

HB 589 HD1



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

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Statement of
THEODORE E. LIU
Director
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEES
ON
ENERGY & ENVIRONMENT
and
TRANSPORTATION, INTERNATIONAL & INTERGOVERNMENTAL AFFAIRS
Thursday, March 19, 2009
2:45 p.m.
State Capitol, Conference Room 225

in consideration of

HB589 HD1
RELATING TO RENEWABLE ENERGY FACILITIES.

Chair Gabbard, Chair English, and Members of the Committees.

The Department of Business, Economic Development, and Tourism (DBEDT) supports HB589 HD1. The purpose of HB589 HD1 is to facilitate the financing and development of renewable energy facilities by allowing leases and easements pertaining to renewable energy facilities, together with mortgages and other conveyances as security for finance, to be created, enforceable, and recordable, without requiring the landowner to obtain formal subdivision approval from the applicable county or other approving agency. There exists considerable acreage of what was once agricultural land that is now sitting idle and is considered of marginal value for agriculture. Some of these sites may be well suited for solar and wind facilities. This bill would streamline the permitting process by ensuring that only those requirements necessary for health and safety are imposed.

In order to develop and finance renewable energy facilities, a site for the facilities and access to the site must often be leased, granted as an easement, or mortgaged to provide financing for the project. Renewable energy projects may require site acreage or configurations that do not coincide with existing, already subdivided lot boundaries. For instance, consider a parcel that is roughly thirty (30) acres in size. A renewable energy developer may want to develop a solar farm on the parcel that is only five (5) acres in size. Under the current subdivision laws, the renewable energy developer would be required to encumber the entire legal lot with a mortgage that provides financing for the project. Currently subdivision laws generally prohibit the transfer of an interest in land that is not an entire subdivided lot or easement that has been approved by the applicable county. With respect to land in the land court system, the additional step of obtaining land court approval is also required. In effect, the developer is forced to risk the entire thirty (30) acres of land in order to finance the solar farm on five (5) acres of land. These laws prevent or discourage utilization of or financing on leases and easements for renewable energy projects.

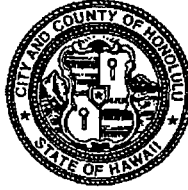
A land owner could subdivide his or her parcel to allow for the financing, but this process is fairly long and involved, in some cases taking several years. HB589 HD1 will help expedite the financing and development of renewable energy facilities by allowing leases and easements pertaining only to renewable energy facilities to be created for mortgages and other conveyances without requiring the landowner to obtain formal subdivision approval from the applicable county or other approving agency. There is no doubt that facilitating the siting of renewable energy facilities will play an integral role in meeting the State's targets for 70% clean energy by 2030.

Thank you for the opportunity to offer these comments.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



DAVID K. TANOUE
DIRECTOR
ROBERT M. SUMITOMO
DEPUTY DIRECTOR

March 19, 2009

The Honorable Mike Gabbard, Chair
and Members of the Committee on Energy
and Environment

The Honorable J. Kalani English, Chair
and Members of the Committee on Transportation,
International and Intergovernmental Affairs
State Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Gabbard, English and Members:

**Subject: Revisions to House Bill No. 589, HD1
Relating to Renewable Energy Facilities**

The Department of Planning and Permitting **supports** the proposed revisions to House Bill No. 589, HD1 that are suggested on the attached letter from Castle & Cooke Hawai'i dated March 18, 2009.

The revisions address the concerns in our original testimony dated February 24, 2009. However, if the proposed revisions recommended by Castle & Cooke are not adopted, the Department will remain opposed to the bill in its current form for the reasons already stated in the attached copy of our February 24, 2009 testimony to the House Committees.

We respectfully recommend that House Bill 589, HD1 with the proposed revisions be passed.

Thank you for the opportunity to testify.

Very truly yours,


for David K. Tanoue, Director
Department of Planning and Permitting

DKT: jmf
hb589hd1-mst.doc
Attachment



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Harry A. Saunders
President

March 18, 2009

The Honorable Mike Gabbard, Chair
and Members of the Energy and Environmental Committee
The Honorable J. Kalani English, Chair
and Members of the Transportation, International and
Intergovernmental Affairs Committee
Hawai'i House of Representatives
Hawai'i State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Chair Gabbard, Chair English and Members of the Committees:

**Subject: *HB 589 HD 1 Relating to Renewable Energy Facilities; Subdivision
Hearing 2:45 pm: March 19, 2009
State Capital Conference Room 225***

Castle & Cooke supports HB 589 HD 1. The purpose of this bill is to recognize as legal and legitimate, those leases and easements for renewable energy projects which cover less than an entire legal lot. This will facilitate financing and development of renewable energy projects.

This bill does not create a new subdivision process; it only legitimizes leases and easements for renewable energy projects by exempting them from compliance with subdivision laws.

We provide the following comments in support of this bill for your consideration:

1. Land requirements for renewable energy projects may not conform to the configuration of legal lots. Where land needed for a renewable energy project is much less than the entire large legal lot, it may be impractical to lease or mortgage the entire legal lot for the project. Leases covering less than an entire legal lot are common, and it is possible that renewable energy projects could be developed under such leases where financing is not required. However, under current law, there is a question as to legal recognition of such leases—and this makes it difficult or impossible to finance a renewable energy project under such a lease. A lender will want title insurance and a recordable mortgage on the lease. Subdivision of the land is required for this, and this could take over a year to accomplish.

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and Members of the Committees
March 18, 2009
Page Two

2. Subdivision laws are designed to protect consumers (e.g. home buyers) to ensure that they are getting a lot that is up to code—this pro consumer purpose does not apply to leases for renewable energy projects with sophisticated parties.
3. This bill does not create a new and separate subdivision process and records, as no subdivision of land is authorized.
4. All other permits and approvals for the development of the project are still required. It does not exempt projects from normal EIS and permitting requirements, and any mitigation conditions and infrastructure requirements can be imposed at permitting.
5. This bill is patterned after an existing agricultural lease exemption from subdivision requirements (see HRS Section 205-4.5(f))

To further refine the narrow purpose of this bill, we offer suggested revisions to HB 589 HD 1 which are incorporated into the marked draft of HB 589 HD 1 attached to this testimony, which clarify that:

1. Subdivision exemption applies only to leases and easements for renewable energy projects
2. Subdivision and conveyance of land without compliance with subdivision laws is not authorized by this bill.
3. There is no exemption from permits, approvals, restrictions or requirements for the actual use, development, construction or operation of the project.
4. This exemption only available where the principal use is for a renewable energy project, the lease term is for at least 20 years and the exemption ends when the project or lease terminate.

On behalf of Castle & Cooke, I respectfully request your support of HB 589 HD1 and our proposed revisions. This legislation will facilitate development and financing of renewable energy projects. Mahalo for your consideration of our testimony. If you have any questions, please feel free to contact us:

Harry Saunders, President
Castle & Cooke Hawai'i
aktsukamoto@castlecooke.com
Phone: 548-4884

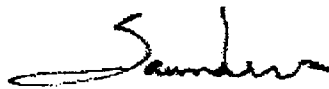
Richard Mirikitani, Senior Vice President and Counsel
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Phone: 548-4890

The Honorable Mike Gabbard, The Honorable J. Kalani English,
and Members of the Committees
March 18, 2009
Page Three

Carleton Ching, Vice President – Community and Government Relations
Castle & Cooke Hawai'i
cching@castlecooke.com
Phone: 548-3793

Sincerely,

CASTLE & COOKE HAWAII

A handwritten signature in black ink, appearing to read "Saunders", written in a cursive style.

Harry A. Saunders
President

attachment

COMMENTS

Report Title:

Renewable Energy Project; Subdivisions

Description:

Exempts renewable energy projects from subdivision requirements; defines "subdivision requirements"; requires agencies to accept instruments for recording and filing.

(HB589 HD1)

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

H.B. NO. 589
H.D. 1

A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY FACILITIES.

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

SECTION 1. The legislature finds that Hawaii's dependence on petroleum for over ninety per cent of its energy needs is more than any other state in the nation. This makes the State extremely vulnerable to any oil embargo, supply disruption, international market dysfunction, and many other factors beyond the control of the State. Furthermore, the continued consumption of conventional petroleum fuel and price volatility can negatively impact the environment and economic health of

the people of Hawaii. At the same time, Hawaii has among the most abundant renewable energy resources in the world, in the form of solar, geothermal, wind, biomass, and ocean energy assets.

The legislature further finds that increased energy efficiency and use of renewable energy resources would increase Hawaii's energy self-sufficiency, achieving broad societal benefits, including increased energy security, resistance to increases in oil prices, environmental sustainability, economic development, and job creation.

To shape Hawaii's energy and environmental future and achieve the goal of energy- and self-sufficiency for the State, efforts must continue on all fronts, integrating new and evolving technologies, seizing upon opportunities to become more economically diversified, and providing incentives and assistance to address barriers.

To develop and finance renewable energy facilities, a site for the facilities and access to the site must often be leased, granted as an easement, or mortgaged to provide financing for the project. Renewable energy projects may require site acreage or configurations that do not coincide with existing, already subdivided lot boundaries. For instance, land required for a project may be only a portion of a large legal lot, and it may be impractical or

undesirable to lease or convey the entire legal lot for the renewable energy project or to encumber the entire legal lot with a mortgage that provides financing for the project. Currently, however, subdivision laws generally prohibit the transfer of an interest in land that is not an entire subdivided lot or easement that has been approved by the applicable county. With respect to land in the land court system, the additional step of obtaining land court approval is required.

Reported Hawaii supreme court cases, including *Whitlow v. Jennings*, 40 Haw. 523 (1954), have recognized that transactions involving lots that have not been approved by the county pursuant to subdivision laws may be unenforceable. Unfortunately, the process of obtaining county, state, and land court approval of subdivision and easement maps is relatively time-consuming and often requires more than one year to complete.

As recognized by the court in the *Whitlow v. Jennings* case, the purpose of laws requiring county subdivision approval is to protect the consumer purchasing interests in land from substandard subdivisions. However, these laws and court rulings have placed in question the validity of leases of parcels that are less than an entire legal lot, and easements without subdivision approval. This prevents

or discourages the use or financing of leases and easements for renewable energy projects. The consumer protection purposes of subdivision laws are not applicable or compelling with respect to sites for renewable energy projects and sophisticated parties developing renewable energy projects. Those subdivision purposes are also outweighed by the State's compelling interests in facilitating, encouraging, and expediting renewable energy projects for the health, safety, and welfare of the residents of Hawaii.

Accordingly, the purpose of this Act is to facilitate the financing and development of renewable energy projects by allowing leases and easements pertaining to renewable energy projects, together with mortgages and other conveyances as security for finance, to be created, enforceable, and recordable, without requiring the landowner to obtain formal subdivision approval from the applicable county or other approving agency.

SECTION 2. Chapter 201N, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§201N- Exemption from subdivision requirements.

(a) Notwithstanding any other law to the contrary:

(1) Lands within the agricultural, conservation, or rural state land use district may be leased; and

~~Deleted: subdivided and~~

(2) Easements may be created and granted over lands within the agricultural, conservation, or rural state land use district,

for the purpose of developing and financing a renewable energy project or access to a renewable energy project that is a permitted use in the district, even though the leased land or easement area has not been subdivided as a separate subdivided lot or easement. Leases and easements authorized by this section shall be valid leases and easements for all purposes, but the exemption from subdivision requirements authorized by this section shall be subject to the requirements and limitations set forth in subsection (d) below.

(b) Without limiting the generality of the foregoing, without complying with subdivision requirements:

~~Deleted: Parcels and easements created under this section shall be legal lots and easements of record for purposes of leasing, granting of easements, and mortgage lending, and shall be exempt from subdivision requirements.~~

(1) All or a portion of a legal lot may be leased as a site for a renewable energy project or access to such project;

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(2) Easements or other possessory interests, whether exclusive or nonexclusive, may be granted to use all or a portion of the legal lot as a renewable energy project site or access to such project;

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(3) Maps, leases, licenses, grants of easements, or other instruments providing for the right to use all or a portion of, a legal lot as delineated on a map for a renewable energy project site or access to such project may be recorded; and

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(4) Mortgages and other security interests may be granted with respect to any lease or easement created pursuant to this section, and the holders of such mortgages or other security interests may foreclose upon the lease or easement covered and otherwise enforce the terms of such mortgage and security documents, subject to compliance with applicable laws other than subdivision requirements.

(c) The land court, bureau of conveyances, and other governmental agencies shall accept for filing and recording all instruments and maps pertaining to leases, easements, mortgages and other security documents authorized pursuant to this section."

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(d) The exemption from subdivision requirements authorized by this section shall only apply to leases and easements that meet the following requirements, and shall be subject to the following limitations:

(1) The principal use of the leased land and easements shall be the development and operation of a renewable energy project;

(2) The lease must have an initial term of at least twenty years;

(3) Except for the exemption from subdivision requirements for leases and easements meeting the requirements of this section, nothing in this section shall exempt the actual development, construction or operation of any use, project or improvements from applicable state or county laws, restrictions, permits or approvals, including, without limitation, restrictions on allowable uses, or conditions and requirements for adequate infrastructure or mitigation measures;

(4) Nothing in this section shall exempt from subdivision requirements the conveyance of any fee interest in land; and

(5) The exemption from subdivision requirements provided by this section shall terminate with respect to any lease or easement upon the first to occur of (1) termination or abandonment of the renewable energy project, or (2) termination or expiration of the lease or easement.

SECTION 3. Section 201N-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read:

"Subdivision requirements" means all state and county laws and permits setting forth standards or requirements for improvements and approvals applicable to the subdivision or consolidation of land, changes in legal boundaries, or the creation or consolidation of parcels, easements, or other interests in land."

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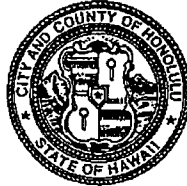
SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect on January 1, 2020.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



DAVID K. TANOUE
ACTING DIRECTOR
ROBERT M. SUMITOMO
DEPUTY DIRECTOR

February 24, 2009

The Honorable Ken Ito, Chair
and Members of the Committee on Water,
Land, & Ocean Resources

The Honorable Hermina M. Morita, Chair
and Members of the Committee on Energy &
Environmental Protection
State House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Ito, Morita and Members:

**Subject: House Bill No. 589
Relating to Renewable Energy Resources**

Although we strongly support renewable energy facilities and other activities, which can make Hawaii less dependent on petroleum fuel, the Department of Planning and Permitting **cannot support** House Bill 589.

The bill calls for exempting renewable energy facilities from any subdivision requirements. Unfortunately, we have some serious issues with this bill:

1. Exempting renewable energy facilities from subdivision requirements will create a separate set of subdivision records that will not be recognized by the counties. We believe that this will potentially create confusion and complications for the community and governmental agencies. If subdivision parcels are not recognized by the counties, we believe that it would be difficult to buy, sell, develop, and finance real estate. The owners and tenants of these parcels will probably have difficulties with matters relating to real property taxes, obtaining permits, and obtaining utility connections.

The Honorable Ken Ito, Chair
and Members of the Committee on Water,
Land, & Ocean Resources

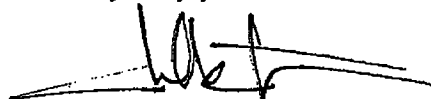
The Honorable Hermina M. Morita, Chair
and Members of the Committee on Energy &
Environmental Protection
State House of Representatives
Re: House Bill No. 589
February 24, 2009
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2. One important aspect of the county subdivision process is to provide subdivided lots, as well as the neighboring properties, with adequate county infrastructure, which includes roadways, water, and sewer. This bill lacks language which relates to requiring adequate infrastructure to the subdivided parcel and the surrounding community.
3. If this bill is passed, and subdivision parcels are created, what will happen if, in the future, a renewable energy facility ceases operations? Will the subdivided parcel become invalid and the property lines become null and void?

We respectfully recommend that House Bill 589 be filed or rewritten.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Tanoue', with a long horizontal flourish extending to the right.

David K. Tanoue, Acting Director
Department of Planning and Permitting

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Harry A. Saunders
President

March 18, 2009

The Honorable Mike Gabbard, Chair
and Members of the Energy and Environmental Committee
The Honorable J. Kalani English, Chair
and Members of the Transportation, International and
Intergovernmental Affairs Committee
Hawai'i House of Representatives
Hawai'i State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Chair Gabbard, Chair English and Members of the Committees:

Subject: ***HB 589 HD 1 Relating to Renewable Energy Facilities; Subdivision
Hearing 2:45 pm: March 19, 2009
State Capital Conference Room 225***

Castle & Cooke supports HB 589 HD 1. The purpose of this bill is to recognize as legal and legitimate, those leases and easements for renewable energy projects which cover less than an entire legal lot. This will facilitate financing and development of renewable energy projects.

This bill does not create a new subdivision process; it only legitimizes leases and easements for renewable energy projects by exempting them from compliance with subdivision laws.

We provide the following comments in support of this bill for your consideration:

1. Land requirements for renewable energy projects may not conform to the configuration of legal lots. Where land needed for a renewable energy project is much less than the entire large legal lot, it may be impractical to lease or mortgage the entire legal lot for the project. Leases covering less than an entire legal lot are common, and it is possible that renewable energy projects could be developed under such leases where financing is not required. However, under current law, there is a question as to legal recognition of such leases—and this makes it difficult or impossible to finance a renewable energy project under such a lease. A lender will want title insurance and a recordable mortgage on the lease. Subdivision of the land is required for this, and this could take over a year to accomplish.

The Honorable Mike Gabbard, The Honorable J. Kalani English,
and Members of the Committees
March 18, 2009
Page Two

2. Subdivision laws are designed to protect consumers (e.g. home buyers) to ensure that they are getting a lot that is up to code—this pro consumer purpose does not apply to leases for renewable energy projects with sophisticated parties.
3. This bill does not create a new and separate subdivision process and records, as no subdivision of land is authorized.
4. All other permits and approvals for the development of the project are still required. It does not exempt projects from normal EIS and permitting requirements, and any mitigation conditions and infrastructure requirements can be imposed at permitting.
5. This bill is patterned after an existing agricultural lease exemption from subdivision requirements (see HRS Section 205-4.5(f))

To further refine the narrow purpose of this bill, we offer suggested revisions to HB 589 HD 1 which are incorporated into the marked draft of HB 589 HD 1 attached to this testimony, which clarify that:

1. Subdivision exemption applies only to leases and easements for renewable energy projects
2. Subdivision and conveyance of land without compliance with subdivision laws is not authorized by this bill.
3. There is no exemption from permits, approvals, restrictions or requirements for the actual use, development, construction or operation of the project.
4. This exemption only available where the principal use is for a renewable energy project, the lease term is for at least 20 years and the exemption ends when the project or lease terminate.

On behalf of Castle & Cooke, I respectfully request your support of HB 589 HD1 and our proposed revisions. This legislation will facilitate development and financing of renewable energy projects. Mahalo for your consideration of our testimony. If you have any questions, please feel free to contact us:

Harry Saunders, President
Castle & Cooke Hawai'i
aktsukamoto@castlecooke.com
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Richard Mirikitani, Senior Vice President and Counsel
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The Honorable Mike Gabbard, The Honorable J. Kalani English,
and Members of the Committees
March 18, 2009
Page Three

Carleton Ching, Vice President – Community and Government Relations
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Phone: 548-3793

Sincerely,

CASTLE & COOKE HAWAI'I

A handwritten signature in black ink, appearing to read "Saunders", written in a cursive style.

Harry A. Saunders
President

attachment

CASTLE & COOKE suggested revision March 18, 2009
COMMENTS

Report Title:

Renewable Energy Project; Subdivisions

Description:

Exempts renewable energy projects from subdivision requirements; defines "subdivision requirements"; requires agencies to accept instruments for recording and filing.

(HB589 HD1)

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

H.B. NO. 589
H.D. 1

A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY FACILITIES.

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

SECTION 1. The legislature finds that Hawaii's dependence on petroleum for over ninety per cent of its energy needs is more than any other state in the nation. This makes the State extremely vulnerable to any oil embargo, supply disruption, international market dysfunction, and many other factors beyond the control of the State. Furthermore, the continued consumption of conventional petroleum fuel and price volatility can negatively impact the environment and economic health of

the people of Hawaii. At the same time, Hawaii has among the most abundant renewable energy resources in the world, in the form of solar, geothermal, wind, biomass, and ocean energy assets.

The legislature further finds that increased energy efficiency and use of renewable energy resources would increase Hawaii's energy self-sufficiency, achieving broad societal benefits, including increased energy security, resistance to increases in oil prices, environmental sustainability, economic development, and job creation.

To shape Hawaii's energy and environmental future and achieve the goal of energy- and self-sufficiency for the State, efforts must continue on all fronts, integrating new and evolving technologies, seizing upon opportunities to become more economically diversified, and providing incentives and assistance to address barriers.

To develop and finance renewable energy facilities, a site for the facilities and access to the site must often be leased, granted as an easement, or mortgaged to provide financing for the project. Renewable energy projects may require site acreage or configurations that do not coincide with existing, already subdivided lot boundaries. For instance, land required for a project may be only a portion of a large legal lot, and it may be impractical or

undesirable to lease or convey the entire legal lot for the renewable energy project or to encumber the entire legal lot with a mortgage that provides financing for the project. Currently, however, subdivision laws generally prohibit the transfer of an interest in land that is not an entire subdivided lot or easement that has been approved by the applicable county. With respect to land in the land court system, the additional step of obtaining land court approval is required.

Reported Hawaii supreme court cases, including *Whitlow v. Jennings*, 40 Haw. 523 (1954), have recognized that transactions involving lots that have not been approved by the county pursuant to subdivision laws may be unenforceable. Unfortunately, the process of obtaining county, state, and land court approval of subdivision and easement maps is relatively time-consuming and often requires more than one year to complete.

As recognized by the court in the *Whitlow v. Jennings* case, the purpose of laws requiring county subdivision approval is to protect the consumer purchasing interests in land from substandard subdivisions. However, these laws and court rulings have placed in question the validity of leases of parcels that are less than an entire legal lot, and easements without subdivision approval. This prevents

or discourages the use or financing of leases and easements for renewable energy projects. The consumer protection purposes of subdivision laws are not applicable or compelling with respect to sites for renewable energy projects and sophisticated parties developing renewable energy projects. Those subdivision purposes are also outweighed by the State's compelling interests in facilitating, encouraging, and expediting renewable energy projects for the health, safety, and welfare of the residents of Hawaii.

Accordingly, the purpose of this Act is to facilitate the financing and development of renewable energy projects by allowing leases and easements pertaining to renewable energy projects, together with mortgages and other conveyances as security for finance, to be created, enforceable, and recordable, without requiring the landowner to obtain formal subdivision approval from the applicable county or other approving agency.

SECTION 2. Chapter 201N, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§201N- Exemption from subdivision requirements.

(a) Notwithstanding any other law to the contrary:

(1) Lands within the agricultural, conservation, or rural state land use district may be subdivided and leased; and

(2) Easements may be created and granted over lands within the agricultural, conservation, or rural state land use district,

for the purpose of developing and financing a renewable energy project or access to a renewable energy project that is a permitted use in the district, even though the leased land or easement area has not been subdivided as a separate subdivided lot or easement. Leases and easements authorized by this section shall be valid leases and easements for all purposes, but the exemption from subdivision requirements authorized by this section shall be subject to the requirements and limitations set forth in subsection (d) below.

(b) ~~Parcels and easements created under this section shall be legal lots and easements of record for purposes of leasing, granting of easements, and mortgage lending, and shall be exempt from subdivision requirements. Without limiting the generality of the foregoing, fee owners of such lots and easements may without complying with subdivision requirements:~~

- (1) Lease—All or a portion of such a legal lot may be leased as a site for a renewable energy project or access to such project;
- (2) Grant—Easements or other possessory interests, whether exclusive or nonexclusive, may be granted to use all or a portion of the legal lot as a renewable energy project site or access to such project; and
- (3) Record—Maps, leases, licenses, grants of easements, or other instruments providing for the right to use all or a portion of the a legal lot as delineated on a map for a renewable energy project site or access to such project may be recorded; and
- (4) Mortgages and other security interests may be granted with respect to any lease or easement created pursuant to this section, and the holders of such mortgages or other security interests may foreclose upon the lease or easement covered and otherwise enforce the terms of such mortgage and security documents, subject to compliance with applicable laws other than subdivision requirements.

(c) The land court, bureau of conveyances, and other governmental agencies shall accept for filing and recording all instruments and maps pertaining to leases, ~~lots and~~ easements, mortgages and other security documents authorized-~~created~~ pursuant to this section."

(d) The exemption from subdivision requirements authorized by this section shall only apply to leases and easements that meet the following requirements, and shall be subject to the following limitations:

(1) The principal use of the leased land and easements shall be the development and operation of a renewable energy project;

(2) The lease must have an initial term of at least twenty years;

(3) Except for the exemption from subdivision requirements for leases and easements meeting the requirements of this section, nothing in this section shall exempt the actual development, construction or operation of any use, project or improvements from applicable state or county laws, restrictions, permits or approvals, including, without limitation, restrictions on allowable uses, or conditions and requirements for adequate infrastructure or mitigation measures;

(4) Nothing in this section shall exempt from subdivision requirements the conveyance of any fee interest in land; and

(5) The exemption from subdivision requirements provided by this section shall terminate with respect to any lease or easement upon the first to occur of (1) termination or abandonment of the renewable energy project, or (2) termination or expiration of the lease or easement.

SECTION 3. Section 201N-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read:

"Subdivision requirements" means all ~~ny state or~~ county laws and ~~, state or county~~ permits setting forth standards or requirements for improvements and approvals applicable to the subdivision or consolidation of land, changes in legal boundaries, or the creation or consolidation of parcels, easements, or other interests in land."

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect on January 1, 2020.



Title Guaranty of Hawaii, Inc.

235 QUEEN STREET, HONOLULU, HI 96813 • P.O. BOX 3084, HONOLULU, HI 96802

Phone (808) 519-6181

Fax (808) 521-0287

March 19, 2009

Via Email: ENEstimony@Capitol.hawaii.gov

The Honorable Mike Gabbard, Chair
The Honorable J. Kalani English, Vice Chair
Members of the Senate Committee on Energy & Environment
Conference Room 225, State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

The Honorable J. Kalani English, Chair
The Honorable Mike Gabbard, Vice Chair
Members of the Senate Committee on Transportation, International and Intergovernmental
Affairs
Conference Room 225, State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Re: House Bill 589, HD1 Relating To Renewable Energy Facilities
Hearing Date: Thursday, March 19, 2009
Hearing Time: 2:45 p.m.

Dear Senators Gabbard and English, and Members of the Senate Committees on Energy & Environment and Transportation, International and Intergovernmental Affairs:

Thank you for the opportunity to submit testimony in favor of House Bill 589, HD1 Relating To Renewable Energy Facilities. We support the intent of the Bill and look forward to working with the proponents of the Bill to provide further comments on the final verbiage.

In our view, the current draft improves upon the wording of the Bill as first submitted. Title insurance companies have been reluctant or unwilling to issue title insurance for leases and mortgages that encumber leases that purport to affect only a portion of a legal lot of record. This creates a disincentive for the development of a renewable energy facility if the area needed is only a part of a large undeveloped parcel of land. Without title insurance, lenders will be less willing to finance the project.

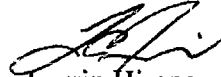
Creating an exemption from the subdivision laws to allow a lease and easement of an area which is a portion of a subdivided lot will facilitate the issuance of title insurance and promote the development of renewable energy facilities.

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At this point, we are still in the process of analyzing whether some clarification of the intended language in Section 2, §201N- (b) is needed. However, we support the intent of House Bill 589, HD1 and respectfully urge you to allow it to advance.

If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



Lorrin Hirano
Legal Counsel

**DOWLING
COMPANY, INC**

March 19, 2009

Hearing on HB589, HD1, Relating to Renewable Energy Facilities
Before the Senate Committees on Energy and Environment
and Transportation, International and Intergovernmental Affairs
on Thursday, March 19, 2009 at 2:45 p.m. in Conference Room 225

Dear Chairs Gabbard and English and members of the Committee:

My name is Jennifer Stites and I am the Green Development Manager for Dowling Company, Inc. ("DCI"). DCI is a Maui-based real estate development company that is committed to sustainable development. As the land owner of 1800 acres in Makena, including the Maui Prince Hotel and Makena North and South Golf Courses, we have set the very ambitious goal of developing a net-zero energy community. Through energy reduction and renewable energy production on-site, we hope to develop a model sustainable community for Hawaii.

Therefore, we support HB589, HD1 because it will expedite the permitting process for renewable energy facilities and, thus, will hopefully bring more renewable generation to Hawaii to meet the goals of HCEI.

Thank you for the opportunity to testify in support of HB589, HD1.