

April 10, 2008

Ms Laura Thielen, Chairperson
Members
Board of Land and Natural Resources
1151 Punchbowl St.
Honolulu, Hawaii 96813

Dear Ms Thielen and BLNR Members:

Re: Proposed Mauna Kea Management Plan
April 11, 2008 Hearing and Comments

Aloha,

Thank you for taking up and considering the important matter of the management of Mauna Kea.

The Mauna Kea Anaina Hou, the Sierra Club (Hawaii Island chapter), Royal Order of Kamehameha I, and Mr. Clarence Ching object to the University of Hawai'i Institute for Astronomy ("UH/IFA") presentation and public comment period before the Board of Land and Natural Resources ("BLNR"). There are a number of reasons this briefing as currently structured is not appropriate.

First, the BLNR is repeating the same mistake on which the Third Circuit Court ruled against UH/IFA and the Board of Land and Natural Resources in January 2008. On January 28, 2008, Judge Hara entered a final judgment in favor of Mauna Kea Anaina Hou et al., and against the UH/IFA and BLNR for the failure of the BLNR to prepare its own Comprehensive Master Plan as required by the BLNR's own rules. *Mauna Kea et al v. BLNR*, Third Circuit Court, Civil No. 4-1-397. The BLNR may not delegate the adoption of a comprehensive master plan for Mauna Kea to the UH/IFA and its agents (the Office of Mauna Kea Management and Ku'iwalu Consulting, LLC).

Second, Judge Hara's Order was clear. BLNR has a duty to protect the conservation resources of the entire summit area of Mauna Kea. Under the BLNR's rules, the DLNR must prepare and the BLNR must approve a comprehensive management plan for the summit of Mauna Kea. This duty may not be delegated to a third party.

Third, on February 26, 2008, the BLNR and UH/IFA both appealed Judge Hara's decision and order to the Intermediate Court of Appeals. By again contracting for UH to prepare a plan, neither the BLNR nor UH/IFA are complying with the Court's Order. Both seek to reverse the Third Circuit decision, calling for the protection and conservation of Mauna Kea.

Fourth, BLNR may not transfer its fiduciary duty to a conflicted third party like the UH/IFA, its agents (or foreign governments) using Mauna Kea. The Hawaii Supreme Court has repeatedly held that the delegation of the State's fiduciary duty to other parties is unlawful.

Fifth, the State may not use the lack of funds to justify delegating their fiduciary duty to protect the public resources on behalf of the Native Hawaiians and People of Hawai'i.

Sixth, Judge Hara's decision called for a conservation plan not a development plan for construction of another observatory. The UH/IFA and University of California are moving to build the world's largest telescope, known as the TMT atop Mauna Kea. The TMT is so big nearly every telescope on the summit could fit inside its dome. The TMT's stadium size dome cannot fit on the summit, so the UH/IFA is proposing to build it on the north summit plateau, that is the last undeveloped view plane, comprised of pristine land, sacred landscape and one of the largest burial complexes. The construction timeline for the TMT is set to begin in 2009. The construction of the TMT will have cumulative impacts way beyond those already found in NASA EIS, which were considered adverse, significant and substantial.

Finally, we do not think it is appropriate to simultaneously claim that BLNR is complying with the Court's Order while at the same time appealing the very same decision.

The below signed parties in the litigation are constrained by the fact of the appeal from formally participating in this discussion. We believe this violates our due process rights and is fundamentally unfair to us as well as the public whose rights and resources you have a duty to protect.

Thank you for your time and consideration.

In Aloha we remain,

Kealoha Pisciotta, Mauna Kea Anaina Hou,

Debbie Ward, Sierra Club (Hawaii Island chapter)

Clarence Ching, Individual Practitioner

Ali'i Sir Paul K. Neves, Royal Order of Kamehameha I.