

# SCR172/SR129

Measure Title: ENCOURAGING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO LEASE CERTAIN PUBLIC LANDS TO THE COUNTY OF HAWAII AND WAIMEA TRAILS AND GREENWAYS TO BE USED AS A TRAILHEAD AND COUNTY PARK.

Report Title: Waimea Trails and Greenways; Public Land Sale

Description:

Companion:

Package: None

Current Referral: WTL/PSM, WAM

Introducer(s): SOLOMON

<u>Sort by Date</u>		<b>Status Text</b>
3/13/2013	S	Offered.
3/19/2013	S	Referred to WTL/PSM, WAM.
3/21/2013	S	The committee(s) on WTL/PSM has scheduled a public hearing on 03-27-13 11:10AM in conference room 225.

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 Committees on  
WATER AND LAND  
and  
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS**

**Wednesday, March 27, 2013  
11:10 AM  
State Capitol, Conference Room 225**

**In consideration of  
SENATE CONCURRENT RESOLUTION 172 / SENATE RESOLUTION 129  
ENCOURAGING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO  
LEASE CERTAIN PUBLIC LANDS TO THE COUNTY OF HAWAII AND WAIMEA  
TRAILS AND GREENWAYS TO BE USED AS A TRAILHEAD AND COUNTY PARK**

Senate Concurrent Resolution 172/Senate Resolution 129 encourages the Department of Land and Natural Resources (Department) to lease public lands in Waimea, Hawaii to the County of Hawaii and Waimea Trails and Greenways for use as a trailhead and county park. **The Department has no objection to these resolutions but provides the following comments.**

The property identified in the resolutions 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.