

DANIEL K. INOUE  
HAWAII

APPROPRIATIONS  
Subcommittee on Defense  
COMMERCE, SCIENCE, AND TRANSPORTATION  
Subcommittee on Surface Transportation  
and Merchant Marine  
COMMITTEE ON INDIAN AFFAIRS  
DEMOCRATIC STEERING COMMITTEE  
COMMITTEE ON RULES AND ADMINISTRATION

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March 23, 2001

Mr. Daniel Goldin  
Administrator  
National Aeronautics and Space Administration  
300 E Street, S.W., Room 9F44  
Washington, D.C. 20546

Dear Administrator Goldin:

I am writing with regard to the Section 106 Consultation for the National Aeronautics and Space Administration ("NASA) Keck Outrigger Project atop Mauna Kea. I am most concerned about the tone, exclusivity and tenuous status of the process.

As you well know, Section 106 of the National Historic Preservation Act requires federal agencies to consider the effects of their activities on historical and cultural sites. The law requires consultation, and if it is determined that adverse effects will occur, mitigation is called for to resolve that which would be deemed adverse. As part of the process, NASA is required to enter into Memorandums of Agreement with the affected cultural entities. NASA implied to the Office of -Mauna Kea Management that Memorandums of Agreements are not necessary for the project to proceed.

The Keck Outrigger Project has come on the heels of the approval of the Mauna Kea Master Plan by the University of Hawaii Board of Regents. This was an emotional, heartfelt and difficult process. I was asked to participate by convening, an ad hoc group of respected native Hawaiians, Ahahui Ku -Mauna, and to encourage dialogue between these Hawaiian cultural and community leaders, and the University of Hawaii administration and astronomy community. Some of the Ahahui Ku Mauna members were unfairly criticized and even considered "sellouts" by members of the Hawaiian community. I, however, owe them a debt of gratitude, as do the leadership of the University of Hawaii Institute of Astronomy and astronomical scientific community, for their willingness to step forward to discuss many sensitive issues and then work in good faith to resolve them.

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The approved Master Plan includes resolutions to restore the people's trust in the management of Mauna Kea. The Master Plan clearly states that the management of Mauna Kea be based on the Big Island of Hawai'i. The Chancellor of the University of Hawai'i at Hilo through the Office of Mauna Kea Management, Mauna Kea Management Board and Kahn Ku. Mauna is tasked to manage Mauna Kea.'

That being said, I must tell you that the conduct of the NASA officials and means utilized to select the native Hawaiian entities that would be consulted have left much to be desired. For example, two entities that have been a part of the ongoing Mauna Kea discussion - Ahahui Ku Mauna and the Office of Mauna Kea Management - were left out and not even invited into the consultation process. I found that omission insulting.

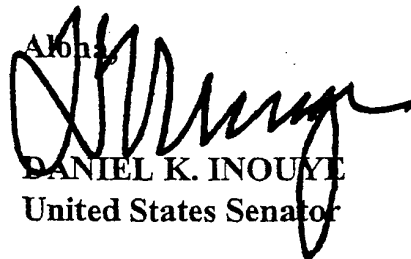
Another example relates to NASA's dealing with a longstanding and respected organization, The Royal Order of Kamehameha of which I am an honorary member. This organization is based on the rich history of the Hawaiian monarchy. It carries out and keeps alive many of the cultural protocols of centuries gone by. However, when they arrived at the Section 106 consultation meeting, their admittance was limited to three. The Royal Order asked for admittance of its leadership, or in the alternative, for a separate meeting. The first request was denied, and I do not believe the alternative was ever acted upon. While NASA is not technically required to do so, such failure reinforces the belief among many native Hawaiian groups that the federal government, and in this case, NASA, is insincere about their cultural concerns, and not interested in making amends and developing long lasting relationships based on mutual respect.

To ensure myself that the sentiments and viewpoints are not merely that of a small minority, I asked to review the comments of a variety of established agencies including the Hawaii State Department of Land and Natural Resources, the Office of Hawaiian Affairs, and the Office of Mauna Kea Management. All found the Section 106 process and the resulting mitigation measures insufficient.

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On this basis, I most, respectfully ask for your review of the process to date and for your consideration for continued discussions that is more respectful of the native people and their cultural issues before NASA moves forward. It will go a long way in maintaining a an astronomical research presence on the island of Hawaii. Thank you for your attention to this most important and sensitive issue. I look forward to hearing from you.

Alpha



DANIEL K. INOUE  
United States Senator

DKI:jsd  
Enclosure

To: Mr. Colin Kippen  
Deputy Administrator,  
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Honolulu, Hawai'i 96813  
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From: Ali'i Aimoku, Ali'i Sir Paul K. Neves  
Royal Order of Kamehameha I -  
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Re: National Historic Preservation Act-Section 106 Process

Date: 20 April, 2001

Aloha Colin,

The Royal Order of Kamehameha I is in receipt of two letters from the Senior Senator Dan Inouye (N.B. Please see attached letters from the Senator); where he raises some concerns that Native Hawaiians are not being treated properly by the National Aeronautics and Space Administration (NASA) in the ongoing Section 106 Consultation process pursuant to the National Historic Preservation Act (NHPA). His letters also state that he has formed an "ad hoc group", and that this group should be included in the current Section 106 Consultation process with other Native Hawaiian Organizations.

The Senator's letters have raised concerns for some of the Native Hawaiian Organizations currently engaged in the Section 106 process with NASA. We are hoping the Office of Hawaiian Affairs (OHA) could provide some guidance and clarification regarding our concerns. Our concerns are as follows: -

- 1.) Senator Inouye appears to be proposing that the "ad hoc" group he formed known as the 'Ahahui Ku Mauna is a Native Hawaiian Organization pursuant to NHPA.
- 2.) Senator Inouye appears to be proposing that the Office of Mauna Kea Management (OMKM) have equal standing to a Native Hawaiian Organizations pursuant to NHPA.
- 3.) Senator Inouye appears to be proposing that the said 'ad hoc' group he formed to be "advisory" to the University President also has standing to, participate in the Section 106 Consultation process pursuant to NHPA.

Regarding our first concern, the 'Ahahui Ku Mauna group, was created by Senator Inouye to "work with the astronomy people in resolving problematic issues of the proposed Mauna Kea Master Plan." (N.B. Please see attached correspondence from 'Ahahui Ku Mauna to NASA). the 'Ahahui Ku Mauna was formed after the original Mauna Kea Advisory Committee, also formed by the Senator, voted against the Mauna Kea Master Plan. The majority of the membership of the 'Ahahui Ku Mauna group were comprised of members of the original Mauna Kea Advisory Committee. The Senator recognizes the 'Ahahui Ku Mauna group as an "ad hoc group" (N.B. please see attached letters from the Senator) to address the concerns regarding the Mauna Kea Master plan.

the 'Ahahui Ku Mauna was created by the Senator to work with the Astronomy community, and they have in the past stated publicly that they operate in an advisory capacity to the University of Hawai'i President only. Although many members of 'Ahahui Ku Mauna are from the Hawaiian community, this group did not conduct public hearings nor receive testimony from the people of the community. In fact some of the members of the community were denied access to their meetings.

To add further confusion to the process, most of the members of the 'Ahahui Ku Mauna were simply re-appointed by the University President and Board of Regents to become part of the Office of Mauna Kea Management (OMKM), and were first called the "Kahu Kupuna Advisory" group. They have since been renamed "Kahu Ku Mauna". 'Ahahui Ku Mauna is the group referred to in the Senators letter. The spokesman for the Ahahui Ku Mauna, Mr. Ed Stevens sits on both the Office of Mauna Kea Management "Kahu Ku Mauna" and the 'Ahahui Ku Mauna Group (the group seeking consultative status in the Section 106 process).

We are not sure that any group formed by a U.S. Senator to advise a University President should necessarily be considered a Native Hawaiian Organization as defined by the NHPA. Furthermore we are concerned that if this is true, it could set a negative precedent.

We recognize the fact that the NHPA is vague in defining a Native Hawaiian Organization (NHPA Section 301 - Definitions), or more specifically how a Native Hawaiian Organization is created, however, it does describe the purpose an organization representing Native Hawaiians should at least subscribe to.

A Native Hawaiian Organization should "represent the interests of Native Hawaiians", have "...as a primary and stated purpose the provision of services to Native Hawaiians"; or be able to provide "-demonstrated expertise in aspects of historic reservation that are culturally significant to Native Hawaiians".

Regarding our second concern over the inclusion of the Office of Mauna Kea Management suggested by Senator Inouye. We believe that the spirit and legislative intent of the NHPA-Section 106 consultation process is to identify the injured group,

who, in this case, are the Native Hawaiian people. and to begin to mitigate the harm as best a possible.

The NHPA law requires consultation with Native Hawaiian Organizations. This requirement is in place to ensure that federal agencies do, in fact, take into account their undertakings on traditional, cultural and historic properties of the Native peoples of the America.

In this case, these lands are our sacred, cultural, traditional, and historic properties. Mauna Kea is comprised, in its entirety, of ceded lands. The Native Hawaiian peoples, therefore, are the right-holders to these lands. These lands have been occupied and desecrated by the University of Hawai'i for over 30 years now.

Although we understand that agencies that have a stake in the lands in question or local governments that retain certain responsibilities on these lands should be informed and kept abreast of on-going consultations, we ask however, do the stakeholders have the same standing as the right-holders under the NHPA? We believe that the NHPA law does make a distinction between the two parties. Since the law requires federal agencies to consult with Native Hawaiians but does not necessarily require the federal agency to consult with the stakeholders. This seems to imply that Native Hawaiian Organizations have a higher precedent than do stakeholders.

Is it reasonable, to claim that the OMKM should have equal standing as OHA, the Royal Order, Mauna Kea Anaina Hou or any other Native Hawaiian group? We do not believe so. Nor do we believe that, any group(s) formed through an appointment process by a U.S. Senator or the University of Hawai'i could be construed to represent the true interests of the Native Hawaiian people. Even if they do fit all of the criteria, pursuant to NHPA it could still be said that they have a conflict of interest.

Regarding our third concern, which questions the standing of an "advisory group" under NHPA. It should be noted that the 'Aha Ku Mauna was created to be advisory to the University President, and therefore is advisory to a non-Hawaiian agency. If this is true than, even if the 'Ahahui Ku Mauna advisory group did fit all of the criteria for a Native Hawaiian Organization, the final outcome of any recommendations made by the group still rests with the University President. Therefore. is the University being allowed to be represented twice in the Section 106 process pursuant to NHPA? The OMKM is formed by the University President and the University Board of Regents, and the 'Ahahui Ku Mauna although formed by the Senator are advisory to the President of the University.

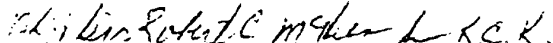
Please understand that we are simply asking the question, we do not suspect that the Senator or anyone else is not acting in good faith, however, if the outcome is to have integrity then so also must the process. The Senior Senator, in his attempt to insure inclusion might not have seen things as we do, We are confident that the Senator, aware of all of the assaults being issued against our people (Rice et al), is aware that any negative precedent set to diminish our rights on a federal level could only feed the

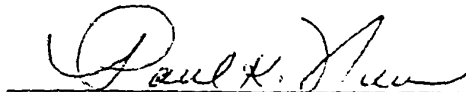
fire for our adversaries. We hope that you can help us to shed some light on this subject and perhaps help us to better understand our standing as Native Hawaiians within the framework of the National Historic Preservation Act.

Aloha, we look forward to hearing from you on this most important issue and we thank you very much for your time.

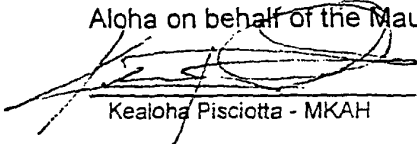
Aloha on Behalf of the Royal order of Kamehameha I Moku O Mamalahoa, signed by:

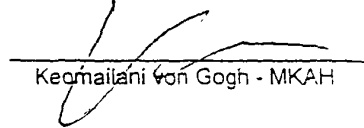
  
Kuauhau Mamo Naliko Markel

  
Kaka'olelo Ali'i Sir Robert McKeen Jr.

  
Ali'i Aimoku Ali'i Sir Paul K. Neves K.G.C.K.

Aloha on behalf of the Mauna Kea Anaina Hou, signed by:

  
Kealoha Pisciotta - MKAH

  
Keomailani von Gogh - MKAH