

Lanny Alan Sinkin
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Lay representative for Temple of Lono

BOARD OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

IN THE MATTER OF) Case No. BLNR-CC-16-002
)
A Contested Case Hearing Re Conservation)
District Use Permit (CDUP) (HA-3568 for) **TEMPLE OF LONO REQUEST FOR**
The Thirty Meter Telescope at the Mauna) **WITNESS SUBPOENA FOR DAVID**
Kea Science Reserve, Kaohe Mauka,) **LASSNER, PRESIDENT OF THE**
Hamakua District, Island of Hawai'i,) **UNIVERSITY OF HAWAI'I SYSTEM;**
TMK (3) 4-4-015:009) **DECLARATION OF COUNSEL WITH**
_____) **EXHIBITS A – C; COS**

**TEMPLE OF LONO REQUEST FOR WITNESS SUBPOENA FOR
DAVID LASSNER, PRESIDENT OF THE UNIVERSITY OF HAWAI'I SYSTEM**

The Temple of Lono requests a subpoena be issued to President David Lassner of the University of Hawai'i System compelling President Lassner's testimony in this contested case.

President Lassner was on the Applicant's list of witnesses and his pre-filed testimony is a matter of record. University of Hawai'i at Hilo Witness Statement 15.

The University did not call President Lassner prior to closing their case.

The Temple of Lono wishes to call President Lassner to discuss the University of Hawai'i's perspective on the traditional Hawaiian faith and the University's obligations under the Constitution and laws of Hawai'i to protect and respect that faith.

Received
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
State of Hawaii
2016 Jan 8, 2016 9:16 pm

The Temple is particularly interested in President Lassner's response when placed on notice that the University had filed a pleading in this contested case that demonstrated a profound hostility towards the traditional faith and misrepresented the traditional faith as an extremist organization.

Offer of Proof

On June 21, 2016, the Temple of Lono filed its Motion for Partial Summary Judgment. DOC-78.

On August 1, 2016, the Applicant filed its opposition to that motion. DOC-135. In that pleading, the Applicant included a hostile and bigoted attack on the Temple of Lono. Ibid. at 14-15. The pleading is signed by Mr. Ian Sandison with Mr. Tim Lui-Kwan and John P. Manaut appearing as co-counsel.

On August 3, 2016, the Temple filed a response to that attack. DOC-176.

On August 5, at a pre-hearing conference, the Hearing Officer took oral argument on the Temple's June 21 motion. While the Temple brought up the attack by the Applicant, neither the Applicant nor the Hearing Officer mentioned the attack.

The Hearing Officer denied the Temple's June 21 motion without referencing the attack..

On August 8, 2016, because the time allotted by the Hearing Officer for pre-hearing motions had expired on August 1 – the same day that the Applicant filed its attack – the Temple filed a motion requesting permission to file a motion out of time addressing the attack. DOC-179. The Temple sought to file a motion arguing that the Applicant's attack on the Temple disqualified the Applicant from receiving a permit from the State. Ibid., Exhibit 2.

On August 29, 2016, at a pre-hearing conference, the Hearing Officer took oral argument on the Temple's motion. During that oral argument, the Applicant made no attempt to defend or explain the attack on the Temple.

After hearing oral argument, the Hearing Officer denied the Temple's request to file the motion out of time. The Hearing Officer made no mention of the attack in making her ruling.

On September 17, 2016, the Temple filed its Motion for Summary Judgment seeking to dismiss the application at issue in this proceeding based on the Applicant's attack on the Temple. DOC-263.

On September 17, 2016, the Temple filed a motion to recuse the Hearing Officer based primarily on the Hearing Officer's refusal to allow the Temple to file its motion to dismiss out of time. DOC-262.

On September 17, 2016, the Temple filed its proposed issues for the Hearing. DOC-265. One issue identified by the Temple in a category denominated as "Character" was "Has the Applicant demonstrated a hostility toward the Traditional Hawaiian Faith that disqualifies the Applicant from receiving the permit requested?" Ibid. Exhibit "A" at 1.

On September 23, 2016, the Hearing Officer issued an order setting the issues for the hearing that excluded the character issue identified by the Temple. DOC-281.

On September 26, 2016, the Temple filed its Motion for Reasoned Explanations and Extension of Time. DOC 286. That motion sought to have the Hearing Officer identify her reasons for excluding the character issue.

On October 6, 2016, the Temple filed its Motion to Schedule Pending Motions. DOC-324. That motion sought to have the Hearing Officer take up motions that had been ignored, including motions seeking to have the Applicant's attack on the Temple addressed. The motions at issue included the September 17 motions for summary judgment based on the Applicant's attack, for recusal based on the denial of a hearing on the Applicant's attack, and for a reasoned explanation for excluding the attack from the issues to be heard.

On October 11, 2016, the Hearing Officer issued a written order denying the Temple's motion to file motion out of time. DOC-356. That denial did not address the Temple's attempts to have the content and implications of the Applicant's attack on the Temple heard in this proceeding.

On October 14, 2016, the Temple filed its identification of unresolved matters that identified 13 pre-hearing motions filed by the Temple that the Hearing Officer had never ruled upon. Those unresolved matters included all the pending Temple motions that sought to have the content and implications of the Applicant's attack considered in this proceeding.

This litany of rulings and refusals to rule means that the issues of the content and implications of the Applicant's attack on the Temple have never been addressed in this proceeding.

The scheduled appearance of President Lassner would have provided an opportunity to have those issues addressed. The removal of President Lassner as a witness foreclosed that opportunity.

The subpoena of President Lassner requested by the Temple will finally provide an opportunity for the Temple to hear from the Applicant on the bases for the attack and any response by the President of the University or any other University official once placed on notice of the attack.

As a further offer of proof, on August 4, 2016, a representative of the Temple sent President Lassner an email reporting the University attack on the Temple in this proceeding to him and suggesting that President Lassner might “like to come to the [next] pre-hearing conference” and “personally apologize for the bigotry directed at the traditional Hawaiian faith by the University in the TMT contested case.” Exhibit 1 ¶¶ 1-2.

The Temple representative did recall that email and stated to President Lassner that the email would be resent through the University’s counsel. *Ibid.* ¶ 3.

The representative then sent the same email to the University’s counsel, Mr. Ian Sandison, with a request that the email be shared with President Lassner. *Ibid.* ¶¶ 4-5.

This offer of proof raises a reasonable presumption that President Lassner received and reviewed the email sent by the Temple representative, either when he received the initial email and/or when the University counsel resent the email to him.

The Temple seeks to question President Lassner about what response, if any, he made based on the email notification.

The Temple also seeks to question President Lassner as to any other information he received about the attack on the Temple by the University and how he responded to that information.

The Temple also seeks to question President Lassner about who else within the University System was informed of the attack and what, if any, responses those individuals had to that notice.

DATED: January 8, 2017

_____/s/_____
Lanny Alan Sinkin
Lay Representative for Temple of Lono

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FOR THE STATE OF HAWAII

IN THE MATTER OF) Case No. BLNR-CC-16-002
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District Use Permit (CDUP) (HA-3568 for) **DECLARATION OF**
The Thirty Meter Telescope at the Mauna) **LANNY ALAN SINKIN**
Kea Science Reserve, Kaohe Mauka,)
Hamakua District, Island of Hawai'i,)
TMK (3) 4-4-015:009)
_____)

DECLARATION OF LANNY ALAN SINKIN

I, LANNY ALAN SINKIN, declare the following to be true to the best of my knowledge and belief:

1. On August 4, 2016 at 9:27 a.m. HST, I sent an email to President David Lassner of the University of Hawai'i system. Exhibit A
2. The three attachments referenced in the email are DOC-78, DOC-135, and DOC-176.
3. On August 4, 2016 at 9:54 a.m. HST, I sent an email to President Lassner recalling the email I sent earlier and informing the President that I would be sending the email to him through the University's counsel. Exhibit B.
4. On August 4, 2016, I sent an email to Mr. Ian Sandison, counsel for the University in this proceeding. Exhibit C.
5. The email to Mr. Sandison contained the same content as the earlier email to President Lassner with an introductory paragraph requesting Mr. Sandison share the message with President Lassner. Id.
6. I never received any response from President Lassner or Mr. Sandison.

DATED: January 8, 2017

_____/s/_____
Lanny Alan Sinkin

From: Lanny Sinkin <lanny.sinkin@gmail.com>
Subject: University attacks traditional Hawaiian faith
Date: August 4, 2016 9:27:00 AM HST
To: President David Lassner <david.lassner@hawaii.edu>

Aloha President Lassner,

Perhaps you would like to come to the pre-hearing conference on Friday and personally apologize for the bigotry directed at the traditional Hawaiian faith by the University in the TMT contested case.

For the Temple of Lono,

Lanny Sinkin

To: Interested Parties
From: Lanny Sinkin

I represent the Temple of Lono in the Board of Land and Natural Resources contested case considering a permit application for the Thirty Meter Telescope (TMT) to be built on Mauna Kea. The Kahuna of the Temple of Lono Palani Tamehameha Kamehaloha Anuumealani Nobriga also represents the Temple in this proceeding.

On behalf of the Temple, I filed a motion for partial summary judgment before Hearing Officer Riki May Amano seeking to clarify two issues (1) is the summit of Mauna Kea considered sacred, even especially sacred? and (2) Is the traditional faith of the Hawaiian people still practiced?

These questions arose for two reasons.

First, the University of Hawai'i is the Applicant for the permit for the TMT. The Imiloa Astronomy Center is an institution that is part of the University of Hawai'i. On the Imiloa website is a description of Mauna Kea that discusses the sacred nature of the Mountain and particularly the sacred nature of the summit where the telescope is proposed.

The first part of the Temple's motion simply noted that, through the website presentation, the University is on record as stating the Mountain is sacred and the summit is especially sacred. The statement on the Applicant's website meant that there was no dispute as to those two facts. The motion for summary judgment sought a ruling from the Hearing Officer on those issues of sacredness.

The second issue arose because in describing the spiritual protocols related to

the Mountain, the Imiloa presentation characterized the traditional Hawaiian faith as historical and no longer practiced. The second part of the Temple's motion sought a ruling that the Temple of Lono clearly still exists and continues to practice.

In response to the motion for partial summary judgment, the University of Hawai'i filed its opposition. That opposition never mentioned the presentation on the Imiloa website and pretended that it was the Temple of Lono asserting the sacredness of the Mountain, rather than the Temple simply acknowledging what the University said on its website. The opposition also attempted to distort the acknowledgment of the Temple by a federal judge to portray the Temple as a new organization with no traditional base.

Apparently aware that their objections on a factual basis to the Temple's motion were not going to work, the University then launched an extensive attack on the Temple of Lono. That attack labelled the Temple as fanatical and absolutist. The University argued that the Temple was using the contested case to initiate a religious campaign that would include imposing Temple hegemony on the Mountain. The overall intent of the University attack is clearly to label the Temple of Lono as essentially a terrorist organization. The University did not present a single piece of evidence to back up its slander of the traditional faith.

The foundation of that faith is the Four Gods -- the Ocean, the Sun, the Earth, and the Fresh Water. Those elements are worshipped because they provide the staff of life, i.e. food. The laws of the traditional faith attempt to maintain a harmonious relationship between Human activity and the Natural World, so that the needs of seven generations are considered in decision affecting the ecological systems. The practice of the faith is found in the religious practices of each family. There is nothing fanatical or even centralized in the religious practices of this faith.

The religious bigotry displayed by the University attack is simply an extension of the long history of efforts to suppress the traditional Hawaiian faith. Much of the motivation for those attacks has been the effort to supplant the traditional faith with other religions. It is the traditional faith that has been the target for religious intolerance and oppression.

I am attaching three documents: (1) The original motion by the Temple (2) The opposition by the University and (3) the reply to that opposition by the Temple.

The Temple considers the University attack on the traditional faith to be shameful and trusts that the University will apologize at the pre-hearing conference scheduled on Friday, August 4 at 10:00 at the YMCA, 300 West Lanikaula Street, Hilo [THREE ATTACHMENTS – DOCS-78, 135, 176]

From: Lanny Sinkin <lanny.sinkin@gmail.com>

Subject: Recall

Date: August 4, 2016 9:54:17 AM HST

To: President David Lassner <david.lassner@hawaii.edu>

Aloha President Lassner,

I am recalling the email that I just sent to you and will resend through your counsel.

Mahalo.

Lanny Sinkin

From: Lanny Sinkin <lanny.sinkin@gmail.com>

Subject: Message

Date: August 4, 2016 10:00:35 AM HST

To: "Ian Sandison" isandison@carlsmith.com

Aloha Ian,

I would appreciate your sharing the message below with President Lassner.

Dear President Lassner,

Perhaps you would like to come to the pre-hearing conference on Friday, August 4 at 10:00 a.m. at the YMCA, 300 Lanikaula Street, Hilo to apologize to the traditional Hawaiian faith for the bigotry directed against that faith by the University in the TMT contested case.

For the Temple of Lono,

Lanny Sinkin

To: Interested Parties

From: Lanny Sinkin

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FOR THE STATE OF HAWAI'I

IN THE MATTER OF) Case No. BLNR-CC-16-002
)
A Contested Case Hearing Re Conservation)
District Use Permit (CDUP) HA-3568 for) **CERTIFICATE OF SERVICE**
The Thirty Meter Telescope at the Mauna)
Kea Science Reserve, Kaohe Mauka,)
Hamakua District, Island of Hawai'i,)
TMK (3) 4-4-015:009)
_____)

CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the **TEMPLE OF LONO REQUEST FOR WITNESS SUBPOENA FOR DAVID LASSNER, PRESIDENT OF THE UNIVERSITY OF HAWAI'I SYSTEM** was served on the following parties by eMail on, January 8, 2017:

Michael Cain <michael.cain@hawaii.gov>, Kealoha Pisciotto-Keomailani Von Gogh <keomaivg@gmail.com>, Clarence Ching <kahiwaL@cs.com>, Uncle Kalani Flores <ekflores@hawaiiantel.net>, Pua Case <puacase@hawaiiantel.net>, cordylinecolor@gmail.com, kealiikea@yahoo.com, Bianca Isaki <bianca@kahea.org>, Ian Sandison <isandison@carlsmith.com>, tluikwan@carlsmith.com, John P. (Pete) Manaut <jpm@carlsmith.com>, Lindsay N. McAneeley <lmcaneley@carlsmith.com>, T. Shinyama' <RShinyama@wik.com>, douging@wik.com <douging@wik.com>, mehana kihoi <uhiwai@live.com>, Kahookahi Kanuha <kahookahi@gmail.com>, Joseph Camara <kualiic@hotmail.com>, lsa@torkildson.com <lsa@torkildson.com>, njc@torkildson.com <njc@torkildson.com>, leina'ala s <leinaala.mauna@gmail.com>, Maelani Lee <maelanilee@yahoo.com>, Lanny Sinkin <lanny.sinkin@gmail.com>, akulele@yahoo.com <akulele@yahoo.com>, s.tabbada@hawaiiantel.net <s.tabbada@hawaiiantel.net>, tiffniekakalia <tiffniekakalia@gmail.com>, Glen Kila <makakila@gmail.com>, Brannon Kealoha <brannonk@hawaii.edu>, hanahanai@hawaii.rr.com <hanahanai@hawaii.rr.com>, pohaku7@yahoo.com <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>, "DLNR.CO.Maunakea" <dlnr.maunakea@hawaii.gov>

and will be served hand on January 9, 2017:

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: January 8, 2017

_____/s/_____
Lanny Alan Sinkin