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GOVERNOR



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EXECUTIVE DIRECTOR

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DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
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Statement of
DENISE ISERI-MATSUBARA
Hawaii Housing Finance and Development Corporation
Before the

SENATE COMMITTEE ON JUDICIARY

March 01, 2023 at 9:30 a.m.
State Capitol, Room 016

In consideration of
S.B. 551 SD2
RELATING TO HOUSING.

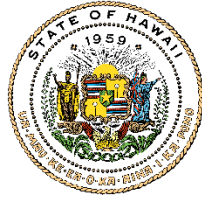
HHFDC **supports** S.B. 551 SD2, which seeks to make it clear that certain housing projects that are not within a Special Flood Hazard Area as identified on the current Federal Emergency Management Agency's Flood Insurance Rate Maps shall be exempt from all statutes, ordinances, charter provisions, and rules relating to planning, zoning, and other certain standards, as outlined in section 201H-38 of the Hawaii Revised Statutes.

The lack of affordable housing continues to be one of the biggest issues facing the state. Measures like this help to streamline the delivery of housing projects.

Thank you for the opportunity to provide testimony.

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
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LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
JUDICIARY

Wednesday, March 1, 2023
9:30 AM
State Capitol, Conference Room 016

In consideration of
SENATE BILL 551, SENATE DRAFT 2
RELATING TO HOUSING

Senate Bill 551, Senate Draft 2 (SB 551, SD2) proposes to clarify that certain housing projects developed by the Hawai'i Housing Finance and Development Corporation on lands that are not within a Special Flood Hazard Area as identified on the current Federal Emergency Management Agency's Flood Insurance Rate Maps shall be exempt from all statutes, ordinances, charter provisions, and rules relating to planning, zoning, and other certain standards, provided that certain conditions are met. **The Department of Land and Natural Resources (Department) offers the following comments.**

The Department appreciates the Senate Committee on Housing's (HOU) recognition of our concerns with existing language in Hawaii Revised Statutes §201H-38(a) and the unintended consequences of allowing blank exemptions to the State of Hawai'i's participation in the National Flood Insurance Program (NFIP).

The Department recommends the amendments added by HOU to SB 551, SD2, page 1, lines 11-13, which reads "thereon; provided that the development is not within a Special Flood Hazard Area as identified on the current Federal Emergency Management Agency's flood insurance rate maps;" be retained.

Mahalo for the opportunity to provide comments on this measure.



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Senate Committee on Judiciary

March 1, 2023

9:30 AM

Room 016

The Office of Hawaiian Affairs (OHA) offers **COMMENTS** on **SB551 SD2**, which would exempt certain Hawai‘i Housing Finance and Development Corporation (HHFDC) projects from planning and zoning statutes, ordinances, charter provisions, and rules in areas that are not within an identified Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) Special Flood Hazard Area (SFHA).

OHA acknowledges that while housing is a critical need in Hawai‘i, so too is the protection and conservation of our lands and natural resources. Article XI, Section 1 of the Constitution of the State of Hawai‘i mandates that “the State and its political subdivisions *shall conserve and protect Hawaii’s natural beauty and all natural resources*, including land, water, air, minerals, and energy sources, and *shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State*. All public natural resources are held in trust by the State for the benefit of the people. [emphasis added]”¹

According to FEMA, “SFHAs are labeled as Zone A, Zone AO, Zone AH, Zones A1-A30, Zone AE, Zone A99, Zone AR, Zone AR/AE, Zone AR/AO, Zone AR/A1-A30, Zone AR/A, Zone V, Zone VE, and Zones VI-V30.”² Most lands in Hawai‘i generally fall outside of Special Flood Hazard Areas as identified by FEMA FIRMs, and are classified within Zones D, or unidentified areas, or Zones X and XS, explicitly identified as areas outside of the SFHA.

The measure as written would essentially exempt HHFDC projects in most cases from planning and zoning oversight, essentially removing public participation and community involvement from the development of large-scale housing projects. This measure by eliminating planning and zoning review of HHFDC projects within SFHAs would further erode the public’s right to inform good governance and be detrimental to the public interest.

Beyond being detrimental to the public interest, this measure could threaten Native Hawaiian cultural practices on undeveloped lands outside of SFHAs. Many Native Hawaiians currently engage in traditional and customary practices for subsistence, cultural, and religious purposes. The Hawai‘i Constitution, Hawai‘i Supreme Court, and this Legislature consistently

¹ Haw. Const. art. XI, § 1.

² Federal Emergency Management Agency, *Flood Zones*, available at <https://www.fema.gov/glossary/flood-zones#:~:text=Flood%20hazard%20areas%20identified%20on,exceeded%20in%20any%20given%20year>, last accessed February 28, 2023.



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protect the perpetuation of these practices as a living component of the Hawaiian culture. Native Hawaiians' cultural and spiritual identity derives from their relationship with the 'āina: the 'āina is part of their 'ohana, and accordingly, traditional Hawaiian customs and practices emphasize respect and care for the 'āina and surrounding resources.³ Consequently, gathering practices traditionally and customarily exercised by Native Hawaiians have continued to the present. Members of hula hālau gather "ferns, maile, and lauhala necessary to make their ceremonies pono, proper." Practitioners of lā'au lapa'au (herbal medicine) gather the plants and herbs necessary for their practice. Finally, fishermen, hunters, gatherers, kalo planters, and farmers access and use the natural or cultural resources of an area for subsistence purposes.

As such, OHA would encourage the inclusion of the following language to ensure that gathering rights shall not have their rights unduly infringed upon:

Nothing contained in this section shall diminish, alter, or amend any existing rights, privileges or practices of the Native Hawaiian people; nor shall the obligations of the State to the Native Hawaiian people be absolved.

OHA would further encourage the following language to ensure that the public interest is maintained:

(3) A public hearing shall be scheduled and held regarding the project within the County where the project is located subject to Chapter 92 requirements. The public hearing shall be held not less than 30 days prior to the corporation seeking review from the legislative body of the county. Public notices shall be published on the corporation website and in a County-wide published periodical no less than once a week for 4 weeks prior to the scheduled public hearing. Notices shall be mailed to all property owners and property lessees of properties within 1 mile of the affected property notifying them of the public hearing not less than 30 days prior to the scheduled public hearing notifying them of the date, time, and place of the public hearing. Copies of all comments received by the corporation in the period within 30 days prior to the public hearing, during the public hearing, and the

³ Davianna Pōmaika'i McGregor, *An Introduction to the Hoa'āina and Their Rights*, 30 HAWAIIAN J. HIST. 1, 15-20 (1996).



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period within 30 days following the public hearing regarding the proposed project shall be provided to the legislative body of the County where the project is located within 7 days of the submission of a project for review by the legislative body of the county where the project is located.

OHA appreciates the opportunity to provide **COMMENTS** on **SB551 SD2** and urges the Legislature to consider amending the measure with the proposed language included within this testimony. Mahalo nui loa.