

JAN 19 2018

A BILL FOR AN ACT

RELATING TO HAWAIIAN CULTURAL RESERVES

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that native Hawaiians
2 struggle to perpetuate their traditional and customary cultural
3 and subsistence practices and maintain cultural connections to
4 the aina, amid increasing development and other land uses that
5 impact the abundance of and access to natural and cultural
6 resources and sites.

7 The legislature further finds that the continued
8 disconnection of native Hawaiians from the aina, including the
9 perpetuation of native Hawaiian traditional and customary
10 practices, has resulted and continues to result in the loss of
11 traditional ecological knowledge and values that could otherwise
12 serve to increase the sustainability and self-sufficiency of our
13 islands, and all who call Hawaii home.

14 Native Hawaiian culture is both interconnected with and
15 interdependent on the maintained integrity of the natural
16 environment. Native Hawaiian models of self-governance serve to
17 bolster natural ecosystems for communal self-sufficiency and



1 sustainability, based in part on communities' intimate knowledge
2 of and connection to their place and local resources. This is
3 reflected in modern-day "kipuka" communities, where native
4 Hawaiian traditional and customary practices and subsistence
5 lifestyles continue to coexist with high levels of resource
6 abundance.

7 Unfortunately, soon after Western contact, shifts in land
8 use, including sugarcane cultivation and cattle ranching,
9 combined with a drastic decline in the native Hawaiian
10 population, resulted in the large-scale devastation of natural
11 and cultural resources and a multi-generational disconnect
12 between many native Hawaiians and place. Native Hawaiians'
13 ability to maintain connections to and steward the aina
14 continued to decline throughout the twentieth century, as
15 development, military activity, and other land uses further
16 disrupted native ecosystems and destroyed natural and cultural
17 resources integral to native Hawaiian cultural practices and
18 subsistence lifestyles. Property owners also sought and
19 continue to seek to exclude native Hawaiians and others from
20 accessing or transiting through their lands, further
21 disconnecting native Hawaiians from land and culture.



1 In recognition of the disconnection of native Hawaiians
2 from their ancestral lands and the critical need to protect the
3 living vestiges of native Hawaiian culture, the state
4 constitution was amended in 1978 to, among other things,
5 "protect all rights, customarily and traditionally exercised" by
6 native Hawaiians. Two decades later, the Hawaii supreme court
7 established the "Ka Paakai" analytical framework, which required
8 state decision making to identify and mitigate impacts to
9 natural and cultural resources and associated native Hawaiian
10 traditional and customary practices. However, these legal
11 protections do not necessarily address, much less reverse, the
12 loss of resources and disconnection that have already occurred
13 through prior land uses.

14 Today, many native Hawaiian cultural practitioners,
15 community groups, and others are seeking to restore and maintain
16 native ecosystems and perpetuate associated native Hawaiian
17 traditional and customary practices, including the stewardship
18 practice of malama aina. These efforts are of particular
19 interest not only to native Hawaiians, but also to resource
20 managers and others who understand the potential of traditional
21 ecological knowledge and community-based stewardship approaches



1 to more effectively restore and perpetuate ecosystems and
2 environmental resources necessary for the long-term
3 sustainability and self-sufficiency of Hawaii. However, these
4 efforts are hampered not only by the lack of mechanisms to
5 restore resources and connections to the aina that have already
6 been lost, but also by the growing trend of subdivisions and
7 condominium property regimes being proposed for largely
8 undeveloped agricultural lands, where the resources and
9 connections could otherwise be restored and maintained.

10 The legislature finds that there is a need for mechanisms
11 to affirmatively reconnect native Hawaiians and native Hawaiian
12 traditional and customary practices with place, as a means of
13 more meaningfully perpetuating native Hawaiian culture, and as a
14 first step towards reviving and perpetuating the cultural
15 knowledge and values that can most effectively ensure the
16 sustainability and self-sufficiency of our islands.

17 The purpose of this Act is to require the counties to
18 provide for the establishment of Hawaiian cultural reserves as a
19 condition of approval and development of certain types of
20 subdivisions and condominium property regimes on agricultural
21 and rural lands that include the construction of dwellings.



1 SECTION 2. Section 46-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§46-6 [~~Parks and playgrounds for subdivisions.~~] Hawaiian
4 cultural reserves and parks and playgrounds for subdivisions.

5 (a) Except as hereinafter provided, each county shall adopt
6 ordinances to require a subdivider, as a condition to approval
7 of a subdivision to provide land in perpetuity or to dedicate
8 land for [~~park~~]:

9 (1) Park and playground purposes[~~7~~]; and

10 (2) Hawaiian cultural reserve purposes,

11 for the use of purchasers or occupants of lots or units in
12 subdivisions[~~-~~]; provided that land set aside for Hawaiian
13 cultural reserve purposes shall also be made available for the
14 use of cultural practitioners and the perpetuation of native
15 Hawaiian traditional and customary practices, cultural
16 resources, or cultural connections to place. The ordinances may
17 prescribe the instances when land shall be provided in
18 perpetuity or dedicated, the area, location, grade, and other
19 state of the sites so required to be provided or dedicated. In
20 addition thereto, [~~such~~] the ordinances may prescribe penalties
21 or other remedies for violation of [~~such~~] the ordinances.



1 (b) In lieu of providing land in perpetuity or dedicating
2 land[7] for park and playground purposes, the ordinances may
3 permit a subdivider pursuant to terms and conditions set forth
4 therein to:

- 5 (1) Pay to the county a sum of money deemed adequate by
6 the county to purchase the park land the subdivider
7 would otherwise have had to provide or dedicate; or
8 (2) Combine the payment of money with land to be provided
9 or dedicated, the value of [~~such~~] the combination to
10 be as deemed adequate by the county to purchase the
11 total amount of land the subdivider would otherwise
12 have had to provide or dedicate.

13 The method of determining such full or partial payment
14 shall be prescribed by the ordinances. The ordinances shall
15 also provide that [~~such~~] the money shall be used for the purpose
16 of providing parks and playgrounds for the use of purchasers or
17 occupants of lots or units in the subdivision. Each county may
18 establish by ordinance a time limit within which it must spend
19 the park dedication fees it has collected. This section shall
20 not satisfy the requirement for land provided in perpetuity or
21 dedicated for Hawaiian cultural reserve purposes.



1 (c) Pursuant to terms, conditions, and limitations
2 specified by the ordinances, a subdivider shall receive credit:

3 (1) For privately-owned and maintained parks and
4 playgrounds;

5 (2) For lands dedicated or provided for park and
6 playground purposes prior to the effective date of the
7 ordinances.

8 No credit for private parks and playgrounds shall be
9 credited against the land that would be provided in perpetuity
10 or dedicated for Hawaiian cultural reserve purposes.

11 (d) Upon the provision of land in perpetuity or the
12 dedication of land by the subdivider as may be required under
13 this section~~[, the]~~:

14 (1) The county concerned shall thereafter assume the cost
15 of improvements and their maintenance~~[, and the]~~; or

16 (2) With regards to a Hawaiian cultural reserve, the
17 county concerned may assume the costs of improvements
18 and their maintenance, or may transfer management to
19 an organization that will assume the cost of
20 improvements and their maintenance.



1 The subdivider shall accordingly be relieved from [~~such~~] the
2 costs.

3 (e) The ordinances adopted pursuant to this section may
4 provide, where special circumstances, conditions, and needs
5 within the respective counties so warrant, for [~~such~~] any
6 exemptions and exclusions as the councils of the respective
7 counties may deem necessary or appropriate and may also
8 prescribe the extent to and the circumstances under which the
9 requirements therein shall or shall not be applicable to
10 subdivisions.

11 (f) Each county shall consult with the office of Hawaiian
12 affairs and potentially impacted native Hawaiian communities
13 regarding the characteristics of any Hawaiian cultural reserve
14 for which land is required to be provided or dedicated pursuant
15 to this section.

16 [~~(f)~~] (g) For purposes of this section, certain terms used
17 herein shall be defined as follows:

18 [~~(1)~~] "Approval" means the final approval granted to a
19 proposed subdivision where the actual division of land
20 into smaller parcels is sought, provided that where
21 construction of a building or buildings is proposed



1 without further subdividing an existing parcel of
2 land, the term "approval" shall refer to the issuance
3 of the building permit.

4 ~~[(2)]~~ "Dwelling unit" means a room or rooms connected
5 together, constituting an independent housekeeping
6 unit for a family and containing a single kitchen.
7 "Hawaiian cultural reserve" means an area established
8 for the exercise of native Hawaiian traditional and
9 customary practices, as a memorial of cultural-
10 historical significance, as a native Hawaiian plant
11 and animal habitat, or any combination thereof.

12 ~~[(3)]~~ "Lodging unit" means a room or rooms connected
13 together, constituting an independent housekeeping
14 unit for a family which does not contain any kitchen.

15 ~~[(4)]~~ "Parks and playgrounds" ~~[mean]~~ means areas used for
16 active or passive recreational pursuits.

17 ~~[(5)]~~ "Subdivider" means any person who divides land as
18 specified under the definition of subdivision or who
19 constructs a building or group of buildings containing
20 or divided into three or more dwelling units or
21 lodging units.



1 [~~(6)~~] "Subdivision" means the division of improved or
2 unimproved land into two or more lots, parcels, sites,
3 or other divisions of land and for the purpose,
4 whether immediate or future, of sale, lease, rental,
5 transfer of title to, or interest in, any or all such
6 lots, parcels, sites, or division of land. The term
7 includes resubdivision, and when appropriate to the
8 context, shall relate to the land subdivided. The
9 term also includes a building or group of buildings,
10 other than a hotel, containing or divided into three
11 or more dwelling units or lodging units.

12 [~~(7)~~] "Privately owned parks and playgrounds" [~~mean~~] means
13 parks or playgrounds and their facilities which are
14 not provided in perpetuity or dedicated but which are
15 owned and maintained by or on behalf of the ultimate
16 users of the subdivision pursuant to recorded
17 restrictive covenants. Where the privately owned park
18 is a part of the lot or lots on which a building or
19 group of buildings containing or divided into three or
20 more dwelling units or lodging units is constructed,
21 it shall not be required that the private park or



1 playground meet county subdivision standards nor shall
2 the area of the private park or playground be deducted
3 from the area of the lot or lots for purposes of
4 zoning or building requirements."

5 SECTION 3. Section 514B-3, Hawaii Revised Statutes, is
6 amended by adding a new definition to be appropriately inserted
7 and to read as follows:

8 "Hawaiian cultural reserves" means the same as defined in
9 section 46-6(g)."

10 SECTION 4. Section 514B-6, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "[~~§~~514B-6~~]~~ Supplemental county rules governing a
13 condominium property regime. (a) Whenever any county deems it
14 proper, the county may adopt supplemental rules governing
15 condominium property regimes established under this chapter in
16 order to implement this program; provided that any of the
17 supplemental rules adopted shall not conflict with this chapter
18 or with any of the rules adopted by the commission to implement
19 this chapter.

20 (b) For any condominium property regime established under
21 this chapter that:



1 (1) Will be located on agricultural or rural lands; and
2 (2) Will include three or more residential units,
3 each county shall adopt supplemental rules to require, as a
4 condition of approval, the provision or dedication of land in
5 perpetuity for Hawaiian cultural reserve purposes, for the use
6 of cultural practitioners and the perpetuation or restoration of
7 native Hawaiian traditional and customary practices, cultural
8 resources, or cultural connections to place. The rules may
9 prescribe the instances when land shall be provided in
10 perpetuity or dedicated, the area, location, grade, and other
11 state of the sites so required to be provided or dedicated. The
12 rules adopted pursuant to this section may provide, where
13 special circumstances, conditions, and needs within the
14 respective counties so warrant, for any exemptions and
15 exclusions as the councils of the respective counties may deem
16 necessary or appropriate and may also prescribe the extent to
17 and the circumstances under which the requirements therein shall
18 or shall not be applicable to projects. In addition thereto,
19 the rules may prescribe penalties or other remedies for
20 violation of the rules.



1 (c) Upon the provision of land in perpetuity or the
2 dedication of land by the developer under this chapter as may be
3 required under this section, the county concerned shall
4 thereafter:

5 (1) Assume the cost of improvements and their maintenance;

6 or

7 (2) Transfer management of any Hawaiian cultural reserve

8 to an organization, which will assume the cost of

9 improvements and their maintenance for non-exclusive

10 use.

11 The developer shall accordingly be relieved from the costs.

12 (d) Each county shall consult with the office of Hawaiian

13 affairs and potentially impacted native Hawaiian communities

14 regarding the characteristics of any Hawaiian cultural reserve

15 for which land is required to be provided or dedicated pursuant

16 to this section."

17 SECTION 5. Section 514B-32, Hawaii Revised Statutes, is

18 amended by amending subsection (a) to read as follows:

19 "(a) A declaration shall describe or include the

20 following:

21 (1) The land submitted to the condominium property regime;



- 1 (2) The number of the condominium map filed concurrently
- 2 with the declaration;
- 3 (3) The number of units in the condominium property
- 4 regime;
- 5 (4) The unit number of each unit and common interest
- 6 appurtenant to each unit;
- 7 (5) The number of buildings and projects in the
- 8 condominium property regime, and the number of stories
- 9 and units in each building;
- 10 (6) The permitted and prohibited uses of each unit;
- 11 (7) To the extent not shown on the condominium map, a
- 12 description of the location and dimensions of the
- 13 horizontal and vertical boundaries of any unit. Unit
- 14 boundaries may be defined by physical structures or,
- 15 if a unit boundary is not defined by a physical
- 16 structure, by spatial coordinates;
- 17 (8) The condominium property regime's common elements;
- 18 (9) The condominium property regime's limited common
- 19 elements, if any, and the unit or units to which each
- 20 limited common element is appurtenant;



- 1 (10) The total percentage of the common interest that is
2 required to approve rebuilding, repairing, or
3 restoring the condominium property regime if it is
4 damaged or destroyed;
- 5 (11) The total percentage of the common interest, and any
6 other approvals or consents, that are required to
7 amend the declaration. Except as otherwise
8 specifically provided in this chapter, and except for
9 any amendments made pursuant to reservations set forth
10 in paragraph (12), the approval of the owners of at
11 least sixty-seven per cent of the common interest
12 shall be required for all amendments to the
13 declaration;
- 14 (12) Any rights that the developer or others reserve
15 regarding the condominium property regime, including,
16 without limitation, any development rights, and any
17 reservations to modify the declaration or condominium
18 map. An amendment to the declaration made pursuant to
19 the exercise of those reserved rights shall require
20 only the consent or approval, if any, specified in the
21 reservation; [~~and~~]



1 (13) A declaration, subject to the penalties set forth in
2 section 514B-69(b), that the condominium property
3 regime is in compliance with all zoning and building
4 ordinances and codes, and all other permitting and
5 other requirements pursuant to section 514B-5, section
6 514B-6, and chapter 205, including section 205-4.6
7 where applicable. In the case of a project in the
8 agricultural district classified pursuant to chapter
9 205, the declaration, subject to the penalties set
10 forth in section 514B-69(b), shall include an
11 additional statement that there are no private
12 restrictions limiting or prohibiting agricultural uses
13 or activities in compliance with section 205-4.6. In
14 the case of a property that includes one or more
15 existing structures being converted to condominium
16 property regime status, the declaration required by
17 this section shall specify:
18 (A) Any variances that have been granted to achieve
19 the compliance; and
20 (B) Whether, as the result of the adoption or
21 amendment of any ordinances or codes, the project



1 presently contains any legal nonconforming
2 conditions, uses, or structures.

3 A property that is registered pursuant to section
4 514B-51 shall instead provide the required declaration
5 pursuant to section 514B-54. If a developer is
6 converting a structure to condominium property regime
7 status and the structure is not in compliance with all
8 zoning and building ordinances and codes, and all
9 other permitting and other requirements pursuant to
10 section 514B-5 [7] and 514B-6, and the developer
11 intends to use purchaser's funds pursuant to the
12 requirements of section 514B-92 or 514B-93 to cure the
13 violation or violations, then the declaration required
14 by this paragraph may be qualified to identify with
15 specificity each violation and the requirement to cure
16 the violation by a date certain[7]; and

17 (14) If applicable, the land to be provided in perpetuity
18 or dedicated for any Hawaiian cultural reserve; and to
19 the extent not shown on the condominium map, a
20 description of the location and dimensions of the
21 horizontal and vertical boundaries of any unit."



1 SECTION 6. Section 514B-33, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) A condominium map shall be recorded with the
4 declaration. The condominium map shall contain the following:

- 5 (1) A site plan for the condominium property regime,
6 depicting the location, layout, and access to a public
7 road of all buildings and projects included or
8 anticipated to be included in the condominium property
9 regime, and depicting access for the units to a public
10 road or to a common element leading to a public road;
- 11 (2) Elevations and floor plans of all buildings in the
12 condominium property regime;
- 13 (3) The layout, location, boundaries, unit numbers, and
14 dimensions of the units;
- 15 (4) To the extent that there is parking in the condominium
16 property regime, a parking plan for the regime,
17 showing the location, layout, and stall numbers of all
18 parking stalls included in the condominium property
19 regime;
- 20 (5) Unless specifically described in the declaration, the
21 layout, location, and numbers or other identifying



- 1 information of the limited common elements, if any;
2 [and]
- 3 (6) A description in sufficient detail, as may be
4 determined by the commission, to identify any land
5 area that constitutes a limited common element[-]; and
- 6 (7) Unless specifically described in the declaration, the
7 layout, location, and other identifying information of
8 the land being provided in perpetuity or dedicated for
9 Hawaiian cultural reserve purposes."

10 SECTION 7. Section 514B-54, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) Prior to the issuance of an effective date for a
13 developer's public report, the commission shall have received
14 the following:

- 15 (1) Nonrefundable fees as provided in rules adopted by the
16 director of commerce and consumer affairs pursuant to
17 chapter 91;
- 18 (2) The developer's public report prepared by the
19 developer disclosing the information specified in
20 section 514B-83 and, if applicable, section 514B-84;



- 1 (3) A copy of the deed, master lease, agreement of sale,
2 or sales contract evidencing either that the developer
3 holds the fee or leasehold interest in the property or
4 has a right to acquire the same;
- 5 (4) Copies of the executed declaration, bylaws, and
6 condominium map that meet the requirements of sections
7 514B-32, 514B-33, and 514B-108;
- 8 (5) A specimen copy of the proposed contract of sale for
9 units;
- 10 (6) An executed copy of an escrow agreement with a third
11 party depository for retention and disposition of
12 purchasers' funds that meets the requirements of
13 section 514B-91;
- 14 (7) As applicable, the documents and information required
15 in section 514B-92 or 514B-93;
- 16 (8) A declaration by the developer, subject to the
17 penalties set forth in section 514B-69(b), that the
18 project is in compliance with all county zoning and
19 building ordinances and codes, and all other county
20 permitting and other requirements applicable to the
21 project, pursuant to chapter 205, including section



1 205-4.6, where applicable, and sections 514B-5, 514B-
2 6, and 514B-32(a) (13);

3 (9) In the case of a project in the agricultural district
4 classified pursuant to chapter 205, a verified
5 statement signed by an appropriate county official
6 that the project as described and set forth in the
7 project's declaration, condominium map, bylaws, and
8 house rules does not include any restrictions limiting
9 or prohibiting agricultural uses or activities, in
10 compliance with section 205-4.6; and

11 (10) Other documents and information that the commission
12 may require."

13 SECTION 8. This Act does not affect rights and duties that
14 matured, penalties that were incurred, and proceedings that were
15 begun before its effective date.

16 SECTION 9. If any provision of this Act, or the
17 application thereof to any person or circumstance, is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the Act that can be given effect without the
20 invalid provision or application, and to this end the provisions
21 of this Act are severable.



S.B. NO. 2133

1 SECTION 10. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 11. This Act shall take effect upon its approval.

4

INTRODUCED BY:


By Request



S.B. NO. 2133

Report Title:

OHA Package; Counties; Hawaiian Cultural Reserves

Description:

Requires the counties to provide for the establishment of Hawaiian cultural reserves as a condition of approval and development of certain types of subdivisions and condominium property regimes on agricultural and rural lands that include the construction of dwellings.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

