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for the
Steph. J. M. M.
Helen Rogers

2017 MAR -2 P 1:15

Samuel Lemmo, Administrator
Office of Conservation and Coastal Lands
Post Office Box 621
Honolulu, HI 96809
File: CC HA-11-05

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

March 30, 2011

PROTECTING
NATIVE HAWAIIAN
CUSTOMARY &
TRADITIONAL RIGHTS
AND OUR FRAGILE
ENVIRONMENT

Aloha e Mr. Lemmo,

Thank you very much for your letter dated March 21, 2011 regarding *ex parte* communications. We are writing today with concerns related to the *ex parte* communications rule and the proposed development of draft regulations under Act 132.

On March 24, 2011, at a joint informational briefing to the Senate Committees on Hawaiian Affairs and Water, Land, and Housing, both the University of Hawaii and the Chairman of the Board of Land and Natural Resources cited our pending contested case hearing as grounds for not answering many of the Joint Committee's questions. The BLNR Chairman did, however, say that he is working closely with the University to develop the regulations for certain activities on Mauna Kea lands, as authorized by Act 132, SLH 2009.

There are insufficient safeguards between the Department and the University to ensure that the *ex parte* rule, HAR §13-1-39, is not violated in this process. The scope of the contested case has not been determined and the BLNR Chairman is "a participant in the decision-making process," as identified in HAR §13-1-39. It seems reasonable to assume that in the process of developing the proposed regulations the University and the Chairman may touch on topics at issue in the contested case hearing. The BLNR Chairman's decision in the contested case may be influenced by the rule-drafting process, regardless if the majority of work is carried out by staff under his supervision.

Thus, we respectfully request that the Department and the University cease all communications about proposed regulations until after the close of the contested case hearing. All communications between the Department and the University since February 25, 2011 that are related to Mauna Kea should be disclosed to all parties and potential parties to the contested case hearing. Any future communications between the Department and

Office
1149 Bethel Street, Ste. 415
Honolulu, HI 96813

Mailing Address
P.O. Box 37368
Honolulu, HI 96837

toll-free phone/fax
877.585.2432

www.KAHEA.org
kahea-alliance@hawaii.ir.com

KAHEA: the Hawaiian-Environmental Alliance is a non-profit 501(c)3 working to protect the unique natural and cultural resources of the Hawaiian Islands. KAHEA translates to english as "the call."

University on any matter related to Mauna Kea should be noticed to all parties and central parties to the contested case.

Thank you very much for your immediate attention to this matter. We look forward to receiving disclosure of the communications held to date regarding Mauna Kea.

Mahalo,



Marti Townsend
Program Director

Cc: UH Chancellor Straney
Attorney General Louie
OHA Administrator Namu'o

ation-Environmental Alliance
(271) 31366
i, Hawaii 96827-0112

HONOLULU HI 968
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FWD.

UH Chancellor Straney
University of Hawaii at Manoa

University of Hawai'i at Hilo
200 West Kawili Street
Hilo, HI 96720-4091

96822+2246

