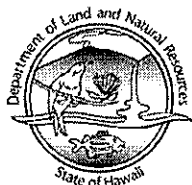


SB 1154

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committees on
WATER, LAND AND HOUSING
and
HAWAIIAN AFFAIRS**

**Saturday, February 12, 2011
10:00 AM
State Capitol, Conference Room 225**

**In consideration of
SENATE BILL 1154
RELATING TO HISTORIC PRESERVATION**

Senate Bill 1154 establishes the South Kona Wilderness Area under the Department of Land and Natural Resources (Department) and provides a mechanism for the development of a comprehensive management plan to preserve the area's significant scenic, historic, cultural, and biological features. The Department acknowledges the merits of this bill, however, we cannot support this measure without the assurance of additional resources, staffing, and capacity for sustainable management to help insure the intent of providing the area with the preservation that is warranted, and to manage and maintain these additional lands.

The concept for a primitive, wilderness park from Honomalino to Manuka was initially proposed in 1971 by the Association of Hawaiian Civic Clubs with the support of the Bishop Museum. Approximately 22,000 acres are proposed for designation as a wilderness area and includes portions of the shoreline of five ahupua'a: Honomalino, Okoe, Kaulanamauna, Kapu'a, and Manukā. Except for the privately-owned lands in Kapu'a, and several inholdings in Honomalino, most of the other lands are owned by the State.

In 1983, with funds appropriated by the Legislature, the Department conducted a park feasibility study and surveys were performed on the botanical, aquatic, wildlife and archaeological resources. However, no decision was made on the suitability of establishing a wilderness park.

The South Kona Wilderness Area was established under Act 59, of the 2003 Legislature. This Act however, was repealed in 2007 when the Kapua land acquisition did not take place. The Senate Bill before you today is identical to Act 59.

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

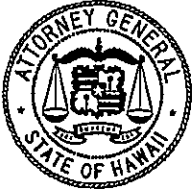
GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
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

Some concerns and issues need to be addressed if the wilderness area is implemented. They are: limited access and the lack of fresh water; the Department's capability to manage and protect the shoreline resources in balance with public visitation and the need for managed public recreational use of the area; development of alternate access and the potential need for adding recreational infrastructure and facilities; wildland fire management, control of visitation patterns to those areas where the sensitivity and significance of the resources require greater resource management. To address these concerns then requires the need for formal planning and compliance with various permitting processes. If additional management and public access is the public's future expectation of this designation, the Department must also consider methods by which the designation and acquisition of land could generate funds in order to provide the enhanced access, recreation and preservation.

The Department supports the intent of this measure as it will preserve a 13 mile long coastline from urban/resort development and preserve the area's important historic, cultural, scenic, environmental and biological resources. However, without additional resources as indicated above, we are unable to assume responsibility for additional lands at this time. Thank you for the opportunity to provide written testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

S.B. NO. 1154, RELATING TO HISTORIC PRESERVATION.

BEFORE THE:

SENATE COMMITTEES ON WATER, LAND, AND HOUSING AND ON
HAWAIIAN AFFAIRS

DATE: Saturday, February 12, 2011 TIME: 10:00 a.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): David M. Louie, Attorney General, or
Julie H. China, Deputy Attorney General

Chairs Dela Cruz and Galuteria, and Members of the Committees:

The Department of the Attorney General opposes this bill.

This bill establishes the South Kona wilderness area (SKWA) to be administered by the Department of Land and Natural Resources (DLNR). The bill reclassifies all of the land within the SKWA as conservation land. Land within the SKWA cannot be subdivided and with a few noted exceptions, no new homes or other structures can be constructed within one thousand feet of the shoreline. The bill further allows the State to acquire the re-classified land on a value-for value exchange. The bill is nearly identical to Act 59, Session Laws of Hawaii 2003, which was repealed at the end of 2006 when the land exchange did not take place.

The real property identified in the bill consists of the shoreline portion of five ahupuaa. We have been informed by DLNR staff that Honomalino, Okoe, Kaulanamauna, and Manuka are mostly public lands with private inholdings in Honomalino. Kapua is mostly private property. The land, 7780+ acres, is zoned agriculture with 1192+ acres in the conservation district resource subzone.

The bill may constitute a regulatory taking under the United States and Hawaii Constitutions. U.S. Const., amend. V; Haw. Const. art. 1, § 20. Both constitutions provide that private property shall not be taken for public use without just compensation. Although the classic taking is a transfer of property to the State or to another private party by eminent domain, the Takings Clause applies to other state actions that achieve the same result. The doctrine of regulatory takings "aims to identify regulatory actions that are functionally equivalent to the classic taking." Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 539 (2005). Thus, it is a taking when a law deprives a landowner of all economically beneficial use of his property, i.e. the property is "economically idle," without providing compensation. Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1019 (1992). See also, Public Access Shoreline Hawaii v. Hawaii County Planning Commission, 79 Hawai'i 425, 452, 903 P.2d 1246, 1273 (1995).

The bill does not state how much of the SKWA land is privately owned and how much is public lands. The bill is also unclear regarding land classification. The bill states that a portion of the land at Kapu'a is within the conservation district. The bill does not identify the classification for the remaining portion of Kapu'a or the four other lands, Honomalino, Okoe, Kaulanamauna, and Manuka, within the SKWA. Depending on the ownership status and current classification of the SKWA land, section 6E-F may constitute a regulatory taking if the new classification makes any private property "economically idle" without providing just compensation to the landowner.

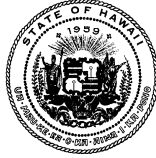
Section 6E-E also raises a taking concern because the State's acquisition of SKWA land from private landowners will be based on the value of the land as reclassified conservation

land. Depending on the current land classification, the State could be acquiring the land for less than fair market value on the day before the passage of the bill.

We respectfully ask the Committee to hold this bill.

From: Jeremy (Kama) Hopkins [jeremyh@oha.org]
Sent: Monday, February 07, 2011 1:01 PM

PHONE (808) 594-1888



FAX (808) 594-1865

STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

February 7, 2011

Hawaii State Senate
Committee on Hawaiian Affairs
Committee on Water, Land, and Housing

SB 1154 – Testimony in **SUPPORT**

Aloha Chair Galuteria, Chair Dela Cruz, Vice Chair Ryan, Vice Chair Solomon, Members of the Senate Committee on Hawaiian Affairs, and Members of the Senate Committee on Water, Land and Housing,

Mahalo for this opportunity to offer **Testimony Supporting Senate Bill 1154 Relating to Historic Preservation.**

There is much forethought and insight in this Senate Bill. From a **Growth Perspective** the future of Hawai'i is on Moku O Keawe, on the island of Hawai'i. Our island is relatively untouched; it is a "Sleeping Giant" waiting to be awakened from a long slumber.

As the island develops and urbanizes across time, keeping the lands identified in **SB 1154** in **Wilderness NOW**; Honomalino, Okoe, Kapu'a, Kaulanamauna and Manukā (portions of) will preserve these lands in **Open Space** for enjoyment by future generations **forever.**

Aloha ‘Āina,

Robert K. Lindsey, Jr.
Trustee, Hawai‘i Island
Office of Hawaiian Affairs

Written Statement of

Jeffrey Edwards

Pa'a Pono Miloli'i

before the

SENATE COMMITTEE ON WATER LAND AND HOUSING and HAWAIIAN AFFAIRS

February 12th 2011

10:00 AM

State Capitol, Conference Room 224

In Support of

SB 1154 RELATING TO HISTORIC PRESERVATION, SOUTH KONA WILDERNESS AREA

TO: Chair Dela Cruz, Vice Chair Solomon, and Members of the Water Land and Housing Committee

TO: Chair Galuteria, Vice Chair Ryan, and Members of the Hawaiian Affairs Committee

From: **Jeffrey Edwards, Pa'a Pono Miloli'i**

Re: Testimony in Support of SB1154

Honorable Chair, Vice-Chair and Committee Members:

Thank you for the opportunity to submit testimony in support of SB1154

The South Kona area on the island of Hawai'i (specifically from Ka Lae South Point to Miloli'i) is one of the last remaining untouched regions in the State. It is rich in early Hawaiian history and has many archaeological sites intact including a ho'ua slide, petroglyphs, caves, heiau burial sites, ahupua'a rock dividers and a 3 mile long stone walking trail which dates back several hundred years. It's coastline is untouched, and offers pristine natural beauty and ocean resources. In addition many native Hawaiian plants can be found on its landscape. The purpose of SB1154 is to create a permanent Wilderness Area in this region of South Kona. It is vitally important that in order to ensure that future generations of our keiki and visitors get to experience this culturally rich area that we preserve it from future development and expansion. Mahalo for your continued support and preservation of our Islands and its unique Hawaiian history.

Jeffrey Edwards

Written Statement of

Pedro Velasco, Jr.

Concerned citizen

before the

SENATE COMMITTEE ON WATER LAND AND HOUSING and HAWAIIAN AFFAIRS

February 12th 2011

10:00 AM

State Capitol, Conference Room 224

In Support of

SB 1154 RELATING TO HISTORIC PRESERVATION, SOUTH KONA WILDERNESS AREA

TO: Chair Dela Cruz, Vice Chair Solomon, and Members of the Water Land and Housing Committee

TO: Chair Galuteria, Vice Chair Ryan, and Members of the Hawaiian Affairs Committee

From: **Pedro Velasco, Jr., Concerned citizen**

Re: Testimony in Support of SB1154

Honorable Chair, Vice-Chair and Committee Members:

Thank you for the opportunity to submit testimony in support of SB1154

The South Kona area on the island of Hawai'i (specifically from Ka Lae South Point to Miloli'i) is one of the last remaining untouched regions in the State. It is rich in early Hawaiian history and has many archaeological sites intact including a holua slide, petroglyphs, caves, heiau burial sites, ahupua'a rock dividers and a 3 mile long stone walking trail which dates back several hundred years. It's coastline is untouched, and offers pristine natural beauty and ocean resources. In addition many native Hawaiian plants can be found on its landscape. The purpose of SB1154 is to create a permanent Wilderness Area in this region of South Kona. It is vitally important that in order to ensure that future generations of our keiki and visitors get to experience this culturally rich area that we preserve it from future development and expansion. Mahalo for your continued support and preservation of our Islands and its unique Hawaiian history.

Pedro Velasco, Jr.

From: mailinglist@capitol.hawaii.gov
To: [WLH Testimony](#)
Cc: leekahele@yahoo.com
Subject: Testimony for SB1154 on 2/12/2011 10:00:00 AM
Date: Friday, February 11, 2011 1:12:26 AM

Testimony for WLH/HWN 2/12/2011 10:00:00 AM SB1154

Conference room: 225
Testifier position: support
Testifier will be present: No
Submitted by: Leighton M. Kahele
Organization: Individual
Address:
Phone:
E-mail: leekahele@yahoo.com
Submitted on: 2/11/2011

Comments:

Thank you for the opportunity to submit testimony in support of SB1154. The South Kona area on the island of Hawaii (specifically from Ka Lae South Point to Miloli'i) is one of the last remaining undisturbed regions in the State. It is rich in early Hawaiian history and has many archaeological sites intact including a holua slide, petroglyphs, caves, heiau burial sites, ahupua'a rock dividers and a 3 mile long stone walking trail which dates back several hundred years. Its coastline is untouched, and offers pristine natural beauty and ocean resources. In addition many native Hawaiian plants can be found on its landscape. The purpose of SB1154 is to create a permanent Wilderness Area in this region of South Kona. It is vitally important that in order to ensure that future generations of our keiki and visitors get to experience this culturally rich area that we preserve it from future development and expansion. Mahalo for your continued support and preservation of our islands and its unique Hawaiian history. Leighton Makanikaiua Kahele a native Miloli'ian born in a grass shack on the beach on a stormy night by a midwife on the 10th December 1946.



The Nature Conservancy of Hawai'i
923 Nu'uuanu Avenue
Honolulu, Hawai'i 96817

Tel (808) 537-4508
Fax (808) 545-2019

nature.org/hawaii

Testimony of The Nature Conservancy of Hawai'i
Supporting of S.B. 1154 Relating to Historic Preservation
Senate Committee on Hawaiian Affairs
Senate Committee on Water, Land, and Housing
Saturday, February 12, 2011, 10:00AM, Rm. 225

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy of Hawai'i supports S.B. 1154.

The proposed South Kona Wilderness Area will protect important cultural resources as well native dry land forest cover which is becoming increasingly rare throughout the state. The Conservancy looks forward to continuing to work with the State, the landowner, and other interested parties to achieve a successful land acquisition and establishment of this important conservation land area.

BOARD OF TRUSTEES

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James C. Polk H. Monty Richards Jean E. Rolles Scott C. Rolles Crystal K. Rose Nathan E. Smith Eric K. Yeaman

Written Statement of

Maria Day

before the

SENATE COMMITTEE ON WATER LAND AND HOUSING and HAWAIIAN AFFAIRS

February 12th 2011

10:00 AM

State Capitol, Conference Room 224

In Support of

SB 1154 RELATING TO HISTORIC PRESERVATION, SOUTH KONA WILDERNESS AREA

TO: Chair Dela Cruz, Vice Chair Solomon, and Members of the Water Land and Housing Committee

TO: Chair Galuteria, Vice Chair Ryan, and Members of the Hawaiian Affairs Committee

From: Maria Day

Re: Testimony in Support of SB1154

Honorable Chair, Vice-Chair and Committee Members:

Thank you for the opportunity to submit testimony in support of SB1154

The South Kona area on the island of Hawai'i (specifically from Ka Lae South Point to Miloli'i) is one of the last remaining untouched regions in the State. It is rich in early Hawaiian history and has many archaeological sites intact including a holua slide, petroglyphs, caves, heiau burial sites, ahupua'a rock dividers and a 3 mile long stone walking trail which dates back several hundred years. It's coastline is untouched, and offers pristine natural beauty and ocean resources. In addition many native Hawaiian plants can be found on its landscape. The purpose of SB1154 is to create a permanent Wilderness Area in this region of South Kona. It is vitally important that in order to ensure that future generations of our keiki and visitors get to experience this culturally rich area that we preserve it from future development and expansion. Mahalo for your continued support and preservation of our Islands and its unique Hawaiian history.

Maria Day

Written Statement of

Maria Day

before the

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February 12th 2011

10:00 AM

State Capitol, Conference Room 224

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Maria Day

Written Statement of

Kaiali'i Kahele

President, Pa'a Pono Miloli'i

before the

SENATE COMMITTEE ON WATER LAND AND HOUSING and HAWAIIAN AFFAIRS

February 12th 2011

10:00 AM

State Capitol, Conference Room 224

In Support of

SB 1154 RELATING TO HISTORIC PRESERVATION, SOUTH KONA WILDERNESS AREA

TO: Chair Dela Cruz, Vice Chair Solomon, and Members of the Water Land and Housing Committee

TO: Chair Galuteria, Vice Chair Ryan, and Members of the Hawaiian Affairs Committee

From: Kaiali'i Kahele, President Pa'a Pono Miloli'i

Re: Testimony in Support of SB1154

Honorable Chair, Vice-Chair and Committee Members:

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Mahalo,

Kaiali'i Kahele, President Pa'a Pono Miloli'i

Written Statement of

Kaiali'i Kahele

President, Pa'a Pono Miloli'i

before the

SENATE COMMITTEE ON WATER LAND AND HOUSING and HAWAIIAN AFFAIRS

February 12th 2011

10:00 AM

State Capitol, Conference Room 224

In Support of

SB 1154 RELATING TO HISTORIC PRESERVATION, SOUTH KONA WILDERNESS AREA

TO: Chair Dela Cruz, Vice Chair Solomon, and Members of the Water Land and Housing Committee

TO: Chair Galuteria, Vice Chair Ryan, and Members of the Hawaiian Affairs Committee

From: Kaiali'i Kahele, President Pa'a Pono Miloli'i

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Mahalo,

Kaiali'i Kahele, President Pa'a Pono Miloli'i

Written Statement of

L.P. Neenz Faleafine

State of Hawaii Resident

before the

SENATE COMMITTEE ON WATER LAND AND HOUSING and HAWAIIAN AFFAIRS

February 12th 2011

10:00 AM

State Capitol, Conference Room 224

In Support of

SB 1154 RELATING TO HISTORIC PRESERVATION, SOUTH KONA WILDERNESS AREA

TO: Chair Dela Cruz, Vice Chair Solomon, and Members of the Water Land and Housing Committee

TO: Chair Galuteria, Vice Chair Ryan, and Members of the Hawaiian Affairs Committee

From: **L.P. Neenz Faleafine, State of Hawaii Resident**

Re: Testimony in Support of SB1154

Honorable Chair, Vice-Chair and Committee Members:

Thank you for the opportunity to submit testimony in support of SB1154

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L.P. Neenz Faleafine

Written Statement of

Leanne Yanabu

A Private Citizen

before the

SENATE COMMITTEE ON WATER LAND AND HOUSING and HAWAIIAN AFFAIRS

February 12th 2011

10:00 AM

State Capitol, Conference Room 224

In Support of

SB 1154 RELATING TO HISTORIC PRESERVATION, SOUTH KONA WILDERNESS AREA

TO: Chair Dela Cruz, Vice Chair Solomon, and Members of the Water Land and Housing Committee

TO: Chair Galuteria, Vice Chair Ryan, and Members of the Hawaiian Affairs Committee

From: **Leanne Yanabu, a Private Citizen**

Re: Testimony in Support of SB1154

Honorable Chair, Vice-Chair and Committee Members:

Thank you for the opportunity to submit testimony in support of SB1154

The purpose of SB1154 is to create a permanent Wilderness Area in the region of South Kona.

I am tired of private developers and corporate interests taking over the common inheritance of our islands, which should be preserved for animals, plants, and future generations. So much has already been developed and ruined; let's leave at least some of our lands and oceans reserved for posterity.

Mahalo for your continued support and preservation of our Islands and its unique Hawaiian history.

Leanne Yanabu