

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 House Committee on
WATER & LAND**

**Thursday, April 18, 2013
2:00 PM
State Capitol, Conference Room 224**

**In consideration of
SENATE CONCURRENT RESOLUTION 172, SENATE DRAFT 2
ENCOURAGING THE COUNTY OF HAWAII TO CONTINUE NEGOTIATIONS
WITH THE PRIVATE LESSEE OF STATE LAND TO MUTUALLY CANCEL THE
LEASE OR, ALTERNATIVELY, TO OBTAIN A PUBLIC EASEMENT IN FAVOR OF
THE COUNTY TO ALLOW THE COUNTY TO PROCEED WITH ITS PLANS FOR
THE WAIMEA TRAILS AND GREENWAYS TRAILHEAD AND COUNTY PARK**

Senate Concurrent Resolution 172, Senate Draft 2 encourages the County of Hawaii (County) to continue negotiations with the private lessee of state land to mutually cancel the lease or, alternatively, to obtain a public easement in favor of the County to allow the County to proceed with its plans for the Waimea Trails and Greenways Trailhead and County Park. **The Department has no objection to this resolution but provides the following comments.**

The property identified in the resolution is currently leased to Roy Mattos, Sr. under General Lease S-5351 for pasture purposes. The lease expires on December 31, 2028. On November 19, 2004, under agenda item D-12, the Board of Land and Natural Resources (Board) approved the cancellation of General Lease S-5351 and set aside of the lands to the County of Hawaii (County) for trailhead, parking area and related purposes as part of the Waimea Trails and Greenway expansion. The Board approval included a condition that the County pay any and all compensation due to Mr. Mattos as a result of the cancellation of the lease.

Subsequently, the County contacted Mr. Mattos in an effort to obtain a list of improvements he had made to the premises, and the cost of the improvements. The Department's file indicates that Mr. Mattos did not provide the information the County requested, and the matter remains unresolved. As a result, the lease has not yet been cancelled and Mr. Mattos continues to occupy the property.

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 Board's 2004 action basically contemplated that a mutual cancellation of the lease would be worked out on terms acceptable to Mr. Mattos. If a voluntary cancellation cannot be negotiated, then the State's option is to condemn the lease through litigation, which is a costly and time-consuming undertaking. The County itself cannot condemn state property. If the State were to commence a condemnation action on the County's behalf, the State would likely require the County to reimburse the State for all costs and legal fees incurred in such a case. The far better approach would be for the County to continue to negotiate an agreement with Mr. Mattos that involves the voluntary surrender of the lease. In this regard, the Department notes that Senate Bill 5 (RELATING TO PUBLIC LANDS) pending in the current legislative session would require additional compensation to a lessee when pasture lands are taken for public purposes. If Senate Bill 5 becomes law, Mr. Mattos and the County should review its impacts carefully to ensure that Mr. Mattos receives due compensation in the transaction.