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GOVERNOR OF
HAWAII



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

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

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DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
HOUSING**

**Thursday, January 31, 2019
9:30 AM
State Capitol, Conference Room 423**

**In consideration of
HOUSE BILL 1398
RELATING TO AHUPU'A'A 'O KAHANA STATE PARK**

House Bill 1398 (HB 1398) proposes to appropriate moneys to the Hawaii Housing Finance and Development Corporation for low-interest home construction and home improvement loans to holders of Ahupu'a'a 'O Kahana State Park residential leases and closes the period during which loans may be granted to June 30, 2023. **The Department of Land and Natural Resources (Department) appreciates the intent of this measure and offers the following comments.**

SECTION 1 of HB 1398 is a very accurate description of the current situation and status of Ahupu'a'a 'O Kahana State Park. The concept of nestling a residential community within a state park with the intent of having the residents participate in the park in a meaningful manner to enhance the park user's experience has never fully been successful as envisioned in its inception over 50 years ago.

While there are residents who do honor the intent and leasehold commitment to perform the requisite service – a large percentage of the residents simply want to live their lives and not be engaged in interpretive program participation. This has created the current situation of residents being in arrears on their service requirement.

Act 15 Session Laws of Hawaii 09, established the Kahana Planning Council to create a master plan for this park. Due to the extreme complexity of the existing residential community, competing expectations and lack of consensus on direction – a master plan was never created. In 2015 and 2016 State Parks contracted a consultant to perform a critical analysis of issues and 3 major impediments to master planning a sustainable future for this park have been identified:

1. The cultural living park concept – How was this concept originally developed and defined? How is this concept understood today – by State Parks and by State legislators? Is this concept still valid for Kahana and the Kahana community?
2. The 65-Year Leases dictate the terms under which Kahana families are permitted to live in the valley – some of the terms of these leases need to be reviewed and may need to be amended.
3. Overall management of Ahupu'a'a 'O Kahana – Is the Division of State Parks Division the best, most appropriate manager of this park and its resident community? If not, then what new entity or entities could, and should, manage Kahana?

While these issues remain unresolved, HB 1398 provides both a financial incentive to perform the required service hours and establish funding for residents who have a critical need to improve their homes.

Thank you on the opportunity to comment on this measure.



STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of
Craig K. Hirai
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON HOUSING

January 31, 2019 at 9:30 a.m.
State Capitol, Room 423

In consideration of
H.B. 1398
RELATING TO AHUPUA'A 'O KAHANA STATE PARK.

The HHFDC opposes H.B. 1398, which would require HHDFC to establish a new loan program for low-interest home construction and home improvement loans of up to \$100,000 for any Kahana Valley State Park residential lessee who is not in arrears or in default on any existing loan and who is current on required service hours as of the last 6 months.

In 1988, the Legislature passed Act 238, Session Laws of Hawaii 1988, which appropriated funds for a low-interest home construction and mortgage loan program for Kahana residents, to be administered by the Housing Finance and Development Corporation, which was a predecessor of the HHFDC. Twenty-six of the 27 DLNR lessees received \$50,000 construction loans.

Bank of Hawaii was designated as the servicing lender for this program, with the understanding that delinquent loans would be serviced by HHFDC. At present, only two loans have been fully repaid and one has been foreclosed upon. Bank of Hawaii is servicing 14 loans, and HHFDC is servicing 9 loans, of which only one is current. HHFDC is working with DLNR to address the delinquent lessees.

Thank you for the opportunity to testify.



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January 29, 2019

House Committee on Housing
Thursday, January 31, 2019
Conference Room 423

HB1398 – Relating to Ahupuaa O Kahana State Park

Aloha Committee Chair, Vice-Chair, and Members:

I am submitting testimony in my capacity as Executive Director of Hawaiian Community Assets (HCA), the State's largest HUD-approved housing counseling agency, and Board President of Hawaii Habitat for Humanity to **SUPPORT HB1398**.

Every year, HCA facilitates the Native Hawaiian Housing Caucus during the Annual Native Hawaiian Convention to identify policy priorities and recommendations to meet the housing needs of Native Hawaiians. In 2015, families from Ahupuaa O Kahana State Park requested a priority and recommendation for State financing or funding to help them secure and sustain their homes in the park in light of their unique land leases and title issues that make mortgage financing through the mainstream marketplace impossible.

HB1349 would assist the families achieve their goal of homeownership by appropriating monies to the Hawaii Housing Finance and Development Corporation (HHFDC) for low-interest home construction and home improvement loans to holders of Ahupuaa O Kahana State Park residential leases.

While this is one avenue for assisting the needs of the families, another possible solution may be to appropriate - and set aside - the \$2 million listed in the bill to the Affordable Homeownership Revolving Fund (aka Self-Help Homeownership Revolving Fund) that was part of the Governor's package and introduced in both the House and Senate. This would allow community development financial institutions and self-help housing nonprofits to assist the Kahana families and HHFDC in this important work and leverage other funds as necessary.

Regardless, the resident families of Ahupuaa O Kahana State Park are in need of this assistance and HCA as well as Habitat for Humanity stand by to assist in ensuring their ability to secure and sustain homeownership as promised by the State of Hawaii. Please pass HB1398.

Mahalo for your time, leadership and consideration. Please contact me directly at 808.587.7653 or jeff@hawaiiancommunity.net should you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink that reads "Jeff Gilbreath". The signature is written in a cursive, flowing style.

Jeff Gilbreath
Executive Director

HB-1398

Submitted on: 1/30/2019 9:11:26 AM

Testimony for HSG on 1/31/2019 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

Testimony **IN OPPOSITION** to HB 1398 as submitted for consideration by the House of Representatives Committee on Housing

by Mrs. Grace Vaiove'a Anthony and Dr. Jim Anthony, wife and husband residents of Kahana Valley State Park. [The Anthony 'Ohana is in full compliance with all the terms of their terminal 65 year lease first entered into in May, 1993.]

This summary testimony IN OPPOSITION to the Bill in its present form is based on the following reasons:

1. This Bill was never submitted for prior review by the residents of Kahana, including, especially, those lessees in good standing. Our 'ohana came to know of the Bill just this afternoon, January 30, 2019.
2. The Bill fails to mention that a comprehensive report on Kahana, paid for by taxpayer funds to the tune of about \$300,000 (three hundred thousand dollars), was just completed in February, 2018. *There is a big story behind that report and at least a short summary of that report or a footnote underscoring its existence ought to have been mentioned in the Bill. **Simply a matter of transparency.—disclosure of a major relevant fact.*** Multiple efforts by some lessees to enter into discussions with the Division of State Parks (charged with 'administering' Kahana over the past 25 years) have failed. The Chair of DLNR has also failed to respond to multiple requests to discuss the Townscape report and to put it on the agenda of a duly noticed meeting of the Board. Kahana's ills go beyond the multiple problems mentioned in the second sentence of Section 1 of the Bill. The Townscape report was paid for by the Division of State Parks/DLNR using taxpayer funds.
3. Of relevance is the fact that that report (done by professional local planner, Townscape, Inc.) addresses in detail the twin subjects of the failure of the cultural living park to materialize over the past 25 years as well as aspects of the strong inference of massive mismanagement of Kahana by State Parks/DLNR since the leases were signed in May 1993.
4. The Bill lacks specificity. For example, on Trout Farm Road there are 8 occupied residential homes on lots designated for that purpose. On Kahana Valley Road there are 20. The Bill also fails to mention that the number of hours of work not done by lessees (the 25 hours of park work required by the terms of the lease) now stands at about 50,000 (fifty thousand) hours. Of the 28 lessees, close to 70% of lessees are in violation of the 25 hour requirement. 70% of 28 is about 20. Only 30% of lessees—about 8—are in compliance with the terms of their leases.
5. The Bill fails to mention Act 15 approved by the Legislature on July 15, 2009 in a VETO OVERRIDE. This matter is very relevant because it refers with particularity because the subject of the six residents without leases is raised towards the end of para. 4 on page 1 of Section 1 and continues on to paragraphs 5 and 6 on page 2 (by the way, the on line version of the Bill is not paginated).
6. It would have been pertinent for the Bill to have disclosed that a major part of Act 15 was the establishment of a Planning Council of 5 whose principal responsibility was to

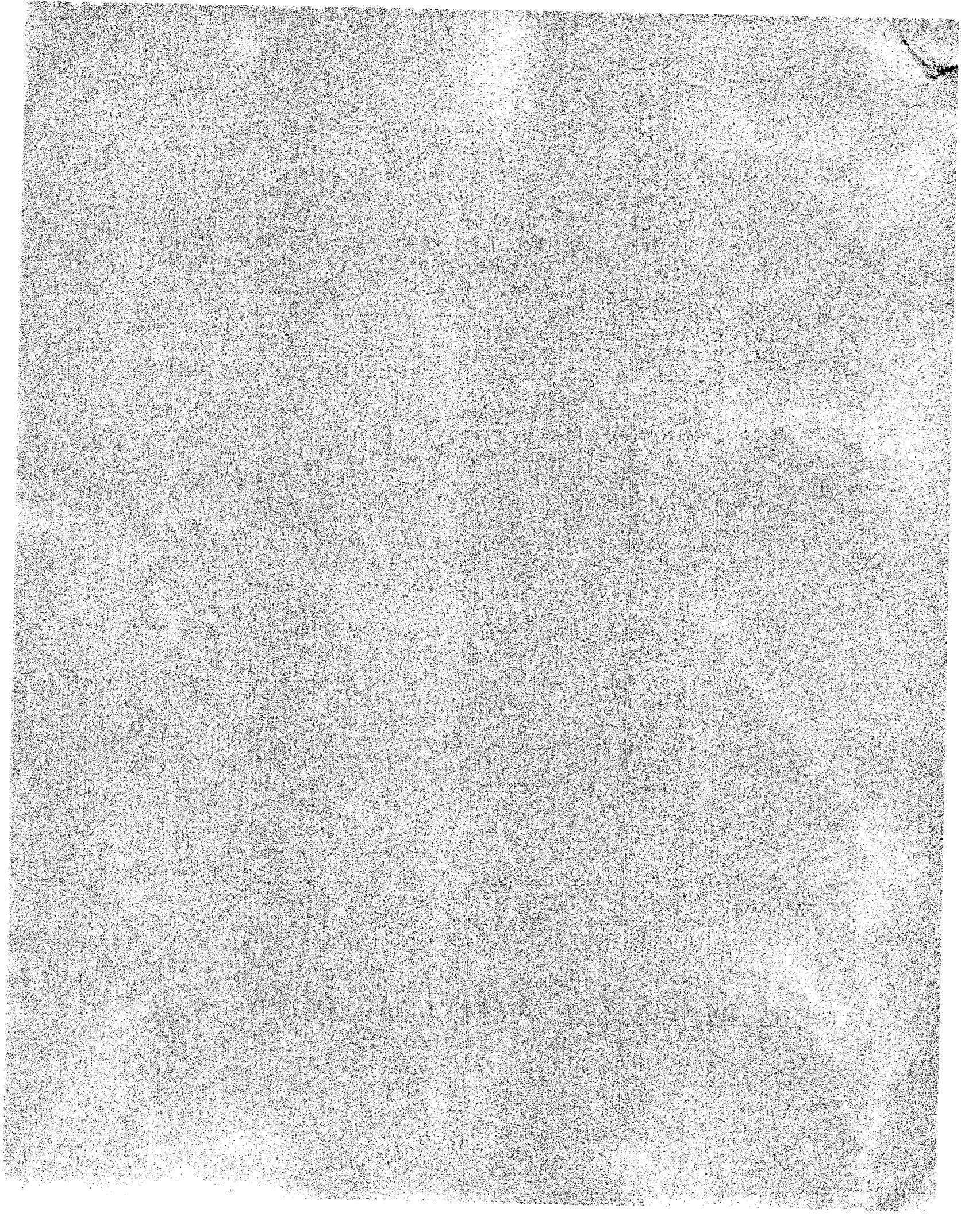
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produce a Master Plan for Kahana. Between 2009, when Act 15 became law and roughly 2016, a total of 7 years, during which time more than 50 meetings were held, the Kahana Planning Council failed to produce a single sentence of approved planning text. It is pertinent to also mention that during the seven years (2009-2016) the Planning Council (a statutory body) received no funding to carry out its legislative mandate, was never given any office space or furniture, no staff, no assigned legal representation, no telephone, no access to wi-fi. State Parks/DLNR neither supervised the work of the Planning Council or made representations to it. **It is both fair and pertinent to say that Act 15, having been established by a VETO OVERRIDE, and considered by the A-G to be under a constitutional cloud was ready made to fail. It was for this reason that a newly appointed Division Head of State Parks decided to spend about \$3000,000 of public money to procure a Planning Report which has been in limbo for the better part of a full year.**

7. The Bill does not mention that all of Kahana, purchased with taxpayer dollars in the 60s, is PUBLIC LAND within the meaning of Article XI, Section 5 of the Hawaii State Constitution and, as such, is subject to Section 2 of HRS 516, the lease to fee conversion statute which became law in 1968. Section 83 of HRS 516 has particular relevance to all of Kahana's 28 long term, residential leases..
8. We direct the committee's attention to the fact that as best as we have been able to ascertain it all six residents without leases have not complied with section 7 of Act 15. The Committee is invited to examine the particular requirements of section 7 of Act 15.
9. Towards the end of page 2, the third line from the bottom, there is language in the Bill which says: "... families are unable to borrow money due the unique status of the living park" is simply wrong. It is NOT the living park concept which is the problem. Lessee families are unable to borrow against the declining equity in their leased estates for two principal reasons: (1) the terms of the lease are such that no reputable lender will accept the leases as collateral; and (2) many lessees simply cannot meet the normal requirements for loans. See further analysis and comments below.
10. It is indeed true that as many as at least 6 lessees are in default of the terms of their mortgages in addition to being in default of the terms of their leases. Here too, on this subject, the Bill lacks transparency, specificity.
11. We come now to the last paragraph of Section 1 on page 3 –that paragraph begins with the words "The purpose of this Act" The proviso has not escaped our attention – to get a loan of up to \$100,000 **lessees will have to be current on existing financing and interpretive hours. The proviso is repeated in the first paragraph of Section 2, page 3 – "for any holder of a Kahana Valley State Park Residential lease who is not in arrears or in default on any existing loan and who is current on required service hours for the previous six months."**

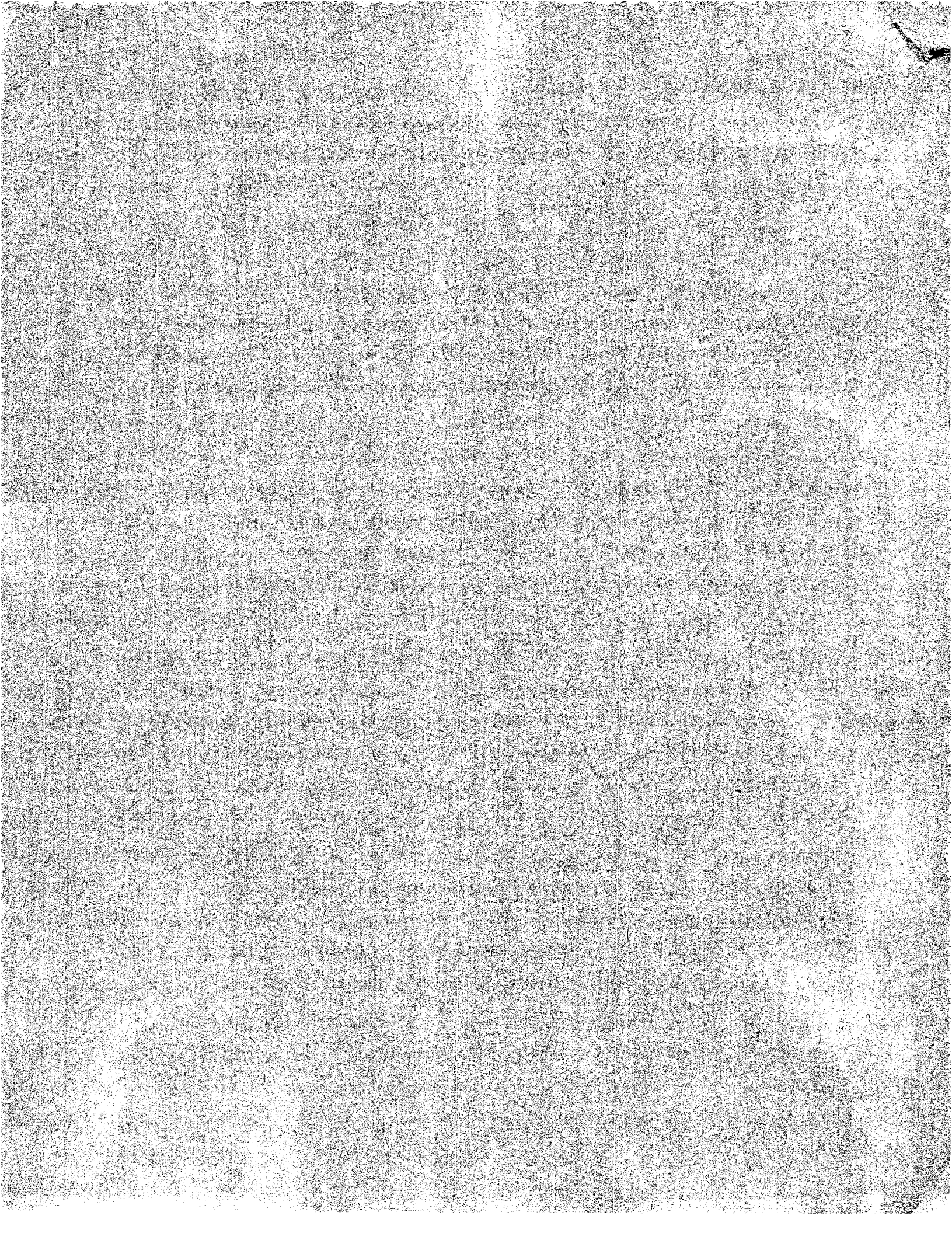
SUMMARY ARGUMENTS & CONCLUSIONS:



These (see especially #11 above) are the conditions which give rise to the entirety of the Bill to fall completely apart. Here are the relevant questions within the framework of the context set out above. First, a quick summary of the context:

- The noncompliant 70% (approx. 20 out of 28) who owe in the vicinity of 50,000 hours of required service hours. In addition there are at least 6 lessees way behind on their mortgage payments, on the edge of the hammer of foreclosure coming down on their heads. Keep in mind, too, that all 28 lessees are on a terminal lease—all leases expire approximately 40 years from now.
- Just keeping this context in mind here are the pertinent questions:
- Most of the lessees cannot meet the requirements set out in the Bill—unless even a small number make up the number of hours that they owe.
- Given the inescapable fact that all lessees are on terminal leases, as long as they remain on terminal leases, why would any of them in their right minds want to take out loans of up to \$100,000 given the fact that all they have are terminal leases with their equity being reduced every day coupled with the most restrictive terms of their residential leases, possibly the most restricted residential leases ever issued to lessees in the history of this State? IF SOME OR ALL OF THESE LEASES WERE TO BE CONVERTED TO FEE SIMPLE AS HRS 516 MAKES POSSIBLE (with just 4 words to be changed in the Statute) the whole situation would change for at least some lessees.¹ But as long as the lease to fee issue is unresolved HB 1398 should be held.
- These final points of disclosure not set out in the Bill:
- Act 5, the enabling legislation to issue leases way back in 1993 has sunset. It is no longer ‘alive’.

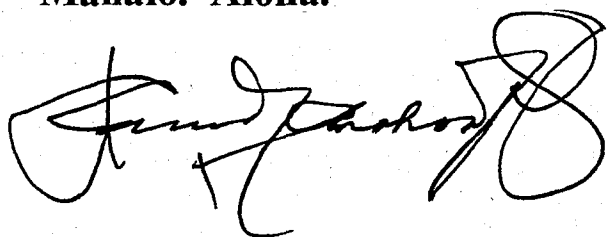
¹ A lease-fee conversion Bill, we note, is supposed to be making its way through the Legislature this session. If there were some assurance that that Bill would be approved as a necessary companion Bill then HB1398 would make sense.



- **To deal effectively with the proposals in this not so well crafted Bill it is very important for this Committee to be as fully informed as possible on the February 2018 Townscape Report and its focus on 3 issues: the existing lease; the state and essentially false promise of the cultural living park which, by and large, is in disarray and the big question of whether the Division of State Parks, given both its record and its known disposition NOT to be involved in the 28 leases/lessees in Kahana.**

As the author of this submission I am open to answering such questions as members of the Committee might wish to ask.

Mahalo. Aloha.

A handwritten signature in black ink, appearing to read "Jim Anthony", with a large, stylized flourish at the end.

Jim Anthony, PhD

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Representative Tom Brower,
Chairman of the Housing Committee
And Members;
RE: HB1398 Ahupua'a 'O Kahana

Aloha Mai Kakou!!!! I am Ululani Beirne, life-time resident of the Ahupua'a 'O Kahana. I commend both Senator Gil Riviera and Representative Sean Quinlan for their authorship of this much needed residential community support, and therefore I support HB 1398 and any attention to help our Ahupua'a 'O Kahana.

This legislation is a means for the residents, to have communications with Susan Case, Department of Land and Natural Resources Chairman, who for the last two years has not been able to meet with our residents, nor communicate, therefore this legislation is a means to assist residents to continue to beautify and "malama 'aina" so residents would be considered for another 65 years and basically clean up Kahana Valley by offering support with funding through the Hawai'i Housing and Finance Development Corporation, an entity, that our lessees are familiar with for many years.

I have served on the Kahana Planning Council for many years with no funding until funding was made available to Townscape Planners to assist in the process. What a difficult process, with the Boards and Commissions nominating individuals that could never give 100% of their time. I believe with funding from the Legislatures that perhaps Act 15 could have already been realized, that is a Master Plan that perhaps all of our legislators could support.

I must say that over 25 years ago, \$50,000 at 3% interest was all 26 residents could secure to build their homes in the Ahupua'a 'O Kahana and although many are having difficulties HFDC should have cleaned up their act from the beginning so that not one would be allowed to falter or fail due to neglect of servicing.

I for one own my home and would like to have this body give our residents an opportunity to either consider our land-base, that's important to our people. We have a terrible problem with our ever growing homeless population in Hawai'i and all over the U.S. Lets plan well, make sure funds are available for the next lessees coming up, our residents need any and all the support to help themselves improve their conditions.

I love my home in the Ahupua'a 'O Kahana and ask that you amend this Legislation to consider an audit of HFDC relating to Ko ahana lessees in arrears and those that are absentee lessees in order to improve our residential community.

Mahalo
Owau Me Ka Ha'a ha'a
Danielle Ululani Beirne

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