LATE TESTIMONY

LINDA LINGLE
GOVERNOR OF HAWAII

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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Revised 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 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 or need for the property.

It is important to note that certain sections of this bill propose to sell lands where there is a higher public purpose or need for the property, and therefore the Department will focus testimony on addressing these parcels, and, in some cases, providing an alternative for the legislature's consideration.

For many years the State has directed the Department to fund basic government services relating to state lands and waters through special fund revenues generated by lands and waters under the Department's jurisdiction. For example, recreational boating and ocean safety is funded through boat fees and lease rents from lands surrounding small boat harbors; management of the Conservation District – half of the land in the State – is supported by commercial and industrial lease rents on state lands.

As is evident by the poor condition of many of our public spaces, these revenues have been insufficient to maintain parks, harbors and trails. 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.

Losing these long-term, reliable lease rents to support these areas would be devastating as the State would lose the reliable fiscal support for certain basic services relating to public safety and land management. As such, the Department responds to specific items in the bill as follows:

The Department strongly objects to Part II in its entirety. This section proposes to sell Sand Island Industrial Park to 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 Department's Land Division, the entire State Dam Safety Program and the Office of Conservation & Coastal Lands.

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. The loss of the State Dam Safety Program would mean the over 200 dams in the State would be unregulated or managed. Loss of the Office of Conservation and Coastal Lands would lead to the utter lack of management and oversight of state watersheds and coastal lands, which is necessary for safety of drinking water and property at risk from coastal hazards.

Sale of this one parcel would deprive the state of 50% of the revenue that supports these operations and staff. The short term gain from this sale is far outweighed by the long-term loss of reliable revenue to support the operations, and the State would need to find alternative taxpayer funds to offset the loss or face increased liability for failure to manage state lands and facilities like dams and reservoirs.

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

(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.

(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.

Small Boat Harbors

The department recommends amending House Bill 2737 regarding properties under the jurisdiction of DLNR Division of Boating and Ocean Recreation (DOBOR) to allow for the sale *or long term lease through direct negotiation* for a maximum term of seventy years, the same as other state maritime facilities.

State law mandates DOBOR provide management of small boat harbors. However, State law also mandates DOBOR provide ocean recreation management to meet the public safety requirements for state waterways and ocean areas. Ocean recreation responsibilities include ensuring the state boaters comply with state and federal boating safety; removal of abandoned boats; managing ocean recreation uses such as canoe races and surf meets in a safe manner that doesn't conflict with commercial and industrial ocean uses.

Rents from property leases and concessions as well as slips in small boat harbors support these ocean recreation responsibilities. Selling the commercially-viable harbors, such as the Ala Wai, would simply deprive the State of reliable long-term revenue, and leave the rural boaters responsible for subsidizing a far higher amount to manage the non-commercially viable facilities plus the ocean recreation activities.

The Department suggests amending HB 2737 to allow sale *or lease through direct negotiations for a maximum term of 70 years* of small boat harbors, which is currently

authorized for the commercial harbors. This amendment can be accomplished by amending HRS Section 179-59(b)(2) to include small boat harbors in the definition of "maritime and maritime-related operations." That provision could apply to the three facilities included as examples in HB 2737, below, as well as other DLNR DOBOR facilities in the State:

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

(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):

(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):

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 11,287.854acre 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 sandwichensis spp. sandwichensis)* 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.

LATE TESTIMONY

RE: HB2737

Aloha. My name is Kai Duponte, and I am writing testimony as a Native Hawaiian about the above-mentioned bill to sell public lands, including ceded lands, to raise money to address the state's economic situation. This letter is to ask that ceded lands not be sold.

Ceded lands are lands that have been acknowledged as having been taken illegally from the Native Hawaiian people (Apology Bill, 1993). They are held in trust and are not to be disposed of without the approval of two thirds of the legislature (current law); this bill is trying to supersede the current and recent law.

The passing of the Akaka Bill will lead to discussions about how ceded lands can be used as part of Hawaiian sovereignty, in a similar way American Indian and Alaskan Native lands have been part of their sovereignty. Native Hawaiians, along with many other indigenous peoples, are "intrinsically tied to their deep feelings and attachment to the land" (Apology Bill, 1993). These lands have a practical purpose as well: they can be used to better the lot of Native Hawaiians in their own homeland, which will improve life for all residents of Hawai`i in numerous ways. Selling the lands now will prevent Native Hawaiians from having the resources they need to pull themselves out of the following dilemma:

In this "paradise" that we live in, the indigenous people of Hawai`i, Native Hawaiians, experience the highest rate of problems including

- Lowest life expectancy
- High rates of alcohol and other substance abuse
- High rates of juvenile and adult incarceration and suicide
- High rates of involvement with the Child Welfare and Mental Health Systems
- High rates of homelessness
- High rates of unemployment, poverty, and lower levels of educational achievement and
- An over-representation of health disparities

All of the above problems have been linked in research to the role of Historical Trauma, which was certainly experienced by Native Hawaiians when their self-determination and lands were taken away in the illegal overthrow of their monarchy.

Members of the legislature, I ask you to do the right thing and vote no to H.R. 2737 or to amend it to take ceded lands out.

Mahalo a nui loa,

Kai Duponte
1450 Young Street #2001
Honolulu, HI 96814

FINTestimony

From: Nanaikapono Community School Museum [nanaikaponocommunityschoolmuseum@yahoo.com]
Sent: Wednesday, February 17, 2010 6:47 AM
To: All Reps; All Senators; FINTestimony
Subject: HB2737, Reject/Oppose Bill

LATE TESTIMONY

Honorable Senators and Representatives,

HB2737, to sell ceded lands to cover the State's Financial woes will solve nothing, and only make our situation worse in the future. Selling the lands will take away the 5f ceded lands trust away from the State as well as the Native Hawaiians. It will decrease the State's Financial woes, but in the long run set the State up for more Deficit and Budget shortfalls...

I urge not to consider or pass this bill.

Mahalo
Jonathan Moniz

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 17, 2010 6:16 AM
To: FINTestimony
Cc: kawehi11@yahoo.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: Rita Kanui
Organization: Individual
Address: 41-169 Poliala St. Waimanalo, Hi.
Phone: 692-2611
E-mail: kawehi11@yahoo.com
Submitted on: 2/17/2010

LATE TESTIMONY

Comments:
Aloha,

Would like to express opposition to HB 2737 and in general "selling ceded lands" due to the fact that the federal and state of Hawai'i has no proof that "it" was ceded in the first place.

Secondly as protected persons according to international law which the state of Hawai'i refuses to recognize as stated in my other testimonies.

Thirdly, the state of Hawai'i will be violating more trust responsibilities against the Hawaiian people and breaking constitutional laws they set-up to protect the cultral and traditional rights set in 1978 Constitutional convention.

Fourth, the state of Hawai'i is proving that they are incompetent in finding ways to make money, it's time to step down and start talking about the only other option: INDEPENDENCE.

Mahalo,
Rita Kanui, Po'o
Hewahewanui 'Ohana Council

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2010 11:58 PM
To: FINTestimony
Cc: mkwillia@aol.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: Mark K Williams
Organization: Individual
Address: 3220 Esther Street Honolulu, HI 96815
Phone: 808-391-8573
E-mail: mkwillia@aol.com
Submitted on: 2/16/2010

LATE TESTIMONY

Comments:
I oppose this bill. You did the right thing last year by requiring a 2/3rd majority vote. Now you cancel this out.

Find the money from corporate profiteers like Oceanic and Monsanto and not from the Hawaiian people.

FINTestimony

From: Samuel K. Kapoi [samkapoi@gmail.com]
Sent: Tuesday, February 16, 2010 10:57 PM
To: FINTestimony; All Reps; All Senators
Subject: A□OLE to HB 2737

LATE TESTIMONY

Aloha Representatives and Senators!

I was writing in regards of HB 2737 and want to protest against selling these ceded lands.

I believe that selling a portion of the 1.8 million acres of ceded lands will not fulfill it□s five purposes:

1. Support of public education
2. Betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920
3. Development of farm and home ownership
4. Public improvements
5. Provision of lands for public use

So please take it into consideration on the decision that will be made for our people in the near future to come. Mahalo.

Aloha,
Samuel K. Kapoi
Executive Producer
808-479-8231
808-695-8200
Follow us: Twitter.com/MakahaStudios

SAMUEL KAPOI . EXECUTIVE PRODUCER . MAKAHA STUDIOS

makaha

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WEBSITE: MAKAHASTUDIOS.COM

CREATIVE. HOMEGROWN. PEOPLE.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2010 10:47 PM
To: FINTestimony
Cc: aumakua@aloha.net
Subject: Testimony for HB2737 on 2/17/2010 10:00:00 AM

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

LATE TESTIMONY

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Eric Po'ohina
Organization: Individual
Address: 340-B Hualani st. kailua, hi
Phone: 348-7550
E-mail: aumakua@aloha.net
Submitted on: 2/16/2010

Comments:
I am against any sale of ceded/crown
lands until such time as all the Hawaiian claims are settled. The State Supreme Court Ruling also states that no lands will be sold until the Hawaiian claims have been settled. If you attmept to sell any of the crown land inventory without my authority and other related Hawaiian claims the state of Hawaii will end up in court litigation for years to come. The state will just get deeper and deeper in debt. To sell the Crown land is to sell out the culture of the Hawaiian kanaka maoli people.
I say no to HB 2737 and any other related land sale bills. The Iwi Kupuna are alive and well!
I will not be there to testify but I
request that one of the people on the
finance committee read my testimony and
introduce my name at the end of my
written testimony.
Eric Po'ohina, Konohiki Alliance

16 February 2010

RE: HB 2737

LATE TESTIMONY

Aloha,

My name is Kawika Liu, and as a physician and Hawaiian, am driven to testify against HB2737. This bill, if enacted, would further impact the already significant health inequities facing Native Hawaiians. Native Hawaiians have among the lowest life expectancy of all the populations of Hawai'i, as well as disparate rates of diabetes, hypertension, obesity and other chronic disease. Native Hawaiians have among the highest rates of infant mortality, involvement with Child and Family Services, juvenile and adult suicide and mental illness, and incarceration. Native Hawaiians face disparate rates of alcohol, tobacco and other substance abuse, as well as overrepresentation in houselessness, poverty, and lower educational achievement. Alienation from the land and the abilitty to practice traditional culture are not the only factors behind these inequities, but certainly contribute to

The issue of State "ownership" of the crown and government lands has not been decided; instead, the holding of the US Supreme Court was narrowly construed, and the State Supreme Court has not issued a final holding on this issue. There is no dispute that the neither the Provisional Government, nor the Republic of Hawai'i had good title to the crown and government lands, which were acquired through the overthrow of the lawful government of Hawai'i. Ipso facto, they had no good title to cede to the United States on annexation, and thus the US had no good title to cede to the State on admission. Thus, the State is in the position of constructive trustee, fiduciarily obligated to prevent dimunation of the crown and government lands until the re-recognition of a lawful Hawaiian government.

The crown and government lands are also among the last areas where Native Hawaiian can practice traditional and customary rights, in order to perpetuate the culture. Once lands are developed, these rights become empty, as the traditional resources found on the lands are either not accessible or no longer extant.

Finally, this bill, and similar legislation, is disrespectful to the Native Hawaiian host culture, as well as our kupuna. The islands are part of the same geneaology which led to kanaka, that of Papahanaumoku, Wakea and Ho'ohokuokalani. Mauna Kea, as well as all other crown and government lands are 'aina, geneaologically related to all Native Hawaiians. Mauna Kea itself is sacred to Waiau, Lilinoe, and Poliahu. To attempt to sell these lands is to literally add insult to injury, to again reproduce the violation of the imposition of private property, and the alienation of Hawaiians from their older siblings. Such sales will have far reaching effects, not simply on living generations, but those to come.

Mahalo for your consideration of my testimony.

Me ka ha'aha'a,

Kawika Liu

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2010 10:03 PM
To: FINTestimony
Cc: ponosize@hotmail.com
Subject: Testimony for HB2737 on 2/17/2010 10:00:00 AM

LATE TESTIMONY

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

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Pono Kealoha
Organization: Individual
Address: 1107 Acacia Rd. #113 Pearlcity, Kingdom of Hawai□i
Phone: 456-5772
E-mail: ponosize@hotmail.com
Submitted on: 2/16/2010

Comments:
HEWA = USA and any that illegally occupy and rule our Sovereign Nation and Kingdom.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2010 9:47 PM
To: FINTestimony
Cc: ja@interpac.net
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: Jim Albertini
Organization: Malu 'Aina
Address: P.O. Box AB Kurtistown
Phone: 808-966-7622
E-mail: ja@interpac.net
Submitted on: 2/16/2010

LATE TESTIMONY

Comments:
I am strongly opposed to HB2737. In my opinion, this is a criminal bill to sell stolen property. So called "ceded lands" are stolen Hawaiian Kingdom lands that need to be returned to their rightful owner --the Hawaiian Kingdom, not fenced to support a criminal enterprise.
Do the right thing, Kill this bill and return the stolen goods.
Mahalo.
Jim Albertini for Malu 'Aina

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2010 9:40 PM
To: FINTestimony
Cc: ponosize@hotmail.com
Subject: Testimony for HB2737 on 2/17/2010 10:00:00 AM

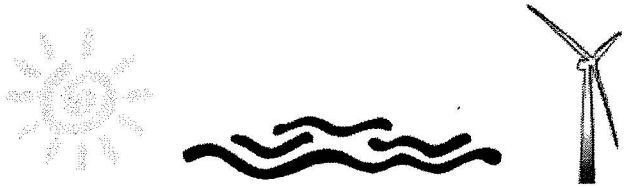
LATE TESTIMONY

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

Conference room: 308
Testifier position: oppose
Testifier will be present: Yes
Submitted by: Pono Kealoha
Organization: HIAA,HUI_PU,Kanaka Maoli,Ka lei Maile Ali□i HCC, and DMZ
Address: 1107 Acacia Rd. #113 Pearlcity, Kingdom of Hawai□i
Phone: 456-5772
E-mail: ponosize@hotmail.com
Submitted on: 2/16/2010

Comments:
HEWA = USA and any that illegally occupy and rule our Sovereign Nation and Kingdom.

LATE TESTIMONY



LIFE OF THE LAND

76 North King Street, Suite 203
Honolulu, Hawai`i 96817
Phone: 533-3454; E: kat.lifeoftheland@gmail.com

COMMITTEE ON FINANCE
Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice Chair
Wednesday, February 17, 2009
10:00 a.m.
Room 308
STRONG OPPOSITION to HB 2737 – Disposition of Public Lands

Aloha Chair Oshiro, Vice Chair Lee and Members of the Committee!

My name is Kat Brady and I am the Assistant Executive Director of Life of the Land, Hawai`i's own energy, environmental and community action group advocating for the people and `aina for almost four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

HB 2737 directs the DLNR 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 meeting certain criteria.

Life of the Land is in strong opposition to this measure. It is a scary message that Hawai`i would be willing to sell off our precious assets to balance the budget.

As Lester Brown wrote in The Earth Charter: *"We stand at a critical moment in Earth's history, a time when humanity must choose its future."*

Is this the future that we envision for our keiki and their keiki? More development, more restricted access once to accessible areas for local people, and the homogenization of Hawai`i? We certainly hope not.

We cannot fathom how Hawai`i could even begin to think of selling precious treasures like Mauna Kea and the Ice Age Natural Reserve Area. Life of the Land continues to be saddened by the desecration of the sacred temple, Mauna Kea.

In Native Hawaiian traditions, 'Kea' is the abbreviated form of Wakea, the sky god who, together with Papa, the earth mother, and other gods and forces created the Hawaiian

Islands. The summit is the meeting point of Wakea and Papa. In this cultural context, the island of Hawai`i was the first-born offspring of this union, the eldest of the islands.

Wakea and Papa also became the parents of the first Native Hawaiian man, Haloa, the first ancestor of the Hawaiian people. These beliefs about Mauna Kea make it a highly significant and spiritual place to the Hawaiian people. The summit is thus associated with the activities of Hawaiian deities, and appear as the focal point in numerous legends and oral histories. The cones are also critical landscape elements in maintain the integrity of Mauna Kea.

When the Polynesians first came to the Hawaiian Islands, Mauna Kea was the first land they spotted from their canoes. The sight was so overwhelming to them that they identified Mauna Kea as the *piko* (umbilical cord) ever since. That connection is indelible to the Kanaka Maoli and one that continues to be a guiding force for the first people of these islands.

For the past 30 years, observatories on Mauna Kea have paid only $1 annually for their use of this sacred mountain. In lieu of rent, they give 10-15% of their observatory viewing time to the University of Hawai`i. In the alternative plan put forth by the Royal Order and Mauna Kea Anaina Hou, those nights would be sold on the international astronomy 'market' with the revenue going to the protection and management of the cultural resources of Mauna Kea, to education, and to Hawaiian agencies. Since one night on a telescope can be sold for $15,000 - $30,000, the eleven observatories could bring in at least $48 million per year.

Selling off other assets like Ala Wai Boat Harbor and the Waikiki Yacht Club seem to accomplish the Governor's dream of privatizing our harbors.

Why are we considering this when there are other ways that Hawai`i can save money – such as <u>not</u> filling our jails and prisons with nonviolent drug lawbreakers, but sending these individuals to drug treatment, where their direct pathway to incarceration would be addressed at a more reasonable cost?

Selling off the assets of the Hawaiian nation is immoral, unconscionable, and another insult brought to bear on the aboriginal people of these islands. This is *hewa* (sin, crime, error).

As Ralph Nader said, *"Somewhere in the ether of your imagination, there are great ideas."* <u>This is NOT one of them</u>.

Let the words of Jimmy Carter guide you through this fiscal quagmire, *"We must adjust to changing time and still hold to unchanging principles."*

We respectfully ask that you HOLD HB 2737. Please don't mortgage the future of our children.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 16, 2010 7:58 PM
To: FINTestimony
Cc: drjant@aol.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: support
Testifier will be present: Yes
Submitted by: Dr. Jim Anthony
Organization: Individual
Address: 52-196 Trout Farm Road Kaaawa, Hawaii 96730
Phone: 8082215559; 8082371254
E-mail: drjant@aol.com
Submitted on: 2/16/2010

LATE TESTIMONY

Comments:
Strongly support this Bill.
Leased land state wide should be sold to lessees--for example, leased lots in Kahana and Waiahole should be sold to lessees. Non profits leasing land should also be eligible to purchase the fee simple interest in lots currently leased.
Have reservations about selling sacred spaces like Maunakea, however.

FINTestimony

From: Kamakaniokaaina T Paikai [kamakani@hawaii.edu]
Sent: Wednesday, February 17, 2010 8:48 AM
To: FINTestimony
Subject: HB 2737

LATE TESTIMONY

To whom it may concern:
This bill is an outrage. If passed, it will continue the string of illegal acts that consistently persist to neglect Native Hawaiian rights. The state of Hawai□i has found the most moronic ways to salvage in this poor economy by first furloughing education and now selling stolen lands that are in trust. What trust do we have with a government that constantly seems to avoid our rights in pursuit to stay afloat?

FINTestimony

From: Casey Alinan on behalf of webmaster
Sent: Wednesday, February 17, 2010 8:06 AM
To: FINTestimony
Subject: FW: Testimony for HB2737 on 2/17/2010 10:00:00 AM

Forwarding email to FINtestimony@capitol.hawaii.gov

From: evernw@aol.com [mailto:evernw@aol.com]
Sent: Wednesday, February 17, 2010 12:03 AM
To: Mailing List
Subject: Re: Testimony for HB2737 on 2/17/2010 10:00:00 AM

I forgot to add my mailing address, which is
3220 Esther Street
Honolulu, HI 96815
I don't want my testimony discounted.

LATE TESTIMONY

Mahalo,
Evern Williams
-----Original Message-----
From: mailinglist@capitol.hawaii.gov
To: FINtestimony@capitol.hawaii.gov
Cc: evernw@aol.com
Sent: Tue, Feb 16, 2010 11:55 pm
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: Evern E Williams
Organization: Individual
Address:
Phone: 808-392-1486
E-mail: evernw@aol.com
Submitted on: 2/16/2010

Comments:
I strongly oppose this bill. Why pass a law requiring 2/3rds majority and then create this one to cancel your previous action out? This is total hypochrisy and shows what you are really about. Keep Hawaiian lands in Hawaiian hands.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 17, 2010 7:50 AM
To: FINTestimony
Cc: aumakua@aloha.net
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: Kealoha Pahuino Po'ohina
Organization: Individual
Address: 340-B Hualani St Kailua 96734
Phone: 261-1814
E-mail: aumakua@aloha.net
Submitted on: 2/17/2010

LATE TESTIMONY

Comments:
I am agianst HB2737 because historical records show that the state of Hawaii does not have clear title to the ceded/Crown lands.
Before the illegal overthrow of the
Kingdom of Hawaii during 1893 the
framers of the republic of Hawaii
only had Crown land leases from
King David Kalakaua. Starting from
1890 and before they started conveying
the Crown lands via Quit Claim deed.
A quit claim deed does not convey legal
title it is similar to a lease agreement.
I formaly request that the state of Hawaii and attorney general Bennet submit to me personaly an abstract of title dating back to 1848 up to the present date.

Testimony In Opposition

To House Bill 2737: Relating to the Disposition of Public Lands

The House Committee on Finance

February 17, 2010

Room 308

LATE TESTIMONY

10:00 a.m.

The following testimony in opposition to HB2737 is submitted on behalf of the Native Hawaiian organization Mauna Kea Anaina Hou.

Aloha Chairman Oshiro and Members of the Committee of Finance,

We are **opposed to HB2737** for a number of reasons:

1. **Sacred Sites of Hawai`i Should Not Be Sold: Mauna Kea has enormous cultural and religious significance**

We are opposed to the sale of any and all public trust lands in Hawai`i. We especially object to sale of sacred lands including the summit lands of Mauna Kea.

Mauna Kea is place of enormous cultural and religious significance to the Hawaiian peoples and has been for millennia. Mauna Kea is a wahi pana and the burial ground of our most sacred ancestors. The summit landscape is designated a state and national historic district and landmark. It is home to threaten and endangered plant and animal species found nowhere else on planet earth. The star knowledge that our ancestors use to navigate and people the vast Pacific Ocean generations before western science originates from the summit's cultural landscape--knowledge that is still taught today.

MAUNA KEA IS NOT FOR SALE!

2. **Mauna Kea Is A Vast Community Resource That Should Not be Sold**

Mauna is accessed and utilized by many people in the community including but not limited, to Native Hawaiian cultural and religious practitioners, hunters, hikers, bird watchers, conservationists, naturalists, scientists (i.e. geologist, anthropologists, biologists, entomologist, vulcanologists,

professional and amateur astronomers etc.), various recreational users as well as those who simply wish to view the heavens and find spiritual inspiration and restoration.

3. Mauna Kea Lands Are Conservation District And Natural Area Reserve Lands (NARS)--Which Serve The Greater Public Health, Safety And Welfare--And Should Not be Sold

The language contained in HB2737 relies on incorrect assumptions. HB2737 states, *"The State holds title to many parcels of land that are not essential to the provision of public health, safety, and welfare services by the State or county. These lands may be sold to close or reduce the looming deficit."*

In 1961, the forestry and watershed lands of Mauna Kea where designated conservation district lands, which serve the public health, safety and welfare of the people of Hawai`i. Mauna Kea is the principle aquifer providing drinking water for the people of Hawai`i Island.

Hawai`i Revised Statutes Chapter 183C, which governs all conservation districts, including the conservation district of Mauna Kea states,

> **The Legislature finds that lands within the state land use conservation district contain important natural resources essential to the preservation of the State's fragile natural ecosystems and the sustainability of the State's water supply. It is therefore, the intent of the legislature to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare. [183C-1]**

HB2737 also suggests selling the Mauna Kea Ice Age Natural Area Reserve. Natural Area Reserve System (NARS) lands contain the last remaining intact native habitat and are home to the most threatened and endangered species in Hawai`i. The NARS are very important to welfare and health of Hawai`i's because they protect vital ecosystems,that in turn provide for human health and welfare.

4. Mauna Kea Should Not Be Sold, BUT Users Should Pay Rent

The wealthy international governments and corporations still ONLY pay $1.00 per year in lease rent for the use of Mauna Kea.

HB2737 relies on Hawai`i Revised Statutes 171 (HRS 171) to justify selling Mauna Kea lands, however, **HRS 171 requires the Board of Land and**

Natural Resources (BLNR) to charge "fair-market" lease rent for the use of public trust lands. The BLNR has failed to comply with HRS 171.

In the case of Mauna Kea, the BLNR has failed to comply with HRS 171, by not charging proper lease and allowing some of the wealthiest foreign nations and corporations to pay ONLY $1.00 per year in lease rent. This is outrageous--and it violates existing law. If the international observatories collectively paid $50 million per year in lease rent--a reasonable amount-- in just two years the state would collect $100 million. Imagine how much money the state would have collected if the BLNR had been following the law, collecting proper rent over the last 30 years. BLNR needs to collect rent on public trust land, not ask lawmakers to sell the legacy and homeland of our children.

We are strongly opposed to HB2737 and we respectfully ask you not pass HB2737 from this committee.

Ms. Kealoha Pisciotta, President

Mauna Kea Anaina Hou

P.O. Box 5864

Hilo, Hawai`i 96720

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 17, 2010 8:47 AM
To: FINTestimony
Cc: malamapono@aol.com
Subject: Testimony for HB2737 on 2/17/2010 10:00:00 AM

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

LATE TESTIMONY

Conference room: 308
Testifier position: support
Testifier will be present: No
Submitted by: Mahealani Cypher
Organization: Ko`olaupoko Hawaiian Civic Club
Address: P. O. Box 664 Kaneohe, HI 96744
Phone: 235-8111
E-mail: malamapono@aol.com
Submitted on: 2/17/2010

Comments:
The Ko`olaupoko Hawaiian Civic Club supports this bill with reservations. We are concerned about the sale of any lands that would be classified as ceded Hawaiian lands, and urge the committee to delete those parcels that should be set aside for future negotiations between the State of Hawaii and a new native Hawaiian self-governing entity.

Mahalo for this opportunity to offer our mana`o.

FINTestimony

From: Georgette Stevens [georgette.stevens@gmail.com]
Sent: Wednesday, February 17, 2010 8:57 AM
To: FINTestimony
Subject: HB No. 2737

Dear Legislators,

I oppose this bill. Ceded lands are still at issue and must be resolved before any disposition of the properties are made.

Respectfully,

Georgette Stevens
P. O. Box 75414
Kapolei, HI 96707
306-7992

HOUSE OF REPRESENTATIVES
STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

February 17, 2010

Testimony of Representative Faye P. Hanohano before the Committee on Finance in **strong opposition to HB 2737 Relating to the Disposition of Public Lands**.

I wish to express my fervent opposition to **HB 2737 Relating to the Disposition of Public Lands**, which seeks to dispose of public lands, lands which are also known as "ceded lands" and to which the Kanaka Maoli have an unresolved claim. Using the sacred land of Mauna Kea as an example of public land incites agitation and anger, and is mean-spirited. This measure also seeks to exempt the public land sale from recently enacted legislation governing sale of ceded land, a compromise worked out last session that puts responsibility of stewarding the sale of ceded lands in the hands of the legislature. This measure is an insult to Kanaka Maoli and to all citizens of Hawai`i who value due process. IT MUST BE HELD.

Mahalo,

Faye P. Hanohano
State Representative, District 4

TESTIMONY IN OPPOSITION:
HOUSE BILL 2737 RELATING TO THE DISPOSITION OF PUBLIC LANDS.

The House Committee on Finance
February 17, 2010
Room 308 10:00AM

Aloha Chairman Oshiro and members of the Finance Committee,

I am writing in strong opposition to HB 2737. I would like to speak specifically about Mauna Kea. The sale of our sacred mountain would be an affront to the Hawaiian People. We revere Mauna Kea as it is our place of creation. It is the manifestation of the Divine and the burial ground of our highest born. Mauna Kea is on the list for National Historic Places because of its historic and cultural importance and is therefore under protective status.

Mauna Kea is also considered **conservation district** and is protected for the health, welfare, and enjoyment of the public. There cannot be a private entity that can turn our beloved Mauna Kea into a gated community only accessible to a few. The State **can generate funds** by charging fair market rents from all of the lands listed in HB2737 and receive an annual income that could be used for public purposes. In the case of Mauna Kea, some of the funds generated could be used for managing and protecting it and other conservation districts around the state which the state has a duty to preserve and protect.

We have been given Mauna Kea not to use up and destroy but to have an attitude of reverence and gratitude toward the divine. This is what we should leave for our future generations – not the idea that our sacred aina can just be sold to the highest bidder like a piece of plastic. What about next time when things get tough do we start selling off the islands one by one? I cannot help but think of the image of the desperate drug addict who sells all the family heirlooms little by little because he's so desperate for a fix. Is this what we mean by "a shot in the arm" for the economy?

I am opposed to the sale of any public lands. Please let's preserve what we can for our future generations and not bow down to political pressure. **KILL THIS BILL.**

Mahalo for your time and consideration on this very important matter,

Keomailani Von Gogh Olaa, Hawaii (808) 345-8032

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 17, 2010 9:18 AM
To: FINTestimony
Cc: kahiwal@cs.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: Clarence Ching
Organization: Individual
Address: 64-823 Mamalahoa Highway Kamuela, HI
Phone: (808)769-3828
E-mail: kahiwal@cs.com
Submitted on: 2/17/2010

Comments:
The potential practice of selling any of the so-called "ceded" lands should never be contemplated. Such lands are the legal property of the Kingdom of Hawai'i - that arguably (by international law) continues to exist. As a legal postulate - the so-called "state" of hawai'i holds those lands in trust for the real owner - the Kingdom.

The state DOES NOT have "good" title to those lands.

Such culturally important "land" as the Mauna Kea lands should never be sold - especially NOT for paying any on-going expenses of the state. To dispose of such important land to raise "working capital" for the excessive financial debaucheries of the state is a very poor - and certainly not responsible and prudent - practice.

Please kill the bill - or delete all references to any of the so-called "ceded" lands.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 17, 2010 9:43 AM
To: FINTestimony
Cc: imua-hawaii@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: Isaac Harp
Organization: Individual
Address: 64-217 Wailani Place Kamuela, HI 96743
Phone: 808-345-6085
E-mail: imua-hawaii@hawaii.rr.com
Submitted on: 2/17/2010

Comments:
COMMITTEE ON FINANCE
Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice Chair
Wednesday, February 17, 2009
10:00 a.m.
Room 308
STRONG OPPOSITION to HB 2737

HOUSE COMMITTEE ON FINANCE
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

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

LATE TESTIMONY

HOUSE BILL 2737
Relating to the Aloha Tower Development Corporation
Individual Testimony submitted by Michelle S. Matson

Aloha Chair Oshiro, Vice Chair Lee and Finance Committee Members:

This testimony is respectfully submitted in STRONG OPPOSITION to the present form of House Bill 2737, which Directs the Department of Land and Natural Resources to fund the general fund by disposing of public lands. Included in the lands proposed to be disposed of is the portion of Kaka'ako Makai which formerly fell under legislative scrutiny and was made subject to consequent legislation in response to public controversy. History should not be repeated by passage of this measure, and the community master planning process now underway for these lands should be allowed and encouraged to progress.

More than $750,000 in taxpayer funds, including a $600,000 planning consultant contract, have been invested in developing the Master Plan for Kaka'ako Makai now underway. This Master Plan is founded on the community-based Vision and Guiding Principles for Kaka'ako Makai in the public interest. This area of Kaka'ako Makai is also part of the Hawaii Coastal Zone Shoreline Management Area subject to statutory reservation of public lands for shoreline recreation purposes.

The parcels described in House Bill 2737 relating to Kaka'ako Makai are not simply remnant parcels, but part of the much larger shoreline planning effort in the interest of present and future generations. Therefore, House Bill 2737 is fatally flawed and should be held by the House Committee on Finance. Please do not allow this measure to move forward with the Kaka'ako Maki parcels designated for disposition.

Sincerely,

Michelle S. Matson
Secretary, Kaka'ako Makai Community Planning Advisory Council

Kānaka Council Moku ō Keawe

HC2 Box 9607
KEA'AU, HI 96749
(808) – 982 – 9020
KANAKACOUNCIL@GMAIL.COM

House Committee on Finance

DATE: Wednesday, February 17, 2010
TIME: 10:00 a.m.

TESTIMONY ON HB 2737 Relating to the Disposition of Public Lands

My name is Kale Gumapac, Alaka'i for Kanaka Council Moku O Keawe. I am submitting my testimony in strong opposition of HB 2737 relating to the selling of (Crown Lands) ceded lands. Attached is our legal brief that I submitted on a contested case that I filed against Hawaii Oceanic Technology in November 2009. The case is still sitting on the Attorney General's desk awaiting a decision as to whether or not myself and members of Kanaka Council Moku O Keawe have standing to file a contested case. We have raised legal issues that cannot be ignored. More reason for gaming on Hawaiian Homes Land to be passed.

It is your responsibility to protect these lands and more importantly get Senate President Hanabusa to pass the gaming bill to help balance the budget.

The Kanaka Council Moku O Keawe believes this bill violates our rights as stated in our brief as well as under Article XII Section 7 of the State of Hawaii constitution. HB 2737 must not be passed.

Malama aina,
Kale Gumapac, Alaka'i

1846 Organic Act Provides Statutory Authority for
Petitioner for this Contested Case Hearing

The legal authority cited below sets forth the piscary rights of "the people of these islands" as it relates to fisheries. The 1846 Organic Act Establishing Executive Departments, Section 1 says in relevant part that:

> The entire marine space, without and seaward of the reefs, upon the coasts of the several islands...the fishery of the ocean, from said reefs to the limit of the marine jurisdiction in the first article of this chapter defined, shall be free to the people of these islands (emphasis added).

In describing the first article of this chapter, it states further that:

> The jurisdiction of the Hawaiian Islands shall extend and be exclusive for the distance of one marine league seaward, surrounding each of the Islands of Hawaii, Maui, Kahoolawe, Lanai, Molokai, Oahu, Kauai, and Niihau, commencing at the low water mark on each of the respective coasts of said islands.

As a person "of these islands", the petitioner falls within this statute and has rights that are directly affected by the permitting process regarding Hawaii Oceanic Technology, Inc. because the permitting will affect the area that petitioner (for this contested case hearing) has a right to fish.

BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

1. NAME: Kale Gumapac and Kanaka Council Moku O Keawe PHONE: 808-982-9020
   FAX: 808-966-6032

2. ADDRESS: HC 2 Box 9607, Keaau, HI 96749

   Email Address: moku_okeawe@yahoo.com

3. Attorney: Keoni K. Agard Phone: 808-545-2922

4. Address: 700 Richards St., Suite 805, Honolulu, HI 96813

   Email Address: keoni.agard@hawaiiantel.net

5. Subject Matter: Hawaii Oceanic Technology, Inc., Application for Open Ocean Fish Farm (CDUA) HA-3495

6. Date of Public Hearing/Board Meeting: _October 23, 2009_

7. Legal authority under which hearing, proceeding or action is being made:

   Article 43, 1907 Hague Convention, IV, whereby an occupant State must administer the laws of the occupied State.

8. Nature of your specific legal interest in the above matter, including tax map key of property affected:

   I am a subject of the Hawaiian Kingdom and so are members of the Kanaka Council Moku O Keawe. We are also protected persons as defined under Article 4, 1949 Geneva Convention, IV. Further, as Hawaiian subjects and residents of the Island of Hawai`i, we also have an undivided vested right in all the shorelines of the Hawaiian Kingdom, which include access, gathering and fishing and are directly affected by this permitting process of the Board of Land and Natural Resources. Likewise, the 1846 Organic Act protects our piscary rights.

9. The specific disagreement, denial or grievance with the above matter:

   The granting of the application by Hawai`i Oceanic Technology, Inc. would manifestly require the Board to act outside the constitutional limitations of its administrative authority, and unlawfully intrude upon, and in effect seize political control over an Executive Agreement entered into between U.S. President Grover Cleveland and the Hawaiian Kingdom's Queen Lili`uokalani to restore the Hawaiian Kingdom government, a usurpation that is in direct violation of the constitutional authority to enter into international agreements

with foreign States exclusively in the hands of the Executive branch of the Federal government, specifically, the President of the United States. This Executive Agreement acknowledges that the only law to be applied in the Hawaiian Islands is Hawaiian Kingdom law and not U.S. law via the State of Hawai`i. Because the Hawaiian Kingdom has been under a prolonged occupation since the Spanish-American War on August 12, 1898, the application process is also in violation of Article 43, 1907 Hague Convention, IV, whereby the only governmental authority authorized to administer Hawaiian Kingdom law in the territory of the Hawaiian Kingdom, which includes the Island of Hawai`i, is a U.S. military government and not a civilian government.

10. Outline of specific issues to be raised:

    See attached Brief in Support of Petition

11. Outline of Basic Facts:

    See attached Brief in Support of Petition

12. The relief or remedy to which you seek or deem yourself entitled:

    Put a stop to these proceedings until they are executed in compliance with the Article 43, 1907 Hague Convention, IV, and the laws of the Hawaiian Kingdom.

The above-named person hereby requests and petitions the Board of Land and Natural Resources for a Contested Case hearing in the matter described above. Dated:_____

BRIEF IN SUPPORT OF THE PETITION

I. NATURE OF THE PROCEEDING

The Applicant, Oceanic Technology Inc., has applied for an Open Ocean Fish Farm (CDUA) with the Board of Land and Natural Resources, an agency of the State of Hawai`i, United State of America. Petitioners are native tenants and subjects of the Hawaiian Kingdom that have an undivided vested right in all the shorelines of the Hawaiian Kingdom, which include access, gathering and fishing. This permitting process is not in accordance with the laws of the Hawaiian Kingdom, nor laws proclaimed by the Occupant State, the United States Military in the administration of the laws of occupation. Therefore, this permitting process is illegal and Petitioners seek to put a stop to these proceedings until they are done in accordance with Article 43, 1907 Hague Conventions, IV, and the laws of the Hawaiian Kingdom.

II. STANDARD OF REVIEW

The U.S. Constitution provides that treaties, like acts of Congress, are considered the "supreme law" of the land. See U.S. Constitution Art. VI(2); *Maiorano v. Baltimore & Ohio R.R. Co.*, 213 U.S. 268, 272-73 (1909). And that Executive Agreements entered into by the President under his constitutional authority with foreign States are treaties that do not need ratification by the U.S. Senate. See *United States v. Belmont*, 301 U.S. 324, 326 (1937). Further, the U.S. Supreme court has held that "an act of Congress, passed after a Treaty takes effect, must be respected and enforced, despite any previous or existing Treaty provision on the same subject. See *Alvarez y Sanchez v. United States*, 216 U.S. 167, 175-176 (1910). But this rule can only be applicable as a matter of domestic or municipal law, the international obligation still remaining. See *Pigeon River Improvement, Slide & Boom Co. v. Charles W. Cox, Ltd.*, 291 U.S. 138, 160 (1934), (while an Act of Congress that conflicted with a treaty provision "would control in our courts as the later expression of our municipal law…the international obligation [would] remain unaffected").

To assist the Board's determination, the Petitioners submit herewith an exchange of diplomatic notes that occurred between October 18, 1893 and December 20, 1893 that comprise the Cleveland-Lili`uokalani Agreement of Restoration, an Executive Agreement between to Heads of State, and which forms the basis and reliance of Petitioners' position. Exhibits are copies from the United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawaii: 1894-95, (Government Printing Office, 1895): Exhibit #1—*Secretary of State Gresham to President Cleveland*, October 18, 1893; Exhibit #2—*Secretary of State Gresham to Ambassador Willis*, October 18, 1893; Exhibit #3—*Ambassador Willis to Secretary of State Gresham*, November 16, 1893; Exhibit #4—*Secretary of State Gresham to Ambassador Willis*, November 24, 1893; Exhibit #5—*Secretary of State Gresham to Ambassador Willis*, December 3, 1893; Exhibit #6—Ambassador Willis to *Secretary of State Gresham*, December 19, 1893; and Exhibit #7—*Ambassador Willis to Secretary of State Gresham*, December 20, 1893.

III. SUMMARY OF ARGUMENT

The Petitioners rely on the Executive Agreement between United States President Grover Cleveland and Petitioners' late Queen Lili`uokalani to Restore the Hawaiian Kingdom government on December 18, 1893, the 1907 Hague Convention, IV, and as a Protected Person as defined under Article 4, 1949 Geneva Convention, IV. Both Conventions regulate the occupation of Petitioners' country, which has been occupied since the Spanish-American War on August 12, 1898. In its Arbitral Award in 2001, the Permanent Court of Arbitration in The Hague acknowledged that the Hawaiian Kingdom in the nineteenth century "existed as an independent State recognized as such by the United States of America, the United Kingdom, and various other States."[1] Furthermore, in 2004, the Ninth Circuit Court of Appeals also acknowledged the status of the Hawaiian Kingdom as a "coequal sovereign alongside the United States."[2] The Petitioners assert that this Board cannot exercise authority within the territory of the Hawaiian Kingdom without violating the 1893 Executive Agreement, Article 43 of the 1907 Hague

[1] Lance Larsen vs. Hawaiian Kingdom, *International Law Reports* 119 (2001): 566, 581. Reprinted at *Hawaiian Journal of Law & Politics* 1 (Summer 2004): 299.
[2] Kahawaiola`a v. Norton, 386 F.3d 1271, 1282 (9th Cir. 2004).

Convention, IV, that mandates an Occupying State to administer the laws of the Occupied State.

A. Negotiating Settlement: 1893 Cleveland-Lili`uokalani Agreement of Restoration

When U.S. forces and its diplomatic representative overthrew the Hawaiian Kingdom government in 1893 with its aim towards extending its territory through military force, it constituted a serious breach of the Hawaiian State's dominion over its territory and the corresponding duty of non-intervention. Non-interference was a recognized general rule of international law, or peremptory norm, in the nineteenth century as it is now, unless the interference was justifiable under the right of the intervening State's self-preservation.[3] But in order to qualify a State's intervention, the danger to the intervening State "must be great, distinct, and imminent, and not rest on vague and uncertain suspicion."[4] The Hawaiian Kingdom posed no threat to the preservation of the United States and after investigating the circumstances that led to the overthrow of the Hawaiian government on January 17th 1893, President Cleveland determined that "the military occupation of Honolulu by the United States...was wholly without justification, either as an occupation by consent or as an occupation necessitated by dangers threatening American life and property." [5] He concluded that the "lawful Government of Hawaii was overthrown without the drawing of a sword or the firing of a shot by a process every step of which, it may be safely asserted, is directly traceable to and dependent for its success upon the agency of the United States acting through its diplomatic and naval representatives."[6] On the responsibility of State actors, Oppenheim states that "according to special circumstances and conditions the home State may be obliged to disown an act of its envoy, to apologize or express its regret for his behaviour, or to pay damages."[7]

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[3] Henry Wheaton, *Elements of International Law*, ed. George Grafton Wilson (Oxford: Clarendon Press, 1936), 100; James Kent, *Commentaries on American Law*, 12th ed. (F.B. Rothman 1989), 21; William Edward Hall, *A Treatise on International Law*, 8th Ed., (Oxford University Press, 1904), 55; George B. Davis, *The Elements of International Law* (Harper & Brothers 1903), 99; Thomas D. Woolsey, *Introduction to the Study of International Law*, 4th ed. (F.B. Rothman 1981), 50.
[4] *Id.*, Kent, *Commentaries*, 24.
[5] United States House of Representatives, 53rd Congress, Executive Documents on Affairs in Hawaii: 1894-95, (Government Printing Office, 1895), 452 [hereafter Executive Documents].
[6] *Id.*, 455.
[7] Lassa Oppenheim, *International Law*, 3rd ed., (Longmans, Green and Company 1920), 252.

On November 13th 1893, U.S. Minister Albert Willis requested a meeting with the Queen at the U.S. Legation, "who was informed that the President of the United States had important communications to make to her."[8] Willis explained to the Queen of the "President's sincere regret that, through the unauthorized intervention of the United States, she had been obliged to surrender her sovereignty, and his hope that, with her consent and cooperation, the wrong done to her and to her people might be redressed."[9] The President concluded that the "members of the provisional government and their supporters, though not entitled to extreme sympathy, have been led to their present predicament of revolt against the Government...by the indefensible encouragement and assistance of our diplomatic representative."[10] Thus being subject to the pains and penalties of treason under Hawaiian law, the Queen was then asked, "[s]hould you be restored to the throne, would you grant full amnesty as to life and property to all those persons who have been or who are now in the Provisional Government, or who have been instrumental in the overthrow of your government?"[11] The Queen refused to grant amnesty and referenced Chapter VI, section 9 of the Penal Code, which states, "[w]hoever shall commit the crime of treason shall suffer the punishment of death and all his property shall be confiscated to the Government." When asked again if she would reconsider, she responded, "[t]hese people were the cause of the revolution and the constitution of 1887. There will never be any peace while they are here. They must be sent out of the country, or punished, and their property confiscated."[12] In the government transcripts of this meeting, it states that the Queen called for beheading as punishment, but the Queen adamantly denied making such a statement. She later explained that beheading "is a form of punishment which has never been used in the Hawaiian Islands, either before or since the coming of foreigners." [13] This statement, however, was leaked to newspapers in the United States for political purposes in order to portray the Queen as uncivilized and prevent restoration of the government. Notwithstanding the charge or denial of this statement, the treason statute calls for those convicted of such a high crime

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[8] Executive Documents, 1242.
[9] *Id.*
[10] *Id.*, 457.
[11] *Id.*, 1242.
[12] *Id.*
[13] Lili`uokalani, *Hawai`i's Story by Hawai`i's Queen* (Charles E. Tuttle Co., Inc. 1964), 247.

to suffer the punishment of death whereby beheading is a means by which an execution is carried out—it does not strengthen or lessen the punishment of death.

In a follow-up instruction sent to Willis on December 3rd 1893, U.S. Secretary of State Gresham directed the U.S. Minister to continue to negotiate with the Queen.[14] Gresham acknowledged that the President had a duty "to restore to the sovereign the constitutional government of the Islands," but it was dependent upon an unqualified agreement of the Queen to recognize the 1887 constitution, assume all administrative obligations incurred by the Provisional Government, and to grant full amnesty to those individuals instrumental in setting up or supporting the Provisional Government.[15] Gresham directed Willis to convey to the Queen that should she "refuse assent to the written conditions you will at once inform her that the President will cease interposition in her behalf."[16]

On December 18th 1893, after three meetings with Willis, the Queen agreed with the President and provided the following pledge that was dispatched to Secretary of States Gresham on December 20th 1893. An agreement between the two Heads of State had finally been made for settlement of the international dispute and restoration of the government.

> I, Liliuokalani, in recognition of the high sense of justice which has actuated the President of the United States, and desiring to put aside all feelings of personal hatred or revenge and to do what is best for all the people of these Islands, both native and foreign born, do hereby and herein solemnly declare and pledge myself that, if reinstated as the constitutional sovereign of the Hawaiian Islands, that I will immediately proclaim and declare, unconditionally and without reservation, to every person who directly or indirectly participated in the revolution of January 17, 1893, a full pardon and amnesty for their offenses, with restoration of all rights, privileges, and immunities under the constitution and the laws which have been made in pursuance thereof, and that I will forbid and prevent the adoption of any measures of proscription or punishment for what has been done in the past by those setting up or supporting the Provisional Government. I further solemnly agree to accept the restoration under the

[14] *Id.*, 1192.
[15] *Id.*
[16] *Id.*

constitution existing at the time of said revolution and that I will abide by and fully execute that constitution with all the guaranties as to person and property therein contained. I furthermore solemnly pledge myself and my Government, if restored, to assume all the obligations created by the Provisional Government, in the proper course of administration, including all expenditures for military or police services, it being my purpose, if restored, to assume the Government precisely as it existed on the day when it was unlawfully overthrown.[17]

B. United States Obligation Established by Executive Agreement

The ability for the U.S. to enter into agreements with foreign States is not limited to treaties, but includes executive agreements, whether jointly with Congress or under the President's sole constitutional authority.[18] While treaties require ratification from the U.S. Senate, executive agreements do not, and U.S. "Presidents have made some 1600 treaties with the consent of the Senate [and] they have made many thousands of other international agreements without seeking Senate consent."[19] According to Henkin:

> Presidents from Washington to Clinton have made many thousands of agreements, differing in formality and importance, on matters running the gamut of U.S. foreign relations. In 1817, the Rush-Bagot Agreement disarmed the Great Lakes. Root-Takahira (1908) and Lansing-Ishii (1917) defined U.S. policy in the Far East. A Gentlemen's Agreement with Japan (1907) limited Japanese immigration into the United States. Theodore Roosevelt put the bankrupt customs houses of Santo Domingo under U.S. control to prevent European creditors from seizing them. McKinley agreed to contribute troops to protect Western legations during the Boxer Rebellion and later accepted the Boxer Indemnity Protocol for the United States. Franklin Roosevelt exchanged over-age destroyers for British bases early during the Second World War. Potsdam and Yalta shaped the political face of the world after the Second World War. Since

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[17] Executive Documents, 1269.

[18] "The executive branch claims four sources of constitutional authority under which the President may enter into executive agreements: (1) the president's duty as chief executive to represent the nation in foreign affairs; (2) the president's authority to receive ambassadors and other public ministers; (3) the president's authority as commander in chief; and (4) the president's duty to "take care that the laws be faithfully executed."

[19] Louis Henkin, *Foreign Affairs and the United States Constitution*, 2nd ed. (Clarendon Press 1996), 215.

> the Second World War there have been numerous sole agreements for the establishment of U.S. military bases in foreign countries.[20]

The U.S. Foreign Affairs Manual provides that there are "four sources of constitutional authority under which the President may enter into [sole] executive agreements: (1) the president's duty as chief executive to represent the nation in foreign affairs; (2) the president's authority to receive ambassadors and other public ministers; (3) the president's authority as commander in chief; and (4) the president's duty to 'take care that the laws be faithfully executed.'"[21] The agreement with the Queen evidently stemmed from the President's role as "chief executive," "commander in chief," and his duty to "take care that the laws be faithfully executed;" and the binding nature of the agreement must be considered confirmed, so long as the agreement is not "inconsistent with legislation enacted by Congress in the exercise of its constitutional authority."[22]

In *United States v. Belmont*, Justice Sullivan argued that there are different kinds of treaties that did not require Senate approval. The case involved a Russian corporation that deposited some of its funds in a New York bank prior to the Russian revolution of 1917. After the revolution, the Soviet Union nationalized the corporation and sought to seize its assets in the New York bank with the assistance of the United States. The assistance was "effected by an exchange of diplomatic correspondence between the Soviet government and the United States [in which the] purpose was to bring about a final settlement of the claims and counterclaims between the Soviet government and the United States."[23] Justice Sutherland explained:

> That the negotiations, acceptance of the assignment and agreements and understandings in respect thereof were within the competence of the President may not be doubted. Governmental power over internal affairs is distributed between the national government and the several states. Governmental power over external affairs is not distributed, but is vested exclusively in the national government. And in respect of what was done here, the Executive had authority to speak as the sole organ of that government. The assignment and the agreements in connection therewith did not, as in the case of treaties, as that term

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[20] *Id.*, 219.
[21] 11 *Foreign Affairs Manual* 721.2(b)(3), October 25, 1974.
[22] United States v. Pink, 315 U.S. 203, 229 (1942); see also United States v. Guy W. Capps, Inc., 204 F.2d 655, 660 (4th Cir. 1953).
[23] United States v. Belmont, 301 U.S. 324, 326 (1937).

is used in the treaty making clause of the Constitution (article 2, 2), require the advice and consent of the Senate.[24]

C. United States Breach of the 1893 Cleveland-Lili`uokalani Agreement

In the United States, Congress took deliberate steps to prevent the President from following through with his obligation to restore, which included hearings before the Senate Foreign Relations Committee headed by Senator Morgan, a pro-annexationist and its Chairman in 1894. These Senate hearings sought to circumvent the requirement of international law, where "a crime committed by the envoy on the territory of the receiving State must be punished by his home State."[25] Morgan's purpose was to vindicate the illegal conduct and actions of the U.S. Legation and Naval authorities under U.S. law. Four Republicans endorsed the report with Morgan, but four Democrats submitted a minority report declaring that while they agree in exonerating the commander of the USS Boston, Captain Wiltse, they could not concur in exonerating "the minister of the United States, Mr. Stevens, from active officious and unbecoming participation in the events which led to the revolution in the Sandwich Islands on the 14th, 16th, and 17th of January, 1893."[26] By contradicting Blount's investigation, Morgan intended, as a matter of congressional action, to bar the President from restoring the government as was previously agreed upon with the Queen because there was a fervor of annexation among many members of Congress. Cleveland's failure to fulfill his obligation of the agreement allowed the provisional government to gain strength, and on July 4th 1894, they renamed themselves the Republic of Hawai`i. For the next three years they would maintain their authority by hiring mercenaries and force of arms, arresting and imprisoning Hawaiian nationals who resisted their authority with the threat of execution, and tried the Queen on fabricated evidence with the purpose of her abdicating the throne.[27] In 1897, the Republic signed another treaty of cession with President Cleveland's successor, William

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[24] *Id.*, 330.
[25] Oppenheim, *International Law (3rd ed)*, 252.
[26] Senate Report 227 (February 26, 1894), *Reports of Committee on Foreign Relations 1789-1901* Volume 6, 53rd Congress, at 363.
[27] Two days before the Queen was arrested on charges of misprision of treason, Sanford Dole, President of the so-called Republic of Hawai`i, admitted in an executive meeting on January 14, 1894, that "there was no legal evidence of the complicity of the ex-queen to cause her arrest..." *Minutes of the Executive Council of the Republic of Hawai`i*, at 159 (Hawai`i Archives).

McKinley, but the Senate was unable to ratify the treaty on account of protests by the Queen and Hawaiian nationals. On August 12th 1898, McKinley unilaterally annexed the Hawaiian Islands for military purposes during the Spanish-American War under the guise of a Congressional joint resolution.

These actions taken against the Queen and Hawaiian subjects are directly attributable and dependent upon the non-performance of President Cleveland's obligation, on behalf of the United States, to restore the Hawaiian government. This is a grave breach of his agreed settlement with the Queen as the Head of State of the Hawaiian Kingdom. The 1893 Cleveland-Lili`uokalani international agreement is binding upon both parties as if it were a treaty, because, as Oppenheim asserts, since "there exists no other law than International Law for the intercourse of States with each other, every agreement between them regarding any obligation whatever is a treaty."[28] According to Hall, "a valid agreement is therefore concluded so soon as one party has signified his intention to do or to refrain from a given act, conditionally upon the acceptance of his declaration of intention by the other party as constituting an engagement, and so soon as such acceptance clearly indicated."[29]

D. Function of the Doctrine of Estoppel

The principle that a State cannot benefit from its own wrongful act is a general principle of international law referred to as estoppel, which was drawn from the common law.[30] The rationale for this rule derives from the maxim *pacta sunt servanda*—every treaty in force is binding upon the parties and must be performed by them in good faith,[31] and "operates so as to preclude a party from denying the truth of a statement of fact made previously by that party to another whereby that other has acted to his detriment."[32] According to MacGibbon, a legal scholar in international law, underlying "most formulations of the doctrine of estoppel in international law is the requirement that a

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[28] Oppenheim, *International Law (3rd ed)*, 661.
[29] Hall, *Treatise on International Law*, 383.
[30] D.W. Bowett, "Estoppel Before International Tribunals and its Relation to Acquiescence," 33 *British Yearbook of International Law* 33 (1957): 181.
[31] Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, Article 26.
[32] Bowett, *Estoppel*, 201.

State ought to be consistent in its attitude to a given factual or legal situation."[33] To ensure consistency in State behavior, the Permanent Court of International Justice, in a number of cases, affirmed the principle "that a State cannot invoke its municipal law as a reason for failure to fulfill its international obligation."[34] This principle was later codified under Article 27 of the 1969 Vienna Convention on the Law of Treaties, whereby "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."[35]

In municipal jurisdictions there are three forms of estoppel—estoppel by judgment as in matters of court decisions; estoppel by deed as in matters of written agreement or contract; and estoppel by conduct as in matters of statements and actions. Bowett states that these forms of estoppel, whether treated as a rule of evidence or as substantive law, is as much a part of international law as they are in municipal law, and due to the diplomatic nature of States relations, he expands the second form of estoppel to include estoppel by "Treaty, Compromis, Exchange of Notes, or other Undertaking in Writing." Brownlie states that because estoppel in international law rests on principles of good faith and consistency, it is "shorn of the technical features to be found in municipal law."[36] Bowett enumerates the three essentials establishing estoppel in international law:

1. The statement of fact must be clear and unambiguous.
2. The statement of fact must be made voluntarily, unconditionally, and must be authorized.
3. There must be reliance in good faith upon the statement either to the detriment of the party so relying on the statement or to the advantage of the party making the statement.[37]

It is self-evident that the 1893 Cleveland-Lili`uokalani agreement meets the requirements of the first two essentials establishing estoppel, and, as for the third, reliance in good faith was clearly displayed and evidenced in a memorial to President Cleveland by the Hawaiian Patriotic League on December 27th 1893. As stated in the memorial:

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[33] I.C. MacGibbon, "Estoppel in International Law," *International and Comparative Law Quarterly* 7 (1958): 468.
[34] *Id.*, 473.
[35] *Vienna Convention on the Law of Treaties*, 1155 U.N.T.S. 331, Article 27.
[36] Ian Brownlie, *Principles of Public International Law*, 4th ed. (Clarendon Press 1990), 641.
[37] Bowett, *Estoppel*, 202.

> And while waiting for the result of [the investigation], with full confidence in the American honor, the Queen requested all her loyal subjects to remain absolutely quiet and passive, and to submit with patience to all the insults that have been since heaped upon both the Queen and the people by the usurping Government. The necessity of this attitude of absolute inactivity on the part of the Hawaiian people was further indorsed and emphasized by Commissioner Blount, so that, if the Hawaiians have held their peace in a manner that will vindicate their character as law-abiding citizens, yet it can not and must not be construed as evidence that they are apathetic or indifferent, or ready to acquiesce in the wrong and bow to the usurpers.[38]

Continued reliance was also displayed by the formal protests of the Queen and Hawaiian political organizations regarding the second treaty of annexation signed in Washington, D.C., on June 16th 1897, between the McKinley administration and the self-proclaimed Republic of Hawai`i. These protests were received and filed in the office of Secretary of State Sherman and continue to remain a record of both dissent and evidence of reliance upon the conclusion of the investigation by President Cleveland and his obligation and commitment to *restitutio in integrum*—restoration of the Hawaiian government. A memorial of the Hawaiian Patriotic League was filed with the United States "Hawaiian Commission" for the creation of the territorial government in September and appears to be the last public act of reliance made by a large majority of the Hawaiian citizenry.[39] The commission was established on July 9th 1898 after President McKinley signed the joint resolution of annexation on July 7th 1898, and was holding meetings in Honolulu from August through September. The memorial, which was also printed in two Honolulu newspapers, one in the Hawaiian language[40] and the other in English,[41] stated, in part:

> WHEREAS: By memorial the people of Hawaii have protested against the consummation of an invasion of their political rights, and have fervently appealed to the President, the Congress and the People of the United States, to refrain from further participation in the wrongful annexation of Hawaii; and

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[38] Executive Documents, 1295.
[39] Munroe Smith, "Record of Political Events," *Political Science Quarterly* 13(4) (Dec. 1898): 752.
[40] "Memoriala A Ka Lahui," *Ke Aloha Aina*, 3 (September 17, 1898).
[41] "What Monarchists Want," *The Hawaiian Star*, 3 (September 15, 1898).

WHEREAS: The Declaration of American Independence expresses that Governments derive their just powers from the consent of the governed:

THEREFORE, BE IT RESOLVED: That the representatives of a large and influential body of native Hawaiians, we solemnly pray that the constitutional government of the 16th day of January, A.D. 1893, be restored, under the protection of the United States of America.

There is no dispute between the United States and the Hawaiian Kingdom regarding the illegal overthrow of the Hawaiian government, and the 1893 Cleveland-Lili`uokalani agreement of restoration is the evidence of final settlement. As such, the United States cannot benefit from its non-performance of its obligation of restoring the Hawaiian Kingdom government under the 1893 Cleveland-Lili`uokalani agreement over the reliance held by the Queen and Hawaiian subjects in good faith and to their detriment. Therefore, the United States is estopped from asserting any of the following claims, unless it can show that the 1893 Cleveland-Lili`uokalani agreement had been fulfilled. These claims include:

1. Recognition of any pretended government other than the Hawaiian Kingdom as the lawful government of the Hawaiian Islands;
2. Annexation of the Hawaiian Islands by joint resolution in 1898;
3. Establishment of a U.S. territorial government in 1900;
4. Administration of the Hawaiian Islands as a non-self-governing territory since 1898 pursuant to Article 73(e) of the U.N. Charter;
5. Admission of Hawai`i as a State of the Federal Union in 1959; and,
6. Designating Native Hawaiians as an indigenous people situated within the United States.

Since Hawaiian law is the only law recognizable under international law, the Board of Land and Natural Resources deriving its authority under and by virtue of the 1959 Admission Act of the State of Hawai`i (U.S. Public Law 86–3, 73 U.S. Stat. 4), cannot assert authority within the territory of the Hawaiian Kingdom, without violating the 1893 Cleveland-Lili`uokalani agreement of restoration (Executive Agreement).

E. International Laws of Occupation

According to Benvenisti, the continuity of an occupied State's sovereignty stems

from "the principle of inalienable sovereignty over a territory," which "spring the constraints that international law imposes upon the occupant."[42] While Hawai`i was clearly not a participant in the hostilities of the Spanish-American War, the United States occupied the Hawaiian Islands for the purpose of waging the war against Spain, as well as to fortify the islands as a military outpost for the defense of the United States in future conflicts with the convenience of the puppet government it installed on January 17th 1893. "Though the resolution was passed July 7, [1898] the formal transfer was not made until August 12th, when, at noon of that day, the American flag was raised over the government house, and the islands ceded with appropriate ceremonies to a representative of the United States."[43] Patriotic societies and many of the Hawaiian citizenry boycotted the ceremony, and "in particular they protested the fact that it was occurring against their will."[44]

The "power exercising effective control within another's sovereign territory has only temporary managerial powers," and during "that limited period, the occupant administers the territory on behalf of the sovereign."[45] The actions taken by the McKinley administration, with the consent of the Congress by joint resolution, clearly intended to mask the violation of international law as if the annexation took place by treaty. As Marek states, "a disguised annexation aimed at destroying the independence of the occupied State, represents a clear violation of the rule preserving the continuity of the occupied State."[46] In fact, President McKinley proclaimed that the Spanish-American war would "be conducted upon principles in harmony with the present views of nations and sanctioned by their recent practice,"[47] and acknowledged the constraints and protection international laws provide to all sovereign states, whether belligerent or neutral. As noted by Senator Henry Cabot Lodge during the Senate's secret session, Hawai`i, as a sovereign and neutral state, was no exception when it was occupied by the United States during its war with Spain.[48] Article 43 of the 1899 Hague Regulations, which remained

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[42] Eyal Benvenisti, *The International Law of Occupation* (Princeton University Press 1993), 5.
[43] Territory of Hawai`i v. Mankichi, 190 U.S. 197, 210 (1903).
[44] Tom Coffman, *Nation Within: The Story of America's Annexation of the Nation of Hawai`i* (Tom Coffman/Epicenter 1999), 322.
[45] Benvenisti, *Law of Occupation*, 6.
[46] Marek, *Identity and Continuity of States*, 110.
[47] The Paquette Habana, 175 U.S. 677, 712 (1900).
[48] Senate Transcripts, *supra* note 70.

the same under the 1907 amended Hague Regulations, delimits the power of the occupant and serves as a fundamental bar on its free agency within an occupied neutral State.[49] Although the United States signed and ratified both Hague Regulations, which post-date the occupation of the Hawaiian Islands, the "text of Article 43," according to Benvenisti, "was accepted by scholars as mere reiteration of the older law, and subsequently the article was generally recognized as expressing customary international law."[50] Graber also states that "nothing distinguishes the writing of the period following the 1899 Hague code from the writing prior to that code."[51] Consistent with this understanding of the international law of occupation during the Spanish-American war, Smith reported that the "military governments established in the territories occupied by the armies of the United States were instructed to apply, as far as possible, the local laws and to utilize, as far as seemed wise, the services of the local Spanish officials."[52] This instruction to apply the local laws of the occupied State is the basis of Article 43 of the Hague Regulations.

Since occupation of the Hawaiian Kingdom since the Spanish-American war, international laws mandates an occupying government to administer the laws of the occupied State during the occupation, in a role similar to that of a trustee (occupying State) and beneficiary (occupied State) relationship.[53] Thus, the occupier cannot impose its own domestic laws without violating international law. This principle is clearly laid out in article 43 of the Hague Regulations, which states, "the authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore and ensure, as far as possible, public order and civil life, while respecting, unless absolutely prevented, the laws in force in the country." Referring to the American occupation of Hawai`i, Dumberry states:

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[49] The United States signed the 1899 Hague Regulations respecting Laws and Customs of War on Land at The Hague on July 29th 1899 and ratified by the Senate March 14th 1902; *see* 32(1) U.S. Stat. 1803. The 1907 Hague Regulations respecting Laws and Customs of War on Land was signed at The Hague October 18th 1907 and ratified by the Senate March 10th 1908; *see* 36 U.S. Stat. 2277. The United States also signed the 1907 Hague Regulations respecting the Rights and Duties of Neutral Powers at The Hague on October 18th 1907 and ratified by the Senate on March 10th 1908; *see* 36 U.S. Stat. 2310.

[50] Benvenisti, *Law of Occupation*, 8.

[51] Doris Graber, *The Development of the Law of Belligerent Occupation: 1863-1914*, (Columbia University Press 1949), 143.

[52] Munroe Smith, "Record of Political Events," *Political Science Quarterly* 13(4) (Dec. 1898): 748.

[53] Benvenisti, *Law of Occupation*, 6; see von Glahn, *Law Among Nations*, 785-794; and von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* (University of Minnesota Press 1957), 95-221.

> the 1907 Hague Convention protects the international personality of the occupied State, even in the absence of effectiveness. Furthermore, the legal order of the occupied State remains intact, although its effectiveness is greatly diminished by the fact of occupation. As such, Article 43 of the 1907 Hague Convention IV provides for the co-existence of two distinct legal orders, that of the occupier and the occupied.[54]

According to von Glahn, there are three distinct systems of law that exist in an occupied territory: "the indigenous law of the legitimate sovereign, to the extent that it has not been necessary to suspend it; the laws (legislation, orders, decrees, proclamations, and regulations) of the occupant, which are gradually introduced; and the applicable rules of customary and conventional international law."[55] Hawai`i's sovereignty is maintained and protected as a subject of international law, in spite of the absence of a diplomatically recognized government since 1893. In other words, the United States should have administered Hawaiian Kingdom law as defined by its constitution and statutory laws, similar to the U.S. military's administration of Iraqi law in Iraq with portions of the law suspended due to military necessity.[56] U.S. Army regulations on the law of occupation recognize not only the sovereignty of the occupied State, but also bar the annexation of the territory during hostilities because of the continuity of the invaded State's sovereignty. In fact, U.S. Army regulations on the laws of occupation not only recognize the continued existence of the sovereignty of the occupied State, but

> confers upon the invading force the means of exercising control for the period of occupation. *It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty*. The exercise of these rights results from the established power of the occupant and from the necessity of maintaining law and order, indispensable both to the inhabitants and to the occupying force. It is therefore unlawful for a belligerent occupant to

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[54] Patrick Dumberry, "The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continue as an Independent State under International Law," *Chinese Journal of International Law* 2(1)(2002): 682.
[55] von Glahn, *Law Among Nations*, 774.
[56] David J. Scheffer, "Beyond Occupation Law," *American Journal of International Law* 97(4) (October 2003): 842-860.

annex occupied territory or to create a new State therein while hostilities are still in progress.[57] (emphasis added)

In the absence of any evidence extinguishing Hawai`i's sovereignty during or since the nineteenth century, international laws not only impose duties and obligations on an occupier, but also maintain and protect the international personality of the occupied State, notwithstanding the effectiveness and propaganda attributed to prolonged occupation.[58] Crawford explains that, belligerent occupation "does not extinguish the State. And, generally, the *presumption*—in practice a strong one—is in favor of the continuance, and against the extinction, of an established State."[59] Therefore, as Craven states, "the continuity of the Hawaiian Kingdom, in other words, may be refuted only by reference to a valid demonstration of legal title, or sovereignty, on the part of the United States.[60] No such evidence of "a valid demonstration of legal title, or sovereignty," exists.

F. Civilian Government Established in Violation of the Laws of Occupation

In view of the blatant violation of Hawai`i's sovereignty after January 16th 1893, clearly the U.S. never intended to comply with international laws when it annexed Hawai`i by joint resolution, and proceeded to treat the Hawaiian Islands as if it were an incorporated territory by cession. On April 30th 1900, the U.S. Congress passed an Act

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[57] "The Law of Land Warfare", *U.S. Army Field Manual 27-10*, (July 1956), §358.

[58] Regarding the principle of effectiveness in international law, Marek explains, "A comparison of the scope of the two legal orders, of the occupied and the occupying State, co-existing in one and the same territory and limiting each other, throws an interesting light on one aspect of the principle of effectiveness in international law. In the first place: of these two legal orders, that of the occupied State is regular and 'normal', while that of the occupying power is exceptional and limited. At the same time, the legal order of the occupant is, as has been strictly subject to the principle of effectiveness, while the legal order of the occupied State continues to exist notwithstanding the absence of effectiveness. It can produce legal effects outside the occupied territory and may even develop and expand, not be reason of its effectiveness, but solely on the basis of the positive international rule safeguarding its continuity. Thus, the relation between effectiveness and title seems to be one of inverse proportion: while a strong title can survive a period of non-effectiveness, a weak title must rely heavily, if not exclusively, on full and complete effectiveness. It is the latter which makes up for the weakness in title. Belligerent occupation presents an illuminating example of this relation of inverse proportion. Belligerent occupation is thus the classical case in which the requirement of effectiveness as a condition of validity of a legal order is abandoned." *See* Marek, *Identity and Continuity of States,* 102.

[59] James Crawford, *The Creation of States in International Law*, 2nd ed., (Oxford Press 2006), 701. A presumption is a rule of law where the finding of a basic fact will give rise to the existence of a presumed fact, until it is rebutted.

[60] Matthew Craven, Professor of International Law, Dean, University of London, SOAS, authored a legal opinion for the *acting* Hawaiian Government concerning the continuity of the Hawaiian Kingdom, and the United States' failure to properly extinguish the Hawaiian State under international law (12 July 2002). Reprinted at *Hawaiian Journal of Law & Politics* 1(Summer 2004): 512.

establishing a civil government to be called the Territory of Hawai`i.[61] Regarding U.S. nationals, section 4 of the 1900 Act stated:

> all persons who were citizens of the Republic of Hawaii on August twelfth, eighteen hundred and ninety-eight, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii. And all citizens of the United States resident in the Hawaiian Islands who were resident there on or since August twelfth, eighteen hundred and ninety-eight and all the citizens of the United States who shall hereafter reside in the Territory of Hawaii for one year shall be citizens of the Territory of Hawaii.[62]

In addition to this Act, the Fourteenth Amendment of the United States Constitution was applied to individuals born in the Hawaiian Islands.[63] Under these U.S. laws, the putative population of U.S. "citizens" in the Hawaiian Kingdom exploded from a meager 1,928 (not including native Hawaiian nationals) out of a total population of 89,990 in 1890, to 423,174 (including native Hawaiians, who were now "citizens" of the U.S.) out of a total population of 499,794 in 1950.[64] The native Hawaiian population, which accounted for 85% of the total citizenry in 1890, accounted for a mere 20% (only 86,091 of 423,174) of the total population by 1950.[65]

According to international law, the migration of U.S. citizens to these islands, which included both military and civilian immigration, is a direct violation of Article 49 of the Fourth Geneva Convention, which provides that the occupying power shall not "transfer parts of its own civilian population into the territory it occupies."[66] Benvenisti asserts that the purpose of Article 49 "is to protect the interests of the occupied population, rather than the population of the occupant."[67] Benvinisti also goes on to state that civilian migration and settlement in an occupied State is questionable under Article 43 of the Hague Regulation, since it cannot be "deemed a matter of security of the

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[61] 31 U.S. Stat. 141.
[62] *Id.*
[63] Territory of Hawai`i v. Mankichi, 190 U.S. 197, 210 (1903). The 14th Amendment states, "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States."
[64] United States Bureau of the Census, *General characteristics—Hawai`i*, 18 (U.S. Government Printing Office 1952).
[65] *Id.*
[66] Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 UST 3516, 75 UNTS 287.
[67] Benvenisti, *Law of Occupation*, 140.

occupation forces, and it is even more difficult to demonstrate its contribution to 'public order and civil life.'"[68]

In 1946 the United States further misrepresented its relationship with Hawai`i when the United States ambassador to the United Nations identified Hawai`i as a non-self-governing territory under the administration of the United States since 1898. In accordance with Article 73(e) of the U.N. Charter, the United States ambassador reported Hawai`i as a non-self-governing territory.[69] The problem here is that Hawai`i should have never been placed on the list in the first place, because it already achieved self-governance as a "sovereign independent State" beginning in 1843 — a recognition explicitly granted by the United States itself in 1849 and acknowledged by 9th Circuit Court of Appeals in 2004.[70] It can be argued that Hawai`i was deliberately treated as a non-self-governing territory or colonial possession in order to conceal the United States' prolonged occupation of an independent and sovereign State for military purposes. The reporting of Hawai`i as a non-self-governing territory also coincided with the United States establishment of the headquarters for the U.S. Pacific Command (PACOM) on the Island of O`ahu. If the United Nations had been aware of Hawai`i's continued legal status as an occupied neutral State, member States, such as Russian and China, would have prevented the United States from maintaining their military presence.

The initial Article 73(e) list comprised of non-sovereign territories under the control of sovereign States such as Australia, Belgium, Denmark, France, Netherlands, New Zealand, United Kingdom and the United States. In addition to Hawai`i, the U.S. also reported its territories of Alaska, American Samoa, Guam, Panama Canal Zone, Puerto Rico and the Virgin Islands.[71] The U.N. General Assembly, in a resolution entitled "Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 (e) of the Charter," defined self-governance in three forms: a sovereign independent State; free association with an

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[68] *Id.*
[69] *Transmission of Information under Article 73e of the Charter*, December 14, 1946, United Nations General Assembly Resolution 66(I).
[70] Kahawaiola`a v. Norton, 386 F.3d 1271, at 1282 (9th Cir. 2004).
[71] U.N. General Assembly Resolution 66 (I).

independent State; or integration with an independent State.[72] None of the territories on the list of non-self-governing territories, with the exception of Hawai`i, were recognized sovereign States.

G. Transforming the Territory into a State of the Federal Union

"For most people," according to Coffman, "the fiction of the Republic of Hawaii successfully obscured the nature of the conquest, as it does to this day. The act of annexation became something that just happened."[73] The first statehood bill was introduced in Congress in 1919, but failed because Congress did not view the Hawaiian Islands as an incorporated territory.[74] Advocates for statehood in the islands assumed the Hawaiian Islands were a part of the United States since 1898, but it appears that they weren't aware of the Senate's secret session that clearly viewed Hawai`i to be an occupied State and not an incorporated territory acquired by a treaty of cession.[75] Ironically, the legislature of the imposed civil government in the Islands, without any knowledge of the Senate secret session transcripts, enacted a "Bill of Rights," on April 26th 1923, asserting their perceived right of becoming an American State of the Union.[76] Beginning with the passage of this statute, a concerted effort was made by residents in the Hawaiian Islands to seek entry into the Federal union. The object of American statehood was finally accomplished beginning in 1950, when two special elections were held in the occupied kingdom. As a result of the elections, 63 delegates were elected to draft a constitution that was ratified on November 7th 1950.[77]

On March 12th 1959, the U.S. Congress approved the statehood bill and it was signed into law on March 15th 1959.[78] In a special election held on June 27th 1959, three propositions were submitted to vote. First, "shall Hawai`i immediately be admitted into

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[72] *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 (e) of the Charter*, December 15, 1960, United Nations Resolution 1541 (XV).
[73] Coffman, *Nation Within*, 322.
[74] *Cessation of the transmission of information under Article 73 e of the Charter: communication from the Government of the United States of America*, September 24, 1959, United Nations Document A/4226, 100.
[75] "Transcript of the Senate Secret Session on Seizure of the Hawaiian Islands, May 31, 1898," *Hawaiian Journal of Law & Politics* 1 (Summer 2004): 280.
[76] Act 86 (H.B. No. 425), Territory of Hawai`i, 26 April 1923.
[77] *Cessation of the transmission of information*, 100.
[78] 73 U.S. Stat. 4.

the Union as a State?"; second, "the boundaries of the State of Hawai`i shall be as prescribed in the Act of Congress approved March 18, 1959, and all claims of this State to any areas of land or sea outside the boundaries prescribed are hereby irrevocably relinquished to the United States"; and third, "all provisions of the Act of Congress approved March 18, 1959, reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Hawai`i are consented to fully by said State and its people."[79] The residents in the Islands accepted all three propositions by 132,938 votes to 7,854. On July 28th 1959, two U.S. Hawai`i Senators and one Representative were elected to office, and on August 21st 1959, President Eisenhower proclaimed that the process of admitting Hawai`i as a State of the Federal union was complete.[80]

In 1988, Kmiec, raised questions concerning not only the legality of congressional action in annexing the Hawaiian Islands by joint resolution, but also Congress' authority to establish boundaries for the State of Hawai`i that lie beyond the territorial seas of the United States' western coastline. Although Kmiec acknowledged Congressional authority to admit new States into the union and its inherent power to establish state boundaries, he did caution that it was the "President's constitutional status as the representative of the United States in foreign affairs," not Congress, "which authorizes the United States to claim territorial rights in the sea for the purpose of international law."[81] There is no legal basis for any U.S. claim of sovereignty over the Hawaiian Islands, even under acquisitive prescription.

H. War Crimes

In the *Flick trial*, the U.S. Military Tribunal stated, "International law, as such, binds every citizen just as does ordinary municipal law. Acts adjudged criminal when done by an officer of the Government are criminal also when done by a private individual. The guilt differs only in magnitude, not in quality."[82] The tribunal defined a

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[79] *Cessation of the transmission of information*, 100.
[80] *Id.*
[81] Douglas Kmiec, "Legal Issues Raised by Proposed Presidential Proclamation To Extend the Territorial Sea," *Opinions of the Office of Legal Counsel of the U.S. Department of Justice* 12 (1988): 238, 252.
[82] *Trial of Friedrich Flick and Five Others, United States Military Tribunal, Nuremberg*, 9 Law Reports of Trials of Law Criminals (United Nations War Crime Commission) 1, 18 (1949)

crime for private citizens as any "person without regard to the nationality or the capacity in which he acted, is deemed to have committed a crime...if he was (a) a principal or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein or (d) was connected with plans or enterprises involving its commission."[83] The tribunal also stated "that responsibility of an individual for infractions of international law is not open to question. In dealing with property located outside his own State, he must be expected to ascertain and keep within the applicable law. Ignorance thereof will not excuse guilt but may mitigate punishment."[84]

Article 146 of the Geneva Convention provides that the "High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article." According to Marschik, this article provides that "States have the obligation to suppress conduct contrary to these rules by administrative and penal sanctions." [85] "Grave breaches" enumerated in Article 147, that are relevant to the occupation of the Hawaiian Islands, include: "unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention...[and] extensive destruction and appropriation of property, not justified by military necessity."[86] Protected persons "are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."[87] According to U.S. law, a war crime is "defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party."[88] The United States did ratify both Hague and Geneva Conventions, and is considered one

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[83] *Id.*, 19.
[84] *Id.*, 23.
[85] Axel Marschik, "The Politics of Prosecution: European National Approaches to War Crimes," (Timothy L. H. McCormack and Gerry J. Simpson, ed.s), *The Law of War Crimes: National and International Approaches* (Kluwer Law International 1997), 72, note 33.
[86] Geneva Convention, IV, Relative to the Protection of Civilian Persons in Time of War (1949), Article 147.
[87] *Id.*, Article 4.
[88] 18 U.S. Code §2441(c)(1).

of the "High Contracting Parties."[89]

Occupation does not change the legal order of the occupied State, and according to Marek, there is "nothing the occupant can legally do to break the continuity of the occupied State. He cannot annul its laws; he can only prevent their implementation. He cannot destitute judges and officials; he can merely prevent them from exercising their functions."[90] Greenwood states that the Hague Regulations developed "a body of rules to regulate the way in which an occupying power governed occupied territory and to hold the difficult balance among the conflicting interests of the occupant, the displaced sovereign and the population of the occupied territory."[91] These constraints upon the occupier, as formulated in Article 43 of the Hague Regulations, compel the occupying State "to respect the existing—and continuing—legal order of the occupied State."[92] Chapter II, section 6 of the Hawaiian Civil Code, provides:

> the laws are obligatory upon all persons, whether subjects of this kingdom, or citizens or subjects of any foreign State, while within the limits of this kingdom, except so far as exception is made by the laws of nations in respect to Ambassadors or others. The property of all such persons, while such property is within the territorial jurisdiction of this kingdom, is also subject to the laws.[93]

IV. CONCLUSION

State sovereignty "is never held in suspense,"[94] but is vested either in the State or in the successor State, and in the absence of any "valid demonstration of legal title, or sovereignty, on the part of the United States," sovereignty, both external and internal, remains vested in the Hawaiian Kingdom. Therefore, despite the lapse of time, the 1893 Cleveland-Lili`uokalani Agreement remains legally binding on the United States, and the continuity of the Hawaiian Kingdom as a sovereign State is grounded in the very same

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[89] Hague Convention No. IV, October 18, 1907, Respecting the Laws and Customs of War on Land, 36 U.S.Stat. 2277; Treaty Series 539; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, Treaties and Other International Acts Series, 3365.
[90] Krystyna Marek, *Identity and Continuity of States in Public International Law*, 2nd ed., (Librairie Droz 1968), 80.
[91] Christopher Greenwood, "The International Law of Occupation," *The American Journal of International Law* 90 (1996): 712 (bookreview).
[92] *Id.*
[93] *Compiled Laws of the Hawaiian Kingdom* (Hawaiian Gazette 1884), 2.
[94] United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 317 (1936).

principles that the United States and every other State rely upon for their own legal existence. In other words, to deny Hawai`i's sovereignty would be tantamount to denying the sovereignty of the United States and the entire system the world has come to know as international relations. In *U.S. v. Belmont*, the Court qualified the powers of the President to negotiate international agreements without regard to State laws or policies. The Court stated:

> The supremacy of a treaty in this respect has been recognized from the beginning. Mr. Madison, in the Virginia Convention, said that, if a treaty does not supersede existing state laws as far as they contravene its operation, the treaty would be ineffective. "To counteract it by the supremacy of the state laws, would bring on the Union the just charge of national perfidy, and involve us in war." And while this rule in respect of treaties is established by the express language of cl. 2, Art. VI, of the Constitution, the same rule would result in the case of all international compacts and agreements from the very fact that complete power over international affairs is in the national government, and is not and cannot be subject to any curtailment or interference on the part of the several states. In respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear. As to such purposes, the State of New York does not exist. Within the field of its powers, whatever the United States rightfully undertakes it necessarily has warrant to consummate. And when judicial authority is invoked in aid of such consummation, state constitutions, state laws, and state policies are irrelevant to the inquiry and decision. It is inconceivable that any of them can be interposed as an obstacle to the effective operation of a federal constitutional power.[95]

For the foregoing reasons, the Petitioners assert that this Board is estopped (precluded) from granting this application to Oceanic Technology Inc. because of the 1893 Cleveland-Lili`uokalani Agreement of Restoration (Executive Agreement), and that the United States Military situated within the territory of the Hawaiian Kingdom, namely the U.S. Pacific Command (PACOM) headquartered at Camp Smith, Island of O`ahu, is responsible for the administration of Hawaiian Kingdom law in accordance with the 1907 Hague Conventions, IV and V, and the 1949 Geneva Convention, IV, and not a civilian

[95] *U.S. v. Belmont*, 301 U.S. 324, 331 (1937).

government. Accordingly, the Petitioners respectfully request that this Board stop these proceedings until they are executed in compliance with Article 43, 1907 Hague Convention, IV, and the laws of the Hawaiian Kingdom through a military government established by the Commander of the Pacific Command.

Respectfully submitted,

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Keoni K. Agard
Attorney for Kale Gumapac and
Kanaka Council Moku o Keawe

Dated: October 31, 2009

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Attachment to Life of the Land Testimony HB 2737

Crist backs rehab for inmates

By John Frank, Times/Herald Tallahassee Bureau

LATE TESTIMONY

Published Sunday, February 14, 2010

TALLAHASSEE — Gov. Charlie Crist, once known for his support of prison chain gangs, is embracing an inmate rehabilitation effort often seen as "soft on crime."

The new mind-set, also welcomed by top Republican lawmakers, is not a change of heart from the lock-'em-up policies that dominated the past decade. Rather, it indicates how Florida's dire budget situation is making officials rethink the link between crime and punishment.

The shift is notable, given that Republicans are leading the discussion during an election year. "I think that justice calls for many facets," Crist said Friday. "But I also think if there are individuals who can turn their lives around and get a second chance, especially youth, that's a worthy cause."

Nearly 90 percent of inmates will eventually leave prison, and one in three will commit a new crime within three years. If state prison officials trim recidivism by just 1 percent, they will save $8 million a year.

"Particularly in austere budget times, re-entry (programs) really make good business and public safety sense," Florida Department of Corrections Secretary Walt McNeil said. "It comes from the lock-them-up-and-throw-away-the-key (policies) — the evidence shows it has not been very effective."

As the state's chief warden, McNeil began preaching these reforms years ago.

But the political winds didn't change until June when three former Florida attorneys general, a retired Department of Corrections secretary and the state's powerful business lobby wrote a letter to Crist asking him to halt spending for new prison construction as available dollars grew scarce.

Each inmate costs state taxpayers $20,000 a year, and the prison population now tops 100,000, statistics show. The number of inmates is projected to grow 15 percent in coming years — an unsustainable pace, the group said.

In his executive budget, Crist proposed no money for new prisons and diverted funding for prison work camps to re-entry centers where the state assists inmates' transition into the community through job training and social services.

The thinking is spreading even to the Legislature, which in recent years has approved measures to abolish parole and implement minimum required sentences for offenders.

"The prudence of spending has helped to humanize the issue of incarceration," said state Rep. Darryl Rouson, D-St. Petersburg, a lawyer who is a recovering alcoholic and drug addict.

For years when offenders left prison, the state gave them $100 and a bus ticket. But in recent presentations to lawmakers, state officials tout a program with space for 5,500 inmates that helps them find jobs and learn life skills — both keys to reducing recidivism.

It's about public safety, officials contend, not coddling criminals. And reducing crime means fewer victims in the future.
"We can measure the bad stuff but never capture all the bad things that didn't happen," said Rebecca Wolf-Reynal, a probation supervisor in Pinellas County who organizes re-entry programs.

The corrections agency is expanding these re-entry hubs in each of the state's four regions for inmates who have less than three years left in prison.

The re-entry facilities operate in conjunction with work release centers that help offenders find jobs before they are released.

Once the program reaches full speed, the state will serve nearly 7,000 inmates at any given time, though the agency wants to expand even further.

Gordon Lee Jr. participated in voluntary re-entry classes after serving 18 years in prison for a slew of drug charges. He left prison at age 40 with dim hopes after seeing others released only to return.

"They went back to the same environment with the same things and wound up with the same results," said Lee, now 42 and a supervisor at a car rental agency in Tampa. "But they taught me a lot of life skills. They made me feel like I had a chance."

The agency's new focus on helping offenders is bolstering a broader examination of how the state punishes criminals.

This year, House Bill 23, the "Second Chance for Children in Prison Act" — once deemed dead on arrival — is getting another look.

The legislation would allow the state's parole board to reconsider lengthy prison sentences given to youthful offenders. The sponsor, state Rep. Mike Weinstein, a Jacksonville Republican, is a prosecutor.

The bill also illustrates the difficulty faced by legislation perceived as being lenient on criminals. When Weinstein introduced the bill two years ago, he was labeled a "liberal." In a recent committee hearing, he began with a disclaimer: "This isn't a massive prison release system."
"Republicans worked a long time to do away with parole and some of them were reluctant to even crack the door," Weinstein said. "But the pendulum is coming the other way."

But not all lawmakers are softening their views. Other measures to add to the "hate crimes" statute and enhance the eligibility for the death penalty continue to get broad support.

"The No. 1 priority should always be public safety," said Republican Sandy Adams, the chairwoman of the House criminal justice budget committee and a former sheriff's deputy. "I don't believe we need to let criminals out of institutions just for budget purposes."

A number of law enforcement officials see it differently, including Hillsborough County Sheriff David Gee. "The only way to take (public safety) to the next level is through a good re-entry and recidivism program," he said. "When people listen to the facts, they are starting to understand."

Times/Herald staff writer Beth Reinhard contributed to this report. John Frank can be reached at jfrank@sptimes.com or *(850) 224-7263.*

FINTestimony

From: Dexter Kaiama [cdexk@yahoo.com]
Sent: Wednesday, February 17, 2010 9:51 AM
To: FINTestimony
Cc: cdexk@yahoo.com
Subject: H.B. 2737

LATE TESTIMONY

To members of the Finance Committee:

I am strongly opposed and must demand your committee's total rejection of H.B. 2737.

It is certain that passage of this bill will result in a lawsuit against the State seeking an injunction against the sale of any former Crown and Government Lands of the Kingdom of Hawai'i, currently held in trust by the State of Hawai'i and incorrectly but often referred to as "ceded" lands.

The bill clearly designates parcels known to be former Crown and Government lands, held in trust by the State of Hawai'i and clearly violates the holding of the Hawai'i Supreme Court in OHA v. HCDCH and flys in the face of the spirit and intent to protect and preserve these important lands until such time as the claims of the Hawaiian nation has been resolved.

Do not attach you names to the support of this bill. Reject it outright.

Dexter K. Kaiama
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