



Board of Regents <bor@hawaii.edu>

Testimony for Parking Fee Increase

Nicholas Reyes <nvreyes@hawaii.edu>
To: "bor@hawaii.edu" <bor@hawaii.edu>

Wed, Oct 17, 2018 at 12:56 PM

Aloha Board of Regents,

I am one of the many students here that attend UH Mānoa and also the President of the Kappa Sigma Fraternity here in campus. I brought up the topic of the schools potential parking rate increase to my chapter meeting of around 80 UH Manoa students and they were not fond of this proposal. Today I would like to ask you to please vote NO for the proposal regarding the increase of parking rates. Campus parking rates are already high: as prices across campus are increasing on everything students are starting to find things more difficult to pay for. Instead of increasing funds on parking rates no matter how much we pay there is still no guarantee that we will find a parking spot. Instead of increasing parking rates the University should be proactive and request for state legislature funding just how UHM did for Stan Sheriff, the WRC, and housing facilities. Thank you for your time and consideration.

Best,
Nicholas Reyes
President, Kappa Sigma Fraternity



Board of Regents <bor@hawaii.edu>

Testimony to Increase Parking Rates

Catharine Creadick <ccreadic@hawaii.edu>

Wed, Oct 17, 2018 at 10:13 AM

To: bor@hawaii.edu

Aloha Chair Putnam, Vice Chair Portnoy, Vice Chair Higaki, and members of the Board,

Thank you for listening to the students' concerns about this proposed parking rate increase. I urge you all to **vote against** this proposal, because according to Commuter Services, the extra monies will be going towards urgent maintenance, which in my view, should have been accounted and budgeted for well in advance, and not put off until it's too late. Students already carry a large burden for cost of living and cost of attendance, and in my opinion, should not have to add on paying for UH's mismanagement and poor planning. The university has yet to consider and make an effort to find other sources of funding, such as from the State Legislature. Additionally, the fee increase wouldn't even supply more parking stalls, when even our current structure does not come close to meeting the demand. The parking fees *already* don't guarantee a stall for students who work hard to pay for a parking pass, and increasing the rates would make this problem even more appalling. From my personal experience and from discussion with other students, this parking rate increase would greatly hurt the student body and be detrimental to young adults working extremely hard to receive an education and college degree, which is already difficult enough. Thank you for reviewing these testimonies, and I urge the board to make the best decision for the UHM student body.

Mahalo,

Catharine Creadick

Senator for the School of Ocean and Earth Science and Technology, 106th Senate

[Associated Students of the University of Hawai'i at Mānoa](#)

B.S. Geology and Geophysics

University of Hawai'i at Mānoa



Board of Regents <bor@hawaii.edu>

Please VOTE NO Re: Increased Parking Rates

Sylvia Nguyen <nguyensy@hawaii.edu>
To: "BOR@hawaii.edu" <BOR@hawaii.edu>

Wed, Oct 17, 2018 at 1:50 PM

Aloha Board of Regents,

Parking is already hard to find and expensive as it is. It is a deterrent for many students who try to make an effort to come to school and have a difficulty with attempting to find parking. There have been days where I told myself, "if there's no parking in the structure, I'm going home," because there was no way I could afford to park on upper campus or risk getting a ticket. Instead of increasing rates to benefit FUTURE students, we should be assisting CURRENT students in increasing attendance and graduation rates. How can students be expected to come to school when they already struggle with paying so many fees? On top of worrying about excelling in their classes, students have to come to school before the lot gets full or find other places to park. Parking has been a huge problem at UHM for decades and increasing rates will not help the situation. If you truly cared about increasing student retention rates, please do not make it harder for students to simply attend.

Mahalo,
Sylvia



parking increase

Kira Beltran <beltrank@hawaii.edu>
To: bor@hawaii.edu

Wed, Oct 17, 2018 at 2:35 PM

Aloha Board of Regents,

I am one of the many students here that attend UH Mānoa. Today I would like to ask you to please vote NO for the proposal regarding the increase of parking rates. I purchased my moped in order to make it easier to get to work and make money to afford tuition. \$30 is a reasonable price per semester, but I could not afford anything more. My paychecks already go to several activities I participate in on campus, and I do not need another financial burden.

Thank you for your time and consideration.

Best,
Kira Beltran
Sent from my iPhone



OHA Administrative Testimony to UH BOR - Maunakea

Anuheia Patoc <anuheap@oha.org>
To: "bor@hawaii.edu" <bor@hawaii.edu>
Cc: Wayne Tanaka <waynet@oha.org>, Sabrina Gramberg <sabrinag@oha.org>

Wed, Oct 17, 2018 at 3:58 PM

Aloha,

Please find the attached OHA Administrative Testimony for the upcoming UH Board of Regents meeting.

Mahalo nui,

Anuheia Patoc

Pou Alo Kulekele Aupuni

Public Policy Administrative Assistant

Office of Hawaiian Affairs

560 North Nimitz Highway, Suite 200 | Honolulu, HI 96817

Ph: 808-594-1756 Email: anuheap@oha.org

 **OHA TESTIMONY BOR Maunakea with attachments 101718 FINAL.pdf**
831K



Administrative Testimony
Testimony of Kamana‘opono Crabbe, Ph.D
Ka Pouhana, Chief Executive Officer

University of Hawai‘i Board of Regents
Agenda Item V.B.3

APPROVAL OF ADMINISTRATION’S RECOMMENDATION, BASED ON TESTIMONY RECEIVED DURING THE PUBLIC HEARINGS PROCESS, TO DRAFT REVISIONS TO SPECIFIC PROVISIONS IN THE PROPOSED CHAPTER 20-26, HAWAII ADMINISTRATIVE RULES, ENTITLED “PUBLIC AND COMMERCIAL ACTIVITIES ON MAUNA KEA LANDS”, AND TO RETURN TO THE BOARD OF REGENTS FOR APPROVAL OF THE NEW DRAFT PRIOR TO A SECOND ROUND OF PUBLIC HEARINGS.

October 18, 2018

9:30 a.m.

Conference Room 105A/B

The Administration of the Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** regarding the University of Hawai‘i (UH) Administration’s recommendation to draft revisions to the proposed administrative rules for UH’s leased Maunakea lands, to be presented to the Board of Regents (BOR) for approval prior to a second round of public hearings.

At this time, any proposed rule revisions are publicly unknown; however, OHA appreciates that authorizing revisions generally may provide an opportunity for the rules to address OHA’s longstanding concerns regarding the management of Maunakea and the protection of traditional and customary practices and their underlying natural and cultural resources and sites. **OHA appeals to the BOR to refrain from approving any additional public hearings until OHA’s concerns have been meaningfully addressed, as envisioned under HRS §304A-1903.** Otherwise authorizing an additional round of public hearings would be a costly and inefficient use of public resources, insofar as another round of public hearings may then be necessary to address OHA’s concerns, or may result in rules that continue to fail to adequately protect the natural and cultural resources, cultural sites, and cultural practices associated with one of Hawai‘i’s most culturally sacred places. **Accordingly, OHA encourages the BOR to formally direct the UH Administration to reconcile OHA’s longstanding and reiterated concerns, and any other concerns raised in public testimony.**

Attached to this testimony are OHA’s previous testimony from the Board of Regents meeting on June 7, 2018, and OHA’s public hearing testimony to UH President David Lassner dated September 11, 2018. Both submittals urge revising the draft rules to more comprehensively and sustainably manage and mitigate the impacts of public and commercial activities on Maunakea, in order to adequately mitigate or prevent adverse impacts to Native Hawaiian traditional and customary practices, including impacts to the resources and sites they rely upon.

Mahalo for the opportunity to comment on this matter.



**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. NIMITZ HWY., SUITE 200
HONOLULU, HAWAII 96817**

September 11, 2018

David Lassner
President, University of Hawai'i
c/o UH System Government Relations Office
2442 Campus Road, Administrative Services Building 1, Room 101
Honolulu, Hawai'i 96822

Re: Public Hearing Testimony for the Proposed Chapter 20-26, Hawai'i Administrative Rules, entitled "Public and Commercial Activities on Mauna Kea Lands."

Aloha e Mr. Lassner,

The Administration of the Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** regarding the proposed administrative rules for the University of Hawai'i's (UH's) leased Maunakea lands. While OHA appreciates that the longstanding lack of administrative rules has substantially hindered much-needed management of public and commercial activities on Maunakea, OHA believes that the current proposed rules fall short of meaningfully ensuring the appropriate stewardship of Maunakea, including through the protection of Native Hawaiian traditional and customary rights. **Accordingly, OHA urges the inclusion of additional provisions to more comprehensively and sustainably manage and mitigate the impacts of public and commercial activities on Maunakea.**

- 1. The sacred nature and longstanding concerns over the stewardship of Maunakea strongly counsel rules that can comprehensively and sustainably fulfill its unique and diverse management needs.**

As OHA and numerous others have previously testified, Maunakea is amongst Hawai'i's most sacred places. Many Native Hawaiians believe that Maunakea connects them to the very beginning of the Hawaiian people, and Native Hawaiians have used its summit for cultural, spiritual, and religious purposes since time immemorial. Over the past several decades, OHA's beneficiaries have voiced growing concerns over the development, use, and management of Maunakea's summit and surrounding lands, concerns which have been validated and reaffirmed by numerous state audits and other third-party reports. OHA believes it is for these reasons that the UH's Board of Regents is specifically required to consult with OHA, to ensure that any administrative rules "shall not affect any right, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by . . . descendants of native

Hawaiians who inhabited the Hawaiian Islands prior to 1778.”¹ **It is also for these reasons that OHA believes it is critically important for the proposed administrative rules, which have been pending since 2009, to comprehensively cover and ensure the ongoing fulfillment of Maunakea’s unique and diverse management needs.**

2. OHA’s longstanding concerns should be addressed in the administrative rules.

OHA appreciates the outreach meetings that took place earlier this year with Office of Mauna Kea Management (OMKM) staff and the Mauna Kea Management Board (MKMB) Chair, and the long-awaited opportunity for dialogue that these meetings provided. OHA understands that these meetings were undertaken in part to satisfy the requirement that the Board “consult with the Office of Hawaiian Affairs to ensure that [the Maunakea administrative rules] shall not affect any right, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua’a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.” **Unfortunately, despite explicit concerns expressed by OHA during these meetings as well as in OHA’s original correspondence from 2011, the current administrative rules continue to inadequately address a number of issues critical to the protection of Native Hawaiian traditional and customary practices, and the underlying resources, sites, and overall environment upon which they depend.**

A. Decisions that may impact Native Hawaiian traditional and customary rights and underlying resources and sites should be made in a transparent and accountable manner.

OHA continues to have significant concerns, originally expressed in 2011, regarding the lack of transparency and accountability mechanisms for potentially far-reaching decisionmaking that may impact Native Hawaiian traditional and customary rights, including the environment and resources upon which these rights rely. **As OHA has previously and consistently stated, public meetings are often the only opportunity for Native Hawaiians to identify and assert their constitutionally-protected traditional and customary rights during government decisionmaking.** However, as with previous drafts of these rules, the current draft would allow a single individual “designee” – **who would not be subject to the public meeting requirements under the state sunshine law** – the authority to make decisions concerning: fees for access, permits, parking, entrance, etc.; the issuance or denial of written permits for group activities, public assemblies, research activities, hiking on cinder cones, and commercial activities, among other permits; the closure of or limitation of access to all or portions of the Maunakea lands; and various other administrative actions.² Notably, such an individual

¹ HRS § 304A-1903.

² OHA appreciates that the rules do provide for some of these decisions to be made by the “board” or the “University,” which is “governed by the board”; however, the rules at the outset states that “the board delegates its authority to administer this chapter to the president, who may further delegate that authority to a designee.” Proposed HAR §§ 20-26-2, -8. Likewise, while certain decisions appear to be specifically assigned to the “president,” the “president” as defined in these rules means “the president of the university, or the president’s designee.” Proposed HAR § 20-26-2 (emphasis added).

“designee” also may not be as accountable to the public in the same manner as Governor-appointed and Senate-confirmed board or commission members, and the rules lack clear processes for challenging the scope and basis of many of the decisions made by this individual “designee.”

OHA does acknowledge that not all decisions may require the same level of public transparency or scrutiny; OHA further acknowledges the potential need for expedited decisionmaking in order to address bona fide public safety or resource protection issues, such as inclement weather or the discovery of a sensitive cultural site in a high-traffic public area. **However, OHA believes that there may be ways to balance the need for expeditious decisionmaking under exigent circumstances, and the need for public transparency and accountability in decisions that can significantly impact the ability of Native Hawaiians to exercise their traditional and customary rights.**³ Although OHA has consistently raised this concern since 2011, including in meetings with OMKM staff and the MKMB Chair earlier this year, the rules still fail to identify when more intense uses and activities should be made openly and transparently, with an opportunity for public scrutiny and input.

- B. Consultation with Kahu Kū Mauna, the Office of Hawaiian Affairs, and/or cultural practitioners and lineal descendants, as appropriate, should be required for all actions and activities that may adversely impact Native Hawaiian traditional and customary practices.

On a similar note, OHA strongly urges that these administrative rules provide much clearer cultural consultation requirements, consistent with the 2009 Mauna Kea Comprehensive Management Plan (CMP), to ensure that decisionmaking does not unduly infringe on Native Hawaiian traditional and customary practices, or impact culturally significant resources and sites. OHA does take note of the draft rules' suggestion that the “president’s designee may seek the advice of the Maunakea management board and the Kahu Kū Mauna pursuant to the comprehensive management plan and consistent with the timelines and procedures of this chapter,” and that OMKM may, “after consulting with Kahu Kū Mauna,” restore sites impacted by “customary and traditional rights” activities.⁴ However, despite Kahu Kū Mauna (KKM’s) explicit role as a Native Hawaiian cultural advisory body for the MKMB, OMKM, and the UH Chancellor, neither of these permissive regulatory references would require any actual consultation with KKM. Moreover, the draft rules provide no other mention or role for KKM, other than to advise that cultural practitioners consult with them. **Given the broad range of decisions and activities contemplated by these draft rules that may impact cultural resources and practices on Maunakea – including area closures, the designation of snow play areas, the issuance of group and commercial permits, etc. – OHA**

³ One possible example, which OHA provided in its 2011 letter and reiterated in 2018 consultation meetings, might be found in the conservation district rules, where some uses and activities may be unilaterally granted by the Chairperson, and other more intensive uses and activities must be approved by the Board of Land and Natural Resources, with additional attendant requirements such as a management plan.

⁴ Proposed HAR § 20-26-3(e) (emphasis added); -21(b).

strongly believes that these rules should provide a much clearer, mandatory, and broader advisory role for the official Native Hawaiian advisory council for the management of Maunakea.

OHA further notes that the CMP and its underlying cultural resource protection plan contain numerous "actions" and other provisions requiring OMKM and KKM to "work with families with lineal and historical connections to Maunakea, kūpuna, cultural practitioners, the Office of Hawaiian Affairs and other Native Hawaiian groups . . . toward the development of appropriate procedures and protocols regarding cultural issues." However, again, the lack of consultation requirements on a number of decisions relevant to cultural practices and protocols for Maunakea provide little assurance that any such consultation.

C. CMP actions requiring rulemaking should be included and implemented in the draft rules.

OHA further urges UH to ensure that these rules reflect the management actions envisioned in the CMP, that may be critical to protecting Native Hawaiian rights and cultural resources, and that would appear to require rulemaking to be properly implemented. For example, FLU-2 (designating land use zones to restrict future land uses in the Astronomy Precinct, based on cultural and natural resource inventories); CR-7 (cultural education requirements for construction staff, UH staff, and researchers); ACT-2 (parking and visitor traffic plan); and CR-6 (guidelines for the visitation and use of ancient shrines), among others, would all appear to require rulemaking to be enforceable and fully implemented. Other actions, such as EO-7 (developing a systematic input process for stakeholders) and NR-13 (establishing a collaborative working group for management and resource protection), among others, could also be implemented and institutionalized via rulemaking. However, these and other CMP action items that, if implemented, would serve to protect cultural practices, resource, and sites, do not appear to be reflected in the administrative rules.

OHA appreciates OMKM's assertion that some of these action items may be implemented via "policies" adopted by OMKM or the Board of Regents; however, there is no guarantee that such policies will in fact be established, much less in an appropriate and accountable way. For example, a number of these actions have been pending for years, well beyond their anticipated timeline of completion; **the need for rulemaking itself was specifically cited as the reason for the delay in implementing certain actions** (such as CR-6, "Develop and adopt guidelines for the visitation and use of ancient shrines"). **The decade-long failure to adopt "policies" to implement these outstanding actions, which would appear to otherwise require rulemaking, raises significant doubt as to whether such policies will actually be adopted in a timely manner outside of the rulemaking context.** In another example, despite the CMP's aforementioned requirement that OHA, 'ohana with lineal ties, and cultural practitioners be specifically consulted on specific actions including CR-5 (the adoption of guidelines for the placement of cultural offerings), CR-7 (the appropriateness of new cultural features), and CR-9 (the appropriateness of new cultural features), policies to "implement" these actions were recently recommended for approval by OMKM, without any meaningful consultation with OHA or a known family of cultural practitioners that specifically

requested consultation.⁵ Such a recommendation brings into question whether future “policies” that are in fact adopted to implement the CMP, will be done so in an appropriate way consistent with the CMP’s own requirements.

OHA notes that even if referenced or generally contemplated in the current rules draft, specific policies and plans adopted outside of the formal rulemaking process may also not be enforceable, as illustrated in numerous court decisions relating to HRS Chapter 91.

- D. Reliable and transparent resource-generating mechanisms, including observatory sublease provisions, are necessary to minimize impacts to Native Hawaiian traditional and customary rights resulting from permitted, unregulated, and otherwise allowed activities

Finally, and most critically, OHA reiterates its long-standing assertion that any administrative rules for Maunakea provide clear assurances that future observatory subleases will generate sufficient and reliable revenue and other support for the appropriate management of Maunakea, including through the full implementation of the CMP.

OHA notes that a number of activities which may be permitted, unregulated, or otherwise allowed under these rules have the potential to significantly undermine Native Hawaiian traditional and customary practices and beliefs associated with Maunakea, thereby impacting Native Hawaiians’ ability to exercise their traditional and customary rights. For example, access to and the availability of specific resources and sites may be hampered or foreclosed by commercial tours, research activities (including observatory development and operation), public use, and even the actions of untrained government staff and contractors. In addition, “Culture and nature are from an anthropological perspective intertwined and from a Native Hawaiian point of view inseparable . . . one cannot even begin to try and understand the meaning and significance of the cultural resources . . . without considering the relationship between people and the high altitude environment”;⁶ therefore, the impacts of permitted and allowed activities on Maunakea’s environmental integrity as a whole, may fundamentally burden or preclude the meaningful exercise of Native Hawaiian cultural practices in an otherwise sacred region.

In light of this understanding, OHA does believe that full implementation of the CMP, including its various subplans, may mitigate the potential for impacts to Native Hawaiian rights. However, absent stronger capacity-building assurances in the rules, there is no identifiable source of funds or other resources necessary for the CMP to be fully and

⁵ OHA did attend a May 2016 outreach meeting regarding these actions along with numerous other stakeholders, where the overwhelming sentiment was to conduct further public outreach; however, the only subsequent outreach events were a series of general notices stating that “OMKM would like to invite you to talk story about Maunakea,” with no indication of what, specifically, OMKM was inviting the public to “talk story” about. OHA does not consider this to represent meaningful and directed consultation with OHA, cultural practitioners, or lineal descendants, much less members of the general public.

⁶ CULTURAL RESOURCES SUB-PLAN at 2-1.

consistently implemented. OHA notes that the proposed rules do authorize fees for permits, parking, and entrance; however, even the most lucrative commercial tour permits have historically generated only half a million dollars a year on average, just a fraction of UH's current costs of administering Maunakea.⁷ Numerous CMP action items yet to be implemented – including greater enforcement coverage, the development and implementation of educational and cultural training curricula, the development and implementation of a parking and visitor traffic plan, the scoping of additional facilities such as restrooms and a vehicle wash station, the ongoing collection and maintenance of cultural information and practices, and many others – will likely require a much higher level of resources than in previous years. Again, without mechanisms to ensure a sufficient level of resource generation to meaningfully implement the CMP, permitted and other activities will have a high likelihood of harming Native Hawaiian traditional and customary rights.

In this regard, OHA notes that the one activity with consistently sufficient budgetary resources, which has and will likely continue to reap the most direct and unique benefits of Maunakea's lands, and which has also served as the primary source of long-standing protests by Native Hawaiian cultural practitioners and environmental groups alike, is observatory development and operation on Maunakea's summit. OHA therefore strongly urges that the administrative rules incorporate express regulatory guidance relating to the subleasing of Maunakea lands, which can formally ensure that observatory activities provide fair compensation sufficient to implement the CMP, and mitigate future impacts to Native Hawaiian rights that would otherwise result from the proposed rules.

OHA does understand that the scientific study of celestial phenomena has incredible academic and, perhaps more importantly, philosophical value, with the potential to unify humanity across national, religious, ethnic, and political barriers in the common pursuit of understanding our universe, and our very existence as a human race. As in many other cultures, Native Hawaiian traditions also involved the extensive study of the night sky, using stars, planets, and the moon to predict weather conditions, guide harvesting and farming practices, foretell events, and navigate across vast expanses of ocean. Accordingly, OHA has never opposed astronomical endeavors in and of themselves. **However, the unifying, cross-cultural value of astronomy may be severely undermined, and its philosophical call for unity and mutual compassion for our shared humanity significantly subverted, if it advances only at the direct and unaddressed expense of a particular cultural group, who maintain sincere and reasonable concerns relating to environmental resources and spiritual spaces considered to be both culturally sacred, and marred by historically unjust acquisition.**

Accordingly, ensuring that extremely well-funded astronomical endeavors on Maunakea help to address their cultural and environmental impacts would not only mitigate concerns relating to Native Hawaiian rights, but also reinforce the philosophical and humanitarian foundation of astronomy on Maunakea. Unfortunately, as illustrated by the

⁷ OFFICE OF THE AUDITOR, FOLLOW-UP AUDIT OF THE MANAGEMENT OF MAUNA KEA AND THE MAUNA KEA SCIENCE RESERVE: A REPORT TO THE GOVERNOR AND THE LEGISLATURE OF THE STATE OF HAWAII'I 2 (2014) (hereinafter "2014 AUDIT").

Protect Mauna Kea Movement, decades-long neglect of environmental and cultural concerns in favor of observatory development have eroded away many Native Hawaiians' ability to trust in less formal assurances. Therefore, clear regulatory mechanisms to this effect should provide as much public transparency and accountability as feasible.

In light of the above, OHA strongly recommends that these administrative rules include specific provisions to ensure that any and all future observatory subleases, as public and/or commercial land uses, provide an appropriate, consistent, and sufficient level of financial and other support for the stewardship of Maunakea and its natural and cultural resources. Insofar as such sublease provisions may prove critical to the protection of Native Hawaiian traditional and customary rights in Maunakea, OHA stands ready to provide the consultation required under the Board of Regent's statutory rulemaking authority.

Mahalo nui for the opportunity to comment on this matter. For any questions or concerns, please contact Jocelyn Doane, Public Policy Manager, at 594-1908 or via e-mail at jocelynd@oha.org.

‘O wau iho nō me ka ‘oia ‘i‘o,



Kamana'opono M. Crabbe, Ph.D.
Ka Pouhana, Chief Executive Office

KC:wt

CC: Robert Lindsey, Ke Kua 'O Hawai'i, OHA Trustee



Administrative Testimony
Testimony of Kamanaʻopono Crabbe, Ph.D
Ka Pouhana, Chief Executive Officer

University of Hawaiʻi Board of Regents
Agenda Item C-4

AUTHORIZATION TO REQUEST GOVERNOR'S APPROVAL TO ALLOW THE
UNIVERSITY TO HOLD PUBLIC HEARINGS REGARDING PROPOSED CHAPTER 20-26,
HAWAIʻI ADMINISTRATIVE RULES, ENTITLED "PUBLIC AND COMMERCIAL
ACTIVITIES ON MAUNAKEA LANDS"

June 7, 2018

9:15 a.m.

Sullivan Conference Center

The administration of the Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** regarding the proposed administrative rules for the University of Hawaiʻi's (UH's) leased Maunakea lands. While OHA appreciates that the longstanding lack of administrative rules has substantially hindered much-needed management of public and commercial activities on Maunakea, OHA believes that the current rules draft falls short of meaningfully ensuring the appropriate stewardship of Maunakea, including through the protection of Native Hawaiian traditional and customary rights. **Accordingly, OHA urges the Board of Regents (Board) to provide further opportunities for input and to incorporate or otherwise address OHA's concerns, prior to initiating the formal rulemaking process.**

OHA is the constitutionally-established body responsible for protecting and promoting the rights of Native Hawaiians.¹ OHA has substantive obligations to protect the cultural and natural resources of Hawaiʻi for the agency's beneficiaries.² Accordingly, OHA is required to serve as the principal public agency in the State of Hawaiʻi responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians; assess the policies and practices of other agencies impacting native Hawaiians and Hawaiians; and conduct advocacy efforts for native Hawaiians and Hawaiians.³ These responsibilities with relation to activities at Maunakea are particularly significant: Maunakea is amongst Hawaiʻi's most sacred places and many Native Hawaiians believe Maunakea connects them to the very beginning of the Hawaiian people; since time immemorial, Native Hawaiians have used the summit for cultural, spiritual, and religious purposes. OHA believes it is for these reasons that the Board is specifically required to consult with OHA, to ensure that any administrative rules "shall not affect any right, customarily and traditionally exercised for subsistence, cultural,

¹ HAW. CONST. ART. XII, § 5

² See Haw. Rev. Stat. ("HRS") Chapter 10 (2009).

³ HRS § 10-3 (2009).

and religious purposes and possessed by . . . descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778.”⁴

It is with these kuleana in mind that OHA offers the following comments.

1. The decision to commence the formal rulemaking process for Maunakea should take place on Hawai‘i Island.

As a preliminary matter, OHA strongly urges the Board to defer the action before it today and to render its decision on Maunakea rules on Hawai‘i Island, to provide the island’s residents and cultural practitioners – including individual members of Kahu Kū Mauna (KKM) as well as the Mauna Kea Management Board (MMB) – a more meaningful opportunity to weigh in on the sufficiency of any draft rules. **Such individuals may have the most detailed, intimate, and up-to-date knowledge of the environmental, cultural, historical, and geological characteristics and needs of Maunakea, particularly with regards to commercial and public activities as well as the relevant provisions of the comprehensive management plan (CMP);** accordingly, their review and insight may be critical to maximizing the management opportunities provided by administrative rules. OHA notes that the last public outreach regarding these rules occurred on Hawai‘i Island three years ago, and that while the Office of Mauna Kea Management (OMKM) reports that “over 89 comments and surveys were received,” there is no description or summary of what these comments were, or what amendments, if any, were made to address them. Moreover, OHA understands that the last opportunity for public review of any draft rules occurred when the MKMB met over a year ago to approve the draft, when substantial conflict between Hawai‘i Island cultural practitioners, OMKM, and others may have inhibited constructive and meaningful participation and dialogue over these rules. **As discussed further below, OHA continues to maintain concerns regarding long-awaited management opportunities missing or largely unaddressed in the current draft rules, and believes that Hawai‘i Island stakeholders may also maintain similar, additional concerns on the rules’ sufficiency.**

While OHA does appreciate that the formal rulemaking process will require at least one public hearing to occur on Hawai‘i Island, OHA notes that the procedural requirements of the formal rulemaking process may preclude any substantial changes to incorporate potentially critical public hearing testimony, without further and potentially costly rulemaking delays. Meanwhile, although supplemental rule amendments or changes may also be made in the future during the formal rulemaking process, the seven years it has taken to develop the current draft rules thus far suggest that such a piecemeal approach may result in additional years of delays for such adjustments, if they are made at all. **Accordingly, the failure to ensure that the administrative rules for Maunakea are fully developed to comprehensively cover its unique and diverse management needs prior to the formal rulemaking process may significantly inhibit the effective stewardship of the mountain for an indefinite length of time.**

⁴ HRS § 304A-1903.

Therefore, OHA urges the Board to render its public hearing decision on Hawai'i Island itself, such that it can gather the input necessary to fully evaluate whether any administrative rules are sufficiently developed to begin the formal rulemaking process.

2. OHA's key concerns continue to be neglected in the current rules draft.

OHA appreciates the most recent outreach meetings with OMKM staff and the MKMB Chair, and the long-awaited opportunity for dialogue that these meetings provided. OHA understands that these meetings were undertaken in part to satisfy the requirement that the Board "consult with the Office of Hawaiian Affairs to ensure that [the Maunakea administrative rules] shall not affect any right, customarily and traditionally exercised for subsistence, cultural, and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights." **Unfortunately, despite explicit concerns expressed by OHA during these meetings as well as in OHA's original correspondence from 2011, the current administrative rules draft continues to inadequately address a number of issues critical to the protection of Native Hawaiian traditional and customary practices, and the underlying resources, sites, and overall environment upon which they depend.**

- A. Decisions that may impact Native Hawaiian traditional and customary rights and underlying resources and sites should be made in a transparent and accountable manner.

OHA continues to have significant concerns, originally expressed in 2011, regarding the lack of transparency and accountability mechanisms for potentially far-reaching decisionmaking that may impact Native Hawaiian traditional and customary rights, including the environment and resources upon which these rights rely. **As OHA has previously stated, public meetings are often the only opportunity for Native Hawaiians to identify and assert their constitutionally-protected traditional and customary rights during government decisionmaking.** However, as with previous drafts of these rules, the current draft would allow a single individual "designee" – **who would not be subject to the public meeting requirements under the state sunshine law** – the authority to make decisions concerning: fees for access, permits, parking, entrance, etc.; the issuance or denial of written permits for group activities, public assemblies, research activities, hiking on cinder cones, and commercial activities, among other permits; the closure of or limitation of access to all or portions of the Maunakea lands; and various other administrative actions.⁵ Notably, such an individual "designee" also may not be as accountable to the public in the same manner as Governor-appointed and Senate-

⁵ OHA appreciates that the rules do provide for some of these decisions to be made by the "board" or the "University," which is "governed by the board"; however, the rules at the outset states that "the board delegates its authority to administer this chapter to the president, who may further delegate that authority to a designee." Proposed HAR §§ 20-26-2, -8. Likewise, while certain decisions appear to be specifically assigned to the "president," the "president" as defined in these rules means "the president of the university, or the president's designee." Proposed HAR § 20-26-2 (emphasis added).

confirmed board or commission members, and the rules lack clear processes for challenging the scope and basis of many of this individual's decisions.

OHA does acknowledge that not all decisions may require the same level of transparency or scrutiny; OHA further acknowledges the potential need for expedited decisionmaking in order to address bona fide public safety or resource protection issues, such as inclement weather or the discovery of a sensitive cultural site in a high-traffic public area. **However, OHA believes that there may be ways to balance the need for expeditious decisionmaking under exigent circumstances, and the need for public transparency and accountability in decisions that may significantly impact the ability of Native Hawaiians to exercise their traditional and customary rights.**⁶ Although OHA has consistently raised this concern since 2011, including and when we met with OMKM staff and the MKMB Chair earlier this year, no specific amendments to the rules were made to identify when more intense uses and activities should be made openly and transparently, with an opportunity for public scrutiny. Accordingly, OHA urges the Board to recommend further opportunity for dialogue between OMKM, KKM, OHA, cultural practitioners, and other stakeholders, as appropriate, to ensure that these rules draft provide for an appropriate level of transparency and accountability in the stewardship of Maunakea.

- B. Consultation with Kahu Kū Mauna, the Office of Hawaiian Affairs, and/or cultural practitioners and lineal descendants, as appropriate, should be required for all actions and activities that may adversely impact Native Hawaiian traditional and customary practices.

On a similar note, OHA strongly urges the Board to require that these draft rules provide much clearer cultural consultation requirements, consistent with the CMP as well as the need to ensure that decisionmaking does not unduly infringe on Native Hawaiian traditional and customary practices, or impact important culturally significant resources and sites. OHA does acknowledge the draft rules' suggestion that the "president's designee may seek the advice of the Maunakea management board and the KKM pursuant to the comprehensive management plan and consistent with the timelines and procedures of this chapter," and that OMKM may, "after consulting with Kahu Kū Mauna," restore sites impacted by "customary and traditional rights" activities.⁷ However, despite KKM's explicit role as a Native Hawaiian cultural advisory body for the MKMB, OMKM, and the UH Chancellor, neither of these permissive regulatory references would require any actual consultation with KKM. Moreover, the draft rules provide no other mention or role for Kahu Kū Mauna, other than to advise that cultural practitioners consult with them. **Given the broad range of decisions and activities contemplated by these draft rules that may**

⁶ One possible example, which OHA provided in its 2011 letter and reiterated in 2018 consultation meetings, might be found in the conservation district rules, where some uses and activities may be unilaterally granted by the Chairperson, and other more intensive uses and activities must be approved by the Board of Land and Natural Resources, with additional attendant requirements such as a management plan.

⁷ Proposed HAR § 20-26-3(e) (emphasis added); -21(b).

impact cultural resources and practices on Maunakea – including area closures, the designation of snow play areas, the issuance of group and commercial permits, etc. – OHA strongly believes that these rules should provide a much clearer, mandatory, and broader advisory role for the official Native Hawaiian advisory council for the management of Maunakea.

OHA further notes that the CMP and its underlying cultural resource protection plan contain numerous “actions” and other provisions requiring OMKM and KKM to “work with families with lineal and historical connections to Maunakea, kūpuna, cultural practitioners, the Office of Hawaiian Affairs and other Native Hawaiian groups . . . toward the development of appropriate procedures and protocols regarding cultural issues.” However, again, the lack of consultation requirements for KKM on a number of decisions relevant to cultural practices and protocols for Maunakea preclude any such consultation.

Accordingly, OHA again urges the Board to provide further opportunity for dialogue on and refinement of these administrative rules, to ensure that an appropriate level of cultural consultation is conducted in relevant decisionmaking actions, as envisioned and long-promised by the CMP.

C. CMP actions requiring rulemaking should be included and implemented in the draft rules.

OHA further urges the Board to ensure that these rules reflect the management actions envisioned in the CMP, that may be critical to protecting Native Hawaiian rights and cultural resources, and that would appear to require rulemaking to be properly implemented. For example, FLU-2 (designating land use zones to restrict future land uses in the Astronomy Precinct, based on cultural and natural resource inventories); CR-7 (cultural education requirements for construction staff, UH staff, and researchers); ACT-2 (parking and visitor traffic plan); and CR-6 (guidelines for the visitation and use of ancient shrines), among others, would all appear to require rulemaking to be enforceable and fully implemented. Other actions, such as EO-7 (developing a systematic input process for stakeholders) and NR-13 (establishing a collaborative working group for management and resource protection), among others, could also be implemented and institutionalized via rulemaking. However, these and other CMP action items that, if implemented, would serve to protect cultural practices, resource, and sites, do not appear to be reflected in the administrative rules.

OHA appreciates OMKM’s assertion that some of these action items may be implemented via “policies” adopted by OMKM or the Board; however, there is no guarantee that such policies will in fact be established, much less in an appropriate and accountable way. For example, a number of these actions have been pending for years, well beyond their anticipated timeline of completion; the need for rulemaking itself was specifically cited as the reason for the delay in implementing certain actions (such as CR-6, “Develop and adopt guidelines for the visitation and use of ancient shrines”). **The decade-long failure to adopt “policies” to implement these outstanding actions, which would appear to otherwise require rulemaking, raises significant doubt as to whether**

such policies will actually be adopted in a timely manner outside of the rulemaking context. In another example, despite the CMP's aforementioned requirement that OHA, 'ohana with lineal ties, and cultural practitioners be specifically consulted on specific actions including CR-5 (the adoption of guidelines for the placement of cultural offerings), CR-7 (the appropriateness of new cultural features), and CR-9 (the appropriateness of new cultural features), policies to "implement" these actions were recently recommended for approval by OMKM, without any meaningful consultation with OHA or a known family of cultural practitioners that specifically requested consultation.⁸ Such a recommendation brings into question whether future "policies" that are in fact adopted to implement the CMP, will be done so in an appropriate way consistent with the CMP's own requirements.

OHA notes that even if referenced or generally contemplated in the current rules draft, specific policies and plans adopted outside of the formal rulemaking process may also not be enforceable, as illustrated in numerous court decisions relating to HRS Chapter 91.

Accordingly, OHA again urges the Board to provide further opportunity, prior to the commencement of the formal rulemaking process, for consultation and dialogue on these administrative rules, to ensure that they fulfill their critical management functions in protecting Native Hawaiian rights and their underlying cultural resources and sites on Maunakea.

- D. Reliable and transparent resource-generating mechanisms, including observatory sublease provisions, are necessary to minimize impacts to Native Hawaiian traditional and customary rights resulting from permitted, unregulated, and otherwise allowed activities

Finally, and most critically, OHA reiterates its long-standing assertion that any administrative rules for Maunakea provide clear assurances that future observatory subleases will generate sufficient and reliable revenue and other support for the appropriate management of Maunakea, including through the full implementation of the CMP.

OHA notes that a number of activities which may be permitted, unregulated, or otherwise allowed under these rules have the potential to significantly undermine Native Hawaiian traditional and customary practices and beliefs associated with Maunakea, thereby impacting Native Hawaiians' ability to exercise their traditional and customary rights. For example, access to and the availability of specific resources and sites may be hampered or foreclosed by commercial tours, research activities (including observatory development and operation), public use, and even the actions of untrained government

⁸ OHA did attend a May 2016 outreach meeting regarding these actions along with numerous other stakeholders, where the overwhelming sentiment was to conduct further public outreach; however, the only subsequent outreach events were a series of general notices stating that "OMKM would like to invite you to talk story about Maunakea," with no indication of what, specifically, OMKM was inviting the public to "talk story" about. OHA does not consider this to represent meaningful and directed consultation with OHA, cultural practitioners, or lineal descendants, much less members of the general public.

staff and contractors. In addition, “Culture and nature are from an anthropological perspective intertwined and from a Native Hawaiian point of view inseparable . . . one cannot even begin to try and understand the meaning and significance of the cultural resources . . . without considering the relationship between people and the high altitude environment”;⁹ therefore, the impacts of permitted and allowed activities on Maunakea’s environmental integrity as a whole, may fundamentally burden or preclude the meaningful exercise of Native Hawaiian cultural practices in an otherwise sacred region.

In light of this understanding, OHA does believe that full implementation of the CMP, including its various subplans, may mitigate the potential for impacts to Native Hawaiian rights. However, absent stronger capacity-building assurances in the rules, there is no identifiable source of funds or other resources necessary for the CMP to be fully and consistently implemented. OHA notes that the proposed rules do authorize fees for permits, parking, and entrance; however, even the most lucrative commercial tour permits have historically generated only half a million dollars a year on average, just a fraction of UH’s current costs of administering Maunakea.¹⁰ Numerous CMP action items yet to be implemented – including greater enforcement coverage, the development and implementation of educational and cultural training curricula, the development and implementation of a parking and visitor traffic plan, the scoping of additional facilities such as restrooms and a vehicle wash station, the ongoing collection and maintenance of cultural information and practices, and many others – will likely require a much higher level of resources than in previous years. Again, without mechanisms to ensure a sufficient level of resource generation to meaningfully implement the CMP, permitted and other activities will have a high likelihood of harming Native Hawaiian traditional and customary rights.

In this regard, OHA notes that the one activity with consistently sufficient budgetary resources, which has and will likely continue to reap the most direct and unique benefits of Maunakea’s lands, and which has also served as the primary source of long-standing protests by Native Hawaiian cultural practitioners and environmental groups alike, is observatory development and operation on Maunakea’s summit. OHA therefore urges the incorporation of express, regulatory guidance relating to the subleasing of Maunakea lands, which can provide formal assurances that observatory activities provide fair compensation sufficient to implement the CMP, and mitigate future impacts to Native Hawaiian rights that will otherwise result from these rules.

OHA does understand that the scientific study of celestial phenomena has incredible academic and, perhaps more importantly, philosophical value, with the potential to unify humanity across national, religious, ethnic, and political barriers in the common pursuit of understanding our universe, and our very existence as a human race. As in many other cultures, Native Hawaiian traditions also involved the extensive study of

⁹ CULTURAL RESOURCES SUB-PLAN at 2-1.

¹⁰ OFFICE OF THE AUDITOR, FOLLOW-UP AUDIT OF THE MANAGEMENT OF MAUNA KEA AND THE MAUNA KEA SCIENCE RESERVE: A REPORT TO THE GOVERNOR AND THE LEGISLATURE OF THE STATE OF HAWAI’I 2 (2014) (hereinafter “2014 AUDIT”).

the night sky, using stars, planets, and the moon to predict weather conditions, guide harvesting and farming practices, foretell events, and navigate across vast expanses of ocean. Accordingly, OHA has never opposed astronomical endeavors in and of themselves. **However, the unifying, cross-cultural value of astronomy may be severely undermined, and its philosophical call for unity and mutual compassion for our shared humanity completely subverted, if it advances only at the direct and unaddressed expense of a particular cultural group, who maintain sincere and reasonable concerns relating to environmental resources and spiritual spaces considered to be both culturally sacred, and marred by historically unjust acquisition.**

Accordingly, ensuring that extremely well-funded astronomical endeavors on Maunakea help to address their cultural and environmental impacts would not only mitigate concerns relating to Native Hawaiian rights, but also reinforce the philosophical and humanitarian foundation of astronomy on Maunakea. Unfortunately, as illustrated by the Protect Maunakea Movement, decades-long neglect of environmental and cultural concerns in favor of observatory development have eroded away many Native Hawaiians' ability to trust in less formal assurances. Therefore, clear regulatory mechanisms to this effect should provide as much public transparency and accountability as feasible.

In light of the above, OHA strongly recommends that the Board, prior to approving any public rulemaking hearings, require that these administrative rules include specific provisions to ensure that any and all future observatory subleases, as public and/or commercial land uses, provide an appropriate, consistent, and sufficient level of financial and other support for the stewardship of Maunakea and its natural and cultural resources. Insofar as such sublease provisions may prove critical to the protection of Native Hawaiian traditional and customary rights in Maunakea, OHA stands ready to provide the consultation required under the Board's statutory rulemaking authority.

Mahalo nui for the opportunity to comment on this matter. For any questions or concerns, please contact Jocelyn Doane, Public Policy Manager, at 594-1908 or via e-mail at jocelynd@oha.org.



[Testimony] Parking

Cody Dunham <cdunham@hawaii.edu>
To: bor@hawaii.edu

Wed, Oct 17, 2018 at 4:38 PM

Dear Board of Regents,

I am emailing in regards to the parking rate increase proposal. It is unfair to implement these increases on our student body and faculty members. Parking on campus is already difficult as is and students constantly have trouble finding parking off campus. With this increase it makes not only getting to school much order but attending school much more difficult as well. It's another burden that students must endure. Please do not increase parking.

Sincerely,

Cody Dunham



UNIVERSITY
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Board of Regents <bor@hawaii.edu>

Vote for proposal

Glaidel Calamayan <glaidely@hawaii.edu>
To: BOR@hawaii.edu

Wed, Oct 17, 2018 at 11:22 AM

NO

Sent from my iPhone



Increase Parking Rate

1 message

Clinton Ng <clng@hawaii.edu>
To: BOR <bor@hawaii.edu>

Thu, Oct 18, 2018 at 7:14 AM

Aloha Board of Regents,

My name is Clinton Ng and I'm one of many students who attend UH Manoa. Today I would like to ask you to please vote NO for the proposal regarding the increase of parking rate. I'm open to increasing the parking rate and support the idea of increasing the parking rate. However, after looking over the current proposal, I do not support the proposal. I would like them to increase the amount of parking space or figure out a way to reduce the demand for parking spaces but at the same time not preventing students who need one from getting one. I understand you can not make everyone happy or provide spaces for everyone but the current situation is shameful, a lot of students who need one are unable to obtain one. Increasing the rate just for maintenance does not seem justified, increasing due to construction of a new parking structure or expanding the current structures is justified. Hawaii cost of living is already extremely high, and a lot of the times I have to choose between eating or paying for the daily parking rate, I'm unable to obtain a parking pass due to the demand. I also know a lot of students who are in the same situation as me. In the proposal, it states that they are planning to offer more upper campus parking but after looking at their plans, it seems like they also want to reduce the amount of upper campus space, too. So I think this is slightly misleading. Finally, I would like to mention that a lot of my friends cited the parking situation as being a reason why they choose not to attend UHM or transfer out of UHM.

Thank you for your time and consideration.

Best of Wishes,

Clinton Ng

B.S. Electrical Engineering Candidate



Increased Parking Rates

1 message

Aprille Tang <aprille7@hawaii.edu>
To: "bor@hawaii.edu" <bor@hawaii.edu>

Thu, Oct 18, 2018 at 7:40 AM

Vote No on the proposal to increase parking rates



Parking Proposal

1 message

Connie Lu <connielu@hawaii.edu>
To: BOR@hawaii.edu

Thu, Oct 18, 2018 at 7:47 AM

I vote NO for the parking proposal.



Parking Rate Proposals

1 message

Bobsause <bobster.808@gmail.com>
To: "bor@hawaii.edu" <bor@hawaii.edu>

Thu, Oct 18, 2018 at 9:00 AM

Aloha,

I'm reaching out to you to voice my opinion on the matter of parking rate increases.

It seems as though that UH manoa wants to undergo renevation of its campus, specifically its parking structures. I see no direct correlation to why this is relevant for students, especially one's who don't even use the parking structures.

If they go through with the proposal, at least find some beneficial improvements to overall better the UH manoa campus for new commers and students (instead of the few that use the parking structures) who have 4+ year plans. Maybe concerning more parking for mopeds and automobiles alike? Just food for thought.

Thank you for hearing me out,

Robert



Testimony on item VB3 on 10.18.18 agenda


Shelley Muneoka <shelleymuneoka@gmail.com>
To: bor@hawaii.edu

Thu, Oct 18, 2018 at 10:15 AM

Aloha,

Please see my attached testimony in opposition to item VB3 on the 10.18.18 agenda regarding OMKM drafting another iteration of management rules for Mauna Kea.

Mahalo,
Shelley

 **10.18.18 bor mtg.docx**
19K

Aloha mai kākou,

My name is Shelley Muneoka and I wanted to testify today to ask the Board of Regents to reject the OMKM proposal for their office to prepare a new draft of proposed rules for the management of Mauna Kea. OMKM is claiming to have incorporated the feedback presented in written and oral testimony, yet I do not find their summary to be complete or accurate. One important omission is nothing about closing Mauna Kea to nighttime access. The most glaring omission are the challenges posed over and over to the University's authority to govern and so-call 'manage' Mauna Kea. Jurisdictional questions were raised regarding the lack of clear title the state and therefore the UH has on the Mauna as well as more basic questions of kuleana. Even if OMKM does not agree with the validity of such questions, it should at least be reflected in the summary provided to the board. I heard this in many of the comments offered at the O'ahu meeting which I attended in person, as well as at the Maui and Hilo meetings as well, which I watched video footage of. This omission calls into question the sincerity of this document.

These instead are the areas OMKM said the testimony focused on:

§20-26-21 Traditional and customary practices

§20-26-24 Preservation of scientific and educational resources

§20-26-29 Vehicles and transportation

§20-26-34 Audio devices and noise

§20-26-63 Permits for public assemblies and meetings

§20-26-73 Violations, penalties, costs, administrative fines, sanctions, and collection

Various Relating to the delegation of rules implementation by the President to a designee

While I agree that these are some of the main points the public raised, the contemplated revision 1) offers no assurance that public concerns will actually be addressed and 2) doesn't even go far enough in its contemplation. I will go through specific points and explain how OMKM's proposed contemplation revision does not address the questions and concerns raised by the public.

§20-26-21 Traditional and customary practices. It says that practitioners are encouraged, but not required to obtain permits for activities that have minimal to no impacts on resources. It goes on to say that the University will make a determination on whether or not there were impacts – and the gap in understanding there, between the practitioner and the university could be \$2,500. Or later \$5,000 and \$10,000. With penalties that steep, I think the permits are more than 'encouraged'. The main problem here is that UH will retain the authority to determine what is and isn't impact to the resource which is not addressed in OMKM's contemplated response. Also, the language of 'traditional and customary' -- where does this leave new ahū, which is our prerogative to build when and where we see fit to do so. OMKM's offered response is to "clarify focus on the resource and public safety instead of the nature of the activity". So people are questioning UH's authority to make a determination on impact and their response is that they will make that determination – this clearly doesn't address the concern. It is absurd to ask Hawaiians and the public to follow rules to prevent impacts to cultural resources when the University itself has run its astronomy program to the direct detriment of the cultural and natural resources through the leveling of pu'u, destruction of wekiu habitat, and the domination of the wao akua with telescopes. As the 2005 EIS for the NASA Outrigger telescopes found, the existing 13 telescopes have had a cumulative impact that is "substantial, adverse and significant." OMKM's proposal says that if it is determined that negative impact has been had on resources that the site may be restored to its condition prior to the activity. Let's

translate this – this rule attempts to justify bulldozing newly constructed ahu as a ‘remedy’, yet there is no remedy to bulldozing the tops of our pu‘u.

§20-26-24 Preservation of scientific and educational resources: A concession was made, allowing phones in airplane mode above a certain altitude, though it is unclear how that would be enforced. It’s however still not adequate. If someone is traveling with a phone in airplane mode and pass out say from exhaustion/altitude sickness and did not have the chance to turn the phone back on, apps like Apple’s “Find my iPhone” will not work. The main concern with this is public safety – which ironically the rules purport to promote. Similarly, the concern over safety in banning artificial illumination is also not addressed. OMKM offers more specificity around artificial illumination, but the concern was not that the rule was unclear, the concern was for public safety in exchange for telescope operation.

§20-26-34 Audio devices and noise: The original language in the draft rule explicitly prohibits sounds made “vocally”. A critique raised is about the banning of singing and chanting – OMKM concedes to allow musical instruments (originally prohibited as well) but does not address the “vocal” sounds. More importantly, it ignores the fact that the telescopes themselves have destroyed the natural peace and silence of the wao akua. Will this rule be applied to heavy equipment at the TMT site if ever they move forward with construction? This is the kind of double standard that needs to end. You can’t both make the case for the necessity of these rules and then make exceptions exclusively for telescope operation and development.

§20-26-63 Permits for public assemblies and meetings and §20-26-73 Violations, penalties, costs, administrative fines, sanctions, and collection: In both of these sections OMKM offers to make their proposed rules similar to those of other agencies. But that’s not the concern raised. The people said, “the fines are too high” not, “the fine schedule is inconsistent with that of other agencies.”

The last section that deals with the president and their designee’s ability to issue permits and other broad management decisionmaking power is wholly inadequate. People offered substantive comments about how the very premise of this scheme is problematic, but instead of addressing the premise OMKM offers to provide more clarity.

How are we supposed to feel confident that OMKM will create a draft that incorporates the concerns and questions from kānaka maoli and the general public? Their submittal to this board typifies the deficiency of this current rulemaking process. The University already has a bad track record of poor management of Mauna Kea and yet insist that they are best suited to manage. Now we’ve seen their draft and we can see that their focus is to keep kānaka and the public out for their own self-interest, not the interest of the mauna. This proposal echoes the 1998 State Auditor’s report: “We found the University of Hawai‘i’s management of the Mana Kea Science Reserve is inadequate to ensure the protection of natural resources. The university focused primarily on the development of Mauna Kea and tied the benefits gained to its research program.” I’ve been criticized for bringing up this old audit, but I will continue to do so until something substantive changes. I don’t see much in the first draft, or in the proposed amendments moving forward that deviates from this scheme. Just look at the section on TCP vs the section on scientific resources – the first are about restrictions on tcp, while the latter is on protections for those resources. This sums up the orientation of OMKM. These rules should be in protection of Mauna Kea, not in protection of telescope operation – if not, perhaps we should re-name OMKM to the Office of Science Reserve Management. The current draft should be scrapped and a broadbased community led process should be held. It is not enough to have OMKM draft rules and have us comment on it. We should be allowed to participate in the actual drafting of the rules. May I suggest starting first with rules to regulate commercial activities? I think there is common ground there that we could build on. Until the question of the authority of the UH to manage Mauna Kea, we will continue to resist any attempts to regulate the movements of kānaka maoli on the mauna. Mahalo.

BEFORE THE UNIVERSITY OF HAWAI'I (UH) BOARD OF REGENTS

October 18, 2018

Proposed Administrative Rules
Agenda Item V. B3

Aloha Chair Putnam, Vice Chair Portnoy, and Members of the UH Board of the Regents,

The Ka Lāhui Hawaii Political Action Committee (KPAC) opposes any proposed Administrative Rules for Mauna Kea for the following reasons.

1. There is a lawsuit currently pending before the State's Supreme Court, involving the many issues and legal questions regarding the University of Hawai'i's JURISDICTION to make and approve rules governing Kanaka Maoli and the General Public. The University should wait until the legal questions including questions regarding the jurisdiction, current leases and other agreements between the state's BLNR, University of Hawai'i and the other International governments have been resolved.
2. Mauna Kea is comprised of Public and Hawaiian Kingdom Crown and Government lands aka "Ceded Lands", its summits are sacred to Kanaka Maoli and its resources, sacred sites, and overall environment is important to the well-being of the Kanaka Maoli people. The Kanaka Maoli people never relinquished rights to and sovereignty over these lands as such the University of Hawai'i has no jurisdiction to manage how and when Kanaka Maoli exercise customary and traditional rights to access the Mauna Kea summits for subsistence, religious and cultural purposes. The University is an Educational institution not a land manager that only has a sublease of the Mauna Kea summits.
3. There been an absence and lack of meaningful consultation with the Kanaka Maoli community and the Office of Hawaiian Affairs (OHA) whose concerns and issues were and continue to be ignored (Consultation with OHA is a requirement per Act 132) in the drafting of these proposed Administrative Rules.
4. The proposed Administrative Rules are unconstitutional -they undermine the State's constitutional obligation to protect the public trust, natural resources, environmental rights as well as Kanaka Maoli customary and traditional rights (Hawaii State Constitution Article XI, Sections 1 & 9 and Article XII, Sections 4 & 7). For example, the proposed Administrative Rules would allow an individual to grant permits that would not be subject to the public meeting requirements (under the state sunshine law) and to make decisions concerning access fees, parking, research activities, public assemblies, commercial activities, and closures, etc. without having to be accountable to the public and consult with the Kanaka Maoli people. These issues are still not addressed by the token proposed changes to the rules that is being recommended and are on the table these issues are still addressed.
5. There were over 500 testimonies submitted in regards to these proposed administrative Rules for Mauna Kea with approximately 90% of them in opposition to the proposed Rules and the majority of them in in opposition to the process of proposing rules citing no Jurisdiction.
6. Problems with the UH process to promulgate Administrative Rules, unresolved questions over UH Jurisdiction over Mauna Kea summits, and the unconstitutionality of the proposed rules will only result in

future legal litigation and/or contested cases.

Please don't continue on with this falsehood that the UH actually has the authority to propose Administrative Rules over thousands of acres of Kanaka Maoli lands that is zoned as Conservation. This should not be about keeping investors in the TMT interested it should be about doing what is pono for the 'aina, the people and our most sacred Mauna.

Respectfully submitted,

M. Healani Sonoda-Pale
Chair, KPAC



Board Of Regents Meeting 10/18/2018

Rocky I <ahicatcher@hotmail.com>
To: "bor@hawaii.edu" <bor@hawaii.edu>

Thu, Oct 18, 2018 at 11:40 AM

I am Rocky Kalanikau Ishibashi, I am a Kanaka Maoli and a protected person as is stated in the Geneva and Hague Conventions. The USA agreed to both The Hague and Geneva Conventions, and to which they have violated in 1893. Mauna Kea is SACRED. This is ABSOLUTE!!!!!! Nothing the western world's Fake State of Hawaii, USA, UH, or OMKM can say or do that can change the fact that Mauna Kea is SACRED.

The first time I heard of the Geneva Conventions was when Hitler was killing Jews. The US was fast to criminalize Hitler's war crimes but not stop committing their own major war crimes against the Kingdom of Hawaii. There is no difference; a war crime is a war crime whether it is committed by Germany or the United States of America, State of Hawaii, UH, or OMKM. After massive fact finding that proves the USA committed a terrorist act when it overthrew the independent sovereign Kingdom of Hawai`i in 1893. The facts prove war crimes have been and continue to be committed against the Kingdom of Hawai`i. After informing the United Nations of the USA war crimes and United Nations are in the process of correcting the terrorist act.

The huli/change has already begun giving back control of Kingdom to the Kanaka Maoli. How? Remember in 2015 when the terrorist fake state Supreme Court ruled against the fake states plan to build TMT? In the past projects like TMT were shoved down kanaka throats, however with social media this stopped the terrorist State of Hawaii. This is when the huli started.

After almost 3 years TMT will have more issues as Big Island County Council Women Jennifer Ruggles has asked the county if she is protected from war crimes. County Legal Council Kamelamela stated that she was protected from war crimes. However, the county, state and USA are the wrong persons to ask because war crimes will be decided by the Kingdom of Hawai`i. So whoever votes to allow TMT to be built on sacred Mauna a Wakea will have committed a war crime against the Kingdom of Hawai`i and their name will be put on the "WAR CRIMES LIST". Please make sure you all know this fact and vote accordingly.

Sent from [Mail](#) for Windows 10



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Board of Regents <bor@hawaii.edu>

Increase in Parking

Sherimae Murro <sdmurro@hawaii.edu>
To: "bor@hawaii.edu" <bor@hawaii.edu>

Thu, Oct 18, 2018 at 12:41 PM

No to increase in parking. Thank u