

TEMPLE OF LONO

Hanalei Fergerstrom
P. O. Box 976
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HOUSE JUDICIARY COMMITTEE

February 13, 2009 2:20PM Room 325

TESTIMONY IN OPPOSITION TO HB 1174 AND RELATED BILLS HB 1340 / SB 992 / SB 502

Submitted on behalf of the TEMPLE OF LONO, practitioners of the ancient / pre-contact RELIGION and covenant between the people and their Gods.

Aloha Pumehana Chairman Karamatsu and Members of the House Judiciary Committee:

We wish the record to reflect that we, the Temple of Lono, support KAHEA's testimony on H.B. 1174, as well as the Joint testimony of:

Ms. Kealoha Pisciotta, President of Mauna Kea Anaina Hou,

Ms. Debbie Ward and Nelson Ho, Co-Chairs of Mauna Kea Issues Committees,
Sierra Club Hawai'i Island Chapter,

Ali'i `Ai Moku, Mr. Paul K. Neves of the Royal Order of Kamehameha I, Moku
of Mamalahoa Heiau Helu `Elua, and

Mr. Clarence Ku Ching (individual Native Hawaiian Practitioner).

We wish to also directly testify in opposition to HB 1174 and it related bills.

The Summit of Mauna Kea is of extreme importance to the Temple of Lono as it is the PE`A or pinnacle of our Religious Beliefs. It is the Leva of the PO, the sacred area of transfer of the Gods to the Earth below.

This information is also recorded and documented in the National Aeronautic and Space Administration (NASA) final EIS for Mauna Kea , 2005.

The State of Hawaii has Trust responsibilities for those lands considered "ceded" as part of the Admissions Act of 1959. Any attempt to transfer those responsibilities to a third party (University of Hawaii) would constitute a BREACH OF TRUST.

Giving the University of Hawaii (a third party lesser) sweeping unprecedented authority to set laws, rules and regulations that would have a direct effect on 1st amendment

constitutional rights.

Further, the constitution of the State of Hawaii under article 12, section 7 provides for protections of Traditional Religious and customary practices of the Hawaiian People. Also note that there are many non Hawaiian Religious parishioners that practice the Traditional Hawaiian Religion.

Under PASH, is the reaffirmation of the existing rights, established under the Hawaiian Kingdom, for the protection of Traditional Religious and Customary practices.

Presently, under the BLNR, further development of Mauna Kea requires a comprehensive management plan, created by the DLNR.

The Comprehensive Management Plan for Mauna Kea that is being created by the University of Hawaii is only self serving. It is not being created by the DLNR as required by law. In fact that CMP was only released in Draft on Feb. 10, 2009 with the comment period ending March 10, 2009.

This attempt to create legislation that would give the University of Hawaii sweeping powers to promulgate laws, rules, and regulations usurps the Trust obligations of the State of Hawaii regarding ceded lands and undermines the Public's interest and destroys the Public's ability of redress as it allows only the self interest of the University of Hawaii, The Board of Regents, and it own selected consultants , behind closed doors, sweeping ability to control constitutional protected rights.

It is therefore the Testimony of the Temple of Lono that this legislation, if passed, would violate the 1st amendment to the U.S.Constitution, as well as the State of Hawaii's constitution, and would certainly result in a BREACH OF TRUST of the Admissions Act, and should therefor be rejected.

Thank you for allowing the Temple of Lono this right to submit our position for the official record..

Dated this Day Feb. 13, 2009

Hanalei Fergstrom
Temple of Lono



Association of Hawaiian Civic Clubs
P. O. Box 1135
Honolulu, Hawai'i 96807

**TESTIMONY OF LEIMOMI KHAN, PRESIDENT
IN SUPPORT, WITH AMENDMENTS, OF**

H.B. 1174, H.D. 1 – Relating to the University of Hawaii

Committee on Judiciary

Hearing date, time and place:

Friday, February 13, 2009, 2:20 p.m., Conference Room 325

Aloha Chairperson Karamatsu, Vice-Chair Ito, and Committee Members

Thank you for this opportunity to testify in support, with amendments, House Bill 1174, House Draft 1, which allows the University of Hawaii to adopt administrative rules to regulate activities at and within the Mauna Kea Lands, or the lands U.H. leases from the Board of Land and Natural Resources.

It also allows U.H. to provide for procedures to enforce these rules, and to assess and collect administrative fines for violations of these rules. Finally, it establishes the Mauna Kea Management Special Fund.

The summit of Mauna Kea is a wahi pana (sacred place). It has been a celestial observatory since ancient times and we acknowledge is considered to be one of the best astronomical sites in the world. For this reason, it is home to many of the world's leading astronomical observatories. **Construction of telescopes on Mauna Kea has been a source of intense legal and political controversy in recent years.** Native Hawaiians and environmental groups have protested that construction of additional telescopes would cause considerable environmental damage and further desecrate a site of great cultural importance. According to legend, the summit of Mauna Kea is the home of the snow goddess, Poliahu, and many other deities. It is also an important site for prayer, burials, consecration of children, and traditional celestial observation.

Over the past decade, major legal battles have raged through Hawaii's court system. On January 19, 2007, the Third Circuit Court reaffirmed its decision to halt all further development on Mauna Kea until an appropriate Management Plan that sufficiently addresses the environmental damage and cultural impacts posed by astronomical development has been approved. A draft Comprehensive Management Plan was published by February 1, 2009 and is open for comments. It should be noted, though, that despite the courts ruling against further development, plans for additional telescopes have been moving forward.

The AHCC also recognizes that the Cultural, Historical and Natural resources of Mauna Kea are not being adequately preserved and protected, a contributing cause being the

absence of properly written, and enforced rules and regulations, to cover the lands leased to the University of Hawaii on Maunakea mountain.

Thus, the Association of Hawaiian Civic Clubs adopted a resolution at our convention last year urging the legislature of the State of Hawaii to **Authorize the Office of Mauna Kea Management**, an Entity of the University of Hawai'i, Hilo, to Develop Administrative Rules Covering the Lands Leased to the University of Hawaii on Maunakea Mountain. **Proposed amendment-collaboration with OHA and Consultation with Kahu Ku Mauna:** In this respect and given the legal battles in the courts, we also recommend that HB1174, HD 1 contain a mandatory requirement that the University of Hawaii collaborate with the Office of Hawaiian Affairs and consult with the Kahu Ku Mauna, a council comprised of Hawaiian cultural resource persons from the island of Hawai'i, at every stage of the rulemaking process.

Proposed Deletion – Mauna Kea Management Special Fund. We are also very concerned with the provisions in the HB that concerns the proposed special fund and the use of the monies that constitute that special fund and respectfully request that all **references to the special fund be deleted from the bill. If this is not acceptable to the legislature, then we recommend that the bill contain language that there be no negative impact on the revenues due OHA from ceded lands, and explicit language in this bill that no funds set aside in the Mauna Kea Special Fund can consist of funds due to OHA or the collection of which would have a negative impact on OHA's ceded lands revenues.**

Mauna Kea are ceded lands, thus, careful attention must be given to assuring that revenue derived from its use is used to fulfill the mandate of the public lands trust. It is noted that the lands for the lease of Mauna Kea is only \$1, yet revenues generated are significant.

Proposed section 304A provides that this special fund include revenues, rents, fees, charges, assessments, fines and other moneys collected by the university in connection with overseeing and managing the Mauna Kea lands, including any rents, fees, and charges for the use of land and facilities within the Mauna Kea lands, all moneys collected for violations of administrative rules adopted pursuant to this chapter relating to the Mauna Kea lands, and all revenues, rents, fees, charges, and other moneys collected from entities conducting or receiving moneys attributable to commercial activities within the Mauna Kea land.

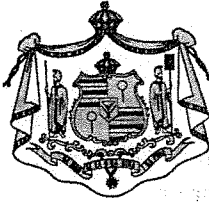
Provisions in the bill further allow for the university to establish separate accounts within the special fund for major program activities and for the board of regents to have the authority to expend the moneys deposited in the Mauna Kea Management special fund for Enforcement of the administrative rules; oversight and management of the Mauna Kea lands, including maintenance, administrative expenses, salaries, etc.

As noted, nowhere is there any indication of the proposed special funds being used for the purposes of the Public Lands Trust.

Lastly, given the **intense legal and political controversy in recent years, we strongly recommend the removal of the provisions for fines for violation of rules until the community has had time to digest and comment on it.**

Prerequisite to setting the admin rules + determining the gravity of the violation. If none of our recommendations acceptable, the AHCC given in non support of HB 1174, HD-1.

Thank you for this opportunity to provide testimony in support of House Bill 1174,
House Draft 1.



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Dated this Day Feb. 13, 2009

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Temple of Lono

**ASSOCIATION OF HAWAIIAN
CIVIC CLUBS
A RESOLUTION**

08-48

**URGING THE LEGISLATURE OF THE STATE OF HAWAII, TO
AUTHORIZE THE OFFICE OF MAUNA KEA MANAGEMENT, AN
ENTITY OF THE UNIVERSITY OF HAWAII, HILO, TO DEVELOP
ADMINISTRATIVE RULES COVERING THE LANDS LEASED
TO THE UNIVERSITY OF HAWAII ON MAUNAKEA MOUNTAIN**

WHEREAS, a portion of the lands on Maunakea mountain have been leased to the University of Hawai'i until 2033; and

WHEREAS, the Institute for Astronomy, under the University of Hawai'i, Manoa, was tasked with the responsibility for the "management" of the area covered by the lease agreement; and

WHEREAS, those management activities had caused concern amongst the Hawaiian communities of Hawai'i Island, which resulted in a "Master Plan" being approved in 2000 by the University of Hawai'i Board of Regents; and

WHEREAS, the Office of Mauna Kea Management, an entity of the University of Hawai'i, Hilo, was created, and has been functioning since 2000 without adequate authority of Administrative Rules and Regulations; and

WHEREAS, the Cultural, Historical, and Natural resources are not being adequately preserved and protected, primarily because of the absence of properly written, and enforced rules and regulations, to cover the lands leased to the University of Hawai'i on Maunakea mountain; and

WHEREAS, the Office of Mauna Kea Management has undertaken the development of a Comprehensive Management plan for those leased lands atop Maunakea, which includes components for the comprehensive management of Cultural, Historical, and Natural resources as well;

NOW, THEREFORE, BE IT RESOLVED by the Association of Hawaiian Civic Clubs at its 49th Annual Convention at Nukoli'i, Kaua'i, Hawai'i, this 24th day of October 2008, that it strongly urges the Legislature of the State of Hawai'i, to authorize the Office of Mauna Kea Management, an entity of the University of Hawai'i, Hilo, to develop Administrative Rules covering the lands leased to the University of Hawai'i on Maunakea Mountain; and

BE IT FURTHER RESOLVED, that a certified copy of this Resolution be transmitted to the Governor of the State of Hawai'i, the President of the Senate and the Speaker of the House of Representatives of the Legislature of the State of Hawai'i, and the Mayor of the County of Hawai'i.



The undersigned hereby certifies that the foregoing Resolution was duly adopted on the 24th day of October 2008, at the 49th Annual Convention of the Association of Hawaiian Civic Clubs at Nukoli'i, Kaua'i, Hawai'i

Simon Huan

President

Na Koa Ikaika o Ka Lahui Hawai'i
And
Moana Keala Akaka

Testimony In Opposition

TO: The House Judiciary Committee Chair and Committee Members

REGARDING: H.B 1174/H.B. 1370

DATE: February 13, 2009,

CONFERENCE ROOM: 325

TIME: 2:20 p.m.

The following testimony IN OPPOSITON to H.B. 1174 is submitted on behalf of MS. Millilani B. Trask of Na Koa Ikaika o Ka Lahui Hawai'i, and Ms. Moani Keala Akaka.

Aloha,

We support KAHEA, Mauna Kea Anaina Hou, and the Royal Order of Kamehameha I, testimony in full regarding this measure and all four (4) versions of the University's Bills relating to the transfer of Mauna Kea Lands (S.B. 992, S.B. 502, and H.B. 1370).

WE ARE STRONGLY OPPOSED TO H.B. 1174 FOR THE FOLLOWING REASONS:

H.B. 1174 Violates the Hawaii Supreme Court Injunction on the Sell, Transfer or Encumbrance of Ceded Lands

H.B. 1174 is a back-door transfer of the Ceded Lands of Mauna Kea, which is in direct contravention of the Hawai'i State Supreme Court's holding in OHA v. HCDCH, 2008. The Hawaii Supreme Court barred the transfer of all ceded lands until a formal reconciliation between the State of Hawaii, the U.S. federal government, and the Native Hawaiian people is reached, in order to prevent the premature alienation of the land trust established by the Admissions Act of 1959. Transferring land out of DLNR's control - even to another branch of the state government - violates the Supreme Court ruling because DLNR is the only state entity with the constitutional and statutory obligation to manage ceded lands. This is to say that transferring ceded lands to the University of Hawaii and the Observatory owners (foreign and mainland corporations) - all entities

with absolutely no legal obligations to protect the public land trust – is a breach of the public trust.

Legislators should understand that the passage of any proposal to allow the DLNR to transfer the ceded lands of Mauna Kea to the University and Observatory owners will result in additional litigation based on the standing injunction issued in OHA v. HDCDH.

H.B. 1174 robs the public land trust –and the taxpayers

H.B. 1174 fails to address State Law relating to the Public Trust Land Revenues. Instead it proposes to establish a special fund that would allow the UH to collect revenue foreign and mainland Observatory and pocket this money. This violates State Law HRS 171-18. The State under HRS 171-18 is the beneficiary of the 5(f) trust land revenue, not the University or OHA alone. The State taxpayer are the not getting their fare share—and that means they are being cheated.

OHA has suggested amendments in the Senate Companion bill (S.B. 502) that would have the UH give them their 20% share— currently the foreign and mainland telescope owners pay a bargain basement price of \$1.00 per year, and give the UH time in lieu of rent---at this rate the agreement OHA is making gives them twenty cents (\$0.20)—and if that is what OHA is getting then public's share only eighty cents (\$0.80).

None of these agreements are permitted under HRS 171-18.

LAWMAKERS you must ask where are the CONSIDERATIONS what is the state getting from the Foreign and mainland owners? Where is the back rent—that is 30 or 40 years worth of back rent? Why is the State allowing private uses on Public Lands.

Hawai`i Revised Statutes 171-18 requires the Board of Land and Natural Resources to collect "fair-market" lease rent from third parties leasing public lands, this is the law and it should be changed for Special interest that ahs not made good on the law for all these years. H.B. 1174 should not be passed—it should be killed immediately.

Moreover, the Legislature should not allow the BLNR to claim poverty as grounds for not adequately managing Mauna Kea lands, when that poverty is self-imposed. The BLNR would have sufficient funding to properly protect Mauna Kea and other conservation districts if it simply charged third parties sub-leasing public lands rent based the fair market value of the land, as the Community recommended to them nearly 9 years ago—the community suggested BLNR charge not less than \$50 million dollars per year rent for the use of Mauna Kea—and to have the money given to BLNR, OHA, and the University itself for all students in any field—now the UH is trying to convince you they are doing the right thing—pocketing the taxpayers funds. How could this be?.

The State taxpayers have enough worry about in this time of economic crisis, they should not continue to be saddled with subsidizing foreign and mainland companies investment and gain. This is completely unacceptable.

The UH has violated the public trust and destroyed the natural and cultural resources of Mauna Kea

The UH cannot be granted any authority to manage the sacred and fragile summit of Mauna Kea because its purpose for being on the summit is not resource management, but rather resource exploitation. To be clear, the UH and the foreign and mainland observatory owners are the developers of Mauna Kea. Its presence on the summit has destroyed and desecrated the resources of Mauna Kea.

The desecration and destruction caused by UH's use of Mauna Kea is well document. Two reports by the State Auditor have found that UH's misuse and the BLNR's failed oversight is "inadequate to ensure the protection of natural resources, and neglected ...the cultural value of Mauna Kea." Their report further stated that the University's Institute for Astronomy "focused primarily on the development of Mauna Kea and tied the benefits gained to its research program," and that its focus on telescope construction has been "at the expense of neglecting the site's natural resources."

In 2005, an Environmental Impact Statement required by federal court order found that the cumulative impact of telescope activities on Mauna Kea has had a "substantial, adverse, and significant" impact. According to the regulations protecting all conservation districts, permits cannot be issued for activities in conservation districts that have a substantial, adverse or significant impact on the natural and cultural resources of the area precisely because their protection is the purpose of the conservation district in the first place.

The State of Hawaii designated the entire summit of Mauna Kea to be a conservation district in order to protect its unique natural and cultural resources, not to facilitate telescope construction.

H.B. 1174 creates a legal and public policy nightmare—by creating a "fox guarding the hen house" situation on Mauna Kea

As we have repeatedly outlined over the last decade, UH is NOT the protector of Mauna Kea, it is the exploiter. In similar fashion, our concerns have been repeatedly confirmed by court rulings and official reports. Make no mistake, despite all of the rhetoric, today is no different than yesterday. The UH is advocating for the passage of this bill in order to streamline its ability to use and abuse the sacred summit of Mauna Kea. The Legislature will be complicit in this desecration and destruction if it passes this bill.

The UH has already outlined its plans for the summit under the management authority proposed in this bill. The UH plans to shutdown public access to the summit of Mauna Kea. The UH proposes to gate the only road to the summit and regulate who may enter and at what price. This road is a public road, paid for with taxpayer dollars. The summit

itself has always been a public area. The UH has no right to create a gated community for astronomers on the public's sacred summit.

The UH also proposes regulate who may worship on the summit, when, where, and how. The UH plans to actively discriminate against people who wish to worship on the summit based on race. In an attempt to sidestep the constitutional rights of Native Hawaiian cultural practitioners, the UH proposal says people of Native Hawaiian ancestry will be "accommodated." Not only does this violate the Supreme Court rulings in both PASH and Kapa'akai, it also violates the fundamental rights of non-Hawaiian cultural practitioners. Understand that Native Hawaiians are not the only people who practice Hawaiian religion and engage in Hawaiian culture. Mauna Kea is a temple and access cannot be denied. Aloha knows no color.

The UH also proposes to remove decision-making from public oversight. The bill would authorize the UH Board of Regents to make decisions about Mauna Kea without any public notice, public hearing, or even gubernatorial oversight. What exactly is UH planning to do on the summit that it needs that much secrecy?

The one thing UH does not propose to do on the summit is limit the construction of future telescopes. The current plan UH is pressuring the BLNR to approve does not outline any standards for determining the carrying capacity of the summit, nor does it propose any kind of limit on the number of telescopes that can be built on the summit. Instead, it proposes to streamline the process for erecting new, larger, and more destructive structures on the summit. There are at least two massive telescopes already in line to further decimate Wekiu habitat, desecrate iwi kupuna, and possibly contaminate Hawaii Island's primary aquifer.

For these reasons, we strongly urge you to not pass H.B. 1174—it should be kill NOW!