

SENATE COMMITTEE ON WAYS AND MEANS
The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair

**S.C.R. NO. 29, S.D. 1, REQUESTING THE STATE AUDITOR TO
CONDUCT A FINANCIAL AUDIT OF THE UNIVERSITY OF HAWAII'S
ACTIVITIES RELATED TO MAUNA KEA.**

Hearing: Tuesday, March 13, 2018, 10:15 a.m.

The Office of the Auditor **has no position** regarding S.C.R. No. 29, S.D. 1, which requires the auditor to conduct a financial audit of the University of Hawai'i's activities related to Mauna Kea. **However, we have the following comments and requests for clarification.**

Initially, we note that the University of Hawai'i undergoes an annual audit of its financial statements by an independent CPA firm, which assesses whether the University of Hawai'i's financial statements are presented fairly and in accordance with generally accepted accounting principles. The most recent financial audit, which is for the fiscal year ending June 30, 2016, is accessible through our website.¹ The audit of the University of Hawai'i required by the proposed draft appears to duplicate that audit, at least in part.

The audits that we regularly perform of State agencies are "performance audits," which generally assess specific agency programs or activities. Among other things, we examine how the agency is performing its statutory duties; evaluate whether the agency is using public resources, both financial and personnel, responsibly, effectively, and efficiently; and report our findings, which include recommendations intended to help the agency address any issue in its performance that we have identified during our audit.

The audits of the management of Mauna Kea and the Mauna Kea Science Reserve that we conducted in 1998 (Report No. 98-6, *Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve*) and again in 2005 (Report No. 05-13, *Follow-up Audit of the Management of Mauna Kea and the Mauna Kea Science Reserve*), were performance audits.

If the intent of S.C.R. No. 29, S.D. 1 is to have us conduct a performance audit of the management of Mauna Kea and the Mauna Kea Science Reserve, we would suggest that the term "financial" be deleted. We also request that the committee significantly narrow the scope of the requested audit, both the list of offices to be audited as well as the activities to be assessed. We suggest that the committee determine and identify the specific aspects of the University of

¹ <http://files.hawaii.gov/auditor/Reports/2016/UHFinancialAuditReport2016.pdf>

Senate Committee on Ways and Means

S.C.R. No. 29, S.D. 1, Requesting the State Auditor to Conduct a Financial Audit of the University of Hawaii's Activities Related to Mauna Kea.

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Hawai'i's activities related to Mauna Kea that it is interested in having us examine, and that the resolution be amended to specifically reflect only those areas.

For the committee's information, we note that S.B. No. 757, S.D. 2, which also calls for an audit of the University of Hawai'i's activities related to Mauna Kea, was transmitted to the House on March 6, 2018. This bill calls for a narrower financial and performance audit of the University of Hawai'i's activities related to Mauna Kea.

Thank you for considering our testimony regarding S.C.R. No. 29, S.D. 1.



SCR29 SD1

REQUESTING THE STATE AUDITOR TO CONDUCT A FINANCIAL AUDIT OF THE UNIVERSITY OF HAWAII'S ACTIVITIES RELATED TO MAUNA KEA Senate Committee on Ways and Means

March 13, 2018

10:15 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SCR29 SD1, which would require the auditor to conduct a financial audit of the University of Hawai'i's (UH's) activities related to Maunakea. **OHA appreciates and supports the recognition of a need to more closely examine the stewardship of Maunakea – a singularly unique place of tremendous environmental, cultural, and spiritual significance – and to better account for UH's public trust obligations in its management of Maunakea's lands.**

As a preliminary matter, OHA re-emphasizes the litany of historical and ongoing failures of UH in its management of Maunakea. These include, but are not limited to: the failure to budget and fund proper management of UH's Maunakea lands; the failure to prudently negotiate sublease terms, allowing for gratis or nominal rents for multi-million dollar development projects; the failure to adequately implement a decade-old Comprehensive Management Plan, including 32 of its 54 management actions specifically affecting Native Hawaiians; the failure to meaningfully consult with OHA, Kahu Kū Mauna, and other cultural stakeholders on management policies and rules; the failure to maintain an environment that appropriately respects Maunakea's cultural landscape and singular cultural significance, including through the protection of Native Hawaiian traditional and customary rights and practices; the failure to manage public access and highly inappropriate and/or unsafe activities, which have led to numerous vehicular accidents and fires, deaths and bodily injuries, and spills of highly hazardous waste; and the failure to enforce lease and sublease terms and otherwise manage observatory development and decommissioning. **Insofar as these failings, and others, have persisted for over a generation, including through four state audits and multiple lawsuits spanning two decades, OHA appreciates these measures' recognition of a need to examine more closely the operations and activities of the University of Hawai'i as they pertain to Maunakea.**

Notably, as a state agency, UH has constitutional and fiduciary obligations under the public trust, to public lands and resources under its administration and control. The immense environmental, cultural, and spiritual value of Maunakea's public trust lands counsel an especially heightened level of care in fulfilling these obligations, including the obligation to conserve and protect natural and cultural resources for present and future generations. Unfortunately, it is clear that UH has not lived up to these obligations, and

has instead continuously pushed for more and greater observatory development on Maunakea's summit, at the expense of the lands, resources, and beneficiaries of the public trust. **Accordingly, OHA believes that an audit, particularly with regards to the items found on page 2, line 39 thru page 4, line 5, would shed valuable light on areas of longstanding concern, would provide critical information necessary to understand how and why UH has continuously failed to properly manage the public trust resources under its control, and would help to identify potential first steps to restoring balance in the management and stewardship of Maunakea.**

Mahalo nui for the opportunity to testify on this measure.

SCR-29-SD-1

Submitted on: 3/12/2018 5:36:53 AM

Testimony for WAM on 3/13/2018 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Testifying for Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

We continue to STRONGLY SUPPORT this Resolution. Mahalo.

SCR-29-SD-1

Submitted on: 3/12/2018 10:08:46 AM

Testimony for WAM on 3/13/2018 10:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments:

Testimony of Peter CUSHMAN Lewis
Before the Senate Committee on
Ways and Means

March, 13, 2018

In consideration of
SENATE CONCURRENT RESOLUTION 2
AUTHORIZING THE ISSUANCE OF A TERM, NON-
EXCLUSIVE EASEMENT COVERING A PORTION OF
STATE SUBMERGED LANDS AT WAIANAE, OAHU,
FOR THE EXISTING SEAWALL, STEPS, AND
LANDSCAPED AREA AND FOR USE, REPAIR, AND
MAINTENANCE OF THE EXISTING IMPROVEMENTS
CONSTRUCTED THEREON

Senate Concurrent Resolution 2 requests the authorization to issue a term, non-exclusive easement covering about 391 square feet, more or less, portion of state submerged lands identified as tax map key: (1) 8-7-023: seaward of 044, at Waianae, Oahu for the use, repair, and maintenance of the existing seawall, steps, and landscaped area constructed thereon, pursuant to Section 171-53, Hawaii Revised Statutes (HRS).

I, Peter Cushman Lewis, the current owner of the abutting property, worked with the Department to resolve the encroachments. The seawall, steps, and landscaped area are located on State submerged lands. As required by Section 171-53, HRS, the Board of Land and Natural

Resources ("Board") may lease submerged lands "with the prior approval of the Governor and the prior authorization of the Legislature by concurrent resolution". At its meeting on October 13, 2017, under agenda item D-8, the Board approved the issuance of a term, non-exclusive easement for the purposes stated above.

I, as grantee, shall pay the State the fair market value of the easement as consideration for the use of public lands. The amount of consideration shall be determined by an independent appraisal.

I respectfully request approval of Senate Concurrent Resolution 2.

Peter C. Ferris

Testimony of
Makana McClellan and Kekoa McClellan
Before the Senate Committee on
Ways and Means
March, 13, 2018
____:____

In consideration of
SENATE CONCURRENT RESOLUTION 2
AUTHORIZING THE ISSUANCE OF A TERM, NON-
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THE EXISTING SEAWALL, STEPS, AND LANDSCAPED
AREA AND FOR THE USE, REPAIR, AND
MAINTENANCE OF THE EXISTING IMPROVEMENTS
CONSTRUCTED THEREON

Senate Concurrent Resolution 2 requests the
authorization to issue a term, non-exclusive easement to
Peter Cushman Lewis covering about 391 square feet,
more or less, being a portion of state submerged lands
identified as tax map key: (1) 8-7-023: seaward of 044, at
Waianae, Oahu for the use, repair, and maintenance of
the existing seawall, steps, and landscaped area
constructed thereon, pursuant to Section 171-53, Hawaii
Revised Statutes (HRS).

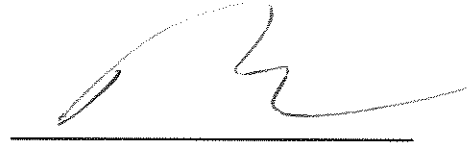
We, the landowners abutting 849C Farrington Highway
(Tax Map Key: (1) 8-7-023:044) support the granting of the

non-exclusive easement to Peter Cushman Lewis and are
testifying in support of SCR 2.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Makana McClellan', written over a horizontal line.

Makana McClellan

A handwritten signature in black ink, appearing to read 'Kekoa McClellan', written over a horizontal line.

Kekoa McClellan

Testimony of
Thomas McClellan and Dorien McClellan
Before the Senate Committee on
Ways and Means

March, *13*, 2018

____:____


In consideration of
SENATE CONCURRENT RESOLUTION 2
AUTHORIZING THE ISSUANCE OF A TERM, NON-
EXCLUSIVE EASEMENT COVERING A PORTION OF
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THE EXISTING SEAWALL, STEPS, AND LANDSCAPED
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Senate Concurrent Resolution 2 requests the
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the existing seawall, steps, and landscaped area
constructed thereon, pursuant to Section 171-53, Hawaii
Revised Statutes (HRS).

We, the landowners abutting 849C Farrington Highway
(Tax Map Key: (1) 8-7-023:044) support the granting of the

non-exclusive easement to Peter Cushman Lewis and are
testifying in support of SCR 2.

Respectfully submitted,



Thomas McClellan

Dorian McClellan

Testimony of
Donald and Melina Clark
Before the Senate Committee on Ways and Means
March 13, 2018


Our property immediately abuts the property located at 849C Farrington Highway, the owner of which, Peter Lewis, is requesting approval of a non-exclusive easement containing 391 square feet immediately adjacent to the makai boundary of the Lewis property.

We are concerned that if the easement is not granted the existing seawall will have to be removed which, in turn, would cause substantial erosion to the Lewis property as well as the surrounding properties.

Therefore, we wish to express our support for the passage of Senate Concurrent Resolution 2 introduced by Senator Maili Shimabukuro who represents the Senate District where the property is located.



Donald Clark



Melina Clark

Testimony of
Geoffrey and Melissa Lewis
Before the Senate Committee on
Ways and Means
March 13, 2018

Our property is on the Waianae side and immediately adjacent to the property located at 849C Farrington Highway, the owner of which, Peter Lewis, is requesting approval of a non-exclusive easement containing 391 square feet which area includes a long standing, existing seawall that is immediately adjacent to the makai boundary of the Lewis property.

If the easement is not approved, the existing seawall may have to be removed which, in turn, would cause substantial erosion not only to the property at 849C Farrington Highway but also to our property as well.

We therefore wish to express our strong support for the passage of Senate Concurrent Resolution 2.



Geoffrey S. Lewis



Melissa L. Lewis