



## 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 Ways & Means

April 4, 2013

9:50 a.m.

Room 211

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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 Kaeliawai

in which the Mō‘ī 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 Mō‘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 the 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.<sup>1</sup> 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.<sup>2</sup>

We will communicate these requests in writing directly to DLNR.

Mahalo for the opportunity to testify on this important measure.

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<sup>1</sup> 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).

<sup>2</sup> Ka Pa‘akai o ka ‘Āina, 94 Hawai‘i at 47.



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April 3, 2013

**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**

Committee on Ways and Means – Decision Making – April 4, 2013 – 9:50 am

Committee Members:

**The Kunuiakea Family supports this concurrent resolution.**

The Kunuiakea Family consists of over 70 individual members who are collectively entitled to about 34% of the properties which were the subject of the land case filed in 1992 by the Napoleon Family to quiet title. We believe that there has been more than ample legal process to establish the rights of the interested parties in the Court. The case has been pending for over twenty (20) years. Over the years, the Kunuiakea Family has participated in the many meetings and discussions in this case. It was agreed with the other families that the land exchange and sale was the best approach to resolve this case. The agreement between the parties was based on land appraisals made at the time the exchange was initially contemplated and provides for use of the land that is consistent with the location and zoning relating to the land.

Although the Kunuiakea Family initially contemplated owning their portion of the land and preserving it for the family to use, too many family members have passed away to make the original plan feasible. For over 8 years, the family has felt that sale of their portion would be in their best interests. Therefore, the Kunuiakea Family respectfully requests that the legislature approve the Land Exchange and Sale so that this case can come to a conclusion.

Thank you for your consideration of this matter.

Very truly yours,

B. REGINA TAYLOR