

TESTIMONY

SB 643

LATE

LINDA LINGLE
GOVERNOR
STATE OF HAWAII



MICAH A. KANE
CHAIRMAN
HAWAIIAN HOMES COMMISSION

KAULANA H. PARK
DEPUTY TO THE CHAIRMAN

ROBERT J. HALL
EXECUTIVE ASSISTANT

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P.O. BOX 1879
HONOLULU, HAWAII 96805

LATE TESTIMONY

COMMENTS PROVIDED BY MICAH A. KANE, CHAIRMAN
HAWAIIAN HOMES COMMISSION

BEFORE THE SENATE COMMITTEE ON WATER, LAND, AGRICULTURE AND
HAWAIIAN AFFAIRS

ON SB 643, RELATING TO PUBLIC LANDS

February 6, 2009

Chair Hee, Vice-Chair Tokuda and Members of the Committee:

The Hawaiian Homes Commission and Department of Hawaiian Home Lands submit the following comments for your consideration of this legislation that proposes to transfer significant responsibilities to DHHL.

Act 5, 1987, acknowledges Kahana Valley State Park as place with unique historical and natural resources and allows for long-term leases to residents on lands that were acquired for Kahana Valley State Park. In exchange for these leases, qualified residents would participate in a program to interpret the significance of these resources for the general public.

This legislation calls for the transfer of officers, employees, appropriations, records, and equipment, with the authority to manage

Kahana Valley from DLNR to DHHL. There are three areas of concern that we would like to raise. First, DHHL has very little experience managing an interpretive program. Secondly, it appears that this legislation may trigger new administrative rules to be promulgated. Thirdly, the legislation also does not outline whether DHHL's responsibilities would include management of the park's infrastructure and utilities. If the management of park includes infrastructure and utilities, it is unclear whether appropriations for these costs will also be transferred to DHHL.

DHHL is aware of several legislative proposals regarding the disposition of Kahana Valley and its current lessees and believes that there are too many issues that need to be address to ensure a successful transition before the proposed transfer date of July 1, 2009.

Thank you for the opportunity to provide these comments.

February 5th, 2009

Danielle Ululani Beirne-Keawe
P.O. Box 653
Kane'ohe, Hawai'i 96744
Phone: (808) 237-8856
email: ululani2006@hawaiiantel.net

The Senate
The Twenty-Fifth Legislature
Regular Session of 2009
Committee on Water, Land, Agriculture, and Hawaiian Affairs
Senator Clayton Hee, Chair and
Senator Jill N. Tokuda, Vice-Chair and
Members of the Committee

RE: Testimony for S.B. 643

Dear Members:

The purpose of this legislation is to transfer management of Kahana Valley State Park from the Department of Land and Natural Resources to the Department of Hawaiian Home Lands. I support the concept of S.B. 643 with a recommendation that DHHL manage the entire Ahupua'a O Kahana if they can "grandfather" in those residents that are not native Hawaiian. I.e. Kalawahine by Roosevelt High School. It sounds good to be true, but if this native Hawaiian agency, with its expertise in building communities with master plans that benefit the people would like to manage Kahana, I can live with it.

I know that there is a long waiting line for native Hawaiians needing to be placed on lands and have opportunities to build their own homes, so with the approval of the Governor, undertake and carry out development of any Hawaiian home lands available for lease under and pursuant to section 207 of this Act by providing for construction, improvement, repair of public facilities to name a few, and (2) undertake and carry out the development of available lands for homestead, and multipurpose projects, including all infrastructures.

In reference to Section 2 of Findings and purpose, DHHL authority to enter into long-term lease has always been 99 years and not 65 years leases, so perhaps an amendment is in order. I like the fact that we even have the opportunity at this time to consider another State entity to manage the Kahana Valley State Park and change the laws

as such. I have no problem with another State agency creating a community that is within their jurisdiction to improve the make-up and lifestyles of its people.

Again, in all due respect to the Senator from my District, I support the intent of the bill and your effort to do the business of Kahana that is long over due. I can visualize all the improvements needed and funding that State Parks has had limited budgets over time.

Mahalo

A handwritten signature in black ink, reading "Danielle Ululani Beirne". The signature is written in a cursive, flowing style.

Danielle Ululani Beirne, Resident

February 6, 2009 Testimony of May Leinani Au, Kahana Valley lessee S5308

Hon. Senator Clayton Hee & Committee Members
Water, Land, Agriculture, and Hawaiian Affairs

LATE TESTIMONY

Senate Bill 638

I DO NOT support a moratorium for two years. The families who are affected by the evictions have had at least two years of "free moratorium" since their revocable permits expired in 2006. HOWEVER, I do say to afford them the opportunity to obtain a lease now (pending qualifications); to allow them to remain where they live or relocate them in the valley and allow them to provide a better pathway for their families hereon.

I DO SUPPORT the establishment of a master plan advisory committee to develop and implement action plans for Kahana Valley state park. If the intent of the plan is to empower lessees to meet the goals, then another lessee should be added to make seven members on that committee. I propose that the timeline for the completed plan be one year since there are many Kahana master plans already in existence to glean from. (SECTION 3.(a))

Senate Bill 639

I DO SUPPORT authorization to the department of Land & Natural Resources to issue long-term leases to qualified persons. However, I propose an amendment to address qualifications: to include individuals that once qualified under Act 5; this does not exclude individuals currently living in Kahana who are 18 years or older, and can verify financial funding of \$50,000 within 12 months notice of qualification.

I DO SUPPORT the state park advisory committee that is already established but recommend the membership consist of three lease holders and delete the Office of Hawaiian Affairs member for a total of seven.

I DO NOT SUPPORT SECTION 6 and recommend deletion in entirety and replaced with language to provide for REPLACEMENT LEASES in the event of defaults.

Senate Bill 643

I DO NOT SUPPORT the department of Hawaiian Home Lands receiving all authority to manage, administer, and exercise control over Kahana Valley state park. Moving jurisdiction from department of land and natural resources to another state agency is moot. We have been "controlled" to death. Empower the people!

May Leinani Au

Aloha:

I'm Ron Johnson, a lease holder, and my family spans seven generations in Kahana.

In 1965, in a document titled State of Hawaii vs. Hattie Laea Nuhi Au, our Tutu's interest in Kahana was condemned by the State, to include water rights and konohiki fishing rights. As you can imagine I have a keen interest in the success of the Living Park as envisioned by our elders.

I am strongly against S.B. No. 643 proposing transfer to DHHL.

I am strongly against S.B. No. 635 proposing transfer to OHA.

I am strongly against S.B. No. 638 proposing a 2 year moratorium on evictions/Master plan advisory committee.

I am strongly against S.B. No 639 proposing DLNR issue leases/Advisory committee.

All of these bills have flaws that I believe need to be corrected.

I believe the majority of current lease holders support the adoption of a master plan and I support the people's plan 1979.

I support State Parks and our program flourishes under them. Ask the Park interpretive program co-coordinator for an evaluation of all our programs in Kahana.

I resent the negative impressions out there about Kahana, we have much to offer and we work at it.

Relating to S.B.643

I am strongly against S.B. No. 643 proposing transfer to DHHL.

We have lease agreements in place in which we agreed to participate in interpretive programs.

Over the past years, residents of Kahana have been participating in cultural interpretive programs. This includes the Wailua Auwai Project I started. This project has shared with thousands of people helping with the auwai and the lo'i kalo in Kahana.

If you were to visit us on a work day, you would see the people, the program and the valley. I believe the culture of Kahana still exists and would stand up to third party scrutiny.

Although not every family is actively engaged in a cultural program consistently, the intent and integrity of the Wailua Auwai Project is still moving forward with its goals and mission.

With the support of State Parks (Dan Quinn, Martha Yent, Renee Kamisuge) our program has provided a positive opportunity for me to reach out and educate students from pre-school to the collegiate level

With more ideas spawning from the collaborative efforts of the State and the residents I believe that teamwork and partnership will continue to move the valley forward into a well maintained park that highlights the residents culture and lifestyle.

It may be debatable on how productive the residents have been with their programs but I support the cultural interpretive programs and I encourage investigation as to how programs were, where they are today, and how we can use this information to move forward together, collaboratively, State and resident lessee.

Mark S. Alapaki Luke
P.O. Box 11085
Honolulu, 96828
808-381-4326, markluke@hawaii.edu

LATE TESTIMONY

Organizations: Kamakakūokalani Center for Hawaiian Studies, Ka Papa Lo‘i o Kānewai, Wailua ‘Auwai lo‘i in Kahana Valley, ‘Onipa‘a Nā Hui Kalo, Geography Dept at Honolulu Community College, and the East-West Center International Board

TESTIMONY IN REGARDS TO SB 643: TO BE HEARD BY THE SENATE WATER, LAND AND OCEAN RESOURCES COMMITTEE ON 2/6/09.

Aloha members of the Senate Water, Land, and Ocean Resources. My name is Alapaki Luke and I am a *kalo* (taro) planter in Kahana Valley, Ko‘olauloa moku of O‘ahu, with the Wailua ‘Auwai cultural interpretive program under the direction and leadership of Uncle Ron Johnson and Uncle Nana Gorai, current and previous residents of Kahana Valley for many generations back. The Wailua ‘Auwai program was started in 1997 with a vision to restore to Kahana Valley the *lo‘i* (taro ponds) and *māla* (gardens) that once flourished in the valley. Since its inception, the project has grown exponentially with thousands of visitors and participants taking part in the establishment, maintenance and growth of this culturally significant *wahi* (place). State Parks has been a key element in administering this program from the start, big supporters such as Dan Quinn, Martha Yent, and Renee Kamisugi have been instrumental in supporting these programs throughout the years, without their support, the program would not be as successful as it is today. The Wailua ‘Auwai program has accommodated the residents of the valley, students from various levels of education (pre-school to graduate levels), greater Hawai‘i community, and the international community. Institutions such as University of Hawai‘i (Mānoa, Brigham Young University Hawai‘i, The East-West Center, Kamehameha Schools, many Department of Education schools at all levels, community organizations, ‘*Ohana* (family) groups, Native Hawaiian support programs, to name just a few. Kumu Keao NeSmith, a *kumu* (teacher) of Hawaiian Language at the UH Mānoa, and one of the founding *kumu* of the project, whos ‘*ohana* lives in the valley, regularly brings his *haumana* (students) to participate and connect to their *ha‘awina* (lessons), sometimes flying in the Ni‘ihau ‘*ohana* to participate with his *haumana*. The Wailua ‘Auwai program has been an avenue to achieve the living cultural park mission of Act 5, thereby establishing a program to *ho‘olauna* (introduce) the host culture of Hawai‘i, and more importantly establishing a way of life for the Kahana community that brings back pride to our heritage and who we are.

There has been rhetoric about how things are unorganized or chaotic in Kahana Valley and there’s no good direction or management, I feel this is false and coming from people who don’t fully realize the situation and the many different dynamics that take place in the valley. The program is working, which I can attest to, as a *kumu* myself at the University of Hawai‘i, and connected with my ‘*ohana* through *kupuna* ‘*iwi* (ancestral remains) that are buried in the valley, I was fortunate to *kanu* (plant) *kalo* and receive what holistically comes with planting *kalo*, which is the ‘*ike* (knowledge) and *mana* (spiritual power) of the *kūpuna* (ancestors).

me ka ha‘aha‘a (with humility),

PUBLIC TESTIMONY

SB 643

Dr. Jim Anthony, a resident of Kahana

I **oppose** SB 643 for the following reasons:

1. There is no justification for the proposed change of management from DLNR, Parks to the Department of Hawaiian Home Lands: no study has apparently been done, no plausible or defensible explanation has been offered as to why this change ought to be made and, indeed, no prospect has been held out as to how and why the change in management from one department to another is likely to be better in any way.
2. This appears to be a 'shoot from the hip' proposal, perhaps generated because of pique or because there is a personality clash between the initiator of this Bill and administrative staff of the DLNR or perhaps, even the Governor herself. 'Shoot from the hip' proposals for legislation, especially legislation of this magnitude, are generally both arbitrary and capricious and not in the public interest.
3. Legislation proposed without justifiable reasons—reasons that can be examined in the daylight of the common forum, analyzed through the lens of logic and good sense—is generally legislation not in the public interest. That certainly appears to be the case in this instance.
4. There is a time honored standard when it comes to 'changing horses in mid stream' as this Bill is attempting to do—without rhyme or reason: stick with the 'devil' you know rather than the one you don't. That standard is relevant here. I would much rather stick with the DLNR 'devil' that I know rather than take my chances with the DHHL 'devil' that I do not know.
5. I have had a considerable amount of experience dealing with DLNR and with State Parks over many years. Neither DLNR nor Parks is perfect—in fact I think I can safely say that they have many shortcomings. But that said, in the Kahana context, the far greater problem—far, far greater—is the fact that for many years the people of Kahana have been badly served by a Community Association that is now, and has long been, a failed organization: it has no staff, no research capability and next to no funds at its disposal. It is, in fact, incapable of representing the interests of lessees in Kahana and those interests that are particularly pertinent to a cultural living park. If this Bill had been preceded by a comprehensive look at Kahana's problems this would have been readily apparent and the distinguished Senator with whom this Bill originates would have been less likely, I think, to leap to the conclusion that nirvana is to be found by the simple, and somewhat simple minded act of suggesting that the management master of Kahana be changed, apparently, just for the sake of change.

This Bill, in my considered view, ought to be held and not allowed to proceed any further than this Committee.

Jim Anthony, Ph.D.
February 6, 2009

LATE TESTIMONY

Supplementary testimony: Kahana. Dr. Jim Anthony—all relevant Bills.

There is something else about Kahana that I have not canvassed in my testimony so far and this same 'something' is not mentioned anywhere in the now substantial published material on this subject. The time has come for this matter to be addressed frontally.

First, some foundation: The 5,000 plus acres of Kahana were purchased in 1970 with taxpayer dollars. All of this land is owned by the taxpayers of Hawaii. It is public land. The ownership of this land is vested in the State of Hawaii. Its title, as I understand it, is unassailable.

And here is the important point I want to make:

The lessees who live on this land are just that: lessees. They do not own the land on which they live. They have a right to remain on the land they lease for a given period of time in exchange, in this case, for 25 hours of work a month. Basically, this is the core of the legally binding contract between lessees and the State of Hawaii.

Once leases were issued by the State to lessees in Kahana in 1993 a small number of them began to adopt a different posture. This small hard core of Kahana lessees began to act as if they had the right to veto and to disrupt the operations of this State Park. What had happened is this: Governor Burns had embraced the idea of a 'cultural living park' within a State Park. To this day, the concept of a 'cultural living park' remains undefined and elusive. This small hard core of lessees in Kahana began to use the 'cultural living park' as a vehicle to assert many different claims and to make all kinds of demands on the State. Their tactics have invariably included bullying, intimidation, threats and endless talk—disputation. Their constant claim: "The State" was responsible for everything "wrong" with Kahana—the fact that some of the most productive taro lands on O'ahu were lying idle (as they still are); the fact that a major fish pond was lying idle (and still is); the fact that a major estuary was not being protected (and still isn't); the fact that the riparian corridor of a major stream was being overtaken by hau (and still is); the fact that trails in the Valley were overgrown and inaccessible and still are); the fact that major waterways were clogged and no longer working and that this was giving way to flooding in certain areas—all of these problems, and others, were (as they still are) blamed on "the State" while, for almost the last twenty years at least (the "post lease" period), the Kahana Community Association, dominated by the small hard core, became a forum for endless disputation. And that is what the Kahana Community Association is still today: a failed organization with all of its officers holding office illegally in violation of its by-laws. The Kahana Community Association has no staff, no research capability, no funds at its disposal (other than \$300-\$400).

Some 40% of lessees are behind on the work they are supposed to perform every month.

Against this summary background, the time has come for the State to act like a State, a government. These lessees need to be told—the small hard core in particular—that they do not own Kahana Valley. The State must do what all governments must eventually do: having consulted all of the relevant parties about action that need to be taken, it must take some action. And the place to begin is to politely but firmly remind lessees that they are just lessees and that being recipients of a gift from the taxpayers of Hawaii it is about time they fully honored their part of the contractually binding contract they entered into in 1993.

And as for those without leases, if they are to be allocated residential lots (something I support if it can be done legally and subject to conditions I have set out else in prepared testimony), then all taxpayers in Hawaii should be given a full, open and equal opportunity to apply for lots in Kahana too.

Honorable Chairman and committee members of the Water, Land, and Ocean Resources,

My name is Clinton Kanahale "Nana" Gorai. I was born in 1932 in Kahana. Growing up in Kahana has provided me many opportunities and knowledge from the mountain to the sea. I am a fisherman, a crafter, and a taro farmer.

In 1968, I was called to active duty and serviced in the Army for 20 years. My family continued to live in Kahana. My roots are deep in the Kahana heritage and culture going back to the 1800's.

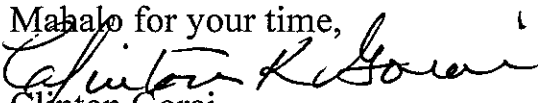
Since my return from the military, I have always gone back to Kahana, my homeland. The past 12 years, I have worked the lo'i that once belonged to my father. I do not live in Kahana, but I return to my 'aina every day to listen to the land and talk story with the plants. I have lo'i up the mountainside and often host students who visit Kahana valley.

I am provided my testimony to emphasize that I have lineage in Kahana, I continue work and give back to Kahana, and I want to have the opportunity to return to Kahana and live.

Throughout the discussions and details of the bills presented in this years legislation, not once did I hear any reference of taking care of the kupuna or providing the opportunity for kupuna like me to return to our lands to live. I would like the words changed to include people who once lived in Kahana to have the opportunity to come back to our lands. If truly the intent is to perpetuate our culture, then kupuna like me should be more visible and existent in the community. We should have a level of priority to the new residential leases. The opportunity to reside in Kahana can provide numerous chances to educate and share with the younger generation.

I am lucky if I have another 15 more years to live, but please provide a fair opportunity for me to reside in the community. Unfortunately, malama I ke kupuna was a huge oversight on everyone's part, but I am asking to reconsider and include the language in your bill so that I can come back home to Kahana.

Mahalo for your time,


Clinton Gorai

COMMITTEE ON WATER, LAND, AGRICULTURE, AND
HAWAIIAN AFFAIRS

~~SB 635 / SB 638 / SB 639 / SB 643~~

Chairman Senator Clayton Hee, Vice Chairwoman Jill Tokuda
and committee members

06 Pepehuali 2009

ALOHA!

My name is Sherri Lynn Leimomi Wallace Johnson. As one of six families facing evictions from the Ahupua'a o Kahana, I am writing in support of ALL legislation that support my efforts, the efforts of all the other na ohana facing evictions to remain on the land where I/WE reside, in this community called "Kahana."

At the least, six generations of my family have resided and currently reside in Kahana, from my great grand mother, to my grand nephew (who is 1 ½ years). Last year, I went to the Native Hawaiian Legal Corporation for representation, and was saddened to hear that they would not be able to represent me, and that I am considered a "squatter" on this land that my ancestors once lived upon. I informed the NHLC attorney that I did not just "fly" in from the continental United States of America with a one way ticket, hop on the bus and when I came to "Kahana" in its beauty and said, "THIS IS THE PLACE!" I have lineal ties to THIS land I now occupy, and wish to remain on THIS land I call "HOME."

I believe my 'ohana to be an asset to the community, participating in many cultural based activities (maintance of the fishpond and lo'i). I have three beautiful children (25, 16, 15) who speak fluent hawaiian, and raised in Kahana.

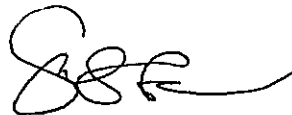
I encourage all legislators to support all legislation that will KEEP HAWAIIAN HANDS IN HAWAIIAN LANDS.

In closing, I share this olelo noe'au with your committee,

I ULU NO KA LALA KE KUMU
THE BRANCES GROW BECAUSE OF THE TRUNK
WITHOUT OUR ANCESTORS... WE WOULD NOT BE HERE

Mahalo nui loa!

Sherri Lynn Leimomi Wallace Johnson ✓
Erik Kakuzen Johnson
Ka'imina'auao Edd Cole Ho'opa'a ikapono Johnson
Kamalani Micah Francis Ho'ohiwahiwaokalewanu'u Johnson



TESTIMONY ON ~~SB 639~~ AND SB 643

LATE TESTIMONY

Aloha Senators,

Kahana Valley State Park is public property, owned by and for all residents of Hawaii. The 1970 proposal of a living park allowed the residential families to continue residence in the valley and participate in interpretive programs while providing a new type of park experience. In 1987, the legislature passed Act 5 to make this happen. To qualify for a lease a person must:

- (1) "at the time of enactment of this act reside in Kahana Valley on land acquired for Kahana Valley State Park and have lived continuously on this land since before 1970; or
- (2) on the effective date of this act have permits issued by DLNR allowing them to reside on designated parcels of land acquired for Kahana Valley State Park."

Act 5 and its extension, Act 58, expired on July 01, 1993. At that time, there was a lengthy waiting list for leases. SB 639 does not use the same wording and dates, thereby deleting many from eligibility. Between 1970 and present, residents left the valley due to military service, deterioration of residence, expansion of household, or limitations of a 31 lease cap. SB 639 and SB 643 lease qualifications should include those people remaining on the list upon expiration of Act 5. SB 639, pg3, Sec 2, ln 21 should read, "with persons who resided and continuously resided on land acquired for a state park from April 13, 1987 to before 1970" and SB 643, pg 6, Sec 2, ln 18 should read:

- (1) Persons who on April 13, 1987 resided in Kahana Valley on land acquired for Kahana Valley State Park and have lived continuously on this land since before 1970; or
- (2) Persons who on the effective date of this act have permits....."

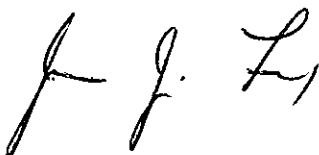
This will foster an atmosphere of fairness.

SB 639, pg 4, Sec 3 inserted a new term "caretaking programs" in place of the present interpretive programs without defining caretaking. As a taxpaying owner of a cultural living park with 31 leases, I want to know I am getting my tax dollar worth of service for leases rendered.

SB 639, pg 6, Sec 6 has an expiration date for issuing new leases. This is a continual problem since Act 5, Act 58 and now SB 639. Thirty one leases were issued prior to July 01, 1993. Since then, five leases were forfeited and SB639 was crafted to legalize reissue. In the near future, at least two more leases will be available which will probably require another bill. There should be a permanent fix.

JOHN J. FOX
46-142 Humu St, Kaneohe, Hi 96744

1 Attachment:
Kahana Lease Applications



KAHANA LEASE APPLICATIONS
Applications received as of April 2005*

LATE TESTING

1. Au, Clarence (received lease in 2004 through foreclosure)
2. Au, Mitchell
3. Channels, Maria
4. Evans, Thoran
5. Fox, John
6. Gaceta, Brummell
7. Gaceta, Jose III
8. Gorai, Clinton
9. Gorai-Kaniho, Christy Mae
10. Hawkins, Leimomi
11. Higa, Naomi
12. Kahala, Ervin
13. Kahala, Moses
14. Kamakaala, Kayla
15. Kamanawa, Jeffery
16. Mainaupo, James
17. Malepe, Duchess Ku'uipo
18. Ortiz, Wayleen
19. Peapealalo, Carson
20. Pili, Helen
21. Rodrigues, Dorothy
22. Soga, Blance
23. Soliven, Lena
24. Tehada, Lillian
25. Thompson, Clyde (aka Troy Wallace)
26. Wasson, Dawn
27. Wasson, Henry
28. Wasson, Harry

* This list reflects applications received between 2000 and 2003. State Parks went to the Board of Land & Natural Resources on April 1, 2005 for approval of preference categories to issue new leases based on applications received prior to April 2005.

Applications received after April 2005

1. Gaceta, Harvey
2. Kahala, Princess
3. Mainaupo, Jason
4. Malama, Geraldine
5. Scharsch, Darryn

TESTIMONY

SB 643

LATE

(END)