

DAVID Y. IGE
GOVERNOR OF
HAWAII



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 Committees on
WATER AND LAND
and
ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

Wednesday, March 23, 2022
3:10 PM

State Capitol, Conference Room 224, Via Videoconference

In consideration of
HOUSE BILL 1788, HOUSE DRAFT 2
RELATING TO WAIAKEA PENINSULA REDEVELOPMENT

House Bill 1788, House Draft 2, proposes to: (1) Establish the Waiakea Peninsula Redevelopment District (WPRD) and Waiakea Redevelopment and Planning Committee (Committee) for the redevelopment of public lands on the Waiakea Peninsula in Hilo, Hawaii; (2) Establish the WPRD Revolving Fund; and (3) Make an appropriation. House Draft 2 of the measure makes the following changes: (i) Amends the purpose section to further explain the need for the measure and distinguish the Waiakea Peninsula from other public lands; (ii) Renames the “Waiakea Planning Committee” as the “Waiakea Redevelopment and Planning Committee” and clarifies that the Committee is a redevelopment and planning committee; (iii) Deletes language transferring the management of public lands within the WPRD to the Committee; (iv) Deletes language that authorized the Committee to lease public lands in the WPRD; (v) Clarifies that the Committee’s authorization to renew or renegotiate any lease in connection with any project contained in the redevelopment plan for the WPRD be on terms and conditions as the Committee deems advisable; and (vi) Makes technical, non-substantive amendments for the purposes of clarity, consistency, and style. **The Department of Land and Natural Resources (Department) opposes this measure.**

The Department has engaged in significant renewal over the past several years of the two signature Banyan Drive hotels and a signature restaurant, and has been actively working on the appropriate disposition for two more. The Department does not believe establishing a redevelopment district will accelerate this ongoing process.

One of the main concerns the Department has with this bill is that it directs all the revenues from the Department's leases on the Waiakea Peninsula to the WPRD Revolving Fund (apparently after deduction of the 20% required by law¹ to fund the annual \$15.1 million annual payment to the Office of Hawaiian Affairs). As a result, the Department must continue to perform all the management responsibilities of the leases yet receive no revenue from them. This does not match income to expenditures.

Rather, all the Department's lease management responsibilities should be tied to the revenue recipient under any scenario, including all costs of lease management, including, without limitation, appraisal, mediation and arbitration costs, administrative time and costs related to billing, monitoring lease compliance, including posting of insurance, performance bonds, rent collections and inspections, as well as vacant property homeless occupant management, compliance management, capital demolition and construction costs.

House Draft 2 of the measure authorizes the Committee to renew or renegotiate any lease in connection with any project contained in the redevelopment plan for the WPRD on terms and conditions the Committee deems advisable. However, the Committee appears not to have authority to issue new leases. In the Waiakea Peninsula area, there are currently four leases: (1) General Lease No. S-3961 to Hilo-Hawaiian Associates, Inc.; (2) General Lease No. S-4786 to Hilo Trading Company Ltd.; (3) General Lease No. S-5018 to Bayview Banyan Corp.; and (4) General Lease No. S-5844 to WHR LLC. There are two additional properties on month-to-month revocable permits and one former lease site that is now unencumbered. The Committee would apparently not have authority to approve new dispositions for the unencumbered property or the lands under revocable permit.

There are a number of long-term leases of public lands in the Waiakea Peninsula area originally entered into in the 1940s that have expired in recent years. Some of these leases were used for hotels, and significant hotel improvements were constructed on the premises during the lease term. In some cases, the leasehold improvements have exceeded their useful life and require costly demolition up to \$13.5 million for a single property. However, the lease forms used for these leases did not require the lessee to remove the improvements at the expiration of the lease term. As a result, the demolition cost falls on the State unless new lessees are willing to rehabilitate and operate the properties under new long-term leases. In this regard, the Department issued Requests for Qualifications/Requests for Proposals (RFQs/RFPs) for the rehabilitation of two properties on the Waiakea Peninsula on August 23, 2020, and an evaluation committee appointed by the Chairperson was close to presenting its recommendation to the Board of Land and Natural Resources (Board) for selection of proposals for the repair and renovation of two properties on Banyan Drive in September 2021. However, presentation of the matter to the Board was put on hold when two separate lawsuits were filed involving an affiliate of the proposed developer.

This measure is intended to promote redevelopment of the Waiakea Peninsula area. Under Chapter 171, Hawaii Revised Statutes (HRS), the Board is authorized to issue leases up to a maximum term of 65 years. Section 171-32, HRS, provides that it is the policy of the State to issue leases by public auction. As the preamble to this bill indicates, at the end of their lease

¹ Act 178, Session Laws of Hawaii 2006 and Executive Order No. 06-06.

terms, lessees have little incentive to invest in improvements to their leasehold properties because the leases cannot be extended further. Rather, new leases of the lands must be issued pursuant to the public auction process. As a result, the properties frequently fall into disrepair.

House Bill 1788, House Draft 2, proposes to designate the WPRD in Hilo as a redevelopment district under the measure and establish its Redevelopment and Planning Committee. The Committee would have nine members and act as the policy-making body for the district. In addition to preparing redevelopment plans for the district, the Committee would have authority to renew or renegotiate any lease in connection with any project contained in the redevelopment plan for the district. The Committee would also be empowered to reduce or waive the lease rental on any lease of public land for any project in the district that requires substantial improvements, provided that the reduction or waiver shall not exceed one year. The measure would further authorize the Committee to enter into development agreements with a developer for any project contained in a development plan, and specifies the contents of the development plan.

The Waiakea Peninsula area constitutes the Department's primary hotel/resort landholdings on Hawaii Island. The Department has been working with the private sector lessees and permittees to move Banyan Drive buildings on State land into redevelopment in phases. Key state parcels in which the Department is engaged in redevelopment of Banyan Drive include:

- 1) Hilo Hawaiian Hotel: ground lease from the Department; renovated.
- 2) Hilo Bay Café (former Nihon restaurant site): ground lease from the Department; renovated.
- 3) Grand Naniloa Hotel Hilo: ground lease from the Department; \$20 million in renovations completed in 2018.
- 4) Golf Course: part of Grand Naniloa ground lease from the Department; requires participation of lessee for redevelopment.
- 5) Uncle Billy's: closed in 2017 by the Board; formerly under Revocable Permit (RP) to Tower Development, Inc. (TDI), who is an affiliate of the lessee of the Grand Naniloa Hotel (RP ended in August 2020); In March 2018, the Department published a request for interest (RFI) regarding the potential demolition of existing structures and reconstruction of a hotel on the former Hilo Bay Hotel site. One response (from TDI) was received with a proposal to substantially demolish and reconstruct a branded hotel on the site consisting of approximately 125 guest rooms, fitness room, appropriate back of house spaces and food and beverage venue. TDI additionally proposed to contribute \$1.5 million toward demolition costs (projected by the Department's consultants to exceed \$8 million in 2018 and \$13 million in 2022). At its meeting of December 13, 2019, the Board authorized the publication of a Request for Qualifications (RFQ)/Request for Proposals (RFP) for the demolition, renovation, or partial demolition and partial renovation of the hotel under a new long-term lease. The RFQ/RFP was published on August 23, 2020, statements of qualification were submitted on September 30, 2020, and proposals were submitted on

November 30, 2020. The evaluation committee made a tentative selection of a developer that has not yet been presented to the Board.²

- 6) Country Club: under RP. At its meeting of December 13, 2019, the Board authorized the publication of an RFQ/RFP for renovation of the hotel under a new long-term lease. The RFQ/RFP was published on August 23, 2020, statements of qualification were submitted on September 30, 2020, and proposals were submitted on November 30, 2020. The evaluation committee made a tentative selection of a developer that has not yet been presented to the Board.
- 7) Reed's Bay Resort Hotel: under RP; has some remaining useful life.

Since 2014, the Department has spent approximately \$524,500 from the Special Land and Development Fund (SLDF) on consultant services and studies dedicated to the public lands at Banyan Drive.

- A planning consultant prepared a market study on tourism to determine if the area could support a new hotel, as well as studies on sea level rise, the viability of master leasing multiple parcels in the area, and the remaining useful life of existing structures on expiring lease premises.
- An architectural consultant conducted a much more detailed architectural and engineering study on whether existing improvements on the expired lease premises should be demolished or rehabilitated.
- A third consultant completed a study on the cost of securing the necessary permitting for demolishing the improvements on the expired leases and completing the demolition.
- Additionally, the Department procured an engineering consultant to assist in reviewing the renovation plans for the Grand Naniloa Hotel.
- Apart from the fees for consultant services, a significant amount of staff time has been invested in planning for the area including attendance at the Banyan Drive Hawaii Redevelopment Agency (BDHRA) meetings, and in preparing the RFQs/RFPs for Uncle Billy's and Country Club and reviewing the submitted proposals.

If the Department's requested capital improvement appropriation is approved this session, the Department will procure a contract for the demolition of the former Uncle Billy's Hotel.

In addition, the Department identifies the following issues with respect to this measure:

The bill creates an additional layer of bureaucracy in government

² A fire at the property on March 4, 2022 caused significant damage to the already dilapidated structures. The Department is skeptical that rehabilitation of the property is even possible now and has renewed its request for a capital improvement appropriation this session for demolition of the structures (seeking \$13.5 million).

The bill designates the WPRD and establishes a nine-member Committee as the policy-making board for the district. The Committee, who serves without compensation, then appoints an administrator for the district who is to be compensated. The Committee may hire additional staff as well.

With respect to Banyan Drive in Hilo, the bill would create a new layer of redevelopment process in addition to the task force (discussed below) and the BDHRA: the Waiakea Peninsula Redevelopment District and a Committee to serve as a policy-making board for the district. In addition to the administrator, the Committee would likely require a secretary and perhaps more staff for proper administration, as well as office equipment, supplies, and travel expenses for the nine Committee members. There will be added expense for the Committee to comply with Chapter 92, HRS, sunshine law requirements. Further, the Committee's actions may be subject to contested case hearings and appeals. A conservative budget for such a redevelopment and planning committee, including payroll, fringe benefits, hearing officer fees, and other costs and expenses, would be \$500,000 annually.

The bill proposes an unnecessary, bureaucratic addition to the Department's operations. As explained above, the Department has been working with the BDHRA regarding plans for the Banyan Drive area. Additionally, as mentioned above, the Department has procured consultants for Banyan Drive to analyze market trends, explore options for redevelopment and rehabilitation of specific parcels or areas, or demolition of existing structures, if required.

There are practical problems with the bill

As noted above, the measure designates the WPRD on public lands. As defined in Section 171-2, HRS, public lands exclude lands used as roads and streets. While the State owns some contiguous parcels in the Banyan Drive area of Hilo, it does not own or manage the roads, which often include utility lines and other infrastructure. Accordingly, to the extent the bill seeks to improve infrastructure in the Waiakea Peninsula area, the redevelopment district does not include important infrastructure components. Rather, the district is confined to the particular parcels under the Department's management.

The Department relies on the revenues from leases of public lands to fulfill its fiduciary duties

The bill proposes to deposit the revenues, income and receipts of the Department from the public lands in the Waiakea Peninsula Redevelopment District into the District's revolving fund. These lands are ceded and the Office of Hawaiian Affairs is currently receiving 20% of the revenues and is seeking to increase its share above the \$15.1 it receives annually. This bill does not relieve the Department of the lease management duties, leaving the Department in the very unfortunate situation of having to manage all of those leases (bill, collect, inspect, procure and pay for professionals for rental and reopening valuations) but receive no revenue in return.

The Department and the Board are responsible for managing approximately 1.3 million acres of public lands comprising sensitive natural, cultural and recreational resources. The Department's responsibilities include managing and maintaining the State's coastal lands and waters, water resources, conservation and forestry lands, historical sites, small boat harbors, parks, and recreational facilities; performing public safety duties (e.g., flood and rockfall prevention); issuing and managing leases of public lands (agriculture, pasture, commercial, industrial, and

resort leases); maintaining unencumbered public lands; and enforcing the Department's rules/regulations.

To properly perform these fiduciary duties, the Board determined that the Department should utilize a portion of the lands it manages to generate revenues to support the Department's operations and management of public lands/programs. Annual lease revenues currently support the SLDF, with revenues coming primarily from leases for commercial, industrial, resort, geothermal and other renewable energy projects.

The SLDF is a critical and increasingly important funding source for various divisions within the Department to deal with emergency response to natural catastrophes such as fire, rockfall, flood or earthquake and hazard investigation and mitigation. The SLDF also is critical for staff support of various programs and funding conservation projects on all state lands. It has also become an important source of State match for federally funded endangered species and invasive species initiatives that otherwise would not go forward. The Department opposes transferring funds from the SLDF to the Committee formed under this measure for redevelopment purposes. As noted at the beginning of our testimony, if the inclination is to pass this measure, we recommend that it be amended to transfer all lease management responsibilities for lands in the district to the Committee or require the transfer of lease revenues be subject to the Department's collection of all lease management costs from the lease revenues before transfer to the Committee's revolving fund.

The Department offers the following alternative amendments to the measure to address its concern with lease management costs. The first alternative would add the underlined language below at the end of line 10, on page 8:

§171-D Powers and duties; generally; exemption from administrative supervision of boards and commissions. (a) The committee shall have the following powers and duties:

- (1) Through its district administrator, appoint staff and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapter 76. The district administrator and its staff and employees shall be responsible for the management of all the leases in the district, and all costs thereof

including, without limitation, appraisal, mediation and arbitration costs, administrative time and costs related to billing, monitoring lease compliance, including posting of insurance and performance bonds, and rent collections and inspections, as well as vacant property homeless occupant management, compliance management, capital demolition and construction costs, shall be paid out of the Waiakea peninsula redevelopment district revolving fund;

Additionally, the following language deleted from House Draft 2 of the measure should be restored to the bill at a new subparagraph (c) under SECTION 3 at pages 18-19:

(c) The management of the public lands within the Waiakea peninsula redevelopment district shall be transferred to the Waiakea redevelopment and planning committee; provided that any lessee or permittee within the Waiakea peninsula redevelopment district shall comply fully with the existing lease or permit.

As an alternative, the language underlined below could be inserted at the end of line 3 on page 18:

§171-G Waiakea peninsula redevelopment district revolving fund. (a) There is established the Waiakea peninsula redevelopment district revolving fund into which shall be deposited:

- (1) The revenues, income, and receipts from the public lands in the Waiakea peninsula redevelopment district, less payment for all costs of lease management incurred by the department of land and natural resources with respect to leases in the district including, without limitation, appraisal, mediation and arbitration costs, administrative time and costs related to billing, monitoring lease compliance, including posting of insurance and performance bonds, rent collections and inspections, as well as vacant property homeless occupant management, compliance management and capital demolition and construction costs;
- (2) Moneys appropriated by the legislature to the revolving fund; and
- (3) Any gifts, grants, and other funds accepted by the committee.

(b) Moneys in the revolving fund shall be expended by the committee and used in the Waiakea peninsula redevelopment district for the purposes of this part; provided that no expenditure shall be made from the fund and no obligation shall be incurred

against the fund in excess of the amount standing to the credit of the fund.

(c) After the committee is dissolved, the unencumbered balance remaining in the revolving fund shall be transferred to the special land and development fund established pursuant to section 171-19."

The authority to construct, improve, renovate and revitalize areas within the counties is already authorized under Section 46-80.5 and Chapter 53, HRS.

The bill seeks to redevelop the infrastructure and facilities within designated redevelopment districts. However, the bill is unnecessary because there are already existing laws and ordinances that provide the process and financing to make such improvements, as evidenced by the County of Hawaii's creation of BDHRA under Chapter 53, HRS. The measure does not explain how a Chapter 53, HRS, agency would coordinate with the WPRD Committee in formulating a development plan for the area. This could lead to conflicting development goals being established by the Committee and Chapter 53, HRS, for the same lands. In dealings between the Department and BDHRA to date, it has been understood that BDHRA's role would be to develop a plan for the area and possibly assist in streamlining the County zoning and entitlement process for any redevelopment.

Section 46-80.5, HRS, authorizes the various counties to enact ordinances to create special improvement districts for the purpose of providing and financing such improvements, services, and facilities within the special improvement district as the applicable county council determines necessary or desirable to restore or promote business activity in the special improvement district. This is the same purpose sought by this bill.

Under the authority of Section 46-80.5, HRS, the County of Hawaii, as an example, enacted Chapter 12 of the Hawaii County Code, which authorizes the County to create improvement districts to construct new, or improve existing infrastructure and facilities, including roadways and utility infrastructure and improvements. It should also be noted that the responsibilities for maintaining such improvements within the proposed redevelopment districts are already vested with the County. Most, if not all, of the public roadways and utility infrastructure within any potentially designated district boundaries have been dedicated to the County.

Thank you for the opportunity to comment on this measure.

HB-1788-HD-2

Submitted on: 3/22/2022 10:07:34 AM

Testimony for WTL on 3/23/2022 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Russell Tsuji	Testifying for DLNR	Oppose	Remotely Via Zoom

Comments:

I am available for questions to DLNR. Please allow me Zoom access.

HB-1788-HD-2

Submitted on: 3/22/2022 10:08:30 AM

Testimony for WTL on 3/23/2022 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Ian Hirokawa	Testifying for DLNR	Oppose	Remotely Via Zoom

Comments:

I am available for questions to DLNR. Please allow me Zoom access.

HB-1788-HD-2

Submitted on: 3/22/2022 10:09:17 AM

Testimony for WTL on 3/23/2022 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Gordon Heit	Testifying for DLNR	Oppose	Remotely Via Zoom

Comments:

I am available for questions to DLNR. Please allow me Zoom access.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEES ON WATER AND LAND AND ENERGY, ECONOMIC
DEVELOPMENT, AND TOURISM
ON
HOUSE BILL NO. 1788, H.D. 2

March 23, 2022
3:10 p.m.
Room 224 and Videoconference

RELATING TO WAIAKEA PENINSULA REDEVELOPMENT

The Department of Budget and Finance (B&F) offers comments on this bill.

House Bill (H.B.) No. 1788, H.D. 2: establishes the Waiakea Peninsula Redevelopment District (WPRD) for the redevelopment of public lands classified as commercial, industrial, resort, and hotel parcels on the island of Hawai'i; provides for redevelopment of the district; creates a nine-member planning committee for the district to provide policy direction and prepare a redevelopment plan; creates the WPRD Revolving Fund that would generate revenues through the income, revenues and receipts from the public lands in the WPRD, legislative appropriations, grants, gifts, and other funds; and appropriates an unspecified amount of general funds for FY 23 for deposit into the revolving fund, and an unspecified amount of revolving funds for FY 23 for redevelopment of the WPRD.

As a matter of general policy, B&F does not support the creation of any revolving fund which does not meet the requirements of Section 37-52.4, HRS. Revolving funds should: 1) serve a need as demonstrated by the purpose, scope of work, and an

explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining. In regard to H.B. No. 1788, H.D. 2, it is difficult to determine whether the proposed source of revenues will be self-sustaining for the revolving fund that is created.

B&F further notes that, with respect to the general fund appropriation in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and

- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.



SENATE COMMITTEE ON WATER AND LAND
SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
Wednesday, March 23, 3:10 pm, State Capitol Room 224 & Videoconference
HB 1788, HD2
Relating to Waiakea Peninsula Redevelopment
TESTIMONY
Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Inouye, Chair Wakai, and Committee Members:

The League of Women Voters of Hawaii opposes HB 1788, HD2.

The Legislature should reject all proposals to establish different criteria or procedures for lease of public lands in Hilo than for lease of similar public lands in other parts of the State. Attached February 1, 2022 testimony by the Attorney General explains why this may be prohibited under Article XI, Section 5 of the Hawaii Constitution. Even if this bill did not violate the Hawaii Constitution, it is simply, obviously wrong to encourage existing lessees of public lands to “play politics” to gain special unfair treatment.

The League supports public planning for redevelopment of public lands and transparent, fair procedures for the **BLNR** to award long-term commercial leases on public lands. We take the same position concerning lease renewals on public lands throughout the State. We oppose the establishment of an unaccountable politically-appointed “committee” with authority to negotiate non-bid long-term leases to existing lessees, earmark use of public lease revenues, and waive public collection of lease revenues for one specific area of State property. We also oppose arbitrary earmarking of public lease revenues to a new revolving fund. There is no good reason to treat lease revenues from public lands located in the Waiakea peninsula differently than lease revenues from similar public lands in other parts of the State.

Thank you for the opportunity to submit testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

H.B. NO. 1788, RELATING TO WAIAKEA PENINSULA REDEVELOPMENT.

BEFORE THE:

HOUSE COMMITTEE ON WATER AND LAND

DATE: Tuesday, February 1, 2022 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 430, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Linda L.W. Chow, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General offers the following comments.

This bill authorizes the establishment of the Waiakea peninsula on the island of Hawaii as a redevelopment district and establishes the Waiakea planning committee for the Waiakea peninsula redevelopment district.

We believe that the classification contained in section 2 of the bill that applies only to the Waiakea peninsula of the island of Hawai'i could be challenged as violating article XI, section 5, of the Hawai'i Constitution. Article XI, section 5, of the Hawai'i Constitution provides:

The legislative power over the lands owned by or under the control of the State and its political subdivisions 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.

(Emphasis added.)

The most recent case on this issue is *Sierra Club v. Dep't of Transp.*, 120 Hawai'i 181, 202 P.3d 1226 (2009), *as amended* (May 13, 2009). In that decision, the court adopted a two-step analysis to determine if a law was general legislation or special legislation.

The first step is to determine "whether the classification adopted by the legislature is a real or potential class, or whether it is logically and factually limited to a class of one and thus illusory." *Id.* at 203-04, 202 P.3d at 1248-49. A class is not

illusory if it could include other members in the future. The actual probability of other members joining the class must be considered in determining whether a class is illusory. *Id.* at 205, 202 P.3d at 1250. If the legislation creates “an illusory class it [is] prohibited special legislation.” *Id.* at 204, 202 P.3d at 1249.

The second step of the analysis requires determination of whether the class is reasonable. *Id.* To be reasonable, the classification must be based on some distinguishing peculiarity and must reasonably relate to the purpose of the statute. *In re Interrogatory Propounded by Governor Roy Romer on House Bill 91S-1005*, 814 P.2d 875, 887 (Colo. 1991).

In this bill, the classification contained in section 2 applies to public lands on the Waiakea peninsula on the island of Hawaii. The classification seeks to distinguish these public lands from all other public lands in the State. The class is currently made up of all current lessees in the specified area, but is not limited to these current members. Through attrition or termination of current leases, new leases could be executed. As long as there is no repeal date, it is likely that new members would join the class over time. Therefore, the class is likely not illusory under the first test.

The second test requires that the classification be reasonable, i.e., that it is based on a distinguishing peculiarity and that it achieves the bill’s purpose. We believe the bill may be subject to challenge because there is insufficient information to support the determination that the classification is reasonable for the following reasons.

Section 1 of the bill states that the area has become dilapidated, obsolete, or has deteriorated over time and that it is in the best interest of the public, and constitutes a valid public purpose, to rejuvenate the public lands in the area. To ameliorate the situation, the bill proposes to create the Waiakea peninsula redevelopment district and to establish: (1) policies for the management of lands in the district; (2) a plan for the district, including district wide improvements; and (3) asset and property management concepts that will optimize income from the properties.

There is no explanation in the bill as to why the Waiakea peninsula public lands are distinguishable from other public lands that may be in a similar deteriorated

condition. The bill does not appear to sufficiently support distinguishing the Waiakea peninsula from other public lands for redevelopment.

We note that Act 149, Session Laws of Hawaii 2018, (Act 149) created the Hilo Community Economic District (HCED). The HCED includes the Waiakea peninsula included in this bill's redevelopment district. Act 149 was intended to address infrastructure that was deteriorated, leaving the region underutilized and in disrepair. The Act created a ten-year-pilot project that authorized the Board of Land and Natural Resources to extend leases of public land in the HCED to facilitate efficient and effective improvement, and economic opportunity, for lessees who commit to making substantial improvements to the existing improvements or constructing new substantial improvements. The purpose of this bill appears to be substantially similar to that of Act 149. This overlap calls into question whether another law is needed for the same area for substantially the same purpose. Based on the above, we are concerned that this bill could be interpreted as special legislation and challenged as unconstitutional if passed into law.

In addition, we have other concerns with regard to the bill's specific provisions. The bill creates the Waiakea planning committee in section 171-C(a) (page 4, lines 4-6). This committee is described as a policymaking or planning committee in section 171-A (page 2, lines 15-17). However, section 171-B(c) requires the public lands within the Waiakea peninsula redevelopment district to be transferred to the Waiakea planning committee. See page 3, lines 13-18. Additionally, the powers of the committee, as set forth in section 171-D(a)(4) and (7), include the authority to lease, renew, or renegotiate any lease, or to reduce or waive the lease rental. See page 8, lines 1-8, and page 8, line 19, through page 9, line 2. The power of the committee to hold the public lands and to actually lease, renew, or renegotiate leases is inconsistent with the establishment of the committee as a policymaking or planning committee.

The renewal or renegotiation of existing leases may also run afoul of existing law. The court in *State v. Kahua Ranch, Ltd.*, 47 Haw. 28, 384 P.2d 581 (1963), made it clear that reformation of leases issued pursuant to public auction is not allowed. The purposes of the statutory requirements of public notice and sale at auction are to

promote transparency and a level-playing field for all bidders. Allowing post-bid reformation defeats those purposes. *Id.* at 36-37, 384 P.2d at 587. If any of the leases within the redevelopment areas were originally let by public auction, those leases could not be renegotiated or modified based on the wording in the bill.

If the Committee decides to pass this bill, we recommend deleting the wording in sections 171-B(c) (page 3, lines 13-18), 171-D(a)(4) (page 8, lines 1-8), and 171-D(a)(7) (page 8, line 19, through page 9, line 2). We also recommend amending the bill to provide sufficient information to support a determination that the classification is reasonable under the article XI, section 5 constitutional analysis discussed above.

Thank you for the opportunity to testify.



**Testimony to the Senate Joint Committee on Water and Land and Energy, Economic
Development, and Tourism
Wednesday, March 23, 2022
State Capitol, Conference Room 224
Via Videoconference**

**RE: HOUSE BILL NO. 1788, HOUSE DRAFT 2, RELATING TO WAIAKEA PENINSULA
REDEVELOPMENT.**

Chair Inouye, Chair Wakai, and Members of the Joint Committee:

The Hawaii Primary Care Association (HPCA) is a 501(c)(3) organization established to advocate for, expand access to, and sustain high quality care through the statewide network of Community Health Centers throughout the State of Hawaii. The HPCA **SUPPORTS** of House Bill No. 1788, House Draft 2, RELATING TO WAIAKEA PENINSULA REDEVELOPMENT.

By way of background, the HPCA represents Hawaii's Federally Qualified Health Centers (FQHCs). FQHCs provide desperately needed medical services at the frontlines to over 150,000 patients each year who live in rural and underserved communities. Long considered champions for creating a more sustainable, integrated, and wellness-oriented system of health, FQHCs provide a more efficient, more effective and more comprehensive system of healthcare.

The bill, as received by your Committee, would establish a redevelopment district (District) on the Waiakea peninsula, Island of Hawaii, to create policies for the management of public lands there. Among other things, this bill would:

- (1) Create the Waiakea Redevelopment and Planning Committee (Committee) to prepare a redevelopment plan;
- (2) Establish the Waiakea Peninsula Redevelopment District Revolving Fund (Fund) to facilitate this Committee's activities and projects; and
- (3) Appropriate an unspecified amount of general funds for fiscal year 2022-2023, to be deposited into the Fund.

This bill would take effect on July 1, 2020 and sunset on June 30, 2022.

Testimony on House Bill No. 1788, House Draft 2
Wednesday, March 23, 2022; 3:10 p.m.
Page 2

The HPCA has long held that the social determinants of health contribute to the overall wellbeing of our people more than any other factor. Persons who experience homelessness, language barriers, and poverty are more likely to suffer persistent, chronic health issues and have shorter life expectancies than those who do not. These conditions serve as risk factors endemic to a person's living and working environment, rather than behavioral or genetic histories. Factors such as home life, income, education, access to recreation and healthy food, and housing environments can and do have measurable impacts on a person and a community, both in health and financial outcomes.

The HPCA recognizes the enormous challenges the County of Hawaii has faced in diversifying its local economy. With historically higher levels of unemployment, lower wage earnings, and higher consumer prices than the State averages, it is understandable that the health outcomes of the citizens on the Island of Hawaii are below the norm.

Because of this, we wholeheartedly support the approach offered in this bill. The public lands on the Waiakea Peninsula hold much potential for reasoned and strategic development due to its close proximity to government agencies, the hotels along the bay front, and the older sections of Hilo.

It is because of its close proximity to the older sections of Hilo that the HPCA believes the membership of the Committee should include a representative from either a locally-situated health care provider or social service nonprofit. Such a representative would have a clearer understanding of the day-to-day plight of the underprivileged on the Island of Hawaii. It should be noted that one of our members, Bay Clinic, is situated in this area and would be an ideal candidate for this role.

The majority of Bay Clinic's patients are Medicaid recipients. In addition they provide a variety of services to the indigent and homeless that currently populate this area. Because they work in tandem with the two other FQHCs on the island, West Hawaii Community Health Center and the Hamakua-Kohala Health Center, Bay Clinic has the "pulse" of the health care needs of the entire island.

With that recommendation, the HPCA urges your favorable consideration of this measure.

Thank you for the opportunity to testify. Should you have any questions, please do not hesitate to contact Public Affairs and Policy Director Erik K. Abe at 536-8442, or eabe@hawaiiipca.net.