

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 MOTION
(CDUA) HA-3568 for the Thirty Meter	)	FOR CLARIFICATION OR, IN THE
Telescope at the Mauna Kea Science	)	ALTERNATIVE, RECONSIDERATION
Reserve, Ka'ohē, Hamakua District,	)	RE: MINUTE ORDERS NO. 43 AND 44,
Island of Hawai'i, TMK (3) 4-4-015:009	)	FILED 4/25/17 & 4/27/17 [DOC. NOS. 558
	)	& 577]; MEMORANDUM IN SUPPORT
	)	OF MOTION; DECLARATION OF E.
	)	KALANI FLORES; EXHIBIT "A";
	)	CERTIFICATE OF SERVICE
)	
	)	Hearing Officer: Hon. Riki May Amano (ret.)

**FLORES-CASE 'OHANA'S MOTION FOR CLARIFICATION OR, IN THE
ALTERNATIVE, RECONSIDERATION RE: MINUTE ORDERS NO. 43 AND 44,
FILED 4/25/17 & 4/27/17 [DOC. NOS. 558 & 577]**

Petitioner, E. KALANI FLORES, *pro se*, representing the FLORES-CASE 'OHANA, respectfully submits this Motion for Clarification or, in the Alternative, Reconsideration Re: Minute Orders No. 43 and 44 ("Motion"), Filed 4/25/17 & 4/27/17 [Doc. Nos. 558 & 577]. This motion is made pursuant to Hawai'i Administrative Rules ("HAR") §§ 13-1-32, 34, 35, and 38 as well as Hawai'i Revised Statutes ("HRS") §§ 91-9, 10, 11, and 12.

DATED: Pu'ukapu, Hawai'i, May 15, 2017



E. Kalani Flores
Representing Flores-Case 'Ohana

Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
2017 May 15 11:37 am

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	)	MEMORANDUM IN SUPPORT OF
(CDUA) HA-3568 for the Thirty Meter	)	MOTION
Telescope at the Mauna Kea Science)	
Reserve, Ka'ohē, Hamakua District,)	
Island of Hawai'i, TMK (3) 4-4-015:009)	
)	

MEMORANDUM IN SUPPORT OF MOTION

The FLORES-CASE 'OHANA previously submitted in a timely manner Motion to Admit Exhibits and Written Direct Testimony Into Evidence (Feb. 28, 2017) and Motion to Admit First Supplemental Exhibits Into Evidence (Mar. 8, 2017). Also, Motion to Reconsider Minute Order No. 43 [Doc. No. 558] was filed April 25, 2017 and Motion to Reconsider Minute Order No. 44 and Notice of Spoliation of Evidence [Doc. No. 577] was filed April 27, 2017. In addition, Response to Applicant University of Hawai'i at Hilo's Doc. Nos. 592 & 615 [Doc. No. 623] was filed May 7, 2017. The FLORES-CASE 'OHANA files this new motion to seek clarification, or as an alternative, reconsideration regarding Minute Orders No. 43 and 44 for the reasons set forth below as well as those in its other submittals.

1) The ability of the FLORES-CASE 'OHANA to adequately complete its proposed decision order, findings of fact, and conclusions of law (hereinafter "document") is being adversely impacted because the issues and matters pertaining to the exhibits have not yet been finalized. Without knowing which exhibits will be finally admitted or not into evidence has prevented the FLORES-CASE 'OHANA as well as other parties from completing certain sections of our documents. In addition, when a decision is finally rendered regarding the exhibits, this might subject our documents to substantial editing for those sections already completed. It is for these and other previously stated reasons that clarification on the exhibits is pertinent.

2) The issue and matter pertaining to the act of spoliation of evidence in these proceedings have not yet been resolved. Based upon further research into Doc R-7 (OCCL Staff Report), it very

evident that R-7 was switched part way through the hearings. The original document R-7 filed in the Evidentiary Hearing Submittals by OCCL staff was the identical document filed 10/11/16 by Applicant UHH as Exhibit A-7 which was an unsigned 'draft' copy of the OCCL Staff Report. The FLORES-CASE 'OHANA filed Exhibit B.70 on 1/30/17 which was a signed copy of the OCCL Staff Report that was submitted to the BLNR as agenda Item K-1. The OCCL Staff Report that was subsequently switched with the original R-7 is now a copy of Item K-1 stamped as approved by BLNR on 2/25/11 along with a four-page correspondence from S. Lemmo to D. Straney, dated 3/3/11. This is not the original document filed as R-7 that S. Lemmo testified to during the hearings. As outlined in previous filings, it appears that R-7 is not the only exhibit that has been tampered with resulting in an act of spoliation of evidence. Thus, we are demanding a full disclosure and corrective action regarding this matter.

3) A complete set of the transcripts has not yet been received in the Thelma Parker Memorial Public & School Library in Waimea. Volume No. 24 is still missing as noted in the memo submitted herein as Exhibit "A". Contrary to Minute Order No. 43, an entire and complete record of the transcripts is not available at this location. Also, despite the news reports, emails, and filings about OHA making some type of arrangements in obtaining electronic copies of the transcripts, the FLORES-CASE 'OHANA has not received any such electronic copies as of this date.

CONCLUSION:

Based upon the foregoing and other noted submittals as well as in the interests of due process, the FLORES-CASE 'OHANA respectfully requests that the Hearing Officer withdraw Minute Order No. 43 until all these issues and matters are clarified and resolved.

DATED: Pu'ukapu, Hawai'i, May 15, 2017



E. Kalani Flores
Representing Flores-Case 'Ohana

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) DECLARATION OF E. KALANI FLORES
(CDUA) HA-3568 for the Thirty Meter)
Telescope at the Mauna Kea Science)
Reserve, Ka‘ohe, Hamakua District,)
Island of Hawai‘i, TMK (3) 4-4-015:009)
_____)

DECLARATION OF E. KALANI FLORES

I, E. KALANI FLORES, declare:

1. I am a representative of the FLORES-CASE ‘OHANA, serving the capacity as *pro se*, in the above captioned case.
2. I make this declaration based on personal knowledge, information, and belief and I am competent to testify to the matters set forth herein.
3. Attached hereto as Exhibit “A” is a true and correct copy of the memo (dated May 9, 2017) from Juanette Cordeiro, Library Assistant, confirming that the Thelma Parker Memorial Public & School Library in Waimea is missing Volume No. 24 of the transcripts for contested case HA-16-02.

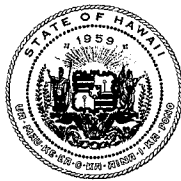
This declaration is made upon personal knowledge. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Pu‘ukapu, Hawai‘i, May 15, 2017



E. Kalani Flores
Representing Flores-Case ‘Ohana

DAVID Y. IGE
GOVERNOR



STACEY A. ALDRICH
STATE LIBRARIAN

STATE OF HAWAII
HAWAII STATE PUBLIC LIBRARY SYSTEM
THELMA PARKER MEMORIAL PUBLIC & SCHOOL LIBRARY
67-1209 MAMALAHOA HIGHWAY
KAMUELA, HAWAII 96743

May 9, 2017

To: Whom It May Concern:

From: Juanette Cordeiro
Library Assistant

A handwritten signature in black ink, appearing to be "JC" or similar initials, written over the printed name "Library Assistant".

To date, Thelma Parker Memorial Public & School Library did not receive volume #24, transcripts for contested case HA-16-02 regarding Conservation District Use Application (CDUA) HA-3568 for the Thirty Meter Telescope at the Mauna Kea Science Reserve, Kaohe Mauka, Hamakua, Hawaii.

Please call me at 887-6067, should you have any questions.

EXHIBIT "A"

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

BLNR Contested Case HA-16-002

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577]; MEMORANDUM IN SUPPORT OF MOTION;
DECLARATION OF E. KALANI FLORES; EXHIBIT
"A"; 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: May 15, 2017