

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

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COMMISSION ON WATER RESOURCE MANAGEMENT
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LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the Senate Committee on
JUDICIARY AND LABOR

Thursday, March 31, 2016
9:30 A.M.
State Capitol, Conference Room 016

In consideration of
HOUSE BILL 2604, HOUSE DRAFT 1, SENATE DRAFT 1
RELATING TO THE ACQUISITION OF REAL PROPERTY

House Bill 2604, House Draft 1, Senate Draft 1 proposes to clarify that the acceptance by the Territorial Legislature or State Legislature of a dedication of land in the Kakaako Community Development District by a private owner is sufficient to convey title to the State. **The Department of Land and Natural Resources (Department) opposes this measure.**

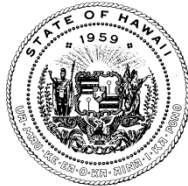
Although the latest draft of the measure proposes to amend Chapter 206E, Hawaii Revised Statutes (HRS), and is limited to land located within the Kakaako Community Development District, the Department has concerns regarding the provision allowing for the conveyance of roads pursuant to Section 264-1, HRS. Although the State Department of Transportation (DOT) may condemn and acquire land for highway purposes, the Department understands that DOT does not possess the authority to hold title to lands in fee. Therefore, fee title to any roads acquired through this measure would ultimately pass to the State through the Board of Land and Natural Resources (Board). Requiring the Board to take title to such land would abrogate the Board's authority to conduct the necessary due diligence before considering the acquisition in a public, sun-shined meeting.

Prior to approving any land acquisition, the Board has authorized the Department to conduct an extensive due diligence review of the land to be acquired to determine potential liability to the State. This process includes a review of title status including the impact of any encumbrances affecting the property, environmental hazards assessment via a Phase I and Phase II (if necessary) environmental site assessments, boundary survey and descriptions reviewed by the State Surveyor, and an independent appraisal to determine the fair market value. In addition, all acquisitions of real property interests are subject to review and approval by the Attorney

General. The Department does not believe the Legislature has the staff, time, or budget to conduct these vital assessments on its own. Public comments alone would not rise to the level of a due diligence review.

Thank you for your consideration of this testimony.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

Testimony by:
FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

March 31, 2016
9:30 a.m.
State Capitol, Room 016

H.B. 2604, H.D. 1, S.D. 1
RELATING TO THE ACQUISITION OF REAL PROPERTY

Senate Committee on Judiciary and Labor

The Department of Transportation (DOT) **opposes** the transfer of interior roads to the DOT by legislative approval and dedication of land by a private owner with the approval of the Director of Transportation.

DOT is required by the Federal Highway Administration to use its due diligence to review past ownership and use of a property, search for any encumbrances attached to the site and perform an environmental assessment so the property won't have a negative impact on HDOT and the State into perpetuity.

DOT owns and maintains roadways that have high traffic volumes such as freeways and arterial roads. There are no high volume roadways located within the Kakaako area. The City and County of Honolulu owns and maintains collector streets and local roadways, similar to those located within the Kakaako district.

Thank you for the opportunity to provide testimony.



HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



KAKAAKO
KALAELOA

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STATEMENT OF
AEDWARD LOS BANOS, INTERIM EXECUTIVE DIRECTOR
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

BEFORE THE
SENATE COMMITTEE ON JUDICIARY AND LABOR

ON

THURSDAY, MARCH 31, 2016

9:30 A.M.

State Capitol, Conference Room 016

in consideration of

**HB 2604, HD1, SD1 – RELATING TO THE ACQUISITION OF REAL
PROPERTY.**

Purpose: Clarifies that the acceptance by the Territorial Legislature or the Legislature of a dedication of land in the Kakaako Community Development District by a private landowner is sufficient to convey title to the State of Hawaii.

Position: As the Hawaii Community Development Authority (HCDA) board has not established its position on this proposal, as the interim Executive Director, I take no position but offer the following comments.

There is currently a dispute regarding ownership of public right-of-ways in the Kakaako Community Development District. Lands claimed by a private entity (via quit claim deed) are otherwise considered to be public roadways, however the unimproved roadway shoulders are currently being administered as private property. These right-of-ways and shoulders include (but may not be limited to):

- A portion of Queen, Kawaiahao and Waimanu Streets (between Cooke and Kamakee);
- Cummins Street;
- The attendant unimproved roadway shoulders; and
- Possibly other streets or real estate not yet identified.

Testimony reflects the view and position of the Executive Director and not that of the Authority.

The issues involved in this matter are not simply limited to clarifying the effect of historic or prospective legislative action. While the proposal would seek to clarify that title had already been or could have been conveyed to the State of Hawaii [more specifically the Department of Land and Natural Resources (DLNR)], the proposal does not address other issues (which include but may not be limited to):

- What interest or capacity (if any) that the State of Hawaii Department of Transportation (DOT) has or did have for acquiring public right-of-way that is typically owned and maintained (via county property and vehicle taxes) as County roadways;
- Whether there is any compelling state interest to acquire, improve and maintain rights-of-way that do not qualify as state highways (with its attendant federal requirements and limited prospects of attracting matching funds) and which only benefit private landowners;
- To whom (i.e., DLNR, DOT, City & County of Honolulu, private community association) should the title of the right-of-way and unimproved shoulders be ultimately conveyed; and
- Whether a landowner may assert control over only a portion of public right-of-way (unimproved roadway shoulders) without having improved or maintained either the shoulder or public right-of-way.

It is also noteworthy that litigation seeking clarification of the existing quit claim deed in circuit court (where disputes regarding title to real estate are typically adjudicated) has not yet run its course. Given the complexity of this matter, it may be premature or unrealistic to expect that this proposal will be able to resolve issues that go far beyond the constitutional scope of the title of this proposal.

With regard to road maintenance and design, the HCDA relies on the City and County of Honolulu, as the HCDA has not adopted a street code, nor does it have the capacity or resources to maintain roadways.

Thank you for the opportunity to provide our comments on this measure.



**Testimony to the Senate Committee on Judiciary & Labor
Thursday, March 31, 2016 at 9:30 A.M.
Conference Room 016, State Capitol**

**RE: HOUSE BILL 2604 HD 1 SD 1 RELATING TO THE ACQUISITION OF REAL
PROPERTY**

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **provides comments on** HB 2604 HD 1 SD 1, which clarifies that acceptance by the Territorial Legislature or the Legislature of a dedication of land in the Kakaako Community Development District by a private owner is sufficient to convey title to the State. Takes effect 7/1/2050. (SD1)

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

It appears that HB 2604 HD 1 SD 1 attempts to address a situation in Kakaako where there may be private ownership of public roads. With respect to the ownership of public roads, it is our understanding that Hawaii, unlike any other State in the U.S., was originally a sovereign nation – a kingdom. There were certain preexisting laws that were passed on and incorporated into what became laws of the U.S. Territory, and then ultimately, of the State.

The Highways Act of 1892:

In October of 1892, Queen Liliuokalani approved a law that determined that the ownership of all public highways and the land, real estate and property of the same, shall be in the Hawaiian Government in fee simple. The definition of public highway includes all existing roads and trails at the time "or hereafter opened, laid out or built by the Government, or by private parties, and dedicated or abandoned to the public as a highway, are hereby declared to be public highways." Furthermore, "All public highways once established shall continue until abandoned by due process of law".

We understand that Chapter 264 HRS provides a definition of State and County highways, roads, etc., which include situations where ownership is acquired by the State or County through dedication or surrender.

Not knowing the exact circumstances of the situation in Kakaako, it would appear that if the road ownership issue falls outside of what is provided in the existing laws, perhaps rather



Chamber *of* Commerce HAWAII

The Voice of Business

than amending Chapter 171-30 HRS, the government entity responsible for oversight of the public roads in this area should acquire the public roads by purchase or eminent domain.

The proposed amendment to the Statute seems to add more confusion to a complicated situation. We appreciate the opportunity to provide our comments on the matter.

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for HB2604 on Mar 31, 2016 09:30AM*
Date: Monday, March 28, 2016 10:33:06 PM

HB2604

Submitted on: 3/28/2016

Testimony for JDL on Mar 31, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Jodi	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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March 28, 2016

Attn: Hawaii Senate Judicial and Labor Committee

Re: Support for HB 2604 RELATING TO ACQUISITION OF REAL PROPERTY

Dear JDL Chair and Committee Members,

I wish to express my support for HB 2604. I live in the Pacifica Honolulu condominium. Our lobby fronts Waimanu Street, one of the streets that was given to the Territory of Hawaii. A private company has claimed ownership of Waimanu Street and has painted paid parking stalls along the length of our property, as well as in front of the 909 Kapiolani. Our condominium has 489 households and 909 Kapiolani has 225 households. We all depend on Waimanu Street for safe access to our homes 24 hours a day, seven days a week.

I have many safety concerns with these paid parking stalls.

First, they are painted directly in front of our lobby, impeding access for fire and emergency personnel and their vehicles. In addition, taxis and others dropping people off or picking people up often have to do so in the middle of the street instead of at the curb because of these parked cars. This is dangerous because of the amount of traffic on Waimanu Street.

Secondly, these parking stalls are painted in front of our fire standpipes, as well as 909's. Every other high rise I've seen has NO PARKING in front of their standpipes so that the fire department can hook water up to the building's fire sprinklers in case of fire. That is 714 households whose fire safety is compromised by these parked cars.

Third, these parked cars are compromising our sight lines coming in and out of our parking garages, making it dangerous to use Waimanu Street.

Fourth, these parking stalls are painted almost to the corner of Ward Avenue, making it difficult to enter Ward Avenue.

Fifth, these parking stalls are painted very close to our loading dock. We have two popular restaurants in our building and all of their deliveries are made on Waimanu Street. These delivery trucks are double parking because of the parked cars, blocking one lane of Waimanu Street where Cummins Street intersects and making for a very dangerous situation for both drivers and pedestrians.

Sixth, the paid parking stalls are blocking our ADA ramp on the Ewa end of our property. People have to use the loading dock exit to go into the street and around these cars at the intersection with Cummins Street. Depending on whether delivery trucks are there, wheelchair bound individuals and those using strollers could be forced into the middle of the street to get to Ward Avenue, where the future rail station will be. This is a very unsafe situation.

Last, the lack of maintenance on these private streets will result in potholes and conditions dangerous to both vehicles and pedestrians. This again will make it more difficult for emergency vehicles to get to us.

Kakaako needs publicly owned streets. I respectfully ask that you pass HB 2604 and have it take effect as soon as possible.

Sincerely,

Judith Atiyeh

1009 Kapiolani Blvd 4002

Honolulu, HI 96814

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for HB2604 on Mar 31, 2016 09:30AM
Date: Monday, March 28, 2016 6:00:50 PM

HB2604

Submitted on: 3/28/2016

Testimony for JDL on Mar 31, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Donna Hashimoto	Individual	Support	No

Comments: I am in support of this bill. I live on Waimanu Street and our safety is compromised because the cars parked on Waimanu are blocking our line of sight getting in and out of our building. Also, handicap access is blocked. Emergency vehicles must park in the middle of the street, which is not safe. The State needs to clarify ownership of the road as soon as possible.

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for HB2604 on Mar 31, 2016 09:30AM
Date: Tuesday, March 29, 2016 4:11:57 AM

HB2604

Submitted on: 3/29/2016

Testimony for JDL on Mar 31, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Brent I.	Individual	Support	No

Comments: I support this bill.

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From: mailinglist@capitol.hawaii.gov
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Cc:
Subject: Submitted testimony for HB2604 on Mar 31, 2016 09:30AM
Date: Monday, March 28, 2016 7:38:02 PM

HB2604

Submitted on: 3/28/2016

Testimony for JDL on Mar 31, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Eileen Kato	Individual	Comments Only	No

Comments: We support HB2604. We currently reside at Pacifica Honolulu. A few months ago, Kakaako Land Co. has painted parking stalls almost the entire length of Waimanu St. Although, this is a financial venture for them, it has become a very dangerous situation for those of us who live and work on this narrow street. Our parking garage and lobby fronts Waimanu St. It has become extremely dangerous as we attempt to exit our garage. Our sight lines are compromised because of cars parked in the "new" stalls on the street. It has become difficult to see oncoming traffic. First responder vehicles must now park directly on the street or further down, taking a longer time for first responders to get to calls. Should there be a fire at our condo, firefighters will have a difficult time accessing our standpipes, because cars are now parked directly in front of the standpipes. Both ADA ramps on the sidewalk that fronts our condo property are blocked on either end because of parked cars. Delivery trucks must now double park, making it difficult for vehicles to pass. For the safety of all who live and work on Waimanu St., we humbly ask you to pass HB 2604. Thank you! Sincerely, Lance & Eileen Kato

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To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for HB2604 on Mar 31, 2016 09:30AM
Date: Monday, March 28, 2016 9:52:16 PM

HB2604

Submitted on: 3/28/2016

Testimony for JDL on Mar 31, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Kanoa Koyanagi	Individual	Support	No

Comments: I support this bill. Stop compromising the safety of residents and visitors to Kakaako. Unimproved roads in Kakaako are already dangerous to navigate. Improvements made by developers in the area have vastly improved the drainage, safety, and visibility along certain corridors. Waimanu and neighboring streets have become hazardous to navigate due to increased vehicular traffic and reversion to conditions that pre-existed development - narrow thoroughfares and poor visibility. Pedestrians and other vehicles are more difficult to see, access is impeded for the traffic load these roads now absorb. Emergency vehicles are potentially being blocked access, slowing response and putting lives in jeopardy.

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From: karen.yee@ubs.com
To: [JDLTestimony](#)
Subject: HB 2604
Date: Tuesday, March 29, 2016 10:40:12 AM

Honorable Senators
of the Senate Judiciary and Labor Committee

Ladies and Gentlemen

As an Owner/Resident of the Pacifica Honolulu condominium, I believe that HB 2604 RELATING TO THE ACQUISITION OF REAL PROPERTY needs to be addressed and passed immediately. Access to our homes and parking fronts Waimanu Street where the Kakaako Land Company has claimed ownership just recently painted parking stalls and put up "private parking" signs along the stretch of Waimanu directly in front of the lobby of Pacifica, neighboring condominium, 909 Kapiolani as well businesses in the area . These very actions have created a hostile and unsafe environment for both pedestrians as well as moving and parked vehicles. Entrance and egress from the buildings are compromised when sight lines are obstructed by parked vehicles, and the road is narrowed. Drivers wanting to turn left waiting to enter parking have experienced vehicles pass on the right, using any available shoulder. Speed limits are not observed. The street is narrow as is and narrowed by the parking stalls installed by Kakaako Land. Is the state willing to wait for someone to be seriously injured or killed right in the middle of our City.

Pacifica's ADA sidewalk ramp and building fire standpipes are blocked by vehicular parking sold by Kakaako Land Company. Does the federal government have to litigate the state for relief, does a fire have to occur and lives taken in order for the state to take remediation action. Kakaako Land Co has no regard for public safety. As an Owner I am subject to and pay Real Property Taxes. Kakaako Land Co has not and does not.

The property taxes we pay are of little value toward basic municipal services in the area. The City & County of Honolulu has stated they will no longer maintain private streets. EMS, Fire and Ambulance services are rendered ineffective if they have to park in the middle of the street or blocks away from the emergency. By what authority do private streets owners have in place to maintain those streets, do they provide those municipal services or enforce laws. Are they self insured; has the area reverted to Wild West Justice.

The rail project is federally funded and progressing rapidly to meet deadlines. The redevelopment of the area is bringing affordable rentals as well as luxury condominiums, constituents, businesses, and workers back to core. HB 2604 needs your immediate and positive attention, as the projects of the City and State as well as developers, businesses and residents are all being held hostage.

As you may well know and by the State's own archives, those "private streets" of Kakaako were given

by Mr Charles Desky to the Territory of Hawaii which should have been a direct flow through to the state of Hawaii, otherwise Hawaii Community Development Authority would not have jurisdiction and authority they are empowered with. This is the time to right a wrong, whether human error or otherwise since the Territory did not transfer ownership in a timely manner. The transfer of ownership of these private streets to the Territory was to happen around 1906, over 110 years later is too long to wait. Is there something wrong with the rules of adverse possession that they do not apply to certain people or entities.

We are in full support of HB 2604 RELATING TO THE ACQUISITION OF REAL PROPERTY and hope that you will give it your most urgent attention and see it through to Passage. We are of the opinion that if the private streets are not immediately acquired, further development needs to be put on **hold**.

Most respectfully and sincerely,

Karen S Yee
Pacifica Honolulu
1009 Kapiolani Blvd Unit 2802
Honolulu, HI 96814

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for HB2604 on Mar 31, 2016 09:30AM
Date: Tuesday, March 29, 2016 7:30:50 AM

HB2604

Submitted on: 3/29/2016

Testimony for JDL on Mar 31, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Jonathan Young	Individual	Support	No

Comments: I support this bill as our condo at 1009 Kapiolani Blvd is in peril due to safety concerns we have with the current Kakaako Land Company blocking our access and safety. No other high rise complexes in the state have their fire standpipes blocked by parked cars, nor do we have our safety sight lines blocked when coming in and out of the parking garage due to blocked cars. We also have access to our lobby blocked by their blocked cars. Fire and ambulance service to our building is greatly compromised by the parked cars but most importantly both of our ADA ramps are blocked. Kakaako Land Company has taken over this public street and charges parking fees on public streets, this should not be happening. The state must step up and take back ownership of this street. Please help us do what is right. Aloha

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