

DAVID Y. IGE
GOVERNOR OF HAWAII



**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
AGRICULTURE AND ENVIRONMENT
and
WATER AND LAND**

**Monday, February 11, 2019
2:45 PM**

State Capitol, Conference Room 224

**In consideration of
SENATE BILL 379
RELATING TO LAND EXCHANGE**

Senate Bill 379 proposes to allow the Governor to negotiate land exchanges to acquire lands that are suitable for long term diversified agricultural production. The measure also proposes to require a report to the Legislature. **The Department of Land and Natural Resources (Department) respectfully opposes this bill.**

The Department has four parcels adjacent or in close proximity to the planned University of Hawaii West Oahu (UHWO) rail station in East Kapolei, which would be impacted by this measure. The Department's long term objective is to lease the parcels for income generating purposes to support the Department's natural resource management and protection programs. The income generated from this project is intended to fund such programs as:

- Operation and beach restoration projects through the Office of Conservation and Coastal Lands;
- Funding of key positions and implementation of priority projects and programs of the Commission on Water Resource Management;
- Lifeguard services for the Division of State Parks;
- Dam safety initiatives and flood control programs through the Engineering Division; and
- Threatened and endangered species protection, invasive species control, wildland fire suppression, watershed protection and restoration and natural area reserves through the Division of Forestry and Wildlife.

The Department has received support from the Hawaii Interagency Council for Transit Oriented Development and the State Office of Planning for the development of these parcels. In addition to the Department, lands managed by University of Hawaii, the Aloha Stadium Authority and

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

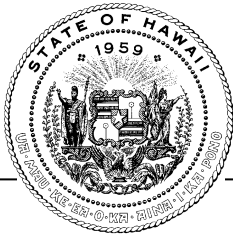
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

other public agencies located along the rail line are also intended to be developed for income generation purposes. The revenue generated from these agencies goes to support green programs and other public recreational and educational programs.

The Department considers the bill's language deficient in regards to providing adequate safeguards to protect the public interest with the alienation of public land. To ensure that the public purpose of affordable housing is fulfilled by the private party, a covenant or reversionary interest in favor of the State should be required as part of any exchange. The measure is particularly adverse in regards to the Department's obligation as steward of the State's public lands. SECTION 2, subsection (a) of the bill usurps the authority of the Board of Land and Natural Resources (Board) by bestowing upon the Governor the sole authority to execute land exchanges pursuant to this measure. As the Board conducts its decision making in an open, sun-shined meeting, this would drastically reduce transparency and public accountability for actions that significantly impact the public land trust.

Additionally, SECTION 2, subsection (e)(3) of the bill as written appears to sterilize the discretionary authority of the Land Use Commission and the appropriate county agencies to reclassify or rezone lands. Rather, the measure seems to compel such action by gubernatorial fiat. Furthermore, SECTION 2, subsection (e)(4) states that "Private development of housing or mixed-uses on private lands, as contemplated by this Act, shall be exempt from all applicable state and county procurement requirements, impact fees, and other exactions". This appears to confer an additional, unwarranted benefit on lands exchanged by State by exempting waiving impact fees (such as for school construction) over similar projects constructed on other private land. Finally, the Department opposes any potential obligation to incur costs of reclassifying and rezoning state-owned lands, only to convey ownership of such lands to a private entity that will ultimately reap the benefit of such action.

Thank you for the opportunity to comment on this measure.



OFFICE OF PLANNING STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

DIRECTOR
OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <http://planning.hawaii.gov/>

Statement of
RODNEY FUNAKOSHI
Planning Program Administrator, Office of Planning
before the
**SENATE COMMITTEES ON WATER AND LAND, AND
AGRICULTURE AND ENVIRONMENT**

Monday, February 11, 2019

2:45 PM

State Capitol, Conference Room 224

in consideration of

SB 379

RELATING TO LAND EXCHANGE.

Chairs Kahele, Gabbard, Vice Chairs Keith-Agaran, Ruderman, and Members of the Senate Committees on Water and Land, and Agriculture and Environment

The Office of Planning (OP) offers **comments** on SB 379, which would allow the governor to negotiate land exchanges to acquire private lands suitable for long-term diversified agricultural production by the State or its lessees, in exchange for State lands to be acquired by private parties for development of housing for Hawaii residents. To facilitate such exchanges, the governor is authorized to “reclassify and rezone” lands intended for exchange and transfer authorized state lands to private parties for development of housing and other mixed-uses within the state urban land use district, provided that the lands are within a one-half mile radius of any Honolulu Authority for Rapid Transportation (HART) station, and that any development on lands transferred to private parties must be in compliance with all state and county requirements regarding health and safety and building permit requirements for housing or mixed-use developments on private lands, but not subject to requirements applicable to State lands.

As noted in SB 379, the promotion of diversified agriculture and the availability of affordable housing have been longstanding goals of the State, and any tool available to the governor to reach these goals is useful. OP is concerned that the State’s acquisition of agricultural lands to produce diversified crops either directly or through lessees could place the State in competition with existing farmers which could thwart the purpose of SB 379.

Moreover, extensive State efforts are underway through the *State TOD Strategic Plan* and the Hawaii Interagency Council for Transit-Oriented Development to master plan the provision of regional infrastructure and financing to develop State TOD lands. Without a clear strategy for how such land exchanges would take place, there could be adverse effects to State agency master planning efforts underway and associated revenue streams for State agencies. A

well-considered strategic assessment is needed to identify those lands for which this could provide more value to the State to conserve agricultural land or promote affordable housing.

Finally, OP is concerned that granting the governor the authority to “reclassify and rezone” lands intended for exchange bypasses the State Land Use Districting process and the Land Use Commission, as well as the City and County of Honolulu planning and permitting process. OP notes that an expedited process for re-districting lands through the LUC for affordable housing is already available through the HRS 201H-38 provisions.

Thank you for this opportunity to testify.



LATE

SB379
RELATING TO LAND EXCHANGE
Senate Committee on Water and Land
Senate Committee on Agriculture and Environment

February 11, 2019

2:45 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) Beneficiary Advocacy and Empowerment Committee will recommend that the Board of Trustees **COMMENT** on SB379. While OHA appreciates the intent of this measure to prioritize agricultural, while simultaneously attempting to mitigate the severity of the housing crisis through the development of affordable housing, **OHA recommends specific provisions be included to ensure public participation, address public trust interests, protect traditional and customary practices, and ensure affordable housing.**

Public scrutiny and input can provide an important check against political and other pressure on State negotiators, which may otherwise result in offers less than fair to the State, the public, and Native Hawaiians. It can also discourage the use of political pressure to procure favorable deals in the exchange of public lands. Agreements on high-value public land exchanges made with the opportunity for public scrutiny may also reduce questions and speculation of favoritism and the erosion of public confidence in the State's administration of our public land base. Finally, it can minimize potential legal challenges post-factum. **With the State's recognition that its "ultimate decision-making power" is vested in the people,¹ OHA respectfully recommends consideration of the overwhelming weight of public interest in the disposition and exchange of our public lands, by providing specific provisions that allow for public participation and review.**

Public and agency review and input would also assist the governor in fulfilling the State's public trust obligations in negotiating land exchanges – and could serve to mitigate negative impacts to Hawai'i's natural and cultural resources. In *Ka Pa'akai*, the Hawai'i Supreme Court stated that the LUC must at a minimum make specific findings and conclusions as to 1) the identity and scope of "valued, cultural, historical, or natural resources," 2) the extent to which those resources – including Native Hawaiian traditional customary rights – will be affected, and 3) the feasible action that the LUC can take to reasonably protect Native Hawaiian rights. Through the *Ka Pa'akai* analysis, the LUC is able to place conditions on district boundary amendments to mitigate impacts to Native Hawaiian traditional and customary practices and the resources they rely upon. SB379's grant of authority to the governor to negotiate land exchanges may, albeit inadvertently,

¹ HRS § 92-1.

not adequately take into consideration the potential impact of negotiated land exchanges on the valued, cultural, historical, or natural resources of those lands and the extent to which those resources, including Native Hawaiian traditional customary rights, can be protected. **OHA recommends that the LUC, county planning directors, and public be given sufficient opportunity to review and comment on proposed reclassifications and appraisals, including with regards to potential impacts to Native Hawaiian traditional and customary practices, as part of the State's due diligence in ensuring exchanges are fair and reflect the interests of the public and Native Hawaiians.**

In addition to the general public's interest in the disposition of its public resources, the Native Hawaiian community also has a particular interest in the disposition and exchange of our public lands, much of which are "ceded" lands acquired without the consent of the Native Hawaiian people, and to which Native Hawaiians have never relinquished their claims. **OHA requests express provisions affirming that private lands exchanged for ceded or public land trust lands assume the ceded or public land trust lands character of the exchanged lands.**

Finally, OHA notes that SB379 would offer incentives to developers in the form of highly valuable land exchanges; OHA suggests that express minimum affordability standards be required to more adequately meet the demand of our residents.

Mahalo for the opportunity to testify.



DAVID Y. IGE
Governor

JOSH GREEN
Lieutenant Governor

MIKE MCCARTNEY
Director

LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai`i

DANIEL ORODENKER
Executive Officer

Bert K. Saruwatari
Planner

SCOTT A.K. DERRICKSON AICP
Planner

RILEY K. HAKODA
Chief Clerk/Planner

RASMI AGRAHARI
Planner

FRED A. TALON
Drafting Technician

Statement of
Daniel E. Orodener
Executive Officer
Land Use Commission
Before the
Senate Committee on Water and Land
and
Senate Committee on Agriculture and Environment

Monday February 11, 2019
2:45 PM
State Capitol, Conference Room 224

In consideration of
SB 379
RELATING TO LAND EXCHANGE

Chairs Kahele and Gabbard; Vice Chairs Keith-Agaran and Ruderman; and members of the Senate Committees on Water and Land; and, Agriculture and Environment:

The Land Use Commission (LUC) provides the following comments on SB379:

The district boundary reclassification process envisioned in this measure may run counter to or violate recent Supreme Court decisions regarding constitutional due process and the State's public trust responsibilities.

Any notification requesting district boundary amendments would have to be preceded by adherence to the provisions of Hawai`i Revised Statutes ("HRS") Chapter 343 and section 6E.

The LUC does not believe it would be able to process a district boundary reclassification in the thirty (30) day time frame identified while providing adequate public notice and opportunity for participation.

Thank you for the opportunity to testify on this matter.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Acting Chairperson
Board of Agriculture

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF THE DEPARTMENT OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON WATER & LAND AND AGRICULTURE &
ENVIRONMENT

FEBRUARY 11, 2019
2:45 P.M.
CONFERENCE ROOM 224

SENATE BILL NO. 379
RELATING TO LAND EXCHANGE

Chairpersons Kahele and Gabbard and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill 379, relating to land exchange. The bill allows the Governor to negotiate land exchanges for diversified agriculture in return for land for housing. The Department supports the intent of this bill and offers comments.

Maintaining production on all agricultural lands is of the utmost importance to reaching the State's goals of food security and sufficiency. This bill seeks to create a path for the State to acquire additional agricultural lands and keep those lands in production. The State must find ways to encourage future agricultural production and this bill seeks to do just that while offering solutions to the housing issues facing Hawaii.

Thank you for the opportunity to testify on this measure.



DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



JAMES J. NAKATANI
Executive Director

STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

TESTIMONY OF JAMES J. NAKATANI
EXECUTIVE DIRECTOR
AGRIBUSINESS DEVELOPMENT CORPORATION

BEFORE THE COMMITTEE ON AGRICULTURE AND ENVIRONMENT AND WATER
AND LAND
MONDAY, February 11, 2019
2:45 p.m.

SENATE BILL NO. 379
RELATING TO LAND EXCHANGE

Chairpersons Gabbard and Kahele and Members of the Committees:

My name is James Nakatani, Executive Director of the Agribusiness Development Corporation (“ADC”). The ADC supports Senate Bill No. 379, which allows the Governor to negotiate land exchanges to acquire lands that are suitable for long-term diversified agricultural production and requires a report to the Legislature.

The bill proposes an innovative method to acquire more lands for agriculture while addressing the State’s housing needs and creating a closer alignment with private sector development. Agriculture could benefit twofold with this concept. First, more valuable lands will be kept in agriculture. Second, agriculture production is closely tied to the availability of workforce housing. It is not unfeasible to envision projects that create a partnerships with the goals to increase food production and increase the State’s housing capacity.

Thank you for the opportunity to testify, and for your consideration of this bill.

SB-379

Submitted on: 2/10/2019 7:52:49 PM

Testimony for WTL on 2/11/2019 2:45:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

LATE

SB-379

Submitted on: 2/10/2019 10:46:13 PM
Testimony for WTL on 2/11/2019 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dale Sandlin	Testifying for Hawaii Cattlemens Council	Support	Yes

Comments:



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

LATE

February 11, 2019

HEARING BEFORE THE
SENATE COMMITTEE ON WATER AND LAND
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

TESTIMONY ON SB 379
RELATING TO LAND EXCHANGE

Room 224
2:45 PM

Aloha Chairs Kahele and Gabbard, Vice Chairs Keith-Agaran and Ruderman, and Members of the Committees:

I am Brian Miyamoto, Executive Director of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interests of our diverse agricultural community.

HFB strongly support SB 379 providing a mechanism for land exchange to stabilize agriculture's access to land.

Tenured access to lands is important for viable agricultural operations. Assurance of access to lands encourages investment and commitment to long term operations. Hawaii has many multigenerational farm operations. Expansion of these types of operations will require assurance to land and water.

This measure addresses one of these needs – land. The exchange process proposed is a good use of resources. Actual cash expenditures can be used for infrastructure improvements and other incentives that are inevitable. Land alone will not ensure a viable agricultural enterprise.

HFB respectfully requests your strong support of SB 379 to advance agriculture into the next generation.

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



February 11, 2019

Senator Mike Gabbard, Chair
Senator Russell E. Ruderman, Vice Chair
Senate Committee on Agriculture and Environment

Senator Kaiali'i Kahele, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Water and Land

Comments in Support of SB 379, Relating to Land Exchange. (Allows the Governor to negotiate land exchanges to acquire lands that are suitable for long-term diversified agricultural production. Requires a report to the Legislature.)

Monday, February 11, 2019, 2:45 p.m., in Conference Room 224

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers, resort operators 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 submit **comments and support regarding SB 379, relating to Land Exchanges.**

HB 550, HD1. The purpose of this bill is to allow the Governor to negotiate land exchanges consistent with and in furtherance of the foregoing agricultural and housing needs and purposes; and require the governor to submit a report to the legislature of any potential or negotiated land exchanges for final approval.

This measure would authorize the Governor to negotiate land exchanges in accordance with Chapter 171, Hawaii Revised Statutes, for the purpose of acquiring private lands that are suitable for long-term diversified agricultural production by the State or its lessees, in exchange for state lands to be acquired by private parties for development of affordable, workforce, and other housing for Hawaii residents. The governor may coordinate with the agribusiness development corporation, the department of land and natural resources, and any other department or agency of the State that holds title to or an assignment of state land that may be appropriate for exchange.

This measure intends that the exchanges negotiated will result in the use of lands that address both the State's agricultural and housing crises, by obtaining large tracts of suitable agricultural lands for the State to lease to farmers for diversified agriculture; and providing suitable urban lands to private parties for expeditious development of affordable housing, workforce housing, and other housing inventory for Hawaii residents, and mixed-use commercial and accessory uses within areas designated for transit-oriented development and other appropriate urbanized areas.

Based on the above, LURF **supports SB 379**, and respectfully urges your favorable consideration.

Thank you for the opportunity to provide comments in support of this matter.