

LINDA LINGLE
GOVERNOR OF HAWAII



LATE TESTIMONY

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committee on
HAWAIIAN AFFAIRS**

**Wednesday, March 18, 2009
9:00 AM**

State Capitol, Conference Room 329

**In consideration of
SENATE BILL 995, SENATE DRAFT 2
RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS**

Senate Bill No. 995, Senate Draft 2, resolves claims and disputes relating to the portion of income and proceeds from the lands of the public land trust for use by the Office of Hawaiian Affairs (OHA) between November 7, 1978 and July 1, 2009 and conveys certain parcels of real property in fee simple to OHA. The Department of Land and Natural Resources (Department) defers to the Department of the Attorney General on the legality and practicality of this measure and offers the following comments to the properties listed under SECTION 5 of the bill.

Properties listed in SECTION 5 of this bill under the jurisdiction of the Department for consideration to be transferred to the OHA covers: Kahana Valley and Beach Park; La Mariana and submerged lands; accreted peninsula bordered by Kalihi Stream and Moanalua Stream; Mauna Kea Scientific Reserve; Mauna Kea Ice Age Natural Area Reserve (NAR); and state-owned fishponds statewide.

Kahana Valley and Beach Park:

Managed by the Division of State Parks, the Ahupua'a O Kahana State Park is located on the windward side of Oahu between Kaneohe and Laie. Kahana Valley and Beach Park was established in the 1970s. There are ten (10) beach campsites in the park. Camping is by permit only. The Division of State Parks currently manages 26 residential leases at Kahana that will expire on November 31, 2058.

La Mariana and submerged lands:

Built in 1955 by the late Ms. Annette Nahinu, the La Mariana Sailing Club consists of 100 boat slips in a marina outside the bar/restaurant servicing both locals and tourists. The Division of Boating and Ocean Recreation manages the lease that will expire on April 30, 2014.

The Department objects to any transfer as it will result in a loss of future public recreational facilities and income-generating property.

Accreted peninsula bordered by Kalihi Stream and Moanalua Stream:

Over the years, the Land Division has issued month-to-month revocable permits for the use of this reclaimed land protruding out into Keehi Lagoon from Nimitz Highway, near the Pacific War Memorial facilities. The parcel is currently encumbered by Revocable Permit No. S-7212 issued to Hawaii All-Star Paintball Games and is used for paintball recreation purposes.

The Department objects to any transfer as it will result in a loss of public recreational facilities and income-generating property.

Mauna Kea Scientific Reserve:

The University of Hawaii (UH) currently occupies the Mauna Kea lands under leases with the Land Board. Specifically, UH leases the 11,287.854-acre Mauna Kea Science Reserve under General Lease No. S-4191, the 19.261-acre Hale Pohaku Mid-Level Facilities site under General Lease No. S-5529, and the 70.798 acre Mauna Kea Observatory Access Road under Grant of Easement No. S-4697.

The Department and UH have adopted a number of management plans for Mauna Kea since UH first started utilizing the area. The 1977 Mauna Kea Management Plan gave UH responsibility to manage snow play on the mountain. Primary responsibility for hunting management was given to the Department's Division of Forestry and Wildlife (DOFAW).

In 1981, two parcels were withdrawn from the Science Reserve lease (General Lease No. S-4191) and placed under the management of the Department as the Mauna Kea Ice Age Natural Area Reserve, pursuant to Executive Order No. 3101.

In the 1983 Mauna Kea Science Reserve Complex Development Plan, UH proposed to adopt rules and regulations regarding access to and uses of the leased areas in cooperation with the Department. The 1983 plan also proposed the establishment of a management committee specifically for Mauna Kea.

In 1995, a joint revised management plan was adopted by UH and the Department that clarified the rights and responsibilities of the two agencies with respect to the mountain. UH was given the right to control and manage access in the Science Reserve and activities at Hale Pohaku Visitor Information Station. The Department's authority to determine public, recreational and commercial uses in these areas was confirmed, as was its responsibility for research, natural resources, and historical and cultural resources in the area.

The March 2000 Mauna Kea Science Reserve Master Plan highlighted the need for a central management authority on Mauna Kea summit and proposed the creation of UH's Office of Mauna Kea Management, which was established that same year. The Department notes that the

Administration has submitted a measure (House Bill 1171, House Draft 3) which seeks to authorize 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, and allow UH to provide for procedures to enforce these rules and to assess and collect administrative fines for violations of these rules.

Mauna Kea Ice Age NAR:

The area is presently designated and managed as a NAR by way of Chapter 195, Hawaii Revised Statutes, with the mandate to protect and preserve the unique natural flora and fauna for the enjoyment of present and future generations, as relatively unmodified as possible.

The Department is very aware of the relationship of this significant cultural site to Hawaiians as evidenced by: Queen Emma (the widow of Kamehameha IV) who in 1881 traveled to "the top of Mauna Kea to bathe in the waters of Waiau to cleanse at the *piko* of the island.". Lake Waiau, the only high elevation lake in the State, is also considered a traditional cultural property and a source of sacred water used in healing and worship practices. Additionally, the Mauna Kea Adze Quarry is an important and unique cultural and geomorphic feature.

The critically endangered `Ahinahina (*Argyroxiphium sandwicense* spp. *sandwicense*) or Mauna Kea Silversword was historically found within the Mauna Kea Ice Age NAR. Recent efforts have been taken to provide a safe place to protect this species within the Mauna Kea Ice NAR boundaries. Additionally, archaeological inventory surveys and invasive species management are presently on-going in the NAR. These management efforts need to continue.

State-owned fishponds statewide:

Traditionally, fishponds were used to cultivate and harvest fish. They existed prior to the arrival of Captain James Cook in 1778. Fish farming provided subsistence and economic opportunities. Recently, there has been an increased interest in reviving fishponds. Of the twelve state-owned fishponds, only one, Koieie fishpond, is encumbered by General Lease No. S-5929 to AOA O Na Loko I'A O Maui.

Transfer would result in a loss of income-generating property.

| | Tax map key: | Acreage: | Encumbrance(s): |
|--------------------------------|--|-----------------|--|
| Kahana Valley and Beach Park | (1) 5-2-1:1; 5-2-2:all; 5-2-5:1 and 21 | 5,248.186 acres | Governor's Executive Order No. 3518 (Kahana Valley State Park); General Lease No. 5278 (Alonzo); General Lease No. 5279 (Beirne); General Lease No. 5280 (Dela Cerna); General Lease No. 5281 (Dela Cerna); General Lease No. 5282 (Domingues); General Lease No. 5285 (Gaceta); General Lease No. 5286 (Garvida); General Lease No. 5287 (George); General Lease No. 5289 (Gorai); General Lease No. 5290 (Gorai); General Lease No. 5291 (Johnson); General Lease No. 5292 (Johnson); General Lease No. 5293 (Kahala); General Lease No. 5294 (Kahala); General Lease No. 5295 (Kahala); General Lease No. 5296 (Kam); General Lease No. 5297 (Kapapa), General Lease No. 5298 (Keaweehu); General Lease No. 5299 (Mainaupo); General Lease No. 5300 (Martinez); General Lease No. 5301 (Peapealalo); General Lease No. 5302 (Shapiro); General Lease No. 5303 (Sherman); General Lease No. 5304 (Soga); General Lease No. 5305 (Soga); General Lease No. 5306 (Ah San-Tanouye). |
| | (1) 5-2-5:3 | 8.364 acres | Governor's Executive Order No. 3765 (Kahana Bay Beach Park) |
| La Mariana and submerged lands | (1) 1-2-23:52 | 2.373 acres | Governor's Executive Order No. 1458 and 2636; Lease No. H-78-5 (La Mariana Sailing Club) |
| Accreted peninsula | (1) 1-1-3:3 | 13.090 acres | Revocable Permit No. S- |

| | | | |
|--|--------------------------------|------------------|--|
| and filled land | | | 7212 (Hawaii All-Star Paintball Games) |
| Mauna Kea: Mauna Kea Scientific Reserve, Mauna Kea Ice Age Natural Reserve | (3) 4-4-15:9 | 11,287.854 acres | General Lease No. S-4191 (University of Hawaii) |
| | (3) 4-4-15:1 and 9 | 70.798 acres | Grant of Easement No. S-4697 (University of Hawaii) |
| | (3) 4-4-15:12 | 19.261 acres | General Lease No. S-5529 (University of Hawaii) |
| | (3) 4-4-15:10, 11 | 3,893.50 | Governor's Executive Order No. 3101 (Mauna Kea Ice Age Natural Area Reserves Part 1 & 2) |
| Statewide Fishponds | (2) 5-5-1:8 | 8.465 acres | Kipapa fishpond |
| | (2) 5-5-1:10 | 19.768 acres | Pahiomu fishpond |
| | (2) 5-6-3:35 | 3.30 acres | Ualapue fishpond |
| | (2) 5-6-6:9 | 36.50 acres | Fishpond |
| | (2) 5-7-6:18 | 1.45 acres | Nahiole fishpond |
| | (2) 5-7-7:22 | 13.80 acres | Panahaha fishpond |
| | (2) 5-7-10:31 | 6.67 acres | Kaluaaha fishpond |
| | (2) 5-8-1:2 | 4.910 acres | Kaapohuku fishpond |
| | (2) 5-8-1:3 | 1.690 acres | Ohalahala fishpond |
| | (2) 5-6-1:1 | 22.250 acres | Ualapue fishpond |
| | (2) 5-2-11:20 | 1.190 acres | Waiakea pond |
| | (2) 3-9-1:fronting 85, 87, 147 | 4.52 acres | Koieie fishpond; General Lease No. S-5929 (AOAO O Na Loko I'A O Maui) |



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LATE TESTIMONY
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**S.B. 995 OHA Settlement & Mauna Kea Lands
Room 329, 9 am
March 18, 2009**

Aloha Chairwoman Carroll and members of the House Committee on Hawaiian Affairs,

Mahalo for this opportunity to testify. KAHEA submits these comments on the proposed inclusion of Mauna Kea in the OHA settlement package. KAHEA is a network of over 6,000 concerned citizens, including kūpuna, cultural practitioners, and ocean users, working to protect Hawai'i's unique natural and cultural resources.

For 40 years, telescope construction has been allowed on the sacred summit of Mauna Kea at the expense of the irreplaceable natural and cultural resources of this unique alpine ecosystem. After a ten year court battle, the public successfully upheld and enforced the state laws that currently provide for the protection of these resources and requires the Department of Land and Natural Resources (Land Board) to protect the natural and cultural resources of the Mauna Kea conservation district through a comprehensive management plan.

Under this court decision, the Land Board is currently considering a management plan proposed by the University of Hawaii, the primary advocate for telescope development on the summit. The Land Board preliminarily indicated concern that the University's proposal does not meet the legal standards for a management plan. These concerns were echoed by the Office of Hawaiian Affairs in their recently released comments on the University's plan (these comments are available on our website).

We have long maintained that the law requires the Land Board, not the University, to prepare and adopt a comprehensive management plan for the conservation district at the summit of Mauna Kea.

Transferring title for the summit to OHA at this time adds a whole new dimension to this process that we have not yet fully analyzed. While we recognize and appreciate the sense of urgency to protect key ceded lands from an unfavorable outcome at the U.S. Supreme Court, such a transfer will have far reaching implications. Thus, for your consideration, we offer the following examples of key questions that should be addressed prior to transferring Mauna Kea to OHA:

Mauna Kea is Kingdom land. The bill seeks to transfer fee simple title from the state to OHA.

Does this transfer violate the Hawaii Supreme Court injunction against the transfer of ceded lands out of the public trust?



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How does this transfer comport with concurrent legislative proposals seeking to protect all ceded lands from sale or transfer?

If passed, then this bill will transfer fee simple title to Mauna Kea from the state to OHA, thus according to the bill, these lands would no longer be considered "public lands" under HRS 206E. Yet, the bill also stipulates that all of these lands are held in trust for the betterment of the people of Hawaii and that all laws remain in effect.

Does this mean the Mauna Kea lands remain public lands or do they become lands privately owned by OHA?

Does OHA have the authority to sell all or portions of Mauna Kea in the future?

The bill states that existing leases and contracts will remain in effect after the transfer, but as landowner, will OHA have the authority to renegotiate existing leases and/or enter into new leases?

If the bill directs the Land Board to abide by the Third Circuit Court ruling and complete the comprehensive management prior to transferring the Mauna Kea lands to OHA, then:

who holds the regulatory authority over Mauna Kea?

Can OHA change the management plan as it sees fit?

Will OHA be required to enforce the requirements for protection of the conservation district, as well as the many other laws and regulations that currently govern activities on the summit?

May OHA promulgate new rules for the management of Mauna Kea?

These are just some of the many questions raised by the proposal in this bill. While we strongly support just compensation to OHA as required by law, a settlement proposal that includes the sacred summit of Mauna Kea raises serious concerns. Mahalo for this opportunity to testify.

Mahalo,

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

Marti Townsend
Program Director

Rep. Maile Shimabukuro

From: Wayne S. Takamine [waynetakamine@hawaii.rr.com]
Sent: Tuesday, March 17, 2009 11:10 PM
To: HAWtestimony
Subject: TESTIMONY IN OPPOSITION OF SB995

TESTIMONY IN OPPOSITION OF SB995

LATE TESTIMONY

COMMITTEE ON HAWAIIAN AFFAIRS

Rep. Mele Carroll, Chair and Rep. Maile S.L. Shimabukuro, Vice Chair

Rep. Della Au Belatti, Rep. Scott Y. Nishimoto, Rep. Joe Bertram, III, Rep. Ryan I. Yamane, Rep. Tom Brower, Rep. Gene Ward and Rep. John M. Mizuno

NOTICE OF HEARING

Wednesday, March 18, 2009

Aloha Representative Mele Carroll, Representative Maile Shimbukuro and the Committee on Hawaiian Affairs:

I would like to submit my testimony in opposition of SB995.

As a lifelong resident of Honolulu, bodysurfer at Point Panic and member of the Kaka'ako Makai Community Planning Advisory Committee (CPAC), I appreciate the Legislature's efforts to resolve the dispute between The Office of Hawaiian Affairs (OHA) and the State of Hawaii. However, after reviewing SB995, I believe there are many loop holes that will compromise existing laws associated to Kaka'ako Makai and HCDA including:

- HRS206E-31.5 (relates to HCDA)
- ACT 317 (HB 2555) that prohibits HCDA from selling Kaka'ako Makai State Lands and any RESIDENTIAL

It is my understanding that SB995 will transfer Kaka'ako Makai land to OHA and exempt OHA from laws relating to HCDA including HRS206E-31.5 and ACT 317 that was established from the repeal of the HCDA and A&B Luxury Condominium RFP in 2006. SB995 **must** include language that prohibits OHA from selling State Lands in Kaka'ako Makai and restrict any RESIDENTIAL development. There also should be restrictions to height limits and commercial development in this area that is the last existing open waterfront space available for public recreations uses in the Honolulu area. As it stands, SB995 will allow OHA to build without restriction, the same luxury condominiums proposed by the A&B RFP or Waikiki type Hotels and Timeshares.

There is also a need for the community to have a voice in the planning of Kaka'ako Makai. I support the Kaka'ako Makai Community Planning Advisory Council (CPAC) established by HCR 30 as the community advisory group or any future planning in Kaka'ako Makai. I am in support of CPAC's adopted Vision and Guiding Principals (see attached) for Kaka'ako Makai as being "The Community's Gathering Place" that would include Cultural, Education and Recreational public uses and limit Commercial businesses.

I respect the intention of SB995 to resolve the dispute between the State of Hawaii and OHA however, in 2006 there was overwhelming support by the public to create the laws that prohibit the sale of public lands and to residential development in Kaka'ako Makai. For this reason, I believe the laws along with restrictions on commercial development should be included in SB995.

Respectfully,

Wayne Takamine
Honolulu, HI

Rep. Maile Shimabukuro

From: Dawn Clark [dawndenise@gmail.com]
Sent: Tuesday, March 17, 2009 3:38 PM
To: HAWtestimony
Subject: Support for SB995 SD2

LATE TESTIMONY

Aloha Representative Carroll,

I am writing to ask that you please accept my testimony in support of SB995 SD2, which proposes to transfer the ownership of Mauna Kea (among other State of Hawaii properties), to the Office of Hawaiian Affairs.

Mahalo,

Dawn Denise Clark
222 Aikapa Street #1
Kailua, HI 96734
1-808-989-2534

May the sun bring you new strength by day
And the moon softly restore you at night
May the rain wash away your fears
And the breeze invigorate your being
May you, all the days of your life,
Walk gently through the world and know it's beauty.
~Native American Prayer, Author Unknown