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BOARD OF LAND AND NATURAL RESOURCES
STATE OF HAWAII

A Contested Case Hearing Re:
Conservation District Use Application HA-3568
for the Thirty Meter Telescope on the Northern
Plateau in the Mauna Kea Conservation District,
Ka'ohē, Hamakua District, Island of Hawai'i
TMK (3) 4-4-015:009

DLNR File No. HA-CC 16-002
(CDUA HA-3568)

CLARENCE KUKAUAKAHI CHING'S
JOINDER TO FLORES-CASE 'OHANA'S
MOTION FOR RECONSIDERATION
OF MINUTE ORDER NO. 85 AND
MEMORANDUM IN SUPPORT OF
MOTION (DOCUMENT NO. 752), COS

CLARENCE KUKAUAKAHI CHING'S JOINDER TO FLORES-CASE
'OHANA'S MOTION FOR RECONSIDERATION OF MINUTE ORDER
NO. 85 AND MEMORANDUM IN SUPPORT OF MOTION (DOCUMENT NO. 752)

COMES NOW CLARENCE KUKAUAKAHI CHING, Pro Se, and files this Joinder to FLORES-CASE 'OHANA'S MOTION FOR RECONSIDERATION OF MINUTE ORDER NO. 85 AND MEMORANDUM IN SUPPORT OF MOTION filed as Document 752 on June 24, 2017.

The Hearing Officer, in Minute Order No. 85, based her decision for denial of the motion on Applicant UHH's argument that Movant failed to show intent of alleged wrong-doing or resulting damage based on Movant's allegation of spoliation.

Looking beyond the alleged "spoliation" of the subject Motion for Reconsideration, the Record—as it may be re-constructed—proves that "switching" of documents has taken place. While it can be claimed that there is only one document involved—and that they are interchangeable—the evidence shows that there are three discrete iterations (occurring at three separate times) of the "same" document—which, for purposes of this discussion, are three specifically discrete and separate documents.

Document R-7-A is the "original" R-7 DLNR Staff Report that was supposedly filed on February 25, 2011, that was filed in the Contested Case Hearing Document File as Exhibit R-7. This is the document that is attached to Movant's Document 676 Motion for Full Disclosure re: spoliation of evidence, filed on 2 Jun 17, as Exhibit A. This document was also identified and authenticated by Samuel J. Lemmo ("Lemmo," the Administrator of the
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
2017 June 29 1:14 pm

Office of Conservation and Coastal Lands, the office that originated the document, on the witness stand at this Contested Case Hearing on February 27, 2017, as Exhibit R-7.

The Hearing's Transcript [Tr. 41, Feb. 27, 2017, p.220, lines 6 to 15] states:

Mr. Flores: Okay. And so the document that you have before you is Exhibit R-7. Can you turn to page 66, please, which is the last page of that document? Is your signature on there?

Lemmo: There's no signature.

Mr. Flores: And so your signature, it's not on the document? Then it's just considered—it's still in draft form?

Lemmo: I don't know why my signature is not on this document.

Document R-7-B is Exhibit B.70, that was filed by the Flores-Case Ohana on January 30, 2017, in the Contested Case Hearing Documents Library. This document is also the Staff Report without the Letter, and is signed by Samuel J. Lemmo. It is marked "Item K-1" yet is NOT stamped "APPROVED BY THE BOARD OF LAND AND NATURAL RESOURCES AT ITS MEETING HELD ON FEB 25, 2011." This document was identified and authenticated by Samuel J. Lemmo ("Lemmo") on the witness stand at this Contested Case Hearing on February 27, 2017, as Exhibit B-70.

The Hearing's Transcript [Tr. 41, Feb. 27, 2017, p.220, line 22 to p.221, line 2] states:

Mr. Flores: And so what I have before you is, once again, Exhibit B-70, and then on the bottom right-hand—excuse me—the bottom right—bottom corner, there's—it's typed "Item K-1." Does that look familiar to you?

Lemmo: Yeah, it looks familiar.

Document R-7-C is the "presently-filed" document R-7 DLNR Staff Report that was supposedly filed on February 25, 2011—and is preceded by a (newly appearing and therefore "foreign") 4-page Cover Letter from Samuel J. Lemmo, Administrator, Office of Conservation and Coastal Lands to Dr. Stanley Straney, Chancellor, University of Hawai'i at Hilo, dated March 3, 2011 and Stamped "Received" March 7, 2011 AND is characterized—REGARDING: Conservation District Use Application HA-3568 Thirty Meter Telescope, dated February 25, 2011, Marked "Item K-1" and Stamped "APPROVED BY THE BOARD OF LAND AND NATURAL RESOURCES AT ITS MEETING HELD ON FEB 25, 2011" at the bottom of the first page.

This is the document that is attached to Movant's Document 676 Motion for Full Disclosure re: spoliation of evidence, filed on 2 Jun 17, as Exhibit "B" This document was NOT identified NOR authenticated by Samuel J. Lemmo ("Lemmo") on the witness stand at this Contested Case Hearing on February 27, 2017. This document was "discovered" on or about April 13, 2017, in the Contested Case Hearing Document file as R-7, a time AFTER February 27, 2017, the date of Samuel J. Lemmo's Examination on the witness stand.

Therefore, it may be logically surmised that a “switch” of R-7 documents took place some time between February 27, 2017 and April 13, 2017, and that there was NO “notice” or “justification” or “approval” for making the “switch.”

Additionally, It is IMPOSSIBLE (in my realm) to have a document dated as “received” on March 7, 2011, to be filed on February 25, 2011!

Another example of switching that Movant proffered were the wholesale “switching” that “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.” **Doc. 752, p.3**

These are violations of the Rules laid out by the Hawai‘i Supreme Court as mandated in all courts of the State of Hawai‘i.

Rule 3.3 of the Hawai‘i Court Record Rules as adopted and promulgated by the Hawai‘i Supreme Court on September 27, 2010, states in part:

The Clerk **shall not** delete, transfer, or replace documents in any court or ADLRO record, except as provided above [below], upon order of the court for which the record is maintained, upon order of the Hawai‘i Supreme Court, or in compliance with Records Control Schedules adopted by the Hawai‘i Supreme Court. [emphasis added]

Rule 1 of the Hawai‘i Court Record Rules states: SCOPE. These rules govern court and ADLRO records, unless otherwise specified.

Rule 2.4 of the Hawai‘i Court Record Rules states: ADLRO means the Administrative Driver’s License Revocation Office.

Rule 2.7 of the Hawai‘i Court Record Rules states: Clerk means Clerk of the Supreme Court and the Chief or Deputy Chief Court Administrators of the trial courts and their subordinates who have custody of court records, and, with regard to the ADLRO, the Administrative Director’s subordinates, who have custody of ADLRO records.

Rule 3.3 of the Hawai‘i Court Record Rules as adopted and promulgated by the Hawai‘i Supreme Court on September 27, 2010, as exceptions to the rule, states in part:

The Clerk and others authorized by the Clerk may, with such technical assistance as required and without order of a court, correct clerical and e-filer data entry and docketing errors. Examples of clerical and e-filing errors that may be corrected without a court order include, but are not limited to, corrections to data in the following data fields: case type, trial court or agency, trial court or agency case type, designation as confidential, short case title, extended case title, trial court judge(s), trial court or agency case numbers, authorizing or charging statutes, party roles, party and attorney identification, docket codes, document category, document type, and filing party.

Where documents are maintained in an electronic document management system, the Clerk may, with such technical assistance as required and without order of a court retrieve from the document management system or a party and attach to the docket any document that failed to upload or attach to the docket. Where documents are maintained in an electronic document management system, the Clerk may, with such technical assistance as required and without order of a court replace incorrect documents that were inadvertently uploaded by parties or that have been corrupted, with the documents that should have been uploaded, and may transfer documents that were filed in a wrong case to the correct case, provided such replacements and transfers are completed **within 10 business days** following the initial filing and **all parties are notified** of the replacement or transfer. [Emphasis added]

There are NO applicable exceptions present.

Document R-7-A IS the document that was originally filed as the Staff Report of the Office of Conservation and Coastal Lands, and, in the Hearing, was identified AND authenticated by Samuel J. Lemmo, the Administrator of the Office of Conservation and Coastal Lands, the originating office for the document.

The “switching” of documents, proved in this analysis as having taken place in this Contested Case Hearing is not only a violation of ethics, it violates the high standard of integrity as adopted and promulgated by the Hawai‘i Supreme Court for all courts of the state, which should also be the standard of this Contested Case Hearing.

This attempt at clarification and added certainty to the quasi-judicial character of the Contested Case Hearing is strictly necessary and is a strong indication that the Record of the Hearing is defective and NOT complete. Therefore the deadlines for Findings of Fact and Conclusions of Law have been prematurely set WITHOUT a completed Record.

While it may be argued that the Rules for Records in the courts of the State of Hawai‘i are not applicable to quasi-judicial constructs of contested case hearings, the Hawai‘i Supreme Court has set the “standard” by which Records are to be administered and managed in the Hawai‘i court system.

That “standard” is totally applicable to this contested case hearing, and should be adopted and followed to its highest possibilities.

DATED: Kamuela, Hawai‘i, June 29, 2017.

_____/s/_____
CLARENCE KUKAUAKAHI CHING

CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of CLARENCE KUKAUAKAHI CHING'S JOINDER TO FLORES-CASE 'OHANA'S MOTION FOR RECONSIDERATION OF MINUTE ORDER NO. 85 AND MEMORANDUM IN SUPPORT OF MOTION (DOCUMENT NO. 752), was served on the following parties by email on June 29, 2017:

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and by first class mail on June 29, 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,
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DATED: June 29, 2017
Kamuela, HI 96743

_____/s/_____
CLARENCE KUKAUAKAHI CHING