

IN THE MATTER OF

A Contested Case Hearing Re Conservation
District Use Permit (CDUP) HA-3568 for the Thirty
Meter Telescope at Mauna Kea Science Reserve,
Kaohe Mauka, Hamakua District, Island of Hawaii,
TMK (3) 4-4-015:009

Case No. : BLNR-CC-16-002

**MOTION TO DENY THE
INTERVENTION OF PERPETUATING
UNIQUE EDUCATIONAL
OPPORTUNITIES AS A PARTY IN
THE CONTESTED CASE HEARING;
MEMORANDUM IN OPPOSITION OF
MOTION; CERTIFICATE OF
SERVICE**

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**BOARD OF LAND AND NATURAL RESOURCES
FOR THE STATE OF HAWAII**

**MOTION TO DENY THE INTERVENTION OF
PERPETUATING UNIQUE EDUCATIONAL OPPORTUNITIES
AS A PARTY TO THE CONTESTED CASE HEARING**

Comes NOW, I, Mehana Kihoi, a citizen of Hawai'i, a Native Hawaiian beneficiary, as defined by the Hawaiian Homes Commission Act of 1921, and a cultural practitioner, representing myself, hereby respectfully move the Board of Land and Natural Resources ("BLNR") or the Hearing Officer to deny Perpetuating Unique Educational Opportunities' ("PUEO") motion to intervene as a party to the contested case pursuant to Hawaii Administrative Rules ("HAR") §§ 13-1-31(b)(2), (c)(1)-(2). This motion should be granted because:

- 1) PUEO is not entitled to mandatory intervention under HAR § 13-1-31(b)(2) because a) it cannot demonstrate it will be directly and immediately affected by the requested action and b) their support for enhanced educational opportunities through the construction of the Thirty Meter Telescope ("TMT") is not a "right distinguishable from the general public." Id. PUEO confused the issues by asserting standing solely based on their Native Hawaiian ancestry and their status as cultural practitioners. The construction of TMT does not protect or preserve customary and traditional rights. There is no constitutional right at all under HAW. CONST. ART. XII, §7 to construct TMT atop Mauna Kea. Id.
- 2) PUEO is not entitled to permissive intervention under HAR § 13-1-31(c)(1)-(2) because PUEO does not have a substantial interest in the contested case. Id. In the alternative, if PUEO is found to have an interest in the contested case, PUEO's claim to enhance educational opportunities for its members, beneficiaries and children of Hawai'i is "substantially the same position" as UHH, who is adequately represented in the contested case. Id. at § 13-1-31(c). To admit PUEO as a party will not add "any new relevant information." Id. at § 13-1-31(c)(1). It will make the proceeding inefficient and unmanageable and not assist BLNR in making a decision. Id. at § 13-1-31(c)(2).
- 3) PUEO should not be allowed to intervene in the contested case because several of their board of directors have a conflict of interest with BLNR and UHH. BLNR board member Stanley Roehrig is in violation of Hawaii Revised Statutes ("HRS") § 171-4(d), which states "Any member having any interest, direct or indirect, in any matter before the board shall disqualify oneself from voting on or participating in the discussion of the

matter.” HRS § 171-4(d) (West) (Westlaw through 2016). As a Board Member, Roehrig has failed to recuse himself from any matters pertaining to the contested case, allowing PUEO to intervene would be in further violation of section of HRS § 171-41(d). Id. PUEO’s participation will only confuse the contested case because its board of directors have direct ties to UHH effectively serving as a conduit for this entity, who is adequately represented in the contested case.

This motion is made pursuant to HAR § 13-1-31 and all other applicable rules of practice and procedure and is based on the attached Memorandum in Opposition.

DATED:

07/18/2016



Mehana Kihoi

MEMORANDUM IN OPPOSITION OF PUEO'S MOTION TO INTERVENE

Mehana Kihoi, a citizen of Hawai'i, a Native Hawaiian beneficiary, as defined by the Hawaiian Homes Commission Act of 1921, and a cultural practitioner, submits this memorandum in opposition to PUEO's motion to intervene as a party in the contested case. This motion should be granted, and, in the alternative, PUEO's motion denied, because:

- 1) PUEO is not entitled to mandatory intervention under HAR § 13-1-31(b)(2) because a) it cannot demonstrate it will be directly and immediately affected by the requested action and b) their support for enhanced educational opportunities through the construction of the Thirty Meter Telescope ("TMT") is not a "right distinguishable from the general public." Id. PUEO confused the issues by asserting standing solely based on their Native Hawaiian ancestry and their status as cultural practitioners. The construction of TMT does not protect or preserve customary and traditional rights. There is no constitutional right at all under HAW. CONST. ART. XII, §7 to construct TMT atop Mauna Kea. Id.
- 2) PUEO is not entitled to permissive intervention under HAR § 13-1-31(c)(1)-(2) because PUEO does not have a substantial interest in the contested case. Id. In the alternative, if PUEO is found to have an interest in the contested case, PUEO's claim to enhance educational opportunities for its members, beneficiaries and children of Hawai'i is "substantially the same position" as TIO and UHH, who are adequately represented in the contested case. Id. at § 13-1-31(c). To admit PUEO as a party will not add "any new relevant information." Id. at § 13-1-31(c)(1). It will make the proceeding inefficient and unmanageable and not assist BLNR in making a decision. Id. at § 13-1-31(c)(2).

3) PUEO should not be allowed to intervene in the contested case because several of their board of directors have a conflict of interest with BLNR and UHH. BLNR board member Stanley Roehrig is in violation of HRS § 171-4(d), which states "Any member having any interest, direct or indirect, in any matter before the board shall disqualify oneself from voting on or participating in the discussion of the matter." *Id.* As a board member, Roehrig has failed to recuse himself from any matters pertaining to the contested case, allowing PUEO to intervene would be in further violation of section of HRS § 171-41(d). *Id.* PUEO's participation will only confuse the contested case because its board of directors have direct ties to UHH effectively serving as a conduit for this entity, who is adequately represented in the contested case.

I. RELEVANT BACKGROUND

In April 2009, Ho'akea, LLC dba Ku'iwalu ("Ku'iwalu") prepared the Mauna Kea Comprehensive Management Plan ("CMP") for the University of Hawai'i at Hilo ("UHH").¹ The CMP was developed to support UHH's application for a Conservation District Use Permit ("CDUP") to construct the TMT within the Mauna Kea Science Reserve. *Id.* The goal of the CMP was to determine if Hawaiian culture and astronomy can "co-exist in such a way that is mutually respectful and yet honors the unique cultural and natural resources of Mauna Kea." *Id.* at 5. To support this, Ku'iwalu "aggressively and extensively engaged the community to support the development of the CMP." *Id.* at 5.

¹ Comprehensive Management Plan, OFFICE OF MAUNA KEA MANAGEMENT, available at http://www.malamamaunakea.org/uploads/management/plans/CMP_2009.PDF. (last visited on July 12, 2016). [Hereinafter called CMP].

On September 2, 2010, UHH, on behalf of the Thirty Meter Telescope International Observatory, LLC (“TIO”), submitted a Conservation District Use Application (“CDUA”) to construct TMT to the Department of Land and Natural Resources (“DLNR”). Mauna Kea Anaina Hou v. Bd. of Land & Nat. Res., 136 Haw. 376, 381, 363 P.3d 224, 229 (2015). The purpose of the CDUA was to advance the “educational uses of the mountain by providing the most advanced tool for astronomical research in the world and providing opportunities for the public to visit and learn about the high-technology science taking place and the discoveries made.”² DLNR approved the application on the condition that a contested case hearing be held first for individuals and organizations challenging the application. Id. The permit was challenged and invalidated on due process violations by the Supreme Court of Hawai‘i and remanded for a new contested case hearing consistent with the court’s opinion. Id. This year, UHH, on behalf of TIO, submitted the same CDUA it submitted in September 2010 declaring the same purpose as mentioned above to build TMT.³

On May 16, 2016, PUEO submitted a motion to intervene as a party in the present contested case. (See Motion to Intervene by PUEO at 1) (“P”). PUEO is a Hawai‘i non-profit organization established on April 12, 2016.⁴ PUEO’s motion was brought by its five board of directors, Shadd Keahi Warfield, Patrick Leo Kawaiola‘a, William H. Brown, Mapuana Waipa and Richard Ha, Jr. (collectively known as “Petitioners”). Id. The purpose of the motion is to

² *Conservation District Use Permit Application, Thirty Meter Telescope Project, by the University of Hawaii at Hilo*, DEPARTMENT OF LAND AND NATURAL RESOURCES, available at <http://dlnr.hawaii.gov/occl/files/2013/08/CDUA.pdf>. (last visited on July 12, 2016). [Hereinafter called “CDUA”].

³ Id. at 156

⁴ *Perpetuating Unique Educational Opportunities, Inc.*, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, available at <https://hbe.ehawaii.gov/documents/business.html?fileNumber=262323D2>. (last visited on July 12, 2016).

“greatly enhance educational opportunities for the children of Hawaii” by supporting the construction of TMT. *Id.* The mission of PUEO is to a) share the interaction of Hawaiian culture and science and b) research and educate the public on the interaction of Hawaiian culture and science and c) to inspire exploration. P at 3. Warfield, Kawaiola’ a, Brown and Ha provided signed declarations attesting to their Native Hawaiian ancestry and their status as cultural practitioners on Mauna Kea. P at 11-20.

They assert they should be entitled to intervene because 1) they are Native Hawaiian and they practice customary and traditional rights on Mauna Kea 2) Their customary and traditional rights will not be diminished if TMT is built and 3) As cultural practitioners, they claim they should have standing to advance enhanced educational opportunities by supporting the construction of TMT. *Id.* at 1-2. Petitioners do not indicate an injury should the court not grant the intervention.

Warfield is the Executive Director of PUEO and also the President of Keaukaha One Youth Development (“KYOD”). KYOD is a Hawai’i non-profit organization.⁵ BLNR member Stanley Roehrig was the Director of KYOD till March 16, 2015.⁶ On January 30, 2015, while Roehrig was the Director of KYOD, Warfield applied for a \$15,000 grant funded by TMT. *Id.* KYOD receives funding from the Hawaii STEM Learning Partnership (“STEM”), a grant

⁵*Keaukaha One Youth Development*, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, available at <https://hbc.ehawaii.gov/documents/business.html?fileNumber=216258D2&view=officers>. (last visited on July 12, 2016).

⁶*BLNR Board Member Had No Conflict of Interest*, CIVIL BEAT, available at <http://www.civilbeat.org/2015/07/blnr-board-member-had-no-conflict-of-interest-in-vote-on-mauna-kea-access/>. (last visited on July 12, 2016).

administered by the Hawaii Community Foundation.⁷ STEM is funded by nine organizations including TIO and the Mauna Kea Observatories of UHH, 'Imiloa Astronomy Center. Id.

Richard Ha, Jr. is a board member of PUEO⁸ and the President of Hamakua Springs Country Farms ("Hamakua").⁹ As President of Hamakua, Ha served as a community and cultural consultant to assist UHH and TIO staff to garner support from the community and to help develop UHH's CMP since 2006.¹⁰ Patrick Kawaiola'a is a board member of PUEO.¹¹ Kawaiola'a also served as a community and cultural consultant for TIO and the CMP process.¹² In April 2009, Kawaiola'a created radio ads in support of the TMT. Kawaiola'a and Ha served as agents of UHH and TIO and were actively engaged in community outreach to garner support for TMT. Id. Ha and Kawaiola'a's support is documented in the CMP. Id.

II. DISCUSSION

⁷ *Hawaii Stem Learning Partnership*, HAWAII COMMUNITY FOUNDATION, available at <http://www.hawaiicomunityfoundation.org/grants/hawaii-stem-learning-partnership> (last visited on July 12, 2016).

⁸ *About Us*, PUEO, available at <http://alohapueo.org/about-us/> (last visited on July 12, 2016). ["PUEO"]

⁹ *Contact Us*, HAMAKUA SPRINGS COUNTRY FARMS, available at <http://www.hamakuasprings.com/contact-us> (last visited on July 12, 2016).

¹⁰ *Comprehensive Management Plan Appendices*, OFFICE OF MAUNAKEA MANAGEMENT, available at http://www.malamamaunakea.org/uploads/management/plans/CMP_Appendices_2009.PDF at 4 [Hereinafter called "CMP Appendices"], (last visited on July 12, 2016), See also, *Community, Education, Hawaiian Role Models*, HAMAKUA SPRINGS COUNTRY FARMS, available at <http://www.hamakuasprings.com/2009/03/lehua-veincent-2009-distinguished-alumni/>. (last visited on July 12, 2016). (Ha admits to meeting Lehua Vincent three years from 2009 in the TMT planning meeting."). See also, *Bridging science and culture with the Thirty Meter Telescope*, SCIENCE LINE, available at <http://scienceline.org/2011/01/bridging-science-and-culture-with-the-thirty-meter-telescope/>, (last visited on July 12, 2016). ("Richard Ha, a Big Island community member who assisted the TMT staff with their outreach endeavors, says that it was initially difficult to get people to commit to the project. They were afraid of speaking out in favor of the TMT, afraid of possible backlash from the rest of the community, he explained." "Patrick Kahawaiola'a, president of the Keaukaha Community Association, created radio ads endorsing the management plan (and, by extension, future observatories) in early April of 2009. "That gave people the courage to be pro," he said. About a week later, the Board of Land and Natural Resources approved the plan after listening to two days of public testimony.)

¹¹ PUEO at About Us

¹² CMP Appendices at 4

PUEO should not be granted mandatory or permissive intervention because 1) they incorrectly use their Native Hawaiian ancestry and customary and traditional practices to advance an educational purpose that does not protect or preserve Traditional and Customary rights ("T&C rights") 2) they fail to demonstrate how they will be directly and immediately affected or how their interest will suffer harm and 3) their claims, in the alternative, are adequately represented by UHH. To admit PUEO as a party will not add new or relevant information to the contested case and will not assist BLNR in making a decision.

We examine PUEO's flawed reasoning in asserting an interest in the contested case solely on the grounds that they are T&C practitioners to advance an unrelated educational purpose that does not "preserve and protect" T&C rights.

1. The State has a duty to protect and preserve Traditional and Customary rights under HAW. CONST. art. XII, § 7.

Pursuant to HAW. CONST. art. XII, § 7, the State of Hawai'i has an affirmative duty to "protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians." HAW. CONST. art. XII, § 7. The Intermediate Court of Appeals ("ICA") reaffirmed the State's duty in as much that a government agency must consider the "rules regarding the gathering rights of native Hawaiians and its obligation to preserve and protect those rights." Pub. Access Shoreline Hawaii by Rothstein v. Hawaii Cty. Planning Comm'n by Fujimoto, 79 Haw. 246, 253, 900 P.2d 1313, 1320 (Ct. App. 1993), aff'd sub nom. Pub. Access Shoreline Hawaii by Rothstein v. Hawai'i Cty. Planning Comm'n by Fujimoto, 79 Haw. 425, 903 P.2d 1246 (1995) ("PASH I"). Further, "all government agencies undertaking or approving development of undeveloped land

are required to determine if native Hawaiian gathering rights have been customarily and traditionally practiced on the land in question and explore the possibilities for preserving them.” Id. at 253-54, 1320-21.

Here, PUEO does not seek entry to preserve T&C rights but to advance the same educational purpose and support for TMT as UHH.

a. Enhanced educational opportunities through TMT is not a T&C right.

Hawai‘i’s long standing history, constitutional mandates and laws act to preserve rights and to provide practitioners with measures to protect against adverse actions that may prevent them from exercising their T&C rights.¹³ The protections and reservations for T&C practices are incorporated in several provisions within Hawai‘i’s laws. Id. These laws reaffirm the State’s obligation to “protect and preserve” T&C rights. Id. The laws provide protection against actions that might threaten the continuance of these rights.

¹³ HAW. REV. STAT. § 7-1 (West) (Westlaw through 2016) (affirming State’s obligation to uphold “the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use.”). See HAW. CONST. ART. XI, §7 (affirming the State’s “obligation to protect, control and regulate the use of Hawai[‘i]’s water resources for the benefit of its people”); id. art. XII, §7 (declaring that the “State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua‘a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights”). HAW. REV. STAT. §174C-101(c)-(d)(West, Westlaw through 2016)(affirming the State’s obligation to protect “Traditional and customary rights of ahupua‘a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by this chapter. Such traditional and customary rights shall include, but not be limited to, the cultivation or propagation of taro on one’s own kuleana and the gathering of hihiwai, opae, o‘opu, limu, thatch, ti leaf, aho cord, and medicinal plants for subsistence, cultural, and religious purposes.(d) The appurtenant water rights of kuleana and taro lands, along with those traditional and customary rights assured in this section, shall not be diminished or extinguished by a failure to apply for or to receive a permit under this chapter.”). See also, HAW. REV. STAT. §§ 174C-1, 2(a)-(e), 3, 4(d), 5(3)-(6),(13)-(15), 31(c)(1)-(5), 32(a), 41(a), 43, 44, 45, 48(a), 50(a)-(j), 51-59, 63 (West, Westlaw through 2016) [“Code”];

In the present case, PUEO argues their status as Native Hawaiian cultural practitioners is sufficient to warrant intervention. This reasoning is incorrect and flies in the face of the the Court, Constitution and related laws. PUEO is not pursuing an action to protect their T&C rights but to “greatly enhance educational opportunities” through the construction of TMT. P at 4. Similarly, UHH makes this argument to support their CDUA. To be clear, to advance education in the areas of science, technology engineering or mathematics are not protected rights under HAW. CONST. art. XII, § 7. Id.

Customary and traditional rights are based on Hawaiian usage. HRS § 1-1 (West) (Westlaw through 2016). T&C rights include but are not limited to “the right to take firewood, house-timber, aho cord, thatch, or ki leaf.” HRS § 7-1 (West) (Westlaw through 2016). These rights are reiterated in the water code. HRS § 174C-101(c) West) (Westlaw through 2016). Under this provision, the state must provide adequate water for the “the cultivation or propagation of taro ... gathering of hihiwai, opae, o’ opu, limu, thatch, ti leaf, aho cord, and medicinal plants for subsistence, cultural, and religious purposes.” Id.

There is no reference in the law that classifies the construction of a mega telescope as a T&C right. Petitioners incorrectly use their status as cultural practitioners to advance their support for the TMT and pursuit for enhanced educational opportunities. Therefore, their argument must fail because they are asserting the same interest as UHH.

- 2. PUEO is not entitled to mandatory intervention under HAR § 13-1-31(b)(2) because PUEO cannot demonstrate an injury-in-fact and support for enhanced educational opportunities is not a right distinguishable from the general public.**

HAR § 13-1-31(b)(2) provides:

"All persons ... who otherwise can demonstrate [1] that they will be so directly and immediately affected by the requested action [2] that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application."

Id.

PUEO is considered a "person" for purposes of this provision. HAR § 13-1-2.

To establish whether a party's interest will be directly and immediately affected, Petitioners must demonstrate that their interests will be injured. Pele Def. Fund v. Puna Geothermal Venture, 77 Haw. 64, 69, 881 P.2d 1210, 1215 (1994). To do this, Petitioners must prove that 1) he or she will suffer some actual or threatened injury 2) the injury is traced to the challenged action and 3) the action is likely to be redressed by a favorable decision. Akau v. Olohana Corp., 65 Haw. 383, 389, 652 P.2d 1130, 1134-35 (1982). An injury in fact includes harm to economic interests or aesthetic and recreational values. Id. **Standing shall not be granted if Petitioners are "merely airing a political or intellectual grievance."** Id. at 390 (1982).

a. PUEO cannot demonstrate an injury in fact to establish standing.

PUEO must provide "sufficient specificity to be accepted as factual allegations of injury." Sierra Club v. Hawaii Tourism Auth. ex rel. Bd. of Directors, 100 Haw. 242, 251, 59 P.3d 877, 886 (2002). The conduct challenged must concretely affect or threaten the petitioner's interests. Id. at 252.

Here, PUEO has not provided any reference on how they will be injured if they are not granted intervention. By the plain language of its motion, PUEO argues TMT will not diminish their customary and traditional rights on Mauna Kea. P at 11-20. PUEO makes no argument that they will be deprived economically, aesthetically or environmentally. Id., 65 Haw. 383 at

389, 59 P.3d 877 at 886 (1982). Their sole purpose to intervene, like UH, is to advance enhanced educational opportunities through the construction of TMT. PUEO is not engaged in any contract or receives any funding dependent on the construction of TMT.

PUEO could arguably assert that it would be deprived of educational opportunities but this assertion cannot stand because PUEO is incapable of providing specific information on this injury. Therefore, PUEO does not meet the injury in fact requirement to become a party in the case.

b. Enhanced educational opportunities is not a right distinguishable from the general public to warrant intervention.

PUEO requests to intervene, like UH, to “enhance educational opportunities” by the construction of the TMT, which is not a right distinguishable from the general public. In Pub. Access Shoreline Hawaii by Rothstein v. Hawai'i Cty. Planning Comm'n by Fujimoto, 79 Haw. 425, 434, 903 P.2d 1246, 1255 (1995) (“PASH”), the court granted standing to an organization whose Native Hawaiian members exercised T&C for subsistence, cultural, and religious purposes on undeveloped lands. Id. The court declared the members had an interest in the approval of a permit that was clearly distinguishable from that of the general public because the permit threatened their ability to exercise their rights in the area. Id. Standing was granted based on the state's obligation to preserve and protect those rights and to provide the members with a protected process to ensure their rights were adequately represented in this case. Id.

The court concluded the agency “disregarded the rules regarding the gathering rights of native Hawaiians and its [State's] obligation to preserve and protect those rights.” Id.

Here, PUEO does not request intervention to "protect and preserve" T&C rights. Id. They argue they should be able to advance support for TMT to enhance educational opportunities on the grounds that the individual board members are Native Hawaiian T&C practitioners. This argument is wrong and insufficient to warrant mandatory intervention. Their claim is not based on advancing T&C rights against an action that will adversely impact those rights but to advance an educational purpose, which is not a right distinguishable from the general public. Id.

The CDUA and potential construction of TMT will, in fact, have an adverse impact on Mauna Kea. The issue is whether Plaintiffs (not Petitioners) will be able to continue to practice their T&C rights because the land beneath the project will forever be changed and will likely cause irreparable harm to this sacred site.

BLNR may deny intervention if it finds that the asserted interests are "substantially similar" to those of the general public. PASH, 79 Haw. 425, 434, 903 P.2d 1246, 1255 (1995).

PUEO's purpose is to enhance educational opportunities through the construction of TMT. Thus, this right is substantially similar to the general public. Id. The general public generally supports enhanced educational opportunities. Therefore, BLNR has the authority to deny PUEO's motion to intervene. Id.

3. PUEO is not entitled to permissive intervention because their interests are adequately represented by UHH.

Under HAR 13-1-31(c)(1)-(2):

"The board may approve such requests if it finds that the requestor's participation will substantially assist the board in its decision making. The board may deny any request to be a party when it appears that: (1) The position of the requestor is substantially the same as the position of a party already admitted to the

proceedings; and (2) The admission of additional parties will not add substantially new relevant information or the addition will make the proceedings inefficient and unmanageable.”

UHH shares the same position as PUEO. In UHH's CDUA, UHH states the TMT will advance the “educational uses of the mountain by providing the most advanced tool for astronomical research in the world and providing opportunities for the public to visit and learn about the high-technology science taking place and the discoveries made.”¹⁴ PUEO asserts a similar interest: to “greatly enhance educational opportunities” through TMT. Thus, PUEO and UHH assert the same interest to increase and enhance educational opportunities. Therefore, BLNR should deny PUEO's motion because their interest is adequately represented by UHH.

4. PUEO should not be allowed to intervene in the contested case because several of their board of directors have a conflict of interest with BLNR and UHH

Board Member Stanley Roehrig is in violation of HRS § 171-4(d). *Id.* HRS § 174-4(d) provides, “Any member having any interest, direct or indirect, in any matter before the board shall disqualify oneself from voting on or participating in the discussion of the matter.” As a board member, Stanley Roehrig has failed to recuse himself from any matters pertaining to the contested case, allowing PUEO to intervene would be in further violation of section of HRS § 171-4(d) because of Roehrig's indirect and direct ties to the construction of the TMT.

In addition to this, PUEO's participation will only confuse the contested case because its board of directors have direct ties to UHH effectively serving as a conduit for this entity, who is adequately represented in the contested case. Three of five board members have direct ties to

¹⁴ CDUA, *supra* note 2 at 156

UHH. (See Relevant Background). These directors have served as agents of the TMT project or have received funding from UHH.

Kawaiola' a and Ha served as community and cultural consultants for UHH to garner support for TMT. (See Section Relevant Background). Ha assisted TMT staff to persuade community residents to endorse TMT. Id. Kawaiola' a created radio ads in 2009 to garner support for TMT. Id. Together, they effectively served as agents of UHH. Their (Ha and Kawaiola' a) participation and feedback were documented in the final version of the CMP.¹⁵ Their participation in the present contested case would not add substantially new relevant information because their feedback was already documented in the CMP, which is incorporated in UHH' s CDUA.¹⁶ Further, their participation will likely make the contested case inefficient and unmanageable. Thus, by denying their motion, the Court will prevent these directors from being conduits for UHH.

Finally, I have concerns regarding the potential conflict of interest and true motivation Warfield has in the present case as the Executive Director of PUEO. Although PUEO has not accepted any grant funding from UHH, Warfield is the President of KYOD. KYOD currently receives funding from UHH and TIO via the STEM grant. Respectfully, his interest in continued funding through STEM could likely influence this proceeding.

b. CONCLUSION

¹⁵ CMP Appendices, *supra* note 9 at Page 4

¹⁶ CDUA, *supra* note 2 at 156

Based on the foregoing, I, Mehana Kihoi, respectfully urge BLNR to deny PUEO's motion to intervene.

Mehana Kihoi

Mehana Kihoi, Pro Se

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

Contested Case Hearing Re Conservation
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for the Thirty Meter Telescope at the Mauna
Kea Science Reserve, Ka'ohu Mauka,
Hāmākua, Hawai'i, TMK (3) 4-4-015:009

BLNR Contested Case HA-16-02
Document title:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced document was served upon the following parties by the means indicated:

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