

Senator Lorraine R. Inouye
March 2, 2004
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Senator Lorraine R. Inouye
Chair, Committee on Water Land & Agriculture
Hawaii State Capitol, Rm. 201

**Re: Update on the Auditor's Report on the Management of Mauna Kea
Informational Briefing: Tuesday, March 2, 2004, Conf. Room 329**

Dear Senator Inouye:

Kealoha Pisciotta of Mauna Kea Anaina Hou has asked me to send in a letter summarizing my perspective on the University of Hawai'i's Institute Astronomy ("UHIFA's") compliance with the 1998 State Auditor's report on the management of Mauna Kea and the Mauna Kea Science Reserve ("1998 Audit"). I am unable to appear at the informational briefing on March 2, 2004. Please feel free to contact me if you have any questions.

As a preliminary matter, I send this letter solely in my personal and individual capacity. I previously represented the Office of Hawaiian Affairs ("OHA") in its successful lawsuit against NASA relating to the adequacy of the NASA's environmental assessment for the Keck Outrigger Telescope Project. However, I have not consulted anyone at OHA regarding this letter. This letter should **NOT** be interpreted as OHA's position on **ANY** matter.

A. Auditor's Recommendations to UHIFA.

The Auditor made several recommendations that have been ignored by UHIFA, summarized in the table below:

Auditor's Recommendation	UHIFA's Failure To Respond
"We recommend that the university develop a new methodology to measure the impact of future development on Mauna Kea. The new method should assess the impact of each new project, as well as the impact on the total development. In addition, this new methodology should be approved by the Board of Land And Natural Resources." See 1998 Audit Overview, Recommendations and Response.	UHIFA failed to develop a new methodology or obtain BLNR approval of such a methodology. Instead, it has proceeded with piecemeal development and study.

Auditor Recommendation	UHIFA's Failure To Respond
<p>"We recommend that the university ensure that the Institute for Astronomy begin the planning process for the next master plan. . . The master plan and attending environmental impact statement should clearly identify . . . critical habitats of plants, invertebrates, and other rare or endangered species." <i>Id.</i></p>	<p>UHIFA failed to identify critical habitat for the W_kiu Bug, a rare invertebrate that is a candidate endangered species. It is continuing to allow piecemeal development and further destruction of habitat without sufficient study to determine the value of the habitat to the survival of the species as a whole.</p>
<p>"We also recommend that the university . . . develop a forum for continuous community input." <i>Id.</i></p>	<p>Although the UHIFA formed the Office of Mauna Kea Management ("OMKM"), and OMKM formed several committees to provide community input, those committees were frequently not provided with full information or have not met regularly. For example, after several meetings in which feedback from the environment committee was negative, OMKM stopped holding meetings for over a year.</p>
<p>The 1998 Audit noted that study of the W_kiu Bug came <u>after</u> damage to habitat and that a "carrying capacity" for development needed to be established taking into account impacts on bio-fauna. See 1998 Audit, at 24, 36.</p>	<p>UHIFA failed to determine the "carrying capacity" of bio-fauna on the summit of Mauna Kea. Instead, the UHIFA is allowing piecemeal development. It has implemented studies only when a project is proposed.</p>

For example, the UHIFA is failing to implement the Auditor's recommendations on its latest proposed development -- the Keck Outrigger Telescope Project ("the Project"). The Project proposes to add up to six outrigger telescopes around two existing ten-meter telescopes. In July 2003, U.S. District Court Judge Susan Oki Mollway held that NASA's 3-page analysis of potential cumulative impacts in its environmental assessment ("EA") for the Project was inadequate because it failed to properly analyze cumulative environmental impacts of past, present, and reasonably foreseeable future actions. Specifically, the Judge Mollway found that the EA failed to discuss the effects of past actions, arbitrarily limited its analysis of reasonably foreseeable actions, was "markedly lacking in detail and analysis," and contained descriptions of activities "too general to be meaningful." UHIFA's own environmental assessment of the Keck Outrigger Project relies almost completely on the inadequate NASA EA.

In light of Judge Mollway's decision, NASA agreed to complete a more detailed environmental impact statement ("EIS") and began EIS scoping hearings in January 2004. The EIS is projected to be completed sometime this year. There is general agreement that NASA's EIS will produce better and more information about cumulative

environmental effects of astronomy development on Mauna Kea, and in the area of the existing Keck Telescopes.

However, the UHIFA is currently attempting to obtain a conservation district use permit ("CDUP") for the project before the Board of Land Natural Resources ("BLNR") without waiting for NASA to complete its EIS. Instead, the UHIFA is urging the BLNR to issue a CDUP on an inadequate record, with incomplete information about the potential cumulative impacts of the project -- directly contradicting the Auditor's recommendations. Construction cannot begin until the EIS is completed. Therefore, the project will not be substantially delayed if the UHIFA continues the decision making on its CDUP until NASA completes the detailed EIS. If BLNR issues a CDUP now, rights to develop the property may vest and BLNR may lose its right to add more conditions to the permit in light of the new and better information produced by the EIS. UHIFA's actions directly contradict the Auditor's recommendation that UHIFA study the cumulative effects of astronomy development and determine carrying capacities FIRST, before proceeding with further development that may have irreversible effects on environmental and cultural resources (e.g., extinction of the W_kiu Bug).

B. The Auditor's Recommendations to BLNR

Auditor's Recommendation	BLNR's Failure To Respond
<p>"[W]e recommend that DLNR do the following: (1) review and rewrite applicable environmental impact mitigating measures as specific Conservation District Use Permit conditions. . . ." See 1998 Audit, Overview, Recommendations and Response.</p>	<p>With respect to the Keck Outrigger Project, BLNR is poised to grant UHIFA a conservation district use permit without waiting for NASA to complete a more detailed environmental impact statement that may recommend more effective mitigating measures.</p>
Auditor's Recommendation	BLNR's Failure To Respond
<p>"[W]e recommend that DLNR . . . (2) include permit conditions (and time frames) that require the implementation of management plans that are approved by the Board. . . ." <i>Id.</i></p>	<p>BLNR has not approved any summit wide management plans that manage or protect the environmental and cultural resources of Mauna Kea. Instead, BLNR has allowed UHIFA to submit project specific "management plans." With respect to the Keck Outrigger Project, BLNR has allowed the UHIFA to submit a three-page "management plan" and then later expand that three-page "management plan" to an over thirty-page management plan without proper notice to the community.</p>

<p>"[W]e recommend that DLNR . . . (3) establish controls to ensure the timely completion of administration requirements" <i>Id.</i></p>	<p>As discussed above, BLNR has not approved a summit wide management plan that UHIFA and other telescope operators must implement, nor a time table to do so.</p>
<p>"[W]e recommend that DLNR . . . (4) ensure that enforcement of rules not related to the department clearly rest with the university." <i>Id.</i></p>	<p>Enforcement responsibilities remain unclear.</p>
<p>"[W]e recommend that DLNR . . . (5) complete and implement the Historic Preservation plan. . . ." <i>Id.</i></p>	<p>The State Historic Preservation Division ("SHPD") of DLNR published a Historic Preservation Plan in 2001. Implementation of the Plan a deadline for some actions of 2006. Although the SHPD stated in 1999 that it planned to list the summit of Mauna Kea as eligible in the State and National Register of Historic Places, it has not completed the listing process.</p>
<p>"[W]e recommend that DLNR . . . (6) adopt rules for the Historic Preservation Program, Chapter 6E, HRS." <i>Id.</i></p>	<p>Although some rules have been adopted related to burials, other rules governing procedures for historic preservation have been in draft form since 1998 and have never been adopted or approved.</p>

Again, thank you for this opportunity to submit information regarding the 1998 Auditor's report on Mauna Kea.

Very truly yours,

Lea Hong

cc: Kealoha Pisciotta, Mauna Kea Anaina Hou
Nelson Ho, Sierra Club