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STATE OF HAWAII

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAI'I

IN THE MATTER OF

Contested Case Hearing Re Conservation  
District Use Application (CDUA) HA-3568 for  
the Thirty Meter Telescope at the Mauna Kea  
Science Reserve, Ka'ohē Mauka, Hāmākua,  
Hawai'i, TMK (3) 4-4-015:009

Case No. BLNR-CC-16-002


APPLICANT UNIVERSITY OF HAWAI'I  
AT HILO'S **MOTION FOR LEAVE TO  
PRESENT REBUTTAL TESTIMONY;**  
MEMORANDUM IN SUPPORT;  
DECLARATION OF COUNSEL;  
CERTIFICATE OF SERVICE

**APPLICANT UNIVERSITY OF HAWAI'I AT HILO'S MOTION  
FOR LEAVE TO PRESENT REBUTTAL TESTIMONY**

Applicant University of Hawai'i at Hilo (the "**University**"), by and through its counsel  
Carlsmith Ball LLP, hereby submits this Motion for Leave to Present Rebuttal Testimony  
("**Motion**").

This Motion is made pursuant to Hawai'i Administrative Rules ("**HAR**") §§ 13-1-32(c),  
34, and 35, and is based on the supporting memorandum and the pleadings filed herein.

DATED: Honolulu, Hawai'i, February 13, 2017.

*For*   
\_\_\_\_\_  
IAN L. SANDISON  
TIM LUI-KWAN  
JOHN P. MANAUT  
Attorneys for Applicant  
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MEMORANDUM IN SUPPORT

**MEMORANDUM IN SUPPORT**

**I. INTRODUCTION**

At the hearing on January 31, 2017, the Hearing Officer in the above-captioned matter ordered the parties wishing to present rebuttal testimony in this proceeding to file a motion for leave to present rebuttal testimony setting forth good cause to call the rebuttal witness and the reasons for not presenting the witness in its case in chief. Accordingly, the University of Hawai'i at Hilo ("**University**") hereby submits this Motion for Leave to Present Rebuttal Testimony ("**Motion**") of Sara Collins, or in the alternative, Dennis Gosser.

**II. LEGAL STANDARD**

Under Hawai'i Administrative Rules ("**HAR**") §§ 13-1-32(c) and 13-1-35, the Hearing Officer has the authority to receive relevant evidence. All relevant evidence is to be considered prior to a decision and order in a contested case hearing. *See* HAR § 13-1-38.

**III. ARGUMENT**

Sara Collins, Ph.D. is a Senior Archaeologist with Pacific Consulting Services, Inc. ("**PCSI**"), the consultant company responsible for completing the Archaeological Inventory Survey ("**AIS**") of the Astronomy Precinct in the Mauna Kea Science Report ("**Astronomy Precinct AIS**"). The Astronomy Precinct AIS included as Appendix I to Volume 3 of the

Thirty-Meter Telescope (“TMT”) Final Environmental Impact Statement (“FEIS”) (Exhibit A-5 in this proceeding). Dr. Collins is also the former Branch Chief of the Archaeology Branch of the State Historic Preservation Division (“SHPD”) of the State of Hawai‘i and was a State Archaeologist for over 10 years. Dr. Collins is familiar with the Astronomy Precinct AIS and competent to testify on SHPD’s process for conducting an AIS, including the nature and scope of consultations required in the preparation of an AIS. Based on her substantial professional experience, Dr. Collins also has extensive knowledge concerning the process for conducting the Cultural Impact Assessment (“CIA”) that would be helpful to the Hearing Officer.

The University initially expected to present Dr. Collins in its case in chief and timely filed her written direct testimony on October 11, 2016. Dr. Collins’ curriculum vitae was also filed as Exhibit A-45 on October 11, 2016. Unfortunately, Dr. Collins was unavailable to testify when the University presented its direct case. Decl. of Counsel ¶ 4. On the first day of evidentiary hearings in this matter, October 20, 2016, counsel for the University informed the Hearing Officer and the other parties of Dr. Collins’ unavailability during October and the early part of November, as well as the University’s intent to present her as a rebuttal witness if the University was unable to schedule her testimony during its case in chief. Decl. of Counsel ¶ 5.

Due to the initial delay in the start of the evidentiary hearing as well as the unanticipated slow pace at which cross-examination of the University’s witnesses proceeded, the University made an effort to shorten its witness list. Decl. of Counsel ¶ 6. In an effort to assist with moving the proceedings along in a timely fashion, together with the University’s belief that the record contained the evidence that Dr. Collins would testify to, the University reserved Dr. Collins as a rebuttal witness so that it could narrow the scope of her testimony for the limited purpose of rebutting specific evidence presented by the other parties. Decl. of Counsel ¶ 5.

Specifically, several of the other parties' witnesses have provided testimony challenging: (1) adherence to the archaeological and cultural review processes; (2) the sufficiency of the consultation for the TMT project's AISs and CIA; and (3) the credibility of the archaeological and CIA documents supporting the project. That testimony is unfounded and distorts the record evidence of the process followed for archaeological and cultural assessments and surveys performed for the TMT project. Therefore, the University wishes to address those points through the testimony of Dr. Collins to clarify the record. As discussed, Dr. Collins is eminently qualified to testify to the State's archaeological review process, including consultation, as well as the documents related to the TMT project and the archaeological properties in the University-managed areas on Mauna Kea. Her testimony is undoubtedly relevant to Criterion 4 of the Conservation District Use Application ("CDUA") and the claims asserted by various parties and witnesses in this contested case proceeding. Dr. Collins's testimony will assist the Hearing Officer in her decision-making. Accordingly, the University submits it has shown good cause to present Dr. Collins as a rebuttal witness.

Dr. Collins' rebuttal testimony will be limited in scope to the subject matter enumerated above, and will not address other issues raised by the other parties in this contested case hearing, including, *inter alia*, the validity of any asserted traditional and customary practice.

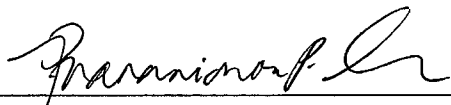
Given the uncertainty of the hearing schedule, should Dr. Collins be unavailable to testify, the University asks for leave to call Mr. Dennis Gosser, M.A., R.P.A. in her place. Mr. Gosser is a Principal Investigator and Senior Archaeologist with PCSI and is also familiar with and competent to testify to the archaeological properties and sites on the University-managed lands on Mauna Kea, as well as the AIS documents prepared by PCSI. Mr. Gosser's rebuttal testimony will be limited in scope to the same subject matter proposed for Dr. Collins.

The University does not intend to call any other rebuttal witnesses at this time; however, in light of the fact that approximately 13 parties have not yet presented their cases in chief, combined with certain witnesses' continued practice to date of expanding the scope of their testimony beyond what was in their written direct testimony, the University hereby reserves its right to seek leave to present additional rebuttal testimony to address new issues that arise on cross-examination and could not be ascertained from the witnesses' written direct testimony.

**IV. CONCLUSION**

For the foregoing reasons, the University respectfully requests that the Hearing Officer GRANT its Motion to present Dr. Sara Collins, or in the alternative if she is unavailable, Mr. Dennis Gosser, as a rebuttal witness in this proceeding.

DATED: Honolulu, Hawai'i, February 13, 2017.

*for*   
\_\_\_\_\_  
IAN L. SANDISON  
TIM LUI-KWAN  
JOHN P. MANAUT  
Attorneys for Applicant  
UNIVERSITY OF HAWAI'I AT HILO

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Case No. BLNR-CC-16-002

DECLARATION OF COUNSEL

**DECLARATION OF COUNSEL**

I, TIM LUI-KWAN, declare and state as follows:

1. I am a partner at the law firm of Carlsmith Ball LLP, counsel of record for Applicant UNIVERSITY OF HAWAI'I AT HILO (the “**University**”) in the above-captioned matter.
2. I am authorized and competent to testify to the matters set forth herein, and unless otherwise indicated, I make this declaration based upon my personal knowledge.
3. I appeared on behalf of the University during the October 20, 2016 contested case hearing in the above-captioned matter, presided over by the Honorable Riki May Amano.
4. Based on a review of the notes of my colleagues and my own recollection of the proceedings, during the October 20, 2016 contested case hearing in the above-captioned matter, the University represented that it intended to present Dr. Sara Collins as a witness in its direct case, but that she would be unavailable during October and the first or second week of November 2016.
5. Based on a review of the notes of my colleagues and my own recollection of the proceedings, during the October 20, 2016 contested case hearing in the above-captioned

matter, the University represented that it intended to take Dr. Collins' testimony out of order, or in the alternative to present her as a rebuttal witness.

6. Based on a review of the notes of my colleagues and my own recollection of the proceedings, due to the initial delay in the start of the evidentiary hearing as well as the unanticipated slow pace at which cross-examination of the University's witnesses proceeded, the University made the decision to shorten its witness list.

This declaration is made upon personal knowledge and is filed pursuant to Rule 7(b) of the Rules of the Circuit Courts of the State of Hawai'i. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, February 13, 2017.

  
For TIM LUI-KWAN



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Case No. BLNR-CC-16-002

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

The undersigned certifies that the above-referenced document was served upon the following parties by email unless indicated otherwise:

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DATED: Honolulu, Hawai'i, February 13, 2017.

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