

**BOARD OF LAND AND NATURAL RESOURCES**

**STATE OF HAWAII**

IN THE MATTER OF ) ) Contested Case Hearing Re Conservation District ) Use Application (CDUA) HA-3568 For the ) Thirty Meter Telescope at the Mauna Kea Science ) Reserve, Ka`ohe Mauka, Hamakua, Hawai`i ) TMK (3) 4-4-015:009 ) ) ) ) _____ )	)	CASE NO. BLNR-CC-16-002  Minute Order No. <u>66</u> (Order Denying the Temple of Lono Request for Witness Subpoena for David Lassner, President of the University of Hawaii System (Doc. 438))  <b>Certificate of Service</b>
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**MINUTE ORDER NO. 66**

**(Order Denying the Temple of Lono Request for Witness Subpoena for David Lassner, President of the University of Hawaii System (Doc. 438))**

On January 25, 2017, a hearing on the Temple of Lono Request for Witness Subpoena for David Lassner, President of the University of Hawaii System; Declaration of Counsel with Exhibits A-C (Doc. 438) (“Lono Request”), was held in Hilo, Hawai`i at the Grand Naniloa Hotel, 93 Banyan Drive.

The following persons were present:

Kealoha Pisciotta in her individual capacity and for Mauna Kea Anaina Hou (“MKAH”)

Paul Neves

Clarence K. Ching

Deborah Ward

E. Kalani Flores and B. Pualani Case for the Flores-Case Ohana

John Manaut, Esq. and Ian Sandison, Esq., Attorneys for the University of Hawaii-Hilo (“UHH”)

Ross Shinyama, Esq. A and Brian Kang, Esq., Attorneys for TMT International Observatory, LLC. (“TIO”)

Received  
Office of Conservation and Coastal Lands  
Department of Land and Natural Resources  
State of Hawaii  
2017 June 5 10:21 am

Lincoln Ashida, Esq., Attorney for Perpetuating Unique Educational Opportunities Inc. (“PUEO”) with Keahi Warfield  
 Lanny Sinkin for Temple of Lono  
 Dexter Kaiama, Esq., for the Hawaiian –Environmental Alliance (“KAHEA”)  
 Harry Fergerstrom  
 Mehana Kihoi in her individual capacity and for Leina`ala Sleightholm  
 Cindy Freitas  
 William Freitas  
 Wilma Holi (Witness)

In addition to the Request, the following submissions were considered:

<b>Doc. #</b>	<b>Filed</b>	<b>Party</b>	<b>Title</b>
445	19-Jan-17	UHH	The University of Hawai‘i at Hilo’s Motion to Quash Temple of Lono’s Request for Witness Subpoena for David Lassner, President of the University of Hawai‘i System, Filed January 8, 2017; Memorandum in Support of Motion
457	01-Feb-17	UHH	[Proposed] Minute Order No. ____ Denying Temple of Lono Requesting for Witness Subpoena for David Lassner, President of the University of Hawai‘i System [Doc. 438] and Granting the University of Hawai‘i at Hilo’s Motion to Quash Temple of Lono Request for Witness Subpoena for David Lassner, President of the University of Hawai‘i System, Filed January 8, 2017 [Doc. 445]

By its Request, “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.” Lono Request at page 1.

UHH moves to quash the Temple of Lono’s subpoena of Lassner. (Doc. 445) UHH argues that:

The Temple’s offers of proof for the Request are that: (1) President Lassner was initially named on the University’s witness list but the University did not call him; (2) President Lassner’s testimony provided an opportunity for the Temple to question him on the purported “attack” on and “hostility” towards the Temple, issues which the Hearings Officer has already excluded from these proceedings; and (3) the Temple wants to question President Lassner concerning his response to an email concerning the

purported “attack” that Mr. Sinkin improperly sent directly to President Lassner, despite Mr. Sinkin’s knowledge that President Lassner is represented by counsel. Request at 1, 5. These are not issues in this proceeding; nor are they relevant or material to the issues that are being adjudicated here. Moreover, the fact that President Lassner was previously named as a University witness does not create an entitlement for the Temple to compel his testimony.

Doc. 445 at pp. 1-2.

After taking the Lono Request and UHH Motion to Quash under advisement overnight, the Hearing Officer issued a verbal ruling on January 26, 2017:

With regards to the subpoenas, I have considered them...those subpoena requests involve President David Lassner, UH President David Lassner, as well as an employee who can speak to and perhaps present the document ...that needs to be submitted before an `ahu can be built...I’m going to find that they – there is no relevance or materiality as to our current issues, and I’m denying the request for subpoenas.

Tr. Vol. 31, 1-26-17, 12:12-24.

On February 1, 2017, the University of Hawai`i at Hilo filed a Proposed Minute Order No. \_\_\_ Denying Temple of Lono Requesting for Witness Subpoena for David Lassner, President of the University of Hawai`i System [Doc. 438] and Granting the University of Hawai`i at Hilo’s Motion to Quash Temple of Lono Request for Witness Subpoena for David Lassner, President of the University of Hawai`i System, Filed January 8, 2017 [Doc. 445] (“Proposed Minute Order). There were no responses to the Proposed Minute Order.

Based upon the Request, all related and oral submissions from counsels and/or parties, including the Proposed Minute Order, all applicable law, the entire record having been considered by the Hearing Officer,

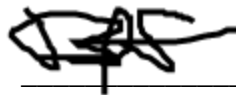
**IT IS HEREBY ORDERED that the Request is DENIED.**

**Motion to Reconsider.** A party, who believes it appropriate, may file a motion to reconsider using the procedure set out herein. Any Motion for Reconsideration shall not be used to reargue the motion or set out positions of a purely repetitious nature or to present factual or legal grounds that could or should have been presented at the original hearing. AMFAC, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 114 (1992).

The deadline for submission of any **motion** to reconsider this minute order is no later than **5 business days** after the date this Minute Order is filed in the Documents Library. Any **responses to motions to reconsider**, shall be submitted no later than **10 business days** after this order is filed in the Documents Library; essentially 5 business days after the deadline for motions to reconsider.

Any Motion to Reconsider shall be considered a non-hearing motion unless otherwise designated by the Hearing Officer.

DATED: Honolulu, Hawai`i, June 5, 2017.



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Judge Riki May Amano (Ret.)  
Hearing Officer

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

BLNR Contested Case HA-16-02  
Document title: **Minute Orders 60-67**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced documents were served upon the following parties by email (when indicated) on June 5, 2017 and by regular mail on June 5, 2017:

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June 5, 2017