



February 16, 2022

To: State of Hawai'i House of Representatives, Committee on Water & Land, Committee on Judiciary & Hawaiian Affairs, and Committee on Finance, February 19, 2022 Hearing, Conference Room 430 (VIA VIDEOCONFERENCE)

Testimony of KAHEA: The Hawaiian-Environmental Alliance in OPPOSITION to HB2024, Relating to Mauna Kea

PROTECTING

NATIVE HAWAIIAN

CUSTOMARY &

TRADITIONAL RIGHTS AND

OUR FRAGILE

ENVIRONMENT

KAHEA: The Hawaiian-Environmental Alliance, a 501(c)(3) nonprofit organization strongly opposes HB2024, which seeks to implement recommendations from the Mauna Kea Working Group's (Working Group) Draft Report, "He Lā Hou Kēia Ma Mauna a Wākea: A New Day on Mauna A Wakea," dated December 17, 2021 (draft report). Our opposition is based on the flaws in the draft report KAHEA earlier noted in our comment to the working group, dated January 2, 2022.

KAHEA is a community-based organization working to improve the quality of life for Hawaii's people and future generations through the revitalization and protection of Hawaii's unique natural and cultural resources. We have been advocating for the protection of Mauna Kea for nearly the entire life of our organization, which was founded in 2000.

1. Resolution cannot be found in a Governor-appointed Entity

The Draft Report recognized existing management practices do not ensure the observatories: (1) plan for and finance decommissioning and restoration; (2) are held to appropriate standards of "restoration"; and (3) contribute to decommissioning funds. Draft report at 26. The Draft Report also, helpfully, recommended development of "a plan to return the mauna above 9,200 feet elevation to its natural state." *Id.* at 25. The Draft Report, however, unilaterally entrusted a new Governing Entity to ensure these are implemented in a timely and meaningful way. This is a mistake as described *infra* Part 3.

2. Foundational concepts of the Kumu Kānāwai that were referenced throughout the Working Group Report are not included in the HB2024 language.

One of our earlier criticisms of the Working Group Report was that it included no framework to actually implement the Kumu Kānāwai, and in this bill, it has been completely removed. This bill should not move forward without meaningful inclusion of the Kumu Kānāwai. The Draft Report described traditional kānāwai, including Kai'okia Kānāwai, under which natural boundaries dictated traditions, such that "land deemed safe for residential and commercial activity were zoned as wao kanaka, where man

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KAHEA: the Hawaiian-Environmental Alliance is a non-profit 501(c)(3) working to protect the unique natural and cultural resources of the Hawaiian islands. KAHEA translates to English as "the call."

could live and work. Other lands were set aside and zoned as wao akua, where human activity was kept to a minimum, either for safety from elemental activity or to keep the area pristine to maintain our natural resources.” Draft report at 5. Hawaiian practices as dictated by traditional Kānāwai include: “The height of the mauna sits at an atmospheric level that prohibits occupation. The top is revered and should be treated with utmost reverence. It is the makahiapo or the oldest child and is ‘kapu’; therefore, prohibited for occupation.” Draft report at 14.

These traditional laws prohibit industrial development on Mauna Kea, including existing development. Yet, these traditional kānāwai are only “intended to guide and inform how the [Governing] entity designs and implements its governance and management frameworks; and performs its day to day operations by recentering permissible human use and access activities towards the overall, cumulative health and resilience of Mauna a Wākea.” Draft report at 12.

The problem has never been a lack of brilliance or deep knowledge of Hawaiian practitioners as is expressed in the kānāwai shared in the report. The problem has always been the failure of the University and State to relinquish their control over the management of Mauna Kea and their refusal to allow those most knowledgeable to apply that knowledge to the care and protection of this sacred place. Western laws are open to a certain width of interpretation, safeguarded by checks and balances of the coordinate governing branches. Guidance and information have larger spheres of interpretation and lack assurances that they will be implemented. The Working Group’s report failed to demand compliance with traditional kānāwai - no further development on Mauna Kea.

3. Governor’s power to appoint nearly all the members of the Governing Entity

Several years ago in 2018, the senate introduced SB3090, which would have removed UH from its management role over Mauna Kea and installed a governor-appointed management authority in its stead. Legislators introduced the bill after promising community groups that they would not do so. KAHEA joined the calls of caution from community leaders - that UH’s dismal management record should not be a reason to repeat a wrong-headed approach directed at "resolving conflict". Conflict isn't the problem. The problem is over-development on the mauna.

Like the SB3090 Management Authority, the Working Group set forth parameters for a “Governing Entity,” comprised of nine members, all but one (the OHA CEO) of whom are appointed by the governor. Draft report at 23. The Governing Entity would be the “sole authority” over management of “state-owned lands above the 6,500 foot elevation line, inclusive of Pu’u Huluhulu to the summit of Mauna a Wākea.” *Id.* at 21, 24.

Like the SB3090 Management Authority, this Governing Entity removes protective procedures that are currently in place and could themselves use strengthening. It would provide one-stop shopping for project design review, leasing, conservation district use permitting, environmental impact statement approvals, and any historic preservation or burial treatment impacts review. Instead of the more protective serialized system of approvals from different entities - BLNR, SHPD, DOFAW, Burial Councils, and other agencies - development applicants need only turn to the Governing Entity. Facilitating development on Mauna Kea is the *opposite* lesson that we should have learned from litigation and contested case hearings on the Thirty Meter Telescope.

More importantly, HB2024 purports to present a preformed template and asks the community to trust you to fill in details. Management and governance of Mauna Kea must proceed from a truly community-based process that builds trust amongst people who have shown their commitment to protecting the mauna, which includes many more than those who served on the Working Group. Build that trust by empowering longtime Mauna Kea protectors from the Royal Order of Kamehameha, Sierra Club of Hawai'i, Hawaiian charter schools, Mauna Kea Anaina Hou to select Governing Entity members and without requiring the governor's appointment.

4. Astronomy industry should not be part of the Governing Entity

While we oppose HB2024, should it go forward, we ask the House not amend the bill to allow the astronomy industry to be afforded a seat. We strongly oppose this recommendation as the goals and interests of the astronomy industry have been overrepresented on Mauna Kea for the last 50+ years which has caused, "significant, substantial, and adverse harm" to cultural resources. (2005 NASA federal EIS on the Keck Outrigger project) Western astronomy now dominates the summit of Mauna Kea and need not further impose its priorities on this sacred landscape. We hope that the Working Group deeply revises its recommendations to include: (1) significant, meaningful, and broad-based community input prior to the introduction of any legislation; (2) removing the governor's power of appointment of nearly all the members of the Governing Entity; and, (3) honoring the traditional Kānāwai by, first and foremost, prohibiting any further construction – including the Thirty-Meter Telescope – on Mauna Kea.

Me ke aloha,

KAHEA Board and Staff 2022