



## HCR175/HR142

URGING THE DEPARTMENT OF LAND AND NATURAL RESOURCES AND THE SAND ISLAND BUSINESS ASSOCIATION TO CONTINUE THEIR DISCUSSIONS REGARDING THE SALE OR EXCHANGE OF PARCELS OF LAND WITHIN THE SAND ISLAND INDUSTRIAL PARK  
House Committee on Water and Land

April 1, 2013

10:30 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) **OPPOSES** HCR175 and HR142, which would pressure the Department of Land and Natural Resources (DLNR) to exchange or sell valuable and substantial revenue-generating “ceded” lands in Sand Island, for unspecified properties that may not provide comparably consistent or reliable revenues for the protection and conservation of our natural and cultural resources.

**The lands leased to the Sand Island Business Association (SIBA) are comprised of lands “ceded” to the United States as a result of the unlawful overthrow of the Kingdom of Hawai‘i.** While the timing of the transfer of the subject lands in Sand Island from the federal government to the Territory of Hawai‘i may render them as section 5(a) lands for which OHA receives no revenue, their nature as government lands at the time of annexation places these lands squarely within the ceded lands corpus.

**In order to fulfill its trust responsibilities, the state must maintain the ceded lands corpus until the Native Hawaiian people’s claims to ceded lands have been resolved.** Any further diminishment of the ceded lands corpus will negatively impact reconciliation efforts between Native Hawaiians and the state and the ability to achieve a comprehensive, just, and lasting resolution of these historic injustices. Moreover, the disposal of land from the ceded lands corpus is inconsistent with the state’s established fiduciary duty as trustee to maintain and protect the corpus. A land sale or exchange will substantially hinder the ability of the state to fulfill its fiduciary responsibility to appropriately manage and administer the ceded lands trust.

While Act 235, Session Laws of Hawai‘i 2011, authorized the DLNR to consider a sale or exchange of Sand Island Industrial Park parcels to leaseholders, DLNR is **not** proposing or actively pursuing a land exchange. Instead SIBA has repeatedly attempted to pressure DLNR into entering into a sale or land exchange agreement. The only land exchange involving Sand Island that could be appropriate is one that is **substantially** favorable to the State, the ceded lands trust, and its beneficiaries.

**The exchange of the ceded Sand Island lands may also lead to a significant loss of reliable and consistent revenue for the protection, conservation, and management of our natural and cultural resources.** As noted in HCR175/HR142, a substantial amount of revenue for DLNR, the only agency dedicated to protecting, conserving, and managing Hawai‘i’s natural and cultural resources, comes from the SIBA lease. Even with SIBA paying \$3.9 million below the current fair market rent for its lease, SIBA lease revenues alone still constitute about 50% of all lease revenues supporting the DLNR’s Special Land Development Fund. Accordingly, in a recent

January 13, 2013 DLNR staff submittal to the Board of Land and Natural Resources, DLNR staff indicated that any proposal considered by the Land Board should include an additional “significant incentive” to “compensate the department for the loss of its single most important revenue asset and the imposition of greater financial risks.” DLNR staff indicated that it does not believe that “a straight exchange (value for value) in this instance would serve a public purpose or be in the best interest of the Department.” OHA agrees and would oppose any exchange for Sand Island that does not significantly expand the ceded lands corpus by adding private lands that have (1) a significantly greater value than Sand Island is currently valued (\$175 million) and (2) an equal or greater present income stream that allows the state to recoup the lease value lost under the current lease scheme that contemplated lower initial lease rent that increases over time (currently \$9 million a year, plus periodic step-ups and reopenings over the remaining 36 years of the SIBA lease) than the subject Sand Island lands.

OHA appreciates the concerns that have been previously voiced by SIBA regarding its tenants’ potential difficulties in obtaining financing for improvements to their leased properties, due to the leasehold nature of their property interests. However, OHA notes that the DLNR found that after consultation with SIBA, “there was no conclusive evidence that long-term, real estate secured financing was required by a substantial number of SIBA’s tenants.” OHA further notes that despite this finding, the DLNR nevertheless agreed to conduct a rent reopening schedule to provide a fixed rent through June 30, 2027, allowing individual SIBA tenants to seek both short-term and long-term financing.<sup>1</sup> Given that SIBA continues to “enjoy[] the benefit of paying annual rent that is over \$3.9 million below the current fair market rent [for the SIBA lease],” OHA believes that these concerns have been appropriately addressed.<sup>2</sup>

Therefore, OHA urges the Committees to **HOLD** HCR175 and HR142. Thank you for the opportunity to testify.

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<sup>1</sup> See FINAL REPORT ON THE PUBLIC LAND TRUST, A REPORT TO THE LEGISLATURE OF THE STATE OF HAWAII 50 - 52 (1986) (“Sand Island is all ceded lands.”).

<sup>2</sup> *Id.* at 51 (noting that 202 acres of land in Sand Island was transferred to the Territory of Hawai‘i just one day before statehood, rendering them as 5(a) and not 5(f) lands); *contrast id.* at 51 (“It is our finding that the DLNR’s classification of lands on Sand Island [as 5(a) lands] is technically correct. However, we believe that all of Sand Island is considered a part of the trust established by section 5(f) of the Admission Act and possibly subject to HRS chapter 10”).

<sup>3</sup> See, e.g., P.L. 103-150 (1993) (“[T]he 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”).

<sup>4</sup> See DEPARTMENT OF LAND & NATURAL RESOURCES, REPORT TO THE TWENTY-SIXTH LEGISLATURE REGULAR SESSION OF 2012: PROPOSED SALE OR EXCHANGE OF SAND ISLAND PARCELS 2 (2011) (“[SIBA] currently enjoys the benefit of paying annual rent that is over \$3.9 million below the current fair market rent [for the SIBA lease]”).

<sup>5</sup> See DEPARTMENT OF LAND & NATURAL RESOURCES, REPORT TO THE TWENTY-SIXTH LEGISLATURE REGULAR SESSION OF 2012: PROPOSED SALE OR EXCHANGE OF SAND ISLAND PARCELS 2 (2011).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

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**From:** mailinglist@capitol.hawaii.gov  
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**To:** waltestimony  
**Cc:** tabraham08@gmail.com  
**Subject:** Submitted testimony for HCR175 on Apr 1, 2013 10:30AM

**HCR175**

Submitted on: 3/31/2013

Testimony for WAL on Apr 1, 2013 10:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Troy Abraham	Individual	Support	No

Comments: I support passage of this bill

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NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

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

**Before the House Committee on  
WATER & LAND**

**Monday, April 1, 2013  
10:30 AM  
State Capitol, Conference Room 325**

**In consideration of  
HOUSE CONCURRENT RESOLUTION 175/HOUSE RESOLUTION 142  
URGING THE DEPARTMENT OF LAND AND NATURAL RESOURCES AND THE  
SAND ISLAND BUSINESS ASSOCIATION TO CONTINUE THEIR DISCUSSIONS  
REGARDING THE SALE OR EXCHANGE OF PARCELS OF LAND WITHIN THE  
SAND ISLAND INDUSTRIAL PARK**

House Concurrent Resolution 175/House Resolution 142 urges the Department of Land and Natural Resources (Department) and the Sand Island Business Association (SIBA) to continue their discussions regarding the sale or exchange of the State's Sand Island Industrial Park property for other private properties. **The Department vigorously opposes these resolutions.**

The Sand Island Industrial Park consists of 113 subdivided lots served by roadways and other infrastructure, and covers approximately 69.119 acres of State lands. SIBA is the State's master lessee. It manages the property, collects rents from the sublessees, and pays ground rent to the Department. Act 235, Session Laws of Hawaii 2011, authorized the Department to consider a sale or exchange of the industrial park to "leaseholders". Pursuant to Act 235, the Department contracted for an independent appraisal of the fair market value of the industrial park. In a Summary Appraisal Report dated May 10, 2012, the appraisal firm of Hastings, Conboy, Braig & Associates determined that the unencumbered fee simple interest in the land underlying the 113 individual lots within the industrial park was valued at \$175,670,000 as of May 7, 2012.<sup>1</sup>

The industrial park is of immense importance for sustaining the ongoing operations of the Department. The Board of Land and Natural Resources (Board) previously determined that the

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<sup>1</sup> The resolutions recite the figure of \$97,200,000 as the appraised value of the industrial park. However, this value was derived for the specific purpose of determining the prospective fair market rent for the master lease and is not appropriate and cannot be used to establish fair market value for sale or exchange purposes.

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

**ESTHER KIA'AINA**  
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

Department should utilize a portion of the lands it manages, including the industrial park, to generate revenues to carry out its fiduciary duties and support the Department's operations and management of public lands and programs. This is especially critical at this time due to the State's struggling economy. The lease revenues generated by the industrial park constitute about 50% of all lease revenues currently supporting the Department's Special Land Development Fund.

To date, SIBA has identified no private properties to be considered for exchange. Nevertheless, on January 25, 2013, Item D-11, an informational briefing was held for the Board on the results of the appraisal and SIBA's request for a land exchange. The Department advised the Board that it does not recommend an exchange unless the value of the exchange property substantially exceeds the value of, and revenues from, the industrial park, so that the Board is compensated for the loss of its single most important revenue asset and the imposition of greater financial risks. A straight exchange (value for value) would not serve a public purpose or be in the best interest of the State. If the Board were inclined to pursue the exchange, the Department's recommendation was that the State receive the land value of the industrial park, plus a significant incentive premium for the Board, and an income stream with a present value that is equal to or greater than the present value of the income stream under the remaining term of the SIBA lease. Otherwise, there would be no good reason for the Board to consider the sale or exchange of this valuable asset.

Several divisions within the Department submitted testimony in at the January 25, 2013 Board meeting in opposition to the concept of an exchange. The divisions recognized the importance of the industrial park revenues to the operations of the Department for such things as the dam safety program, the geothermal program, the protection of threatened and endangered species, eradication and control of invasive species, and fighting wildland fires. Copies of these testimonies are attached.

SIBA has received the benefit of a significant subsidy from the State over the years in terms of discounted lease rents that exceed the value of the improvements SIBA financed to the property. To the extent the State is forced to exchange these lands on a value for value basis, SIBA and its tenants will receive a windfall at the taxpayers' expense.