



Sierra Club Hawai'i Chapter

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Aloha, Chair and Members, Board of Land and Natural Resources,

This testimony is presented on behalf of the Sierra Club, Hawaii Chapter. Sierra Club, Hawaii Chapter (SC), is the local chapter of the national Sierra Club, one of America's oldest grassroots environmental organization, with 700,000 members joined together to protect and preserve natural ecosystems and work against degradation from a variety of causes. Members of the Sierra Club, Hawaii Chapter (Sierra Club) include residents of Hawai'i Island who regularly use Mauna Kea for hiking, viewing and enjoying open spaces, and other forms of recreation, including wildlife observation, aesthetic enjoyment, educational study, and spiritual contemplation.

BLNR held that Sierra Club had standing to participate in a contested case hearing regarding the Keck Outrigger Telescope Project. The Contested Case Hearing and subsequent District Court ruling found that the agency responsible for Conservation District lands must develop a comprehensive management plan to address multiple uses. As parties to BLNR contested case hearing and court proceeding, the SC asks to meaningfully participate in this decision making process. **We hereby reserve the right to request a contested case hearing should BLNR approve the CMP, sub-plans, timelines, and other project documents.**

In our call for a contested case, both for the UH CMP, and for these sub-plans, we assert that SC members have standing as distinct from the general public by our longstanding recreational and regenerative use of the Mauna Kea Conservation District. We further believe that ceded land belongs to the native Hawaiians and the general public, held in trust by DLNR, and that all of the people have "property rights", and should not be denied standing.

SC has reviewed the Office of Conservation and Coastal Lands' staff submittal relating to the Request for Approval of Natural Resources Management Plan, Cultural Resources Management Plan, Public Access Plan, Decommissioning Plan and Management Framework, and other related matters now before the BLNR. SC believes that BLNR decision makers have not been given sufficient and accurate information with which to make an informed decision on delegating implementing authority to the OMKM.

1) Illegal delegation of authority

SC continues to assert that developer should NOT be preparing a comprehensive Management Plan for Mauna Kea. The initiative, scope, guidance and oversight of plan management plan development rests with DLNR. Delegation of authority to the developer is inappropriate, in that it places the developer in the role of decision-maker—

1. The UH 2000 MP is not in evidence, nor was it when the UH CMP was approved. When a conflict arises between these documents, which of these documents will be controlling?
2. The UH 2000 MP establishes a management structure that takes the place of BLNR on many key land-use decisions. These structures include the Office of Mauna Kea Management (OMKM), the Mauna Kea Management Board (MKMB), and the advisory groups like Kahu Ku Mauna (KKM), the UH chancellors, and ultimately the President of the University of Hawaii.

This is to say, the people empowered to decide, direct, impose conditions and restrict Hawaiian and public access are people under the direct control of the UH. They are not selected by the people of Hawai'i, nor are they even legally authorized to make these kinds of decisions on public trust and conservation lands.

The **Project Submittal Timeline** (PST) delegates the sole power and authority to classify a telescopes project or a land altering activities as "major" or "minor." To UH. Even "minor" projects can involve land altering activities.

For example, the UH proposal to remove the road on Pu`u Poliahu was classified as "minor" but this involved land altering activity, and affected wekiu habitat.

Further, according to the UH documents if the UH decides the project is "minor" the project will be exempt from state and/or federal environmental, historic preservation and/or cultural impact review. The first purpose of any conservation district is conservation and not development--so all land altering activities in a conservation district are major. BLNR, it is not enough that you may have some control over project the UH classifies as "major". By law you must have control over all land altering activities on Mauna Kea.

4) Sub-plans were not included in the CMP Environmental Assessment

While the Board determined that an Environmental Assessment was required for the UH CMP, no environmental review has been completed for the sub-plans, which describe in detail large land-altering activity. The impact of decommissioning and site restoration must be subject to the same review.

5) Role of developer and decision-maker has inherent conflicts

Major Projects Review Steps (exhibit 4 (1of 2) is an inaccurate and misleading process flow chart. The Office of Mauna Kea Management (OMKM) is fatally conflicted with institutional mandates. It repeats the fatal flaws that have crippled true management programs for the last 30 years of the Mauna Kea Science Reserve Lease to the University of Hawaii.

One example, (there are more) see the nine big review steps in the center column. First green one after 8 big blue boxes. States MKMB RECOMMENDS APPROVAL OR DISAPPROVAL OF PROJECT (MAJOR).

Now compare that with the statement by UH Regents to the Legislature:

OMKM funds are requested to initiate baseline research, continue long-term monitoring and engage in activities necessary to implement and enforce the CMP...In addition, **OMKM/UH is responsible for defending State and or**

currently no legally binding requirements that would force any of the observatories to do either decommissioning or clean up, including clean up of hazardous material, brown fields and contaminated soil. BLNR, you should read this plan carefully, because confirms our earlier claims, regarding your legal liability. (see page 2, 10 of 86)

On page 6 the DP states,

2.2.4 Site Abandonment

Although unlikely, it is possible that a sublessee could abandon an observatory in place, without deconstructing and site restoration. If this happens, UH, as the lessee to DLNR, will ultimately be will be responsible for the site through the terms of their master lease.

This demonstrates that when you delegate your authority the taxpayers get saddled with the clean-up since they fund both the BLNR and the UH.

See also Table 3, p. 16 of 86 which reads,

Clean up of contaminated soil costs

Canada France Hawai'i claims \$6 million quote for decommissioning was given in 2004. This did not include any clean-up of contaminated soil. Planning for one year of operational costs for 'cleaning cost'. Potentially sell Waimea headquarters to fund decommissioning.

UKIRT claims their costs are confidential

Received confidential quote for decommissioning in 2006. This information is not available for public record. Facility to be removed and site restored to original condition at end of operation. The financial provision for this is maintained within the STFC (not Joint Astronomy Centre) budget and is informed by an exercise conducted every 3-5 years to secure up-to-date estimates for decommissioning.

All of the people of Hawai'i have a constitutional right to a clean and healthy environment--the waters of Mauna Kea provide drinking water for people of Hawai'i Island. If these waters or the lands are contaminated this impacts our rights duties and privileges.

Native Hawaiians harvest snow, ice and waters from the summit of Mauna Kea--these waters are used for healing and ceremonial purposes, if the waters or the land are contaminated this impacts our rights duties and privileges.

The University agreed in the 1985 MKSRCDP to conduct baseline inventories and ongoing monitoring of the flora and fauna, and threats inherent in industrial development. Over the past twenty five years, the funds have been found to construct numerous additional telescope facilities, but funds have been notably absent for the protective activities promised in that 25 year-old plan. In this plan we see far more detail about the data gaps, and prioritization of research, monitoring and protection proposed, but without funding to carry out the plan, the proposed actions rely on the taxpayer to pay for the responsibilities incurred by the University. So little is known about the resources that any future development could impact the resource irrevocably.

Over and over, the budget concerns for proposed actions are mentioned in the sub-plans, but no funding source (other than the taxpayer, through University base-funding)

11) Funding sources for management rest inadequately addressed

The "UH CMP" and subplans do not offer a cohesive management plan, but rather a menu of planning options. In the subplans, the vague references to astronomy industrial development in the decommissioning plan do not spell out anything but past and current projections. The subplans are inconsistent regarding the criteria for determining the carrying capacity and criteria for determining the optimal protections for resources in the conservation district. The subplans fail to protect our state's resources, nor do they delineate responsible parties and earmarked funding. It is unconscionable that DLNR would decline its full responsibility to manage these conservation lands, and it is time that the legislature addresses this failure of the Department to protect our natural resources. While the University is requesting \$2.1 M in funding for CMP implementation **including \$300,000 to address legal defense of proposed telescope development**, these funds could be allocated, instead to DLNR management staff and enforcement personnel.

We attach with this testimony the UH Operating budget Attachment A. This decision should not take place until a review of the financial audit of the valuation of the University and its affiliates use of Mauna Kea is conducted.

In summation, SC therefore feels that irreparable harm will be done to the natural and cultural resources of MK summit and hereby asks for contested case status to formally participate in the BLNR decision on these agonized matters.

Respectfully submitted,

Deborah Ward and Nelson Ho
Co-Chair, State Mauna Kea Issues Committee.
Sierra Club