



**HAWAII COMMUNITY  
DEVELOPMENT AUTHORITY**

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DAVID Y. IGE  
GOVERNOR

SUSAN TODANI  
CHAIRPERSON

DEEPAK NEUPANE, P.E., AIA  
EXECUTIVE DIRECTOR

Statement of  
**DEEPAK NEUPANE**  
Executive Director  
Hawaii Community Development Authority  
before the

**SENATE COMMITTEE ON WATER AND LAND**

Wednesday, February 16, 2022  
2:00 p.m.  
State Capitol, Conference Room 229 & Videoconference

In consideration of  
**SB 2502**  
**RELATING TO HAWAII COMMUNITY DEVELOPMENT AUTHORITY.**

Chair Inouye, Vice Chair Keith-Agaran, and members of the Committee.

The Hawaii Community Development Authority (HCDA) **supports SB 2502**, which would enable the HCDA to enter into 99-year leases on land owned by HCDA.

The State of Hawaii is facing an acute housing shortage. According to the 2019 Hawaii Housing Planning Study, conducted by SMS Research, Hawaii will need to add over 50,000 new housing units to the market between 2020 and 2025. This figure includes pent-up demand due to multi-generational living, considers years of supply shortages and the continued outmigration of Hawaii residents.

The ability to enter into a 99-year lease will allow HCDA to explore the feasibility and marketability of developing affordable condominium units using a model where the condominium units are subject to a 99-year ground lease. If passed, this measure will enable the HCDA to offer Hawaii residents another housing product to help address the shortage of affordable housing.

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



# SIERRA CLUB OF HAWAI'I

## SENATE COMMITTEE ON WATER AND LAND

February 16, 2022

2:00 PM

Conference Room 229

In **OPPOSITION** to **SB2502**: Relating to Hawai'i Community Development Authority

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Aloha Chair Inouye, Vice Chair Keith-Agaran, and members of the Senate Committee on Water and Land,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawai'i **opposes SB2502**, which may lead to the effective privatization of state-held lands, including “ceded” lands, by allowing lands held by the Hawai'i Community Development Authority (“HCDA”) to be leased for a century at a time.

The Sierra Club of Hawai'i has long sought to uphold and defend the public trust, which requires that lands held by the state be protected and used for the benefit of present and future generations.<sup>1</sup> Consistent with these public trust obligations, the legislature itself has also wisely acknowledged that “each sale [of lands held by the state], however reasonable or necessary, is final and permanent,” and has accordingly required that any sale, gift, or exchange of any lands held by the state to a non-state entity be subject to a legislative supermajority approval requirement.<sup>2</sup>

Notably, in recognition of the fact that most of the lands held by the state remain subject to the unrelinquished claims of the Native Hawaiian people, the legislature has also required that any proposed sale or gift of state-held lands be noticed to the Office of Hawaiian Affairs for a minimum of three months.<sup>3</sup>

By authorizing 99-year leases of lands held by the HCDA, a state agency, this measure would significantly undermine the public trust, and violate the spirit and intent of the current legislative supermajority approval requirement for the sale, gift, or exchange of any state-held lands. Such long-term, multigenerational leases have in fact been recognized as being tantamount to a fee interest in various contexts; as one analyst has noted, while “such leases are for a fixed duration and therefore legally terminable, the property expectations born of those leases, combined with the infrastructure development and capital investment made in reliance on them, may render those leases essentially irrevocable as a political matter.”<sup>4</sup> **Accordingly, this measure would**

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<sup>1</sup> See HAW. CONST. ART. XI SEC. 1.

<sup>2</sup> HRS §§ 171-50, 64.7.

<sup>3</sup> HRS § 171-64.7.

<sup>4</sup> 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)).

**authorize the essentially permanent disposal of lands held by the state, potentially denying future generations the ability to determine and enjoy their best use in perpetuity, in contravention of the public trust.**

To the extent that leased lands may also be “ceded” lands to which Native Hawaiians have never relinquished their claims, this measure may also foreclose important opportunities for the state and the people of Hawai‘i to seek justice and reconciliation with the Native Hawaiian community.<sup>5</sup>

Should the Committee nonetheless choose to move this measure forward, the Sierra Club respectfully offers the following suggested amendments to alleviate some of our concerns:

By amending page 1, line 9, to read as follows:

“conformity with the community development plan[.], provided that any lease exceeding an aggregate length of greater than sixty-five years shall be subject to the same requirements for the sale or gift of land as described in section 171-64.7.”

For the above reasons, the Sierra Club of Hawai‘i respectfully urges the Committee to **HOLD** SB2502, or adopt the amendment recommended above. Mahalo nui for your consideration of this testimony.

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<sup>5</sup> See HCR 6, HD1 SD1 (Reg. Sess. 2013); OHA v. HCDCH, 117 Hawai‘i 174 (2008) (“[A]ny ceded lands alienated from the public lands trust will be lost and will not be available for the future reconciliation efforts contemplated by the Apology Resolution, Acts 354, 359, and 329, and Governor Lingle. Although an argument could be made that monetary reparations would be the logical remedy for such loss, we are keenly aware-as was Congress-that ‘the health and well-being of the native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land.’”)

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



SB 2502 – RELATING TO HAWAII COMMUNITY DEVELOPMENT AUTHORITY.  
**OPPOSE**

Senate Committee on Water and Land 2/16/2022 @ 2pm

**We OPPOSE SB 2502!**

We **oppose** increasing terms for public auction, sales, or leases from 65 years to 99 years. This measure negatively impacts our public lands and our Hawaiian rights.

The State has a fiduciary duty as trustee of our public lands: “shall be held by the State as a public trust for native Hawaiians and the general public.”

**PUBLIC TRUST**

**Section 4.** The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XVI, Section 7, of the State Constitution... **shall be held by the State as a public trust for native Hawaiians and the general public.**

Mahalo,  
Kūpuna for the Mo'opuna  
Pana'ewa, Hawai'i



**STOP LEGAL THIEVERY**

*Ua mau ke ea o ka 'āina i ka pono!*



## MAUNA KEA MOKU NUI `AELIKE/CONSENSUS BUILDING `OHANA

We file the following collective testimony IN OPPOSITION to the following Bills:

1. HB2024 RELATING TO MAUNA KEA: Mauna Kea Stewardship Authority; Established; Appropriation (\$)
2. SB2502 RELATING TO HAWAII COMMUNITY DEVELOPMENT AUTHORITY: Public Auction, Increases terms for public auction, sales, or leases from sixty-five years to ninety-nine years.
3. HB1750/SB3384 RELATING TO AFFORDABLE HOUSING: Makes the new construction of affordable housing eligible for exemption from environmental impact statement and environmental assessment requirements.
4. HB2165 RELATING TO DISPOSITION OF PUBLIC LANDS BY NEGOTIATION: Includes leases for commercial, industrial, and hotel or resort purposes eligible for disposition by negotiation pursuant to section 171-59(b), Hawaii Revised Statutes.

We file our opposition to the above-mentioned bills collectively because they are related, fail to protect and/or seek to alienate our lands out of the body corpus of the Public Lands Trust (Crown and Government lands) provided under the Admissions Act, for which Kanaka Maoli (Native Hawaiians) are the right holders and beneficiaries. (See [Http://www.capitol.hawaii.gov/hrscurrent/vol01\\_ch0001-0042f/04-adm/adm-.htm](http://www.capitol.hawaii.gov/hrscurrent/vol01_ch0001-0042f/04-adm/adm-.htm))

These bills are grossly defective thus constituting a liability upon all agents of the State for a Breach of Trust. Lawmakers/Legislators are Agents of the so-called "State of Hawai'i" and as such are also Trustees of the Public Trust. All Lawmakers/Legislators are required to exercise their Fiduciary Duties and Responsibilities in order to administer and manage the Constitutional Trust for the benefit of its Beneficiaries who are Native Hawaiians and the General Public. The Hawai'i Supreme Court opines that the Public Trust is like regular trusts - the Trustee must protect the resources of the Trust for the benefit and betterment of its Beneficiaries (See *Ching v. Case* - <https://law.justia.com/cases/hawaii/supreme-court/2019/scap-18-0000432.html>). Affirming that the lands must be managed for the betterment of the Beneficiaries and the Beneficiaries must receive benefits.

Furthermore, in addition to the protections provided for the Native Hawaiian beneficiaries under relevant state and federal laws, as Lawmakers/Legislators you are also bound by international law relating to the protections of Indigenous Peoples (such as Native Hawaiians) and their traditional lands and territories. The United Nations Declaration on Rights of Indigenous Peoples (UNDRIP) Article 26, specifically provides protection for the traditional lands of all Indigenous Peoples. Therefore, we as Kanaka Maoli (Native Hawaiians) and as right holders and beneficiaries do not give our consent for the alienation and or misuse of our lands. (See [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf))



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MAUNA KEA MOKU NUI `AELIKE/CONSENSUS BUILDING `OHANA

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We publicly object to and are opposed to the above listed bills. We have provided you with the legal reasons and relevant laws to inform your decision and call upon this Legislature to hold these bills and not to pursue them further into the future. Because to do otherwise is to act in excess of your authority and ignores the laws put in place to protect the People of Hawai'i and their Trust assets.

On Behalf of the Mauna Kea Moku Nui `Aelike/Consensus Building `Ohana  
/s/ Clarence Kauakahi Ching  
Speaker  
kahiwal@cs.com



**SB2502**  
**RELATING TO HAWAII COMMUNITY DEVELOPMENT AUTHORITY**  
Senate Committee on Water and Land

February 15, 2022

2:00 PM

Videoconference

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The Council for Native Hawaiian Advancement (CNHA), a member-based 501(c)(3) non-profit organization with a mission to enhance the cultural, economic, political, and community development of Native Hawaiians, **STRONGLY OPPOSES** SB2502. This measure would authorize the lease of public lands by Hawaii Community Development Authority for up to 99 years, which could ultimately result in the permanent alienation of public lands, including “ceded” lands.

CNHA emphasizes that the State’s obligation to the betterment of conditions for Native Hawaiians is substantively carried out by the revenue generated from the Public Land Trust lands (PLT), which include those lands commonly referred to as “ceded” lands. The State, in fulfilling its trust mandate and fiduciary obligations to Native Hawaiians, must ensure against the further erosion of the PLT corpus, while also ensuring that these lands are subjected to best possible uses.

Historically, these multiple-lifetime-long leases, through the passage of time, increasingly lack clarity in terms of original “ownership” and purpose, and as a result, PLT lands have effectively been removed from the State’s inventory and placed into private ownership. These extremely long leases may and continue to alienate public and “ceded” lands, which would further undermine the State’s trust and fiduciary obligations to Native Hawaiians.

Furthermore, extending a lease over multiple generations could effectively lock the State out of ensuring the best use of those lands, which again, would inhibit the State from fulfilling its fiduciary obligations to Native Hawaiians and the public.

For these reasons, CNHA respectfully requests that this measure be held.

Mahalo nui loa for this opportunity to provide testimony on this measure.



Respectfully,

J. Kūhiō Lewis  
President & CEO  
Council for Native Hawaiian Advancement





and attachment to the land." Aina, or land, is of crucial importance to the [n]ative Hawaiian [p]eople -- to their culture, their religion, their economic self-sufficiency and their sense of personal and community wellbeing. **Aina is a living and vital part of the [n]ative Hawaiian cosmology, and is irreplaceable.** The natural elements -- land, air, water, ocean -- are interconnected and interdependent. **To [n]ative Hawaiians, land is not a commodity; it is the foundation of their cultural and spiritual identity as Hawaiians.** The aina is part of their ohana, and they care for it as they do for other members of their families. For them, the land and the natural environment is alive, respected, treasured, praised, and even worshiped.

*OHA v. HCDC*, 117 Hawai'i at 214, 177 P.3d at 924.

Mahalo for the opportunity to testify.

A handwritten signature in black ink, appearing to read 'DK', with a long horizontal flourish extending to the right.

David Kauila Kopper  
Ashley Kai'ao Obrey  
For the Native Hawaiian Legal Corporation

**SB-2502**

Submitted on: 2/12/2022 3:39:38 PM

Testimony for WTL on 2/16/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Bridgit Bales	Individual	Oppose	No

Comments:

Strongly oppose!!!

**SB-2502**

Submitted on: 2/12/2022 3:54:38 PM

Testimony for WTL on 2/16/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Nako'o Warrington	Individual	Oppose	No

Comments:

OPPOSE!

**SB-2502**

Submitted on: 2/14/2022 6:48:22 AM

Testimony for WTL on 2/16/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Namaka	Individual	Oppose	No

Comments:

Aloha Chair Sen. L. Inouye, Vice Chair G. Keith-Agaran and members of the Committee on Water and Land,

I oppose SB2502 which allows the HCDA to lease lands under its control, including "ceded" lands for 99 years at a time, effectively alienating them from the "ceded" lands corpus.

Mahalo

**SB-2502**

Submitted on: 2/14/2022 10:11:34 AM

Testimony for WTL on 2/16/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Jennifer Noelani Ahia	Individual	Oppose	No

Comments:

I strongly oppose this bill.

**LATE**

**SB-2502**

Submitted on: 2/15/2022 7:14:43 PM

Testimony for WTL on 2/16/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Tara Rojas	Individual	Oppose	No

Comments:

Legislators,

This is seriously getting out of hand for far too long. ‘A‘OLE. No to extended leases, no to selling of, no to transferring to, no to any land deals to anyone, to any corporation, to any group, to any organization, to any entity OTHER than Native Hawaiians with rights to THEIR LAND in THEIR SPACE AND ISLAND HOME. The only illegally occupied, illegally created, and erroneous westernized system responsibility is to PROTECT, PRESERVE, AND HOLD THESE LANDS IN TRUST FOR NATIVE HAWAIIANS. That is it.