

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

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  
JUDICIARY**

**Friday, February 22, 2019  
9:00 AM  
State Capitol, Conference Room 229**

**In consideration of  
SENATE BILL 898, SENATE DRAFT 1  
RELATING TO LAND RECORDATION**

Senate Bill 898, Senate Draft 1 proposes to specify that the data requirements for land recordation by the Bureau of Conveyances (Bureau), on land other than fee simple timeshare interests deregistered by the land court, shall include a map and description prepared by a licensed surveyor. **The Department of Land and Natural Resources supports this measure.**

Thank you for the opportunity to comment on this measure.

The Honorable Senator Karl Rhoads, Chair  
The Honorable Senator Glenn Wakai, Vice Chair  
Senate Committee on Judiciary

Re: Hearing Date: Friday, February 22, 2019 at 9:00 am  
Testimony in support of Senate Bill 898, SD1

From: Karl Nishio, President, Hawaii Land Surveyors Association

I am writing in support of S.B. 898, S.D. 1. It will allow a means to rectify some of the inadequacies set forth in HRS 501-261.5, helping provide more oversight and a check of correctness of information when de-registering Land Court properties. It provides a means for the State Survey office to have a current status of the lands as they are the purveyors of such information for registered lands.

Our members of the association have been opposed to de-registration at its onset but have accepted it is the current state of being although it presents challenges to the land surveying profession. As it appears now, more burden has been placed upon the survey professional to ascertain title/ownership of a subject property and complicates matters in mapping and descriptions.

This bill will help keep the information necessary for land matters in an organized and traceable manner to be more beneficial for the public and professional community.

Thank you for your time and consideration with this.

Karl Nishio  
President  
Hawaii Land Surveyors Association

McCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

CHARLES E. PEAR, JR.  
ATTORNEY AT LAW

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February 21, 2019

Senator Karl Rhoads, Chair  
Senator Glen Wakai, Vice Chair  
Members of the Senate  
Committee on Judiciary  
Thirtieth Legislature  
Regular Session, 2019

Re: S.B. 898, S.D.1  
Hearing on February 22, 2019, 9:00 a.m.  
Conference Room 016

Dear Chair, Vice Chair and Members of the Committee:

My name is Charles Pear. I am testifying as legislative counsel for ARDA Hawaii.

ARDA Hawaii opposes S.B. 898, S.D.1.

As stated in Section 1 of the bill, "The land court provides a systemic and logical process for the mapping and indexing of land and the recording of transactions and encumbrances on land titles, such as mortgagees, liens, leases, claims, and taxes."

In fact, when a petition is first submitted to the Land Court for registration, it must include a survey. See §501-51, HRS. The survey must be made by a or under the direction of a person who is both a registered professional surveyor and who has been qualified and registered to practice in the Land Court. See Land Court Rule 101, which provides as follows

Rule 101. Surveys, Descriptions and Maps.

(1) The field survey made for the purpose of registering title to, or subdividing registered land, shall be made on the ground by or under the direct supervision of a registered professional surveyor duly licensed under the laws of the state who shall also have been found qualified by the judge and registered to practice in the land court, and whose registration to practice therein remains unrevoked.

If a parcel of property registered with the Land Court is subsequently subdivided, a new map must be filed with the Land Court. The new map must contain a metes and bounds description of the subdivided land. See Land Court Rule 104, which provides in part:

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Five Waterfront Plaza, 4<sup>th</sup> Floor • 500 Ala Moana Boulevard • Honolulu, Hawai'i 96813  
Telephone: (808) 529-7300 • Fax: (808) 524-8293 • E-mail: info@m4law.com

#### Rule 104. Subdivision Maps

(1) A subdivision map filed after the decree is entered and original certificate issued shall delineate the metes and bounds and area of each lot or parcel of land within the subdivision and shall conform to the requirements for a map filed with an original application, eliminating however all reference to conveyances from the government from which original title was derived; there shall also be inscribed on the map the name of the owner of, and the number of the certificate of title covering the land.

A sample subdivision map is attached hereto as Exhibit A. If your eyes are good enough, you should be able to see two things: (1) The subdivision map was prepared by a registered professional land surveyor; (2) The map shows a metes and bounds description of the boundaries of each lot.

For the past 22 years, I have been working on Land Court reforms, initially at the request of the Office of the Assistant Registrar of the Land Court and later at the request of ARDA. I am currently working informally with a group formed by the Office of the Assistant Registrar of the Land Court to assess how to further streamline the Land Court with respect to non-time share matters.

Over the years, we have deregistered leasehold time share interests and then deregistered fee time share interests and allowed non-timeshare property owners to deregister their lands as well.

Many time share projects are mixed use condominiums. These have resort units that contain fee time share interests as well as resort and perhaps residential units that are not submitted to the time share plan. In addition, many mixed use time share condominiums also contain commercial units.

As a result of the mandatory deregistration of all time share interests, these mixed use condominium projects become dual system projects. For example, all amendments to the condominium documents must be recorded in both the Bureau and the Land Court.

Developers can avoid this by deregistering the non-time share portions of the project. The current procedure seems to be effective to accomplish this.

S.B. 898, S.D.1 proposes to add an additional step to deregister the non-time share property. Essentially, the bill would require that a property owner hire a surveyor. The surveyor would then prepare a new survey. The new survey would contain a description of the land shown on the survey currently on file as a Land Court Map.

This seems like needless duplication and expense. In addition, it may complicate and delay the completion of the deregistration process.

There may also be unexpected side effects. For example, owners in some condominiums have deregistered their own (non-time share) condominium units. Consider how this might work in the case of a large condominium of, say 200 units. First one owner deregisters and must obtain and record a new survey in the Bureau. Then another owner deregisters and must obtain and record a new survey. Then another and another. This could quickly become unmanageable. And the Bureau would potentially be cluttered by multiple surveys, possibly creating concerns with how best to search title and, if there are inconsistencies, how best to determine which survey is correct. Of course, there should not be inconsistencies, since the survey filed as the Land Court Map already contains the metes and bounds description of the property.

Act 181 of the 2017 Session Laws repealed Chapter 514A as of January 1, 2019. HB811 and SB552 propose to extend that deadline. I have been advised, informally, that one reason for the extension is that there were not enough surveyors in one county to allow developers to meet the transition requirements of Act 181. If this is true, imposition of a new survey requirement for deregistrations may make that situation even more difficult.

Finally, I understand that there may be some concern about how best to describe the derivation of title to deregistered land. In a nutshell, when a petition to register land is filed with the Land Court, the petition must show the title details.<sup>1</sup> The court then assesses the claim to title asserted by the petitioner and makes a judicial determination whether to decree that title is vested in the petitioner. Essentially, this amounts to a quiet title proceeding and results in a court declaration of who holds title. See §501-71, H.R.S. From that point forward, it is no longer necessary to refer back to the original derivation of title. Instead, reference is made to the judicial proceeding by which title is determined.

The deregistration of land does not affect this. §501-262 expressly addresses this, stating:

(b) Neither voluntary deregistration of land other than a fee time share interest nor the mandatory deregistration of any fee time share interest pursuant to part II of this chapter, whether by recordation of a certificate of title in the bureau of conveyances prior to July 1, 2012, or by operation of law thereafter, shall disturb the effect of any proceedings in the land court where the question of title has been determined. All proceedings had in connection with the registration of title that relate to the settlement or determination of

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<sup>1</sup> Rule 101. Surveys, Descriptions and Maps \* \* \* (5) The map shall be in two parts showing as far as practicable the drawing of the plat of the land on the left-hand side with true north pointing towards the top and on the right-hand side near the top of the map, the title of the court, the number and title of the cause and reference to the locality in which the land is situated which shall include the number of the award and name of awardee, or the number of the patent or grant, or other class of original title, and the name of the patentee or grantee, the ili, and ahupuaa, district and island, and any local name in common use together with a brief general description of the land sufficient to identify the same; all writing shall have a space not less than 2/10 of an inch between the written lines. The scale to which the plat is drawn shall also be noted. Beneath this, sufficient space, approximately 2 ½ inches, shall be reserved for signatures, certificates, orders of the court and other writings. [Emphasis added.]

Chair, Vice Chair and Members,  
Senate Committee on Judiciary  
February 21, 2019  
Page 4

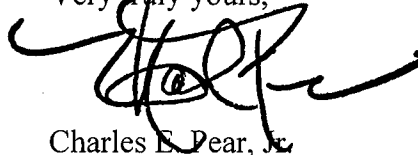
title to deregistered land before the date and time of deregistration, and all provisions of this chapter that relate to the status of the title, shall have continuing force and effect with respect to the period of time that title remained under the land court system. \* \* \*

Accordingly, we see no need to prepare a survey for the purpose of identifying the derivation of title.

We have great respect for the surveyors in our community. Perhaps we are overlooking something. If so, we would be happy to discuss it with the interested parties. As anything involving the Land Court must be addressed ever so cautiously, it might be wise to expect this to take place in the period between the end of this legislative session and the start of the next one.

Thank you for your kind consideration of these thoughts.

Very truly yours,

A handwritten signature in black ink, appearing to read "Charles E. Pear, Jr.", with a stylized flourish extending to the right.

Charles E. Pear, Jr.

CEP:kn

# Exhibit A

MAP 700

LAND COURT  
STATE OF HAWAII  
LAND COURT APPLICATION 1069

SUBDIVISION OF LOT 9400  
AS SHOWN ON MAP 699  
INTO LOTS 9402 TO 9439, INCLUSIVE  
AND DESIGNATION OF  
EASEMENTS 4528 TO 4732, INCLUSIVE

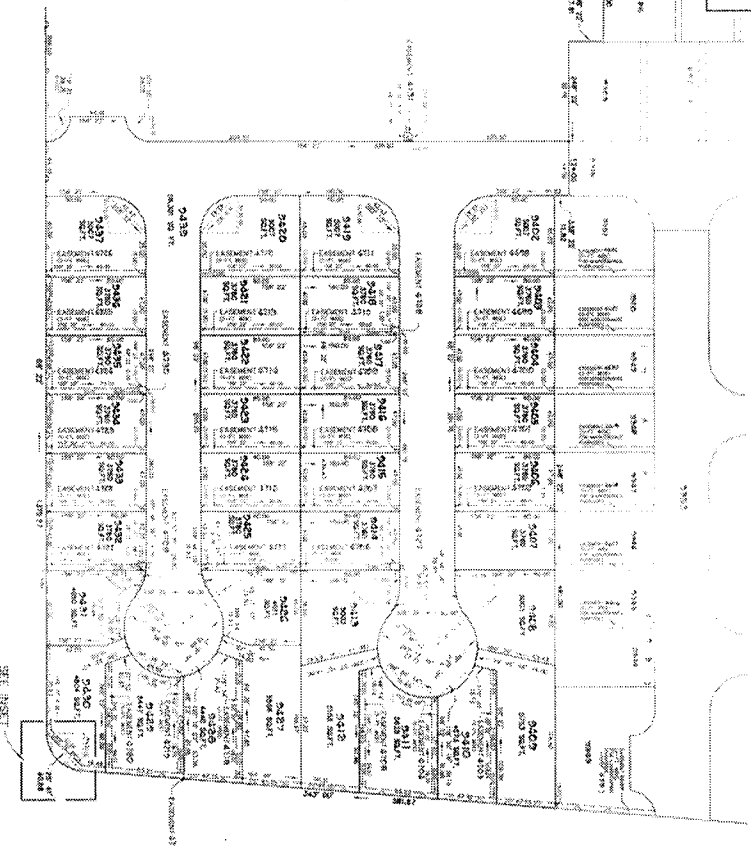
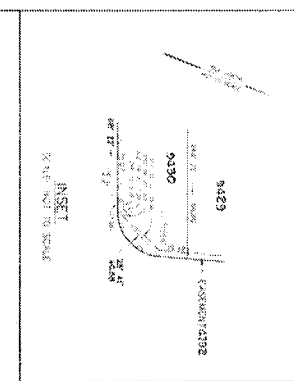
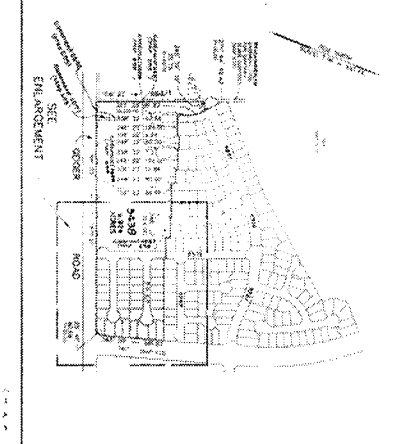
AT HONOLULU, HAWAII, CHUK HANAU

PLANNING, INC.  
1000 Kalia Road  
Honolulu, Hawaii 96813  
Phone: 808-955-1111  
Fax: 808-955-1112



OWNER: STATE DEVELOPMENT COMPANY  
TRANSFEREE: STATE OF HAWAII

APPROVED AND SUBMITTED IN FIDELITY OF THE AGENT  
OF THE LAND COURT: JANEY L. BROWN  
BY POWER OF THE COURT  
JANEY L. BROWN  
CLERK OF THE LAND COURT



ENLARGEMENT  
SCALE 1" = 100'

NOTES:

EASEMENT NUMBER	AREA OF EASEMENT (SQ. FT.)	PROPOSED USE	LOTS AFFECTED
4528	100	WATERWAY	9402, 9403
4529	100	WATERWAY	9404, 9405
4530	100	WATERWAY	9406, 9407
4531	100	WATERWAY	9408, 9409
4532	100	WATERWAY	9410, 9411
4533	100	WATERWAY	9412, 9413
4534	100	WATERWAY	9414, 9415
4535	100	WATERWAY	9416, 9417
4536	100	WATERWAY	9418, 9419
4537	100	WATERWAY	9420, 9421
4538	100	WATERWAY	9422, 9423
4539	100	WATERWAY	9424, 9425
4540	100	WATERWAY	9426, 9427
4541	100	WATERWAY	9428, 9429
4542	100	WATERWAY	9430, 9431
4543	100	WATERWAY	9432, 9433
4544	100	WATERWAY	9434, 9435
4545	100	WATERWAY	9436, 9437
4546	100	WATERWAY	9438, 9439

MAP 700  
DATE: 10/15/2010

Senator Karl Rhoads, Chair  
Senator Glenn Wakai, Vice Chair  
Committee On Judiciary



From: Meyer Cummins, LPLS  
Date: Thursday, February 22, 2018  
Subject: In Favor of SB 898 SD 1 Relating to Land Recordation

Honorable Senator Karl Rhoads, Chair, Honorable Senator Glenn Wakai, Vice Chair, and members of the Committee On Judiciary

Thank you for allowing me to testify in favor of Senate Bill 898 SD 1.

My name is Meyer Cummins and I am a land surveyor licensed to practice in the State of Hawaii. I am also the Vice President of the Hawaii Land Surveyors Association which represents a majority of the licensed land surveyors in the State.

Existing Land Court Deregistration legislation described in HRS Chapter 501-261 does not ensure that land owners who voluntarily deregister their property from the Land Court Registration system are in possession of a proper map and legal description of their land to replace those that become inaccurate and inapplicable immediately after deregistration.

Maps and legal descriptions are instruments that outline the bounds, area, and location of land but they also describe and delineate the entitlements and encumbrances associated with that land. A property owner should have full knowledge of said entitlements and encumbrances to not only fully exercise their own rights but to also be made aware of the limits on those rights so as not to infringe on the rights of their neighbors.

Due to this important issue, the Board of the Hawaii Land Surveyors Association was asked by its membership to craft a bill to correct the issue of title ambiguity and lack of proper documentation for those lands that are deregistered from the Land Court. The HLSA Board has spent two years meeting/and or discussing with property owners, land surveyors including Russell Higa, the Maui County Surveyor, and Chrystal and Nick Yamasaki with Wes Thomas Associates on the Island of Hawaii, who have submitted testimony in favor of this bill, with Reid Siarot the State Land Surveyor, Carol Ackerman, the Bureau of Conveyances Land Court Branch Chief, Leslie Kobata the Registrar of the Bureau of Conveyances, who has assured me that he supports the intent and spirit of the Bill, Lorrin Hirano of Title Guaranty, and other title professionals to get input on crafting a bill aimed at fixing the issue. We have also reached out to the Planning Departments of all the counties and on the whole did not receive any negative feedback. Our efforts have produced Senate Bill 898 SD 1.



Senate Bill 898 SD 1 attempts to amend existing Land Court Deregistration legislation by requiring land owners who wish to voluntarily deregister their property from the Land Court Registration system to submit to the Bureau of Conveyances a map and legal description of their land prepared in accordance with Chapter 502 by a licensed land surveyor for review and approval by the State Land Surveyor. This amendment will ensure that lands deregistered in the Land Court have the proper documentation describing their original land titles, encumbrances and rights that is expected of every other piece of land not registered in the Land Court.

Mahlo nui for this opportunity to testify. Should you have any questions, I can be reached at (808)294-3051 and will make myself available for questions.

Meyer Cummins, LPLS

**Senator Karl Rhoads, Chair**  
**Senator Glenn Wakai, Vice Chair**  
**Senate Judiciary Committee**  
**SB898 SD1**

**Relating to Land Recordation**

Testimony by Joanne Williamson, LPLS

Affiliations: Hawaii Licensed Professional Land Surveyor

National Society of Professional Surveyors, Hawaii Director

Senior Land Surveyor, Hawaiian Electric Company

(808) 436-6725

February 22, 2019

9:00 AM

Room 016

Thank you for allowing my testimony in strong support of SB898 SD1

My name is Joanne Williamson and I am a Licensed Professional Land Surveyor and Land Court Land Surveyor, having been in the surveying profession for the past twenty-five (25) years in the State of Hawaii.

Surveyors are tasked with writing property descriptions based on their professional expertise in discerning the boundaries, as well as identifying the land title, of the land being described. The surveying profession requires both a working knowledge of Hawaiian land history and current legislation and regulatory processes. Additionally a professional surveyor has a mandate is to guard the integrity of land boundaries for the public which we serve.

SB898 SD1 addresses the inherent ambiguity created by the original deregistration legislation. Accurate mapping clearly supports the public interest in what is often the most substantial investment most of us will ever make. Refining the deregistration process assures the continuity of Hawaiian land title moving forward and clearly identifies the original status of deregistered lands. Utilizing the existing mapping processes at the State Survey office additionally saves both time and expense for future owners of these lands.

Thank you for your consideration.

**SB-898-SD-1**

Submitted on: 2/20/2019 10:35:26 AM

Testimony for JDC on 2/22/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
clayton kaneshiro	Individual	Support	No

Comments:

Rep. Karl Rhoads, Chair

Rep. Glenn Wakai, Vice Chair

Thank you for allowing me to submit testimony supporting SB898 SD1. I am a licensed surveyor and licensed to perform Land Court surveys in the State of Hawaii. I have been in the surveying profession for over 28 years. 17 of those years were with the State Land Survey Division. I feel SB898 proposes a necessary procedure to ensure the welfare of the property owner. Once an owner deregisters the property from Land Court, it is no longer guaranteed clear title and is recorded in the "regular" system. In doing so, the original land title should be identified, as the Land Court does not create nor replace original land titles. This bill will address the ambiguity created by the original deregistration process and ensure the continuity of land title to the property and provides a process which will allow continuity of the recordation of the deregistered land.

Thank you,

Clayton Kaneshiro, LPLS

**SB-898-SD-1**

Submitted on: 2/21/2019 7:54:13 AM

Testimony for JDC on 2/22/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jeffrey Sato	Individual	Support	No

Comments:

I am writing in support of Senate Bill 898 SD1. Thank you for carefully considering the concerns of the Hawaii Land Surveyors Association and the private surveyors.

I am licensed in the State of Hawaii as both a land surveyor and civil engineer and have worked at two local civil engineering and land surveying firms over the past 30 years. Additionally, I am also a Land Court Surveyor and a member of the Hawaii Land Surveyors Association. The primary focus of my career has been subdividing residential, commercial and industrial land on Oahu.

Senate Bill 898 SD1, and its amendments, addresses my concerns regarding deregistration of Land Court parcels.

Thank you for allowing me the opportunity to comment on this bill.

**SB-898-SD-1**

Submitted on: 2/21/2019 9:58:24 AM

Testimony for JDC on 2/22/2019 9:00:00 AM



<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Andy Harada	Individual	Support	No

Comments:

I am a Professional Licensed Land Surveyor with forty eight years of experience in land surveying. Licensed to practice in the State of Hawaii since 1987. I am also registered to practice in the Land Court of the State of Hawaii. I am currently working for a local Engineering and Surveying company. Affiliations: National Society of Professional Surveyors and Hawaii Association of Lands Surveyors.

I support the changes to Section 501-261.5. Hawaii Revised Statutes. The changes are necessary to ensure the transition of land, registered with the Land Court and to unregistered land, will be done in the proper manner. Currently, unregistered land maps and descriptions are filed under 502-17, unregistered land, being the lands not registered within the land court system. Hawaiian Land Titles by Robert D. King, he wrote "Land Court title does not annul or cancel out the original titles derived by a Land Commission Award, a Royal or Land Patent (Grant) or a Kamehameha Deed." Thus when Land Court lot or lots are deregistered, the underlying original land title(s), must be used for the mapping and included in metes and bounds descriptions for said lot(s) and recorded in the State of Hawaii Bureau of Conveyances.

Sincerely,

Andy R. Harada, LPLS