

The Pacific Resource
PARTNERSHIP



Testimony of C. Mike Kido
External Affairs
The Pacific Resource Partnership

Committee on Water, Land, Ocean Resources & Hawaiian Affairs
Representative Ken Ito, Chair
Representative Jon Riki Karamatsu, Vice Chair

HB 3421
Monday, February 4, 2008
8:30am
Conference Room 312

Chair Ito and members of the Committee on Water, Land, Ocean Resource & Hawaiian Affairs:

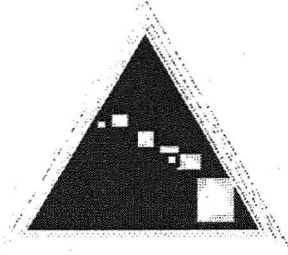
My name is C. Mike Kido, External Affairs of the Pacific Resource Partnership (PRP), a labor management organization representing the Hawaii Carpenters Union and more than 220 signatory contractors.

PRP wishes to express opposition to the proposed intent of this proposed legislation's attempt to condition that the development of DHHL's available lands for a revenue-generating project for the Hawaiian Homes Lands Trust be subject to compliance with County zoning, subdivision and other land use requirements.

PRP respectfully ask for your reassessment of the consequences of this proposed legislation on the future economic viability of the Hawaiian Homes Land Trust. Speaking from experience, given the challenges and competition among developers of land, PRP would ask that you also take those factors into consideration as you deliberate over this type of legislation.

Thank you for the opportunity to offer our viewpoint on this measure.

Sovereign Councils
of the



Hawaiian Homelands
Assembly

89-188 Farrington Highway
Wai'anae, Hawai'i 96792
Phone & Fax: (808) 668-0441

Kamaki Kanahele
Chair
O'ahu

Leah K. Pereira
Vice-Chair
Kaua'i

M. Kammy Purdy
Secretary
Moloka'i

M. Kanani Kapuniai
Treasurer
Hawai'i

G. Pikake Pelekai
Executive Director

February 3, 2008

To: **Representative Hermina Morita, Chair**
Representative Mele Carroll, Vice Chair & Members of the
Committee on Energy & Environmental Committee

From: **Kali Watson**
Chairman of Statewide Economic Development Committee
SCHHA
Honolulu, Hawaii 96792

Re: **Hearing on HB -Rel3421 Relating to Land Use (DHHL)**
February 4, 2008 at 8:30am
Conference Room 312, State Capitol

TESTIMONY IN OPPOSITION

Dear Chair Morita, Vice Chair Carroll and Members:

Thank you for the opportunity to provide testimony in opposition to HB 3421-Relating to Land Use on the Department of Hawaiian Home Lands. This bill requires the Department, including recipients of commercial leases, to go through the County rezoning, subdivision and other land use review processes under Chapter 171, Hawaii Revised Statutes. The SCHHA strongly opposes the imposition of such county and government control over these trust lands. To do so would eliminate and undermine the limited sovereign status of these lands set aside for the benefit of native Hawaiians.

The SCHHA, through its various homestead associations, is undertaking an aggressive effort to develop commercial, industrial, and community centers, along with low-income housing projects on Department lands throughout the state. In Nanakuli, the Homestead Community Association is already developing the Nanakuli Village Center. It has a 65 year lease from DHHL that allows a commercial center, the Agnes K. Cope Hawaiian Cultural Center, and the 48-unit low-income rental Hale Makana O Nanakuli housing Project. The Association has already received significant funding along with commitments from various tenants. This bill, which would require the Association to go through the rezoning process, would basically kill the project. I urge you to please defer this measure, HB 3421. We do not need additional government control placed on our native Hawaiian trust lands. The Department or the eventual sovereign successor does not need to be stripped of its ability to control the use of its trust lands. Your support is greatly appreciated.

Sincerely,

Kali Watson

Kali Watson

House of Representatives
Twenty-Fourth Legislature
Regular Session of 2008

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

Hearing
Monday, February 4, 2008
8:30 a.m., CR 312

Testimony by: Ralph C. Boyea, Legislative Advocate, Hawai'i County Council

Testimony in favor of HB 3421 RELATING TO LAND USE

Chairperson Ito, Vice Chairperson Karamatsu, and Honored Representatives,

On behalf of the Hawai'i County Council, I urge you to pass House Bill 3421. House Bill 3421 clarifies that land use laws apply to available Hawaiian home lands that are disposed of to the public and are not leased to native Hawaiians for homesteading purposes.

This Bill is part of the 2008 package for the Legislative Hawaiian Caucus. These proposed changes to Section 204 of the Hawaiian Homes Commission Act of 1920, would clearly establish that zoning and other land use requirements set forth by Hawai'i Revised Statutes, Chapter 171, would apply to Hawaiian home lands used for purposes other than homesteading purposes. This change would protect homesteaders for the potential adverse impact of commercial and industrial developments in their neighborhoods; it would help to insure that those homesteaders benefit from appropriate infrastructure associated with such developments; and, it would benefit all residents of the State of Hawai'i by providing for consistent, planned usage of all lands.

We request your support of HB 3421.

From: annalia [mailto:annalia@hawaii.rr.com]
Sent: Friday, February 01, 2008 9:20 PM
To: WLHtestimony
Subject: Testimony

Annalia Russell, Ph.D.
COMMITTEE ON WATER LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS
Monday, February 4, 2008
8:30 a.m.
HG3421

Please support HB3421.

While tens of thousands of beneficiaries wait for

leases, the Department of Hawaiian Homelands has been abusing the process and giving leases to corporations and non-beneficiaries. This process has become very appealing to large companies because they have inaccurately been lead to believe that Hawaiian Homelands

is an opportunity to avoid the county regulations with which they would have to comply if they were on non-Hawaiian property. This unfair and illegal abuse by the current administration must stop. Please clarify the law and make the Department

follow the law, like everyone else. This will help refocus the department for what it was intended, the beneficiaries, not developers and campaign contributors.
Sincerely,

/s/ Annalia Russell

--

In true Aloha, Annalia, Ph.D., D.D.

<http://www.ACenter4WellBeing.com>

808-822-2686, off Kaua'i 866-822-WELL

Theta Healing, Go to the Cause and Heal - Physical, Emotional, Mental

Young Living 100% Pure, non-toxic
Personal Care, Nutritional Products & Essential Oils
<https://www.youngliving.org/148886>

<http://www.oil-testimonials.com/viewUser.php?uID=17b9>

Quantum Touch - Quantifying Life Force Healing

From: feeblereif@aol.com [mailto:feeblereif@aol.com]
Sent: Sunday, February 03, 2008 10:31 PM
To: WLHtestimony; "<WLHtestimony@Capitol.hawaii.gov <WLHtestimony">@Capitol.hawaii.gov
Subject: HB 3421

Lori Edgar
7018 Hawaii Kai Drive
Honolulu, HI 96825

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

Monday, February 4, 2008

8:30 a.m.

HB 3421

Please support HB3421.

It is unfair to everyone in the community that while everyone other business has to comply with zoning regulations, the DHHL does not.

We make rules and regulations to mitigate the impacts of development on the community and to get big business to pay their fair share.

If they are offered some kind of immunity from this, of course corporate America is going to jump on it. Their impacts become our community

burden, including the beneficiaries.

PLEASE SUPPORT HB3421

Mahalo,

Lori Edgar

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS
Monday, February 4, 2008
8:30 a.m.

HB 3421

Dear Sir or Madam:

Please support HB3421.

The Department of Hawaiian Homelands (DHHL) has been giving leases to corporations and non-beneficiaries to increase revenues to support the Department of Hawaiian homelands goals of getting more native Hawaiians onto the land. This process has become very appealing to large companies because they have inaccurately been lead to believe that Hawaiian Homelands is an opportunity to avoid the county regulations with which they would have to comply if they were on non-Hawaiian property. This is improper use of our lands and carries the possibility of long term negative effects on our environment and community. Please clarify the law and make the make private developers and corporations work within county zoning regulations and comply with Davis Bacon on Hawaiian Homeland Properties. We need to empower all citizens to plan the type of community in which they will live and how the infrastructure can best be developed for the future generations.

Sincerely,

Diane Kanealii,
Citizen of Hawaii
Member of Kailapa Community Association

Please support HB3421. While thousands of native Hawaiian beneficiaries wait for leases, the Department of Hawaiian Homelands has been abusing the process and giving leases to corporations and non-beneficiaries. This process has become very appealing to large companies because they have inaccurately been lead to believe that Hawaiian Homelands is an opportunity to avoid the county regulations with which they would have to comply if they were on non-Hawaiian property. They are being given carte blanche to oppress and rape our lands with the approval of our current administration. This unfair and illegal abuse by the current administration must stop. Please clarify the law and make the Department accountable to its beneficiaries and follow the law, like everyone else. This will help refocus the department for what it was intended, the beneficiaries, not developers and campaign contributors. Sincerely,

Roberta L. Banks
DHHL Leasee, Beneficiary

Committee on Water, Land, Ocean Resources and Hawaiian Affairs
Rep. Ken Ito, Chair Rep Jon Riki Karamatsu
Rep. Mele Carroll Rep Michael Magaoay
Rep. Hermina Morita Rep. Cythia Thielen

Kanaka Council Moku O Keawe

HC 2 Box 9607
Keaau, HI 96749
Ph. 808-982-9020
Email:moku_okeawe@yahoo.com

Testimony submitted by: Kale Gumapac, Alaka'i

**COMMITTEE ON WATER, LAND, OCEAN RESOURCES &
HAWAIIAN AFFAIRS**

DATE: Monday, February 4, 2008

TIME: 8:30 a.m.

**PLACE: Conference Room 312, State Capitol
415 South Beretania Street**

1. Hawaiian Homelands were intended for the beneficiaries to have the opportunity to have homes, farms and ranch lands. But while thousands of Hawaiians wait, sometimes for generations, frequently NEVER getting a lease but commercial interests and developments are being fast-tracked by the department. Some people have been on the waiting list for over 30 years for their lease. Jacoby, a developer from Florida, DeBartolo, another multi-million-dollar development company, and Wal-Mart, the world's largest corporation are all getting leases. These are not Hawaiians. This is NOT the intent of the Hawaiian Homes Act.
2. Historically the Trustee, State of Hawaii, has breached its trust responsibility to the beneficiaries of the Hawaiian Homes Act and it continues today. The trustee has placed the responsibility of securing funds for its beneficiaries on the Department of Hawaiian Homes Land a state agency. The appeal for DHHL is the income from leases that they would not make from beneficiaries. Beneficiaries are being used as an excuse to bring in the income from commercial leases, yet big developers are getting the infrastructure while the beneficiaries get nothing. As long as it is more appealing to the politicians running the department to bring in money and give benefits to campaign contributors in the form of zoning circumvention, the process will only become more corrupt while beneficiaries suffer.
3. Hawaii counties include everyone in those communities, Hawaiians and others alike. If the DHHL lands are spot zoned and tax the infrastructure without any mitigation or planning, the entire community including beneficiaries are left to pay the price.

On January 31, 2008, the Hawaii Supreme Court (HSC) reversed rulings by the lower courts and granted an injunction against Housing and Community Development Corporation of Hawaii (HCDCH) ruling that selling or transferring not be allowed to 3rd parties until claims of ceded lands can be resolved.

The HSC also took into account the agreement reached between the Territory at the time and Federal government in order for the Territory to be granted Statehood to hold in trust 1.8 million acres of public trust lands (ceded lands) that includes Hawaiian Homes Land under the Admissions Act of 1959. Thus making the State of Hawai'i, "trustee" and subject to trust laws.

HSC went further to redefine native Hawaiian by using The Apology Bill of 1993, Public Law 103-150 as "any individual as a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii".

HSC also sighted that the State has a fiduciary responsibility as "trustee".

The HSC ruling on OHA v. HCDCH clarifies once and for all the State of Hawai'i's responsibility as a trustee to its beneficiaries as a result of the 1993 Apology Bill Public Law 103-150. It also clarifies the fiduciary responsibility that the trustee "State of Hawaii" has to its beneficiaries in protecting its ceded lands asset until the true sovereign government returns. Until that happens, the trustee (State of Hawaii) must do everything in its power to protect these assets or face dire consequences for breach of trust.

HSC disallowed the use of sovereign immunity, waiver and estoppels and justiciability that was used as a defense to protect the State of Hawaii. Instead, HSC ruled the State of Hawaii to be a trustee in this case thus, making the State of Hawaii subject to trust laws.

Hana `i` o ka haole!

The foreigner does it in earnest!

Generally easy-going,
Hawaiians didn't order people off their lands
or regard them as trespassers.
When the foreigners began to own lands,
people began to be arrested for trespassing
and lands were fenced in
to keep the Hawaiians out.

The Kumulipo lays the foundation of our po'e kanaka rights. The Kumulipo answers the question of where we come from, who we are, our cultural beliefs, customs and traditions that starts from the beginning of time. It is imperative that the recognition of our po'e kanaka rights be upheld in the wake of the Hawaii Supreme Court of OHA v. HCDCH ruling.....stewardship of the resources both mauka and makai must be returned to the po'e Kanaka. Po'e kanaka practitioners' of spiritual fulfillment must be returned to their rightful place.

§5(f): Native Hawaiians afforded a distinct interest separate from that of the general public
Supreme Court Decision: Kohanaiki vs. Planning Director, County of Hawai'i.

Native Hawaiians have legal standing to raise issues relating to subsistence, cultural and religious practices.

All government agencies have an enforceable duty to preserve and protect traditional rights under Article XII, section 7 and must give full consideration to cultural and historic values as well as the needs for economic development when implementing the objectives, policies, and SMA guidelines.

Native Hawaiian rights and practices have equal footing with Western real property rights.

Hawaiian usage sets the foundation for Common Law, HRS, Section 1-1 and Gathering Rights, HRS, Section 7-1

Legal principals of the state predate western principals and the Supreme Court has signaled its intention to reject taking challenges to the exercise of traditional rights.

Supreme Court Decision: "Ka Pa'akai o Ka 'Aina v. Land Use Commission"
Remand to LUC for specific findings

Reaffirms previous court decisions: western concepts of private property must be balanced with traditional rights of native Hawaiians

Agencies cannot delegate its obligation to determine impacts

The Public Trust Doctrine

Introduction

The Public Trust Doctrine is an ancient and universal code, dating back to the 4th century, that protects man's primary relationship to the earth. It is based on the fundamental and self evident belief that the earth's natural resources are commonly owned and available to all for beneficial use and enjoyment.

The universal human right to life, at its root, depends on nature to provide needs. Freedom, self-reliance and self-determination, commonly held are meaningful only when individuals and groups can provide for their own : Public Trust Doctrine guarantees this right.

Doctrine in Hawai'i

The unique potential of the Public Trust Doctrine in Hawai'i is that it is a restrictive covenant that runs with the land, irrespective of the chain of title. The Public Trust Doctrine provides that public trust lands, waters and living resources of the State are held by the State in trust for the benefit of native Hawaiians and the general public.

The Supreme Court has reaffirmed the pre-existing rights of Hawaiians to access lands for the purpose of exercising traditional and customary gathering practices, religious practices and activities.

The Public Trust Doctrine, Guarantor of Traditional Subsistence Gathering:

The Public Trust Doctrine is a higher law that governs a vast estate unbounded by human laws governing time and space. It is an ancient doctrine that is immediately available to resource managers concerned with perpetuating irreplaceable natural resources into the next millennium. The Doctrine defines the mutual duties and obligations of public officials, as trustees, and the public, as beneficiaries, to perpetuate the beneficial use and enjoyment of trust resources by present and future generations in ways that respect the will of past generations who handed down the trust. In Hawai'i, the Public Trust Doctrine has evolved into a 'special trust' that encompasses the natural and cultural history of these unique islands. The special features of the Public Trust Doctrine in Hawai'i affords resource managers powerful tools to move forward.

Public Trust Resources:

Public Trust resources include navigable waters, tidelands, submerged lands and the living resources therein.

In Hawai'i the trust was enlarged by the Admission Act when the U.S. granted to the State title to the 'public property' that had been ceded to it by the Republic of Hawai'i via the Joint Resolution of Annexation in 1898, creating the Ceded Lands.

Water rights, fishing rights, and all traditional and customary rights are within the public trust and the State as trustee is bound by a fiduciary

duty to administer the trust according to the 5(f) provisions of the Admission Act.