



GOV. MSG. NO. 847

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 15, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB1552 HD2 SD2 CD1, without my approval, and with the statement of objections relating to the measure.

HB1552 HD2 SD2 CD1

A BILL FOR AN ACT
RELATING TO PUBLIC LANDS.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 15, 2009

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1552

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1552, entitled "A Bill for an Act Relating to Public Lands."

The purpose of this bill is to establish a living park planning council to develop a master plan for State living parks and to place a two-year moratorium on evictions of persons who reside in the Kahana Valley State Park and who meet certain criteria.

This bill is objectionable because section 3 of the bill violates Section 5 of Article XI of the Hawaii Constitution. This section provides that "[t]he legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws, except in respect to transfers to or for the use of the State, or a political subdivision, or any department or agency thereof." The bill's moratorium provision contemplates applicability to a certain group of private persons who are allowed to use State lands, granting them State-imbued special privileges. The classification of persons allowed to benefit from the moratorium is factually limited to those already benefitting from the use of the State lands. As such, the moratorium provision of this bill is special legislation in violation of Section 5 of Article XI of the Hawaii Constitution.

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 1552
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See Sierra Club v. Dept. of Transportation, 120 Hawaii 181, 202 P.2d 1226 (2009).

My Administration recognizes the special relationship certain families have had with Kahana Valley and the ahupua'a used by pre-contact Hawaiians that existed in this region. We also recognize that efforts to develop a consensus plan on the management and direction of this living park have not succeeded for the past 39 years. I believe it is important to respect the attachment of certain families to the lands within the park. As a result, I am affirming in this veto message my Administration's commitment to not evict the families in the park during the balance of the term of my Administration, as long as the persons residing in the park meet their lease responsibilities to participate in activities benefitting the park and do not engage in criminal activities.

Further, I am pledging my commitment to introduce legislation in the 2010 legislative session that would allow the Department of Land and Natural Resources to issue replacement leases to those who qualified for such leases, pursuant to Act 5 of 1987 and who agree to abide by the original intent and requirements of that Act.

For the foregoing reasons, I am returning House Bill No. 1552 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO PUBLIC LANDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that state living parks
2 possess unique historical and cultural value. In state living
3 parks, individuals reside on lands located within the living
4 park and are an essential part of the purpose of the park for
5 the benefit of the public. As set forth in Senate Resolution
6 No. 264, S.D. 1, Regular Session of 1977, the purpose of a
7 living park is to nurture and foster native Hawaiian culture and
8 spread knowledge of its values and ways.

9 Kahana valley state park is an example of a living park.
10 Between 1965 and 1969, the State condemned the ahupuaa o Kahana
11 for use as a state park, making it the only landowner in the
12 State of Hawaii, other than the owners of Niihau, to own an
13 intact ahupuaa. An ahupuaa, a triangular slice of land running
14 from the mountains to the ocean, was the major land division
15 used by pre-contact Hawaiians.

16 Families living in Kahana at the time of condemnation were
17 of varied ethnic backgrounds, and the people of Kahana generally
18 lived a simple, subsistence lifestyle in harmony with native



1 Hawaiian values and traditions. In 1970, a governor's task
2 force proposed the concept of a living park as a way in which
3 the residents could continue to live in the park and participate
4 in the park for the benefit of the public.

5 To effectuate the living park concept, Act 5, Session Laws
6 of Hawaii 1987, authorized the department of land and natural
7 resources to issue long-term residential leases to individuals
8 who had been living on the land. In 1993, the department of
9 land and natural resources entered into sixty-five-year leases
10 with thirty-one qualifying families and required that all
11 lessees be an essential part of the interpretive programs by
12 contributing at least twenty-five hours of service each month to
13 benefit the park. To provide lessees with money to construct
14 new houses, Act 238, Session Laws of Hawaii 1988, appropriated
15 funds to provide low-interest home construction and mortgage
16 loans for Kahana valley state park lessees. The appropriation
17 was sufficient for twenty-six lessees to receive loans in the
18 amount of \$50,000 each.

19 Since 1993, three leases have been terminated by the
20 department of land and natural resources for noncompliance with
21 lease conditions. Other families living in Kahana valley have
22 sought to obtain long-term leases, but the department of land



1 and natural resources refuses to issue any further leases,
2 relying on the attorney general's opinion issued on March 24,
3 2008, asserting that Act 5, Session Laws of Hawaii 1987,
4 expired.

5 Since 1970, Kahana residents and the greater community
6 proposed numerous plans to the board of land and natural
7 resources. However, the board of land and natural resources
8 never adopted a master plan for Kahana valley state park. As a
9 result, there has been a lack of clarity, vision, goals, and
10 policies directing the residents and the department of land and
11 natural resources in the development and management of Kahana
12 valley state park.

13 The management of a living park requires that the
14 department of land and natural resources have the authority to
15 negotiate and enter into long-term residential leases, a clear
16 master plan, and the resources to support the living park,
17 including the establishment of a land manager position akin to a
18 konohiki.

19 The purpose of this Act is to:

20 (1) Establish a two-year moratorium on evictions of
21 persons who at the time of the enactment of this Act,
22 reside in Kahana valley state park, have participated



1 in interpretive programs for Kahana valley state park,
2 and have continuously lived there since before 1987 or
3 hold or have held a long-term lease or permit to
4 reside there;

5 (2) Authorize the department of land and natural resources
6 to issue long-term residential leases to qualified
7 persons; and

8 (3) Establish a living park planning council to develop a
9 master plan for each state living park that will
10 provide the framework, proposed rules, measurements
11 for success, and planning process to ensure that the
12 living park achieves its purpose and goals.

13 SECTION 2. As used in this Act, "living park" means a
14 state park where individuals residing on lands located within
15 the state park are an essential part of the purpose of the park,
16 for the benefit of the public.

17 SECTION 3. (a) Notwithstanding any other law to the
18 contrary, including chapter 171, Hawaii Revised Statutes, there
19 is established a two-year moratorium from the effective date of
20 this Act on the eviction of persons who at the time of the
21 enactment of this Act:

22 (1) Reside in Kahana valley state park;



1 (2) Have participated in interpretive programs for Kahana
2 valley state park; and

3 (3) Have:

4 (A) Continuously lived there since before 1987; or

5 (B) Held a long-term lease or permit to reside there.

6 (b) Notwithstanding any other law to the contrary,
7 including chapter 171, Hawaii Revised Statutes, the department
8 of land and natural resources is authorized to negotiate and
9 enter into long-term residential leases for sites in state parks
10 with acreage greater than five thousand acres but not more than
11 six thousand acres, with the following qualified persons:

12 (1) Persons who at the time of enactment of this Act
13 reside in a state living park and are contributing at
14 least twenty-five hours of service each month to
15 benefit the state living park; and

16 (2) Other qualified persons who may be identified in a
17 living park master plan approved by the board of land
18 and natural resources.

19 SECTION 4. (a) For each state living park there shall be
20 established a living park planning council to be placed within
21 the department of land and natural resources for administrative
22 purposes. The planning council shall consist of five voting



1 members, appointed in the manner and to serve for the terms
2 provided in section 26-34, Hawaii Revised Statutes, and two ex
3 officio nonvoting members.

4 (b) The voting members of the living park planning council
5 shall be as follows:

6 (1) One member shall be a representative of the department
7 of land and natural resources;

8 (2) Three members shall be representatives of families who
9 reside in the state living park, selected from a list
10 of resident nominees provided by the president of the
11 park's community association; and

12 (3) One member shall be a representative of the general
13 public.

14 (c) The ex officio nonvoting members of the planning
15 council shall be appointed in equal numbers by the state senator
16 and the state representative representing the district in which
17 the state living park is located. Each nonvoting member of the
18 planning council shall possess general knowledge of at least one
19 of the four strategic areas listed below:

20 (1) Land use laws or land use planning;

21 (2) Community-based planning;

22 (3) The environment; or



1 (4) Native Hawaiian culture.

2 (d) The council shall select a chairperson by a majority
3 vote of its voting members; provided that no member may serve as
4 chairperson for more than three consecutive years.

5 (e) Council members shall serve without compensation but
6 shall be reimbursed for actual expenses, including travel
7 expenses, incurred in the performance of their official duties.

8 (f) Any action taken by the planning council shall be
9 approved by a majority of its voting members. Three voting
10 members shall constitute a quorum to conduct business.

11 (g) The first meeting shall be held on the third Tuesday
12 in July, beginning in 2009.

13 SECTION 5. The development of a master plan for a state
14 living park shall rest with the living park planning council.
15 The master plan shall be reviewed and updated as needed. In
16 developing the master plan, the council, among other things,
17 shall:

18 (1) Establish goals and objectives to ensure the living
19 park reaches its full potential;

20 (2) Set forth standards, timelines, and other measurements
21 to ensure the living park achieves its goals and
22 objectives;



- 1 (3) Identify programs that enhance educational
- 2 opportunities and cultural awareness in the living
- 3 park;
- 4 (4) Develop plans to secure funding for a land manager, a
- 5 housing fund, and any other financial needs identified
- 6 in the living park master plan;
- 7 (5) Seek out and consult with all residents of the living
- 8 park, kupuna, community groups adjacent to the living
- 9 park, and organizations that have knowledge that may
- 10 benefit the living park;
- 11 (6) Advise the department of land and natural resources on
- 12 any matter relating to the living park;
- 13 (7) Propose agreements that will establish the full
- 14 authority of the planning council to implement the
- 15 master plan, including whether the planning council
- 16 can hire a land manager, establish a nonprofit
- 17 organization, or enter into contracts;
- 18 (8) Establish criteria, policies, and controls governing
- 19 the management of the living park leases, including:
- 20 (A) Selection of persons for leases; provided that
- 21 preference is given to persons residing in the
- 22 park who contribute twenty-five hours of service

- 1 each month to benefit the living park and are
2 actively seeking a lease in the living park;
- 3 (B) Designation of lands to be leased;
- 4 (C) Terms and conditions of leases;
- 5 (D) Monitoring and enforcement of lease terms and
6 conditions;
- 7 (E) Treatment of persons residing in a living park
8 without a lease; and
- 9 (F) Assignment and renewal of leases;
- 10 (9) Maintain, promote, and perpetuate the aloha spirit as
11 defined in section 5-7.5, Hawaii Revised Statutes; and
- 12 (10) Develop protocols and proposals to encourage the
13 caring for kupuna and the sharing and perpetuation of
14 kupuna knowledge.

15 SECTION 6. The living park planning council shall submit a
16 proposed master plan to the board of land and natural resources
17 no later than one year following the first meeting of the
18 planning council. Within ninety days after submission of the
19 proposed master plan, the board of land and natural resources
20 shall either adopt the proposed master plan or deny the proposed
21 master plan. If it denies the proposed master plan, the board
22 of land and natural resources shall submit to the living park



1 planning council, in writing, its reasons for denying the
2 proposed master plan. The living park planning council shall
3 revise the proposed master plan and resubmit the revised
4 proposed master plan to the board of land and natural resources
5 until a final master plan is adopted.

6 The living park master plan shall become effective upon its
7 adoption by the board of land and natural resources. Pending
8 adoption of the living park master plan, the department of land
9 and natural resources and the residents of the living park shall
10 be guided by existing plans developed by the residents of the
11 living park. For example, in Kahana valley, the Kahana state
12 park development plan, dated December 1985, and the living park
13 plan of Kahana's people, dated 1979, shall be guiding documents
14 for Kahana valley state park.

15 SECTION 7. Until the living park master plan is adopted
16 pursuant to this Act and a long-term residential lease
17 application has been acted upon, persons currently residing in a
18 living park at the time of enactment of this Act shall not be
19 evicted on the grounds that they lack a valid lease; provided
20 that they are contributing at least twenty-five hours of service
21 each month to benefit the living park.



1 SECTION 8. The department of land and natural resources
2 shall submit to the legislature an initial progress report,
3 including any proposed legislation, regarding the implementation
4 of this Act not later than twenty days prior to the convening of
5 the regular session of 2010 and a final progress report,
6 including any proposed legislation, not later than twenty days
7 prior to the convening of the regular session of 2011.

8 SECTION 9. This Act shall take effect on July 1, 2009.

