
A BILL FOR AN ACT

RELATING TO THE HABITAT CONSERVATION PRESERVE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the mascot for the
2 university of Hawaii, west Oahu campus, is the endangered short-
3 eared owl, or pueo. Currently, there are only eleven pueo
4 living on the island of Oahu. For centuries, the area where the
5 Hunehune gulch and Kaloi gulch converge, through what is now the
6 university of Hawaii, west Oahu campus, has been documented as a
7 pueo habitat. A 2006 final environmental impact statement
8 recommended that if any pueo are observed on the campus property
9 at the university of Hawaii, west Oahu, a supplemental
10 environmental impact statement should be ordered to assess any
11 negative impacts to the pueo. The university of Hawaii, west
12 Oahu, appears not to be compliance with the 2006 final
13 environmental impact statement. In fact, in 2017, a certified
14 ornithologist conducted a pueo count on Oahu, authorized by the
15 division of forestry and wildlife of the department of land and
16 natural resources, and recorded a confirmed sighting of a pueo
17 flying over the university of Hawaii, west Oahu. This sighting



1 is considered a new finding, and therefore, it would require a
2 new supplemental environmental impact statement. The
3 legislature finds that the university of Hawaii, west Oahu's
4 apparent noncompliance with chapter 343, Hawaii Revised
5 Statutes, and the corresponding administrative rules,
6 necessitates legislative action to compel the development of a
7 habitat conservation preserve on the campus of the university of
8 Hawaii, west Oahu, in order to save the pueo in Honouliuli Ewa.

9 According to the October 2017 interim report to the twenty-
10 ninth legislature entitled "Interim Report Regarding the Pueo
11 Study Conducted by the Department of Land and Natural Resources
12 and the University of Hawaii at Manoa for the Period April 1,
13 2017 - August 1, 2017", a pueo has recently been detected at the
14 university of Hawaii, west Oahu campus. Additionally, according
15 to his east Kapolei master plan biological survey published on
16 September 17, 1996, Kenneth Nagata recommended the use of the
17 university of Hawaii, west Oahu campus, as a bird refuge due to
18 the sixteen different species of birds inhabiting the property.

19 While there are steps that can be taken to protect
20 endangered species without requiring the presence of an active
21 nest, no statute or administrative rule explicitly compels the



1 department of land and natural resources to take immediate
2 action on a parcel of land based solely on information that the
3 parcel is inhabited by an endangered species.

4 The legislature further finds that section 195D-21(a),
5 Hawaii Revised Statutes, allows the department of land and
6 natural resources to "enter into a planning process with any
7 landowner for the purpose of preparing and implementing a
8 habitat conservation plan". Establishing a habitat conservation
9 preserve at the university of Hawaii west Oahu campus would
10 eliminate the need for any supplemental environmental impact
11 statement and also satisfy current state law.

12 Accordingly, the purpose of this Act is to require the
13 university of Hawaii to establish a habitat conservation
14 preserve at its west Oahu campus. The legislature declares that
15 this Act is a matter of statewide concern.

16 SECTION 2. Chapter 304A, Hawaii Revised Statutes, is
17 amended by adding a new subpart to part IV to be appropriately
18 designated and to read as follows:

19 " . Habitat Conservation Preserve

20 **§304A-A Definitions.** As used in this subpart, unless the
21 context indicates otherwise:



1 "Chancellor" means the chancellor of the university of
2 Hawaii, west Oahu campus.

3 "Department" means the department of land and natural
4 resources.

5 "Makai parcel" means that five hundred acre parcel of land
6 owned by the university and located to the south of the west
7 Oahu campus.

8 "Mauka parcel" means that nine hundred ninety-one acre
9 parcel of land owned by the university and located to the north
10 of the west Oahu campus.

11 "Preserve" means the habitat conservation preserve.

12 "University" means the university of Hawaii.

13 **§304A-B Habitat conservation preserve; establishment.**

14 There is established within the university a habitat
15 conservation preserve under the direction of the chancellor.
16 The university shall partner with the department to establish
17 the habitat conservation preserve; provided that the partnership
18 shall include the development of a habitat conservation plan
19 pursuant to section 195D-21, Hawaii Revised Statutes, and the
20 hiring of a natural resources manager. The university alone



1 shall have the authority to determine the location of the
2 habitat conservation preserve.

3 **§304A-C Siting and boundary.** (a) Within the boundary set
4 forth in subsection (b), the university shall devote a
5 contiguous segment of land within the non-campus private
6 development lands of the university of Hawaii, west Oahu campus,
7 as a habitat conservation preserve.

8 (b) The boundary of the preserve shall be defined as
9 follows:

- 10 (1) The 1825 Hawaiian Malden trail to the north;
- 11 (2) The Kapolei golf course to the west;
- 12 (3) The Kualakai parkway to the east; and
- 13 (4) The department of Hawaiian home lands to the south.

14 **§304A-D Prohibited acts within the preserve.** The
15 following shall be prohibited in the preserve:

- 16 (1) Farming;
- 17 (2) Grading and grubbing;
- 18 (3) Defoliation of native grasses and other native flora;
- 19 (4) Spraying or soil drift; and
- 20 (5) Any other activities that the department's division of
21 forestry and wildlife deems counterproductive to the



1 proliferation of endangered or threatened avian and
2 mammal species.

3 The university shall post signage within and throughout the
4 preserve prohibiting the foregoing activities.

5 **§304A-E Preservation of historic railway berms.** The
6 university shall keep all historic railway berms located in the
7 preserve in the berms' original positions.

8 **§304A-F Educational uses of the preserve.** The university
9 shall use the habitat conservation preserve lands as an outdoor
10 classroom and to augment the curriculum of the university of
11 Hawaii, west Oahu campus. The university shall also permit the
12 preserve to be used for educational field trips.

13 **§304A-G Chancellor's authority to permit access to**
14 **preserve.** The university shall authorize the chancellor to
15 permit access to the preserve to all of the university's
16 students, faculty, and instructors. The university shall also
17 authorize the chancellor to permit access, on a case-by-case
18 basis, to personnel from nature organizations and other
19 universities.

20 **§304A-H Department duties.** The department shall provide
21 the chancellor with the following:



1 (1) Oversight and enforcement of the protection of
2 endangered and threatened species within the preserve;
3 and

4 (2) Any materials that the department deems necessary to
5 delineate and identify the boundary of the preserve
6 and to protect the preserve and the endangered and
7 threatened species within the preserve.

8 **§304A-I Unauthorized entry.** Unauthorized entry into the
9 preserve shall be considered a criminal trespass onto state
10 lands pursuant to section 708-814.7. The department shall erect
11 and maintain signage throughout the preserve in accordance with
12 section 708-814.7(1)(a)(ii).

13 **§304A-J Pre-existing development plans.** (a) If any party
14 with title to or interest in any real property designated for
15 the use of the preserve pursuant to this subpart had final plans
16 authorized by the university to develop any portion of the
17 affected property prior to the effective date of this Act, the
18 university shall offer the affected party the same terms and
19 conditions comparable in financial standing to reestablish the
20 affected party's development plans on the mauka parcel.



1 (b) If an affected party suffers a financial loss related
2 to development plans for the affected property, as described in
3 subsection (a), or has executed a contract for development
4 within the affected property, the university may compensate the
5 affected party with additional acreage of property located in
6 the mauka parcel to lease at no additional cost; provided that
7 the cost of the additional acreage offered shall not exceed the
8 actual financial loss incurred by the affected party.

9 **§304A-K Funding to maintain the preserve.** The university
10 shall fund any landscaping, maintenance, or pest control
11 activities and any other resources and infrastructure necessary
12 to maintain the preserve with the proceeds from the following:

- 13 (1) Any moneys collected from tenants leasing land located
14 in the mauka parcel; and
15 (2) Any moneys collected from the rent from farming
16 activities or other rental income permitted in the
17 makai parcel.

18 **§304A-L Inventory of endangered and threatened species;**
19 **report; report to legislature.** The biology department of the
20 university of Hawaii, west Oahu campus, shall submit a report
21 listing the inventory of endangered and threatened species that



1 exist in the preserve to the legislature no later than twenty
2 days prior to the convening of the regular session of 2020 and
3 every five years thereafter."

4 SECTION 3. (a) Until December 31, 2019, any deadline for
5 the adoption of administrative rules by the board of regents of
6 the university of Hawaii or the department to accommodate the
7 preserve shall be waived and extended to allow for time to
8 quantify the necessary appurtenances and other resources as the
9 department deems necessary and essential to the establishment of
10 the preserve.

11 (b) No later than December 31, 2019, the board of regents
12 of the university of Hawaii shall submit to the board of land
13 and natural resources a habitat conservation plan pursuant to
14 this Act.

15 (c) No later than December 31, 2019, the board of regents
16 of the university of Hawaii and the chairperson of the board of
17 land and natural resources shall jointly submit a report to the
18 legislature of its progress, findings, and recommendations,
19 including any proposed legislation, to address amendments to
20 administrative rules as may be necessary to sustain and manage
21 the preserve.



1 SECTION 4. The department of land and natural resources
 2 shall submit a report to the legislature of its estimated costs
 3 for the materials listed in section 304A-H(2), Hawaii Revised
 4 Statutes, in section 2 of this Act, no later than twenty days
 5 prior to the convening of the regular session of 2020.

6 SECTION 5. In codifying the new sections added by section
 7 2 of this Act, the revisor of statutes shall substitute
 8 appropriate section numbers for the letters used in designating
 9 the new sections in this Act.

10 SECTION 6. This Act does not affect rights and duties that
 11 matured, penalties that were incurred, and proceedings that were
 12 begun before its effective date.

13 SECTION 7. This Act shall take effect upon its approval,
 14 provided that the university of Hawaii shall begin the process
 15 of establishing a habitat conservation preserve no later than
 16 one hundred eighty days after the effective date of this Act.
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INTRODUCED BY:

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H.B. NO. 1569

Report Title:

Department of Land and Natural Resources; UH; West Oahu; Pueo;
Endangered Species; Habitat Conservation Preserve

Description:

Requires the University of Hawaii to establish a habitat
conservation preserve at its West Oahu campus.

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