

FLORES-CASE 'OHANA
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Petitioners pro se

BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

In the Matter of:)	Case No. BLNR-CC-16-002
A Contested Case Hearing Re)	
Conservation District Use Application	)	FLORES-CASE 'OHANA'S
(CDUA) HA-3568 for the Thirty Meter	)	RESPONSE TO APPLICANT
Telescope at the Mauna Kea Science	)	UNIVERSITY OF HAWAII
Reserve, Ka'ohē, Hamakua District,	)	AT HILO'S MOTION FOR LEAVE TO
Island of Hawai'i, TMK (3) 4-4-015:009	)	PRESENT REBUTTAL TESTIMONY;
	)	MEMORANDUM IN SUPPORT OF
	)	RESPONSE; EXHIBIT "A";
	)	CERTIFICATE OF SERVICE
)	
	)	Hearing Officer: Hon. Riki M. Amano
	)	(Ret.)

**FLORES-CASE 'OHANA'S RESPONSE TO APPLICANT UNIVERSITY OF HAWAII
AT HILO'S MOTION FOR LEAVE TO PRESENT REBUTTAL TESTIMONY**

Petitioner, E. KALANI FLORES, pro se, representing the FLORES-CASE 'OHANA, respectfully submits this response to Applicant University of Hawai'i at Hilo's Motion for Leave to Present Rebuttal Testimony, filed on February 13, 2017, based upon the supporting memorandum, and any record and files herein.

DATED: Pu'ukapu, Hawai'i, February 16, 2017



E. Kalani Flores
Representing Flores-Case 'Ohana

Received
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
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MEMORANDUM IN SUPPORT OF RESPONSE

I. Response to Applicant University of Hawai'i at Hilo's Motion for Leave to Present Rebuttal Testimony

Firstly, it's quite puzzling as to UHH's motion, filed at 4:21 p.m. on February 13, 2017, to call a rebuttal witness when on this same day, UHH Attorney Tim Lui-Kwan, made an oral request to move along the contested case hearing by having "parties, including the University, not call rebuttal witnesses...to the extend that KAHEA has already identified and designated Mr. Brian Cruz, we can include him..." Thus, this motion is in contradiction to what was represented by UHH counsel during the morning of this contested case hearing.

Secondly, UHH rested its case on December 13, 2016. As such, there is an appearance that UHH is attempting to recall their previously dismissed witness, Ms. Sara Collins, after they rested its case. Thus, the Flores-Case 'Ohana is opposed to this motion if UHH attempts to enter into evidence the WDT of Collins, initially filed on 11 October 2016, by calling her as a rebuttal witness. Although the Flores-Case 'Ohana has some reservations, it's not completely opposed to UHH calling Ms. Collins as a rebuttal witness based upon a limited scope along with a new and appropriate WDT.

The proposed scope of the subject matter to be enumerated by Ms. Collins or Mr. Dennis Gosser of Pacific Consulting Services, Inc. (PCSI) is noted in this motion as such:

- (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.

The Flores-Case ‘Ohana is opposed to the scope of the afore-mentioned subject matter proposed to be enumerated by Ms. Collins or Mr. Gosser for the following reasons:

- the proposed scope of the subject matter is overly broad
- UHH had an opportunity to address this subject matter with any witnesses through their cross-examination
- the Archaeological Inventory Survey (AIS) for the TMT Observatory Project was actually done by the firm Cultural Surveys Hawai‘i, Inc. - not by PCSI
- the Cultural Impact Assessment (CIA) for the TMT Observatory Project was actually done by the firm Cultural Surveys Hawai‘i, Inc. - not by PCSI
- if PCSI did not actually prepare or complete the TMT’s AIS or CIA, Ms. Collins or Mr. Gosser are incapable of verifying the credibility, sufficiency, or accurateness of these documents
- if UHH wishes to verify the credibility, sufficiency, or accurateness of TMT’s AIS or CIA, having a representative from the consulting firm Cultural Surveys Hawai‘i, Inc. would be deemed more relevant and appropriate

However, the Flores-Case ‘Ohana is not opposed to the following limited scope of subject matter which would be more relevant in a motion for a rebuttal witness from PCSI:

- (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

Lastly, the Flores-Case ‘Ohana does have some 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. As disclosed during the oral testimony of Mr. Nees, nearly 6.5 out of 8 pages of his WDT weren’t even his own testimony, but instead his WDT was actually derived from a template from Ms. Collins. In addition, another reservation is regarding Ms. Collins in that she is not identified as serving in any capacity in the authoring or preparation of PCSI’s AIS of the Astronomy Precinct in the Mauna Kea Science Reserve, unlike Mr. Gosser whose name appears in the Acknowledgments. [see Exhibit “A”] Thus, it’s very questionable if Ms. Collins would be an appropriate rebuttal witness for all the reasons stated in this response.

II. Conclusion

As such, the Flores-Case 'Ohana calls upon the Hearing Officer to consider these comments in response to UHH's Motion for Leave to Present Rebuttal Testimony.

DATED: Pu'ukapu, Hawai'i, February 16, 2017



E. Kalani Flores
Representing Flores-Case 'Ohana

FINAL Report
Archaeological Inventory Survey of the Astronomy
Precinct in the Mauna Kea Science Reserve, Ka`ohe
Ahupua`a, H•m•kua District, Hawai`i Island, Hawaii.
TMK: (3) 4-4-015: 09 (por.)

Prepared for:
Office of Mauna Kea Management
University of Hawaii at Hilo
640 N. A`ohoku Place
Hilo, HI 96720

Prepared by:
Pacific Consulting Services, Inc.
720 Iwilei Road, Suite 424
Honolulu, HI 96817

January 2010

EXHIBIT "A"

FINAL REPORT

Archaeological Inventory Survey of the Astronomy Precinct
In the Mauna Kea Science Reserve
Ka`ohe Ahupua`a, Hāmākua District, Island of Hawai`i
TMK: (3) 4-4-015: 09 (por.)

By
Patrick C. McCoy, Ph.D.
Richard Nees, B.A.
Stephan D. Clark, B.S.

Prepared for
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University of Hawai`i at Hilo
200 W. Kawili Street
Hilo, Hawai`i 96720

Prepared by
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720 Iwilei Road, Suite 424
Honolulu, HI 96817

January 2010

ABSTRACT

Under contract to the Office of Mauna Kea Management (OMKM), Pacific Consulting Services, Inc. (PCSI) conducted an archaeological inventory survey of the 525-acre Astronomy Precinct in the Mauna Kea Science Reserve. Although the inventory fieldwork was conducted in 2005, archaeological sites that comprise the inventory include sites identified in previous reconnaissance surveys (McCoy 1982a, 1982b, 1984b, 1999a) as well as sites recorded during 2005.

A total of seven historic properties have been identified within the Astronomy Precinct. These include six archaeological sites and one traditional cultural property. The six archaeological sites found during various fieldwork phases are comprised of 7 features. With one exception, all sites and features have been interpreted as shrines. The one exception, Site 21449, a terrace of unknown function, was excavated to aid in the determination of site function. The testing determined that this terrace was a natural gelifluction feature.

K•kahau`ula, a prominent landscape feature at Mauna Kea's summit, was deemed a Traditional Cultural Property (TCP) by SHPD in 1999, and designated as Site 50-10-23-21438. This landscape feature is also known as Pu`u Hau Oki, Pu`u Kea, and Pu`u Wekiu. A portion of K•kahau`ula extends into the Astronomy Precinct is part of the inventory of historic properties in the Astronomy Precinct.

A draft historic preservation plan (HPP) prepared in 1999 by SHPD for the lands managed by the University of Hawai`i on Mauna Kea proposed the recognition of what was called the Mauna Kea Summit Region Historic District. The district (50-10-23-28689), later determined eligible for inclusion in the National Register of Historic Places, includes the Astronomy Precinct. The seven historic properties in the Astronomy Precinct are contributing properties to this district and are significant under multiple criteria.

Seven "find-spots" were identified in the Astronomy Precinct in 2005, including a previously identified find-spot found during a 1997 survey (McCoy 1999a). Find spots are cultural resources that are either obviously modern features or features that cannot be classified with any level of confidence as historic properties because of their uncertain age and function.

All of the sites in the Astronomy Precinct and in the Mauna Kea Science Reserve are in preservation and will continue to be managed by the Office of Mauna Kea Management (OMKM). The data from this survey has been incorporated into a draft Cultural Resource Management Plan (McCoy et al. 2009). In the interim, recommendations are made that all future construction projects in the precinct proceed with caution and an increased awareness of the nature, location, and significance of historic properties in the Astronomy Precinct and the need to protect them. Relevant sections of the draft CRMP are listed that will aid in managing the historic properties identified in the Astronomy Precinct.

ACKNOWLEDGMENTS

Numerous individuals contributed to the successful completion of the work described in this report. Stephanie Nagata, currently Interim Director of the Office of Mauna Kea Management (OMKM) provided much appreciated logistical support in making arrangements for the field crew to stay at the Mid-Elevation Facility at Hale Pohaku.

The aerial photograph (Figure 2.1) was obtained from George McEldowney, father of Holly McEldowney, in the early 1980s, when Holly and the senior author co-authored the first cultural resource management report on the Mauna Kea Science Reserve. Her report continues to be one of the most important sources of ethnographic and ethnohistoric information on the summit region of Mauna Kea and is cited or quoted in a number of places in this report.

The authors are grateful for the hard work and perseverance under very trying conditions of our PCSI co-workers, Dennis Gosser and Reid Yamasato. The survey could not have been completed without their efforts.

**BOARD OF LAND AND NATURAL RESOURCES
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Contested Case Hearing Re
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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced documents were served upon the following parties by the means indicated below:

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Date: February 16, 2017