

DAVID Y. IGE
GOVERNOR



DENISE ISERI-MATSUBARA
INTERIM EXECUTIVE DIRECTOR

STATE OF HAWAII

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

Statement of
DENISE ISERI-MATSUBARA
Hawaii Housing Finance and Development Corporation
Before the

SENATE COMMITTEE ON JUDICIARY

February 24, 2020 at 12:00 p.m.
State Capitol, Room 016

In consideration of
S.B. 2036, S.D. 1
RELATING TO PUBLIC LANDS.

The HHFDC supports S.B. 2036, S.D. 1. The bill expands HHFDC's existing exemption from the definition of "public lands" in Chapter 171, HRS, by adding lands set aside to the HHFDC by Executive Order or leased to HHFDC by another State department or agency. This language will help to streamline the development process for affordable housing projects on State lands. It will minimize the number of approvals from the Department of Land and Natural Resources as a project moves forward from set-aside to the leasing, entitlement, financing, and development phases.

Thank you for the opportunity to provide written comments on this bill.



SB2036 SD1
RELATING TO PUBLIC LANDS
Ke Kōmike 'Aha Kenekoa o ka Ho'okolokolo

Pepeluali 24, 2020

12:00 p.m.

Lumi 016

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB2036 SD1, which seeks to amend the Hawai'i Revised Statutes (HRS) § 171-2 definition of "public lands," removing certain procedural safeguards found in HRS Chapter 171 for public lands set aside from the Governor or leased by other State departments or agencies to the Hawai'i Housing Finance and Development Corporation (HHFDC).

OHA greatly appreciates the amendments in the current draft of this measure, reflecting OHA's recommendations that State-owned lands set aside from the Governor or leased to HHFDC remain consistently protected against inappropriate alienation pursuant to HRS § 171-64.7. OHA is also grateful for the additional provision added to HRS § 201H-9, requiring (1) that lands set aside by the Governor to HHFDC be returned to the Public Trust administered by the Department of Land and Natural Resources, and (2) that lands leased to HHFDC by any State department or agency be returned to that department or agency when no longer needed by HHFDC for housing, finance, and development purposes. These amendments would better ensure the appropriate use and disposition of our public lands, including "ceded" lands, and further ensure clear and consistent oversight, accountability, and transparency in the potential sale or alienation of our limited public and "ceded" land base.

SB2036 SD1 contemplates a significant expansion of the public lands that could be leased under HHFDC's very flexible and liberal land disposition authorities. Currently HHFDC can give out extremely long-term, including 99 year leases, on the limited lands that HHFDC holds in fee; HHFDC may also lease or otherwise dispose of such lands for far less than fair market value, and without the auction or other requirements generally applicable to the disposition of public lands. SB2036 would allow a vast amount of public lands—which are overwhelmingly "ceded" lands to which Native Hawaiians maintain unrelinquished claims, and which are also largely public land trust lands, held for the benefit of native Hawaiians and the general public—to be leased or otherwise disposed of under HHFDC's broad leasing and disposition authorities. These lands are currently subject to the public transparency and accountability protections of HRS Chapter 171, which include lease length limitations (i.e. maximum aggregate lease period of 65 years), lease extensions prohibitions, and auction requirements; allowing these lands to be excepted from HRS Chapter 171 and instead subjecting them only to HHFDC's broad leasing and

dispositions authorities may foreclose, for a century or more, opportunities for Native Hawaiians to fully and directly realize the benefits from lands to which they have specific legal and moral claims.

As OHA has highlighted numerous times in the past, extremely long-term, multi-generational leases on “ceded” lands create a sense of entitlement on the part of lessees that has led to, and may continue to lead to, the alienation of public and “ceded” lands. Every year we see lessees attempt to change laws and policies to allow them to hold on to public lands for longer and longer periods. OHA strongly objects to the sale or alienation of “ceded” lands except in limited circumstances, and has significant concerns over any proposal that may facilitate the diminution of the “ceded” lands corpus. Accordingly, OHA cannot support a measure that may subject a significant amount of “ceded” lands to extremely long-term, 99-year leases.

Therefore, **OHA respectfully recommends reducing the lease term lengths applicable to the lands that may be set aside to or leased by HHFDC to a maximum of 75 years for affordable housing projects.**¹ OHA particularly recommends the following suggested language if there are no express benefits to Native Hawaiians in these housing projects.

By amending page 7 line 18 to page 8 lines 5, to read as follows:

~~“(e) (d) [The]~~ Subject to subsection (f), the corporation may lease or rent all or a portion of any housing project and establish and revise the rents or charges therefor. The corporation may sell, exchange, transfer, assign, or pledge any property, real or personal, or any interest therein to any person or government.

~~“(d) (e) [The]~~ The corporation may insure or provide for the insurance of its property or operations against risks as it deems advisable.

(f) Notwithstanding any law to the contrary, as it relates to the leasing of lands set aside by the governor to the corporation, or lands leased to the corporation from other state agencies, no lease shall be for a longer term than seventy-five years, provided that the aggregate of the initial term and any extension shall in no event exceed seventy-five years, provided further that the lease is for the primary purpose of providing affordable housing.”

Mahalo piha for the opportunity to testify on this measure.

¹ OHA acknowledges concerns regarding the potential for kūpuna without family or resources and those with special physical and health needs to outlive a 75-year lease; OHA is open to further discussions regarding whether additional statutory lease extension language can accommodate such exigent circumstances.



LATE

February 23, 2020

Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair
Senate Committee on Judiciary

Strong Support for SB 2036, SD1 RELATING TO PUBLIC LANDS (Clarifies that lands set aside to the HHFDC by the governor or leased to the corporation by other state departments and agencies are excluded from the definition of "public lands" and require approval from the legislature upon disposition. Requires that lands set aside by the governor or leased to the HHFDC be returned to the public trust or to the leasing agency if the HHFDC is no longer needed by the HHFDC.)

JDC Hrg: Monday, February 24, 2020, 12:00 p.m., in Conference Room 016

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and utility companies. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF and its members work closely with the Hawaii Housing Finance and Development Corporation (HHFDC) in efforts to increase the number of affordable housing units and housing for all income levels in Hawaii and LURF is in **strong support of SB 2036, SD1.**

SB 2036, SD1. This measure clarifies that lands set aside to the HHFDC by the governor or leased to the corporation by other state departments and agencies are excluded from the definition of "public lands" and require approval from the legislature upon disposition. Requires that lands set aside by the governor or leased to the HHFDC be returned to the public trust or to the leasing agency if the HHFDC is no longer needed by the HHFDC.

LURF's Position. This bill confirms that lands set aside to the HHFDC by a Governor's Executive Order (E.O.) for the primary purpose of affordable housing development are not "public lands" subject to the jurisdiction of the DLNR. If passed, this exemption will ensure clarity that HHFDC has jurisdiction over suitable state lands set aside to it by a Governor's E.O. and will streamline the development process for affordable housing by reducing the number of approvals required for projects located on state lands set aside to HHFDC.

For the reasons set forth above, LURF is **in support of SB 2036, SD1** and respectfully urges your favorable consideration of this bill.



SB 2036, SD1, RELATING TO PUBLIC LANDS

FEBRUARY 24, 2020 · SENATE JUDICIARY
COMMITTEE · CHAIR SEN. KARL RHOADS

POSITION: Support.

RATIONALE: IMUAlliance supports SB 2036, SD1, relating to public lands, which clarifies that lands set aside to the HHFDC by the governor or leased to the corporation by other state departments and agencies are excluded from the definition of "public lands" and require approval from the legislature upon disposition, and requires that lands set aside by the governor or leased to the HHFDC be returned to the public trust or to the leasing agency if the HHFDC is no longer needed by the HHFDC.

Today, **the lack of affordable housing exacerbates the economic insecurity suffered by local families, which sex traffickers use to prey upon potential victims with false promises of financial stability and prosperity.** Hawai'i residents face the highest housing costs in the nation, at more than twice the national average. Researchers who authored the National Low Income Housing Coalition's *Out of Reach 2019* report found that a full-time worker would need to earn \$36.82/hour to afford a two-bedroom apartment at fair market value in our state, with Honolulu experiencing a 67 percent increase in fair market rent between 2005 and 2015.

Average rent for a two-bedroom unit surpassed \$2,000 in recent years, with minimum wage workers needing to log 111 hours per week to afford a modest one-bedroom apartment at fair market value and 146 hours per week to afford a two-bedroom—a number that is equivalent to working over 20 hours a day with no days off year-round. In the past five years alone, Honolulu

rent has increased by more than 25 percent. While 43 percent of Hawai'i residents are renters (a number that does not include individuals and families renting outside of the regulated rental market), they earn an average wage of \$16.68/hour, according to NLIHC, scarcely enough to meet their basic needs.

One out of every four households in Hawai'i report that they are "doubling up" or are three paychecks or less away from being homeless, per the Hawai'i Appleseed Center for Law and Economic Justice. Additionally, 63 percent of households are severely cost-burdened, following NLIHC data, meaning that they pay more than 30 percent of their income for housing costs, a number that rises to 83 percent of extremely low-income households, with only 74 homes available for every 100 households earning 80 percent of their respective area's median income.

Unsurprisingly, our state is now experiencing population decline. Hawai'i saw domestic out-migration increase for a third consecutive year in 2019, as the state's high cost of living continued to push people to the mainland. Census estimates show that our state's population dropped by more than 4,700 people, to 1,415,872, from July 2018 to July 2019, when births, deaths, and migration were accounted for. That's the biggest numerical population drop since 2015 and it made Hawai'i one of just ten states in the country to lose population in 2019, according to the U.S. Census Bureau. People are simply being priced out of paradise.

Allowing public lands to be used for the development of affordable housing could lower the cost of affordable housing projects and, in turn, prices by eliminating the primary cost of such developments: land. We cannot continue to allow the islands to be used as a private Monopoly board for real estate speculators. To ensure that our islands are affordable for ourselves and future generations, we must take bold action *now* to increase our affordable housing supply for working families.

SB-2036-SD-1

Submitted on: 2/21/2020 1:44:05 PM

Testimony for JDC on 2/24/2020 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Edith Kawai	Individual	Oppose	No

Comments:

I oppose this measure as it is yet another opportunity for the Governor/State to deplete the public lands which are Trust lands, again depriving Hawaiian people of their rights and benefits.

Edith Kawai, 65-1234 Puu Opelu Road, Kamuela, HI 96743

LATE

SB-2036-SD-1

Submitted on: 2/23/2020 6:35:30 PM

Testimony for JDC on 2/24/2020 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments: