

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

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`ohe Mauka, Hamakua, Hawai`i)
TMK (3) 4-4-015:009)
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CASE NO. BLNR-CC-16-002

Minute Order No. 73
(Order Granting-in-Part
Applicant University of
Hawai`i at Hilo’s Motion
for Leave to Present
Rebuttal Testimony
(Doc. 461))

Certificate of Service

MINUTE ORDER NO. 73

**(Order Granting-In-Part Applicant University of Hawai`i at
Hilo's Motion for Leave to Present Rebuttal Testimony
(Doc. 461))**

On February 21, 2017, a hearing on the Applicant University of Hawai`i at Hilo's ("UHH") Motion for Leave to Present Rebuttal Testimony (Doc. 461) ("Motion") was held at the Grand Naniloa Hotel, 93 Banyan Drive, Hilo, Hawai`i.

The following persons were present:

- Ian Sandison, Esq., and John Manaut, Esq., Attorneys for the University of Hawaii-Hilo ("UHH")
- Kealoha Pisciotta 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 Fergerstrom
- 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
- Cindy Freitas
- William Freitas

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

Doc. #	Filed	Party	Title
465	2/16/2017	Flores-Case	Flores-Case `Ohana's Response to Applicant University of Hawaii at Hilo's Motion for Leave to Present Rebuttal Testimony; Memorandum in Support of Response; Exhibit "A"
466	2/17/2017	KAHEA	Kahea: The Environmental Alliance's Response to UH Hilo's Motion for Leave and Partial Joinder in Flores-Case Ohana's Response to Application University of Hilo's Motion for Leave to Present Rebuttal Testimony Filed February 13, 2017, filed (on or about) February 16, 2017; Exhibit "1"
479	2/24/2017	UHH	Proposed Minute Order No. ____ Granting-in-Part Applicant University of Hawaii at Hilo's Motion for Leave to Present Rebuttal Testimony

By this Motion, UHH seeks leave to have Sara Collins, Ph.D., or in the alternative, Dennis Gosser, testify as rebuttal witnesses. Dr. Collins 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”).” (emphasis removed) Doc. 461 at page 1. UHH pronounces, “The University initially expected to present Dr. Collins in its case in chief and timely filed her written direct testimony on October 11, 2016.” Doc. 461 at page 2. However, due to scheduling issues, Dr. Collins was unavailable during the period that UHH presented its case in chief. Doc. 461 at page 2. UHH informed the Hearing Officer and parties of the scheduling problems and of its intent to present Dr. Collins as a rebuttal witness. Doc. 461 at page 2. UHH argues that Dr. Collins’ testimony will assist the Hearing Officer in her decision-making and that good cause has been shown for leave to present Dr. Collins as a rebuttal witness.

Doc. 461 at page 2. Mr. Gosser would be offered as a rebuttal witness if Dr. Collins was not available when scheduled.

The Flores-Case `Ohana suggests that the Motion presents inconsistent positions taken by the UHH. Doc. 465 at page 2. The Flores-Case `Ohana also raises concerns and reservations about “a PCSI representative being called as a rebuttal witness based upon the credibility of the written direct testimony associated with this firm as previously demonstrated by UHH’s witness, Mr. Richard Nees – PCSI Senior Archaeologist.” Doc. 465 at page 3. However, the Flores-Case `Ohana takes the position that it would not oppose the rebuttal witness within a specific limited scope:

- (1) Adherence to the archaeological and cultural review processes as it pertains to PCSI’s own document, Archaeological Inventory Survey of the Astronomy Precinct in the Mauna Kea Science Reserve included as Appendix I to Volume 3 of the thirty-Meter Telescope Final Environmental Impact Statement (Exhibit A-5 in this proceeding)
- (2) the credibility of PCSI’s own archaeological document noted above
- (3) PCSI’s role and contribution to the CDUA HA-3568

Doc 465 at page 3.

KAHEA objects entirely to UHH calling Dr. Collins and Mr. Gosser as rebuttal witnesses. KAHEA contends that “UHH desires to call Ms. Collins for purposes of rehabilitating the testimony of their own witness (Nees) and mending “pukas” in their case in chief, and that the stated reasons for their request for leave is merely a disguise for their desire to rehabilitate their own witnesses and/or “pukas” in their case in chief.” Doc. 466 at page 3.

At the hearing on this Motion on February 21, 2017, the Hearing Officer ruled: “With regard to the University’s request for Sara Collins or Dennis Gosser, I’m also granting that request. Again, that testimony, rebuttal in nature, will be limited to the Points 1, 2, and 3 set out in the Flores-Case opposition.” Tr. Vol. 38, 2/21/2017, at 28:20-24.

On February 24, 2017, UHH filed a Proposed Minute Order No. ____ Granting-in-Part Applicant University of Hawaii at Hilo's Motion for Leave to Present Rebuttal Testimony, filed February 13, 2017 (Doc. 461) ("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,


IT IS HEREBY ORDERED that the Motion is Granted-in-Part.

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

BLNR Contested Case HA-16-02
Document title: **Minute Orders 73**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced documents were served upon the following parties by email (when indicated) on June 9, 2017 and by regular mail on June 9, 2017:

Carlsmith Ball LLP
Ian Sandison, John P. Manaut, Lindsay N. McAneeley
1001 Bishop Street
ASB Tower, Suite 2200
Honolulu, HI 96813
isandison@carlsmith.com
jpm@carlsmith.com
lmcaneley@carlsmith.com
Counsel for the Applicant University of Hawai'i at Hilo

Law Offices of Yuklin Alulu
415-C Uluniu Street
Kailua, HI 96734
yuklin@kailualaw.com
Co-Counsel for Kahea

Dexter K. Kaiama
111 Hekili Street, #A1607
Kailua, HI 96734
cdex@hotmail.com
Co-Counsel for Kahea

Kealoha Pisciotta and Mauna Kea Anaina Hou
PO Box 5864
Hilo, HI 96720
keomaivg@gmail.com

Clarence Kukauakahi Ching
64-823 Mamalahoa Hywy
Kamuela HI 96743
kahiwaL@cs.com

Flores-Case 'Ohana
E. Kalani Flores, B. Pualani Case
PO Box 6918
Kamuela, HI 96743
ekflores@hawaiiantel.net

Deborah J. Ward
PO Box 918
Kurtistown, HI 96760
cordylinecolor@gmail.com

Paul K. Neves
380 Nahale-a Avenue
Hilo, HI 96720
kealiikea@yahoo.com

Watanabe Ing LLP
J. Douglas Ing, Ross T. Shinyama, Summer H. Kiawe
First Hawaiian Center 999 Bishop Street, 23rd Floor
Honolulu, HI 96813
rshinyama@wik.com
douging@wik.com
Counsel for TMT International Observatory, LLC

Harry Fergerstrom
P.O. Box 951
Kurtistown, HI 96760

Mehana Kihoi
PO Box 393
Honaunau, HI 96726
uhiwai@live.com

C. M. Kaho'okahi Kanuha
77-6504 Maile St
Kailua Kona, HI 96740
kahookahi@gmail.com

Joseph Kualii Lindsey Camara
192 Kualua Pl.
Hilo, 96720
kualiic@hotmail.com

Torkildson, Katz, Moore, Hetherington & Harris
Attn: Lincoln S. T. Ashida
120 Pauahi Street, Suite 312
Hilo, HI 96720-3084
lsa@torkildson.com
njc@torkildson.com
*Counsel for Perpetuating Unique Educational
Opportunities (PUEO)*

J. Leina'ala Sleightholm
P.O. Box 383035
Waikoloa, HI 96738
leinaala.mauna@gmail.com

Lanny Alan Sinkin
1429 North 17th Street
Bismarck, North Dakota 58501-2858
lanny.sinkin@gmail.com
Representative for The Temple of Lono

Kalikolehua Kanaele
4 Spring Street
Hilo, HI 96720
akulele@yahoo.com

Stephanie-Malia:Tabbada
P O Box 194,
Naalehu, HI 96772
s.tabbada@hawaiiantel.net

Tiffnie Kakalia
549 E. Kahaopea St.
Hilo, HI 96720
tiffniekakalia@gmail.com

Glen Kila
89-530 Mokiawe Street
Waianae, HI 96792
makakila@gmail.com

Dwight J. Vicente
2608 Ainaola Drive
Hilo, Hawaiian Kingdom

Brannon Kamahana Kealoha
89-564 Mokiawe Street
Nanakuli, HI 96792
brannonk@hawaii.edu

Cindy Freitas
PO Box 4650
Kailua Kona, HI 96745
hanahanai@hawaii.rr.com

William Freitas
PO Box 4650
Kailua Kona, HI 96745
pohaku7@yahoo.com

Wilma H. Holi
P. O. Box 368
Hanapepe, HI 96716
w_holi@hotmail.com
Hearing Officer's witness

Moses Kealamakia Jr.
1059 Puku Street
Hilo, HI 96720
mkealama@yahoo.com
Hearing Officer's witness

Signature:

Name: Michael Cain

Date:


June 9, 2017