

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 521
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT
PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND DIVISION
STATE PARKS
WATER RESOURCE MANAGEMENT

Ref.:PB:SL

SEP 25 1996

Dr. Fred D. Stone
Math & Natural Sciences Division
Hawaii Community College
200 W. Kawili Street
Hilo, Hawaii 96720-4091

Dear Dr. Stone:

I am in receipt of your May 11 and 29, 1996 letters regarding alleged damage to the Wekiu bug habitat in the summit area of Mauna Kea due to construction of the Japan National Large Telescope (JNLT) and Gemini Northern 8-Meter Telescopes.

We have reviewed the Conservation District Use Application files (Nos. HA-2619 & HA-2462) for these projects as well as the Mauna Kea Science Reserve, Complex Development Plan and the Final Environmental Impact Statement (FEIS), and have the following comments.

Japan National Large Telescope:

According to the FEIS and Complex Development Plan, Pu'u Hau Oki is identified as one of the primary areas where the Wekiu bug (Nysius Wekiuicola) is found. Both reports recommend that disturbance and/or destruction of the Nysius habitat should be minimized.

The Conservation District Use Application (CDUA) for the JNLT Telescope did not refer to the significance of the of the Pu'u Hau Oki Crater as a Nysius habitat nor did it refer to the mitigation measures in the FEIS concerning Nysius habitat. The staff report for the CDUA did not discuss the Wekiu bug.

Subsequent to the approval of the CDUA, the applicant submitted construction plans for review and approval of the project elements. The plans included a "fill" site for excess materials. This fill site was not illustrated on the preliminary project plans that were submitted with the application. There was no indication that the crater would be used as a fill site or that the disturbance of the inner crater walls would occur. The application stated that the excavated material would be placed "along the outer edges of the telescope pads along the access road, and in the control building area." It now appears that the Department erred in approving the construction plans on April 29, 1992.

Ref ; SL DEPARTMENT OF LAND AND NATURAL RESOURCES

. LAND DIVISION

P.O. BOX 621

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However, we now recognize that the filling of the inner crater of Pu'u Hau Oki could have been avoided if the University of Hawaii, Institute for Astronomy (UHfIA) had followed the guidelines of the FEIS and Complex Development Plan for minimizing destruction of the Wekiu bug habitat, and if our staff had conducted a more thorough review of these documents. It may also be noted that although some destruction of the Wekiu bug has occurred, this was anticipated in the FEIS due to the need to locate the telescope facilities and access roads in and around the cinder cones in the summit area of Mauna Kea.

Gemini Northern 8-Meter Telescope:

On July 27, 1994, the Department approved construction plans for the first three phases of the Gemini Telescope project. Then on November 3, 1995, UHFIA submitted a second set of construction plans covering other elements of the project.

Although UHFIA failed to note in their written request that the construction plans called for a realignment of the road from the earlier plan, staff did acknowledge and approve the change on May 3, 1995. However, staff was given no indication by UHFIA, at that time, that the new road alignment would impact Nysius habitat. The Conservation District Use Application that was submitted to the Department for the Gemini Telescope did refer to the Wekiu bug, but only to the extent that the area had been "previously developed or disturbed."

It does not appear that the Gemini Telescope is located in a area considered to be a "high density" Nysius habitat, although the bug may well occur in this area. Based on a map of Nysius habitat that was included in the Complex Development Plan, "high density" Nysius habitat occurs approximately 200 feet from edge of the old road.

Relocation of the road could have potentially impacted the Nysius habitat on the outer wall of the crater.

Cumulative Impacts:

The FEIS recommends that impacts on resident arthropods can be minimized by keeping construction activities within the minimum possible defined area; preventing cinder or debris from falling downslope on the cones; insuring that wind will not displace trash or other materials outside the construction area; keeping new road alignments to a minimum size and length; and taking precautions to prevent oil spills.

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In reviewing this case, it appears that UHFIA, in some cases, failed to acknowledge guidelines included as part of the FEIS and Complex Development Plan for protection of Nysius habitat in the summit area of Mauna Kea. The Department also failed to discover these omissions in its review of the respective CDUAs and plan approvals. (Note: UHFIA did refer to Lycosa habitat (spiders) and Lichen concentrations in the CDUA for the Smithsonian Submillimeter Observatory.) While the FEIS discloses the fact that a portion of Nysius habitat might be destroyed by construction of telescopes and access roads, mitigation measures were stipulated in the FEIS to minimize this problem. In addition, the fact that the actual extent of the Wekiu bug is not completely understood (it may or may not be common) does not obviate the responsibility of UHFIA to follow the guidelines included in the FEIS with respect to specific mitigation measures.

Enforcement:

An employee of our Land Division staff visited the summit area of Mauna Kea on June 10, 1996 accompanied by the Director of UHFIA, a DLNR, Division of Conservation and Resources Enforcement (DOCARE) officer, and one of your colleagues. During the field trip, three observatory sites were visited including Gemini, Smithsonian, and Subaru. At the Gemini site, staff was unable to determine if the road re-alignment had adversely affected the identified Nysius habitat.

At the Subaru site, fill and grading work appeared to exceed that which was approved by the Department on April 29, 1992. According to our planning staff, an area between the dirt access road leading to the Subaru site, including the center of the crater, and up to telescope site had been filled and/or graded. In addition, there was a construction trailer situated outside of the sublease area. Staff asked that it be moved.

On-going work conducted at the Smithsonian site appeared to be in order. However, in revisiting this CDUA, it appears that specific mitigation measures included in the FEIS with respect to keeping the construction of new roads to a minimum length appears to have been eschewed. This complex involves approximately one mile of new roads.

Another purpose of the field trip was to generally assess the impact of any on-going construction projects in the summit area. In one case, it was identified that a power and telecommunications system cable, previously approved by the Department through a Site Plan Approval, was about to be installed on the outer slope of the Pu'u Hau Oki cinder cone, a known habitat of the Wekiu bug. However, this matter was not discussed in the CDUA for the Subaru Observatory or in the Site Plan Approval under which it was finally authorized.

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authorized.

Construction of a new line within the existing (disturbed) roadway leading to the Subaru Observatory would appear to have caused much less damage to the Wekiu habitat than trenching through the outer slope of the crater. However, inasmuch as this information was not disclosed when the site plan approval application was submitted to us, it was not considered as a possible alternative. The DLNR did write a separate letter to UHFIA concerning this matter (attached).

Based on the evidence surrounding this case, the Department could pursue these matters as violations of the Conservation District Regulations. Non-compliance with conditions requiring observance of EIS mitigation measures or disturbance of ground areas outside the limits of approved construction plans could serve as a strong basis for the enforcement of sanctions. However, there are circumstances in this case which prevent the Department from pursuing these matters as violations: 1) the University has agreed to fund additional biological field work, immediately; 2) there are uncertainties regarding the significance and/or rarity of the Wekiu bug in Hawaii, thus making assessment of penalties quite difficult if not impossible; and 3) although there exists mitigation measures to protect the habitat of the Wekiu bug, the FEIS does not establish how much disturbance should be tolerated before development should be halted. Furthermore, although UHFIA failed to discuss these mitigation measures in some of the respective CDUAs or plan approvals, they may feel that they, nevertheless, were adhering to the guidelines in the FEIS.

We are continuing to work with UHFIA to institute a more effective monitoring and enforcement program for the mountain. Manpower at the visitor center as been increased and we are currently talking to UHFIA about stationing additional enforcement personnel on the mountain. With respect to land use and activities, one possible alternative would be to actively involve the Mauna Kea Cultural Review Committee (in an advisory capacity), when future projects are processed through the DLNR. However, we understand that UHFIA is not planning any major development of the summit area under the existing Complex Development Plan and FEIS.

In the meantime, we have asked UHFIA to review its present construction projects, with oversight from DLNR staff, to ensure that all work is proceeding in accordance with the guidelines of the FEIS with respect to avoidance of arthropod fauna.

Also, we will continue to work with the Mauna Kea Support Services to ensure that they report violations to the appropriate government authorities.

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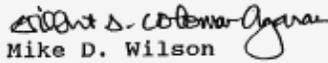
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Please feel free to call me or my Land Division staff at 587-0386 should you have any questions this matter.

Aloha,

for 
Mike D. Wilson

Attachment

cc: Governor's Office
Don Hall
Chris Yuen
DOCARE

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