

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on
Judiciary & Hawaiian Affairs**

February 9, 2023

H.B. No. 1355: RELATING TO CIVIL TRESPASS

Chair Tarnaas, Vice Chair Takayama, and Members of the Committee:

The Office of the Public Defender supports the intent of H.B. No. 1355, which establishes the civil infraction of trespass onto real property and establishes monetary penalty for said infraction.

The offense established under this bill is similar to an existing offense – Simple Trespass, in violation of HRS § 708-815:

- (1) A person commits the offense of simple trespass if the person knowingly enters or remains unlawfully in or upon premises.
- (2) Simple trespass is a violation.

The offense of Simple Trespass, however, is adjudicated as a criminal offense even though the offense is a violation. The alleged offender is required to appear in court for arraignment. If the alleged offender wishes to contest the charge, the case will be scheduled for a trial before a district court judge as any other criminal offense. If the alleged offender fails to appear in court at arraignment or trial (or any other hearing), a bench warrant or a penal summons will issue, and the case will remain in limbo until the alleged offender is summoned to court.

Rather than adjudicating the offense as a criminal matter, the offense established under this bill will be adjudicated as a civil infraction, similar to a minor traffic, parking, jaywalking, or seat belt violation.

Judicial efficiency would be better served by creating a civil infraction. Rather than setting mandatory court hearings for these citations, the onus would be on the individual to request a hearing if they want to challenge a citation. The majority of the civil infraction citations go unchallenged; the cited individuals will simply pay the amount of the fine written on the citation either by mail, in person, by phone, or

online. And for those who disregard the citations, their unpaid citations will be turned into default judgments rather than bench warrants. This would also reduce law enforcement resources spent on tracking down individuals with a bench warrant or a penal summons for the offense of simple trespass. Moreover, the financial hit caused by a citation would be a sufficient deterrent for most, if not all, individuals.

Because the offense of Simple Trespass is similar (if not identical) to the offense under this bill, the Office of the Public Defender suggests that rather than amending the Hawai'i Revised Statutes by adding a new offense, the offense of Simple Trespass under HRS § 708-815 be amended to include the language set forth in SECTION 2 of this bill.

Thank you for the opportunity to comment on H.B. No. 1355.



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Second State Legislature, 2023 Regular Session

Committee on Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

February 9, 2023, 2:00 p.m.
Conference Room 325 & Via Videoconference

By:
Michelle D. Acosta
Deputy Chief Court Administrator
District Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1355 – Relating to Civil Trespass

Purpose: Establishes the civil infraction of trespass onto real property and monetary penalties therefor. Provides that a violator shall be issued a citation. Requires violations to be adjudicated in the district courts using a system similar to that used for adjudicating traffic infractions and emergency period infractions. Requires the Judiciary to have established and implemented no later than 1/1/2024 the system to adjudicate citations for civil trespass.

Judiciary’s Position:

The Judiciary takes no position on the intent of this measure. The Judiciary suggests the framework established in Act 185, Session Laws of Hawai‘i 2021, for the emergency period infractions, as a means of decriminalizing trespass. The Judiciary recommends setting a specific fine amount as this will minimize the need for mandatory court appearances.

Thank you for the opportunity to testify on this measure.



Wasa Electrical Services, Inc.

MAIN OFFICE: 1023 KIKOWAENA PLACE ~ HONOLULU, HAWAII 96819
PHONE: (808) 839-2741 FAX (808) 836-0887

February 6, 2023

The Honorable David A. Tarnas, Chair
The Honorable Gregg Takayama, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

Re: H.B. No. 1355 – Relating to Civil Trespass – Support

Dear Chair Tarnas and Vice Chair Takayama:

I am writing to register my strong support for H.B. No. 1355 – Relating to Civil Trespass as it will provide clear guidance and help minimize additional costs and avoid delays for future necessary housing projects.

As you are well aware Hawaii has continuously faced a housing crisis with a severe shortage of housing driven by a lack of supply despite the high demand for housing. This has a major impact and hardship on the residents in our State. This severe shortage is in part attributable to the high costs to develop housing projects on properties in Hawaii. This bill helps to eliminate an additional unnecessary cost that can currently add higher costs and delays to any housing project. Cranes provide contractors the ability to transport steel, concrete, large tools, and other building materials over the building site in an efficient cost effective manner. The necessary crane and its horizontal portion (jib) hover well over 250 feet above the ground. When not in use, the jib must be left free to swing in the wind; otherwise, a high wind may knock the crane over.

As you can imagine, within the dense urban core areas where the current focus of vertical housing development is being planned in an effort to avoid further impacts on the State's agricultural lands, the free-swinging jib typically intrudes into the airspace over, yet well above, neighboring properties without any actual impact to that neighboring properties use. If the intrusion is considered a "trespass" and is prohibited from entering that airspace, the housing project's construction costs will increase substantially and delays will occur.

There is already a critical shortage of housing in Hawaii despite the high demands by local residents and failing to address this issue would only add to the costs. We strongly support the purpose of this Bill to define civil trespass and then exempt housing projects from civil trespass in the event that the housing project's construction crane does not interfere with the adjacent/neighboring landowner's actual use of the property.

If you have any questions or require anything additional from us, please do not hesitate to contact me.

Sincerely,

Ronald K.B. Yee
PRESIDENT / CEO

MAUI

861 EHA ST~ WAILUKU, HI 96793
PHONE: (808) 242-9764 ~ FAX: (808) 242-6198

KAUAI

3064 AUKELE ST~ LIHUE, HI 96793
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KONA

73-4118 HULIKOA ST ~ KAILUA-KONA, HI 96793
PHONE: (808) 329-8414 ~ FAX: (808) 329-4867



February 8, 2023

Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair
Members of the Committee on Judiciary
& Hawaiian Affairs

RE: **HB 1355 – RELATING TO CIVIL TRESPASS**
Hearing date – February 9, 2023 at 2:00PM

Aloha Chair Tarnas, Vice-Chair Takayama and members of the committees,

Thank you for allowing NAIOP Hawaii to submit testimony in **STRONG SUPPORT** of HB 1355 – RELATING TO CIVIL TRESPASS. NAIOP Hawaii is the state chapter of the nation’s leading organization for office, industrial, retail, residential, affordable housing and mixed-use real estate. NAIOP Hawaii has over 200 members in the State including local developers, owners, investors, asset managers, lenders and other professionals.

HB 1355 establishes civil trespass onto real property without prior authorization as an infraction punishable by a monetary fine. The bill also provides an exception for construction equipment entering into the airspace of another property where (1) doing so does not interfere with the property owner’s actual use; or (2) for the construction of affordable housing projects.

Due to the limited open space in high density areas such as Honolulu, it is nearly impossible to construct a high-rise building, including affordable housing projects, without entering upon the airspace of adjacent properties. This is because the construction equipment used to build the projects must enter into the open airspace of adjacent properties. This usually occurs at heights well above the adjacent buildings and required to transport steel, concrete, large tools, and other building materials to the building site in an efficient cost-effective manner. In addition, the equipment must be left free to swing in the wind; otherwise, the high winds at that altitude will compromise the safety of the equipment.

Despite this need some unscrupulous property owners have leveraged their position to charge extremely high fees for temporary rights of entry in order to use the open airspace. Allowing the use of open airspace that doesn’t impact the actual use by a

Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair
Members of the Committee on Judiciary
& Hawaiian Affairs
Page 2

property owner would help to reduce an additional unnecessary cost for construction of affordable housing projects.

Hawaii is in the middle of a housing emergency. The severe shortage of housing driven by a lack of supply despite the high demand for housing is directly attributable to the high cost of development. Every effort should be made to reduce unnecessary costs of housing. HB 1355 provides a simple solution to reduce one of those costs with very little impact, if any, to property owners.

We strongly urge this committee to pass HB 1355 as a common sense solution to reduce the costs of affordable housing.

Mahalo for your consideration,

Jennifer Camp, President
NAIOP Hawaii

HAWAII LEGISLATIVE
ACTION COMMITTEE


community
ASSOCIATIONS INSTITUTE

February 8, 2023

Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair
Committee Members
Committee on Judiciary & Hawaiian Affairs

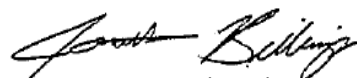
RE: HB1355 - Support

Aloha Chair Tarnas, Vice Chair Takayama and Committee Members:

Thank you for the opportunity to submit testimony. I am a member of the Community Associations Institute (CAI) Legislative Action Committee (LAC) Hawaii Chapter. CAI Hawaii LAC supports HB1355.

Frequently many community associations must deal with individuals trespassing on private property. Oftentimes it is the same individual trespassing because there is currently little or no consequence for trespassing without the community association taking legal action. Treating trespassing as a civil infraction with monetary fines is a step in the right direction and the CAI Hawaii LAC supports HB1355.

Very truly yours,



Jonathan Billings
CAI Hawaii LAC Member



HAWAII REGIONAL COUNCIL OF CARPENTERS

House Committee on Judiciary & Hawaiian Affairs
Rep. David A. Tarnas., Chair
Rep. Gregg Takayama, Vice Chair

Statement of the Hawaii Regional Council of Carpenters
SUPPORT for HB 1355 Relating to Civil Trespass

Aloha Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

We are writing to register our strong support for H.B. No. 1355 – Relating to Civil Trespass as it will provide clear guidance and help minimize additional costs and avoid delays for future necessary housing projects.

As you are well aware Hawaii has continuously faced a housing crisis with a severe shortage of housing driven by a lack of supply despite the high demand for housing. This has a major impact and hardship on the residents in our State. This severe shortage is in part attributable to the high costs to develop housing projects on properties in Hawaii. This bill helps to eliminate an additional unnecessary cost that can currently add higher costs and delays to any housing project. Cranes provide contractors the ability to transport steel, concrete, large tools, and other building materials over the building site in an efficient cost effective manner. The necessary crane and its horizontal portion (jib) hover well over 250 feet above the ground. When not in use, the jib must be left free to swing in the wind; otherwise, a high wind may knock the crane over.

As you can imagine, within the dense urban core areas where the current focus of vertical housing development is being planned in an effort to avoid further impacts on the State's agricultural lands, the free-swinging jib typically intrudes into the airspace over, yet well above, neighboring properties without any actual impact to that neighboring properties use. If the intrusion is considered a "trespass" and is prohibited from entering that airspace, the housing project's construction costs will increase substantially and delays will occur.

There is already a critical shortage of housing in Hawaii despite the high demands by local residents and failing to address this issue would only add to the costs. We strongly support the purpose of this Bill to define civil trespass and then exempt housing projects from civil trespass in the event that the housing project's construction crane does not interfere with the adjacent/neighboring landowner's actual use of the property.

STATE HEADQUARTERS & BUSINESS OFFICES

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HILO OFFICE: 525 Kilauea Avenue, Room 205, Hilo, Hawaii 96720-3050 • Ph. (808) 935-8575 Fax (808) 935-8576
KONA OFFICE: 75-126 Lunapule Road, Kailua-Kona, Hawaii 96740-2106 • Ph. (808) 329-7355 Fax (808) 326-9376
MAUI OFFICE: 330 Hookahi Street, Wailuku, Maui 96793-1449 • Ph. (808) 242-6891 Fax (808) 242-5961
KAUAI OFFICE: Kuhio Medical Ctr Bldg., 3-3295 Kuhio Hwy, Suite 201, Lihue, Kauai 96766-1040 • Ph. (808) 245-8511 Fax (808) 245-8911

Mahalo.

Testimony of
Pacific Resource Partnership

House Committee On Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

HB 1355—Relating To Civil Trespass
Thursday, February 9, 2023
2:00 P.M.

Aloha Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

Pacific Resource Partnership (PRP) is a non-profit market recovery trust fund which represents approximately 7,000 men and women union carpenters and 240 large and small contractors. With our expertise in research, compliance, marketing, and project advocacy, we are committed to building a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs, and enhances the quality of life for all residents of Hawaii.

PRP writes in **support** of HB 1355, which defines civil trespass and exempts housing projects from civil trespass in the event that the housing project’s construction crane does not interfere with the adjacent landowner’s actual use of the property.

The “Hawaii Housing Planning Study, 2019” (“Study”) found that the State of Hawaii will need 50,156 more housing units between 2020 and 2025. The island of Oahu needs the majority of this housing, which could be built within Honolulu’s dense urban core. To build in this area, contractors will need to build with cranes with jibs, the horizontal portion of the crane, that typically intrudes into the airspace over neighboring properties to transport building materials and tools to the building site. The jib usually hovers well above neighboring properties without interfering with the adjacent landowner’s actual use of the property and is needed to construct affordable housing units in a vertical housing development project.

If the intrusion of the crane and its components are considered a “trespass” and are prohibited from entering the airspace of neighboring properties, the housing project’s construction costs will increase substantially, and delays will likely occur. As such, we respectfully request your favorable decision on this measure. Thank you for this opportunity to submit written testimony.



James Campbell
CORPORATION

*Affiliates of the
James Campbell
Company LLC*

*James Campbell
Corporation
Suite 260*

*Aina Nui Corporation
Suite 250*

*Kapolei Properties LLC
Suite 250*

*Fort Street Investment
Corporation
Suite 256*

February 8, 2023

The Honorable Rep. David A. Tarnas, Chair
Committee on Judiciary & Hawaiian Affairs
Hawaii House of Representatives
Conference Room 325
State Capitol
415 South Beretania Street
Honolulu Hawaii 96813

Dear Chair Tarnas and Committee Members::

Testimony in **opposition** to HB1355 Relating to Civil Trespass
Hearing Date: February 9, 2023, 2:00 PM

Mahalo for the opportunity to submit testimony on behalf of the James Campbell Corporation, an affiliate of the James Campbell Company LLC (“JCC”) in **opposition** to HB1355. JCC is focused on the master planning and development of O’ahu’s second city of Kapolei, as well as economic development and job creation in the Kapolei region.

As drafted, HB1355 relating to civil trespass infringes on established and protected property rights, and would limit a property owner’s remedies for trespass claims to this new civil fine program – replacing long-established common law rights.

Trespass is a common law claim that Hawaii Courts deal with on a regular basis. Case law in this State has established rules and standards for trespass claims, which are often brought in conjunction with related actions for nuisance or conversion. These claims work together to provide relief to property owners whose property rights are intentionally infringed upon by others without their consent.

Moreover, trespass that is repeated or ongoing is subject to injunctive relief – allowing a court to effectively provide the authority for a property owner to enforce its right to exclude a trespasser from one’s property, rather than to simply award damages. This is important because Courts have routinely found that in cases where there is a repeated trespass, real relief must free the property owner from the ongoing intrusion into their property.

HB1355 attempts to remove this right from property owners in Hawaii by mandating a fine as the only available remedy to victims of trespass. This limit to remedies is further evidenced by the fact that the bill envisions that trespass claims will be brought in the district courts, which have no statutory authority to issue injunctive relief.

Finally, the legislation appears to also make trespass a strict liability offense. Pursuant to section 1 and 2(b), a mistaken entry is no defense to a trespass claim. Trespass at common law is an intentional tort. This bill will result in numerous claims against and fines issued for simple mistakes, where there is no intent to invade the property of another person.

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1001 Kamokila Boulevard
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PHONE: 808.674.6674
FAX: 808.674.3111
jamescampbell.com
kapolei.com

Trespass has been and should continue to be handled by the courts as a common law claim, where judges are free to craft remedies appropriate under the circumstances of the cases before them.

For these reasons, JCC opposes HB1355 and respectfully requests that the matter be deferred.

Mahalo for your consideration,

A handwritten signature in black ink, appearing to read "Matt Caires". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Matt Caires
Manager, Development
James Campbell Company



Hawaii Cattlemen's Council, Inc.

**COMMITTEE ON JUDICIARY & HAWAIIAN
AFFAIRS**

Rep. David A. Tarnas, Chair
Rep. Gregg Takayama, Vice Chair

HB1355
RELATING TO CIVIL TRESPASS

Thursday, February 9, 2023, 2:00 PM
Conference Room 325 & Videoconference

Chair Tarnas, Vice Chair Takayama, and Members of the Committee,

The Hawaii Cattlemen's Council (HCC) is the Statewide umbrella organization comprised of the four county level Cattlemen's Associations. Our member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of over 750 thousand acres of land in Hawaii, or 20% of the State's total land mass. We represent the interests of Hawaii's cattle producers.

The Hawaii Cattlemen's Council **opposes HB1355** which establishes the civil infraction of trespass onto real property and monetary penalties therefor and provides that a violator shall be issued a citation.

This bill will effectively ensure that the only consequence for trespassing is a fine. Current case law allows for a many types of relief, including injunctive relief and punitive damages for particularly egregious conduct, from which judges can determine the appropriate consequence.

Trespassing on agricultural land is not only unlawful, but it can be detrimental to the owner/leaseholder's operations and safety. The Hawaii Cattlemen's Council supports consequences for trespassing that both deter the unlawful act and provide remedy for any damages.

We appreciate the opportunity to testify on this measure.

Nicole Galase
Hawaii Cattlemen's Council
Managing Director





P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

January 9, 2023

HEARING BEFORE THE
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

TESTIMONY ON HB 1355
RELATING TO CIVIL TRESPASS

Conference Room 325 & Videoconference
2:00 PM

Aloha Chair Tarnas, Vice-Chair Takayama, and Members of the Committee:

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

The Hawai'i Farm Bureau respectfully opposes HB 1355 as written, because it appears to conflict with current trespass law regarding the rights of persons to access and remain on agricultural private property without permission.

Farmers and ranchers are extremely concerned that this bill proposes to undo the last three decades of working with the legislature to establish laws that address trespass as a major problem for agricultural producers.

The term, "Enter or remain unlawfully" is currently defined in HRS Section 708-800, Offenses Against Property Rights. HB 1355 would redefine the term to the detriment of Hawai'i farmers and ranchers.

In 2011, the legislature found that trespassing was a major problem for owners of seemingly unimproved or unused land. It noted that, "Trespassers often damage property and crops and increase the liability of the owners of the land. Trespassers also use unimproved and unused lands as illegal dump sites and places to conduct illicit activities." Senate Standing Committee Report No. 830, House Standing Committee Report No. 934. Trespassers often cut or damage fences which leads to livestock getting out of the property and on to public roads, resulting in traffic accidents. Even the most innocuous trespass can inadvertently spread livestock diseases and invasive plant species. Trespass incidences on farms and ranches today are more frequent than in 2011.

Act 208, Session Laws 2011, amended the definition of "enter or remain unlawfully" ***by deleting the provision being proposed today***...that a person who enters or remains on unimproved and apparently unused land that is not fenced or otherwise enclosed in a manner designed to exclude intruders, unless notice against trespass has been given, is allowed to be on the land and is not trespassing. The legislature recognized that, in many cases, trespassers are armed and found many miles from the nearest town or police station, and that in these situations, personal notice is impractical and even dangerous. Senate Standing Committee Report No. 1254, Conference Committee Report No. 59.

Act 208 amended §708-814(1) by prohibiting a person from entering or remaining unlawfully on unimproved or unused lands that are fenced, enclosed, or clearly marked by signage. And importantly, it also added to the offense of trespass in the second degree entering or remaining on agricultural lands even when they are fallow or if they have evidence of livestock or crop, regardless of lack of signage.

The law currently on the books was necessary to protect Hawai'i's farms and ranches, not all of which may be entirely fenced, not all of which may look "improved" during all phases of farming, and not all of which may be posted in a conspicuous enough manner to meet this outdated and since-rejected definition.

HFB is unaware of the purpose of this bill but is willing to work with the legislature to ensure that farmers and ranchers are not inadvertently negatively impacted by the measure.

Thank you for the opportunity to testify on this matter of importance to the agricultural community.

Nan Inc

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636 Laumaka Street
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Telephone: (808) 842-4929
Facsimile: (808) 841-8281

February 9, 2023

The Honorable David A. Tarnas, Chair
The Honorable Gregg Takayama, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

Re: H.B. No. 1355 – Relating to Civil Trespass – Support

Dear Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

I am writing to register my strong support for H.B. No. 1355 – Relating to Civil Trespass as it will provide clear guidance and help minimize additional costs and avoid delays for future housing projects.

Hawaii faces a housing crisis. There is a severe shortage of housing, specifically affordable housing, which is driven by a lack of supply despite the high demand for housing. This severe shortage is in part attributable to the high costs to develop housing projects on properties in Hawaii.

This bill helps to eliminate additional unnecessary cost that could arise in constructing an affordable housing project. Construction cranes are necessary for the construction of high-rise affordable housing in the state. Unfortunately, sometimes given the nature of the project and the footprint of the property, construction cranes may need to occasionally and temporarily pass through the airspace of neighboring properties. I have personal experience with neighboring landowners demanding millions of dollars for access to their airspace for the reason that a contractor's construction crane intrudes temporarily into the landowner's airspace. This is not right. If this intrusion is considered a "trespass" and contractors are prohibited from entering that airspace, the construction costs for affordable housing projects will increase substantially and delays will occur. This cost will be passed on to the eventual owner.

There is already a critical shortage of housing in Hawaii despite the high demands by local residents and failing to address this issue would only add to the costs. I strongly support the purpose of this bill to ensure affordable housing projects can proceed with construction without the fear of a civil trespass action especially when the housing project's construction crane does not interfere with the adjacent/neighboring landowner's actual use of his/her property.

Thank you for the opportunity to testify.

Sincerely,

Nan Chul Shin, Director of Nan, Inc.

February 07, 2023

The Honorable David A. Tarnas, Chair
The Honorable Gregg Takayama, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

Re: H.B. No. 1355 – Relating to Civil Trespass – Support

Dear Chair Tarnas and Vice Chair Takayama:

I have been a licensed realtor in Hawaii for over 18 years. I am writing to register my strong support for H.B. No. 1355 – Relating to Civil Trespass as it will provide clear guidance and help minimize additional costs and avoid delays for future necessary housing projects.

As you are well aware Hawaii has continuously faced a housing crisis with a severe shortage of housing driven by a lack of supply despite the high demand for housing. This has a major impact and hardship on the residents in our State. This severe shortage is in part attributable to the high costs to develop housing projects on properties in Hawaii. This bill helps to eliminate an additional unnecessary cost that can currently add higher costs and delays to any housing project.

Cranes provide contractors the ability to transport steel, concrete, large tools, and other building materials over the building site in an efficient cost-effective manner. The necessary crane and its horizontal portion (jib) hover well over 250 feet above the ground. When not in use, the jib must be left free to swing in the wind; otherwise, a high wind may knock the crane over.

As you can imagine, within the dense urban core areas where the current focus of vertical housing development is being planned in an effort to avoid further impacts on the State's agricultural lands, the free-swinging jib typically intrudes into the airspace over, yet well above, neighboring properties without any actual impact to that neighboring properties use. If the intrusion is considered a "trespass" and is prohibited from entering that airspace, the housing project's construction costs will increase substantially and delays will occur.

There is already a critical shortage of housing in Hawaii despite the high demands by local residents and failing to address this issue would only add to the costs. We strongly support the purpose of this Bill to define civil trespass and then exempt housing projects from civil trespass in the event that the housing project's construction crane does not interfere with the adjacent/neighboring landowner's actual use of the property.

If you have any questions or require anything additional from us, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kyle G. J. J. J.", written in a cursive style.



February 8, 2023

Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair
Members of the Committee on Judiciary & Hawaiian Affairs

RE: **HB 1355 – RELATING TO CIVIL TRESPASS**

Hearing date – February 9, 2023, at 2:00 PM

Aloha e Chair Tarnas, Vice-Chair Takayama, and members of the committees,

Thank you for the opportunity to submit testimony in **STRONG SUPPORT** of HB 1355 – RELATING TO CIVIL TRESPASS. My name is Chris Deuchar and I’m a principal with Form Partners LLC, a real estate development company in Honolulu that has developed over 400 residential (urban & resort) and commercial condominiums, over the past 20 years.

One of the key elements of HB 1355 is that it provides an exception for construction equipment entering the airspace of another property where (1) doing so does not interfere with the property owner’s actual use; or (2) for the construction of affordable housing projects.

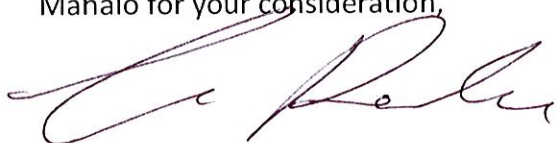
As a result of Honolulu’s urban density, it is often difficult and, in some cases, impossible to construct high density buildings, including affordable housing projects, without entering upon the airspace of adjacent properties. Typically, construction equipment, including tower cranes used to build these projects must enter the open airspace of adjacent properties. This usually occurs at heights well above the adjacent buildings and are required to transport steel, concrete, large tools, and other building materials to the building site in an efficient cost-effective manner. In addition, the equipment must be left free to swing in the wind; otherwise, the high winds at that altitude may compromise the safety of the equipment.

Despite this need some property owners in Honolulu have leveraged their position to charge extremely high fees for temporary rights of entry to use the open airspace. Allowing the use of open airspace that doesn’t impact the actual use by a property owner would help to reduce an additional unnecessary cost for construction of residential projects particularly affordable housing projects.

Honolulu’s housing crisis is primarily driven by a lack of supply despite the high demand for housing which is directly attributable to the high cost of construction and development. Every effort should be made to reduce any unnecessary costs associated with the production of housing. HB 1355 provides a simple solution to reduce one of those variable and unknown costs with little to no impact, if any, to property owners.

I humbly ask this committee to pass HB 1355 as a commonsense solution to help reduce the costs of residential development particularly the development of affordable housing.

Mahalo for your consideration,

A handwritten signature in black ink, appearing to read "Chris Deuchar". The signature is fluid and cursive, with a large initial "C" and "D".

Chris Deuchar

Form Partners LLC

HB-1355

Submitted on: 2/7/2023 3:39:54 PM

Testimony for JHA on 2/9/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
R Laree McGuire	Individual	Support	Written Testimony Only

Comments:

Civil trespass is becoming more and more prevalent in and around condominium associations. This Bill will assist condos in addressing this problem. I strongly support.

Respectfully submitted,

Laree McGuire

HB-1355

Submitted on: 2/7/2023 3:40:15 PM

Testimony for JHA on 2/9/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Jared Watumull	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose this measure as it creates an infringement on personal property rights. No one should have the ability to trespass over someone's properties air rights without proper permission. I urge the committee to oppose this measure. Thank you.

HB-1355

Submitted on: 2/7/2023 5:20:09 PM

Testimony for JHA on 2/9/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Oppose	Written Testimony Only

Comments:

oppose

February 6, 2023

The Honorable David A. Tarnas, Chair
The Honorable Gregg Takayama, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

Re: H.B. No. 1355 – Relating to Civil Trespass – **Support**

Dear Chair Tarnas and Vice Chair Takayama:

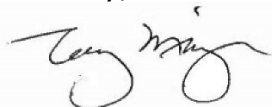
I am writing to register my strong support for H.B. No. 1355 – Relating to Civil Trespass as it will provide clear guidance and help minimize additional costs and avoid delays for future necessary housing projects.

As you are well aware Hawaii has continuously faced a housing crisis with a severe shortage of housing driven by a lack of supply despite the high demand for housing. This has a major impact and hardship on the residents in our State.

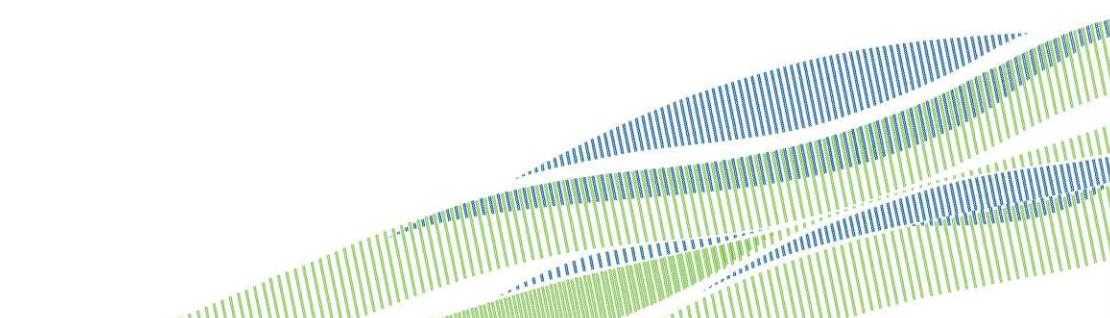
Part of the reason it is so hard to produce much needed housing is the myriad of requirements and mandates, including that neighboring property owners can protest (or demand payment) for a crane's jib floating well above its usable height limit. H.B. No. 1355 removes one such unreasonable barrier to development and would bring much needed housing projects for our families one step closer to a reality.

If you have any questions or require anything additional from us, please do not hesitate to contact me.

Sincerely,



Tony Mizuno
Senior Vice President



I submit this testimony in opposition to HB1355.

HB 1355 relating to civil trespass infringes on established and protected property rights of the citizens of Hawaii. Trespass is a common law claim that Hawaii Courts deal with on a regular basis. Case law in this State has established rules and standards for trespass claims, which are often brought in conjunction with related actions for nuisance or conversion. These claims work together to provide relief to property owners whose property rights are intentionally infringed upon by others without their consent. Moreover, trespass that is repeated or ongoing is subject to injunctive relief – allowing a court to effectively vindicate the right of a property owner to exclude others rather than to simply award damages. Courts have routinely found that ongoing trespass cannot be adequately remedied by monetary damages, but that real relief must free the property owner from the ongoing intrusion into their property. The right to injunctive relief is inextricably tied to the fundamental rights that are intrinsic to property ownership, one of the most important of which is the right to exclude. At its most basic concept, a person cannot truly own property if they cannot exclude others from it. HB 1355 attempts to remove this right from property owners in Hawaii by mandating a fine as the only available remedy to victims of trespass. Not only are fines the only remedy mentioned in the bill, but the bill envisions that the claims will be brought in the district courts, which have no statutory authority to issue injunctive relief.

It should also be noted that the above is applicable to any trespass, no matter the duration or the severity. Under this bill, a person can climb his neighbor's fence and swim in his pool and the redress is limited to a claim that results in a fine. Current case law allows for a myriad of relief, including injunctive relief and punitive damages for particularly egregious conduct. Judges are well equipped to weight the facts in these cases and craft the appropriate remedy under the circumstances.

Moreover, certain trespassers, those constructing affordable housing, have no liability under HB 1355 for trespass to a person's air rights in any situation – regardless of the harm they cause, the risks they pose, or the frequency or duration of their trespasses. Effectively, under section 2(b), the bill provides immunity to those who are engaging in construction of affordable housing. While, affordable housing should be promoted and the state is entitled to encourage the construction of the same, it cannot strip neighboring properties of their property interests in the process. Such conduct amounts to an unconstitutional taking.

With regard to the foregoing, it has been assumed that HB 1355 is intended to be the exclusive remedy for trespass claims – replacing common law rights. If HB 1355 is intended to be cumulative with existing common law trespass remedies, then the bill should so state explicitly so as to avoid any confusion that the bill might be the exclusive remedy available to property owners.

Finally, the legislation appears to also make trespass a strict liability offense. Pursuant to section 1 and 2(b), a mistaken entry is no defense to a trespass claim. Trespass at common law is an intentional tort. This bill will result in numerous claims against and fines issued for simple mistakes, where there is no intent to invade the property of another person.

HB 1355 is fraught with harm to property owners and unintentional trespassers alike. And, there is no stated need for this bill or any issue or concern it attempts to alleviate. Trespass has been and should continue to be handled by the courts as a common law claim, where judges are free to craft remedies appropriate under the circumstances of the cases before them. I encourage all to vote “no” on HB 1355.

Momentum Development Company
1071 Ikena Circle
Honolulu, Hawaii 97821

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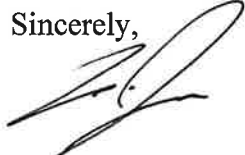
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Thank you for your consideration of my position.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Johnson', written over a white background.

Mark L. Johnson
President
Momentum Development Company

February 8, 2023

The Honorable David A. Tarnas, Chair
The Honorable Gregg Takayama, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

Re: H.B. No. 1355 – Relating to Civil Trespass – Support

Dear Chair Tarnas, Vice Chair Takayama, and members of the committee:

I am writing to register my strong support for H.B. No. 1355 – Relating to Civil Trespass as it will provide clear guidance and help minimize additional costs and avoid delays for future necessary housing projects. I am an attorney licensed to practice law in the state of Hawai`i and represent a developer doing business in the state.

To provide some background, the common law recognized this legal maxim, “*Cujes est solum, ejus est usque ad coelum*” - “a landowner owns not only the surface of the land but everything below it to the center of the earth and above it to the sky”. However, with the advent of air travel, the United States Supreme Court in *United States v. Causby*, 328 U.S. 256 (1946) curtailed “the extent of surface owner's ownership under the common law.” *Causby*, 328 U.S. at 260–61. The Supreme Court said a landowner owns at least as much of the space above the ground as he can occupy or use in connection with the land. *Id.*

While the majority of state courts, including Hawai`i, have not specifically ruled on the property owner’s rights to the unbridled air space above its property, states such as New Jersey and Illinois have extended the *Causby* decision to construction cases. The Superior Court of New Jersey dealt with two adjacent buildings, a tall one and a short one, both built to the lot line with their walls touching the common property boundary line. The owner of the tall building used a movable scaffold that extended over and above the neighbor's building to renovate its exterior wall. At times, the scaffolding was only six vertical inches above the roof of the short building. The court held that defendant’s scaffold that hung over the top of plaintiff’s property was not an actual trespass. The New Jersey court stated that

Defendant may not interfere with plaintiffs' present enjoyment of the property or the potential use of the air space above it. The dropping of tools or materials, the falling of the scaffold and any other actual interferences with the actual use of the property are trespasses which may be the subject of damage claims and injunctive relief. Furthermore, defendant may not interfere with the potential use of plaintiffs' property by resurfacing its wall so that it permanently invades the air space above plaintiffs' building.

Slotoroff v. Nassau Assocs., 178 N.J. Super. 292, 295, 428 A.2d 956, 958 (Ch. Div. 1980).

The Appellate Court of Illinois, also applying the reasoning in *Causby*, denied injunctive relief to the owner of the small building against an invasion of his airspace by scaffolding on the neighboring tall building finding “that a property owner owns only as much air space above his

property as he can practicably use. And to constitute an actionable trespass, an intrusion has to be such as to subtract from the owner's use of the property.” *Geller v. Brownstone Condo. Ass'n*, 82 Ill. App. 3d 334, 337, 402 N.E.2d 807, 809 (1980).

In Hawai`i, the circuit courts have been split as to whether a private individual could bring a cause of action for trespass of airspace. In 2020, the Honorable Jeffery P. Crabtree denied injunctive relief for scaffolding that hung from the Queen Emma Building over PMP Building both on Queen Emma Street. The Honorable James Ashford recently granted a preliminary injunction to enjoin a developer from using its crane that occasionally and temporarily extended over its neighbors parking lot.

As you are well aware Hawai`i has continuously faced a severe housing crisis primarily caused by a lack of supply despite the high demand for housing. This severe shortage is in part attributable to the high costs to develop housing projects on properties in Hawai`i. This bill helps to eliminate an additional unnecessary cost that can currently add higher costs and delays to any housing project. Construction cranes are necessary, especially in the urban core, to meet the demand for housing. As you can imagine, within the dense urban core areas where the current focus of vertical housing development is being planned in an effort to avoid further impacts on the State’s agricultural lands, a construction crane could intrude into the airspace over, yet well above, neighboring properties without any actual impact to that neighboring properties use. If the intrusion is considered a “trespass” and is prohibited from entering that airspace, the housing project's construction costs will increase substantially and substantial delays are all but certain. This cost will ultimately be borne by the future homeowner.

There is already a critical shortage of housing in Hawai`i despite the high demands by local residents and failing to address this issue would only add to the costs. We strongly support the intent of this bill to define civil trespass and then exempt affordable housing projects from civil trespass in the event that the housing project’s construction crane does not interfere with the adjacent/neighboring landowner’s actual use of the property.

If you have any questions or require anything additional from us, please do not hesitate to contact me.

Sincerely,

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

Wyeth M. Matsubara, Esq.

HB-1355

Submitted on: 2/8/2023 5:14:23 PM

Testimony for JHA on 2/9/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Chad Korenaga	Individual	Support	Written Testimony Only

Comments:

Dear Chair Tarnas and Vice Chair Takayama:

My name is Chad Korenaga and I have been in the construction industry for over 19 years. In our industry, the tower crane is an essential piece of equipment that we utilize to transport material, install heavy components to the building and set formwork for the structure itself. Using a tower crane is the most efficient and cost effective to construct a mid or high-rise building.

Over the years, we have experienced many “air rights” issues during construction of various buildings from neighboring entities. Not only did this add unnecessary costs to the project, but it also affected the completion dates of some projects. This extended time caused an inconvenience to the surrounding community and businesses with vehicular traffic and extended durations of road work and closures in the area.

Furthermore, these crane issues affect the cost and schedule for many projects that are trying to provide added housing in Hawaii. Being that we have a shortage of housing in the state, it is critical that we eliminate unnecessary costs during construction which may result in higher costs and delays for potential homebuyers.

For these reasons, I am writing to strongly support H.B. No. 1355 relating to civil trespass. I am supporting this bill that will exempt housing projects from civil trespass in the event that the housing project’s construction crane is not interfering with the neighboring entity’s actual use of the property. This would greatly help the unnecessary costs and time delays incurred by housing project’s that have an issue with air space rights.

Sincerely,

Chad Korenaga

HB-1355

Submitted on: 2/8/2023 8:55:36 PM

Testimony for JHA on 2/9/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Douglas Shanefield	Individual	Support	Written Testimony Only

Comments:

Turning around a severe lack of housing is a top priority for the citizens of Honolulu. We now have a few developers ready to take on the tough challenge of building new supply in urban core locations where high-rise construction is possible (with the additional community benefits of not cutting into agricultural or natural areas), so I am writing to register my strong support for H.B. No. 1355 – Relating to Civil Trespass. It will provide clear guidance and help minimize additional costs and avoid delays for future necessary housing projects in town.

Working in real estate sales in Honolulu for 29 years, I have seen a continued shortage of housing driven by a lack of supply. Building vertically in the center of town is especially difficult, but can provide much-needed relief to both demand for homes and to traffic, by bringing dwellings closer to work and schools. This has a major impact on the residents in our State. The severe housing shortage is in part attributable to the high costs to development in Hawaii. This bill helps to eliminate an additional unnecessary cost that can currently add major delays to any housing project. Cranes provide contractors the ability to transport steel, concrete, large tools, and other building materials over the building site in an efficient cost-effective manner. The necessary crane and its horizontal portion (jib) hover well over 250 feet above the ground. When not in use, the jib must be left free to swing in the wind; otherwise, a high wind may knock the crane over.

In the urban core areas, where the current focus of vertical housing development is being planned in an effort to avoid further impacts on the State’s agricultural lands, the free-swinging jib typically intrudes into the airspace over, yet well above, neighboring properties without any actual impact to that neighboring properties use. If the intrusion is considered a “trespass” and is prohibited from entering that airspace, the housing project's construction costs will increase substantially and delays will occur.

There is already a critical shortage of housing in Hawaii despite the high demands by local residents and failing to address this issue would only add to the costs. I strongly support the purpose of this Bill to define civil trespass and then exempt housing projects from civil trespass in the event that the housing project’s construction crane does not interfere with the adjacent/neighboring landowner’s actual use of the property.

Thank you very much!