

RESOLUTION EXPLICITLY AUTHORIZING THE OFFICE OF HAWAIIAN AFFAIRS' ADMINISTRATION TO TAKE ACTION TO ADVOCATE FOR THE RIGHTS, SAFETY, AND WELL-BEING OF BENEFICIARIES ENGAGING IN PEACEFUL PROTEST OF THE DECADES-LONG MISMANAGEMENT OF MAUNAKEA, PERPETUATING NATIVE HAWAIIAN TRADITIONAL AND CUSTOMARY PRACTICES, AND EXERCISING THEIR RIGHTS TO FREEDOM OF SPEECH AND ASSEMBLY

WHEREAS, on November 7, 2017, the Office of Hawaiian Affairs (OHA) filed a lawsuit in First Circuit court against the State of Hawai'i and the University of Hawai'i (UH) for their longstanding and well-documented mismanagement of Maunakea, contrary to the public trust and the terms of UH's lease of these "ceded" and culturally sacred lands; and

WHEREAS, four state audits spanning twenty years have documented and criticized the state and UH's mismanagement of Maunakea; and

WHEREAS, the initial audit from 1998 concluded that "little was done" to protect the natural resources on Maunakea since the first telescope was constructed in 1968, and that UH did not allocate sufficient resources to protect Maunakea's natural and cultural resources because it focused primarily on astronomy development; and

WHEREAS, three follow-up state audits revealed that while some progress had been made, more needed to be done; and

WHEREAS, despite having been granted rulemaking authority by the state Legislature in 2009 to improve its management of Maunakea, and despite the 2014 audit's direct warning that "[u]ntil [UH] adopts administrative rules for its Maunakea lands, UH cannot fulfill its stewardship responsibilities," to this day UH has not promulgated a single administrative rule, and has repeatedly failed to draft rules that would adequately address critical management and cultural concerns expressed by OHA and Native Hawaiians for years, if not decades; and

WHEREAS, in a 2010 study, UH conceded that from a cumulative perspective, past, present and reasonably foreseeable future activities on Maunakea resulted and will result in substantial and adverse impacts to the Mauna's cultural, archaeological, historical, and natural resources and sites; and

WHEREAS, in 2015, the leadership of both the state and UH publicly admitted to their management failures, with Governor David Ige conceding that the state has "not done right by" and "failed" the mountain, and UH President David Lassner stating that UH "has not yet met all of [its] obligations to the mountain or the expectations of the community"; and

WHEREAS, in 2015, OHA entered in good faith into a mediated process with the state and UH to address these management shortcomings, which, after a two-year process, was ultimately unsuccessful; and

WHEREAS, OHA’s subsequent lawsuit asserts that as trustees of Maunakea, both the state and UH have breached their moral and legal obligations to appropriately manage Maunakea; and

WHEREAS, OHA’s lawsuit identifies numerous issues and failings that have contributed to the continued mismanagement of Maunakea by the state and UH, including the:

- Failure to budget and fund proper management of Maunakea;
 - Failure to prudently negotiate sublease terms – for example, by allowing the existing telescopes to pay a nominal rent of \$1, or not pay rent at all, despite their significant impacts and Maunakea’s overwhelming and longstanding management needs;
 - Failure to adequately implement the 2009 Comprehensive Management Plan, with 32 of the 54 management actions that specifically affect Native Hawaiians remaining incomplete;
 - Failure to create an environment respectful of Maunakea’s cultural landscape, including by not adequately protecting Native Hawaiian traditional and customary rights and practices on Maunakea;
 - Failure to manage access to Maunakea and activities on Maunakea, which has led to vehicular accidents, personal injuries and deaths, and hazardous material spills, among other incidents; and
 - Failure to manage observatory development and decommissioning;
- and

WHEREAS, OHA has continuously advocated for improved management of Maunakea before the Legislature, the UH Board of Regents, UH’s Office of Mauna Kea Management, and the state Board of Land and Natural Resources; and

WHEREAS, OHA finds that even after filing its 2017 lawsuit, the state and UH have failed to take meaningful steps to address their management failures, and inappropriate activities and public safety incidents have continued to occur, cultural structures have been destroyed, and implementation of critical comprehensive management plan action items have remained unperformed, all with little response, much less corrective action, by the state and UH; and

WHEREAS, on June 20, 2019, state and county law enforcement arrested a member of the Native Hawaiian community and dismantled cultural and religious structures on Maunakea, with no consultation with or warning to the Native Hawaiian community; and

WHEREAS, on July 10, 2019, Governor David Ige, UH President David Lassner, and Thirty Meter Telescope (TMT) International Observatory Board of Governors’ Chairman Henry Yang announced that construction for the TMT would begin on July 15; and

WHEREAS, on July 17, 2019, over 30 Native Hawaiians and others, including many kūpuna, some beacons of the Native Hawaiian community, were arrested for engaging in peaceful protest and civil disobedience on Maunakea; and

WHEREAS, on July 17, 2019, Governor David Ige issued an Emergency Proclamation that allowed the suspension of various laws for the purpose of calling into active service the Hawaii National Guard and ordering the Adjutant General of the Hawaii National Guard to activate Hawaii National Guard units; and

WHEREAS, in light of the ongoing neglect and mismanagement of Maunakea, and the continued and reaffirmed commitment of many Native Hawaiians and others to demonstrate until their ongoing concerns have been addressed, it is possible that confrontations and demonstrations may result in bodily harm and psychological trauma to OHA's beneficiaries and others at the hands of the state, UH, and law enforcement; and

WHEREAS, the OHA Board of Trustees expresses deep kaumaha over the arrest of Native Hawaiian kūpuna and others engaged in peaceful protest over the continual dismissal and rejection of Native Hawaiians' concerns over the mismanagement of Maunakea; and

WHEREAS, Native Hawaiians have endured injustices that have persisted, unaddressed, for over a century, manifested today in systemic inequities that permeate our criminal justice system, public education institutions, land use and planning decisions, natural and cultural resource management, state funding prioritization, and, notably, the management and administration of Maunakea as well as other sacred spaces; and

WHEREAS, Native Hawaiians have a well-established history of relying on their freedom of expression and assembly and on the use of civil disobedience to amplify their long-denied rights and voice their concerns in the face of social injustice, and systemic oppression; now, therefore,

BE IT RESOLVED, that the OHA Board of Trustees expressly authorizes the OHA Administration to advocate for the rights, safety, and well-being of OHA beneficiaries engaging in peaceful protests of the state's decades-long pattern of mismanagement of Maunakea, perpetuating their constitutionally protected Native Hawaiian traditional and customary practices, and exercising their constitutionally protected rights of freedom of speech and assembly, including but not limited to: the negotiation of rules of engagement; the establishment and maintenance of pu'uhonua or safe spaces; the observation and documentation of actions by law enforcement, government, university or community personnel; an assessment and provision of health, safety, and legal needs; and any other actions as may be reasonably necessary or appropriate; and

BE IT FURTHER RESOLVED, that the OHA Board of Trustees respectfully implores that the state take material steps to eliminate the clearly foreseeable and high potential for physical harm and psychological trauma to Native Hawaiians seeking to uphold their cultural and spiritual beliefs and to voice their opposition to the decades-long pattern of mismanagement of Maunakea, by 1) condemning and prohibiting any further government action to provoke or intimidate Native Hawaiian cultural practitioners and others seeking to protect Maunakea; 2) coordinating with relevant state and county agencies, UH officials, OHA representatives, and Native Hawaiian community members to meaningfully alleviate tensions; 3) prohibiting, unconditionally, the use of any and all unwarranted force against Native Hawaiians and others

engaged in peaceful protest on Maunakea; and 4) ensuring the safety of all who wish to exercise their cultural practices and right to peaceful expression and opposition; and

BE IT FURTHER RESOLVED, that the OHA Board of Trustees strongly opposes the use of unwarranted force, such as the use of Long Range Acoustic Devices, batons, tear gas, or any other action that may result in physical harm or psychological trauma, against Native Hawaiians engaged in peaceful protest on Maunakea and calls upon the Governor to rescind his Emergency Proclamation dated July 17, 2019; and

BE IT FURTHER RESOLVED, that certified copies of this Resolution be transmitted to the Governor of the State of Hawai‘i, the Attorney General of the State of Hawai‘i, the Chair of the state Board of Land and Natural Resources, the President of the University of Hawai‘i, and the Mayor of the County of Hawai‘i.

ADOPTED, this ___th day of ___ 2019, island of O‘ahu, State of Hawai‘i, by the Board of Trustees of the Office of Hawaiian Affairs in its regular meeting assembled.