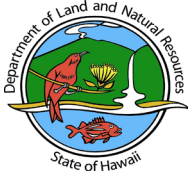


DAVID Y. IGE  
GOVERNOR OF HAWAII



**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 Committees on  
WATER AND LAND  
and  
AGRICULTURE AND ENVIRONMENT**

**Friday, February 12, 2021  
1:15PM**

**State Capitol, Via Videoconference, Conference Room 229**

**In consideration of  
SENATE BILL 226  
RELATING TO LAND EXCHANGE**

Senate Bill 226 proposes to temporarily allow the Governor to negotiate land exchanges to acquire lands suitable for long-term diversified agricultural production in return for state lands to be developed for affordable, workforce and other housing. The measure also proposes to require legislative approval for land exchanges and a report to the Legislature. **The Department of Land and Natural Resources (Department) respectfully opposes this bill.**

The Department has four parcels adjacent or in close proximity to the planned Keone`ae rail station in East Kapolei across from the University of Hawaii West Oahu (UHWO), which would be impacted by this measure. The Department's long-term objective is to lease the parcels for income generating purposes to support the Department's natural resource management and protection programs. The income generated from this project is intended to fund such programs as:

- Operation and beach restoration projects through the Office of Conservation and Coastal Lands;
- Funding of key positions and implementation of priority projects and programs of the Commission on Water Resource Management;
- Lifeguard services for the Division of State Parks;
- Dam safety initiatives and flood control programs through the Engineering Division; and
- Threatened and endangered species protection, invasive species control, wildland fire suppression, watershed protection and restoration and natural area reserves through the Division of Forestry and Wildlife.

**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

The Department also appreciates the critical need for affordable housing. To help address this need, the Department's planned uses for the parcels include 1,000 affordable rental housing units. Other proposed uses include transit oriented mixed uses including commercial, retail, hotel, and medical. Additionally, the Department intends to include light industrial uses for parcels located further away from the rail station. In addition to generating income to support its programs, the Department believes that the proposed project will be a critical economic, employment and residential component of the East Kapolei community. The Board of Land and Natural Resources (Board) approved the draft strategic development plan that included those proposed uses at its meeting on October 23, 2020. The Department is currently in the process of procuring consultant services to develop an Environmental Impact Statement for the project.

The Department has received support from the Hawaii Interagency Council for Transit Oriented Development and the State Office of Planning for the development of these parcels. In addition to the Department, lands managed by University of Hawaii, the Aloha Stadium Authority and other public agencies located along the rail line are also intended to be developed for income generation purposes. The revenue generated from these agencies goes to support green programs and other public recreational and educational programs.

The Department considers the bill's language deficient regarding providing adequate safeguards to protect the public interest with the alienation of public land. To ensure that the public purpose of affordable housing is fulfilled by the private party, a covenant or reversionary interest in favor of the State should be required as part of any exchange. The measure is particularly adverse regarding to the Department's obligation as steward of the State's public lands. SECTION 2, subsection (a) of the bill usurps the authority of the Land Board by bestowing upon the Governor the sole authority to execute land exchanges pursuant to this measure. As the Board conducts its decision making in an open, sun-shined meeting, this would drastically reduce transparency and public accountability for actions that significantly impact the public land trust.

Additionally, SECTION 2, subsections (d) and (e)(3) of the bill as written appears to nullify the discretionary authority of the Land Use Commission and the appropriate county agencies to reclassify or rezone lands. Rather, the measure appears to compel such action by gubernatorial fiat. Furthermore, SECTION 2, subsection (e)(4) states that "Private development of housing or mixed-uses on private lands initiated pursuant to this Act, shall be exempt from all applicable state and county procurement requirements, impact fees, and other exactions...". This appears to confer an additional, unwarranted benefit on lands exchanged by State by exempting waiving impact fees (such as for school construction) over similar projects constructed on other private land. Finally, the Department opposes any potential obligation to incur costs of reclassifying and rezoning state-owned lands, only to convey ownership of such lands to a private entity that will ultimately reap the benefit of such action.

Thank you for the opportunity to comment on this measure.

**SB-226**

Submitted on: 2/11/2021 11:05:29 AM

Testimony for WTL on 2/12/2021 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Aaron Setogawa	Testifying for Office of Planning	Comments	No

Comments:

I am available for questions.



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February 12, 2021

HEARING BEFORE THE  
SENATE COMMITTEE ON WATER AND LAND  
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

**TESTIMONY ON SB 226**  
RELATING TO LAND EXCHANGE

Conference Room 229  
1:15 PM

Aloha Chairs Inouye and Gabbard, Vice-Chairs Keith-Agaran and Nishihara, and Members of the Committees:

I am Brian Miyamoto, Executive Director of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

**The Hawaii Farm Bureau supports SB 226**, which allows the governor to negotiate land exchanges to acquire lands that are suitable for long-term diversified agricultural production.

Tenured access to lands is important for viable agricultural operations. Assurance of access to lands encourages investment and commitment to long term operations. Hawaii has many multigenerational farm operations. Expansion of these types of operations will require assurance to land and water.

This measure addresses one of these needs – land. The exchange process proposed is a good use of resources. Actual cash expenditures can be used for infrastructure improvements and other incentives that are inevitable. Land alone will not ensure a viable agricultural enterprise.

HFB respectfully requests your strong support of SB 226 to advance agriculture into the next generation.

Thank you for the opportunity to provide testimony on this measure.

**DAVID Y. IGE**  
Governor

**JOSH GREEN**  
Lt. Governor



**JAMES J. NAKATANI**  
Executive Director

STATE OF HAWAII  
**AGRIBUSINESS DEVELOPMENT CORPORATION**

235 S. Beretania Street, Room 205  
Honolulu, HI 96813  
Phone: (808) 586-0186 Fax: (808) 586-0189

**LATE**

TESTIMONY OF JAMES J. NAKATANI  
EXECUTIVE DIRECTOR  
AGRIBUSINESS DEVELOPMENT CORPORATION

BEFORE THE COMMITTEE ON WATER AND LAND AGRICULTURE AND  
ENVIRONMENT

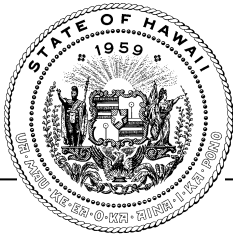
Friday, February 12, 2021  
1:15 p.m.

SENATE BILL NO. 226  
RELATING TO LAND EXCHANGE

Chairperson Inouye, Chairperson Gabbard, and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 226. The Agribusiness Development Corporation (ADC) strongly supports Senate Bill No. 226, which temporarily allows the governor to negotiate land exchanges to acquire lands suitable for long-term diversified agricultural production in return for state lands to be developed for affordable, workforce, and other housing and requires legislative approval for the land exchanges. Report to the Legislature.

Arable land is the most critical component in agriculture and cannot be developed unlike infrastructure and improvements. The cost for suitable agricultural lands continues to rise and is becoming too expensive for farmers to acquire on their own. Agricultural lands and open spaces across the state, which serve as buffer zones between urban and rural areas are facing threats of being developed and lost forever. The ADC appreciates and supports the Legislature's efforts to come up with creative ways to preserve agricultural lands for future generations.



# OFFICE OF PLANNING STATE OF HAWAII

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DAVID Y. IGE  
GOVERNOR

MARY ALICE EVANS  
DIRECTOR  
OFFICE OF PLANNING

Statement of  
**MARY ALICE EVANS**  
Director, Office of Planning  
before the  
**SENATE COMMITTEE ON WATER AND LAND AND  
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT**  
Friday, February 12, 2021  
1:15 PM  
State Capitol, Conference Room via Videoconference

in consideration of  
**SB 226**  
**RELATING TO LAND EXCHANGE.**

Chairs Inouye and Gabbard, Vice Chairs Keith-Agaran and Nishihara, and Members of the Senate Committees on Water and Land and Agriculture and Environment.

The Office of Planning (OP) offers **comments** on SB 226 that allows the Governor to negotiate land exchanges to acquire lands suitable for long-term diversified agricultural production in return for State lands within a one-half mile radius of any rail transit station to be developed for affordable, workforce, and other housing.

OP supports measures that promotes the production of affordable housing. State agencies with lands within the vicinity of rail transit stations are members of the Hawaii Interagency Council for Transit-Oriented Development and are already planning projects including affordable housing to develop these parcels. State agencies are also obligated to use these lands in the most efficient and effective manner to support their core mission. An exchange of agricultural land for more financially lucrative urban land, especially within a half-mile radius of a rail transit station, may impede this effort.

OP also supports measures that promote diversified agriculture and long-term agricultural self-sufficiency, and recognizes not only the need to preserve the most productive agricultural lands, but also other necessary elements for agricultural sustainability such as financing, water infrastructure, labor, and training.

Thank you for this opportunity to testify.



**SB226**  
**RELATING TO LAND EXCHANGE**  
Senate Committee on Water and Land  
Senate Committee on Agriculture and Environment

February 12, 2021

1:15 p.m.

Room 229

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on SB226. While OHA appreciates the intent of this measure to support local food production, while simultaneously attempting to mitigate the severity of the housing crisis through the development of affordable and workforce housing, **OHA does recommend the addition of specific provisions to facilitate public participation, address public trust interests, protect traditional and customary practices, and further promote the realization of affordable housing in any land exchanges that may occur under this measure.**

Given the significance of our limited public land base to the public, including Native Hawaiians, OHA believes that public scrutiny and input can provide an important check against political and other pressure on State negotiators, which may otherwise result in exchange arrangements that are less than fair to the State, the public, and Native Hawaiians. It can also help to discourage the use of political pressure by private entities to procure favorable deals in the exchange of public lands. Public scrutiny and input may also reduce questions and speculation of favoritism and the erosion of public confidence in the State's administration of our public land base. Finally, it can minimize potential legal challenges post-factum. **With the State's recognition that its "ultimate decision-making power" is vested in the people,<sup>1</sup> OHA respectfully recommends consideration of the overwhelming weight of public interest in the disposition and exchange of our public lands, by providing specific provisions that allow for public participation and review.**

Public and agency review and input would also assist the governor in fulfilling the State's public trust obligations in negotiating land exchanges – and could serve to mitigate negative impacts to Hawai'i's natural and cultural resources. In *Ka Pa'akai*, the Hawai'i Supreme Court stated that the LUC must at a minimum make specific findings and conclusions as to 1) the identity and scope of "valued, cultural, historical, or natural resources," 2) the extent to which those resources – including Native Hawaiian traditional customary rights – will be affected, and 3) the feasible action that the LUC can take to reasonably protect Native Hawaiian rights. Through the *Ka Pa'akai* analysis, the LUC is able to place conditions on district boundary amendments to mitigate impacts to Native Hawaiian traditional and customary practices and the resources they rely upon. SB226's

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<sup>1</sup> HRS § 92-1.

grant of authority to the governor to negotiate land exchanges may inadvertently result in exchanges that fail to take into consideration the potential impact of negotiated land exchanges on the valued, cultural, historical, or natural resources of those lands and the extent to which those resources, including Native Hawaiian traditional customary rights, can be protected. **OHA recommends that the LUC, county planning directors, and public be given sufficient opportunity to review and comment on proposed reclassifications and appraisals, including with regards to potential impacts to Native Hawaiian traditional and customary practices, as part of the State's due diligence in ensuring exchanges are fair and reflect the interests of the public and Native Hawaiians.**

In addition to the general public's interest in the disposition of its public resources, the Native Hawaiian community also has a particular interest in the disposition and exchange of our public lands, much of which are "ceded" lands acquired without the consent of the Native Hawaiian people, and to which Native Hawaiians have never relinquished their claims. **OHA requests express provisions affirming that private lands exchanged for ceded or public land trust lands assume the ceded or public land trust lands character of the exchanged lands.**

Finally, OHA notes that SB226 would offer incentives to developers in the form of highly valuable land exchanges; OHA suggests that express minimum affordability standards be required to more adequately meet the demand of our residents.

Based on the above, OHA respectfully offers the following amendments to be added as additional paragraphs after page 5, line 4, to read as follows:

- "(3) Prior to the submission of a draft resolution to the legislature to approve the exchange under section 171-50, Hawaii Revised Statutes, the governor, or governor's designee, shall hold an informational briefing on the proposed exchange and shall allow all interested persons to submit testimony, orally or in writing, in conjunction with the briefing;
- (4) Lands received by the state under this Act shall assume the ceded or trust land status of the parcel for which they were exchanged; and
- (5) In the event that the legislature fails to approve of an exchange under this Act, any lands that had been intended for exchange and that were reclassified or rezoned by the Governor, pursuant to subsection (e) (3), shall automatically revert to the classification or zoning held prior to



action by the Governor pursuant to subsection (e) (3)."

OHA further recommends deleting the language found on page 6, lines 5-8, requiring the reclassification of lands to take place within 30 days, as follows (language to be deleted from the bill is stricken):

"(3) The governor may submit notifications and supporting information, as necessary for the purposes of this Act, to the land use commission and the planning director for the appropriate county for any necessary reclassification and rezoning of land; ~~provided that the reclassification and rezoning shall be adopted within thirty days of receipt of the governor's notification;~~"

Finally, OHA recommends amending page 6, lines 9-13 to read as follows:

"(4) Private development of housing on private lands shall be exempt from all applicable state and county procurement requirements, impact fees, and other exactions, to the extent that the residential portion of developments meet the requirements of subsection (a) of section 201H-38; and"

Mahalo for the opportunity to testify.



Email: [communications@ulupono.com](mailto:communications@ulupono.com)

SENATE COMMITTEES ON WATER & LAND AND AGRICULTURE & ENVIRONMENT  
Friday, February 12, 2021 — 1:15 p.m.

**Ulupono Initiative supports SB 226, Relating to the Land Exchange.**

Dear Chair Inouye, Chair Gabbard, and Members of the Committees:

My name is Micah Munekata, and I am the Director of Government Affairs at Ulupono Initiative. We are a Hawai'i-focused impact investment firm that strives to improve quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food; renewable energy and clean transportation; and better management of freshwater and waste.

**Ulupono supports SB 226**, which temporarily allows the governor to negotiate land exchanges to acquire lands suitable for long-term diversified agricultural production in return for state lands to be developed for affordable, workforce, and other housing and requires legislative approval for the land exchanges.

Ulupono supports the State's local food production efforts and recognizes the need to have viable agricultural land to meet these ambitious goals. The State must find innovative ways to address food security issues by acquiring agricultural lands. As we have seen during this pandemic, local food producers are extremely important to meet the community's hunger needs as many have looked to feed their families with fresh, local products. This bill encourages future agricultural production while also addressing the State's housing crisis.

We appreciate this committee's efforts to look at policies that support local food production and increase our state's food security and resilience.

Thank you for this opportunity to testify.

Respectfully,

Micah Munekata  
Director of Government Affairs

*Investing in a Sustainable Hawai'i*

**LATE**

**SB-226**

Submitted on: 2/11/2021 8:29:44 PM

Testimony for WTL on 2/12/2021 1:15:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Juanita Brown Kawamoto	Individual	Support	No

Comments:

I support SB226 with amendment to acknowledge potential conflict should these lands affect potential public trust lands or ceded lands that are still to be determined.

Mahalo for the opportunity to testify.

Me ka mana'o nui,

Juanita Mahienaena Brown Kawamoto