

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



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

HISTORIC PRESERVATION DIVISION  
KAKUHIHEWA BUILDING  
601 KAMOKILA BLVD STE 555  
KAPOLEI HI 96707

**Testimony of  
WILLIAM AILA, JR  
Chairperson**

**Before the Senate Committee  
JUDICIARY AND LABOR**

**Wednesday, April 10, 2013  
10:00 am  
Conference Room 016**

**In consideration of  
SENATE CONCURRENT RESOLUTION 162, SENATE DRAFT 1/  
SENATE RESOLUTION 119, SENATE DRAFT 1**

**URGING CONTINENTAL PACIFIC, LLC, AND THE STATE HISTORIC PRESERVATION DIVISION TO, AMONG OTHER THINGS, PLACE AN IMMEDIATE STAY OF EVICTION TO ALLOW RESIDENTS OF KAHUKU VILLAGE TO REMAIN IN THEIR HOMES UNTIL AN ARCHAEOLOGICAL INVENTORY SURVEY CAN BE COMPLETED FOR THE ENTIRE PROJECT AND ENSURE THAT THE KAHUKU VILLAGE PROJECT ADHERES TO ALL REQUIREMENTS, INCLUDING REQUIREMENTS FOR THE TREATMENT OF BURIAL REMAINS AND FOR CONDOMINIUM PROPERTY REGIMES.**

Senate Concurrent Resolution 162, Senate Draft 1/Senate Resolution 119, Senate Draft 1, is an effort to allow residents of Kahuku Villages to stay in their homes until an archaeological inventory survey is completed by Continental Pacific, LLC. The resolutions urge State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources (Department) to work with Continental Pacific to engage in the following actions:

1. Develop and implement an archaeological survey for the entire Kahuku Village Project
2. Ensure that burial remains unearthed during construction that fell outside of the scope of the permit are properly treated in accordance with state law;
3. Develop and implement an appropriate burial treatment plan in an expeditious manner
4. Ensure that within the scope of the permits granted to Continental Pacific no further burial sites are disturbed without an archaeological inventory survey;
5. Consult with the Department of Planning and Permitting (City and County of Honolulu) to ensure that the project proceeds properly within the scope of permits granted to Continental Pacific
6. Submit a written report to the Legislature

**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

**The Department appreciates the intent of the resolutions, but provides the following concerns and comments.**

Actions (1), (2) and (3) under the resolutions are already being done. SHPD cannot do action (4) because an archaeological inventory survey does not ensure that all burials on a property are found. The Department has requested archaeological monitoring for work being done after the archaeological inventory survey is complete, and Continental Pacific has agreed to this condition.

Outside of the historic preservation review, SHPD has no jurisdiction and is not involved in the permitting process. Therefore, with regard to action (5), the Division is consulting with the Department of Planning and Permitting (DPP) to ensure that historic preservation concerns are addressed, but that is the limit of SHPD meetings with the DPP.

SHPD would be happy to provide the Legislature with copies of the Burial Treatment Plan and the Archaeological Inventory Survey Report upon completion of each.

Condominium schemes allow landowners to avoid the subdivision process, which is where an Archaeological Inventory Survey would normally be requested. Developers using this scheme to develop their rural lands have been able to initially avoid SHPD review even when SHPD has requested an archaeological inventory survey in earlier reviews of subdivision permits. The Legislature may want to consider a review of Section 514B-83, Hawaii Revised Statutes, to address the nexus of condominium schemes and historic preservation review.

SHPD does agree that an archaeological inventory survey needs to be done on the entire parcel before construction happens.

hee2 - Kathleen

---

**From:** hee8 - Kathryn  
**Sent:** Tuesday, April 09, 2013 3:30 PM  
**To:** hee2 - Kathleen  
**Subject:** FW: Locricchio's Testimony on Resolution on SCR 162 SD1

Hey Kate... from Jarrett

Lehua aka "Kathryn-not-Kathleen"  
\*; )

---

**From:** hee9 - Jarrett  
**Sent:** Tuesday, April 09, 2013 3:19 PM  
**To:** hee8 - Kathryn  
**Subject:** FW: Locricchio's Testimony on Resolution on SCR 162 SD1

Hi Kate,

This individual sent his testimony to me instead of through the website. How do I get it submitted?

---

**From:** Barbara Locricchio [<mailto:bloccricchio@yahoo.com>]  
**Sent:** Tuesday, April 09, 2013 3:12 PM  
**To:** hee9 - Jarrett  
**Subject:** Locricchio's Testimony on Resolution on SCR 162 SD1

**APRIL 9, 2013**

**Testimony on SCR 162 SD1**

**Anthony P. Locricchio, Attorney for Kahuku Plantation Residents Association**

**THE RECOMMENDED CHANGES IN THE RESOLUTION ARE AS FOLLOWS.**

**RESERVE ORAL TESTIMONY TO RESPOND TO SUBMISSION BY CONTINENTAL PACIFIC.**

**SUMMARY:**

- A) STAY EVICTIONS UNTIL REAL ESTATE COMMISSION REVIEW OF CRP APPLICATION BY CONTINENTAL PACIFIC IS COMPLETED AND VALID OFFER TO PURCHASE REQUIREMENTS IS MADE TO RESIDENTS AND CORRECTIONS MADE UNDER HRS 514(B) -83.**
- B) STAY EVICTIONS UNTIL DETERMINATION MADE BY SHPD OF ANY VIOLATION OF SHPD MANDATE TO STOP CONSTRUCTION AND EXCAVATIONS RESULTING IN A SECOND DISCOVERY OF**

**IWI WITHOUT PERMIT AND DIRECT VIOLATION OF SHPD DENIAL OF ANY CONSTRUCT/EXCAVATION IN TMK 027.**

- C) HAVE SHPD AND SHPO REPORT ON FAILURE TO ISSUE NOTICE OF HEARING TO APPLY SANCTIONS FOR CONSTRUCTION COMPANY AND CP DEVELOPER UNDER HRS 6E- AFTER DISCOVERY OF IWI ON JULY 2, 2012 AND MARCH 4, 2013. INCLUDE WHY NO STOP WORK ORDER WAS ISSUED AFTER NOVEMEBR 20, 2012 ORDER BANNING ANY CONSTRUCTION /EXCAVATION WORK AFTER NOV. 20, 2012.**
- D) HAVE SHPO FILE REPORT WITH COMMITTEE AS TO HIS PART TIME WORK AS SHPO WHILE ALSO HEAD OF DLNR AND THE EFFECT THAT LIMITED SUPERVISION HAS ON SHPD SERVICES AND COMPLIANCE WITH HRS 6E. INCLUDE SOLUTIONS SUGGESTED BY SHPO FOR REVIEW OF COMMITTEE. FORWARD TO NATIONAL PARK SERVICE PRIOR TO NEXT HAWAII INSPECTION.**
- E) SEEK A REPORT BY LAWYERS FOR RICO IF INDIVIDUAL SHPD STAFF AND ADMINISTRATORS SHOULD BE TEMPORARILY RELIEVED OF POSITIONS PENDING HEARINGS FOR FAILURE TO APPLY SHPD RULES AS MANDATED BY HAWAII SUPREME COURT.**
- F) THE STATE HISTORICAL PRESERVATION OFFICER UNDER HRS 6E-5 HAS BEEN NEGATED BY THE FACT THAT AT BEST THE ROLE HAS BEEN DIMINISHED AS A PART TIME POSITION. THE SHPO OFFICER DOES NOT HAVE THE PROFESSIONAL (DEGREES) MANDATED BY THE LEGISLATIVE INTENT, BUT MORE TELLING, HE, AS THE DIRECTOR OF DLNR, IS THE BUSIEST STATE CABINET MEMBER WITH THE LARGEST AGENCY IN THE STATE. A NEW QUALIFIED PERSON SHOULD BE APPOINTED TO THIS POSITION.**

## **SUPPLEMENTARY EXPLANATION OF ABOVE.**

1) It is recommended that the Committee Resolution address State Agencies especially the Real Estate Commission (and RICO as the investigative State Agency) and SHPD and SHPO re: review of effects of actions of developers altering Historical Preservation Act 6E.

2) REQUEST OF THIS COMMITTEE FOR A REPORT AS TO CONCLUSIONS REACHED BY THE REAL ESTATE COMMISSION BY WAY OF RICO ONGOING INVESTIGATION OF ALLEGED ONGOING POSSIBLE VIOLATIONS OF HRS 514(B) CONDOMINIUM PROPERTY REGIME APPLICATION DEFECTS AND OMISSIONS.

- 3) THAT ALL EVICTIONS BE STAYED UNTIL IT IS DETERMINED THAT THE CRP WILL NOT BE REVOKED.
- 4) CP CHOSE TO FALSIFY ITS APPLICATION FOR A CPR DESIGNATION BY AFFIRMING IT HAD COMPLETED ALL OFF SITE IMPROVEMENTS INCLUDING ROADS, WATER SYSTEMS DRAINAGE, FLOOD RUNOFF, AND OTHER. INSTEAD CP PASSED ON THE COSTS OF COMPLETING SIGNIFCANT OFF SITE IMPROVEMENTS TO THE RESIDENTS AS ADDITIONAL COSTS WHEN LENDING INSTITUTIONS REFUSED TO FUND LOANS FOR THE SITE PURCHASE OF LOTS.
- 5) THEREAFTER, CP CHOSE TO IGNORE SHPD MANDATE TO STOP CONSTRUCTION AND EXCAVATIONS AND PROCEEDED TO VIOLATE THE HISTORICAL PRESERVATION LAW DESPITE HIGH PENALTY RISK.
- 6) THAT ALL WORK DONE IN VIOLATION OF THE BAN ON CONSTRUCTION CANNOT BE RELIED ON TO ESTABLISH THAT CP HAS FINISHED THE OFF SITE IMPROVEMENTS AND MUST BE BARRED FROM ANY REINSTATEMENT OF CPR STATUS UNTIL ALL FINES AND PENALTIES ARE PAID AS ASSESSED AND ALL EVICTIONS ARE MADE.
- 7) REQUEST OF SHPD AS TO ITS REASONING FOR NOT SEEKING INVESTIGATION OF POTENTIAL PENALTIES FOR CONTINUOUS EXCAVATIONS WITHOUT PERMITS OR APPROVAL BY SHPD AND ALLEGED CONTINUING EXCAVATIONS AFTER JULY 2, 2013 DISCOVERY OF IWI AND **A NEW DISCOVERY OF IWI WAS UNEARTHED AS OF MARCH 4, 2013 WITHOUT PERMIT AND UNDER DIRECT MANDATE THAT NO CONSTRUCTION OR EXCAVATION BE UNDERTAKEN UNTIL AN ARCHEOLOGICAL INVENTORY SURVEY PLAN IS APPROVED BY SHPD BE UNDERTAKEN**
- 8) BASED ON A REVIEW OF TESTIMONY PRESENTED TO THE COMMITTEE THE STATE REAL ESTATE COMMISSION SHOULD PREPARE A REPORT FOR THIS COMMITTEE REVIEW OF WHY THE CPR ISSUED BASED ON WITHHELD AND UNKNOWING MATERIAL REQUIRED DATA IN THE DEFECTIVE CPR APPLICATION SHOULD NOT BE REVOKED UNTIL ALL AISP MANDATES ARE FULFILLED, AND ALL OFFERS TO RESIDENTS ARE CORRECTED TO INCLUDE THE OMISSIONS THAT APPEAR TO HAVE VIOLATED THE CONDOMINIUM PROPERTY REGIME ACT HRS 541(B). THE ALLEGED COMPLETION OF THE CPR IS BEING USED AS A BASIS FOR ABILITY TO EVICT RESIDENTS FROM THE KAHUKU VILLAGE SITE. A STAY OF EVICTIONS COULD BE ACCOMPLISHED BY MERE APPLICATION AND ENFORCEMENT OF THE CPR ACT AND REVOKING TEMPORARILY THE ISSUED CPR.
- 9) THE RICO INVESTIGATION OF ALLEGED WITHHOLDING OF MATERIAL INFORMATION IS UNDERWAY. THE MISCONDUCT BY THE DEVELOPER SHOULD NOT BE ALLOWED TO BE USED DURING THAT INVESTIGATION AS A BASIS TO EVICT RESIDENTS IN VIOLATION OF THE STATE LAW. AN ADDITIONAL 10 EVICTIONS NOW BRING TO A TOTAL OF 29 EVICTIONS THAT ARE UNDERWAY WITH THE DEVELOPER SEEKING TO EVICT RESIDENTS SO THAT THEY ARE NOT REQUIRED TO MAKE A VALID OFFER TO PURCHASE CPR LANDS WHICH ARE NOW ZONED AS PLANTATION COMMUNITY SUBDIVISION. .
- 10) THE DEVELOPER HAS BEEN MADE AWARE THAT THE CITY AND COUNTY HAS DESIGNATED THIS SITE AS A PLANTATION COMMUNITY SUBDIVISION (PCS). THE

DEVELOPER HAS KEPT THAT MATERIAL INFORMATION FROM THE REAL ESTATE COMMISSION ADDING TO THE OTHER AREAS OF POSSIBLE OMISSIONS.

11) THE DEVELOPER HAS FURTHER FAILED TO NOTICE THE COMMISSION THAT THE DEVELOPER IS REQUIRED BECAUSE OF THE DISCOVERY OF IWI ON THE SITE AND THE OFFICIAL FINDINGS OF SHPD THAT NO CONSTRUCTION OR EXCAVATION PERMITS WILL BE ISSUED UNTIL THE COMPLETION OF THE NOVEMBER 20, 2013 AISP COMPLETION DEMAND BY SHPD.

**12) The HRS 514(b) requires a valid offer to all residents at the site of the proposed CPR location to receive an offer to purchase the lot in fee before any CPR public Notice can be issued. The offers hid from both the residents and the Commissions multiple material facts that nullified the Offer from having taken effect. Therefore, the Commission is urged if the defective nature of the offers can be verified by RICO to revoke the CPR and rule no valid offers have been made. Thus, the Committee here asks the cooperation of all parties including Continental Pacific to stay evictions until these determinations are made. If the violations of HRS 514(b) are determined and evictions went forward, then the Commission may review the withholding of any CPR issuance based on bad faith.**

**13) SHPD has issued a stay of all construction and excavation, but as shown in testimony before the Committee, the developer has proceeded to violate that duty.**

**14) Therefore, the issuance of authority to have a Condominium Property Reserve Designated development be reviewed for purpose of denial of that application based on bad faith and misconduct.**

**15) SHPD shall investigate and report to this Committee why it has not sought hearings to seek penalties under the HRS 6 E statute.**

- a) Background- SHPD has no authority to require a stay in evictions, but Reality Commission by revoking the CPR will stop the evictions.
- b) The CPR had been issued only after the material withheld information regarding the discovery of IWI was kept from the Commission. In addition, since that original hiding of Iwi, the developer then admitted Iwi had been found, but kept from the Commission that the Developer had on Nov. 20, 2012 been required to have an Archeological Inventory Survey Plan before any construction or excavation could occur. That was withholding of material fact as the finding of SHPD was that the land in the entire TMK 0027 consisted of soils of sand and coral where Iwi would likely be found. (This TMK covered almost all of the lots where evictions are occurring)
  - a. Given Iwi had already been discovered on July 2, 2012 and was kept secret from Commission, now despite mandate no work be done on the

site, Continental Pacific ignored the SHPD communication to the City that no permits could be approved by SHPD until an AISP were done for the entire TMK 0027.

- b. Despite the SHPD order that no construction/excavation be done at the site CP and its construction company accelerated the illegal construction work. Complaints filed with SHPD were ignored or specifically denied to be acted on.; **New IWI was discovered on March 4, 2013** during a time that the SHPD order to not issue permits until the final completion of the Archeological Inventory Survey CP was ask to complete and was approved.
- c. The same SHPD Archeologist who had refused to seek penalties or issue stop work orders when the first Iwi was found on July 2, 2012, demanded the unwarranted and rule violating disinterment and extraction of the entire skeletal remains to be moved to a construction trailer in disrespect for the Iwi. The SHPD person in charge of the Iwi re burial has after almost 10 months time still been unable to have the July 2, 2012 Iwi reinterred even after a community Plan to do so had been finalized except for the Developer has had the final plan for nearly 6 weeks and has refused to issue approval or rejection of the Plan thereby making moot the reburial process.
- d. The second March 4<sup>th</sup> Iwi has been approved by the same unfortunately motivated SHPD burial officer to be again placed in a degrading and more insulting location within the house that the illegal construction company houses its employees, and where they clean and toilet themselves, and engage in activities that are flagrantly not the site where IWI should be stored. Again the SHPD Burial specialist again grossly violated the SHPD rules in his lack of concern regarding IWI respect.
- e. After the second IWI was located the SHPD duty to issue penalties and to initiate hearings for the dual Iwi unearthing without permit must be undertaken or this conduct will continue.
- f. SHPD position of current Director is that she could not seek penalties because the developer was excavating in an area that he did not have a permit to work in. Thus, her application of the law is to assure no penalties for uncovering IWI do not seek a permit or have archeologist on site to monitor.
- g. Had a penalty been sought between the time of the first no permit unearthing on July 2, 2012 and destruction of Burial sites until the second IWI being found on March 4, 2013 the amount of the penalty would have been 3.2 million dollars. The Construction company equipment would be confiscated and vehicles that delivered the equipment operators to the site when the illegal excavations occurred would be attached. The Contractor would be ineligible for any State or City work for a period of 10 years.
- h. While these prohibitions and penalties would act to insure enforcement of the State Historical Preservation Act, the fact that the SHPD staff will not seek to enforce

- the penalties makes the Legislative intent to protect Iwi a frustrating violation of the alleged implementer of the law and a signal to all developers that the law is meaningless as currently administered.
- i. The Role of the State Historical Preservation Officer under HRS 6E-5 has been negated by the fact that at best the role has been diminished as a part time position. The SHPO officer does not have the professional (degrees) mandated by the legislative intent, but more telling, he, as the Director of DLNR, is the busiest State Cabinet Member with the largest agency in the State. The Current SHPD office in effect is free to run the SHPD services to the point where the United States Government through the Department of Parks has found in Hawaii the most serious violations of Historical Preservation mandates any where in the County.
  - j. The likelihood that Hawaii will be the first State ever to lose it's Historical Preservation Certification remains very high. A full time Professional with Degree certification is required for this position. The loss of the Federal Funding will most adversely affect the Hawaiians seeking to protect their cultural and religious heritage.
  - k. This Committee needs to be noticed by William Aila before the next legislative session of his plan to supplement the State Historical Preservation Office duties by Appointment of a full time Credential Director of Operations who would oversee Historical Preservation activities as it appears impossible for Mr. Aila to adequately oversee SHPD as State Historical Preservation Officer of this most important State Agency with strong Legislative Protection under HRS 6E -1 to be under Part time supervision.
  - l. That above required plan should be forwarded to the National Park Services for their review before their next visit to Hawaii (delayed due to sequestration cut backs) that this legislature is seeking to work with the SHPO to assure maximum attention to the problems identified by NPS.
  - m. If no action is taken to correct inadequate supervision, hearings should be held to determine Legislative creation of a Director of Operations full time position filled by a candidate with the required professional degree qualifications under HRS 6E-5.
  - n. Testimony will be supplied to the committee that 5 persons have verified that they saw bones on the surface of the earth after illegal excavation took place. However, when they returned the bones had been removed.
  - o. That under oath testimony by the Attorney for the developer alleged he was unaware that the second Iwi had been found despite the fact that report of the second Iwi was submitted to him. The attempts to cover-up additional finding of Iwi should be investigated,

Respectfully Submitted,

Anthony P. Locricchio  
Attorney for Kahuku Plantation Residents Association



hee7 - Ikaika

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, April 10, 2013 7:48 AM  
**To:** JDLTestimony  
**Cc:** jkahuku@hotmail.com  
**Subject:** Submitted testimony for SCR162 on Apr 10, 2013 10:00AM

## SCR162

Submitted on: 4/10/2013

Testimony for JDL on Apr 10, 2013 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
John Errett	Individual	Support	Yes

Comments: THE STATE HISTORIC PRESERVATION DIVISION needs to follow the law and enforce the rules that they are required to up hold. CONTINENTAL PACIFIC, LLC, needs to be accountable for not following the rules for the development of the CONDOMINIUM PROPERTY REGIMES and the handling of the discovered iwi.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)