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STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
WATER AND LAND

Wednesday February 1, 2023
1:00 p.m.

State Capitol, Conference Room 229 & Videoconference

In consideration of
SENATE BILL 81
RELATING TO NATURAL RESOURCE MANAGEMENT

Senate Bill 81 proposes to clarify that the Board of Land and Natural Resources' retains authority over the Conservation District lands, pursuant to Hawai'i Revised Statutes (HRS) 183C, until those duties and powers are transferred to the Mauna Kea Stewardship and Oversight Authority after five (5) years for all lands designated under the State Land Use Conservation District. **The Department of Land and Natural Resources (Department) supports the bill.**

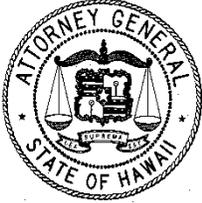
Act 255, Session Laws of Hawai'i (Act 255) established the Mauna Kea Stewardship and Oversight Authority, vesting it with powers and duties previously held by the Board of Land and Natural Resources pursuant to Chapter 171, and the Land Use Commission pursuant to Chapter 205.

The Department is concerned that Act 255 appears to remove Mauna Kea lands from the State Land Use Conservation District. The Department feels it is critical that Conservation District protections will remain in place. By clarifying that the Board of Land and Natural Resources will retain powers and jurisdiction over areas designated under the State Land Use Conservation District pursuant to HRS Chapter 183C, Senate Bill 81 will ensure that conservation district, wildlife, and historic preservation protections remain in place during the transition period. It will also ensure that a permitting process is in place for any proposed land uses, and that enforcement powers remain in place for any violation of conservation district rules.

This clarification is necessary to ensure timely and efficient processing of decommissioning plans for the former Hoku Kea Observatory, and several other observatories that the University of Hawai'i has

identified for decommissioning. The Department also anticipates receiving applications for improvements at the Hale Pōhaku midlevel facilities.

Thank you for the opportunity to comment on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 81, RELATING TO NATURAL RESOURCE MANAGEMENT.

BEFORE THE:

SENATE COMMITTEE ON WATER AND LAND

DATE: Wednesday, February 1, 2023 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Margaret A. Leong, Deputy Attorney General

Chair Inouye and Members of the Committee:

The Department of the Attorney General provides the following comments:

The purpose of this bill is to clarify the powers and duties of the Mauna Kea Stewardship and Oversight Authority (Authority), the Board of Land and Natural Resources (BLNR), and the Department of Land and Natural Resources (DLNR), for lands identified and defined as "Mauna Kea lands" pursuant to Act 255, Session Laws of Hawaii 2022, codified as chapter 195H, Hawaii Revised Statutes (HRS).

The bill amends section 195H-7(b) to add a clause at the end: "provided that the board of land and natural resources shall retain powers and jurisdiction over areas designated under the state conservation district pursuant to chapter 183C." See page 3, Lines 9-17. It is unclear whether this provision applies during the five-year transition period, after the completion of the transition, or both.

Pursuant to chapter 195H, HRS, all of the "Mauna Kea lands" that will be managed by the Authority are in the conservation district. As currently drafted, there are two plausible meanings to the clause "provided that the board of land and natural resources shall retain powers and jurisdiction over areas designated under the state conservation district pursuant to chapter 183C"—either (1) the BLNR would retain all of its power and jurisdiction of the land after the transition period, leaving the Authority with management responsibilities fairly similar to those borne by the current lessee, the University of Hawai'i; or (2) the BLNR would retain only its powers under chapter 183C,

HRS, i.e., the provisions specifically applicable to conservation districts, such as conservation district use permitting and enforcement.

If the first meaning is intended, and the reservation of jurisdiction to the BLNR is to apply during and after the transition period, we recommend amending section 1 of the bill to explicitly state the enumerated powers and duties to be reserved to the BLNR pursuant to chapter 183C, HRS, and amending section 183C-3, HRS, to codify the enumerated powers and duties to be reserved to the BLNR.

If a second reading is intended, we recommend amending subsection 195H-7(b), HRS, by amending the last sentence to read:

Notwithstanding any law to the contrary, all powers and duties of the board of land and natural resources pursuant to chapter 171, and the land use commission pursuant to chapter 205, concerning permits, dispositions, land use approvals, and any other approvals pertaining to the Mauna Kea lands, but not the powers and duties of the board of land and natural resources pursuant to chapter 183C, are transferred to the authority upon the expiration of the transition period.

The Department is happy to work with this Committee to amend the bill to best effectuate its intent.

Thank you for the opportunity to provide comments on this bill.

Testimony of John Komeiji, Interim Chairperson Mauna Kea Stewardship and Oversight Authority

**Before the Senate Committee on WATER AND LAND Wednesday February 1, 2023 1:00 p.m
State Capitol, Conference Room 229 & Videoconference**

In consideration of SENATE BILL 81 RELATING TO NATURAL RESOURCE MANAGEMENT

I am John Komeiji, interim chair of the Mauna Kea Stewardship and Oversight Authority (MKSOA).

The new authority was created by the legislature in 2022 to address the many and diverse public concerns regarding the use of Mauna Kea. While we appreciate the intent of SB 81, "Relating to Natural Resource Management," we believe it is premature at this time to enact this measure and respectfully request the legislature to allow the MKSOA to continue in its formation efforts. During the next legislative session, the MKSOA will be better positioned to present a comprehensive recommendation on matters that may require further clarification and/or changes.

Over past few months, the Authority has undertaken an information seeking effort to better understand the multiple issues of Mauna Kea. There is a lot to learn in the inter-relationships and dependencies between various aspects of the management of Mauna Kea. It is a very complex landscape that requires deep analysis and understanding in order to find an effective way forward.

While we concur with the general intent of SB 81 to seek clarity, this measure, if passed today, could result in unintended consequences such as impairing the autonomy and independent judgment and independence of the Authority. For example, would the BLNR have the ability to overrule the Authority's Management Plan, its financial plan or its framework for astronomy-related development?

For these reasons, the Authority requests that this matter be deferred until a comprehensive review can be conducted regarding the Authority and its relationship to other regulatory bodies.

Mahalo for allowing us the opportunity to provide input on this measure.