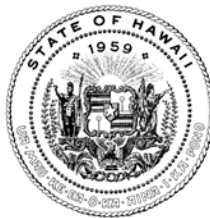


DAVID Y. IGE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
CARTY S. CHANG
Interim Chairperson**

**Before the House Committee on
FINANCE**

**Tuesday, March 3, 2015
11:00 A.M.
State Capitol, Conference Room 308**

**In consideration of
HOUSE BILL 515, HOUSE DRAFT 2
RELATING TO REMNANTS**

House Bill 515, House Draft 2, proposes to narrowly restrict what parcels of land may be disposed of as a "remnant" under section 171-52, Hawaii Revised Statutes. **The Department of Land and Natural Resources ("Department") opposes the bill.**

The bill proposes to restrict the types of land that may qualify as a remnant to only (1) lands acquired by condemnation but are in excess of the needs for which they were condemned, and (2) a vacated, closed, abandoned, or discontinued road, ditch, or other right-of-way. No other type of land, no matter what the circumstances, would qualify. The bill curtails the disposition of lands that are not developable or usable by the State, due to economic or physical factors, that currently may qualify for disposition to adjoining landowners who could more fully utilize the parcel for access, landscaping or simply to add a little more land area to their private parcel.

The current statute provides sufficient flexibility to allow all facts, conditions, and circumstances to be taken into consideration by the Board of Land and Natural Resources (Board). When determining whether a parcel of land qualifies as a remnant and whether the parcel should be disposed of as a remnant, the Department will seek comments from other government agencies that may be affected by the disposition of the remnant and their responses, as well as the testimony of the public, will be considered by the Board at a public meeting.

CARTY S. CHANG
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DANIEL S. QUINN
INTERIM FIRST DEPUTY

W. ROY HARDY
ACTING 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



HB515 HD2
RELATING TO REMNANTS
House Committee on Finance

March 3, 2015

11:00 a.m.

Room 308

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB515 HD2. This measure restores transparency, accountability, and legislative oversight over the alienation of public lands, including “ceded” lands and public land trust lands, by clarifying which public lands qualify as “remnants” exempt from public auction and legislative approval requirements otherwise applicable to the sale of such lands.

Act 176, which settled a decade-long lawsuit brought by OHA over the State of Hawai‘i’s attempt to sell “ceded” lands,¹ was enacted to “establish a more comprehensive process for the sale of state-owned land, and to reserve a larger oversight role for the legislature to assure that key information about certain sales or exchanges of land is shared with the legislature.” In recognition of the finality and permanence of the sale of Hawai‘i’s most precious and limited resource, the Legislature established procedural mechanisms to ensure transparency and accountability in public land sales—namely, the prior approval by a super majority of the Hawai‘i State Legislature, “before most state-owned land [can] be sold[.]” Act 176 (Reg. Sess. 2009) (emphasis added). Additionally, a public auction process is currently required for the sale of most public lands.

The only exception to these procedural safeguards exists for those lands classified as “remnants,” which are arguably limited to formerly condemned lands that are no longer needed, or abandoned roads, ditches, or other similar rights-of-way. HRS § 171-52. In such circumstances, remnants must also be found unsuitable or undesirable for development. If the state determines a parcel of land to be a “remnant,” then it may sell the parcel without going through a public bidding process, and without a super majority approval of the Legislature.

Unfortunately, in certain cases, the state has used a selectively broad interpretation of the remnant definition to sell multiple parcels, including a five-acre parcel of ceded, public land trust lands, without public auction or legislative approval. This parcel of land included a culturally significant stream and waterfall in East Maui, and was not formerly condemned lands, nor an abandoned right-of-way. However, the state nevertheless determined this parcel to be a remnant based solely on a finding that it was “unsuitable for development.” In a subsequent decision, a seven-acre parcel of non-ceded, non-public land trust, undeveloped lands was also approved for sale as a “remnant”; again, the only criterion applied

¹ On November 4, 1994, OHA filed a lawsuit, *OHA v. Hawaii Finance and Development Corporation* [later renamed *OHA v. Housing and Community Development Corporation of Hawai‘i (HCDCH)*], to seek a moratorium on the sale of ceded lands by the State of Hawai‘i in order to implement its policy to protect the ceded lands corpus until the unrelinquished claims of Native Hawaiians are resolved.

was that this land was considered “unsuitable for development.” OHA expresses serious concern that the greater application of this broad interpretation of “remnants” may substantially undermine the Legislature’s desire to have a “larger oversight role” over public land sales, as envisioned by Act 176.

For example, similar applications of the “remnant” definition, should this trend continue, could allow a significant proportion of the state’s public lands to be classified and sold as “remnants,” due to their “unsuitability” for development. As illustrated in the aforementioned land sales, such a trend would undermine the procedural mechanisms used to safeguard our limited land assets, and open the door for our public lands base to be gradually diminished through sales without the opportunity for meaningful public scrutiny or financial accountability. Further remnant sales may also impact the state’s commitments to a reconciliation process with Native Hawaiians and the health and well-being of the Native Hawaiian people, which is intrinsically tied to their connection and attachment to the ‘āina.

By clarifying that remnants shall be either formerly condemned property or abandoned rights-of-way, and by further prohibiting the sale, through the remnants exception, of lands which contain natural and cultural resources necessary for Native Hawaiian traditions, this bill restores meaning to the procedural laws that protect our public and ceded lands base. In addition, such provisions uphold the intent of Act 176, which recognizes the importance of the ceded lands to the Native Hawaiian people, respects the claims held by Native Hawaiians to their ancestral lands, and ensures the otherwise high burden of persuasion the Legislature has long required for the permanent alienation of our public lands.

Accordingly, OHA urges the Committee to **PASS** HB515 HD2. Mahalo nui for the opportunity to testify on this measure.



LATE



**Department of Land and Natural Resources
Aha Moku Advisory Committee
State of Hawaii
Post Office Box 621
Honolulu, Hawaii 96809**

Testimony of
Leslie Kuloloio, Chair
Aha Moku Advisory Committee (AMAC)

Before the House Committee on Finance

Tuesday, March 3, 2015
11:00 A.M.
State Capitol, Conference Room 308

**In Consideration of
House Bill 515 HD 2
Relating to Remnants**

House Bill 515 HD 2 clarifies the definition of the term “remnant” for purposes relating to the disposition of public lands. It prohibits disposition of remnants that contain resources necessary for the exercise of native Hawaiian subsistence, cultural, or religious practices. **The Aha Moku Advisory Committee (AMAC) offers the following comments.**

The AMAC works with moku and ahupua’a communities through the Aha Moku System (System), a traditional land and ocean management system that dates from the 9th century and has been restored by the kupuna practitioners of each island. Through this System, generational resource knowledge and methodology is shared with the site-specific communities of an ahupua’a as well as with the DLNR to whom the AMAC is attached. One of our mandates is to advise the Chair of the Board of Land and Natural Resources (BLNR) on issues related to natural and cultural resources (§171-4.5).

In the moku system, as practiced by the AMAC, the native Hawaiian resource practitioners who have the generational knowledge of the land and ocean resources of specific sites within an ahupua’a have been working with the DLNR divisions in identifying and perpetuating the natural and cultural assets of these sites – often bringing forth empirical resource and cultural knowledge of an area.

The lawful definition of “remnant” per §171-52 means a parcel of land economically or physically unsuitable or desirable for development or use as a separate unit because of location, size, shape, or other characteristics. There is no definition for Hawaiian cultural or subsistence use on remnant lands– most likely because the Remnant definition was put into law in 1981 when the perception and knowledge of Hawaiian use of public lands was not known or protected to the extent that it is now.



**Department of Land and Natural Resources
Aha Moku Advisory Committee
State of Hawaii
Post Office Box 621
Honolulu, Hawaii 96809**

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The Aha Moku is concerned that BLNR has disposed of remnant lands without any consideration for native Hawaiian practices on these remnant parcels some of which may be as large as seven acres. These practices may have included access to gathering or religious practice areas. We believe this concern can be addressed now for the following reasons:

- 1) The makeup of the BLNR is defined in §171-4 to include “(c) at least one member of the board shall have demonstrated expertise in native Hawaiian traditional and customary practices, as evidenced by: 1) a college degree in a relevant field, such as Hawaiian studies, native Hawaiian law, native Hawaiian traditional and customary practices, or related subject area; 2) work history that demonstrates an appropriate level of knowledge in native Hawaiian traditional and customary practices; or 3) substantial experience as a native Hawaiian traditional and customary practitioner”; and,
- 2) The attachment of the Aha Moku Advisory Committee and the process of the Aha Moku System – through Act 288, 2012 Hawaii Session Laws to the Department of Land and Natural Resources (DLNR) and its mandate that it may advise the Board of Land and Natural Resources (BLNR) on issues that are related to natural and cultural resources.

We believe that the current statute provides sufficient flexibility – due to the new structure of the BLNR and the attachment of the AMAC to the department – to allow all of the proposed restrictions to be taken into consideration by the current BLNR.