

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 RECONSIDERATION OF MINUTE
Telescope at the Mauna Kea Science	)	ORDER NO. 85; MEMORANDUM IN
Reserve, Ka'ohē, Hamakua District,	)	SUPPORT OF MOTION; CERTIFICATE
Island of Hawai'i, TMK (3) 4-4-015:009	)	OF SERVICE
	)	
	)	Hearing Officer: Hon. Riki May Amano (ret.)
	)	
	)	

FLORES-CASE 'OHANA'S MOTION FOR RECONSIDERATION  
OF MINUTE ORDER NO. 85

Petitioner, E. KALANI FLORES, *pro se*, representing the FLORES-CASE 'OHANA, respectfully submits this Motion for Reconsideration of Minute Order No. 85. This motion is made pursuant to Hawai'i Administrative Rules ("HAR") §§ 13-1-34 and 35 as well as Hawai'i Revised Statutes ("HRS") §§ 91-9, 10, and 11.

DATED: Pu'ukapu, Hawai'i, June 24, 2017



E. Kalani Flores  
Representing Flores-Case 'Ohana

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BOARD OF LAND AND NATURAL RESOURCES  
STATE OF HAWAII

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	)	

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**MEMORANDUM IN SUPPORT OF MOTION**

The FLORES-CASE 'OHANA files this motion for reconsideration of Minute Order No. 85 as the Hearing Officer has **still failed to provide full disclosure of the issues surrounding the act of spoliation of evidence** in the proceeding of this contested case hearing for the reasons set forth below as well as those outlined in its previous submittals Doc. Nos. 577, 623, and 676. The FLORES-CASE 'OHANA previously filed *Motion to Reconsider Minute Order No. 44 and Notice of Spoliation of Evidence* [Doc. No. 577] on April 27, 2017 and *Response to Applicant University of Hawai'i at Hilo's Doc. Nos. 592 & 615* [Doc. No. 623] on May 7, 2017 regarding this matter. Minute Order No. 51 [Doc. No. 647] filed by the Hearing Officer failed to address this issue prior to the deadline of May 30, 2017 for submittal of findings of fact, conclusions of law, and decision order. As such, this required the filing on June 2, 2017 of *Motion for Full Disclosure Re Spoliation of Evidence* [Doc. No. 676] ("*Motion for Full Disclosure*"). In response to this *Motion for Full Disclosure* [Doc. No. 676], the Hearing Officer filed Minute Order No. 85 dated June 20, 2017.

1) The Hearing Officer has mistakenly characterized the *Motion for Full Disclosure* [Doc. No. 676] as being a "thinly veiled request to reconsider Minute Order No. 44". This conclusion is inaccurate as this was not a motion for reconsideration of Minute Order No. 44, but instead a **motion for full disclosure of spoliation of the evidence**.

2) The Hearing Officer has also incorrectly stated that “the Motion fails as a matter of law because movants fail to provide evidentiary support for their allegations of spoliation.” In fact, the *Motion for Full Disclosure* [Doc. No. 676] included Exhibits “A”, “B”, and “C” which clearly provided evidentiary support that demonstrated this issue at hand. It was as if the Hearing Officer failed to examine these exhibits, declaration, and memorandum in support of motion that were included as part of the *Motion for Full Disclosure* [Doc. No. 676]. Recopied below from the memorandum in support of motion in Doc. No. 676 was a detailed description outlining the spoliation of evidence.

There is sufficient evidence to demonstrate that several exhibits have been switched subsequent to their original filings. It’s very evident that Doc R-7 (“R-7”) was switched part way through the hearings. Case in point, R-7 was originally filed as a “draft” unsigned copy of the OCCL Staff Report (dated Feb. 25, 2011) [see Exhibit “A”]. The original document R-7 filed in the Evidentiary Hearing Submittals by OCCL staff was the identical document filed October 11, 2016 by the Applicant UHH as Exhibit A-7 which was an unsigned ‘draft’ copy of the OCCL Staff Report. However, subsequent to the hearing date of February 27, 2017, R-7 was switched with a totally different copy [see Exhibit “B”]. 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 February 25, 2011 along with a four-page correspondence from S. Lemmo to D. Straney, dated March 3, 2011. This correspondence wasn’t part of the original R-7.

In addition, other exhibits that included spoliation of evidence were explicitly identified for the Hearing Officer as further noted in the memorandum in support of motion in Doc. No. 676.

It appears that R-7 is not the only exhibit that has been tampered with resulting in an act of spoliation of evidence. In addition, it appears that Exhibits B.30 to B.36 are NOT the original documents filed and they were instead later switched and replaced respectfully with Exhibits Doc R-1 to R-8.

3) The Hearing Officer has basically failed to address the core issue of this matter which is the spoliation of the evidence which was first brought to her attention in the *Notice of Spoliation of Evidence* [Doc. No. 577] filed on April 27, 2017. Does the Hearing Officer have a responsibility to ensure that matters pertaining to the integrity of the evidence and the official record in this proceeding have been properly handled? Has the Hearing Officer even conducted any type of inquiry with the administrator and/or staff of the Office of Conservation and Coastal Lands (“OCCL”) as to the matter of switching the originally filed exhibits with different exhibits part

way through of the proceeding resulting in the distortion of the record and spoliation of the evidence?

4) Furthermore, the FLORES-CASE 'OHANA clearly articulated leave sought from the Hearing Officer in this matter as noted in section 7 of the *Motion for Full Disclosure* [Doc. No. 676].

CONCLUSION:

**Based upon the foregoing and other noted submittals as well as in the interests of due process, the FLORES-CASE 'OHANA once again demands full disclosure of this matter and leave from the Hearing Officer. Failure to provide such by the Hearing Officer would give an appearance of unfairness in this proceeding resulting in a prejudicial error that would adversely impact parties such as the FLORES-CASE 'OHANA.**

DATED: Pu'ukapu, Hawai'i, June 24, 2017



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E. Kalani Flores  
Representing Flores-Case 'Ohana

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

BLNR Contested Case HA-16-002

Document title: FLORES-CASE 'OHANA'S MOTION  
FOR RECONSIDERATION OF MINUTE ORDER  
NO. 85; 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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