

Cain, Michael

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Sent: Friday, April 28, 2017 3:30 PM
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Subject: CLARENCE KUKAUAKAHI CHING'S JOINDER OF 1) TEMPLE OF LONO MOTION FOR RECONSIDERATION OF MINUTE ORDER 44 AND MEMORANDUM IN SUPPORT, ETC.

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BOARD OF LAND AND NATURAL RESOURCES
FOR THE STATE OF HAWAII

IN THE MATTER OF) Case No. BLNR-CC-16-002)
A Contested Case Hearing Re Conservation)
District Use Application (CDUA) (HA-)
3568) The Thirty Meter Telescope at the) CLARENCE KUKAUAKAHI CHING'S JOINDER
Mauna Kea Science Reserve, Kaoho Mauna) OF 1) TEMPLE OF LONO MOTION FOR
Hamakua District, Island of Hawai'i,) RECONSIDERATION OF MINUTE ORDER 44 AND
TMK (3) 4-4-015:009) MEMORANDUM IN SUPPORT, 2) FLORES-CASE
) 'OHANA'S MOTION TO RECONSIDER MINUTE
) ORDER NO. 44 AND NOTICE OF SPOILIATION OF
) EVIDENCE, AND MEMORANDUM IN SUPPORT
) DATED APRIL 26, 2017, AND 3) MAUNA KEA
) MAUNA KEA ANAINA HOU ET AL. JOINDER TO
) THE TEMPLE OF LONO MOTION FOR
) RECONSIDERATION OF MINUTE ORDER 44
) AND OBJECTIONS DATED APRIL 27, 2017,
) CERTIFICATE OF SERVICE

CLARENCE KUKAUAKAHI CHING'S JOINDER OF 1) TEMPLE OF LONO
MOTION FOR RECONSIDERATION OF MINUTE ORDER 44 AND
MEMORANDUM IN SUPPORT, 2) FLORES-CASE 'OHANA'S MOTION TO
RECONSIDER MINUTE ORDER NO. 44 AND NOTICE OF SPOILIATION OF
EVIDENCE, AND MEMORANDUM IN SUPPORT DATED APRIL 26, 2017, AND 3)
MAUNA KEA ANAINA HOU ET AL. JOINDER TO THE TEMPLE OF LONO MOTION FOR
RECONSIDERATION OF MINUTE ORDER 44 AND OBJECTIONS DATED APRIL 27, 2017

COMES NOW, CLARENCE KUKAUAKAHI CHING PRO SE (hereinafter "CHING"), and files this Joinder to 1) Temple of Lono Motion for Reconsideration of Minute Order 44 and Memorandum in Support, 2) Flores-Case 'Ohana's Motion to Reconsider Minute Order No. 44 and Notice of Spoliation of Evidence, and Memorandum in Support dated April 26, 2017, and 3) Mauna Kea Anaina hou et al. Joinder to Temple of Lono Motion for Reconsideration of Minute Order 44 and Objections dated April 27, 2017. and provides the following additional objections to Minute Order 44.

SPOILIATION OF EVIDENCE

The **spoliation of evidence** (Wikipedia) is the intentional, reckless, or negligent withholding, hiding, altering, fabricating, or destroying of **evidence** relevant to a legal proceeding.

Exhibit R-7, the DLNR Staff Report of CDUA HA-3568, was the subject of E. Kalani Flores' cross-examination of Samuel Lemmo, DLNR Administrator on February 27, 2017. Mr. Lemmo testified that the copy of Exhibit R-7, that was a copy filed in the contested case hearing Exhibit List prior to February 27, 2017, was a Draft Copy and was **not signed**. Mr. Michael Cain, a staff member of Mr. Samuel Lemmo, has been and is the present Custodian of the documents and exhibit lists of the contested case hearing. However, at some time AFTER February 27, 2017, the copy of R-7 in the Exhibit List, contained a "signature page" that **was signed**. It is easily concluded that someone who had access to the Exhibit List had substituted a "different, but "signed" signature page to the Exhibit List. The "switch" was apparently made without notice or permission. CHING opines that this manipulation of the "signature page" of Exhibit R-7 is an allegation of "spoliation of evidence." Such possibility for "spoliation of evidence" cannot be tolerated AND allowed. CHING further opines that the Hearing Officer's apparent decision to NOT admit all of the R-series exhibits – and specifically Exhibit R-7 – results in documents, files and records directly related to the CDUA of this contested case hearing being excluded as evidence is a violation of HAR §13-1-32.4.

Received:
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
2017 April 28 3:30 pm

HAR §13-1-32.4 Records on file with board. **Records directly relating to the application** that are **on file** with the board, including, but not limited to, the record of the public hearing (if held), **shall** be a part of the record of the contested case; provided, however, that any party may object, in the manner provided in section 13-1-35, to any part of such record. [Eff and comp 2/27/09] (Auth: HRS §§91-2, 171-6) (Imp: HRS §§91-2, 91-9, 171-6).

CHING further opines that the required public hearing necessary for standing of intervenors in this contested case hearing – except in the case of the “original” intervenors – never happened. If CHING’S opinion is in error, then: Where in the Record are the details of said public hearing reflected?

UNAUTHORIZED RULE CHANGES

The Hearing Officer orally announced multiple times during the course of the hearing, and, in fact, even refused parties’ attempts to verify exhibits during the hearing, that she would admit practically all exhibits presented into evidence – subject to evaluation of said evidence by weight of credibility. CHING does not recall whether this rule was ever codified by written minute order.

However, it appears that the Hearing Officer, subsequent to the last time that the “rule” was orally mentioned during the occasion of the last physical hearing date on March 2, 2017, has again changed a “rule” that has heretofore been established, without notice, consultation with all the parties and by their consent as required by rule. CHING opines that this is an unauthorized and illegal rule change pursuant to HAR §13-1-35(j).

HAR §13-1-35 Evidence

(j) At the hearing, the presiding officer may require the production of further evidence upon any issue. Upon agreement of the parties, the presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time.

Additionally, the Hearing Officer “ruled” orally on March 2, 2017, that exhibits that were mentioned in written and/or oral witness testimonies and/or cross examination, but that were NOT yet filed, could be filed before March 9, 2017. However, the “rule,” without notice, consultation and/or consent to and by the parties, was unauthorized and illegally changed by the effects of Minute Order 44. CHING and other intervenors who relied on this rule to their detriment, now have their exhibits excluded by an illegal rule change. CHING opines that this is an unauthorized and illegal rule change pursuant to HAR §13-1-35(j). CHING’S Exhibits B19(i) and B19(j) have been excluded by this unauthorized and illegal rule change – and should now be admitted.

DATED: April 28, 2017
Kamuela, HI 96743

_____/s/_____

CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of CLARENCE KUKAUAKAHI CHING’S JOINDER OF 1) TEMPLE OF LONO MOTION FOR RECONSIDERATION OF MINUTE ORDER 44 AND MEMORANDUM IN SUPPORT, 2) FLORES-CASE ‘OHANA’S MOTION TO RECONSIDER MINUTE ORDER NO. 4 AND NOTICE OF SPOILIATION OF EVIDENCE AND MEMORANDUM IN SUPPORT DATED APRIL 26, 2017, and 3) MAUNA KEA ANAINA HOU ET AL. JOINDER TO THE TEMPLE OF LONO MOTION FOR RECONSIDERATION OF MINUTE ORDER 44 AND OBJECTIONS DATED APRIL 27, 2017, was served on the following parties by email on April 28, 2017:

Michael Cain michael.cain@hawaii.gov, **Office of Conservation & Coastal Lands** dlnr.maunakea@hawaii.gov, **Uncle Kalani Flores** ekflores@hawaiiantel.net, **Pua Case** puacase@hawaiiantel.net, **cordylinecolor** cordylinecolor@gmail.com, **kealiikea** kealiikea@yahoo.com, **Bianca Isaki** bianca@kahea.org, **Ian Sandison** isandison@carlsmith.com, **tluikwan** tluikwan@carlsmith.com, **John P. (Pete) Manaut** jpm@carlsmith.com, **Lindsay N. McAneeley** lmcaneley@carlsmith.com, **T. Shinyama** RShinyama@wik.com, **douging** douging@wik.com, **mehana kihoi** uhiwai@live.com, **Kahookahi Kanuha** kahookahi@gmail.com, **Joseph Camara** kualiic@hotmail.com, **Isa** Isa@torkildson.com, **njc** njc@torkildson.com, **leina'ala s leinaala.mauna@gmail.com**, **Maelani Lee** maelanilee@yahoo.com, **Lanny Sinkin** lanny.sinkin@gmail.com, **akulele** akulele@yahoo.com, **s.tabbada** s.tabbada@hawaiiantel.net, **tiffniekakalia** tiffniekakalia@gmail.com, **Glen Kila** makakila@gmail.com, **Brannon Kealoha** brannonk@hawaii.edu, **hanahanai** hanahanai@hawaii.rr.com, **pohaku7** pohaku7@yahoo.com, **Ivy McIntosh** 3popoki@gmail.com, **Kealamakia Jr.** mkealama@yahoo.com, **Patricia Ikeda** peheakeanila@gmail.com, **Yuklin Aluli** yuklin@kailualaw.com, **Dexter Kaiama** cdexk@hotmail.com, **Kealoha Pisciotta** keokea1@icloud.com

and by first class mail on April 28, 2017 to:

1. Dwight J. Vicente 2608 Ainaola Drive Hilo, Hawaiian Kingdom
2. Harry Fergerstrom P.O. Box 951 Kurtistown, HI 96760

3. Michael Cain, Custodian of Records Conservation and Coastal Lands 1151 Punchbowl, Room 131 Honolulu, Hawai'i 96813

Dated: April 28, 2017
Kamuela, HI 96743

_____/s/_____
CLARENCE KUKAUAKAHI CHING