

**TESTIMONY**  
**SB 639**  
**LATE**

**February 5th, 2009**

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

**RE: Testimony for S.B. 639**

**Dear Members:**

**The purpose of this legislation is to authorize the Department of Land and Natural Resources to issue long-term residential leases to qualified persons, on the condition that lessees participate in the State Park's caretaking programs and to establish an advisory committee with representatives from specific, interested organizations to facilitate operations and compliance with state park residential leases.**

**I support S.B. 639 with a recommendation to amend the first paragraph regarding State Park's interpretive programs. It should read "on the condition that lessees participate in the State Park's interpretive programs and lessees are caretakers of the valley. The residents of Kahana Valley State Park would like to share their talents as "traditional practitioners" of their culture and its values for the benefit of the public.**

**Therefore, this legislation is long over due to address the issues of those who have been allowed to remain on State Lands with revocable permits for nearly fifteen year plus with no commitment to do interpretive park program hours. It has been on a volunteer basis, when called upon by other residents or offering to kokua a program. Every person in the Ahupua'a O Kahana is needed to have a successful community partnership with those enjoying the interpretive programs rendered.**

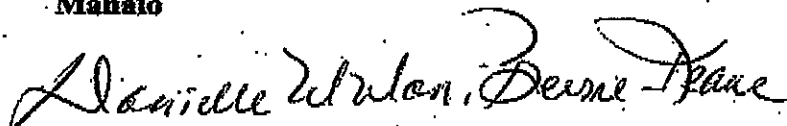
**I also support a lease term not to exceed beyond fifty years so as to end with the rest of the lessees in 2058, however, the residential community should have more than input on the advisory committee regarding the negotiation of leases beyond 2058. It is nearly time for the entire community to rally support for the extended period of another 65 years as**

soon as the advisory committee is set up. We also should be discussing other pressing issues as to the management by the people and for the people of the Kahana State Park. I feel the people know their community issues and know their people and their families and would be an asset to any input needed.

The Department of Land and Natural Resources does have a monitoring system and enforcement mechanism to ensure compliance already in place, however DLNR lacks an implementation process. I also believe that the make-up of the advisory committee regarding section 26-34 should be amended to have more community members involved in the process.

In all due respect to the Senator for my District, I thank him for his vision, clarity and expertise on the submittal of all four bills for this legislative session and pray you will consider a Planning Council for any consideration and evaluation of all master plans and community plans, "People's Plan for the benefit of the community of the Ahupua'a O Kahana or the Kahana Valley State Park.

Mahalo



Danielle Ululani Beirne-Keawe

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

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

LATE TESTIMONY

Senate Bill 638

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

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

Senate Bill 639

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

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

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

Senate Bill 643

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

*May Leinani Au*

## LATE TESTIMONY

Aloha:

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

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

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

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

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

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

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

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

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

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

Response to S.B.No 639

### **I am against S.B. No. 639**

This bill proposes DLNR issue leases on condition that leases participate in "state parks caretaking programs". "caretaking programs" ? "caretakers"?

Most of us signed a lease to participate in **interpretive programs**, and we have been doing this for years. Don't downplay our role to mere caretakers. In fact go take a walk through the valley, come visit us.

The vision of our kupuna was not for "caretakers"! Try preservation, restoration, sharing, and interpretive programs.

This bill proposes an advisory committee. We don't need an advisory committee, just follow the intent of the Act 5 provision "lessees to agree to be an essential part of the interpretive programs in Kahana...." and empower DLNR to support the terms of the leases in existence.

Mahalo,

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Ron Johnson

Mark S. Alapaki Luke  
P.O. Box 11085  
Honolulu, 96828  
808-381-4326, [markluke@hawaii.edu](mailto:markluke@hawaii.edu)

LATE TESTIMONY

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

**TESTIMONY IN REGARDS TO SB 639: TO BE HEARD BY THE SENATE WATER, LAND AND OCEAN RESOURCES COMMITTEE ON 2/6/09.**

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

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

me ka ha‘aha‘a (with humility),

COMMITTEE ON WATER, LAND, AGRICULTURE, AND  
HAWAIIAN AFFAIRS

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

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

06 Pepeleuli 2009

ALOHA!

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

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

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

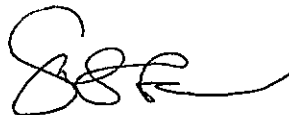
I encourage all legislators to support all legislation that will KEEP HAWAIIAN HANDS IN HAWAIIAN LANDS.

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

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

Mahalo nui loa!

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





TESTIMONY ON SB 639 AND ~~SB 643~~

Aloha Senators,

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

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

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

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

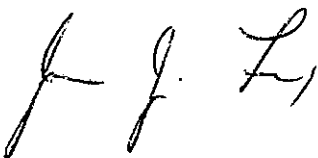
This will foster an atmosphere of fairness.

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

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

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

1 Attachment:  
Kahana Lease Applications



**KAHANA LEASE APPLICATIONS**  
**Applications received as of April 2005\***

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

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

**Applications received after April 2005**

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

LATE TESTIMONY

**PUBLIC TESTIMONY: ~~SB 638; 639~~**

To be read in conjunction with other testimony submitted on this subject, particularly that testimony submitted by me on HB1552 and its attachments

Dr. Jim Anthony, a resident of Kahana

I do not support Senator Hee's bills as they stand.

**Introduction:**

On December 9, 2008 Senator Hee attended an evening meeting of the Kahana Community Association and hand delivered copies of a draft Senate Bill entitled: A Bill for an Act Relating to Public Lands. Despite its title the Bill is specifically related to Kahana Valley State Park as can readily be seen from even a cursory examination of its contents. This is the Bill that is the subject of this report. The first Bill, unnumbered at the time it was delivered to people in Kahana has now grown into two Bills—SB 638 and 639.

Attached to this statement are two documents submitted at formal testimony when SB 3 (2008) was being considered:

1. The written testimony submitted by the Attorney-General **against** a similar Bill authored by Senator Hee and submitted to the Legislature for its consideration in 2007 [Tab # 1].
2. The written testimony submitted by the Chairperson of the Board of Land and Natural Resources **against** a similar Bill offered in 2007 [Tab #2].

That Bill, SB 3, [2008] failed to pass.

**Background**

In October 2008 six residents of Kahana Valley State Park were served notices of eviction.

Of the six, one had had a lease which he had transferred to his sister. She failed to come up with the money to build a house on the lot which remains vacant to this day. Her lease was cancelled.

Three of the six are what you would call “long time” residents but none of them have ever had a lease.

The remaining two residents facing eviction are of more recent vintage—both moved into structures in which their parents used to live after they (i.e. their parents) were allocated other lease lots in Kahana on which they built homes more than a decade ago.

Three of these six residents had long been given a chance to get a lease long before the A-G’s opinion of March 24, 2008 was rendered.

As soon as the threat of evictions became public Senator Hee became involved in seeking a stay of the evictions. He is reported to have made representations to Laura Thielen, Director of DLNR. Senator Hee is also reported to have made representations to the Governor—again, for the same purpose: to stay the evictions.

In time, as the outcry against the evictions became more public, Senator Hee became more publicly and intensely involved in representing and assisting the six residents facing eviction.

Specifically, here are some of the steps which Senator Hee took in behalf of the six threatened with eviction:

- He helped raise funds from several unions, he told us. These funds, Senator Hee said, were raised to have bail money on hand in the event there were any arrests of those opposing the evictions.
- He helped raise funds from a local philanthropist to provide food for those who had assembled to protest the threatened evictions.
- He promised to report a Bill out of his Committee on Land & Water to enable the six to get leases, but that it would then be their responsibility to get funding to build homes.

In time Laura Thielen backed away from evicting the six. A deal was struck: the Legislature would be given a chance to deal with the issue, particularly with that part of the issue making it illegal for any more leases to be issued for the reasons set out in the A-G’s March 24, 2008 opinion.

It is difficult to avoid the conclusion that Senator Hee’s Bill is, yet again, constitutionally prohibited special legislation designed to address the plight of the six resident families in Kahana facing eviction.

We do not know whether the A-G, who has been asked by Senator Hee to review the Bill, will opine, once again, that it is special legislation and is, therefore, unconstitutional. I have asked Senator Hee to share the A-G’s opinion with us and he has agreed to do so. As of this writing I have not heard from Senator Hee.

**Principal submissions:**

With specific reference to the Bills (especially SB 639), set out below are my principal submissions:

1. My overarching position is that I do NOT support either Bill as it stands;  
*“qualified persons are those who are persons who reside and who have continuously lived in the State Park since before 1987 and have served as caretakers of the Park”*:  
 These core criteria for ‘qualified persons’ are unnecessarily restrictive. I believe that “qualified persons” should be more inclusive and should, therefore, be those:
- who now live in the Park and who have lived there for no less than a total of three years at a minimum
  - who have participated in, and contributed to, caretaking activities in the Park (“caretaking” must be defined)
  - who are related by blood or marriage to any lessee who currently has a lease in Kahana
  - who can commit to complete building a home on any one of the remaining residential lots in the State Park, without disturbing existing arrangements, within 12 months of being awarded a lease and who can, furthermore, provide proof that he or she has, or has access to, a minimum of \$50,000 to build a home
  - *In short, the 1987 threshold should be deleted. The word ‘continuously’ or any variant of it, if used, must be defined, and*
  - *In order to get over the hump of the special legislation problem open up leases to all taxpayers*
  - *With respect to the provision in SB 639, Section 2, page 4: (the “Koke’e formula”)– in this case greater than five thousand acres but not less than 6,000 acres—I have no substantive opposition to this provided the 1987 threshold is removed.*

Section 3 (b) (1) and (2), p 4 of SB 638—The Advisory Committee shall be made up of five (5) members:

- Three of whom shall be resident/lessees or members of their households who are members in good standing of the Kahana Community Association. Election shall be by secret ballot which shall be supervised by a person to be appointed by the Chair of DLNR. Term of office shall be three years. Minimum voting age shall be 18. Eligible voters shall be restricted to those who are members in good standing of the Kahana Community Association and who are lessees as set out in the current (6/22/’96 version) of the Association’s by-laws.

**Additional issues:**

In addressing the Bill I was faced with several very difficult overarching, connected dilemmas.

The six families facing eviction are our neighbors. We feel for them. At the same time I am not a supporter of their lack of initiative in meeting the requirements to qualify for a lease over a very long period (several years).

Having said what I have, I now come to a very contentious issue: whether what is being proposed in the Bills is constitutionally prohibited special legislation regarding public lands to which I have already referred above.

I am caught between a rock and a hard place: the “rock” is special legislation; the “hard place” is my emotional connection to those facing eviction. To compound matters I have in the back of my mind such dilemmas as the future housing needs of a new generation of the children of lessees now no longer children. What complicates this issue is that we know that Kahana is a State Park and was **NOT** intended to be a low income or, for that matter, any kind of income, housing subdivision. In fact one of the reasons why the State purchased Kahana was in order to foreclose it becoming a housing subdivision.

To compound my dilemmas I have received representations, too, from those who once lived in Kahana and who left. Some of these people want to return. Some of the lineal descendants of *kuleana* land owners seek to have *kuleana* land restored to them. And then there is a whole cluster of issues which have grown and festered over the years. They are rooted in a lease that was badly written in undue haste—more than a decade and a half ago. **Addressing just the threatened eviction of the six families while ignoring many issues of long standing is a piecemeal approach that is bad policy. A comprehensive approach is long overdue** (see, for example, “Kahana State Park still work in progress” [editorial], *Honolulu Advertiser*, October 30, 2008).

There is no handy sword that I know of that can be used to cut the ‘ Gordian knot’ of the problems before us. I see, in particular, no way around the ‘special legislation’ issue, if indeed, as was the case in 2008 and in 2007 (HB No. 1664), an opinion as significant as that of Attorney-General’s holds to the view yet again that this proposed legislation is in violation of Article XI, Section 5 of the Hawaii State Constitution.<sup>1</sup> No matter how Senator Hee’s Bills are disguised and no matter how magnanimous his intentions, this Bill seems to be, *prima facie*, ‘special legislation’ prohibited by the State’s constitution. If this is found to be persuasive the Bill would likely be held again (or, possibly, litigated, should it become law) and the fate of the six families will likely be thrown back into the cauldron of public controversy: confrontation, picket lines, calls for resignation, arrests (if the evictions are carried out). I do not wish to further develop the special legislation issue at this time except to flag it as I have and to just leave it highlighted for now.

<sup>1</sup> See TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE 2008, March 27, 2008 attached as **Tab # 1.**

To simply dismiss the Attorney-General's opinion, if indeed the same opinion on the constitutionality of the Bill is tendered again, and it is ignored just because it is **just the A-G's opinion** (as Senator Hee recently put it) is an attitude that troubles me. Should a way be found around the special legislation problem I would still hold to my submission that the "1987" provision and others related to it be deleted and the alternative criteria I have suggested be adopted and made part of the Bills instead, if Senator Hee and this Committee decide to persist with them

Attachments: Tabs 1 and 2.

kahanarteport.020609



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FOURTH LEGISLATURE, 2008**

STATE TESTIMONY

ON THE FOLLOWING MEASURE:

S.B. NO. 3, S.D. 1 RELATING TO KAHANA VALLEY STATE PARK.

BEFORE THE:

HOUSE COMMITTEE ON WATER AND LAND

DATE: Monday, March 17, 2008 TIME: 9:00 A.M.

LOCATION: State Capitol Room 312

*Deliver to: Clerk, Room 427, 3 copies*

TESTIFIER(S): Mark J. Bennett, Attorney General  
or William J. Wynhoff, Deputy Attorney General

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Chair Ito and Members of the Committee:

The Department of Attorney General opposes this bill and believes it would be unconstitutional if enacted.

This bill would authorize issuance of long-term leases on additional parcels of land within Kahana Valley.

Article XI, section 5 of the Hawaii Constitution provides:

The legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws, except in respect to transfers to or for the use of the State, or a political subdivision, or any department or agency thereof.

No Hawaii case deals with article XI, section 5. One formal opinion from this department addresses it. In our Opinion No. 61-38, at page 2 (fn. omitted), we said:

[I]t is clear that once land was "owned by the State or under its control," the framers of the Constitution intended that it be distributed by means of general laws and to prohibit its dissipation "through private, or special laws". (Vol. 1, Proceedings of the Constitutional Convention of Hawaii, pp. 233, 336.)



CONFIDENTIAL

The impetus for adoption of article XI, section 5 appears to have been "special land exchange deals or things of that nature which as we know in the past have definitely caused a considerable loss to the Territory." 2 Proceedings of the Constitutional Convention of Hawaii of 1950, at 631 (1961). The committee report refers to "dissipation of assets by land exchanges under private laws or by homestead laws governing a particular tract of land." Stand. Comm. Rep. No. 78, 1 Proceedings of the Constitutional Convention of Hawaii of 1950, at 233 (1960). Although land exchange deals and homestead laws governing particular tracts of land appear to have been foremost in the minds of the delegates to the 1950 Constitutional Convention, the constitutional proposal they agreed to was not limited to those transactions. The committee report instead states "in administering and disposing of the natural resources the legislature must do so by general law." Id. Intergovernmental transfers were the only exceptions provided. Id.

S.B. No. 3 is (plainly) the product of the exercise of legislative power and involves land owned by the State. The bill does not fall within the exception clause of article XI, section 5, because it does not involve an intergovernmental transfer.

S.B. No. 3 is not a general law because the bill singles out one parcel of land in a specific locale. We believe that S.B. No. 3 is an exercise of legislative power over the lands owned by the State by special, not general, law and is, therefore, unconstitutional. We opposed a similar bill, H.B. No. 1664, in 2006 for similar reasons.

It does not appear that this problem can be solved by amendment, because the title to the bill requires that it relate to Kahana Valley.

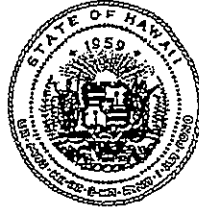
LEGISLATIVE COUNCIL

Aside from the problems with the constitutionality of the measure, the bill describes qualified lessees as "persons who reside and have continually lived in the state park since before 1987 in a culturally and appropriate manner and have served as caretakers of the state park." We know from past experience that this definition will be difficult to interpret and apply. What evidence could prove or disprove that a person has "continually" lived in the park since 1986? What about, for example, persons who lived elsewhere during time spent in military service or in college?

In addition, the phrases "culturally and appropriate manner" and "served as a caretaker of the state park" are inherently ambiguous. If these phrases are intended to impose additional qualifications beyond living in the park since 1986, they should be defined or clarified. During what part of the time must the person have been a caretaker of the park? How would the phrases apply to a person in his or her twenties who was a child during most of the relevant time?

The Department of Attorney General believes that this bill should be held.

LINDA LINGLE  
GOVERNOR OF HAWAII



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

LATE TESTIMONY

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  
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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON  
OF THE BOARD OF LAND AND NATURAL RESOURCES**

**On Senate Bill 3, Senate Draft 1 – RELATING TO KAHANA VALLEY STATE PARK**

**BEFORE THE HOUSE COMMITTEE  
ON**

**WATER, LAND, OCEAN RESOURCES AND HAWAIIAN AFFAIRS**

**March 17, 2008**

Senate Bill 3, Senate Draft 1 provides for additional families to reside in Kahana Valley State Park by lease agreement, and establishes an advisory committee to, among other things, monitor compliance with the agreements. The Department of Land and Natural Resources (Department) opposes this bill because of the cost implications generated by this proposal and the negative impact on the primary park purpose of Kahana Valley (Kahana), which is to provide public access to parks – not private restricted uses.

The State acquired 5,228 acres encompassing the entirety of the Kahana ahupua'a in 1969 to preserve the natural setting of the ahupua'a and to provide public recreational opportunities. The "Living Cultural Park" concept was proposed in 1972 as a way for the people living in Kahana at the time of the State's acquisition to continue to live in Kahana and provide cultural interpretive programs for park visitors. Act 5, Session Laws of Hawaii (SLH) 1987, authorized the Department to enter into 65-year residential leases with families living in Kahana on permit. To qualify for a lease under this Act, one must have lived continuously in Kahana since before 1970 until 1987. The census conducted in 1987 determined that 31 families qualified for leases. Act 238, SLH 1988, provided state funds for mortgages to construct new houses in the Park. The appropriation was sufficient for 26 lessees to receive \$50,000 mortgages each. In lieu of lease rent, each lessee is required to perform 25 hours of interpretive service each month. The 31 residential leases were executed in 1993.

Many Kahana lessees began construction of their houses by 1995, and most have completed construction or renovated their house. A few houses remain uncompleted or have not been started. Between 2003 and 2005, the Department for non-compliance with the lease conditions forfeited three (3) leases, and one lease was assigned to a new lessee through foreclosure.

The bill does not provide a cap on the number of leases for Kahana, which could be problematic. If the number of leases is not limited, the natural setting of the Park may be jeopardized and there are cost implications with the infrastructure needed for these new residences. The Department understands that families grow with each generation, but it was not envisioned that

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the park would provide housing for all the children of the original lessees. Expanded housing will not necessarily benefit the goals of the Park, which are public recreation and preservation of the natural setting.

The Department believes that 31 leases are adequate for the implementation of an interpretive cultural park program. Currently, about half of the lessees are in default on the performance of their interpretive hours. While public interest in interpretive programs has grown, the park program has been limited to one or two school groups a month based on the availability of residents to participate in these programs.

The State has spent over \$1 million in capitol improvement program funds to develop the infrastructure for the two residential areas in the park, including paved roads, graded 10,000 sq. foot lots, leach fields, and utilities. There is one full-time staff position in the Department's Division of State Parks overseeing lease compliance and interpretive programs at Kahana. All this cost comes at the expense of the public parks and public access.

The establishment of a Kahana advisory committee appears to duplicate many of the tasks of the interpretive advisory committee and Kokua Committee, two entities already established in compliance with the lease. It may be more beneficial to expand the function of these two groups, rather than establish another entity with overlapping purposes.

The bill calls for leases not to exceed 65 years to conform with previously issued leases at Kahana under Act 5, SLH 1987. However, in considering any issuance of new leases, the Department would recommend that the bill be amended to have all residential leases terminate in 2058, which is 65 years from 1993 when the 31 original leases were signed.

The Department does not support additional leases at Ahupua'a 'O Kahana State Park because it will require an appropriation of state funds for infrastructure and mortgages. Additional residents do not necessarily mean a better interpretive program, and the management of more leases will be a burden on the existing park staff assigned to Kahana. Continuing efforts to develop a viable interpretive program with the existing lessees is the preferred course of action, not more leases.

**TESTIMONY**  
**SB 639**  
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