

ACT 15

H.B. NO. 1552

A Bill for an Act Relating to Public Lands.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that state living parks possess unique historical and cultural value. In state living parks, individuals reside on lands located within the living park and are an essential part of the purpose of the park for the benefit of the public. As set forth in Senate Resolution No. 264, S.D. 1, Regular Session of 1977, the purpose of a living park is to nurture and foster native Hawaiian culture and spread knowledge of its values and ways.

Kahana valley state park is an example of a living park. Between 1965 and 1969, the State condemned the ahupuaa o Kahana for use as a state park, making it the only landowner in the State of Hawaii, other than the owners of Niihau, to own an intact ahupuaa. An ahupuaa, a triangular slice of land running from the mountains to the ocean, was the major land division used by pre-contact Hawaiians.

Families living in Kahana at the time of condemnation were of varied ethnic backgrounds, and the people of Kahana generally lived a simple, subsistence lifestyle in harmony with native Hawaiian values and traditions. In 1970, a governor's task force proposed the concept of a living park as a way in which the residents could continue to live in the park and participate in the park for the benefit of the public.

To effectuate the living park concept, Act 5, Session Laws of Hawaii 1987, authorized the department of land and natural resources to issue long-term residential leases to individuals who had been living on the land. In 1993, the department of land and natural resources entered into sixty-five-year leases with thirty-one qualifying families and required that all lessees be an essential part of the interpretive programs by contributing at least twenty-five hours of service each month to benefit the park. To provide lessees with money to construct new houses, Act 238, Session Laws of Hawaii 1988, appropriated funds to provide low-interest home construction and mortgage loans for Kahana valley state park lessees. The appropriation was sufficient for twenty-six lessees to receive loans in the amount of \$50,000 each.

Since 1993, three leases have been terminated by the department of land and natural resources for noncompliance with lease conditions. Other families living in Kahana valley have sought to obtain long-term leases, but the department of land and natural resources refuses to issue any further leases, relying on the attorney general's opinion issued on March 24, 2008, asserting that Act 5, Session Laws of Hawaii 1987, expired.

Since 1970, Kahana residents and the greater community proposed numerous plans to the board of land and natural resources. However, the board of land and natural resources never adopted a master plan for Kahana valley state park. As a result, there has been a lack of clarity, vision, goals, and policies directing the residents and the department of land and natural resources in the development and management of Kahana valley state park.

The management of a living park requires that the department of land and natural resources have the authority to negotiate and enter into long-term residential leases, a clear master plan, and the resources to support the living park, including the establishment of a land manager position akin to a konohiki.

The purpose of this Act is to:

- (1) Establish a two-year moratorium on evictions of persons who at the time of the enactment of this Act, reside in Kahana valley state

park, have participated in interpretive programs for Kahana valley state park, and have continuously lived there since before 1987 or hold or have held a long-term lease or permit to reside there;

- (2) Authorize the department of land and natural resources to issue long-term residential leases to qualified persons; and
- (3) Establish a living park planning council to develop a master plan for each state living park that will provide the framework, proposed rules, measurements for success, and planning process to ensure that the living park achieves its purpose and goals.

SECTION 2. As used in this Act, "living park" means a state park where individuals residing on lands located within the state park are an essential part of the purpose of the park, for the benefit of the public.

SECTION 3. (a) Notwithstanding any other law to the contrary, including chapter 171, Hawaii Revised Statutes, there is established a two-year moratorium from the effective date of this Act on the eviction of persons who at the time of the enactment of this Act:

- (1) Reside in Kahana valley state park;
- (2) Have participated in interpretive programs for Kahana valley state park; and
- (3) Have:
 - (A) Continuously lived there since before 1987; or
 - (B) Held a long-term lease or permit to reside there.

(b) Notwithstanding any other law to the contrary, including chapter 171, Hawaii Revised Statutes, the department of land and natural resources is authorized to negotiate and enter into long-term residential leases for sites in state parks with acreage greater than five thousand acres but not more than six thousand acres, with the following qualified persons:

- (1) Persons who at the time of enactment of this Act reside in a state living park and are contributing at least twenty-five hours of service each month to benefit the state living park; and
- (2) Other qualified persons who may be identified in a living park master plan approved by the board of land and natural resources.

SECTION 4. (a) For each state living park there shall be established a living park planning council to be placed within the department of land and natural resources for administrative purposes. The planning council shall consist of five voting members, appointed in the manner and to serve for the terms provided in section 26-34, Hawaii Revised Statutes, and two ex officio nonvoting members.

(b) The voting members of the living park planning council shall be as follows:

- (1) One member shall be a representative of the department of land and natural resources;
- (2) Three members shall be representatives of families who reside in the state living park, selected from a list of resident nominees provided by the president of the park's community association; and
- (3) One member shall be a representative of the general public.

(c) The ex officio nonvoting members of the planning council shall be appointed in equal numbers by the state senator and the state representative representing the district in which the state living park is located. Each nonvoting member of the planning council shall possess general knowledge of at least one of the four strategic areas listed below:

- (1) Land use laws or land use planning;
- (2) Community-based planning;
- (3) The environment; or
- (4) Native Hawaiian culture.
- (d) The council shall select a chairperson by a majority vote of its voting members; provided that no member may serve as chairperson for more than three consecutive years.
- (e) Council members shall serve without compensation but shall be reimbursed for actual expenses, including travel expenses, incurred in the performance of their official duties.
- (f) Any action taken by the planning council shall be approved by a majority of its voting members. Three voting members shall constitute a quorum to conduct business.
- (g) The first meeting shall be held on the third Tuesday in July, beginning in 2009.

SECTION 5. The development of a master plan for a state living park shall rest with the living park planning council. The master plan shall be reviewed and updated as needed. In developing the master plan, the council, among other things, shall:

- (1) Establish goals and objectives to ensure the living park reaches its full potential;
- (2) Set forth standards, timelines, and other measurements to ensure the living park achieves its goals and objectives;
- (3) Identify programs that enhance educational opportunities and cultural awareness in the living park;
- (4) Develop plans to secure funding for a land manager, a housing fund, and any other financial needs identified in the living park master plan;
- (5) Seek out and consult with all residents of the living park, kupuna, community groups adjacent to the living park, and organizations that have knowledge that may benefit the living park;
- (6) Advise the department of land and natural resources on any matter relating to the living park;
- (7) Propose agreements that will establish the full authority of the planning council to implement the master plan, including whether the planning council can hire a land manager, establish a nonprofit organization, or enter into contracts;
- (8) Establish criteria, policies, and controls governing the management of the living park leases, including:
 - (A) Selection of persons for leases; provided that preference is given to persons residing in the park who contribute twenty-five hours of service each month to benefit the living park and are actively seeking a lease in the living park;
 - (B) Designation of lands to be leased;
 - (C) Terms and conditions of leases;
 - (D) Monitoring and enforcement of lease terms and conditions;
 - (E) Treatment of persons residing in a living park without a lease; and
 - (F) Assignment and renewal of leases;
- (9) Maintain, promote, and perpetuate the aloha spirit as defined in section 5-7.5, Hawaii Revised Statutes; and
- (10) Develop protocols and proposals to encourage the caring for kupuna and the sharing and perpetuation of kupuna knowledge.

SECTION 6. The living park planning council shall submit a proposed master plan to the board of land and natural resources no later than one year following the first meeting of the planning council. Within ninety days after submission of the proposed master plan, the board of land and natural resources shall either adopt the proposed master plan or deny the proposed master plan. If it denies the proposed master plan, the board of land and natural resources shall submit to the living park planning council, in writing, its reasons for denying the proposed master plan. The living park planning council shall revise the proposed master plan and resubmit the revised proposed master plan to the board of land and natural resources until a final master plan is adopted.

The living park master plan shall become effective upon its adoption by the board of land and natural resources. Pending adoption of the living park master plan, the department of land and natural resources and the residents of the living park shall be guided by existing plans developed by the residents of the living park. For example, in Kahana valley, the Kahana state park development plan, dated December 1985, and the living park plan of Kahana's people, dated 1979, shall be guiding documents for Kahana valley state park.

SECTION 7. Until the living park master plan is adopted pursuant to this Act and a long-term residential lease application has been acted upon, persons currently residing in a living park at the time of enactment of this Act shall not be evicted on the grounds that they lack a valid lease; provided that they are contributing at least twenty-five hours of service each month to benefit the living park.

SECTION 8. The department of land and natural resources shall submit to the legislature an initial progress report, including any proposed legislation, regarding the implementation of this Act not later than twenty days prior to the convening of the regular session of 2010 and a final progress report, including any proposed legislation, not later than twenty days prior to the convening of the regular session of 2011.

SECTION 9. This Act shall take effect on July 1, 2009.

(Vetoed by Governor and veto overridden by Legislature on July 15, 2009.)