



Office  
1149 Bethel St., Ste. 415  
Honolulu, HI 96813  
877.585.2432 toll-free ph/fx

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

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

**H.B. 1174 Mauna Kea  
Room 309, 2:00 pm  
February 3, 2009**

Aloha Chairman Chang and members of the House Committee on Higher Education,

**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 wider authority over Mauna Kea because:

- Mauna Kea lands leased by the University are "ceded" lands. Granting this authority to the University will violate the Supreme Court's ruling in *OHA v. HCDCH*.
- Mauna Kea lands are public trust lands that must be managed by the landlord (Board of Land and Natural Resources), not the University, who is a mere lease-holder. State law requires that public trust lands be leased at fair market value for the benefit of the people of Hawaii, not the lease-holder.
- The University's activities on Mauna Kea have exploited, destroyed, and desecrated irreplaceable natural and cultural resources on the summit.
- The University will use this authority to limit public access to the summit, regulate when and how Hawaiians worship on the summit, and expand telescope construction on the summit.

#### **HB 1174 seeks to transferred ceded lands out of the public lands trust**

With this bill, the Lingle Administration is seeking to transfer ceded land protected by the public lands trust from the state Department of Land and Natural Resources to the University of Hawaii. This is exact same type of land transferred 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. "As 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



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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." p. 78

According to current state law, ceded lands are managed and administered by the Department of Land and Natural Resources. See, HRS sec. 171-3. This bill seeks to transfer the ceded lands of Mauna Kea from DLNR to the University by granting the University "authority to manage and control public activities on the Mauna Kea lands." This is the exact same type of agency-to-agency transferred deemed illegal by the Supreme Court in OHA v. HCDCH and therefore should not be allowed by the state Legislature.

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

For 30 years, the University has failed to pay the fair market rent to the State for its subleases to foreign countries and corporations that own telescopes atop Mauna Kea, as required by HRS sec. 171. This means the University owes the people of Hawaii back rent for the numerous telescope and support structures on the sacred summit.

Unfortunately, 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 \$8 million a year just from the patent-lease contracts with defense contractors like Raytheon.

Surprisingly, during this time of debilitating economic crisis, the University is not paying this back-rent to the State. Instead in this bill it is proposing to establish a special fund that would allow it to pocket all of the profits from the use of Mauna Kea lands, bypassing the general fund altogether. The University is literally seeking the Legislature's approval to rob the people of Hawaii.

### **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). The construction of so many telescopes in such a fragile environment destroys rare habitat and speeds the



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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 held that both the University and the Board of Land and Natural Resources violated state law by proceeding with the Keck Telescope without a proper management plan for the natural and cultural resources protected by the conservation district that encompasses the entire summit of Mauna Kea. This is in addition to 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.”

In multiple reviews of the University's activities on the summit, the Hawaii State Auditor found that UH's management of Mauna Kea is “inadequate to ensure the protection of natural resources” and “neglected ...the cultural value of Mauna Kea.” Their report stated that UH'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 comprehensive management plan, the University is seeking to undermine the management of the ceded lands and conservation district 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. As required by HRS sec. 171-3, management of ceded lands is provided by the state's land manager, the Department of Land and Natural Resources (DLNR).

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. 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.

Mahalo,

Marti Townsend  
Program Director

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**From:** Cory (Martha) Harden [mh@interpac.net]  
**Sent:** Sunday, February 01, 2009 9:49 PM  
**To:** HEDtestimony  
**Subject:** OPPOSE HB 1174 (Comm on Higher Ed Tue 2-3-09 2pm Rm 309)

Dear Legislators,

Please OPPOSE HB 1174 which would let the fox guard the henhouse. University of Hawaii wants to adopt administrative rules to help manage and regulate public activity on lands it leases and controls on Mauna Kea. It's Dept. of Land and Natural Resources that should be making rules--managing natural resources is their area of expertise. UH has conflict of interest since they stand to gain from more telescopes.

mahalo, Cory Harden, Hilo