

October 17, 2003

TESTIMONY BEFORE THE BOARD OF REGENTS REGARDING
Mauna Kea and Keck Outrigger Telescopes Application

Aloha. I am Nelson Ho, one of Sierra Club's Co-Chairpersons of its statewide Mauna Kea Issues Committee. I come before you today because the University of Hawaii and you Regents must properly oversee the errant activities of the Institute for Astronomy. The IfA is bringing more embarrassment to the University and causing irreparable harm to one of the finest natural and cultural resource sites of this state.

Five years ago, the University of Hawaii came under fire with negative press across the country and the world, when the Legislative Auditor issued a scathing report critical of more than two decades of mismanagement of Mauna Kea. The auditor found that "the University of Hawaii's management ... is inadequate to ensure the protection of natural resources, and that the Department of Land and Natural Resources [DLNR] needs to improve its protection of Mauna Kea..."

The auditor further stated that the University "did not fulfill its obligations as a responsible leaseholder of conservation lands." She stated that the University's "Piecemeal efforts provided no protection, and possibly violated the General Lease." "Very little effort was made to recognize the cultural significance of the mountain." Not only have management plans been ignored, so have administrative requirements been overlooked or completed in an untimely manner. The auditor's report outlines a pattern of practice dating back to 1967, ... of the university's failure to submit timely applications for approval of telescopes constructed and subleases issued, thus requiring after-the-fact review.

The auditor noted that while the operating organizations provide some funding for infrastructure, and shared costs, "there is no provision to dedicate significant amounts of funding for on-going environmental protection. Overall, the current arrangement allows the university to receive research benefits despite budget cuts or redirection of funds [away from] resource protection." The 11 major and 2 minor telescopes allowed in the BLNR approved 1985 Mauna Kea Science Reserve Complex Development Plan have been exceeded. BLNR's regulations require that any new astronomy facility be approved under a "comprehensive management plan."

The BLNR has not approved any amendments to the Plan that would allow the building of more telescopes. Although the Regents approved a Master Plan for the summit in 2000, IfA never sought BLNR approval of that Master Plan. The University and IfA do not have authority to proceed with construction of new telescopes until BLNR approves a comprehensive management plan.

Rather than working with interested agencies and the public to identify common issues and address them with resource protection goals and objectives, the University has chosen once again to segment its responsibilities for overall resource management of the summit to individual sub-lessees—mainland and foreign entities - whose first mission is to explore space, not protect Hawaii's culture, land and environment. (NASA, the National Science Foundation, CalTech, Univ of California, Smithsonian Institution are heavily pushing to build more telescopes on Mauna Kea as if nothing has happened.)

Once again, the University is embarrassed in Federal and State proceedings, and in the court of public opinion, because of its shoddy, arrogant and inadequate approach to its responsibilities.

Recent hearings before BLNR show that IfA continues to ignore its legal responsibilities. In June 2003, a hearing officer appointed by the BLNR found that the management plan proposed for the Keck Outrigger 6 Telescope project was inadequate.

Initially, IfA claimed that certain 1995 amendments to the 1985 Mauna Kea Science Reserve Complex Development Plan was the approved “management plan”. However, those 1995 amendments do not allow the construction of any new telescopes. When IfA realized its error, it then claimed that a 3-page appendix (“Appendix E”) to its permit application was the approved management plan.

When the hearing officer extended the proceedings to review Appendix E, IfA produced a new version – expanding the three-page appendix to a two hundred-page document. When the Board found even this document inadequate, yet another “red-lined version” was submitted. Large relevant sections covering hydrology, soil erosion, permafrost, hazardous waste, sewage, and noise were simply deleted from this inflated document.

Later, the BLNR issued an “Order remanding the case to Hearing Officer, or, in the alternative, denying the application for conservation district use permit”...

“The Board concurs with the hearing officer that the Applicant’ three-page management plan is inadequate.”

In remanding the decision back to the hearing officer, the Board noted that “Review of the 3-page Management Plan may bring out issues that could affect the recommendation on the CDUA, including, but not limited to, mitigative conditions that may be required in order that the criteria for issuance of a conservation district use permit are met.”

In July 2003, federal district court Judge Susan Mollway held that the Environmental Assessment for the Keck Outrigger Project failed to address cumulative impacts of summit development, and told NASA they could not proceed with the Keck project without rectifying the errors.

The IfA relied in part on this inadequate EA in their CDUP proceedings. NASA is considering whether to revise its EA or complete a more detailed environmental impact statement. However, the IfA refuses to wait for the more complete information that would be produced by NASA’s new EA or EIS and insists that it should be granted a permit with the inadequate “Appendix E” management plan.

Congressman Neil Abercrombie has stepped in and met with representatives of the IfA, the Sierra Club, and OHA. He has demanded that the University does things right – including, develop a comprehensive management plan for the summit that is approved by the BLNR. He has told NASA to immediately begin work on a more detailed Environmental Impact Statement for its project.

Why does the IfA persist in its fruitless pursuit of a conservation permit for the Keck Outriggers that is so procedurally flawed? It will be held up in court for years. Why aren’t the Regents and the University acting to prevent yet another embarrassment? The Regents should require the IfA to withdraw its pending permit application for the Keck 6 Outrigger project.

IfA should not seek permits for new construction until: (1) NASA completes its revised EA, or more detailed EIS, so that IfA will have all relevant information, including cumulative impacts, and (2) BLNR approves a comprehensive management plan for the next 20 years of development, management, and protection of Mauna Kea. Mahalo for your consideration of these concerns.