

lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 10, 2013 7:03 PM
To: waltestimony
Cc: cristalkygaran@hotmail.com
Subject: *Submitted testimony for HCR26 on Mar 11, 2013 09:30AM*

HCR26

Submitted on: 3/10/2013

Testimony for WAL on Mar 11, 2013 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Cristal Garan	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 11, 2013 3:51 AM
To: waltestimony
Cc: valnrاد@gmail.com
Subject: *Submitted testimony for HCR26 on Mar 11, 2013 09:30AM*

HCR26

Submitted on: 3/11/2013

Testimony for WAL on Mar 11, 2013 09:30AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Valerie Kailiwai	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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HCR26

SUBMITTING TO THE LEGISLATURE OF THE STATE OF HAWAII FOR REVIEW OF ACTION TAKEN BY THE BOARD OF LAND AND NATURAL RESOURCES ON A LAND EXCHANGE AND SALE OF PROPERTY.

House Committee on Water and Land

March 11, 2013

9:30 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) offers the following comments on HCR26, which approve the exchange and sale of the State's portion of the fee interest in certain lands. **OHA does not oppose the exchange and sale of these lands but seeks to ensure that (1) the parcels in which the State will obtain full fee interest will retain their Public Land Trust status; and (2) the state conducts an analysis that will ensure the reasonable protection of traditional and customary rights that may be impacted by the proposed land transaction.**

This resolution was offered for consideration by the Legislature in accordance with Act 176, Session Laws of Hawai'i 2009, as amended. Among other things, Act 176 requires a two-thirds majority vote of both houses of the Legislature before any specific lands controlled by the State can be sold (including, but not limited to, ceded lands).

In the 1993 "Apology Resolution," the United States Congress, referring to Native Hawaiians' loss of control of their lands, stated:

[t]The Republic of Hawaii . . . ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government.

Sales of ceded lands raise significant concerns for OHA and its beneficiaries, because the Native Hawaiian people's claim to ceded lands has yet to be resolved. OHA urges your committees to consider these unresolved claims carefully as they deliberate regarding each specific sale.

We understand that the land exchange and sale approved by the Board of Land and Natural Resources (BLNR) on June 8, 2012, outlined in HCR26 is pursuant to a Stipulated Judgment on Partition in *Napoleon, et al., v. State of Hawai'i, et al.*, Civ. No. 92-0786. The action was brought by one of four families who share a half interest in five parcels of land in Kahananui, Moloka'i, to quiet title between the families and the State, which retains the other half interest. These parcels are portions of Māhele Award 48 to Kaeliwei in which the Mō'i of the Kingdom of Hawai'i retained a half interest which was seized by

the Provisional Government and subsequently transferred to the United States; thus these are classified as ceded lands. Title to the Mo'ī's one-half interest transferred to the State of Hawai'i pursuant to Section 5(b), Hawai'i Admission Act, and therefore became part of the Public Land Trust. The settlement reached by the families and State in this action directs that the families are to receive one parcel (TMK (2) 5-6-06:15), the State is to retain two parcels (TMKs (2) 5-6-06:14 and (2) 5-6-03:12), and the remaining two parcels (TMKs (2) 5-6-03:08 and (2) 5-6-03:10) are to be sold with proceeds divided among all parties.

Although this case presented a unique set of circumstances, such Māhele Awards in which the Kingdom retained a half interest were not uncommon and this situation may rise again in the future. OHA has reviewed the BLNR submittals, court filings, and historic documents related to these parcels and has decided not to oppose the sale and exchange in this limited situation. However, we will request that the Department of Land and Natural Resources (DLNR) notify OHA about future state land partition actions upon commencement of such actions so that we may make a meaningful contribution at the appropriate time.

We will also request assurances from DLNR that the two parcels in which the State will obtain full fee interest (TMKs (2) 5-6-06:14 and (2) 5-6-03:12) will retain their Public Land Trust status pursuant to Section 5(b) of the Hawai'i Admission Act and we now request that this Legislature commit to the same. Further, we will request that the State's portion of the proceeds received for the two parcels is properly reported by DLNR to the Legislature pursuant to Act 178, Session Laws 2006.

Finally, as recognized by long- and well-established case law, Hawai'i state agencies have an affirmative legal duty to reasonably protect and enforce the rights of Native Hawaiians, including access to less-than-fully developed lands for the practice of traditional and customary gathering rights.¹ We note that the lands included in the proposed transaction are less-than-fully developed and contain or are adjacent to resources (the shoreline, a stream and a forest) that may support traditional practices. As such, we request that the state, through DLNR, conduct an analysis to reasonably protect the traditional and customary rights connected to these lands. This analysis should include the identification of traditional and customary practices and cultural resources that may be impacted by the proposed land transactions; the extent to which these practices and resources may be impacted; and any feasible actions which may be taken to reasonably protect any identified Native Hawaiian rights and cultural resources.²

We will communicate these requests in writing directly to DLNR.

Mahalo for the opportunity to testify on this important measure.

¹ See, e.g., HAW. CONST. ART. XII SEC. 7, Ka Pa'akai o ka 'Āina v. Land Use Comm'n, 94 Hawai'i 31 (2000); Pele Defense Fund v. Paty, 73 Haw. 578 (1992).

² Ka Pa'akai o ka 'Āina, 94 Hawai'i at 47.

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State of Hawaii
HOUSE OF REPRESENTATIVES
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

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NOTICE OF HEARING

DATE: Monday, March 11, 2013
TIME: 9:30am
PLACE: Conference Room 325
State Capitol
415 South Beretania Street

TESTIMONY ON HCR 26

HCR 26
Status

SUBMITTING TO THE LEGISLATURE OF THE STATE OF HAWAII FOR REVIEW OF ACTION TAKEN BY THE BOARD OF LAND AND NATURAL RESOURCES ON A LAND EXCHANGE AND SALE OF PROPERTY. WAL, FIN

Aloha,

COMMITTEE ON WATER & LAND

Honorable Rep. Cindy Evans, Chair

Honorable Rep. Nicole E. Lowen, Vice Chair

COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

Honorable Rep. Faye P. Hanohano, Chair

Honorable Rep. Ty J.K. Cullen, Vice Chair

I am present her to bear testimony in support of the passing of House Concurrent Resolution 26.

Aloha,

I am R. Kawehilani Napoleon and I am here representing my family.

We are in favor of the passing of this House Concurrent Resolution 26.

With the passing of this HCR 26 we will finally be able to move forward as a family and settle this issue which we have been working on since the stipulated final judgment on title was filed on April 12, 1996.

Your support and recommendation in the passing of this resolution will be greatly appreciated.

We have been working as a family for the past seventeen years to finally set aside this issue and begin to move forward to settle this land agreement.

Mahaio,

A handwritten signature in black ink, appearing to be 'R. Kawehilani Napoleon', with a long horizontal flourish extending to the right.

R. Kawehilani Napoleon