



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

---

**ON THE FOLLOWING MEASURE:**

H.C.R. NO. 183, REQUESTING THE BOARD OF LAND AND NATURAL RESOURCES TO REFRAIN FROM SELLING, EXCHANGING, OR OTHERWISE ALIENATING LANDS IN THE PUBLIC TRUST.

**BEFORE THE:**

HOUSE COMMITTEE ON HAWAIIAN AFFAIRS

**DATE:** Wednesday, April 1, 2009 **TIME:** 9:30 AM

**LOCATION:** State Capitol, Room 329

**TESTIFIER(S):** Mark J. Bennett, Attorney General,  
or Charleen Aina, Deputy Attorney General,  
or Bill Wynhoff, Deputy Attorney General

---

Chair Carroll and Members of the Committee:

The Department of Attorney General testifies to bring two aspects of this resolution to the Committee's and the public's attention.

First, it is critical that all who read this resolution appreciate that the "unrelinquished claims" and "claims" to which the resolution refers are not claims that could be sued upon, or would be recognized in any court, as now clearly determined by the United States Supreme Court in Hawaii et al., v. Office of Hawaiian Affairs at 10 (U.S. March 31, 2009) ("The Supreme Court of Hawaii erred in reading §3 as recognizing claims inconsistent with the title held in 'absolute fee' by the United States (30 Stat. 750) and conveyed to the State of Hawaii at statehood."). To avoid creating misconceptions or raising false hopes, the fourth and sixth recitals should be revised to include the fact that these claims cannot be recognized by any court.

Second, because S.B. No. 1677, as amended by this Committee, the House Committee on Water, Land, and Ocean Resources, and the House Committee on Judiciary, would subject the sale or exchange of all state land other than remnants to legislative disapproval, this resolution urging the Board of Land and Natural Resources to refrain from selling,

exchanging or otherwise alienating public land trust lands is not needed.



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

---

**ON THE FOLLOWING MEASURE:**

H.R. NO.147, REQUESTING THE BOARD OF LAND AND NATURAL RESOURCES TO REFRAIN FROM SELLING, EXCHANGING, OR OTHERWISE ALIENATING LANDS IN THE PUBLIC TRUST.

**BEFORE THE:**

HOUSE COMMITTEE ON HAWAIIAN AFFAIRS

**DATE:** Wednesday, April 1, 2009 **TIME:** 9:30 AM

**LOCATION:** State Capitol, Room 329

**TESTIFIER(S):** Mark J. Bennett, Attorney General,  
or Charleen Aina, Deputy Attorney General,  
or Bill Wynhoff, Deputy Attorney General

---

Chair Carroll and Members of the Committee:

The Department of Attorney General testifies to bring two aspects of this resolution to the Committee's and the public's attention.

First, it is critical that all who read this resolution appreciate that the "unrelinquished claims" and "claims" to which the resolution refers are not claims that could be sued upon, or would be recognized in any court, as now clearly determined by the United States Supreme Court in Hawaii et al. v. Office of Hawaiian Affairs at 10 (U.S. March 31, 2009) ("The Supreme Court of Hawaii erred in reading §3 as recognizing claims inconsistent with the title held in 'absolute fee' by the United States (30 Stat. 750) and conveyed to the State of Hawaii at statehood."). To avoid creating misconceptions or raising false hopes, the fourth and sixth recitals should be revised to include the fact that these claims cannot be recognized by any court.

Second, because S.B. No. 1677, as amended by this Committee, the House Committee on Water, Land, and Ocean Resources, and the House Committee on Judiciary, would subject the sale or exchange of all state land other than remnants to legislative disapproval, this resolution urging the Board of Land and Natural Resources to refrain from selling,

exchanging or otherwise alienating public land trust lands is not needed.

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
LAURA H. THIELEN  
Chairperson**

**Before the House Committee on  
HAWAIIAN AFFAIRS**

**Wednesday, April 1, 2009  
9:30 AM  
State Capitol, Conference Room 329**

**In consideration of  
HOUSE CONCURRENT RESOLUTION 183/HOUSE RESOLUTION 147 –  
REQUESTING THE BOARD OF LAND AND NATURAL RESOURCES TO REFRAIN  
FROM SELLING, EXCHANGING, OR OTHERWISE ALIENATING LANDS IN THE  
PUBLIC LAND TRUST**

House Concurrent Resolution 183/House Resolution 147 requests the Board of Land and Natural Resources to refrain from selling, exchanging, or otherwise alienating ceded lands in the public land trust. The Department of Land and Natural Resources defers to the Department of the Attorney General with regard to providing specific comments on this issue.

**LAURA H. THIELEN**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**RUSSELL Y. TSUJI**  
FIRST DEPUTY

**KEN C. KAWAHARA**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

LINDA LINGLE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Laura H. Thielen  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**Transmittal Cover Sheet for  
Department of Land and Natural Resources Testimony**

**Date Submitted: March 27, 2009**

**Testifier's Name/Position/Title:** Morris Atta, Land Division Administrator

**Committee the comments are directed to:** HOUSE COMMITTEE ON HAWAIIAN  
AFFAIRS (HAW)

**The Date & Time of Hearing:** Wednesday, April 1, 2009  
9:30 AM, Conference, Room 329

**Measure Number:** HCR 183/HR 147 REQUESTING THE BOARD OF LAND AND  
NATURAL RESOURCES TO REFRAIN FROM SELLING,  
EXCHANGING, OR OTHERWISE ALIENATING LANDS IN THE  
PUBLIC LAND TRUST

**Number of Copies the Committee is Requesting:** In paper, 2 copies (including original) to  
Room 406 in the State Capitol

March 29, 2009

Honorable Mele Carroll, Chair  
HOUSE HAWAIIAN AFFAIRS COMMITTEE  
Hawaii State Capitol  
415 South Beretania Street, Room 405  
Honolulu, HI 96813

Date: Wednesday, April 1, 2009

Time: 9:30 am

RE: HR183 AND HCR213 - REQUESTING HAWAII'S CONGRESSIONAL DELEGATION  
WITHDRAW ITS SUPPORT FOR THE HAWAII CAPITAL NATIONAL HERITAGE AREA

Dear Chair Carroll,

I thank you for allowing me to submit this letter in SUPPORT of HR183 and HCR213, which seeks to request Hawaii's Congressional Delegation to WITHDRAW its support for the Hawaii Capitol National Heritage Area.

The reasons for SUPPORTING HR183 and HCR213 – requesting the Hawaii's Congressional Delegation to WITHDRAW its support for the Hawaii Capitol National Heritage Area are as follows:

- a. This would create an additional federal designation (an extension of the National Park Service) over a broad area of greater urban Honolulu: the extent and scope of restrictions resulting from this designation is unclear.
- b. The sites that the NHA designation proposes to further preserve already have state and national preservation status and protection (i.e. Bishop Museum, Iolani Palace, Queen Emma Summer Palace, and Chinatown).
- c. The local managing entity allowed under this designation would be essentially unaccountable (not elected by the people) and with no oversight as the NPS usually takes a hand-off approach.
- d. Likewise, there seems to be no recourse for community stakeholders within the NHA designation area to protest decisions of the local managing entity. To what body would a citizen appeal a decision of the local managing entity?
- e. As stated in their study, the local managing authority has the right to inventory each property within the designated area --- the two ahupuaa of Kalihi and Nuuanu --- and evaluate that property's historic significance and recommend that it be managed or acquired by the City, State or some other entity. It is unclear whether that property owner would be able to make changes or renovations easily if the property is deemed a fine example of some particular style (exact language from the study given below\*).
- f. Reducing and possibly removing local and State authority, as the Secretary of Interior approves the management plan and shall prepare a report with recommendations for the future role of the National Park Service.

- g. While, under the act, Federal funds are not allowed to be used for condemnation purposes, with a recommendation from the NHA managing entity, the City can apply for grants for the purposes of condemnation.
- h. The board members of the HCCC and the organizations that comprise it are made up of primarily arts-affiliated non-profits and tourist-related businesses and state entities. **WHAT IS MISSING ARE THE COMMUNITY STAKEHOLDERS WITHIN THE DESIGNATED AREA: THE RESIDENTS, LOCAL BUSINESSES AND LOCAL COMMUNITY ORGANIZATIONS.** They have been left out of this process --- many have known nothing about this proposed legislation even though it has been in the works for the past 6 years. In some instances, key non-profit associations have been part of the NHA planning process and yet failed to inform local stakeholders in the communities which they serve.
- i. **The process itself has not been inclusive:** A key requirement of the proposed NHA designation is that the local community supports the designation and the boundaries of the proposed heritage area. Besides the arts groups which comprise the coalition there has been little effective effort to inform the affected community. Known community stakeholders were not informed of the process until after legislation was introduced at the national level. Many community stakeholders who will be affected by this legislation know little or nothing about it.

\* Language from the Hawaii Capital National Heritage Area Suitability/Feasibility Study, in reference to "section e" above: "In addition to the further compilation of existing data, additional field surveys of the many residential and mixed-use areas within the proposed NHA will also be required. This will include individual evaluations of houses and small businesses in Palama, Liliha, Kaka'ako and especially Kalihi, all of which have many remaining examples of modest frame houses, buildings, housing manufacturing and repair shops and simple concrete block and frame shops and mixed-use buildings." (Hawaii Capital National Heritage Area Suitability/Feasibility Study, p. 54).

"The HCC envisions...potential designation of residential and mixed-use areas either as state or National register properties ... (Ibid, p. 62).

I believe every effort should be made to seek the WITHDRAW of Hawaii's Congressional Delegation for the Hawaii Capitol National Heritage Area and request the WITHDRAW of Federal Legislation introduced as S.359 and H.R.1297 that seeks to establish the Hawai'i Capital National Heritage Area and for other purposes. Therefore, I am in STRONG SUPPORT of HR183 and HCR213.

Me ke aloha pumehana,

Tamar deFries  
2031 Haalelea Place  
Honolulu, HI 96813  
(808) 478-9627