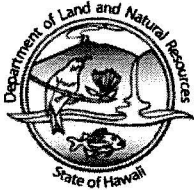


LINDA LINGLE  
GOVERNOR OF HAWAII



**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  
FINANCE**

**Wednesday, February 17, 2010  
10:00 AM  
State Capitol, Conference Room 308**

**In consideration of  
HOUSE BILL 2737  
RELATING TO THE DISPOSITION OF PUBLIC LANDS**

House Bill 2737 directs the Department of Land and Natural Resources (Department) to fund the general fund by disposing of various public lands, including disposing of public lands leased to not-for-profit organizations meeting certain criteria. The Department strongly opposes sections of this bill that applies to properties under the jurisdiction of the Department.

The Department continues to face severe budget cutbacks. The Department's general fund appropriations and special fund revenues have dropped over 32% and 35%, respectively, in less than three years, and the Department lost more than 10% of its positions (over 80 positions) this past year.

In order to address some of these concerns, the Department has embarked on implementing its Recreational Renaissance Plan B, which is an ambitious business plan for the Department to generate new non-taxpayer revenues where appropriate to support the Departments' public trust mandate. The vast majority of the revenues (80%) are expected from commercial and industrial leases from vacant lands in urban areas, some of which are a part of the inventory of lands that is targeted for sale by this bill. As such, the Department responds to specific items in the bill as follows:

**The Department strongly objects to Part II in its entirety.** It appears this part of the bill was drafted to benefit a single state lessee, namely the Sand Island Business Association. Rents collected from General Lease No. S-5261 issued to Sand Island Business Association constitutes nearly one half of the lease rent revenue that funds the payroll for Department's Land Division, the Office of Conservation & Coastal Lands, and some of Engineering Division and Chairperson's staff, as well as the Land Division's ongoing operating expenses.

**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

The Land Division is responsible to ensure public safety by responsibly managing the use and maintenance of 1.3 million acres of public lands including 3 million acres of state ocean waters, and 2 million acres of conservation district lands in a safe and appropriate manner. Such management includes the mitigation of hazards on public lands, such as hazardous materials/wastes, unexploded ordinances, rockfall, flooding, falling trees, dams and reservoirs and other dangerous conditions. Such activities reduce the threat to life, disability, property damage, and economic losses resulting from natural disasters and minimize the State's exposure to potential litigation. Loss of this revenue source would bankrupt the Land Division and certainly result in serious elimination of programs and personnel.

The Department also objects to the following provisions in Part I of the bill:

Oahu

(13) That certain 55 acre parcel of state land adjacent to the site of the University of Hawaii's proposed Kapolei campus, located on the North-South road near Farrington highway, Oahu, that was acquired by the State by a land exchange authorized by Act 294, Session Laws of Hawaii 1996:

The 55 acres in Kapolei is an important revenue development component of the Recreational Renaissance Plan B. The Department has ongoing discussions with the representatives from the University of Hawaii – West Oahu Campus and the City & County of Honolulu on a joint development agreement for a park and ride.

The Department objects to any transfer as it will result in a loss of income-generating property to support its core functions

(15) La Mariana and Pier 60 (TMK Nos. (1) 1-2-23:52, (1) 1-2-23:67, (1) 1-2-23:30, and (1) 1-2-23:55):

Built in 1955 by the late Ms. Annette Nahinu, the La Mariana Sailing Club consists of 100 boat slips in a marina outside the bar/restaurant servicing both locals and tourists. The Division of Boating and Ocean Recreation (DOBOR) manages the lease that will expire on April 30, 2014.

The Department objects to any transfer as it will result in a loss of future public recreational facilities and income-generating property.

(16) Accreted peninsula and land filled bordered by Kalihi stream and Moanalua stream (TMK No. (1) 1-1-3:3):

Over the years, the Department's Land Division has issued month-to-month revocable permits for the use of this reclaimed land protruding out into Keehi Lagoon from Nimitz Highway, near the Pacific War Memorial facilities. The parcel is currently encumbered by Revocable Permit No. S-7212 issued to Hawaii All-Star Paintball Games and is used for paintball recreation purposes. Currently, The Pacific Gateway Center is pursuing compliance with Chapter 343, HRS, Shoreline Management Area Permit and Zoning Variance in order to obtain a direct lease from the Department.

The Department objects to any transfer as it will result in a loss of public recreational facilities and income-generating property.

(17) Waikiki Yacht Club (TMK No. (1)-23037006):

Revenue from this property supports DBOR payroll and operating expenses. Rents from property rentals account for 10-15% of revenues received by DBOR. The loss of rental income would impact the ability of DBOR to provide repairs and maintenance of harbor and ramp facilities and operate an ocean recreation program (surf schools, ocean recreation management areas, etc).

The Department objects to any transfer as it will result in a loss of an important income-generating property.

(18) Ala Wai Boat Harbor Complex (TMK Nos. (1)-23037012, (1)-26010005, (1)-26010016, (1)-26010003, (1)-23037013, (1)-23037020, (1)-23037024, (1)-23037033, and (1)-23037035):

Revenue from the property supports DBOR payroll and operating expenses. Rents from property rentals account for 10-15% of revenues received by DBOR. The loss of rental income would impact the ability of DBOR to provide repairs and maintenance of harbor and ramp facilities and operate an ocean recreation program (surf schools, ocean recreation management areas, etc).

The Department objects to any transfer as it will result in a loss of an important income-generating property.

(20) Kalaeloa Makai (TMK No. (1)-9-1-31:1).

The Kalaeloa Makai parcel is known as the Campbell Feedlot and is a critical component of the Department's Recreational Renaissance Plan B. Currently, Land Division has issued a RFQ/RFP for development of the lot by private entities. More than 1 applicant was deemed qualified and are preparing their respective proposals. Deadline for submission of proposals to the Department is April 1, 2010.

The Department objects to any transfer as it will result in a loss of income-generating property to support its core functions.

## Hawaii

(1) Mauna Kea Scientific Reserve (TMK: 3-4-4-015: 9 and 12):

The University of Hawaii (UH) currently occupies the Mauna Kea lands under leases with the Land Board. Specifically, UH leases the 11,287.854-acre Mauna Kea Science Reserve under General Lease No. S-4191, the 19.261-acre Hale Pohaku Mid-Level Facilities site under General Lease No. S-5529, and the 70.798-acre Mauna Kea Observatory Access Road under Grant of Easement No. S-4697.

The Department and UH have adopted a number of management plans for Mauna Kea since UH first started utilizing the area. The 1977 Mauna Kea Management Plan gave UH responsibility to manage snow play on the mountain. Primary responsibility for hunting management was given to the Department's Division of Forestry and Wildlife (DOFAW).

In 1981, two parcels were withdrawn from the Science Reserve lease (General Lease No. S-4191) and placed under the management of the Department as the Mauna Kea Ice Age Natural Area Reserve, pursuant to Executive Order No. 3101.

In the 1983 Mauna Kea Science Reserve Complex Development Plan, UH proposed to adopt rules and regulations regarding access to and uses of the leased areas in cooperation with the Department. The 1983 plan also proposed the establishment of a management committee specifically for Mauna Kea.

In 1995, a joint revised management plan was adopted by UH and the Department that clarified the rights and responsibilities of the two agencies with respect to the mountain. UH was given the right to control and manage access in the Science Reserve and activities at Hale Pohaku Visitor Information Station. The Department's authority to determine public, recreational and commercial uses in these areas was confirmed, as was its responsibility for research, natural resources, and historical and cultural resources in the area.

The March 2000 Mauna Kea Science Reserve Master Plan highlighted the need for a central management authority on Mauna Kea summit and proposed the creation of UH's Office of Mauna Kea Management, which was established that same year. The Department notes that in the course of updating the Master Plan the public has commented on the role and need for the Department to maintain its oversight for the cultural and natural resources on the summit because of its unique and valued cultural and natural resources. Retaining this in State ownership and with Department continued oversight via the lease and permitting process is effective in maintaining that public trust stewardship.

(2) Mauna Kea Ice Age Natural Area Reserve (NAR), a 143.5 acre square parcel around Puu Pohaku, located to the west of the summit area and a 3,750 acre triangular-shaped parcel that extends from approximately 10,070 feet (3,069 meters) up to 13,230 feet (4,033 meters) at the upper tip of the parcel:

The area is presently designated and managed as a NAR by way of Chapter 195, Hawaii Revised Statutes (HRS), with the mandate to protect and preserve the unique natural flora and fauna for the enjoyment of present and future generations, as relatively unmodified as possible.

The Department is very aware of the relationship of this significant cultural site to Hawaiians as evidenced by: Queen Emma (the widow of Kamehameha IV) who in 1881 traveled to "the top of Mauna Kea to bathe in the waters of Waiau to cleanse at the *piko* of the island." Lake Waiau, the only high elevation lake in the State, is also considered a traditional cultural property and a source of sacred water used in healing and worship practices. Additionally, the Mauna Kea Adze Quarry is an important and unique cultural and geomorphic feature.

The critically endangered `Ahinahina (*Argyroxiphium sandwicense* spp. *sandwicense*) or Mauna Kea Silversword was historically found within the Mauna Kea Ice Age NAR. Recent efforts have been taken to provide a safe place to protect this species within the



Mauna Kea Ice NAR boundaries. Additionally, archaeological inventory surveys and invasive species management are presently on going in the NAR. These management efforts need to continue. Retaining these lands in State ownership and with Department continued management authority, responsibility and expertise is the most effective means to maintain the needed public trust stewardship for these unique lands.

In closing, the Department concurs with the testimony of the Department of Budget and Finance that the sale of public lands to help the state address fiscal issues may be feasible, but this should only be done when there in no higher public purpose for the property.



**HB 2737**  
**RELATING TO THE DISPOSITION OF PUBLIC LANDS**  
House Committee on Finance

February 17, 2010

10:00 am

Room 308

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The Office of Hawaiian Affairs (OHA) offers the following comments on HB 2737.

OHA is monitoring HB 2737 and its Board of Trustees will consider further recommendations by counsel regarding the bill at the board's meeting on February 18, 2010. Counsel will be advising the Trustees to adopt a position in strong opposition to the bill due to the fact that it breaches the Settlement Agreement executed in 2009 among several parties, including OHA and the State of Hawai'i, in a lawsuit of many years' duration in which OHA and individual plaintiffs sought to halt the efforts of a State agency, the Housing and Community Development Corporation of Hawaii, to sell certain ceded land. Originally entitled *Office of Hawaiian Affairs, et al. v. Housing and Community Development Corporation of Hawaii et al.*, the lawsuit eventually made its way to the United States Supreme Court. The Settlement Agreement, signed in May 2009 by Attorney General Mark Bennett on behalf of the State of Hawai'i, was conditioned on Senate Bill 1677, Conference Draft 1 (2009) becoming law. That bill did become law, as Act 176, SLH 2009. Among other things, Act 176 requires a two-thirds majority vote of both houses of the Legislature before any specific lands controlled by the State can be sold (this includes but is not limited to ceded lands).

HB 2737 would essentially invalidate Act 176. For example, page 6, lines 20-22 and page 7, line 1 of the bill directs BLNR to sell public lands "[n]otwithstanding any provision of chapter 171, Hawaii Revised Statutes, or any other law to the contrary...." Section 4 of the bill on page 11, lines 15-18, exempts such sales by BLNR from Section 171-64.7, Hawaii Revised Statutes, which incorporates the legislative approval requirements of Act 176.

We wish to note that because the HCDCH case was resolved by dismissal without prejudice, it is unlikely that any sale of ceded lands would be insured by a reputable title insurance company, because the Hawai'i Supreme Court has not yet ruled on whether Native Hawaiians are, under State law, entitled to an injunction against the sale of ceded lands to third parties, pending resolution of their claim to title to the ceded lands.

Any position taken on HB 2737 by the OHA Board of Trustees at its Feb. 18, 2010 meeting will be communicated in writing to your Committee. Thank you for the opportunity to testify.



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[www.KAHEA.org](http://www.KAHEA.org)  
[kahea-alliance@hawaii.rr.com](mailto:kahea-alliance@hawaii.rr.com)

**H.B. 2737 Sale of Ceded Lands  
Room 308, 10:00 am  
February 17, 2010**

Aloha Representative Oshiro and members of the House Finance Committee,

Mahalo for this opportunity to express our **opposition to HB 2737**. We strongly urge you to NOT make any further effort to sell off the Crown and Government Lands of Hawai'i.

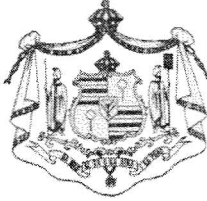
KAHEA is a network of nearly 10,000 people throughout the Hawaiian Islands and the world working to protect Hawai'i's unique natural and cultural resources. Since 2000, we have advocated for the protection of Hawai'i's ceded lands.

As you know, upon the formation of the State of Hawai'i, inferior title to the Crown and Government Lands (C&G) of Hawai'i were given to the state in an effort to ensure that these assets were managed and protected in the best interests of the people of Hawai'i, especially Native Hawaiians. The State does not have authority – legal, moral, or otherwise – to sell this property. Though we understand the severity of the state's current financial crisis, we cannot allow the assets of Native Hawaiians to be raided against their best interests.

In addition, it is important to note that the sale of public lands cannot be authorized until the fair market value of the property is objectively assessed. See, HRS § 171-17 and 18. Therefore, the Department of Land and Natural Resources must first have all of these lands appraised. As you know, KAHEA has long inquired as to the fair market value of Mauna Kea, as currently foreign corporations and governments are leasing these public lands for only \$1. While we do not support the sale of public lands, it would be wise for the state to ensure that the lease collected for the use of these lands is based on the actual market value of those lands. If the state had been collecting market-based rent on the Mauna Kea lands alone since these leases began, it is arguable that the current financial crisis would not be nearly so severe.

Mahalo,

Marti Townsend  
Program Director



Hawaiian Civic Club of Hilo  
P. O. Box 592  
Hilo, Hawai'i 96720

STATEMENT OF ANTOINETTE K. MALLOW, PRESIDENT  
IN **STRONG OPPOSITION TO**

**HB 2737, RELATING TO THE DISPOSITION OF PUBLIC LANDS**

**COMMITTEE ON FINANCE**

Rep. Marcus R. Oshiro, Chair

Rep. Marilyn B. Lee, Vice Chair

**Wednesday, February 17, 2010, 10:00 A.M., Conf Rm 308, 10:00 A.M.**

Aloha, Representative Oshiro, Chair; Representative Lee, Vice Chair, and members of the Committee on Finance

The Hawaiian Civic Club of Hilo is in strong opposition to House Bill 2737, Relating to the Disposition of Public Lands. The bill directs the Department of Land and Natural Resources to fund the general fund by disposing of public lands. It also directs the Department to dispose of public lands leased to not-for-profit organizations in meeting certain criteria.

We recognize and appreciate that the Finance Committee is exploring ways in which to reduce the state's budget shortfall. However, the Hawaiian Civic Club of Hilo is strongly opposed to any sales of lands held in public trust. At our most recent convention, we supported AHCC resolution 09-30, Supporting a Full Moratorium on Any Sale, Exchange or Alienation of Crown and Government Lands, of the Former Kingdom of Hawai'i, Currently Held in Public Trust by the State of Hawaii, Until the Legal, Political, and Moral Claims of the Native Hawaiian Peoples Against the United States and the State of Hawaii are Resolved. Further, the bill fails to comply with provisions of Act 176.

Last year, the legislature passed SB 1677, SD1, HD1, CD1, signed into law by the Governor as Act 176, on July 13, 2009. Act 176 set forth certain processes to be followed for any sales of state land, in particular those lands held in trust. It calls for a concurrent resolution to be adopted by each house by at least a two-thirds majority vote of the members, and it further requires that **prior to submission** of the concurrent resolution to the legislature, the **State, agency, or entity, as appropriate, shall hold an informational briefing on the proposed sale or gift in the community where the land to be sold or given is located.** Other provisions of Act 176 provide that the concurrent resolution must specifically list all proposed sales of state land, location and area appraisal, name of all appraisers, appraisal value, date of appraisal, purpose for which land is being sold, and requires a notice to be provided to OHA.

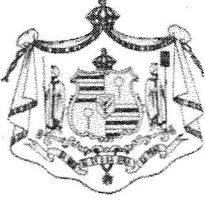
HB 2737 states that its purpose is to address the exigent and extraordinary circumstances that have caused a gaping shortfall in state revenues by **directing** the department of land and natural resources to, as soon as reasonably possible, sell a certain amount of public lands to raise the amount of revenues in the general fund”, and further listed some examples of potential lands to be sold. We believe that the provisions of this bill are not in compliance with HRS 171-64.7 (c) and (e). Informational briefings for the communities in which these lands are located have not been held, and there is no concurrent resolution introduced by the legislature.

Further, in view of the potential passage of the Akaka Bill and the creation of a Native Hawaiian Governing Entity, it is important that the corpus of the Public Trust Lands be kept intact.

We urge this committee not to pass HB 2737.

Respectfully,

Antoinette K. Mallow - President  
Hawaiian Civic Club of Hilo



Association of Hawaiian Civic Clubs  
P. O. Box 1135  
Honolulu, Hawai'i 96807

STATEMENT OF LEIMOMI KHAN, PRESIDENT  
IN **STRONG OPPOSITION TO**

**HB 2737, RELATING TO THE DISPOSITION OF PUBLIC LANDS**

**COMMITTEE ON FINANCE**

Rep. Marcus R. Oshiro, Chair

Rep. Marilyn B. Lee, Vice Chair

**Wednesday, February 17, 2010, 10:00 A.M., Conf Rm 308, 10:00 A.M.**

Aloha, Representative Oshiro, Chair; Representative Lee, Vice Chair, and members of the Committee on Finance

The Association of Hawaiian Civic Clubs is in strong opposition to House Bill 2737, Relating to the Disposition of Public Lands. The bill directs the Department of Land and Natural Resources to fund the general fund by disposing of public lands. It also directs the Department to dispose of public lands leased to not-for-profit organizations in meeting certain criteria.

We recognize and appreciate that the Finance Committee is exploring ways in which to reduce the state's budget shortfall. However, the Association of Hawaiian Civic Clubs is strongly opposed to any sales of lands held in public trust. It has passed several resolutions on this matter at its annual conventions, the most recent resolution passed in November 2009 was AHCC resolution 09-30, Supporting a Full Moratorium on Any Sale, Exchange or Alienation of Crown and Government Lands, of the Former Kingdom of Hawai'i, Currently Held in Public Trust by the State of Hawaii, Until the Legal, Political, and Moral Claims of the Native Hawaiian Peoples Against the United States and the State of Hawaii are Resolved. Further, the bill fails to comply with provisions of Act 176.

For years, the legislature has introduced measures to protect the Public Land Trust recognizing its fiduciary duty to preserve the corpus of the Public Land Trust, specifically the ceded lands until such time as the unrelinquished claims of Native Hawaiians to these lands are resolved. Ceded lands tie directly to Native Hawaiians well-being and identity, as former crown and government lands that were taken from the Kingdom of Hawaii after the overthrow of Queen Lili'uokalani in 1893 and later placed in trust to be used for five public purposes, including the benefit of Native Hawaiians, the indigenous people of these islands.

Last year, the legislature passed SB 1677, SD1, HD1, CD1, signed into law by the Governor as Act 176, on July 13, 2009. Act 176 set forth certain processes to be followed for any sales of state land, in particular those lands held in trust. It calls for a concurrent



resolution to be adopted by each house by at least a two-thirds majority vote of the members, and it further requires that **prior to submission** of the concurrent resolution to the legislature, **the State, agency, or entity, as appropriate, shall hold an informational briefing on the proposed sale or gift in the community where the land to be sold or given is located.** Other provisions of Act 176 provide that the concurrent resolution must specifically list all proposed sales of state land, location and area appraisal, name of all appraisers, appraisal value, date of appraisal, purpose for which land is being sold, and requires a notice to be provided to OHA.

HB 2737 states that its purpose is to address the exigent and extraordinary circumstances that have caused a gaping shortfall in state revenues by **directing** the department of land and natural resources to, as soon as reasonably possible, sell a certain amount of public lands to raise the amount of revenues in the general fund”, and further listed some examples of potential lands to be sold. We believe that the provisions of this bill are not in compliance with HRS 171-64.7 (c) and (e). Informational briefings for the communities in which these lands are located have not been held, and there is no concurrent resolution introduced by the legislature.

Further, in view of the potential passage of the Akaka Bill and the creation of a Native Hawaiian Governing Entity, it is important that the corpus of the Public Trust Lands be kept intact.

We urge this committee not to pass HB 2737.

#### About the Association of Hawaiian Civic Clubs

*The Association is a growing national confederation of fifty-eight Hawaiian Civic Clubs, located throughout the State of Hawai'i and in the States of Alaska, California, Colorado, Illinois, Nevada, Utah, Virginia, Washington State, Tennessee, and Texas. It initiates and works to support actions that enhance the civic, economic, educational, health and social welfare of our communities, and in particular, the culture and welfare of the Native Hawaiian community.*

Malu'ohai Residents Association  
P.O. Box 700911  
Kapolei, HI 96707

Testimony of Homelani Schaedel, President  
Malu'ohai Residents' Association

BEFORE THE COMMITTEE ON FINANCE

**HB 2737 – RELATING TO THE DISPOSITION OF PUBLIC LANDS**

**Hearing Date: February 17, 2010**

February 16, 2010

Aloha,

Chair Oshiro, Vice Chair Lee and Members of the Committee:

I submit this testimony in opposition of HB 2737.

“Desperate times call for desperate measures”...never has a statement been truer as is for the creation and introduction of HB 2737. Using this measure to reduce the state's deficit is by far a desperate measure lacking in foresight and fiduciary responsibility.

The United States Congress, Hawai'i Supreme Court and this legislature acknowledged that Native Hawaiians have un-relinquished claims to the ceded lands. Passing this bill to allow for the sale of ceded lands before those claims are resolved is contrary to your commitment to Native Hawaiians.

It is without question that we are facing challenging economic times. However, the measure presented in this bill places the future and best interest of Native Hawaiians in jeopardy and irreparable harm.

Respectfully,

Homelani Schaedel, President  
Malu'ohai Residents Association

**HOUSE COMMITTEE ON FINANCE**

Rep. Marcus Oshiro, Chair  
Rep. Marilyn Lee, Vice Chair

Wednesday, February 17, 2010  
House Conference Room 308  
10:00 AM

**House Bill 2737**  
**Relating to the Disposition of Public Lands**

Testimony submitted by  
Bob Loy  
Director of Environmental Programs  
The Outdoor Circle

This testimony is respectfully submitted in opposition to the present form of HB 2737, which allows for the sale of certain public lands to help lower budget deficits in coming years.

While The Outdoor Circle acknowledges the fiscal challenges facing Hawaii during the next two fiscal years and possibly beyond, we are concerned that as written, HB2737 will allow the sale of public lands that should be kept for greater purposes.

For example, the legislation specifically identifies several parcels in Kakaako Makai such as the so-called AFFES building which sits strategically on the Ewa/Makai corner of Ward Avenue and Ala Moana Boulevard. This intersection is one of the gateways into Kakaako Makai, which is currently undergoing a \$750,000 legislatively mandated master planning process. If the AFFES building/property is sold to a private party it could have long term negative impacts on future development of Kakaako Makai that might run counter to the master planning process. Furthermore, it's not clear whether this parcel is prohibited by previous legislation from being sold to a private party.

In general, The Outdoor Circle is greatly concerned that this legislation will open the door to the wholesale disposal of public land as a quick fix for the problems created by the current recession. If this legislation moves forward we strongly urge the committee to add language that will require full disclosure of all parcels that might be offered for sale. The legislation also should include a process by which all properties being considered for sale can be critically reviewed by a broad based coalition of community members and legislators to determine the impacts that might result from the sale of all public lands being considered under this legislation.



PO Box 17603 • Honolulu, HI 96817-0603 • (808) 842.1359 • Fax (808) 841.1270  
www.siba-hawaii.org

February 16, 2010

Honorable Marcus Oshiro, Chair  
Committee on Finance  
House of Representatives  
415 South King Street  
Honolulu, HI 96813

***Support for HB2737, Relating to the Disposition of Public Lands***

Dear Chair Oshiro and Committee Members:

The Sand Island Business Association (SIBA), on behalf of its 87 members/tenants, strongly supports the passage of HB2737. It is the hope of SIBA's members/tenants to be granted an opportunity to purchase their leasehold interest, situate Sand Island Industrial Park (SIIP).

SIBA entered into a 55-year master lease with the Department of Land & Natural Resources (DLNR), effective July 1, 1992, for 74 acres on Sand Island. Under said lease, SIBA was responsible for the construction of all infrastructure improvements. The cost to SIBA's members for the infrastructure was over \$41 million. The 74 acres was divided into 111 industrial lots.

SIBA is a unique organization. SIBA is a non-profit corporation and its members are its subtenants. Each sublease has the same terms and conditions as the Master Lease. On behalf of DLNR, SIBA collects rents due from each tenant. SIBA does not charge a fee for this service. SIBA also maintains and manages the 74 acre area, known as the SIIP, by charging an assessment to each tenant/member.

SIBA and its members acknowledge that they have a master lease with DLNR that terminates in 2047. We understand that under our lease there is no provision for the purchase of the fee simple interest under said lease.

However, our members, for business purposes, would like an opportunity to purchase the fee interest in their leasehold. After investing over \$41 million in the infrastructure and over \$20 million in their leasehold improvements, our members do not have the ability to use this investment in the operation and expansion of their businesses. Currently, the fixed rent portion of our lease will expire on June 30, 2017. For financing purposes, our tenant subleases have no value.

- The land on which the SIIP is situated is not ceded land. The *Final Report on the Public Land Trust*, published by the Legislative Auditor in 1986, states this property is classified as 5(a).
- The leasable area of the SIIP is 2,556,398 sq. ft. We have been informed that unimproved industrial land is about \$25 per sq. ft. This would place the value of SIIP land at over \$63 million.
- SIBA is ready to start negotiations with DLNR for the purchase of the SIIP if given the opportunity. We have had assurances from a financial institution of financing. We have had discussion with our subtenants about such a purchase and have received favorable responses.
- SIBA is aware of DLNR's concerns about the loss of revenue if the SIIP was sold. We are willing to discuss this issue and any other concerns DLNR may have. For example, SIBA would consider an exchange as part of the purchase. Or in the event not all of our subtenants want to purchase the fee, to give DLNR the right to retain or repurchase said lots.
- Amend HB2737, Part II, Section 6 (page 12), Line 8, to read "seventy-five or more subtenants".

Inclosing, SIBA is in favor of HB2737 and urge its passage. We are of the opinion that this bill is a "win-win" for all parties.

Very truly yours,

  
Rodney Kim  
Secretary & Executive Director

Representative Marcus Oshiro, Chair  
Representative Marilyn Lee, Vice Chair

Committee on Finance

Wednesday, February 17, 2010, 10:00am, Conference Room 308

**Opposition of HB2737, Related to Disposition of Public Lands**

To the Honorable Chair Oshiro and Honorable Vice Chair Lee:

I am writing in opposition to HB2737.

I am honored to be a member of `Ahahui Ka`ahumanu (Chapter I), Daughters of Hawai`i, `Aha`Iolani, the Hawaiian Civic Club of Honolulu, and other Hawaiian organizations; this is my personal testimony on this bill.

I am in strong opposition to this bill, which would direct the Department of Land and Natural Resources to fund the general fund by disposing of public lands.

Last year, I started a petition that gathered over 30,000 signatures in opposition to the disposition of ceded lands. The petition can be viewed here: <http://apps.facebook.com/causes/petitions/44> and reads:

**About this Petition:**

We ask the State Legislature to uphold and respect the finding of the Hawaii State Supreme Court in OHA v HCDC (available at <http://www.state.hi.us/jud/opinions/s...> which found that the State of Hawaii does not have the authority to sell "ceded" lands. Despite this finding, the Lingle Administration is attempting to move forward with their efforts to sell lands being held in the public trust to a private developer.

**The Desired Outcome of this Petition:**

Protect Hawaii's "ceded" lands

I feel that in light of this widely supported petition, it is not appropriate to move forward with a bill that would encourage the selling of ceded lands. While I can appreciate that the current economic situation demands the consideration of every possible income source, I believe that other options, including the use of the special funds, fee increases, and other revenue generating activities should be completely exhausted before mandating a course of action that would negatively impact the future of the State.

To dispose of lands held in the public trust would effectively cripple all the identified public purposes that benefit from Section 5(f) of the Admission Act, including: betterment of the conditions of native Hawaiians, support of public education, development of farm and homeownership, public improvement, and lands for public use. Rather, we would encourage for the better management of these lands such that all these purposes could better benefit from revenue and income generated from these lands.



It is unreasonable to take this drastic step when much of these land holdings continue to be leased for as little as \$1.00 per year. Please first consider leasing these lands for a more competitive rate before directing their disposition.

Further, I am confident that should the State attempt to move forward with any disposition of the ceded lands, countless Native Hawaiians would come forward to litigate this issue. The Hawai'i State Supreme Court has noted that disposition would amount to alienation in their holding, which meets the standard for "injury," Office of Hawaiian Affairs v. Housing and Community Development Corp. of Hawai'i (2009) (available at <http://www.state.hi.us/jud/opinions/sct/2009/25570.htm>). The applicable section is provided below.

a. "injury in fact" test

The first requirement under the "injury in fact" test is that Osorio must have "suffered an actual or threatened injury as a result of the [State]'s wrongful conduct." Id. Here, Osorio contends that he has suffered threatened harm from the State's breach of trust by attempting to sell or transfer the Leialii parcel or any of the ceded lands in general from the public lands trust. See OHA v. HCDCH, 117 Hawai'i at 190, 177 P.3d at 900. More specifically, Osorio alleges that, "[w]henver ceded lands are alienated from the trust, the trust res is permanently diminished, and the collective rights of the public, Hawaiians[,] and native Hawaiians are negatively impacted" and that such diminishment causes him injury as a member of the general public because, as a Hawaiian, "his identity and cultural subsistence and religious rights are intrinsically tied to the land." In OHA v. HCDCH, we expressly agreed with the "cultural importance of the land to native Hawaiians" set forth in the findings of the trial court, which stated that:

The [n]ative Hawaiian [p]eople continue to be a unique and distinct people with their own language, social system, ancestral and national lands, customs, practices and institutions. "The health and well-being of the [n]ative [H]awaiian people is intrinsically tied to their deep feelings and attachment to the land." [(Citing in a footnote to the Apology Resolution.)] Aina, or land, is of crucial importance to the [n]ative Hawaiian [p]eople -- to their culture, their religion, their economic self-sufficiency and their sense of personal and community well-being. Aina is a living and vital part of the [n]ative Hawaiian cosmology, and is irreplaceable. The natural elements-land, air, water, ocean-are interconnected and interdependent. To [n]ative Hawaiians, land is not a commodity; it is the foundation of their cultural and spiritual identity as Hawaiians. The aina is part of their ohana, and they care for it as they do for other members of their families. For them, the land and the natural environment is alive, respected, treasured, praised, and even worshiped.

117 Hawai'i at 214, 177 P.3d at 924 (original emphasis omitted) (format altered) (brackets in original). Although the trial court (like this court) used the term "native Hawaiian" in the above finding, the trial court could not have intended that its finding be limited to read that the "[a]ina, or land, is of crucial importance" to only those "descendant[s] of not less than one-half part blood of the races inhabiting the Hawaiian Islands previous to 1778." HRS § 2-201 (emphasis added). Indeed, as pointed out by Osorio, this court has never before held that Hawaiian cultural practice is limited to only those persons of fifty percent or more blood quantum. In fact, the converse is true. This court, in Public

Access Shoreline Hawai'i v. Hawai'i County Planning Commission [hereinafter, PASH], 79 Hawai'i 425, 903 P.2d 1246 (1995), expressly stated that:

In the context of an argument challenging the Pele Defense Fund's (PDF) standing to bring its claim, as raised on appeal in [PDF], we made passing reference to the circuit court's finding that PDF's membership included persons of "fifty percent or more Hawaiian blood[.]" 73 Haw. at 615 n.28, 837 P.2d at 1269 n.28; see also 73 Haw. at 620 n.34, 837 P.2d at 1272 n.34 (citing affidavits of persons with at least one-half native Hawaiian blood). Because the [circuit] court's relevant factual determination was not challenged on appeal, we did not disturb this finding in [PDF].

Nevertheless, these references in [PDF] were not intended to imply our endorsement of a fifty percent blood quantum requirement for claims based upon traditional or customary Hawaiian rights. The definition of the term "native Hawaiian" in the [HHCA] is not expressly applicable to other Hawaiian rights or entitlements. Furthermore, the word "native" does not appear in HRS § 1-1. Because a specific proposal to define the terms "Hawaiian" and "native Hawaiian" in the 1978 Constitutional Convention was not validly ratified, the relevant section was deleted from the 1985 version of the HRS. See Kahalekai v. Doi, 60 Haw. 324, 342, 590 P.2d 543, 555 (1979). Consequently, those persons who are "descendants of native Hawaiians who inhabited the islands prior to 1778," and who assert otherwise valid customary and traditional Hawaiian rights under HRS § 1-1, are entitled to protection regardless of their blood quantum. Haw. Const., art XII, § 7 (emphasis added). Customary and traditional rights in these islands flow from native Hawaiians' pre-existing sovereignty. The rights of their descendants do not derive from their race per se, and were not abolished by their inclusion within the territorial bounds of the United States. See Organic Act, § 83; Act of April 30, 1900, c. 339, 31 Stat. 141, 157, reprinted in 1 HRS 36, 74 (1985) (as amended).

79 Hawai'i at 448-49, 903 P.2d at 1269-70 (emphasis in original) (footnotes omitted) (some brackets in original). Although the State is correct that Osorio has not previously "claimed a violation of [article] XII, [section] 7 . . . , or HRS § 1-1 or 7-1," that fact is irrelevant because Osorio is not claiming here that he has a right to exercise certain rights to land, but simply that, as a Hawaiian member of the general public, he may suffer cultural and religious injury if ceded lands are transferred from the trust in violation of the State's fiduciary duties. Based on the foregoing, we conclude that Osorio, as a member of the general public and a "beneficiar[y] of the public trust," has sufficiently alleged particular and threatened injury based on his Hawaiian cultural and religious attachments to the aina or land. Therefore, Osorio's claims, similar to those of the plaintiff in PDF, satisfy the first requirement of the "injury in fact" test. See PDF, 73 Haw. at 594, 837 P.2d at 1258.

The second requirement of the injury in fact test, i.e., that "the injury is fairly traceable to the defendant's actions," is also met. Here, Osorio's threatened cultural and religious injuries are traceable to the State's actions in alienating ceded lands from the public trust, and, "[o]nce the ceded lands are alienated from the public lands trust, they will be lost forever[.]" OHA v. HCDCH, 117 Hawai'i at 208, 177 P.3d at 918.

The third requirement of the "injury in fact" test is that "a favorable decision would likely provide relief for plaintiff's injury." PDF, 73 Haw. at 593, 837 P.2d at 1257-58. Originally, Osorio (along with the settled-plaintiffs) sought an

injunction against the State from selling or otherwise transferring, inter alia, the Leialii parcel. If we were to, again, instruct the circuit court "to issue . . . an injunction against the [State] from selling or otherwise transferring . . . any . . . ceded lands from the public trust until the claims of the native Hawaiians to the ceded lands [have] been resolved," OHA v. HCDCH, 117 Hawai'i at 218, 177 P.3d at 928, such decision would be "favorable" and "provide relief" to Osorio as a member of the general public. As we have previously stated, a moratorium on the alienation of ceded lands from the trust is in the interest of the general public because "a lasting reconciliation [is] desired by all people of Hawai'i." Id. at 216, 177 P.3d at 926 (quoting 1997 Haw. Sess. L. Act 329 § 1 at 956) (emphasis added) (internal quotation marks omitted) (bracket in original). Thus, preservation of the status quo and of the ceded lands trust res in contemplation of "a lasting reconciliation" is in the interest of Osorio as a member of the general public.

Additionally, it is important to point out here that, as previously stated, this court, in PDE, cited with approval the Ninth Circuit's holding in Price, that

Price, a native Hawaiian, had made allegations "sufficient to show an 'injury in fact'" even though legitimate [section] 5(f) uses might not necessarily benefit native Hawaiians. The court continued: "In addition, allowing Price to enforce [section] 5(f) is consistent with the common law of trusts, in which one whose status as a beneficiary depends on the discretion of the trustee nevertheless may sue to compel the trustee to abide by the terms of the trust." Id. at 826-27 (citations omitted).

Id. at 592 n.8, 837 P.2d at 1257 n.8. Based on the foregoing, we conclude that Osorio -- as a member of the general public and a beneficiary of the public lands trust under article XII, section 7 -- has "made allegations sufficient to show an 'injury in fact[.],' even though legitimate [section] 5(f) uses might not necessarily benefit" members of the general public. Id.

For these reasons, I feel that the passage of this bill is a highly unproductive course of action for the legislature and the State at this time.

Thank you for the opportunity to testify on this important Resolution.



Trisha Kehaulani Watson, JD, PhD

Testimony in Opposition to HB 2737-Sale of Mauna Kea and Other Public Lands

Aloha Chair and Committee Members,

It is sad that proposals to sell off public lands continue to reappear. The public has been crying out to stop this for years. Selling irreplaceable public waterfront and lands is reckless and shortsighted. To even consider selling off Mauna Kea is unimaginable. Please listen to the people!

What is equally disturbing is how some of these lands have sat for years until they fall into disrepair. A wiser plan would be to lease them to owners who will properly maintain them and provide sustained income. The reported \$1 per year that the state leases Mauna Kea to some of the wealthiest nations in the world for observatories appears is an example of a land management practice that should be changed.. Poor practices should not be followed by worse ones. What will happen after the land is sold and the short term gains are spent?

Mahalo for your assistance in getting rid of this bill.

Mr. C. Cramer

June T. Shimokawa  
3557A Kaimuki Avenue  
Honolulu, Hawai`i 96816  
(808) 732-6791  
[junets@clearwire.net](mailto:junets@clearwire.net)

February 17, 2010

To: Representative Marcus Oshiro, Chair  
Committee on Finance  
Hawai`i State House of Representatives

From: June Shimokawa, private citizen

Re: **H.B. 2737 Relating to the Disposition of Public Lands**

Chair Oshiro and members of the Committee:

Thank you for this opportunity to testify **against H.B. 2737**. My name is June Shimokawa and I was born on the island of Hawai`i during the period that Hawai`i was considered a Territory of the United States. There was much about Hawai`i we were not taught, but there has been a great deal of factual revelation about Hawai`i's history which leads me to ask:

**How can the "state" of Hawai`i sell what it does not own?**

It is assumed that the state has title to what is called public and crown lands. But does it? Today's Bureau of Conveyance which is the repository of all records of Hawai`i land holdings and proceedings dates back to the 1840s when it was created by the independent Kingdom of Hawai`i. The governing powers in 1898, 1900, and 1959 did not create a new Bureau of records even with the transfer of governing powers by the United States and Hawai`i which have been documented to be unconstitutional (U.S. laws) and without regard to international laws pertaining to how one independent nation comes into the possession of another independent nation.

**I oppose H.B. 2737 because it is based on a fundamentally flawed assumption. The "state" of Hawai`i does not own the public lands it claims to own. Furthermore, to act to dispose of between \$500,000,000 to \$750,000,000 under the continuing cloud of title is grossly irresponsible.**

Thank you for this opportunity to testify.

## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 12, 2010 8:47 PM  
**To:** FINTestimony  
**Cc:** jeannine@hawaii.rr.com  
**Subject:** Testimony for HB2737 on 2/17/2010 10:00:00 AM

Testimony for FIN 2/17/2010 10:00:00 AM HB2737

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Jeannine Johnson  
Organization: Individual  
Address: 5648 Pia Street Honolulu, HI  
Phone: 373-2874  
E-mail: [jeannine@hawaii.rr.com](mailto:jeannine@hawaii.rr.com)  
Submitted on: 2/12/2010

**Comments:**

This is a terrible bill. Shall we sell Diamond Head, 'Iolani Palace and Mauna 'Ala because we need the money? How shortsighted can you be?!? Is this the best you can come up with?

“The land is a living thing. It's like putting a price on a human life. Our state motto should be more than something we make kids memorize in the fifth grade. It should be more than the words on the government seal. Ua mau ke ea o ka 'āina i ka pono. The life of the land is perpetuated in righteousness.” (Lee Cataluna, November 16, 2003)



## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 14, 2010 9:55 PM  
**To:** FINTestimony  
**Cc:** hawaiiannews@hawaii.rr.com  
**Subject:** Testimony for HB2737 on 2/17/2010 10:00:00 AM

Testimony for FIN 2/17/2010 10:00:00 AM HB2737

Conference room: 308  
Testifier position: oppose  
Testifier will be present: Yes  
Submitted by: Toni Auld Yardley  
Organization: Individual  
Address:  
Phone:  
E-mail: [hawaiiannews@hawaii.rr.com](mailto:hawaiiannews@hawaii.rr.com)  
Submitted on: 2/14/2010

**Comments:**

UPHOLD the State's fiduciary trust obligations by NOT allowing the sale of: Mauna Kea Scientific Reserve (TMK: 3-4-4-015: 9 and; Mauna Kea Ice Age Natural Area Reserve, a 143.5 acre square parcel around Puu Pohaku; on the island of Hawaii.

THESE ARE TRADITIONAL CULTURAL PROPERTIES, WHICH ARE SIGNIFICANT TO CONTEMPORARY NATIVE HAWAIIANS; and it is the OBLIGATION of the State of Hawaii to secure their protection.

Are you incapable or incompetent to fulfill your responsibilities?  
IF SO, we all have a bigger problem than just a recession.

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, February 16, 2010 5:15 PM  
**To:** FINTestimony  
**Cc:** johncarro001@hawaii.rr.com  
**Subject:** Testimony for HB2737 on 2/17/2010 10:00:00 AM

Testimony for FIN 2/17/2010 10:00:00 AM HB2737

Conference room: 308  
Testifier position: oppose  
Testifier will be present: Yes  
Submitted by: John Carroll  
Organization: Individual  
Address: 345 Queen St #607 Honolulu, HI 96813  
Phone: 526-9111  
E-mail: [johncarro001@hawaii.rr.com](mailto:johncarro001@hawaii.rr.com)  
Submitted on: 2/16/2010

**Comments:**

This is an absurd legislative offering. Native Hawaiian rights under the Congress approved provisions of the Homestead Act (1920 circa) will be subject to legal challenge. Fifty percent Hawaiians' rights to homestead lands must be addressed before selling any Public Trust Lands.

Testimony in Opposition to HB 2737-Sale of Mauna Kea and Other Public Lands

Aloha Chair and Comitee Members,

It is sad that proposals to sell off public lands continue to reappear. The public has been crying out to stop this for years. Selling irreplaceable public waterfront and lands is reckless and shortsighted. To even consider selling off Mauna Kea is unimaginable. Please listen to the people!

What is equally disturbing is how some of these lands have sat for years until they fall into disrepair. A wiser plan would be to lease them to owners who will properly maintain them and provide sustained income. The reported \$1 per year that the state leases Mauna Kea to some of the wealthiest nations in the world for observatories appears is an example of a land management practice that should be changed.. Poor practices should not be followed by worse ones. What will happen after the land is sold and the short term gains are spent?

Mahalo for your assistance in getting rid of this bill.

Mr. C. Cramer

## **FINTestimony**

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**From:** Mardi LaPrade [mardilaprade@aol.com]  
**Sent:** Monday, February 15, 2010 10:23 AM  
**To:** FINTestimony; HAWtestimony  
**Subject:** testimony opposed to selling Mauna Kea /public lands

Dear Sirs,

I am writing in opposition to HB2737 scheduled for 2/17/10, 10am in room 308.

Please do not give up permanent control of public lands, especially public lands sacred to Hawaiians. Selling this land is short sighted and the people have already let you know they do not support the selling of Mauna Kea.

Please find another way to generate needed revenue other than the sale of precious lands. Please heed the call of the people. You are in a position of responsibility, placed in power by the people and trusted to do our will.

Please look at other ways to manage Hawaii's most precious resource, the land, that are in line with the will of the people and sensitive to Native Hawaiian beliefs and practices. Please do not trample on the will of the people, please do not sell Mauna Kea. Your actions at this time will affect us for generations to come. Please vote against HB2737.

Thank you,

Mardi LaPrade

Dear Sirs,

I am writing in opposition to HB2737 scheduled for 2/17/10, 10am in room 308.

Please do not give up permanent control of public lands, especially public lands sacred to Hawaiians. Selling this land is short sighted and the people have already let you know they do not support the selling of Mauna Kea.

Please find another way to generate needed revenue other than the sale of precious lands. Please heed the call of the people. You are in a position of responsibility, placed in power by the people and trusted to do our will.

Please look at other ways to manage Hawaii's most precious resource, the land, that are in line with the will of the people and sensitive to Native Hawaiian beliefs and practices. Please do not trample on the will of the people, please do not sell Mauna Kea. Your actions at this time will affect us for generations to come. Please vote against HB2737.

Thank you,

Mardi LaPrade