



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

H.B. NO. 1552, RELATING TO PUBLIC LANDS.

BEFORE THE:

HOUSE COMMITTEE ON WATER, LAND AND OCEAN RESOURCES

DATE: Monday, February 9, 2009 **TIME:** 9:00 AM

LOCATION: State Capitol, Room 325

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lisa M. Ginoza, First Deputy Attorney General,
or Russell A. Suzuki, Deputy Attorney General

Chair Ito and Members of the Committee:

The Department of the Attorney General does not support this bill as drafted.

The bill directs the Department of Land and Natural Resources to enter into long-term leases with persons presently residing in Kahana Valley State Park.

Article XI, section 5 of the Hawaii Constitution provides:

The 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 Hawaii Constitution clearly states that the legislative power over "lands owned by or under the control of the State and its political subdivisions **shall be exercised only by general laws.**" [Emphasis added.] There is no dispute that the land in question is state land.

The bill attempts to avoid the special legislation problem by establishing a "living park" planning council but the council

is specifically named the "Kahana Planning Council." Establishing a Kahana Planning Council makes the bill special legislation and vulnerable to a constitutional challenge.

The bill also has other problems such as:

1. Art. V, sec. 6 of the Hawai'i Constitution requires that "[a]ll executive and administrative offices, departments and instrumentalities of the state government and their respective powers and duties shall be allocated by law among and within not more than twenty principal departments in such a manner as to group the same according to common purposes and related functions." Any council established by this bill must be administratively attached to a department.

2. The bill provides a definition of "land manager" but there is nothing in the bill that establishes a land manager position or prescribes the position's duties and responsibilities.

3. The provisions in the bill that would establish the planning council should be clarified to prescribe that three voting members shall constitute a quorum. The existing language (Section 4(g)), merely states that three members shall constitute a quorum but then states that a simple majority of the quorum (2 votes) shall constitute approval of a matter. Allowing a simple majority of a quorum to validate the council's actions would be inconsistent with the Sunshine Law, which requires the concurrence of a majority of all of the voting members to which the council is entitled (3 votes) to validate an action.

4. Because this council would be an executive branch board, the appointing authority to the members of the board should be the governor. Section 4 of the bill should be clarified to provide that the governor appoints the members to the council. Section 4(b) should be revised to provide that, at least as to the voting members of the Council, the governor appoints the members, preferably from a list of nominees submitted by the various groups. The bill should also provide that the appointments either are subject to senate confirmation or are

exempt from the requirements of confirmation (exempt from HRS § 26-34).

5. The notice provision in the bill (Section 4(i)) provides that notice shall be provided in writing by the Department of Land and Natural Resources to all planning council members at least two weeks prior to a scheduled meeting. This council would be subject to the Sunshine Law and therefore the six calendar day notice provision of HRS chapter 92 would apply as to notice. HRS § 92-2(1) defines a "board" as any agency, board, commission, authority, or committee of the State or its political subdivision which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction or advisory power over specific matters and which is required to conduct meetings and to take official actions."

These are our concerns with the bill as it is drafted. We are available to work with the Committee to rewrite the bill to address our legal concerns.



Legislative Testimony

HB 1552 RELATING TO PUBLIC LANDS

House Committee on Water, Land and Ocean Resources

February 9, 2009

9:00 am

Room: 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB 1552, which would authorize the Department of Land and Natural Resources to issue long-term residential leases to qualified persons currently residing in Kahana Valley State Park and establish the Kahana Planning Council to develop the Kahana Valley State Park master plan.

OHA sees the intent of this bill as addressing two critical issues facing Kahana Valley. First, it provides 'ohana that have appropriate connections and kuleana to these special lands with the opportunity to obtain long-term residential leases so that they can continue to contribute to the larger effort of protecting the resources and perpetuating the traditions of Kahana Valley for generations to come. OHA supports the residents who have faithfully and respectfully worked to share Kahana Valley with the larger community.

Secondly, this bill will bring a diverse group of individuals, with a wide range of expertise, together so that the necessary goals and policies which will effectively manage Kahana Valley into the future can be prioritized and incorporated into the master plan. OHA recognizes the unique opportunity presented at Kahana Valley, where an entire ahupua'a is under the sole ownership of the State of Hawai'i. Thus, the resources within this ahupua'a can be comprehensively managed from the mountains to the sea, ensuring a healthy, thriving natural and cultural environment.

Therefore, OHA urges the Committee to PASS HB 1552. Thank you for the opportunity to testify.

Testimony of Laulani Teale, MPH
Native Hawaiian Bar Association/Native Hawaiian Legal Corporation
Peacemaking Project Coordinator
On
HB 1552
February 7, 2009

Aloha Kakou,

I am writing today to express my support for HB1552, which would authorize the department of Land and Natural Resources to issue long-term leases in Kahana to those who need them, and to establish a planning council for the development of a master plan.

My own family has roots in Kahana, and because of this, I have witnessed many of the challenges faced by those who live in the ahupua'a, since my childhood in the 1970's. Also because of this, I know well the great strength, knowledge and deep love of the people there. As a facilitator and community development professional, I have been working within the Kahana community to assist in strategic planning efforts, and have a very firm confidence in the ability of the people of Kahana to solidify an excellent plan that will not only resolve many of the difficulties currently faced by residents and State administrators alike, but will also allow the land and people of Kahana to flourish as completely as they did in generations long ago.

The NHBA/NHLC Peacemaking Project is committed to assisting the Kahana community in building its vision for the future. We have culturally grounded resources that can help with facilitation, conflict resolution, cooperative planning and related support, at very little cost to the community. We will assist in whatever is needed.

With the security of long-term leases and the common vision of a master plan created primarily by the people of Kahana, a healthy, well-organized, vibrant community is truly possible. Such a community would hold tremendous benefit for *all* of the people of Hawai'i.

I would sincerely like to thank the House of Representatives for your time and consideration of this matter. If there are any questions regarding the Peacemaking Project or any other inquiry, we can be reached at Native Hawaiian Legal Corporation's office at 521-2302. Please feel to call me at any time.

Mahalo nui loa,

Laulani Teale, Project Coordinator
NHBA/ NHLC Peacemaking Project