A BILL FOR AN ACT

RELATING TO THE HABITAT CONSERVATION PRESERVE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

SECTION 1. The legislature finds that the mascot for the university of Hawaii, west Oahu campus, is the endangered short-eared owl, or pueo. Currently, there are only eleven pueo living on the island of Oahu. For centuries, the area where the Hunehune gulch and Kaloi gulch converge, through what is now the university of Hawaii, west Oahu campus, has been documented as a pueo habitat. A 2006 final environmental impact statement recommended that if any pueo are observed on the campus property at the university of Hawaii, west Oahu, a supplemental environmental impact statement should be ordered to assess any negative impacts to the pueo. The university of Hawaii, west Oahu, appears not to be compliance with the 2006 final environmental impact statement. In fact, in 2017, a certified ornithologist conducted a pueo count on Oahu, authorized by the division of forestry and wildlife of the department of land and natural resources, and recorded a confirmed sighting of a pueo flying over the university of Hawaii, west Oahu. This sighting
is considered a new finding, and therefore, it would require a
new supplemental environmental impact statement. The
legislature finds that the university of Hawaii, west Oahu's
apparent noncompliance with chapter 343, Hawaii Revised
Statutes, and the corresponding administrative rules,
necessitates legislative action to compel the development of a
habitat conservation preserve on the campus of the university of
Hawaii, west Oahu, in order to save the pueo in Honouliuli Ewa.

According to the October 2017 interim report to the twenty-
ninth legislature entitled "Interim Report Regarding the Pueo
Study Conducted by the Department of Land and Natural Resources
and the University of Hawaii at Manoa for the Period April 1,
2017 - August 1, 2017", a pueo has recently been detected at the
university of Hawaii, west Oahu campus. Additionally, according
to his east Kapolei master plan biological survey published on
September 17, 1996, Kenneth Nagata recommended the use of the
university of Hawaii, west Oahu campus, as a bird refuge due to
the sixteen different species of birds inhabiting the property.

While there are steps that can be taken to protect
endangered species without requiring the presence of an active
nest, no statute or administrative rule explicitly compels the
department of land and natural resources to take immediate
action on a parcel of land based solely on information that the
parcel is inhabited by an endangered species.

The legislature further finds that section 195D-21(a),
Hawaii Revised Statutes, allows the department of land and
natural resources to "enter into a planning process with any
landowner for the purpose of preparing and implementing a
habitat conservation plan". Establishing a habitat conservation
preserve at the university of Hawaii west Oahu campus would
eliminate the need for any supplemental environmental impact
statement and also satisfy current state law.

Accordingly, the purpose of this Act is to require the
university of Hawaii to establish a habitat conservation
preserve at its west Oahu campus. The legislature declares that
this Act is a matter of statewide concern.

SECTION 2. Chapter 304A, Hawaii Revised Statutes, is
amended by adding a new subpart to part IV to be appropriately
designated and to read as follows:

"§304A-A Definitions. As used in this subpart, unless the
context indicates otherwise:
"Chancellor" means the chancellor of the university of Hawaii, west Oahu campus.

"Department" means the department of land and natural resources.

"Makai parcel" means that five hundred acre parcel of land owned by the university and located to the south of the west Oahu campus.

"Mauka parcel" means that nine hundred ninety-one acre parcel of land owned by the university and located to the north of the west Oahu campus.

"Preserve" means the habitat conservation preserve.

"University" means the university of Hawaii.

§ 304A-B Habitat conservation preserve; establishment.

There is established within the university a habitat conservation preserve under the direction of the chancellor. The university shall partner with the department to establish the habitat conservation preserve; provided that the partnership shall include the development of a habitat conservation plan pursuant to section 195D-21, Hawaii Revised Statutes, and the hiring of a natural resources manager. The university alone
shall have the authority to determine the location of the
habitat conservation preserve.

§304A-C Siting and boundary. (a) Within the boundary set
forth in subsection (b), the university shall devote a
contiguous segment of land within the non-campus private
development lands of the university of Hawaii, west Oahu campus,
as a habitat conservation preserve.

(b) The boundary of the preserve shall be defined as
follows:

(1) The 1825 Hawaiian Malden trail to the north;
(2) The Kapolei golf course to the west;
(3) The Kualakai parkway to the east; and
(4) The department of Hawaiian home lands to the south.

§304A-D Prohibited acts within the preserve. The
following shall be prohibited in the preserve:

(1) Farming;
(2) Grading and grubbing;
(3) Defoliation of native grasses and other native flora;
(4) Spraying or soil drift; and
(5) Any other activities that the department's division of
forestry and wildlife deems counterproductive to the
proliferation of endangered or threatened avian and mammal species.

The university shall post signage within and throughout the preserve prohibiting the foregoing activities.

§304A-E Preservation of historic railway berms. The university shall keep all historic railway berms located in the preserve in the berms' original positions.

§304A-F Educational uses of the preserve. The university shall use the habitat conservation preserve lands as an outdoor classroom and to augment the curriculum of the university of Hawaii, west Oahu campus. The university shall also permit the preserve to be used for educational field trips.

§304A-G Chancellor's authority to permit access to preserve. The university shall authorize the chancellor to permit access to the preserve to all of the university's students, faculty, and instructors. The university shall also authorize the chancellor to permit access, on a case-by-case basis, to personnel from nature organizations and other universities.

§304A-H Department duties. The department shall provide the chancellor with the following:
(1) Oversight and enforcement of the protection of
endangered and threatened species within the preserve;
and

(2) Any materials that the department deems necessary to
delineate and identify the boundary of the preserve
and to protect the preserve and the endangered and
threatened species within the preserve.

§304A-I Unauthorized entry. Unauthorized entry into the
preserve shall be considered a criminal trespass onto state
lands pursuant to section 708-814.7. The department shall erect
and maintain signage throughout the preserve in accordance with
section 708-814.7(1)(a)(ii).

§304A-J Pre-existing development plans. (a) If any party
with title to or interest in any real property designated for
the use of the preserve pursuant to this subpart had final plans
authorized by the university to develop any portion of the
affected property prior to the effective date of this Act, the
university shall offer the affected party the same terms and
conditions comparable in financial standing to reestablish the
affected party’s development plans on the mauka parcel.
(b) If an affected party suffers a financial loss related to development plans for the affected property, as described in subsection (a), or has executed a contract for development within the affected property, the university may compensate the affected party with additional acreage of property located in the mauka parcel to lease at no additional cost; provided that the cost of the additional acreage offered shall not exceed the actual financial loss incurred by the affected party.

§304A-K Funding to maintain the preserve. The university shall fund any landscaping, maintenance, or pest control activities and any other resources and infrastructure necessary to maintain the preserve with the proceeds from the following:

(1) Any moneys collected from tenants leasing land located in the mauka parcel; and

(2) Any moneys collected from the rent from farming activities or other rental income permitted in the makai parcel.

§304A-L Inventory of endangered and threatened species; report; report to legislature. The biology department of the university of Hawaii, west Oahu campus, shall submit a report listing the inventory of endangered and threatened species that
exist in the preserve to the legislature no later than twenty
days prior to the convening of the regular session of 2020 and
every five years thereafter."

SECTION 3. (a) Until December 31, 2019, any deadline for
the adoption of administrative rules by the board of regents of
the university of Hawaii or the department to accommodate the
preserve shall be waived and extended to allow for time to
quantify the necessary appurtenances and other resources as the
department deems necessary and essential to the establishment of
the preserve.

(b) No later than December 31, 2019, the board of regents
of the university of Hawaii shall submit to the board of land
and natural resources a habitat conservation plan pursuant to
this Act.

(c) No later than December 31, 2019, the board of regents
of the university of Hawaii and the chairperson of the board of
land and natural resources shall jointly submit a report to the
legislature of its progress, findings, and recommendations,
including any proposed legislation, to address amendments to
administrative rules as may be necessary to sustain and manage
the preserve.
SECTION 4. The department of land and natural resources shall submit a report to the legislature of its estimated costs for the materials listed in section 304A-H(2), Hawaii Revised Statutes, in section 2 of this Act, no later than twenty days prior to the convening of the regular session of 2020.

SECTION 5. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. This Act shall take effect upon its approval, provided that the university of Hawaii shall begin the process of establishing a habitat conservation preserve no later than one hundred eighty days after the effective date of this Act.
Report Title:
Department of Land and Natural Resources; UH; West Oahu; Pueo; Endangered Species; Habitat Conservation Preserve

Description:
Requires the University of Hawaii to establish a habitat conservation preserve at its West Oahu campus.

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