



KAHEA

THE HAWAIIAN-ENVIRONMENTAL ALLIANCE

PROTECTING
NATIVE HAWAIIAN
CUSTOMARY &
TRADITIONAL RIGHTS
AND OUR FRAGILE
ENVIRONMENT

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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."

July 7, 2009

Chancellor Rose Tseng
University of Hawai'i at Hilo
200 W. Kāwili Street
Hilo, Hawai'i 96720-4091

Aloha Chancellor Tseng,

Mahalo for the opportunity to provide comments on the Draft Environmental Impact Statement (EIS) for the Thirty Meter Telescope (TMT) project. KAHEA: The Hawaiian-Environmental Alliance opposes this project. To be clear, KAHEA is not opposed to astronomy; rather, KAHEA is opposed to building a structure larger than a football stadium on Hawaiian sacred land that is also a state conservation district and the watershed for the island of Hawai'i. We believe it is not prudent to permanently sacrifice these natural and cultural resources for a project that will be obsolete in 50 years. The developers of the TMT have proposed to donate money to the community to help educate young people on Hawai'i Island in exchange for the harms the project will inflict on this sacred and fragile environment. KAHEA believes, however, that the children of Hawai'i Island should not have to let people desecrate their church in order to receive a decent education. We also find it offensive that proponents of the TMT invoke the name of deceased Hawai'ian monarchs in their attempts to win public support. Although King David Kalakaua demonstrated an interest in science and technology, including astronomy, we find it offensive to assume, as TMT supporters do, that King Kalakaua would support the colossal TMT on Mauna Kea.

Please address the following concerns in the final EIS for the TMT project.

1. Please explain how TMT justifies obtaining a conservation district use permit for a project that will continue to produce adverse cumulative impacts when state law prohibits the granting of a permit for projects that have "substantial adverse impact to existing natural resources."

Under Hawai'i Administrative Rules, the Department of Land and Natural Resources should not issue a Conservation District Use Permit for the TMT. The purpose of Hawai'i Administrative Rule § 13-5 is to regulate the use of important natural resources for the purpose of conserving, protecting, and preserving them. The rules

require a Board of Land and Natural Resources permit and management plan to develop a telescope on Mauna Kea. One of the criteria for the board's decision is that the "proposed land use will not cause substantial adverse impact to existing natural resources." The draft EIS, however, acknowledges that telescopes have had substantial cumulative impacts on the natural and cultural resources of the mountain. Given this criteria, on what grounds does the TMT expect to be granted a Conservation District Use Permit?

Interestingly, the TMT report is not the only environmental study that has found that telescopes have caused significant impacts on Mauna Kea. The final EIS created by NASA for its proposed Keck Outrigger Telescopes project found that the development of previous telescopes and other activities on Mauna Kea had desecrated traditional Hawaiian sacred sites and thereby "substantially and adversely affected cultural resources." The statement said that reasonably foreseeable future activities on Mauna Kea, including direct and indirect affects of telescopes, would continue "the substantial adverse impact on cultural resources." We believe that the state cannot ignore this previous EIS when deciding whether to allow the project, particularly when some conclusions are not inconsistent with the current draft EIS.

We also believe that the state must adhere to the Hawai'i Environmental Policy Act (HEPA) and other applicable laws when administering the TMT project. The state may argue that the recently passed Act 132 gives the University power to do as it sees fit on Mauna Kea, but that is not true. Notwithstanding the new law, Hawai'i Revised Statutes §304A-B states, "The board of regents may enter into lease agreements for the Mauna Kea lands; provided that the University of Hawai'i shall comply with all statutory requirements in the disposition of ceded lands." These statutory requirements include Hawai'i Revised Statutes § 343, or HEPA, as well as HAR § 13-5. In any event, the University has not yet written rules under Act 132, so there's not yet a way to apply Act 132.

Although the state may wish to ignore HEPA and HAR § 13-5 we urge the TMT to err on the side of caution when making decisions concerning environmental impact statements. Governor Lingle's administration has had difficulty helping large, high-profile projects navigate the environmental regulatory process in the past, and the Administration's mistaken understanding of the law in those cases has created enormous problems for all of the interested parties: proponents, opponents, investors, citizens, etc. We hope that the Administration and University will not ignore or misinterpret the law this time when they consider what they think is required of the TMT project. Given the Administration's previous costly legal errors, committed in the context of a project of even greater public importance than TMT, we think it unwise for TMT to rely solely on the Administration's interpretation of the law.

2. Please explain why the University has not conducted a federal environmental impact statement, despite the fact that federal funding of the TMT project has triggered the National Environmental Policy Act, which requires a federal environmental impact statement.

All major federal actions – that is, all actions by federal agencies – significantly affecting the environment must undergo environmental review under NEPA. The National Optical Astronomy Observatory Administration 2008 Annual Report to the National Science Foundation (NSF) reveals that NSF has been funding and will continue to fund the TMT project. By the end of 2008, TMT and the Giant Magellan Telescope, in conjunction, have received \$8 million in direct and in-kind federal support from NSF. And, TMT has expressed its desire for continued NSF funding during construction and operations phases.

The 2005 NASA Final EIS for the Outrigger Telescopes clarified that where federal funds are involved, the NEPA process will be followed. As the federal funding source for approximately 20% of all federally supported research at colleges and universities, NSF is a federal agency taking action by funding the TMT project. The Council on Environmental Quality regulation 1508.18 clearly identifies actions that fall under the scope of NEPA to include “projects and programs entirely or partly financed...by federal agencies.” Thus, partial financing of the TMT project by NSF triggers NEPA. Because National Science Foundation provides funding to the University for the TMT project, NEPA has been triggered, and the University must complete a federal environmental impact statement.

3. Please explain the University's failure to complete the Mauna Kea Comprehensive Management Plan and, thus, comply with the Land Board's conditional approval of the Plan and the 2007 3rd Circuit decision mandating complete Mauna Kea plans.

The Comprehensive Management Plan (CMP) is not yet comprehensive. The Land Board recognized this tragic flaw, when it approved the CMP on April 9, 2009. Thus, the Board's approval was contingent upon the CMP's completion within the next year or before the next telescope proposal, whichever came first.

With the TMT proposal on deck, the CMP must be completed prior to applying for a Conservation District Use permit. As the Land Board pointed out to the University in April, the CMP lacks any subplans for public access, natural resources, cultural resources, and decommissioning- all immense planning issues that must be finalized before moving forward. The complete CMP must address how decisions will be made regarding these fundamental components. And, the University must provide the Board with these subplans in writing and in person prior to submittal of a Conservation District Use Application. As legal overseer of the summit's management, the Board will review the subplans for approval or rejection.

The University's failure to follow the Land Board's order to complete the CMP is particularly egregious in the wake of the 2007 3rd Circuit Court decision that prevented construction of the Keck Outrigger Telescopes due to an incomplete plan. And, with the Land Board ruling on this particular project only a few months back, it is surprising that the University is failing to comply with the ruling nonetheless. The CMP must be completed before any proposal for construction in the Mauna Kea conservation district may proceed.

4. Please explain why the TMT EIS fails to consider the substantial and adverse cultural impacts as identified by NASA in the Outrigger Telescopes EIS.

The TMT EIS should incorporate the previously accepted EIS for the Outrigger Telescopes, which identified substantial adverse impacts to the environment, because such information is “pertinent to the decision at hand and has logical relevancy and bearing to the action being considered.” Office of Environmental Quality Control Regulation, §11-200-13(B). In taking the requisite hard look at the environmental impacts of the TMT, the EIS should consider all relevant information, particularly those pertaining to adverse and substantial environmental impacts identified- and accepted- in a previous EIS for a similar project in the same location.

After all, the Hawai'i Environmental Policy Act states that the environmental review system is desirable for not only enhancing environmental consciousness but also encouraging cooperation and coordination. Haw. Rev. Stat. §343-1. Consideration and incorporation of the accepted NASA EIS is a prime opportunity for cooperation and coordination within the environmental review process for TMT, particularly because the TMT EIS lacks a discussion of relevant, adverse impacts that are addressed in the NASA EIS.

As one example, the TMT EIS lacks a critical assessment of cultural impacts. In contrast, the accepted NASA EIS identified serious cultural impacts. On page 4-73, the NASA EIS explained that “[f]uture activities on the summit of Mauna Kea would continue the substantial adverse impact on cultural resources.” In contrast, the TMT EIS only considers cultural practices from the perspective that culture and astronomy can co-exist on Mauna Kea, after acknowledging that another widely held perspective is that Mauna Kea is too sacred for any development. TMT EIS, p. 3-19. Thus, the TMT EIS admits to only considering cultural impacts from the perspective of the TMT proponents. Mentioning, but failing to consider, all cultural perspectives disrespects the ignored views and, in the end, skews the conclusion.

5. Please explain why the TMT EIS lacks a substantive conclusion as to the level of cultural impact.

Not only does the EIS assess the level of cultural impact only from the singular aforementioned perspective, but it also fails to identify the level of impact. The EIS reaches the obvious conclusion that mitigation measures would lessen the potential cultural impacts, leaving the reader to wonder, lessen to what level?

As the NASA EIS identified, telescope development on Mauna Kea has a substantial adverse impact on cultural resources, but a lessening of impacts may not minimize the impact enough. Mitigation, by definition, entails a lessening. The important – and absent – part is the level after mitigation. In other words, the impact may still be substantially adverse after mitigation, but the TMT EIS is unwilling to quantitatively assess the cultural impact, as it is legally required to do.

6. Please identify clearly the accepting authority for the EIS.

We understand that UH-Hilo is the proposing agency; the draft EIS states that clearly on the cover. The identity of the accepting authority, however, is less clear. Hawai'i Administrative Rules § 11-200-4 states that the governor or her authorized representative will be the accepting authority when an agency proposes an action that includes state lands. The TMT project fits that category of actions, but it is not clear who the governor has authorized as her representative. Written comments are submitted to the University of Hawai'i at Hilo.

Does this mean the University is both the proposing agency and approving agency for the TMT project? Surely this cannot be the case, for it would be inappropriate to let the University be the party that decides the adequacy of the University's EIS. We believe the Department of Land and Natural Resources should be the accepting authority because the department is the agency most qualified to determine the significance of environmental impacts on a conservation district. After all, the DLNR is the agency solely in charge of granting Conservation District Use Permits, which are normally required for activities in conservation districts. For the governor to appoint an agency besides DLNR to be the accepting authority for the TMT EIS would not only be a gross abuse of the governor's discretion, but also make a mockery of Hawai'i's environmental rules.

Mahalo for this opportunity to comment. We look forward to your responses.

Sincerely,



Miwa Tamanaha
Executive Director



Marti Townsend
Program Director