

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

IN THE MATTER OF)	CASE NO. BLNR-CC-16-002
)	
Contested Case Hearing Re Conservation District Use Application (CDUA) HA-3568 For the Thirty Meter Telescope at the Mauna Kea Science Reserve, Ka`ohe Mauka, Hamakua, Hawai`i TMK (3) 4-4-015:009)	Minute Order No. <u>72</u> (Order Granting KAHEA: The Environmental Alliance's Motion to Permit Live Testimony of Rebuttal Witness Brian Cruz (Doc. 459))
<hr/>)	Certificate of Service

MINUTE ORDER NO. 72

(Order Granting KAHEA: The Environmental Alliance's Motion to Permit Live Testimony of Rebuttal Witness Brian Cruz (Doc. 459))

On February 21, 2017, a hearing on the KAHEA: The Environmental Alliance's Motion to Permit Live Testimony of Rebuttal Witness Brian Cruz (Doc. 459) ("Motion"), was held at the Grand Nanihoa Hotel, 93 Banyan Drive, Hilo, Hawaii.

The following persons were present:

Ian Sandison, Esq., and John Manaut, Esq., Attorneys for the University of Hawaii-Hilo ("UHH")
Kealoha Pisciotto in her individual capacity and for Mauna Kea Anaina Hou ("MKAH") and Paul Neves
Dexter Kaiama, Esq., for the Hawaiian –Environmental Alliance ("KAHEA")
Clarence K. Ching
Harry Fertgertstrom
J. Douglas Ing, Esq., and Jeffrey Ono, Esq., Attorneys for TMT International Observatory, LLC. ("TIO")
Vaughn Cook, Esq., Attorney for Perpetuating Unique Educational Opportunities Inc. ("PUEO")
Mehana Kihoi in her individual capacity and for Leina`ala Sleightholm
Dwight Vicente

Received
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
2017 June 7 1:08 am

Cindy Freitas
William Freitas

In addition to the Motion, the following submissions were considered:

Doc. #	Filed	Party	Title
469	2/20/2017	UHH	University of Hawaii at Hilo's Opposition to KAHEA: The Environmental Alliance's Motion to Permit Live Testimony of Rebuttal Witness Brian Cruz Filed February 13, 2017 [Doc. 459]
471	2/20/2017*	TIO	TMT International Observatory, LLC's Joinder to University of Hawaii at Hilo's Opposition to Kahea: The Environmental Alliance's Motion to Permit Live Testimony of Rebuttal Witness Brian Cruz filed February 13, 2017 [Doc 459] *Received on February 21, 2017 by the Office of Conservation and Coastal Lands
478	2/24/2017	KAHEA	Proposed Order Granting Kahea: The Environmental Alliance's Motion to Permit Live Testimony of Rebuttal witness Brian Cruz filed February 13, 2017

By its Motion, KAHEA: The Environmental Alliance (“KAHEA”) seeks to call Brian Cruz as a rebuttal witness in this contested case hearing. KAHEA contends that Cruz’ testimony would be based upon his work as the author of the 2009-2010 Cultural Impact Assessment while he was employed at Cultural Surveys Hawaii. Doc. 459 at page 6. KAHEA asserts that Brian Cruz would testify that his recommendation that “Project proponents strongly consider no further development” was removed. Doc. 459 at page 7.

UHH opposes the testimony of Cruz on the basis of timeliness; to wit, Cruz is not listed as a witness on the initial lists of direct witnesses submitted on July 18, 2016 (Docs. 103, 104) or the final list on October 11, 2016. Brian Cruz’ name appears for the first time as a potential rebuttal witness, on October 14, 2016, in *Collective Statement of Petitioners’ Designation of Witnesses and Notice of Production of Witnesses for Cross-Examination*.

UHH argues that Cruz is not a proper rebuttal witness. “KAHEA has been aware since the inception of this contested case that the CDUA, which is the subject of these proceedings,

relies in part on the materials and analysis contained in the FEIS. There is no reason – nor does the Motion attempt to provide a reason – why Mr. Cruz was not properly identified as a direct witness from the beginning.” Doc. 469 at pp. 4-5. In addition, UHH proclaims that the testimony of Brian Cruz is “irrelevant, immaterial and repetitious.” Doc. 469 at page 5.

On February 24, 2017, KAHEA filed a Proposed Order Granting KAHEA: The Environmental Alliance's Motion to Permit Live Testimony of Rebuttal Witness Brian Cruz, filed February 13, 2017 (“Proposed Minute Order”). There were no responses to the Proposed Minute Order.

Based upon the Motion, all related and oral submissions from counsels and/or parties, the Proposed Minute Order and all submissions related thereto, all applicable law, the entire record having been considered by the Hearing Officer, and for good cause shown,

IT IS HEREBY ORDERED that the Request is GRANTED with the following limitations:

1. Brian Cruz’s authorship and/or personal direct knowledge of and related to the Preliminary Draft CIA, and the Cultural Impact Assessments incorporated in the Draft Environmental Impact Statement and the Final Environmental Impact Statement (KAHEA Exhibits B.44, B.45 and B.57, UH Hilo Exhibits A-002 through A-005 and MK Hui Exhibits B.31 through B.34; and
2. Mr. Brian Cruz is to appear and provide live testimony and be available for cross-examination and re-direct examination by parties to these proceedings on Tuesday, February 28, 2017 at 9:00 a.m.

Motion to Reconsider. A party, who believes it appropriate, may file a motion to reconsider using the procedure set out herein. Any Motion for Reconsideration shall not be used

to reargue the motion or set out positions of a purely repetitious nature or to present factual or legal grounds that could or should have been presented at the original hearing. AMFAC, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114 (1992).

The deadline for submission of any **motion** to reconsider this minute order is no later than **5 business days** after the date this Minute Order is filed in the Documents Library. Any **responses to motions to reconsider**, shall be submitted no later than **10 business days** after this order is filed in the Documents Library; essentially 5 business days after the deadline for motions to reconsider.

Any Motion to Reconsider shall be considered a non-hearing motion unless otherwise designated by the Hearing Officer.

DATED: Honolulu, Hawai`i, June 7, 2017.



Judge Riki May Amano (Ret.)
Hearing Officer

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

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,
Hāmakua, Hawai'i, TMK (3) 4-4-015:009

BLNR Contested Case HA-16-02
Document title: **Minute Orders 70-72**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced documents were served upon the following parties by email (when indicated) on June 7, 2017 and by regular mail on June 7, 2017:

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Date: *June 7, 2017*