



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

DAVID Y. IGE
GOVERNOR

MIKE MCCARTNEY
DIRECTOR

CHUNG I. CHANG
DEPUTY DIRECTOR

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Statement of
MIKE MCCARTNEY
Director
Department of Business, Economic Development and Tourism
before the
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Wednesday, March 3, 2021
2:00 p.m.
State Capitol, Conference Room 325

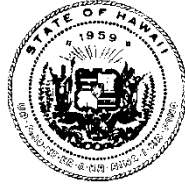
in consideration of
HB902, HD1
RELATING TO PUBLIC LANDS.

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee on
Judiciary & Hawaiian Affairs.

The Department of Business, Economic Development and Tourism (DBEDT)
strongly supports HB902, HD1, an Administration bill that would exempt lands set
aside to the HHFDC by Executive Order from the statutory definition of "public lands."
This exemption will help facilitate affordable housing development on State lands,
including leasehold housing on land located within one-half mile of the Honolulu rail
transit line.

Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR



DENISE ISERI-MATSUBARA
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
Honolulu, Hawaii 96813
FAX: (808) 587-0600

IN REPLY REFER TO:

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

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

March 3, 2021 at 2:00 p.m.
State Capitol, Room 325

In consideration of
H.B. 902, H.D. 1
RELATING TO PUBLIC LANDS.

The HHFDC **strongly supports** H.B. 902, H.D. 1, a measure to expand HHFDC's statutory exemption from the definition of "public lands" to include lands set aside to the HHFDC by Executive Order or leased from another State department or agency. This bill will help streamline the development of affordable housing on state lands.

H.B. 902, H.D. 1 will minimize the number of approvals from the Department of Land and Natural Resources as projects move forward from set-aside to the leasing, entitlement, financing, and development phases. Housing development will be subject to all conditions imposed by the Board of Land and Natural Resources and as set forth in the Executive Order. This includes the return of state land if it is no longer needed for housing.

Thank you for the opportunity to testify.



HB902 HD1
RELATING TO PUBLIC LANDS
Ke Kōmike Hale o ka Ho‘okolokolo a me ke Kuleana Hawai‘i
House Committee on Judiciary and Hawaiian Affairs

Malaki 3, 2021

2:00 p.m.

Lumi 325

The Office of Hawaiian Affairs (OHA) **OPPOSES** HB902 HD1, 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 notes that the long-term leases contemplated for public lands under this measure may foreclose Native Hawaiian claims to potentially large swaths of “ceded” lands for a century or longer, and have long been considered tantamount to a fee sale of lands in other contexts, such as those involving the leasing of tribal lands. **OHA opposes the foreclosure of Native Hawaiian claims to “ceded” lands that were unlawfully taken under extreme duress and without consent by or compensation to the Native Hawaiian people, and urges the inclusion of language provided below that would provide some recognition of and protection for these claims.**

HB902 HD1 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 issue extremely long-term, multigenerational leases, including 99-year leasehold interests, 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. **HB902 HD1 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 exempted 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 repeatedly asserted, 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. Notably, long-term leases such as the 99-year leases contemplated in this and related measures have also been considered tantamount to the sale of a fee interest in tribal lands, as **“the land base is effectively lost for generations to come,”** and **“the property expectation born of those leases, combined with the infrastructure development and capital investment made in reliance on them, may render those leases essentially irretractable as a political matter.”**¹ 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 effective diminution of the “ceded” lands corpus. Accordingly, OHA cannot support any proposal that may subject a significant amount of “ceded” lands to extremely long-term, multigenerational leases, including the instant measure, unless there is a mechanism in place to protect and preserve Native Hawaiian claims to leased “ceded” lands.

Should the Committees nonetheless move this measure forward, **OHA respectfully urges the inclusion of the following suggested amendment to HRS § 201H-9(c), in order to minimally recognize and protect Native Hawaiian claims to “ceded” lands which may be subject to the broad leasing authorities of HHFDC.**

“(c) 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. With regards to real property set aside or leased to the corporation that was classed as government or crown lands prior to August 15, 1895, or exchanged for such lands, any lease, sublease, rental, exchange, transfer, assignment, or pledge of such property or interests in such property by the corporation for an aggregate period of longer than 65 years shall be made subject to terms and conditions approved by the board of trustees of the Office of Hawaiian Affairs. Such terms and conditions shall include provisions that reflect the maintained claims of native Hawaiians in the “ceded” lands corpus, such as provisions requiring rights of first refusal, transfers or commitments of resources for programs serving native Hawaiian

¹ Mary Christina Wood, *Protecting the Attributes of Native Sovereignty: A New Paradigm for Federal Actions Affecting Tribal Resources*, 1995 UTAH L. REV. 109, 145-46 (1995); see also Reid Peyton Chambers & Monroe E. Price, *Regulating Sovereignty: Secretarial Discretion and the Leasing of Indian Lands*, 26 STANFORD L. REV. 1061, 1078 (1974) (“Through the lease instrument—often for 99 years—the fiction of Indian retention is retained, but the impact on the tribe is often inconsistent with the form. In this context, 99-year leases are tantamount to the sale of the fee” (emphasis added)).

interests, affordability requirements based on native Hawaiian housing demand data, a reservation of the rights and interests of a native Hawaiian self-governing entity in such lands, or any other relevant provision."

Accordingly, OHA respectfully urges the Committee to **HOLD** HB902 HD1. However, should the Committees choose to move this measure forward, OHA minimally urges the inclusion of the suggested amendment offered above. Mahalo nui loa for the opportunity to testify on this measure.

Kūpuna for the Mo'opuna
committed to the well-being of Hawai'i for the next generations to come
kupuna4moopuna@gmail.com



STOP LEGAL THIEVERY!

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. Mark M. Nakashima, Chair

Rep. Scot Z. Matayoshi, Vice Chair

Date: Wednesday, March 3, 2021 @ 2:00 PM

Testimony of Kūpuna for the Mo'opuna

HB 902, HD 1 – RELATING TO PUBLIC LANDS. **STRONG OPPOSITION**

HB 902, HD 1 seeks to amend the HRS 171-2 definition of “public lands” by removing certain safeguards for public lands **to the detriment of the public lands’ beneficiaries.** **Before voting on this measure, we urge you to watch the video “PUBLIC LAND TRUST: JUSTICE DELAYED IS JUSTICE DENIED” to understand the definition of “public lands.”**

<https://www.kamakakoi.com/plt>



Ua mau ke ea o ka 'āina i ka pono!



STANFORD CARR DEVELOPMENT, LLC

▪ **March 2, 2021**

**Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair
and Members of the Committee On Judiciary and
Hawaiian Affairs**

RE: Testimony In Support of HB 902, HD1 Relating To Public Lands

Dear Chair Nakashima, Vice Chair Matayoshi and Committee Members,

My name is Stanford Carr and I am the President of Stanford Carr Development, LLC. We are a local development firm that has worked to provide the community with affordable housing opportunities. I would like to testify in support of HB 902, HD1 which exempts land set aside by the Governor to HHFDC and lands leased to HHFDC from other state departments or agencies from classification as public lands subject to DLNR management.

I strongly agree with findings of the House Committees on Housing and Water & Land as stated in Standing Committee Report No. 177 that "this measure will help streamline the development of affordable housing on state land including leasehold housing on land located within one-half mile of the Honolulu Rail Transit line, by reducing the number of approvals required by the Department of Land and Natural Resources once the land is set aside to the Housing Finance and Development Corporation."

As an affordable housing developer, one of the impediments that I have constantly had to deal with in attempting to build more affordable housing projects is the lengthy delays in obtaining necessary permits and approvals from the appropriate government agencies. The passage of this bill will help to mitigate that obstacle. Moreover, this measure will promote Transit Oriented Development (TOD) on State lands which has been a top priority for State and City policymakers and which is critical to the future well-being of our communities.

For all of these reasons. I ask for your favorable consideration of this important measure. Thank you for the opportunity to testify.

Stanford S. Carr



March 3, 2021

Representative Mark M. Nakashima, Chair
Representative Scott Z. Matayoshi, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

Strong Support of HB 902, HD1 RELATING TO PUBLIC LANDS (Exempts land set aside by the governor to Hawaii Housing Finance and Development Corporation [HHFDC] and lands leased to HHFDC from other state departments or agencies from classification as public lands subject to Department of Land and Natural Resources [DLNR] management. Requires the land to be subject to legislative approval prior to the sale or gift of those lands. Requires HHFDC to return any land set aside by the governor or leased lands no longer needed for housing, finance, or development. Effective 7/1/2050. [HD1])

JHA Hearing: Wednesday, March 3, 2021, at 2:00 p.m., in House Conference Room 325 and Via Videoconference

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 appreciates the opportunity to express its **strong support of HB 902, HD1.**

HB 902, HD1. This measure exempts land set aside by the governor to HHFDC and lands leased to HHFDC from other state departments or agencies from classification as public lands subject to DLNR management; requires the land to be subject to legislative approval prior to the sale or gift of those lands; requires HHFDC to return any land set aside by the governor or leased lands no longer needed for housing, finance, or development. Effective 7/1/2050.

LURF's Position. This bill clarifies that lands set aside to the HHFDC by Executive Order or leased from another State department or agency are not "public lands" subject to the jurisdiction of the DLNR. This exemption 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. This will ensure that HHFDC's jurisdiction over suitable state lands set aside to it by E.O. is clear.

For the reasons set forth above, LURF is **in strong support of HB 902, HD1**, and respectfully urges your favorable consideration of this bill.

HB-902-HD-1

Submitted on: 3/1/2021 4:27:53 PM

Testimony for JHA on 3/3/2021 2:00:00 PM

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

Comments:

Dear Honorable Committee Members,

Please oppose HB902.

Thank you,

Andrea Quinn