

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
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IN REPLY REFER TO:

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

SENATE COMMITTEE ON HOUSING

February 12, 2019 at 1:20 p.m.
State Capitol, Room 225

In consideration of
S.B. 1483 PROPOSED S.D. 1
RELATING TO RESIDENTIAL LEASEHOLDS.

The HHFDC *offers the following comments* on S.B. 1482, Proposed S.D. 1. HHFDC appreciates the intent of this measures, but questions whether it meets public purpose and constitutional requirements for the use of eminent domain powers under Chapter 516, HRS.

The purpose of the Land Reform Act of 1967, now codified as Chapter 516, HRS, was to encourage widespread fee simple ownership of **residential** lands. The Ahupua'a 'O Kahana State Park is in the Conservation District and zoned for Preservation. The leases were issued as part of a plan to create a state living park to nurture and foster native Hawaiian culture and spread knowledge of its values and ways.

Thank you for the opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 1483, PROPOSED S.D. 1, RELATING TO RESIDENTIAL LEASEHOLDS.

BEFORE THE:

SENATE COMMITTEE ON HOUSING

DATE: Tuesday, February 12, 2019 **TIME:** 1:20 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Clare E. Connors, Attorney General, or
Matthew S. Dvonch, Deputy Attorney General

Chair Chang and Members of the Committee:

The Department of the Attorney General provides the following comments on the proposed Senate Draft 1 of this bill.

This bill amends chapter 516, Hawaii Revised Statutes (HRS), to allow lessees of lands “leased as residential lots within a living park in a county with a population of 500,000 or more” to apply for lease-to-fee conversion, provided that the living park: (1) consists of at least four thousand acres; (2) is located in the state conservation district; and (3) is zoned for preservation. It is our understanding that the only lands that currently fit this description are State-owned lands within Kahana Valley.

Article XI, section 5, of the Hawai‘i Constitution provides that the Legislature’s power over State and county lands “shall be exercised only by general laws, except in respect to transfers to or for the use of the State, or a political subdivision, or any department or agency thereof.” General laws are typically those that apply uniformly throughout all political subdivisions of the State. *Sierra Club v. Department of Transportation, State of Hawai‘i*, 120 Hawai‘i 181, 201, 202 P.3d 1226, 1246 (2009).

Chapter 516, HRS, currently allows lease-to-fee conversion only for lots zoned for residential. This bill creates a special provision for lessees within the Kahana Valley Living Park, which is zoned for preservation, and allows them to apply for lease-to-fee conversion of their lots. Under *Sierra Club*, it appears that this bill may be a “special law” because it involves legislative action over State land that does not apply uniformly throughout all political subdivisions of the State. We are not aware of any other living

park, on O'ahu or any other island, that meets the requirements of this bill or could meet the requirements of this bill without State action. For this reason, the bill may violate article XI, section 5, of the Hawai'i Constitution.

LATE



Legislative Testimony
SB1483 RELATING TO RESIDENTIAL LEASEHOLDS
Senate Committee on Housing

February 12, 2019

1:20 pm

Conference Room 225

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB1483, which would expand the applicability of existing lease-to-fee land conversion statutes to apply to parcels beyond those zoned residential. OHA is particularly concerned that the proposed expansion of the state lease-to-fee conversion process may lead to the condemnation and sale of State and County lands, including “ceded” and Public Land Trust lands, as well as the condemnation of private ali’i trust lands held for the benefit of Native Hawaiians.

1. Background of the Hawai’i Land Reform Act

In 1967, the Hawai’i Land Reform Act, HRS Chapter 516, was passed to allow the State to condemn and sell public and private residential properties to lessees of those properties. The intent of the Act was to increase the availability, alienability, and turnover of single family residential lots, increase homeownership, disperse the power of large landowners, and stabilize land prices. Under the Act, any lessee of a single-family residence of no more than 2 acres within a development tract of at least 5 acres may apply to the Hawai’i Housing Authority (HHA, now known as the Hawai’i Housing Finance and Development Corporation, or HHFDC) to condemn the underlying fee interest. An eligible tenant must own or have equitable interest in the residential structure, be a state resident or intend to live on the lot, show the ability to pay for a fee interest, and not own residential land nearby. When 25 eligible tenants or half of the lots in a tract file applications, the HHA (or HHFDC), after public notice and hearing, may acquire the lots by eminent domain if it effectuates the public purposes of the Act. The landowner must be compensated for the fair market value of the property. After acquiring title, the HHA may sell the land to qualified tenant applicants.

This bill would amend the Hawai’i Land Reform Act to delete the requirement that the described state lease-to-fee conversion process apply only to parcels zoned residential, meaning that the State could condemn and sell public and private property zoned for other uses, including agricultural or preservation, to eligible lessees.

2. This bill impacts all leased State, county, and private lands zoned for purposes other than residential use.

OHA understands that the intent of this bill is to allow long-term lessees in Kahana Valley to pursue lease-to-fee conversions on residential lots in the conservation district, zoned preservation by the City and County of Honolulu. Based on OHA's previous positions regarding Kahana Valley, OHA is supportive of assisting Kahana Valley lessees to remain in the Valley to caretake and provide cultural services. **However, SB1483 as currently drafted would apply far beyond Kahana Valley, and potentially impact every parcel of leased land owned by the State, counties, or private entities zoned for uses other than residential, including agricultural and preservation lands.**

3. This bill could encourage efforts to alienate "ceded" lands by lessees of such lands.

OHA has serious concerns regarding the proposed broad expansion of the state lease-to-fee conversion process, to include lands not just zoned for residential use, but for zoned for any and all other uses. OHA notes that the Native Hawaiian community is particularly sensitive to any potential alienation of public lands, and "ceded" lands in particular, and has a vested interest in ensuring their prudent use and disposition. The majority of state and county lands are in fact "ceded" lands, or former government and crown lands of the Hawaiian Kingdom, to which Native Hawaiians continue to hold unrelinquished claims. **OHA strongly opposes the sale or other alienation of the "ceded" lands corpus, pending the resolution of Native Hawaiians' claims, and expresses particular concern over any process that may facilitate the alienation of public and "ceded" lands.**

Specifically, OHA has significant concerns regarding the widespread pressure this measure could generate to alienate public and "ceded" lands that would be subject to the expanded lease-to-fee conversion process. By removing the residential zoning restriction for lease-to-fee conversions, this measure may greatly widen the pool of lessees of public lands who may be eligible to pursue fee simple ownership of their leased lands. Should such lessees choose to pursue lease-to-fee conversion for their leased public lands, there may be significant and widespread pressure placed on the HHFDC to condemn and subsequently alienate these lands. **Notwithstanding the legislative approval protections of HRS § 171-64.7, such pressure may subsequently result in the arbitrary alienation of public and even "ceded" lands throughout the state.**

4. This bill could encourage efforts to alienate ali'i trust lands held for the benefit of Native Hawaiians.

Similarly, OHA has serious concerns regarding the impact this measure may have on ali'i trusts, and the lands set aside by ali'i for the betterment of Native Hawaiians in their ancestral lands. OHA notes that the lease of ali'i trust lands is a primary source of revenue needed by our ali'i trusts to carry out their respective beneficial missions, including the education and care of keiki, 'ohana, and

kupuna alike. Again, the expansion of the lease-to-fee conversion process to include lands outside of residential zoning districts may generate substantial and widespread interest among lessees of ali'i trust lands to pursue fee ownership of their leased lands. **Such lessees may place substantial pressure on the HHFDC to condemn and sell their leased lands, thereby significantly impairing our ali'i trusts in the fulfillment of their mission.**

Accordingly, OHA respectfully urges the Committee to **HOLD** this measure. Mahalo nui loa for the opportunity to testify.

DAVID Y. IGE
GOVERNOR OF
HAWAII



LATE

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
HOUSING**

**Tuesday, February 12, 2019
1:20 PM
State Capitol, Conference Room 225**

**In consideration of
SENATE BILL 1483, PROPOSED SENATE DRAFT 1
RELATING TO RESIDENTIAL LEASEHOLDS**

Senate Bill 1483, Proposed Senate Draft 1 proposes to apply lease-to-fee conversion to residential lots located in a living park in a county with a population of 500,000 or more where the park consists of at least 4,000 acres; is located in the state conservation district; and is zoned for preservation. **The Department of Land and Natural Resources (Department) appreciates the intent of legislation that can remedy long standing issues associated with this unique park and offers comments.**

Senate Bill 1483, Proposed Senate Draft 1 is intended to amend Chapter 516, Hawaii Revised Statutes, in a manner to allow for the ability to purchase leasehold interest and convert to fee simple ownership in Ahupua'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 been fully 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 25 hours per month 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 significant arrears on their service requirement as the lease specifies. Also, since its inception, there is the perception among residents that they do not want to engage in cultural activities while tourists come and watch them.

Act 1,5 Session Laws Hawai‘i 2009, established the Kahana Planning Council to create a master plan to attempt to rectify these issues in the park. Due to the extreme complexity and social issues of the existing residential community, competing expectations and lack of consensus on direction and participation – a master plan was never created. The Department’s Division of State Parks, in 2015 and 2016, 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 as to how this concept understood today – by State Parks and by State legislators - and is this concept still valid for Kahana and the Kahana community?
2. The 65-Year Leases that dictate the terms under which Kahana families are permitted to live in the valley – the terms of these leases need to be reviewed and may need to be amended. Lease to fee? (requires legislative amendments) Change to a nominal monetized rent? Change to a rent that would be commensurate with 25 hours of monthly service?
3. Overall management of Ahupua‘a ‘O Kahana – Is State Parks still the most appropriate manager for this park and its resident community? If not, then what new entity or entities could and should manage Kahana?

The current leases expire in 40 years and there are residents whose parents were the original lessee’s who now have their own children and they are living on state land with a terminal lease. This measure may allow for this element of the question of the lease structure to be changed to provide relief to the uncertainty associated with the terminal lease.

However, there may be financial implications associated with conducting appraisals and as such - what the acute cost of lease to fee would be and if this cost is affordable to the existing lessee’s should this amendment be approved.

Thank you on the opportunity to comment on this measure.



Hawaii's Thousand Friends

300 Kuulei Rd. Unit A #281 * Kailua, HI 96734 * Phone/Fax (808) 262-0682 E-Mail: htff3000@gmail.com

February 12, 2019

COMMITTEE ON HOUSING

Senator Stanley Chang, Chair
Senator Dru Mamo Kanuha, Vice Chair

COMMITTEE ON WATER AND LAND

Senator Kaiali'i Kahele, Chair
Senator Gilbert S. C. Keith-Agaran, Vice Chair

SB 1483

RELATING TO RESIDENTIAL LEASEHOLDS

Aloha Committee Chairs and Members;

Hawaii's Thousand Friends opposes SB 1483 that sets up a process to sell state conservation designated land in Kahana State Park on Oahu.

After years of fighting to protect Kahana Valley from development the state purchased the 5,229-acre valley and created a living park so that families living in the valley continuously since the 1960's could remain in the valley and provide cultural interpretive services

All of Kahana Valley is within the State Conservation District and zoned preservation by the county.

Land in the Conservation District primarily consist of existing forest and water reserve zones and includes areas necessary for protecting watersheds and water sources, scenic and historic areas, parks, wilderness, open space, recreational areas, habitats of endemic plants and wildlife.

SB 1483 *deletes* the requirement that lease-to-fee conversion in Kahana Valley only applies to *parcels zoned for residential use* thus setting up a process to sell state conservation land within a State Park.

SB 1483 must be held in committee because it establishes a bad precedent and process for selling state designated conservation land thus making all conservation land, even land within State Parks, vulnerable to being sold to private individuals.

SB-1483

Submitted on: 2/11/2019 1:22:04 PM

Testimony for HOU on 2/12/2019 1:20:00 PM

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

Comments:

LATE



KAMEHAMEHA SCHOOLS®

Senate Committee on Housing

Time: 1:20 p.m.

Date: Peleluali 12, 2019

Where: State Capitol Room 415

TESTIMONY

RE: **SB 1483, Relating to residential leaseholds**

Aloha e Luna Ho‘omalū Chang, Hope Luna Ho‘omalū Kanuha, a me nā Kenekoa ‘ē a‘e o kēia Kōmike.

Kamehameha Schools strongly **opposes** Senate Bill No. 1483 (the “*Bill*”), including the proposed SD1.

We believe this Bill, in any form, is bad public policy. The use and expansion of HRS Chapter 516, ostensibly to help a particular set of tenants, risks starting a new chapter in the long, tragic history of government forcibly dispossessing and removing Native Hawaiians from their ‘āina. As a Native Hawaiian organization, we do not believe there is any acceptable use of takings under HRS Chapter 516. Further, if this Bill proceeds, even in a narrowed form, it risks destabilizing land ownership and investments, creating additional pressure on our agriculture and housing industries.

We are not commenting on the situation involving the lessees of Kahana Valley, but we do believe the use and expansion of HRS Chapter 516 is not the proper way to address the situation.

Mahalo for the opportunity to provide our opposition to the Bill and our concerns on the proposed SD1.

SB-1483

Submitted on: 2/10/2019 9:10:07 PM

Testimony for HOU on 2/12/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa Parsons	Individual	Oppose	No

Comments:

SB 1483 seeks to sell state land in Kahana Valley State Park on Oahu and I urge you to VOTE AGAINST this bill.

- **After years of fighting** to protect Kahana Valley from development, the state purchased the 5,229 acre valley and created a living park so that families living in the valley continuously since the 1960's could remain in the valley and provide cultural interpretive services.

- **All of Kahana Valley** is within the State Conservation District and zoned preservation by the county.

- **SB 1483 deletes the requirement** that lease-to-fee conversion in Kahana Valley only applies to parcels zoned for residential use.

- **Deleting this requirement** means that all the **state-owned conservation land** in Kahana Valley State Park, i.e., the entire valley, can be sold.

- **Selling state-owned conservation land is bad, sets a bad precedent, and leaves all State Park Land vulnerable to being sold.**

SB-1483

Submitted on: 2/11/2019 1:02:54 PM

Testimony for HOU on 2/12/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Scott Foster	Individual	Oppose	No

Comments:

Mahalo for voting **against** SB 1483 RELATING TO RESIDENTIAL LEASEHOLDS. Selling state-owned conservation land is bad, sets a bad precedent, and leaves all State Park Land vulnerable to being sold.

Sincerely,

Scott Foster,
Communications Director
Hawaii Advocates For Consumer Rights
<<http://advocatesforconsumerrights.org/>>

SB-1483

Submitted on: 2/11/2019 2:45:45 PM

Testimony for HOU on 2/12/2019 1:20:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
	Individual	Oppose	No

Comments:

Aloha Committee Chair Chang -

Pls do not sell state land for personal use. This could set a precedent for the disposition of other state lands that may not be in the best interest of the community and state.

Mahalo,

Kathleen Pahinui



From: [Dorothy Letts](#)
To: [HOU Testimony](#)
Subject: SB 1483 SD1
Date: Monday, February 11, 2019 1:51:39 PM

February 11, 2019

To: Committee on Housing

Fr: Dee Dee Letts, Ka`a`awa Resident, Neighborhood Member

Cathy Mattoon, Punalu`u Resident, past Kahana Advisory Committee member,
Neighborhood Board Member

Re: Testimony Opposing SB 1483 SD1

We are testifying in opposition to this measure. Kahana Valley State Park was purchased by the tax payers of Oahu and is to our knowledge the only ahupua`a on Oahu that is within the public domain from the ocean to the mountains. Many people in the surrounding communities have donated countless hours to work with the State and the residents on advisory committees etc. to implement the intent of the legislation founding the park beginning in the 1970s.

The park cannot remain a park for public use if it is carved up into private ownership. If DLNR cannot manage the park then the State should put it under another agency that can. If that is not possible then the site should buy out the current residents for fair market value of the improvements they have put into their property and return the entire ahupua`a to park and recreational use. If the legislature feels that residential use is appropriate within the middle of this sensitive ahupua`a then they should rezone the land appropriately and put the land out to bid as require by state law so that the taxpayers may benefit from their purchase.

The ahupua`a was purchased for park use because of its uniqueness as a contiguous ahupua`a and to allow it to be carved up into private land holdings for a few residents negates the purpose of the park. It should remain a park for this unique reason. It is sad that DLNR cannot manage this area in the way that it should. Residences are being illegally built and no enforcement is taking place. Many have not lived up to the terms of their leases with no consequences. Maybe it is time that it became a park and fair compensation was paid to those who made improvements.

We would also like to express our support for the testimony of Hawai`i's Thousand Friends.