

SCR 21

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.

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 Committee on
WATER AND LAND**

**Tuesday, March 12, 2013
1:25 PM
State Capitol, Conference Room 225**

**In consideration of
SENATE CONCURRENT RESOLUTION 21
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**

Senate Concurrent Resolution 21 submits to the Legislature for review the Board of Land and Natural Resources' approval in principle of a proposed land exchange and sale between the State of Hawaii and four Molokai families. **The Department of Land and Natural Resources supports this concurrent resolution and provides the following comments.**

The proposed land exchange and sale stem from a quiet title and partition action filed in 1992 involving five parcels of land on Molokai. The State was named as a defendant in the action. Stipulated judgments were reached in 1996 and 1997 to resolve the title and partition claims. Pursuant to the stipulated judgments, two of the parcels are to be conveyed to the State, one parcel is to be conveyed to the four families involved in the litigation, and two parcels are to be sold, with the proceeds split 39.89% to the State, and 60.11% to the remaining parties. Based on a 1996 appraisal, the combined value the State is to receive under this arrangement is more than the one-half interest that the State has in all the parcels. These values comply with Section 171-50, HRS. The Board of Land and Natural Resources approved the exchange and sale at its meeting of June 8, 2012, Item D-11. Legislative approval of the exchange and sale is needed to finally resolve this matter.

Thank you for the opportunity to testify.

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



SCR21

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.

Senate Committee on Water & Land

March 13, 2013

1:25 p.m.

Room 225

The Office of Hawaiian Affairs (OHA) offers the following comments on SCR21, 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 SCR21 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.

William and Nanette Grambusch

POB 614, Kaunakakai, HI 96748

2901 Kamehameha V Hwy, Kawela, Molokai, HI 96748

Email: nanette.grambusch@gmail.com

January 29, 2013

Aloha no Legislators of The Twenty-Seventh Session,

Our names are William Henry Grambusch and Nanette Lehua Napoleon Grambusch, husband and wife, heirs to Wilma K. Grambusch, deceased, who was heir to William Nakeleawe Kamakana, deceased; residents of 2901 Kamehameha V Hwy, Kawela, Molokai, Hawaii 96748; mailing address: POB 614, Kaunakakai, HI 96748. We are writing this letter/testimony today in opposition and protest to SCR 21 & HCR 26-resolutions for the land exchange and sale pursuant to Stipulated Judgment on Partition Napoleon, et. al vs. State of Hawaii, et. al, Civ No. 92-0786. We request that you oppose the approval of this action in part on TMK (2) 5-6-06: 14 and (2) 5-6-06: 15 situated in the Ahupuaa of Kahananui, Ualapue, Molokai, Hawaii due to: 1) Clouded Title of Ownership; 2) Questionable Financial and Fiscal Liability-tax and otherwise;

On March 31st, 2005, our mother, Wilma Kamakana Grambusch fell ill, and since that time assisted with the payment of the real property taxes for TMK (2) 5-6-06: 14 and (2) 5-6-06: 15. Prior to her illness, we were unclear about our mother's interest in real property holdings, however, thereafter; we were involved with every aspect of her life-having POA-to act on her behalf if necessary from medical decisions to financial transactions. In the process, we learned that William, her father, and Wilma paid the taxes on these properties since 1963. Consequently, we saw the names of others that appeared on the tax bill and its location, as we visited the area and the cemetery frequently. In addition, I, Nanette, the daughter of Sherman UM Napoleon Sr., who is party to this case, was not privy to the dealings of my father and his brothers, my uncles. In November, a friend emailed the notice about a meeting/hearing scheduled at Kilohana Recreation Center on November 13, 2012. We attended a meeting and hearing in regards to this Stipulated Judgment and found that we were excluded, and we testified and said that we were in opposition to the action. On November 26th, 2012, we submitted the same in writing clarifying that we were in opposition as heirs of Wilma K. Grambusch, deceased, and William Nakeleawe Kamakana, deceased, to Department of Land and Natural Resources. In December, we received a response from the Department of Land and Natural Resources stating that their office forwarded our letter to the attorneys representing the respective parties. On January 18th, 2013 we received a copy of a letter from Tom Leuteneker of Carlsmith and Ball to Linda Chow from the Department of The Attorney General stating that we had no standing, however, we disagree. Our interest as real property owners and taxpayers are as follows:

1. By David Kailiwai, grandson of Kailiwai, Awardee of Mahele Award 48, to Lily Kailiwai, Liber 1915, Pge 263, 10/18/45;2. By Lily Kailiwai to Henry Himeo Haitzuka and wife Dorothy Ayako Haitzuka and Buzzy Tadao and wife May Hatsue Okazaki; Liber4063, Pge 367, 5/29/61;

3. By Henry Himeo Haitzuka and wife Dorothy Ayako Haitzuka and Buzzy Tadao Okazaki and wife May Hatsue Okazaki to William Nakeleawe Kamakana; Liber 4483, Pge 132, 3/22/63;4. By William Nakeleawe Kamakana to Wilma K. Grambusch; Probate No 5756;5. By Wilma K. Grambusch to William and Nanette Grambusch, Probate No 08-1-01592 (pending renewal);

6. And – by Real Property Tax Liability- from 1963 to 2011.

As such, we see this exclusion as a demonstration of negligence and a travesty of justice. We are seeking relief as resolution as a result. We ask and need your help and support. Finally, in closing, again we urge you to oppose the approval of the land exchange and sale pursuant to Stipulated Judgement on Partition Napoleon, et. al vs. State of Hawaii, et. al, Civ No. 92-0786 and to request an investigation into: Title of Ownership and Financial and Fiscal Records-tax and otherwise for TMK (2) 5-6-06: 14 and (2) 5-6-06: 15, Island of Molokai.

Mahalo a nui loa in advance for you attention and your support.

William Henry Grambusch and Nanette LN Grambusch