



HB 1174, HD 2, RELATING TO THE UNIVERSITY OF HAWAII
House Committee on Finance

March 3, 2009

10:00 a.m.

Room: 308

The Office of Hawaiian Affairs (OHA) supports, with amendments, H.B. 1174, H.D. 2, which would transfer to the University of Hawai'i the authority to adopt administrative rules for the management of the Mauna Kea Science Reserve, Hale Pōhaku and their connecting roadway corridor; to enforce such rules; to “establish rents, fees, and charges, including those for the lease or use of university real property and facilities within the Mauna Kea lands”; and to create the Mauna Kea Management Special Fund.

OHA understands the need for administrative rules to specifically cover the uses within and accesses to the resources of the Mauna Kea Science Reserve for health, safety and welfare purposes. We also understand that those rules should be enforced. Nonetheless, we have some concerns about how those rules are made, how rents and fees are established, and how the subsequent funds are to be used.

OHA reminds the Legislature that these are Ceded Lands. As such, the University of Hawai'i does not hold the fee-simple title to the subject Mauna Kea lands. The university currently leases these public trust lands from the Board of Land and Natural Resources (BLNR) for \$1 a year.

The University's current lease agreement with the BLNR states that it can sublease property, with the approval of the BLNR. The rents established for subleases for observatories have also only been for \$1 a year, according to the Department of Land and Natural Resources (DLNR) Land Division, and much controversy has swirled around making the subleases for the observatories for fair market value, and what other contractual arrangements with the observatories have been made for the University's benefit. OHA raises these concerns because HB 1174, HD 2, in Section 304A-__ (a), specifically states that “[t]he board of regents of the university may establish rents, fees, and charges, including those for the lease or use of university real property and facilities within the Mauna Kea lands”.

The use of this invaluable, sacred, public trust land and the “improvements” upon it has yet to be valued by or for anyone but the university, and this bill would continue that policy. Education is only one of the five mandated uses of public trust, ceded lands. This bill would further deprive both the DLNR and OHA of critical revenue that should be used to fulfill our respective mandates. OHA is concerned that if this bill passes, the university would be granted more authority to continue to charge below market value for use of the sacred mountain, to the detriment of Native Hawaiians and the broader public, and only to their own benefit.

To help assuage these concerns, but keeping the University's needs in mind, OHA respectfully offers the following amendments:

In SECTION 2 of this bill, OHA requests that the opening Section 304A-__ (a) be amended to require that if the Board of Regents of the University "may establish rents, fees, and charges, including those for the lease or use of university real property and facilities within the Mauna Kea lands," they must comply with Chapter 91. Current language in the bill exempts them from Chapter 91 for this process. Fortunately, they would at least have to comply with Chapter 92, so the public would have the opportunity to learn what those rental fees would be, information to which the public has not been privy in the past. However, without Chapter 91 compliance, the public could not participate in the discussion, nor could they contest any decisions made by the Board of Regents on the prices placed on public trust, ceded lands.

As the Legislature is likely aware, OHA's beneficiaries and other members of the public have used their rights under Chapter 91 to great success on issues concerning these Mauna Kea properties. For example, in January 2007, the Third Circuit Court agreed with Mauna Kea Anaina Hou; Royal Order of Kamehameha I; Sierra Club, Hawai'i Chapter; and Clarence Ching that the BLNR had to require a Comprehensive Management Plan for the Science Reserve before they could issue a Conservation District Use Permit (CDUP) for the construction and operation of six 1.8-meter Outrigger Telescopes within the Reserve. Had the University not have had to come to the BLNR for approval of their application for a CDUP, the public would not have had the right to file for a contested case hearing or use the appellate process required by Hawai'i's administrative law. OHA cannot, in good faith to our beneficiaries, take away their opportunity to participate in decision making, and contest administrative decisions, about public trust, ceded lands.

Equally, because this bill proposes that "the rents, fees, and charges payable in connection with the lease or use of the university real property and facilities" would be placed in a newly created "Mauna Kea management special fund," 20 % of those millions of dollars generated should be used for the betterment of Native Hawaiians. Various Board of Regents reports allude to annual rental, patent-lease, and academic use benefits of at least \$60 million in value from the Science Reserve. OHA urges that a 20% portion of those rents, fees and charges deposited in the special fund be appropriately allocated to OHA for the betterment of Hawaiians and native Hawaiians. To do this, we suggest amending SECTION 2 to include OHA as one of the expenditures for the Mauna Kea management special fund.

OHA urges the Committee to make the above amendments to HB 1174, H.D. 2. Thank you for the opportunity to testify.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Finance
March 3, 2009 at 10:00 a.m.

by
Rose Tseng
Chancellor, University of Hawai'i at Hilo

HB 1174 HD2 RELATING TO THE UNIVERSITY OF HAWAII

Chair Oshiro, Vice Chair Lee and Members of the Committee:

There is no doubt that Mauna Kea, particularly the summit region, is a special place. Mauna Kea contains an alpine environment in a tropical region, which is rare on the planet; it is one of the most culturally significant and archaeologically important places in the Hawaiian Islands; and it is recognized globally as a premier center for astronomical research. Mauna Kea is visited by those exercising traditional cultural practices, researchers in a variety of disciplines, astronomers, recreational users, educators, tourists and island residents. While each comes to visit, enjoy, and contemplate Mauna Kea in their own way, many do not realize how they, individually and collectively, may impact the mountain. The University is seeking express rule-making authority for the purpose of enabling the University to better manage these uses and activities and protect Mauna Kea's unique cultural and natural resources.

It is important to understand the land classification system and agencies responsible for managing the lands to protect the resources. For example, the upper region of Mauna Kea is zoned conservation district lands and is divided into three types of land designations. Beginning at the summit is the Mauna Kea Science Reserve (11,288 acres) and the Mauna Kea Ice Age Natural Area Reserve (3,893.5 acres). Surrounding these two parcels is the Mauna Kea Forest Reserve (52,500 acres). The Mauna Kea Science Reserve was originally classified Forest Reserve lands. In 1968 the Science Reserve was established when it was removed from the Forest Reserve by the Board of Land and Natural Resources (Land Board) and leased to the University for 65 years to be used as a scientific complex.

The Department of Land and Natural Resources (DLNR) is mandated to protect the resources on its lands and has adopted administrative rules governing the use of lands within both the Forest Reserve and the Natural Area Reserves System. There have not, however, been any administrative rules adopted to specifically cover uses within the Mauna Kea Science Reserve.

The University understands the need and accepts its responsibility to protect the resources on the lands it uses on Mauna Kea, including lands comprising the following: (1) the Mauna Kea Science Reserve, (2) Hale Pohaku, and (3) the Mauna Kea Access Road above Hale Pohaku. While the University believes it has the implied authority to promulgate rules, it nevertheless feels there is a need to eliminate any ambiguity and uncertainty regarding rule making and seeks express statutory authority to adopt administrative rules. The authority to adopt administrative rules is expected to help the University more effectively and efficiently carry out its management obligations under the Land Board's lease of the Mauna Kea lands to the University. The University has completed and submitted to the DLNR a Mauna Kea Comprehensive Management Plan (CMP) that is designed to protect and preserve the natural and cultural resources on and within the University's Mauna Kea lands. The University will be seeking the Land Board's approval for the CMP, which will require the University to carry out a variety of oversight and management functions and responsibilities. Having rule making authority will enable the University to more efficiently carry out these CMP functions and responsibilities.

Moreover, granting the University the authority to assess and collect administrative fines should enable the University to more effectively enforce such rules. In adopting such rules, the University will be required to address and resolve any conflicts with other applicable statutes or rules.

This bill also proposes to establish a Mauna Kea management special fund. This is viewed as an affirmation of the University's commitment to improving the conditions on Mauna Kea. This fund would afford the University the necessary flexibility to better carry out its management responsibilities, particularly under the CMP. The CMP clearly articulates an overall management strategy, with sufficient specific component plans, that is designed to protect Mauna Kea's unique cultural and natural resources. The CMP was developed using an integrated approach drawing upon the Hawaiian approach to managing natural and cultural resources, as well as contemporary science based management tools. The CMP also applies an adaptive management practice, which is a systematic process for continually improving management policies and practices for resource protection by learning from outcomes of past and current management activities. Just as the CMP is designed to continually evolve and improve, the University's ability to fund any measures or activities to implement such improvements needs to be assured and preserved. Having such a fund will help provide this assurance and protection. A special fund will also assist the University in accounting for and keeping track of the benefits and costs relating specifically to Mauna Kea.

Without a separate special fund dedicated to Mauna Kea, the statutes establishing one or more of the University's special or revolving funds (such as the real property and facilities fund established pursuant to HRS section 304A-2274) would need to be amended so that funds arising from all Mauna Kea related activities could be deposited and expended from the fund. Creating such a niche in an existing fund used by the

Committee on Finance – HB 1174 HD2

March 3, 2009

Page 3 of 3

entire University system (and not just for Mauna Kea) could pose some challenges. Part of such an amendment to other statutes would need to include the ability of the University to deposit and expend monies collected by the University as administrative fines.

The University supports passage of this bill. Thank you for your thoughtful consideration.



Hawaii Island Chamber of Commerce

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Chair Oshiro and Members of the House Finance Committee:

Thank you for the opportunity to submit testimony on HB 1174 HD2.

The Hawai'i Island Chamber of Commerce represents more than 350 businesses and 700 members, mainly on the east side of the Big Island. We have identified Mauna Kea, its management and appropriate use the Chamber's top priority for this fiscal year.

The Hawai'i Island Chamber of Commerce strongly **supports** this bill granting the University of Hawai'i the authority to adopt administrative rules and assess fines for rule violations pursuant to HRS Chapter 91. The Chamber also **supports** the establishment of a special fund into which fines for rule violations, and fees and other assessments related to public and commercial activities within the UH managed lands are deposited.

The purpose of adopting rules is to govern public and commercial activities on the University's managed lands. Existing rules of the Department of Land and Natural Resources do not apply to the UH managed lands, thus leaving the resources vulnerable to potential impact.

The University must have this authority to empower the Office of Mauna Kea Management (OMKM) and its rangers to most properly carry out the mandates of the 2000 Mauna Kea Master Plan and the recommendations of the 1998 and 2005 Legislative Auditor's reports, specifically its stewardship duty to protect and preserve the mountain's unique cultural and natural resources.

Some activities, such as off-road driving into areas containing archaeological sites, paragliding from the summit, or hiking in ecologically sensitive habitat, to name a few, are detrimental and damaging to the natural and cultural landscape, as well as potentially dangerous to the uninitiated visitor. Currently, despite the presence of rangers on site, the OMKM is powerless to stop such transgressions. The rangers do not have the authority to stop individuals from engaging in inappropriate or destructive behavior nor can they stop individuals from engaging in activities that could result in serious injuries.



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Under HRS Chapter 91, the development of these new administrative rules would be carried out by the same public processes and community input required by other state entities, such as DLNR. Administrative rules with accompanying penalties are necessary tools to effectively prevent inappropriate, destructive and dangerous activities from occurring.

The University made a strong commitment to new management by adopting the Mauna Kea Science Reserve Master Plan in 2000. Since its adoption, through the efforts of OMKM, great strides have been made towards improved management on the mountain. Most notable is the establishment of the ranger program. As a follow-up to the Master Plan the University recently completed a draft of a comprehensive management plan (CMP). The CMP, upon approval by the Board of Land and Natural Resources, provides guidelines and management strategies to protect and preserve the cultural and natural resources on the University's managed lands. Administrative rules are necessary to effectively implement the management strategies in the CMP.

We strongly urge adoption of this bill.



Japanese Chamber of Commerce & Industry of Hawaii

March 2, 2009

House Finance Committee
2008 Legislature

Dear Chair Oshiro and Members of the House Finance Committee:

Thank you for the opportunity to submit testimony on HB 1174 HD2.

The Japanese Chamber of Commerce and Industry of Hawaii ("JCCIH") supports this bill because it provides the Office of Mauna Kea Management ("OMKM") and its Mauna Kea rangers the authority to carry out the mandate of the 2000 Master Plan. In addition, recognizing the need for rules to protect the resources, the Legislative Auditor recommended the University seek authority to promulgate rules in the 1998 and 2005 reports on the management of the Mauna Kea Science Reserve.

It is JCCIH's understanding that under the current land designation for the Mauna Kea Science Reserve neither the Department of Land and Natural Resources nor the University has authority to promulgate administrative rules governing activities within the Mauna Kea Science Reserve. Activities such as hiking off the trail, improper use of ATVs, and unpermitted commercial tours and filming, to name a few, are detrimental and damaging to the natural and cultural landscape.

The University is seeking approval from the Board of Land and Natural Resources of a newly developed comprehensive management plan. This plan, together with administrative rules, will serve as the University's guide for protecting the resources from public, commercial, recreational and development activities. Rules are needed to enforce and effectively carry out the management strategies of the comprehensive management plan.

The JCCIH is a well established organization that has been serving the East Hawaii Community for over 50 years. It has witnessed the development of astronomy on Mauna Kea from the beginning in the 1960's and has felt the same frustration and anger as the rest of the Hawaii Island Community over how the mountain was managed by the University of Hawaii. However, since the Board of Regents adopted the Mauna Kea Science Reserve Management Plan in 2000 which called for the establishment of the Office of Mauna Kea Management, the community-based Mauna Kea Management Board, and Native Hawaiian advisory council, Kahu Ku Mauna, JCCIH has seen first hand tremendous progress in establishing community trust and proper management of Mauna Kea.

In spite of progress made since 2000, much more can be done to protect the cultural and natural resources with the implementation of the comprehensive management plan. But the comprehensive management plan can only be fully effective if there are administrative rules with provisions for setting fines for rules violations. For these reasons, we strongly urge adoption of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eugene H. Nishimura'.

Eugene H. Nishimura
President



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**H.B. 1174 HD 2 Mauna Kea
Room 308, 10 am
March 3, 2009**

Aloha Chairman Oshiro, Vice Chairwoman Lee, and members of the Finance Committee,

KAHEA strongly opposes the passage of HB 1174 to grant the University of Hawaii authority over the ecologically significant and culturally sacred lands of Mauna Kea. The University must not be granted any authority over Mauna Kea.

The University profits from Mauna Kea at the public's expense

For 30 years the University has allowed foreign telescope owners to use the state lands of Mauna Kea for profit without charging the fair market rent required by Hawaii Revised Statutes sec. 171-17 and -18. This means that not only has the University profited, but the foreign corporations that own and operate telescopes atop Mauna Kea have also profited from the use of our state lands at the expense of Hawaii's taxpayers. While only paying \$1.00 per year in lease rent to the State. This means state taxpayers have been subsidizing foreign government investments on our public lands.

The University, as well as the foreign telescope owners on Mauna Kea, owe state taxpayers for 30 years of back-rent for violating HRS 171. The Legislature should direct the state's landlord, the Department of Land and Natural Resources, to re-issue the current leases with a lease amount based on the fair market value of the land encumbered and collect the rent owed for past, improper use of state lands.

Unfortunately, HB 1174 does not require compliance with state law, payment of back-rent, or provide any relief to the taxpayers. Surprisingly, during this time of debilitating economic crisis, the University is proposing to establish a special fund that would allow the University to divert all of the revenue collected from the use of Mauna Kea lands away from the general fund altogether. The University is literally seeking the Legislature's approval to rob the people of Hawaii.

It is difficult to know exactly how much money the University has taken from the people of Hawaii. The University has never accounted for the profits it has gained from its destructive use of Mauna Kea. According to a report to the UH Board of Regents in 1994, however, the University enjoyed at least \$60 million annually in benefits from its use of Mauna Kea. In 2001, the University admitted to the Legislature that the work conducted on Mauna Kea earned at least \$8 million a year just from the patent-lease contracts with defense contractors like Raytheon.

Rather than allow the University to further burden and steal from Hawaii's peoples, this Legislature should require a financial audit of all telescope activity currently conducted on the



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sacred summit of Mauna Kea. With this accounting, the State can accurately assess the value of the University's astronomy program and determine how best to balance the financial needs of the University, the fragile natural and cultural resources of the mountain, and the people of the Hawaii.

HB 1174 seeks to transfer ceded lands out of the public lands trust

With this bill, the Lingle Administration is seeking to transfer ceded lands protected by the public lands trust from the Department of Land and Natural Resources (DLNR) to the University of Hawaii. This should not be allowed because it is exact same type of land transfer deemed illegal by the Hawaii Supreme Court in January 2008 in OHA v. HCDCH.

The "Mauna Kea lands" identified in this bill are all ceded lands. Ceded lands are the lands improperly taken from the Hawaiian Kingdom during the overthrow of 1893 and transferred to the State of Hawaii at statehood on the condition that these lands were held in trust. The Supreme Court recognized the fundamental importance of this exchange, finding that "[a]s a condition of its admission into the Union, the State of Hawaii agreed to hold certain lands granted to the State by the United States in a public land trust for five purposes." (OHA v. HCDCH, citing Admission Act of March 18, 1959).

The Hawaii Supreme Court held in OHA v. HCDCH that because ceded lands are held in trust for the Hawaiian people and because the state and federal governments have both expressed a commitment to reconcile the injustice of the overthrow, "ceded lands should be preserved pending a reconciliation between the United States and the native Hawaiian people. Without an injunction, the ceded lands are at risk of being alienated and, as previously stated, once the ceded lands are sold or transferred from the public lands trust, they will not be available to satisfy the unrelinquished claims of native Hawaiians and will, as discussed more fully infra, undoubtedly have a negative impact on the contemplated reconciliation efforts." (OHA v. HCDCH) The transfer of Mauna Kea lands proposed in this bill is precisely the type of alienation that the Supreme Court anticipated and sought to prevent with the ceded lands injunction.

In addition to violating the Supreme Court's injunction against the transfer of ceded lands, this bill would also undermine the state's authority over public trust lands by handing over management authority to the leaseholder. As required by law, the DLNR is the state's landlord and is responsible for managing and overseeing all ceded lands and all conservation lands in the State. See, HRS sec. 171-3. Yet, this bill proposes to transfer the responsibility of managing the ceded lands of Mauna Kea from DLNR to the leaseholder by granting the University "authority to manage and control public activities on the Mauna Kea lands." Doing so would establish a precedent of giving the leaseholder – the developer – control over public trust lands. This not only turns the landlord-leaseholder relationship on its head, it violates the prohibition against the "wholesale delegation" of agency authority to a third party, as articulated in Kapa`akai v. LUC.



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The University desecrates and destroys Mauna Kea

Multiple reports, audits, and lawsuits have confirmed that the University's telescope activities have violated the law and continue to destroy the natural and cultural resources of Mauna Kea. Mauna Kea's Hawaiian alpine desert is unlike any other place in the world. It is home to many Hawaiian endemic species - some are found only on Mauna Kea! This includes: 11 species of insects, such as the Wekiu bug; endangered birds, Palila (Hawaiian Honeycreeper) and Uau (Hawaiian Petrel); and the rare plant, Ahinahina (Mauna Kea Silversword). Mauna Kea lands are designated conservation and water shed lands for the purpose of protecting these imperiled cultural and natural resources, not telescope construction. The construction of so many telescopes in such a fragile environment destroys rare habitat and speeds the introduction of invasive species. The Wekiu bug, which lives only on the high elevation cinder cones of Mauna Kea, has lost 90% of its habitat to telescope development.

Most recently, the Third circuit court affirmed that DLNR rules and regulations do require DLNR to complete a comprehensive management plan for the conservation of the entire summit of Mauna Kea before permitting any further telescope construction. This ruling followed a court-ordered federal environmental impact statement (EIS) in 2005, which confirmed that the impacts of the telescope industry on the delicate cultural and natural resources of Mauna Kea have been "substantial, adverse and significant," all of which are conditions that bar the DLNR from issuing any permits for construction in a conservation district.

Furthermore, in multiple reviews of the University's activities on the summit, the Hawaii State Auditor found that the University's management and the DLNR's oversight of Mauna Kea has been "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."

The University seeks to limit public access and expand destructive activities

Through this proposed legislation and its own version of a yet "management plan," the University is seeking to undermine the management of the ceded lands and natural and cultural resources on Mauna Kea, while consolidating its control over the summit. The primary purpose of managing the conservation district on the sacred summit of Mauna Kea must be the protection of the natural and cultural resources found on these ceded lands.

Unfortunately, as outlined in its management plan, the University will not be protecting the natural and cultural resources of the mountain. The plan does not control telescope construction in any way. Instead, it proposes to limit public access, charge user fees, and dictate whether and how Hawaiians worship on the summit. The proposal includes blocking the only

MO'OKAHI NO KA 'ĀINA A ME NA KĀNAKA



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road to the summit; this road is a public road built with tax-payer funds that should not be gated for the benefit of a few astronomers. As a telling example of the University's audacity, HB 1174 proposes that the University "board of regents shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91," when establishing fees for use of summit. Given the University's track record of harm and desecration on the summit, the Legislature should not grant the University any authority to manage or regulate the sacred summit of Mauna Kea. Please hold HB 1174.

Mahalo,

A handwritten signature in cursive script that reads "Marti Townsend".

Marti Townsend
Program Director



**Testimony to the House Committee on Finance
Tuesday, March 3, 2009; 10:00 a.m.
Conference Room 308
Agenda #1**

RE: HOUSE BILL 1174 HD2 RELATING TO THE UNIVERSITY OF HAWAII

Chair Oshiro, Vice Chair Lee and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber is in strong support for HB 1174 HD2 relating to the University of Hawaii.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure allows the University of Hawaii to adopt administrative rules to regulate activities at and within the Mauna Kea lands, or the lands UH leases from the Board of Land and Natural Resources. The measure also allows UH to provide for procedures to enforce these rules, and to assess and collect administrative fines for violations of these rules.

The rules outlined in this measure will help assure proper governance of both public and commercial activities on Mauna Kea, a treasure whose benefits and resources need to be protected now and for future generations. The Office of Mauna Kea Management needs to be empowered by the authority this bill provides in order for it and its rangers to properly do their job. Also, the State Auditor recommended in 2005 that UH obtain rule-making authority and develop, implement, and monitor a comprehensive management plan for Mauna Kea.

Recently, a draft of the Comprehensive Management Plan (CMP) was completed, which was developed through extensive community input through a variety of means, such as public hearings, surveys, and the use of a website, provides guidelines and management strategies to protect and preserve the cultural and natural resources on the University's managed lands.

While the CMP may not be the optimum plan, it is an important step towards the right direction in providing positive stewardship of Mauna Kea in an appropriate way.

Thus, The Chamber respectfully requests this measure be passed for further discussion. Thank you for the opportunity to testify.

Kahu Ku Mauna Council

**Mauna Kea Management Board
Office of Mauna Kea Management**

Presented by: **Arthur Hoke, Jr.**

Member, **Kahu Ku Mauna Council**

For:

FINANCE COMMITTEE MEETING

3/3/2009 10:00AM Room 308

Testimony in SUPPORT of HB1174 HD2

CHAIRMAN OSHIRO and Members of the HOUSE COMMITTEE ON FINANCE,

Thank you for allowing me this opportunity to testify before you on this very important matter concerning Maunakea.

On behalf of the full membership of **Kahu Ku Mauna**(Guardians of the Mountain), the group created by the **2000 Maunakea Master Plan**, and charged with the specific responsibility of advising the **Chancellor of UH-Hilo**, the **Office of Mauna Kea Management(OMKM)**, and the **Mauna Kea Management Board(MKMB)**, on matters of Hawaiian Culture as they relate to Maunakea, are happy to **submit our testimony in support of Administrative Rule Making Authority** for the University of Hawaii at Hilo, thru **OMKM & MKMB**.

The current conditions with respect to the "Maunakea Science Reserve", a portion of the ceded lands atop Maunakea, is that to date, the University of Hawaii **has only been given "the responsibility"** to properly and diligently **protect, preserve and manage, the cultural, natural, and historic resources found there, BUT they have NEVER BEEN GIVEN the required AUTHORITY to ADEQUATELY and PROPERLY carry out the assigned responsibility.**

The University has in the past sought "rule making authority", but to date, it has not been granted the right to promulgate the body of Administrative Rules necessary to adequately manage the resources found on the lands that comprise the Maunakea Science Reserve.

We urge you therefore, Chairman OSHIRO, and the Members of this Committee, to favorably consider this legislation, pass it, and make it into the law necessary, so that in the future, this Legislature, Kahu Ku Mauna Council, and all of the other interested and concerned parties **may assist the University in the promulgation of it's set of Administrative Rules, and then, watchfully hold the University accountable for the PROPER MANAGEMENT of our cherished resource, Maunakea.**

Respectfully submitted,

ARTHUR HOKE, JR. for:

Kahu Ku Mauna Council



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To: House Finance Committee
Marcus Oshiro, Chair

From: Kanoelehua Industrial Area Association (KIAA)
Nimr Tamimi, President

Re: HB 1174 Hearing March 3, 2009, 10 a.m.

Thank you for the opportunity to submit testimony on HB 1174 HD2.

The Kanoelehua Industrial Area Association represents many businesses and industries in the Hilo area.

KIAA strongly **supports** granting the University of Hawai'i the authority to adopt administrative rules and assess fines for rule violations pursuant to HRS Chapter 91. KIAA also **supports** the establishment of a special fund into which fines for rule violations, and fees and other assessments related to public and commercial activities within the UH managed lands are deposited.

The purpose of adopting rules is to govern public and commercial activities on the University's managed lands. Existing rules of the Department of Land and Natural Resources do not apply to the UH managed lands, thus leaving the resources vulnerable to potential impact.

The University adopted the Mauna Kea Science Reserve Master Plan in 2000. Since its adoption, through the efforts of OMKM, great strides have been made towards improved management on the mountain. Most notable is the establishment of the ranger program. As a follow-up to the Master Plan the University recently completed a draft of a comprehensive management plan (CMP). The CMP, upon approval by the Board of Land and Natural Resources, provides guidelines and management strategies

to protect and preserve the cultural and natural resources on the University's managed lands. Administrative rules are necessary to effectively implement the management strategies in the CMP.

The University must have the authority in this bill to empower the Office of Mauna Kea Management (OMKM) and its rangers to most properly carry out the mandates of the 2000 Mauna Kea Master Plan and the recommendations of the 1998 and 2005 Legislative Auditor's reports, specifically its stewardship duty to protect and preserve the mountain's unique cultural and natural resources.

Some activities, such as off-road driving into areas containing archaeological sites, paragliding from the summit, or hiking in ecologically sensitive habitat, to name a few, are detrimental and damaging to the natural and cultural landscape, as well as potentially dangerous to the uninitiated visitor. Currently, despite the presence of rangers on site, the OMKM is powerless to stop such transgressions. The rangers do not have the authority to stop individuals from engaging in inappropriate or destructive behavior nor can they stop individuals from engaging in activities that could result in serious injuries.

Under HRS Chapter 91, the development of these new administrative rules would be carried out by the same public processes and community input required by other state entities, such as DLNR. Administrative rules with accompanying penalties are necessary tools to effectively prevent inappropriate, destructive and dangerous activities from occurring.

We strongly urge adoption of this bill.



Nimr Tamimi, KIAA President 08-09

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Testimony In **Support** of HB1174, HD2
Relating to the University of Hawaii

By Al Lardizabal, Director
Government Relations
Laborers International Union of North America Local 368

To the Committee on Finance
Tuesday, March 3, 2009
10:00 a.m.
Conference Room 308
State Capitol

Honorable Marcus R. Oshiro, Chair; Honorable Marilyn B. Lee, Vice Chair
and Members of the Committee on Finance:

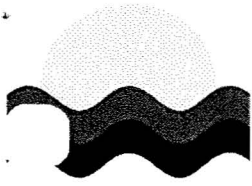
This measure allows the UH to adopt administrative rules to regulate activities at and within Mauna Kea lands, or the lands that UH leases from the Board of Land and Natural Resources. The bill also allows the UH to develop procedures to enforce these rules, and to assess and collect administrative fines for violations of these rules and establishes the Mauna Kea Management Special Fund.

We have reviewed the draft Comprehensive Management Plan developed by the UH through some 150 public outreach meetings with individuals, citizen groups, native Hawaiians, and public-noticed meetings on Hawaii Island and through a state wide telephone survey.

We believe that the plan emphasizes the need to preserve and protect the religious and cultural areas and addresses, by and large, many of the concerns expressed at these meetings. It also provides some balance in affording the community access to scientific and educational opportunities.

HB1174, HD2 is needed to properly implement the Mauna Kea Comprehensive Management Plan.

Thank you for the opportunity to present this testimony.



Hawai'i Island Economic Development Board

ISLAND OF OPPORTUNITY

02 March 2009

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In Consideration of
House Bill No. 1174, HD2
Relating to the University of Hawaii

Tuesday, 03 March 2009
10:00 a.m. - Conference Room 308
House Committee on Finance

The Honorable Representative Marcus Oshiro, Chair
The Honorable Representative Marilyn B. Lee, Vice-Chair
and Honorable Members of the Committee on Finance
State House of Representatives, Hawaii State Capitol, Room 306
Honolulu, Hawaii 96813

Chair Oshiro, Vice-Chair Lee and Members of the Committee:

The Hawai'i Island Economic Development Board (HIEDB) respectfully submits this testimony strongly supporting HB 1174 HD2. This bill gives the University of Hawai'i the authority to promulgate administrative rules and establish a system for assessing and collecting fines for rules violations.

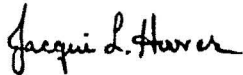
Astronomy is one of the major components of the Hawai'i Island economy. In addition to being a clean industry, it is a stable industry, but unlike the visitor industry it is not as sensitive to impacts of the volatility of economic conditions that occur outside the state. Astronomy also provides long term, stable, and highly skilled jobs for our local residents. It offers opportunities for local students to stay or come back to Hawai'i upon graduating from college.

However, HIEDB recognizes that astronomy on Mauna Kea must be conducted in the right way. It must be respectful of the cultural, spiritual, religious and environmental significance of the mountain. For over 30 years the University of Hawai'i did a poor job of managing the mountain. It ignored the concerns of the community and failed to follow through on recommendations to protect the resources. It was not until 2000 when the Board of Regents acknowledged the community's anger and decided that management needed to be based on the Island of Hawai'i. It established a new management structure composed of the Office of Mauna Kea Management (OMKM) and two advisory groups, the Mauna Kea Management Board and Kahu Ku Mauna (Guardians of the Mountain).

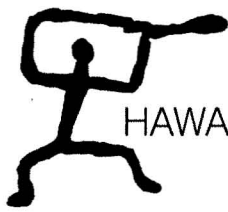
This new management entity has made a difference on how the mountain is managed. It established a ranger corps that monitors activities on the mountain on a daily basis and it initiated surveys and studies of the resources to gain a better understanding on how best to manage those resources. It began the long process of developing a comprehensive management plan that will give them much needed guidelines for protecting the resources from daily human activity as well providing guidelines for handling future development. But to be fully effective the comprehensive management plan needs rules to enforce the management strategies of the plan. Together the comprehensive management plan and administrative rules will provide the best course of action to protect and preserve the cultural and natural resources on the lands managed by the University. It will also provide measures for allowing astronomy to co-exist on Mauna Kea.

HIEDB strongly urges this committee to pass this bill. Mahalo for this opportunity to testify and express our support on behalf of HB 1174.

Respectfully Submitted,

A handwritten signature in black ink that reads "Jacqui L. Hoover". The signature is written in a cursive, flowing style.

Jacqui L. Hoover, Executive Director



HAWAII LEEWARD PLANNING CONFERENCE

P.O. BOX 2159 • KAMUELA, HAWAII 96743-2159

02 March 2009

In Consideration of

House Bill No. 1174, HD2 - Relating to the University of Hawaii

Tuesday, 03 March 2009 - 10:00 a.m. - Conference Room 308
House Committee on Finance

The Honorable Representative Marcus Oshiro, Chair
The Honorable Representative Marilyn B. Lee, Vice-Chair
and Honorable Members of the Committee on Finance
State House of Representatives, Hawaii State Capitol, Room 306
Honolulu, Hawaii 96813

Chair Oshiro, Vice-Chair Lee and Members of the Committee:

Hawaii Leeward Planning Conference (HLPC) respectfully submits this testimony in support of HB 1174 HD2 which gives the University of Hawai'i the authority to promulgate administrative rules and establish a system for assessing and collecting fines for rules violations.

In its thirty-five year history, HLPC has consistently advocated for sound planning decisions to promote long-term benefits for Hawai'i Island while ensuring that the cultural, spiritual, and environmental aspects of our host culture are respected. For over 30 years the University of Hawai'i did a less than stellar job of managing the mountain; ignored the concerns of the community; and failed to follow through on recommendations to protect the resources. Positive changes came about only in 2000 when the Board of Regents acknowledged the community's anger, decided that management needed to be based on the Island of Hawai'i and established a new management structure composed of the Office of Mauna Kea Management (OMKM) and two advisory groups, the Mauna Kea Management Board and Kahu Ku Mauna (Guardians of the Mountain). This new management entity has made a significant difference on how Mauna Kea is managed and has initiated monitoring, survey, and other activities which allow a better understanding on how best to manage the resources of the mountain.

The long process of developing a comprehensive management plan to help establish guidelines both for protecting the resources from daily human activity and for handling future development has also been initiated. As an organization focused on planning and long-term benefits, HLPC recognizes that in order to be fully effective the comprehensive management plan requires that rules enabling enforcement of the management strategies of the plan must be established. Establishment of a comprehensive management plan along with administrative rules will provide a firm foundation upon which the University can better manage Mauna Kea.

HLPC strongly recommends passage of this bill.

Respectfully submitted,

Jacqui L. Hoover, President

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The Pacific Resource
PARTNERSHIP



Testimony of Kyle Chock
Executive Director
The Pacific Resource Partnership

Senate Committee on Finance
Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair

SB1174 HD2 – RELATING TO THE UNIVERSITY OF HAWAII
Tuesday, March 3, 2009
10:00 am
Conference Room 308

Chair Oshiro and Members of the Senate Committee on Finance:

My name is Kyle Chock, Executive Director of the Pacific Resource Partnership (PRP), a labor-management consortium representing over 240 signatory contractors and the Hawaii Carpenters Union.

Pacific Resource Partnership strongly supports HB 1174, HD 2, which allows UH to adopt administrative rules to regulate activities at and within the Mauna Kea lands, or the lands UH leases from the Board of Land and Natural Resources. This measure also allows UH to provide for procedures to enforce these rules, and to assess and collect administrative fines for violations of these rules, and it establishes the Mauna Kea Management Special Fund.

This legislation is the first step to ensure that the recommendation for administrative rule-making authority and enforcement by the State Auditor in the Auditor's 1998 and 2005 reports is implemented. This authority is needed to ensure that the cultural and natural resources on Mauna Kea are protected from inappropriate uses.

This measure is also a recommendation set forth in the Mauna Kea CMP, which if adopted, will ensure that any future development on Mauna Kea is carried out in a culturally respectful and environmentally appropriate manner. PRP supports these goals and urges you to pass this bill.

Thank you for the opportunity to testify.

Testimony Presented before the House Finance Committee

By David Byrne

Supervisor

Mauna Kea Ranger Corps Program

HB1174 HD2

RELATING TO THE UNIVERSITY OF HAWAI'I, MAUNA KEA

March 3, 2009 at 10:00 am

HB1174 HD2 allows the University of Hawaii (UH) to adopt administrative rules to regulate activities within the lands UH manages on Mauna Kea. This bill also provides UH with the ability to enforce these rules, and to assess and collect administrative fines for violations of these rules.

The Ranger Corps supports the intent of this bill. Enforcement abilities of administrative rules would better allow the Ranger Corps to serve the mountain and those coming here from the standpoint of health and safety, and resource management and protection. Proposed changes would allow for better regulation of commercial activity, as well as special events and activities on the mountain.

Health and safety concerns for those traveling to Mauna Kea is a major issue. From an enforcement perspective in helping ensure those coming here do so safely. Following are issues the rangers observe on a recurring basis: 1) people traveling above Hale Pohaku (located at the 9,300 foot elevation) without receiving proper health and safety educational information; 2) people traveling above Hale Pohaku on the un-paved summit road without a four-wheel drive vehicle; 3) driving off the designated Mauna Kea Access Road; 4) unsafe vehicle operation on the Mauna Kea Access Road, as well as lack of observance of generally accepted travel rules; 5) general lack of knowledge on how to drive on steep, gravel roads; 6) overall traffic and off-road vehicle management and control, especially on high volume visitor days (i.e. snow days); 6) dangerous snow play activity; 7) enforcement of road closures; and 8) regulation of alcohol consumption and drug abuse. The Ranger Corps requires the authority to enforce rules in relation to these issues.

Protection and management of Mauna Kea's resources is a primary goal of the Ranger Corps. This is a place of incredible natural, cultural and historical resources. However, the following occurrences on the mountain have been observed: 1) driving off designated roads; 2) littering; 3) destruction of cultural and/or archaeological sites and suspected artifact removal; 4) vandalism of various kinds, whether to protected sites or existing structures and trails; and 6) unpermitted camping and building of fires and other activities that could result in wildfires. Without enforcement authority, the Ranger Corps is only an observation and documenting entity. Our hands are tied without the ability to prevent future occurrences of this kind, leaving these resources vulnerable to damage and desecration.

Commercial activity is an increasing issue on Mauna Kea. As awareness of Mauna Kea as an important cultural, historical, natural and scientific site increases, so do the number of visitors to this place, requiring additional need for regulation of commercial activity. The Ranger Corps requires the ability to enforce the requirements of the commercial tour permits, to prevent unpermitted commercial companies from conducting operations on Mauna Kea, and the ability to enforce the use of film permits. In addition, many larger non-commercial groups come to the mountain. Authority to require these

groups to obtain a Special Request would allow the Rangers to provide these groups with necessary health and safety information, an orientation on the cultural and environmental significance of Mauna Kea, as well as ensure appropriate conduct and activity while visiting the mountain.

Special events and activities occur on Mauna Kea. Such events take the form of bike races, running events and snow competition. In order to help ensure the health and safety of participants as well as protect all the resources of this place, the Ranger Corps again would require the authority to regulate such events and all summit activities. Without any enforceable rules in place to address these activities, there is little that the ranger can do.

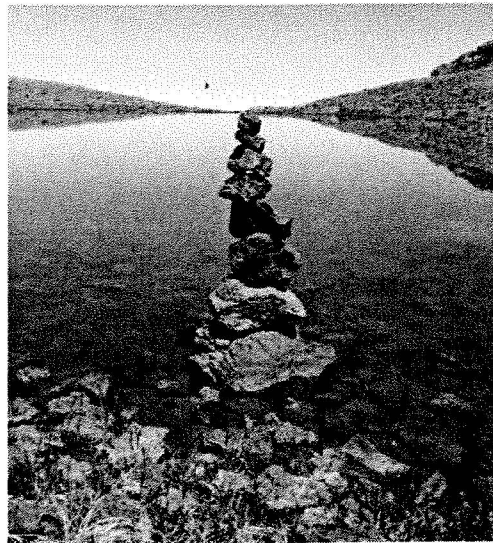
Mauna Kea is a culturally and environmentally unique and significant place. The Mauna Kea Ranger Corps program was developed to protect the mountain. The comprehensive management plan that the University is hoping will be approved shortly by the Board of Land and Natural Resources contains much needed management guidelines and recommendations, but without administrative rules to enforce them, Rangers hands are tied.

Attached are photos illustrating some of observances by the Mauna Kea Rangers.

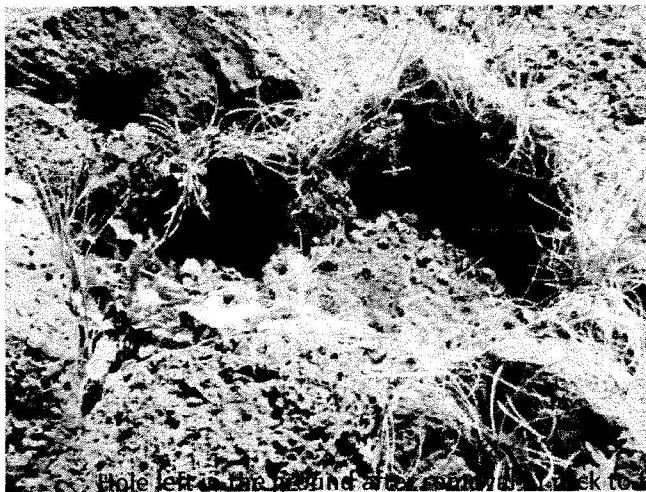
Thank you for the opportunity to comment on this bill.



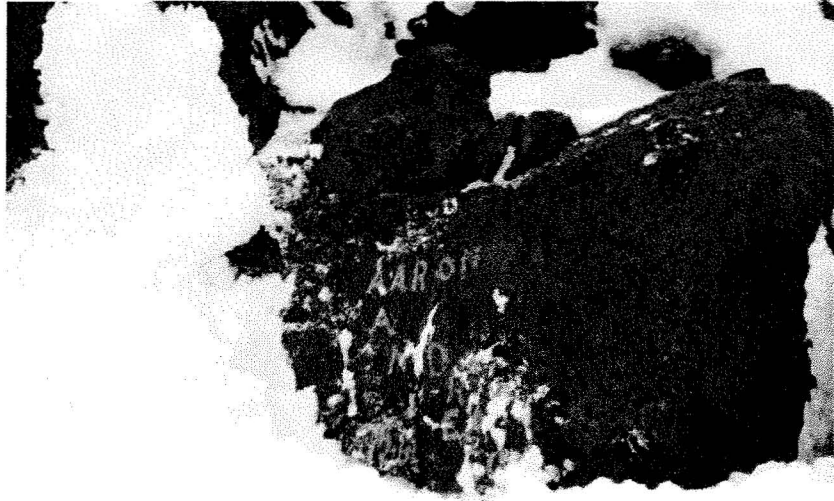
Fire dancing on the summit.



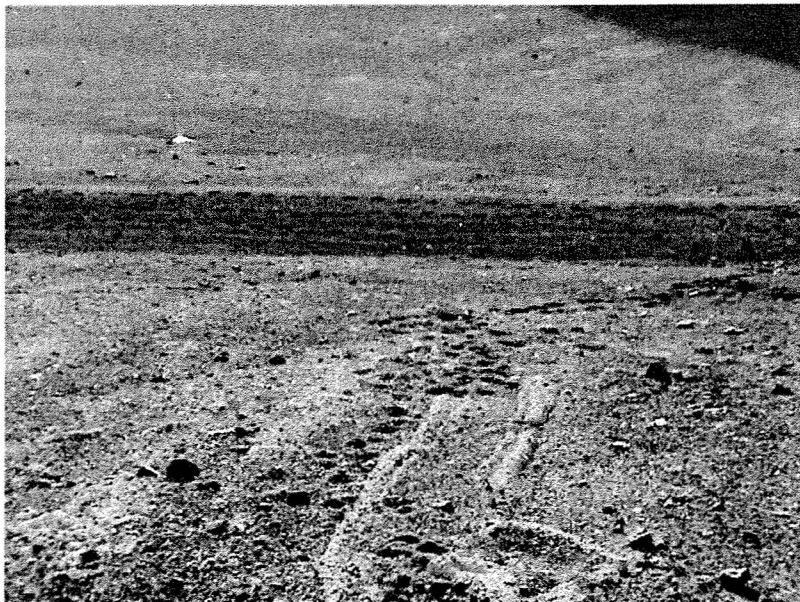
Creative stacking of rocks



Hole left in the ground after someone took to form a stack of rocks



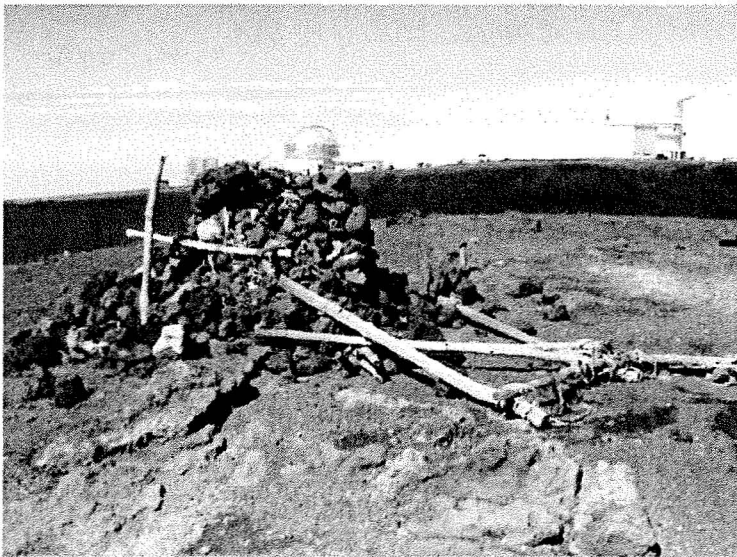
Graffiti



Hiking off trail leaves footprint marks on the summit puu.



Lele prior to vandalism



Vandalized lele



Traffic congestion on the summit access road. A ranger vehicle (yellow roof light) is trying to weave its way through traffic. If there was an accident requiring emergency response, an ambulance would not be able to make it through the traffic. Parked cars on the side of the road impeded two way traffic flow.

Testimony on HB 1174 HD2
By
Barry Taniguchi
Chair, Mauna Kea Management Board

Presented before
House Finance Committee
March 3, 2009
10:00 am

Chair Oshiro and members of the committee:

If enacted H.B. 1174 HD2 will improve the protection of the cultural and natural resources of Mauna Kea. This proposed legislation allows the University of Hawai'i through the Office of Mauna Kea Management (OMKM) and the Mauna Kea Management Board (MKMB) to adopt administrative rules to regulate public and commercial activities within lands managed by the University on Mauna Kea managed. The legislation allows UH to enforce these rules and to establish a Mauna Kea lands management special fund.

This bill is strictly about allowing the University to draft administrative rules to manage public and commercial activities and assess fines for rule violations. **This bill does not transfer ceded lands out of the public land trust.** In fact, the leased ceded lands will remain in the public trust.

Granting the University the authority to promulgate rules will allow the University's OMKM and the MKMB a tool to more effectively carry out its mission to protect and preserve the unique cultural and natural resources on lands managed by the University. One activity that requires rules is managing access. There are many who do not realize that their activities, as innocent as it may seem, have an impact on the cultural and natural landscape. In addition the University must look out for the safety and welfare of the people who visit the mountain, particularly during or at the advent of inclement weather. The public will continue to have access to the mountain, and in particular, Native Hawaiians who wish to engage in their cultural practices as required under the Hawai'i State Constitution.

The University's guiding document for Mauna Kea is the 2000 Master Plan, which transferred management of the summit from the Manoa campus to the UH Hilo campus and its chancellor. That plan established a new management body: the OMKM, reporting to the UH Hilo Chancellor. OMKM's advisory board is the MKMB, which in turn is advised on cultural issues by the Kahu Ku Mauna Council (Guardians of the Mountain).

These advisory boards, made up of members of the community selected for their knowledge of the Mauna Kea's management issues and sensitivity to Native Hawaiian

culture, give the community significant input over the management of UH's lands on Mauna Kea.

Protection of Mauna Kea's archaeological, cultural and environmental resources has benefited greatly from the new management arrangement, and has included the creation of the Mauna Kea ranger corps by OMKM to monitor activities on the mountain and advise visitors regarding appropriate behavior with respect to Mauna Kea's unique cultural and environmental resources.

While the OMKM rangers have made a significant difference, they could be more effective if the University could adopt administrative rules and give rangers the ability to enforce them. As it is, rangers cannot keep visitors from entering archaeologically or environmentally sensitive areas. Rangers cannot even require people to pick up their trash. In addition, although the high elevation and extreme weather can sometimes make Mauna Kea a dangerous place to be, at present there is very little rangers can do to ensure public health and safety on the mountain.

The proposed legislation to authorize the University to adopt administrative rules is a recommendation from the State Auditor's 1998 report on the University's management of Mauna Kea, and was reiterated in the Auditor's 2005 report, which noted a number of improvements in UH's stewardship. The Auditor stated in 2005, "We recommend the University of Hawai'i obtain administrative rule-making authority, revise and update planning documents, and develop, implement, and monitor a comprehensive management plan for natural, cultural, and historic resources of the summit and Hale Pohaku area."

The University is in the final stages of completing the Mauna Kea Comprehensive Management Plan (CMP) that will be the guiding framework for protecting and preserving the cultural and natural resources on Mauna Kea by managing the multiple uses and activities on the mountain

The University needs this legislation to protect the mountain and its valuable and vulnerable resources. When combined with the other recommendations and management practices described in the CMP, this legislation will give the community greater control over Mauna Kea's future.

We encourage the Legislature to take responsible and timely action.

Joint Testimony In Opposition
To
H.B. 1174

The House Finance Committee

March 3, 2009

10:00 a.m.

Room 308

Aloha Pumehana Chairman Oshiro and Members of the House Finance Committee,

The following testimony IN OPPOSITON to H.B. 1174 is submitted on behalf of the following parties:

(1) Ms. Kealoha Pisciotta, President of **Mauna Kea Anaina Hou**, (2) Ms. Debbie Ward and Nelson Ho, Co-Chairs of Mauna Kea Issues Committees, **Sierra Club Hawai`i Island Chapter**, (3) Ali`i `Ai Moku, Mr. Paul K. Neves of **the Royal Order of Kamehameha I, Moku O Mamalahoa Heiau Helu `Elua**, and (4) Mr. Clarence Ku Ching (individual Native Hawaiian Practitioner).

We wish the record to reflect, first, that Mauna Kea Anaina Hou, The Royal Order of Kamehameha I, Sierra Club Hawaii Island Chapter, and Clarence Ku Ching are plaintiffs in Civ. No. 04-1-397 (Mauna Kea et al., v . State of Hawai`i) against the University of Hawaii and the Board of Land and Natural Resources for violation of the regulations protecting Mauna Kea as a conservation district. This lawsuit is currently on review before the Intermediate Court of Appeals after the University appealed the lower court ruling against them. Though the University only recently withdrew its appeal from the ICA, counterclaims that go to the fundamental merits of this issue remain before the ICA. Passage of this bill will interfere with this judicial review by attempting to fundamentally alter the regulatory framework governing the management of Mauna Kea.

We support KAHEA's testimony and although we are specifically testifying in opposition to H.B. 1174 before this committee, we are STORNGLY OPPOSED to all other current versions of the University's Mauna Kea bills, including S.B. 502.

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

I. HB 1174, Is Not Well Thought Out And Legally Flawed.

HB1174, as written, misrepresents and misstates State law relating to state controlled public lands. For example, in the first two opening paragraphs, the University claims they have autonomy over lands they own in fee simple (via purchase) and *as well as those* lands they lease from the State, such a Mauna Kea. This argument is false, first, because if this were in fact true, the UH would not need to ask you-- the lawmakers, to give them such authority over Mauna Kea now. Secondly, while the UH may have authority over its fee simply lands, this same authority does not exist on public lands they lease from the State. **The UH does not now nor has it ever owned the lands of Mauna Kea and therefore the UH authority is subject to State lease conditions.**

1. The State-UH Lease Requires BLNR Oversight of Mauna Kea

The State Board of Land and Natural Resources, issued the UH a lease in 1968, and this lease agreement requires the UH to follow all state laws and accompanying rules and regulations. The State lease expressly states:

“The lessee [UH] shall observe and comply with Regulation 4 of the Department of Land and Natural Resources, and with all other laws, ordinances, rules and regulations of the federal, state, municipal or country governments affecting the demised lands or improvements. “

(Bracketed information added for clarity, see General Lease S-4191 at P. 5)

The State lease conditions highlighted above are reasonable, because, the entire summit of Mauna Kea is made up of both **ceded and conservation lands**. The State is constitutional and statutorily mandated to protect and conserve these lands on behalf of the people of Hawai`i and future generation. Therefore while the UH is a state agency, it isn't the state agency legally responsible for protecting the State's Conservation lands. Further, the courts have already held that State regulatory agencies, such as BLNR may not “wholesale delegate” or transfer their public duty to a political subdivision of the state or private developers. (See, Kapa`akai O Ka Aina v. Land Use Commission (94 Haw. 1 (2000))).

2. The Fox Shouldn't Guard The Hen House

The University cannot police itself --it cannot act as the applicant and judge of its own application all at once -- because the UH is not disinterested with regards to development of Mauna Kea. For all intents and purposes the UH operates as a developer--proffering foreign and corporate telescopes development deals for the bargaining basement price of only \$1.00 per year in lease rent.

3. HB1174, Robs The Taxpayers During The Worst Financial Crisis Since The Great Depression.

The state taxpayers have been subsidizing *foreign* direct investment (telescope infrastructure and capital gain) -- which is also to say the public is loosing "fair-market" lease rent for the use of public trust lands, in direct violation of state law. State law (HRS 171) without question requires the state (BLNR) to collect "fair-market" lease rent for the use of public trust lands. Mauna Kea is entirely comprised of public trust lands, and the neither the State nor the UH have sought to compel the foreign entities to comply with Hawai`i State Law, regarding Public Trust lands revenue.

In fact, the UH has argued repeatedly over the years, they collect the "rent" in the form of time on the telescopes for the UH exclusive use. First, the UH does not have the authority circumvent state law, and any "gentlemen handshake agreements" the UH may make with the foreign entities is irrelevant to the foreign entities requirements under state law. The foreign observatories, UH and BLNR have been violating state law for decades now by failing to charge reasonable rent, to be deposited into the general fund, where UH, BLNR and other state agencies, such as OHA could receive funding to support their programs.

More importantly, the Hawai`i State taxpayers would be relieved of a substantial tax burdens if the observatories, paid rent. About nine (9) years ago our organizations compiled a report (Mauna Kea the Temple: protecting the Sacred Resource, 2001), and in that report we recommended the state collect at least \$50 million dollars per year in lease rent from all the observatories combined.

Remember \$50 million one year is \$100 million in two years, \$200 million in four years etc., and this is money going directly into the State's General Fund, not money spent on infrastructure -- (i.e. The TMT is "worth" \$1 billion dollars -- that is what it cost to build, this is corporate money for infrastructure and not money that relives the people or our State's our immediate budget short fall

problems. Moreover, it is money required by the law. The rent is 30 year past due – now.

WE ARE STRONGLY OPPOSED TO THE LANGUAGE IN HB1174 relating to the UH special fund, which will allow the UH to collect rent and keep it. The MONEY BELONGS TO THE PEOPLE OF HAWAII. If everyone simply follows the law, all could benefit, the UH, BLNR, OHA and the rest of the TAXPAYER that have shouldered the cost for over 30 years now.

4. The UH Can't Police The Public On Public Lands – For The Benefit Of Astronomers.

The lands of Mauna Kea are public lands, the Mauna Kea access road is a public road that was paid for by State Taxpayers – NOT the UH, astronomers or foreign entities operating on Mauna Kea. The UH wants the power to police itself and the public too – all for the benefit of astronomers – and they want you the lawmaker to give it to them. This is outrageous. The UH even claims it can “manage” the public by installing a gate on the Mauna Kea Access Road (see page 7-35 of the UH “comprehensive management plan.”) The UH does not have and should not be given police powers over the public on Public lands including the road, the state DOCARE Officers carries this power and they serve all members of the public not just astronomers.

The UH and Institute for Astronomy (UHIFA) want control over the land management (land uses) of Mauna Kea. The UH is not a land managers, nor are they legally responsible for land management. The UH does not have and should not have this authority. The BLNR is the regulatory agency with this power, and the BLNR serves all members of the public not just astronomers.

In conclusion, HB1174 creates more problems than it solves problems you the lawmakers can avoid, by simply holding the bill. HB 1174 is not a well thought out document and includes provisions that will violate, overturn and or re-write existing constitutional and statutory provisions, related rules and regulations, and the Supreme Court of Hawai'i (please see, Art. XII, sec. 1, HRS 171, HRS 183C, Adm. Rules 13-5, P.A.S.H and Kapa`akai v. LUC (94 Haw. 1 (2000), and Mauna Kea et al., v. State of Hawaii (Civ. No. 1-04-397)).

There is no reason to violate, overturn and or to re-write exiting good law, to support giving exclusive control of Mauna Kea to astronomers, and for this reason we must argue, this bill may not pass. We respectfully request you hold this bill.

We thank you very much for you time and consideration.

In Aloha we remain,

Paul K. Neves, Ali`i `Aimoku, Royal Order of Kamehameha I,

Kealoha Pisciotta, Mauna Kea Anaina Hou

Debbie Ward and Nelson Ho, Sierra Club Hawai`i Chapter

Clarence Ku Ching

HOUSE OF REPRESENTATIVES - THE TWENTY-FIFTH LEGISLATURE -REGULAR SESSION OF 2009

COMMITTEE ON FINANCE - Rep. Marcus R. Oshiro, Chair; Rep. Marilyn B. Lee, Vice Chair

Rep. Henry J.C. Aquino; Rep. Scott Y. Nishimoto; Rep. Karen Leinani Awana; Rep. Roland D. Sagum, III;
Rep. Tom Brower; Rep. James Kunane Tokioka; Rep. Isaac W. Choy; Rep. Jessica Wooley;
Rep. Denny Coffman; Rep. Kyle T. Yamashita; Rep. Sharon E. Har; Rep. Kymberly Marcos Pine;
Rep. Gilbert S.C. Keith-Agaran; Rep. Gene Ward; Rep. Chris Lee.

NOTICE OF HEARING

DATE: Tuesday, March 03, 2009

TIME: 10:00 a.m.

PLACE: Conference Room 308

State Capitol

415 South Beretania Street

AG E N D A # 1

HB 1174, HD2 RELATING TO THE UNIVERSITY OF HAWAII.

HED, JUD, FIN

HR437 Allows UH to adopt administrative rules to regulate activities at and within the Mauna Kea lands, or the lands UH leases from the Board of Land and Natural Resources. Allows UH to provide for procedures to enforce these rules, and to assess and collect administrative fines for violations of these rules. Establishes the Mauna Kea Management Special Fund.

Dear Representatives:

Many of us strongly object to this bill. We assert our Native Hawaiian rights to the restrictions proposed. My family and I are against the perfidious intentions to regulate our practices, customs, and rights. I do not recognize UH authority nor jurisdiction especially since I no longer attend the University of Hawai'i. This sinister act must cease and desist.

Mahalo,

David M. K. Inciong, II

1107 Acacia Road #113

Pearl City, HI (6782-2581

(808) 456-5772

tane_1@msn.com

HB 1174 HD2

WE RECEIVED OVER
900 OF THE ATTACHED
FORM TESTIMONY IN
STRONG OPPOSITION.

HB 1174

Testimony In Opposition To UH Control Over Mauna Kea
HI

Aloha Members of the Legislature and Board of Land and Natural R

I strongly oppose the University's plans for the future of Mauna Kea. Under the University's proposal, Mauna Kea would become a gated community for astronomers. Their management plan would "manage" public access by charging and regulating people visiting the summit and dictating when, how, and who may engage in traditional and customary cultural practices. At the same time, their management plan places no limits on the real threats to Mauna Kea: excessive telescope construction. The lands of Mauna Kea are ecologically unique and culturally significant that is why they are protected as a conservation district. Conservation -- not telescope construction -- must be focus of all activity there.

Instead of abiding by the laws that protect Mauna Kea, the University is attempting to change them. The University has introduced four bills to the State Legislature seek to transfer all management authority from the Land Board to the University. The proposal is outrageous given the University's history of destruction and desecration on the sacred summit. Multiple reports, audits, and lawsuits have confirmed that the University's telescope activities have violated the law and continue to destroy the natural and cultural resources of Mauna Kea. Just as one example, the Wekiu bug, which lives only on the high elevation cinder cones of Mauna Kea, has lost 90% of its habitat to telescope development. Despite all of the flaws of past Land Board mismanagement on Mauna Kea, changing the laws that protect Mauna Kea now will not help to better protect the public trust resources on Mauna Kea. Instead, handing management authority over to the University will only hasten the loss of Mauna Kea's unique resources.

On top of it all, the University of Hawaii is profiting from its abuse of Mauna Kea at the public's expense. Mauna Kea is ceded lands. These lands are to be held in trust for the people of Hawaii. The law requires that fair market rent be charged for the use of these lands. However, in the case of Mauna Kea, the University pays the state only \$1 a year. In exchange, the University receives millions in benefits from the foreign nations and corporations with telescopes on the summit. Especially in this time of economic crisis, the University owes the people of Hawaii back rent for 40 years of destruction and desecration on the summit of Mauna Kea.

For these reasons, I strongly urge to stand strong for Mauna Kea. Uphold the protections currently in place for this sacred place and work to ensure they are fully enforced.

Mahalo,

Judy Dolmatch
P.O. Box 1071
Pahoa, HI 96778

The Pacific Resource

PARTNERSHIP



Testimony of C. Mike Kido
External Affairs
The Pacific Resource Partnership

House Committee on Finance
Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice Chair

HB 1174, HD2 – RELATING TO THE UNIVERSITY OF HAWAII

Tuesday, March 3, 2009

10:00 am

Conference Room 308

Chair Oshiro, Vice Chair Lee and Members of the House Committee on Finance:

My name is C. Mike Kido, External Affairs of the Pacific Resource Partnership (PRP), a labor-management consortium representing over 240 signatory contractors and the Hawaii Carpenters Union.

PRP is in support of the purpose and intent of HB 1174, to enable the University of Hawaii to better carry out its management obligations regarding activities and uses that take place on the Mauna Kea lands that it leases or over which it acquires control or jurisdiction.

We respectfully ask for your consideration on HB 1174, HD2.

