



HB2386
RELATING TO PROPERTY ACCESS

House Committee on Water, Land, & Hawaiian Affairs

January 31, 2020

9:00 a.m.

Room 325

The Office of Hawaiian Affairs Beneficiary Advocacy and Empowerment Committee (OHA) will recommend that the Board of Trustees **OPPOSE** HB2386, which would 1) significantly change the nature and intent of Section 7 of the 1850 Kuleana Act, now codified, essentially unchanged, as Hawai'i Revised Statutes ("HRS") § 7-1, and thereby adversely impact kuleana lands and kuleana land owners throughout the state; and 2) provide for a new and potentially expansive statutory "easement by necessity" that would fail to address any issue of widespread concern, and that could lead to an unfair windfall to a small class of property purchasers at the expense of surrounding landowners.

- 1. By amending HRS § 7-1 to provide kuleana rights for "landlords," non-kuleana parcel owners could adversely burden kuleana lands, including those that continue to host lo'i kalo and traditional and customary agricultural practices, in a manner antithetical to the intent of the Kuleana Act**

The Kuleana Act of 1850 was passed to safeguard the interests of native people in the lands and resources they lived on and relied upon, to ensure they could subsist and survive during and after the complex land division process known as the *Māhele*.¹ The law authorized the Land Commission to award fee-simple title to native tenants for the plots of land that they were actually cultivating, and for plots of land for house lots; these plots we now refer to as kuleana parcels.² The law also explicitly recognized that native tenants would be able to continue accessing their kuleana parcels, as well as resources both mauka (inland) and makai (seaward) of their parcels, to ensure they could sustain themselves and make their land productive.³

The special right of access to landlocked kuleana parcels remains well established in Hawai'i law,⁴ where an easement by necessity may be found for a kuleana parcel owner seeking access over surrounding non-kuleana⁵ land grants; non-kuleana landowners do not have the right to seek access over surrounding kuleana parcels by "necessity." This legal framework recognizes that kuleana parcels were, by their nature, smaller parcels within larger

¹ MELODY K. MACKENZIE, *Introduction*, NATIVE HAWAIIAN LAW: A TREATISE 14-16 (2015).

² *Id.* at 14.

³ *Id.* at 16.

⁴ DAVID M. FORMAN AND SUSAN K. SERRANO, *Traditional and Customary Access and Gathering Rights*, NATIVE HAWAIIAN LAW: A TREATISE 788, at 820 (2015).

⁵ Kuleana parcels may still assert access over other kuleana parcels using different theories, such as traditional or historical trails. *Id.*

surrounding properties (e.g. large land grants), and that **subjecting kuleana parcels to easement rights by others would interfere with kuleana owners' ability to subsist on whatever limited land area they were awarded.**

By changing the language of HRS § 7-1 to provide kuleana rights to “landlords,” non-kuleana landowners could obtain access easements over kuleana lands in a way that was never contemplated by the complex and intentional processes that established private property in Hawai‘i. The situation that led us to this measure in fact exemplifies what is at risk: **easements, including, potentially, vehicular roads or utility lines, running over and through fragile lo‘i kalo systems that have existed since time immemorial, or otherwise compromising the ability of Native Hawaiians to survive on, and maintain connections to, lands they have known for generations.**

Notably, in *Miller v. Wai‘oli Corporation, et al.*, Civ. No. 95-0132 (Feb. 27, 2018), the Hawai‘i Intermediate Court of Appeals (ICA) held that the petitioner, who had sought an easement over numerous kalo farmers’ properties in the cultural kipuka of Wai‘oli, Kaua‘i, failed to establish that his subject property was a kuleana parcel afforded the privileges under HRS § 7-1. Further, the ICA found that the petitioner, Mr. Miller, did not provide any evidence demonstrating an express easement contained in the original grants of the surrounding kuleana parcels; consequently, he was not entitled to an express easement. **As the ICA made clear, Mr. Miller purchased his property with full knowledge that it lacked any easements.** Despite, and because of, Mr. Miller having no legal claim to an easement running over and through the lo‘i kalo systems surrounding the property he purchased, we now find ourselves here—considering a bill that would **impact not only the livelihoods and lifestyles of Wai‘oli kalo farmers, but the rights of all kuleana parcel owners and lands throughout Hawai‘i.** Such a measure would be antithetical to the very intent of the Kuleana Act, and the purposes it continues to serve in providing a means of subsistence and survival for Native Hawaiians seeking to maintain a living connection to their ancestral lands.

OHA also expresses further concern that the amendment to HRS § 7-1 proposed in this measure may also suggest that non-kuleana owners could assert or claim kuleana gathering rights. Again, extending such rights to owners of non-kuleana parcels would be completely inconsistent with the intentions of the Kuleana Act, which sought to ensure that native tenants are able to subsist off the land, as they have for generations, *despite* the privatization of the larger, surrounding tracts of non-kuleana lands. The proposed amendment to HRS § 7-1 flips that notion on its head, and has the potential to result in severe negative impacts to kuleana rights and fragile associated biocultural systems.

2. Amending HRS § 664 as proposed is unnecessary at best, and could provide an unjustified windfall to the very few property owners who have purchased truly landlocked land, at the expense of surrounding properties subject to an expanded class of “easements by necessity.”

Given well-established common laws in Hawai‘i, as well as the ample opportunities afforded to property purchasers to ascertain their access options, amending HRS Chapter 664 as proposed in this measure is also unnecessary and potentially inequitable.

First, Hawai‘i recognizes a range of options for “landlocked” parcel owners to obtain access to their lands. These include common law easements by necessity, customary use, and prescription; recent cases also confirm that an owner of a landlocked parcel may have a right to an implied easement under the “unity of ownership” theory (considering the former Hawaiian Kingdom as the unified owner). For example, if the Hawaiian Kingdom gave out a landlocked parcel but retained ownership of the surrounding area, that surrounding area would be subject to an implied easement to access the landlocked parcel. **Accordingly, there are a range of common law remedies that may equitably provide for easements or rights of way to what might otherwise appear to be landlocked parcels.** In addition, there is no evidence to suggest that there may be a widespread issue of truly landlocked parcels. In the few such cases that may exist, **parcel owners may also negotiate with surrounding properties to purchase an express easement or right of way to their lands.** Accordingly, amending HRS Chapter 664 to provide for a potentially expansive statutory “easement by necessity” would, at best, appear unnecessary to address any issue of widespread significance.

Second, establishing a potentially expansive “easement by necessity” remedy under statute may also lead to inequitable results. In modern times, with professional land title searches required for most purchases of real property, potential buyers have ample opportunity to determine if they are purchasing a property with easements, rights to not-yet-located easements, easement burdens, or without easement rights. Purchasers of truly landlocked land – including Mr. Miller – accordingly have no basis to claim ignorance as to the landlocked nature of their parcel, and **often pay substantially less than they would for parcels that do have clear rights of access.** Again, there is nothing stopping purchasers like Mr. Miller from negotiating with surrounding property owners for the purchase of an express easement interest; however, **giving knowing purchasers of landlocked parcels a new and potentially expansive statutory easement opportunity would only provide them with a potential windfall in property value – to the detriment of surrounding property owners, who could be forced to accommodate such newly created easement rights.**

As a final note, OHA asks the Committee to reflect on the farmers of Wai‘oli, who are still struggling to recover from the devastating floods of 2018, and perpetuate the traditional Hawaiian agricultural practices that have occurred on their lands since time immemorial. **Unfortunately, the passage of this measure would only cause further disruption to this vulnerable but hopeful community** – and potentially upend laws that, for over a century, have safeguarded the ability of Native Hawaiian families and communities throughout the islands, to subsist and survive on their ancestral lands.

Accordingly, we respectfully urge the Committee to **HOLD** this measure. Mahalo nui loa for the opportunity to testify.

HOUSE COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

ATTN: CHAIR RYAN I. YAMANE & VICE-CHAIR CHRIS TODD

Testimony in Strong Opposition to HB 2386:

Relating to Property Access

January 31, 2020, 9:00 a.m.

Conference Room 325

Dear Chair Yamane, Vice-Chair Todd, and Members of this Committee,

Mahalo for this opportunity to testify on this important matter. My name is Reid Yoshida and I come before you as both a taro farmer and also as President of the Wai'oli Valley Taro Hui. I apologize for not being there in person. My family has been in Hanalei for 125 years. My great grandfather came to Kaua'i to work the sugar plantations and lived in Hanalei since the late 1800s. My grandfather was born in Hanalei in 1896 and I still live in the same house that he finished building in 1933. All in all, I come from a family of farmers cultivating kalo on the North Shore of Kaua'i.

When I look at my life, I should not be a taro farmer. After High School, I became an engineer and worked in Las Vegas. During that time, I still found that I would always want to return home to Hanalei and work in the lo'i helping my family. In 2010, I made the decision to walk away from my career as an engineer and move home to Hanalei. Over the next few years, I spent my time helping my uncle on his farm and some of my friends who are also taro farmers. In 2015, I had the opportunity to take over and re-build a 6-acre taro farm and realized that being in Hanalei raising taro is truly where I am the happiest. A lot of people question my decision to walk away from my career because if I look at it from a purely financial standpoint, leaving my engineering career to become a farmer is the worst possible decision I could have made. However, I found that being close to my family, having the opportunity to raise taro in the same area where I grew up, and continuing something that my grandfather started for our family is more valuable than a great salary as an engineer. In no way is it easy, because I do have to live paycheck to paycheck. But, how do you put a price on being able to work the same land that your family has had a connection with for more than 100 years?

After the devastating floods in 2018, our small taro farming community has struggled. Our water system still has not been repaired despite the cooperation of federal, state, and county agencies and emergency proclamations (by the State and County). I recently had to find another job in addition to my farm so I cannot be there in person today. The damage to our water system has created a lot of stress with many of us wondering if there is a future to continue farming taro in Hanalei and Wai'oli. This would be devastating to all kalo and poi production in the State.

Immediately after the flood, our water supply was totally cut off. Luckily, we were able to restore some flow to our system with the help of numerous volunteers, which allowed us to continue farming, but in no way was the volume close to the pre-flood conditions. As with many issues in our community, we all work together to collectively steward the system and land. Over the last year, we have continued to have weather events that cut off the water

supply because the overall system was so heavily damaged. This has created a lot of problems as the low water flow at times has made it hard for me to replant as much as I would like, which in turn makes it even harder to recover from the April 2018 flood. The flood damaged all of our equipment, and many of us were not able to prepare the new fields for planting for 3-4 months and some farmers have still not repaired some of their fields. With the water/equipment issues and the silt which was deposited in the fields, the crop yields since the flood have been very low. I am currently down 40% when compared to my pre-flood production. Due to the impacts of the flood, I have had to go back to my career as an engineer for a contractor on Kauai. It was not my plan nor my wish to do so. With my farm being relatively small and the loss of production, it was a decision I needed to make to financially support my family. I still continue to work the farm on a part time basis with the hope that in a few years, I can complete the recovery and return to farming full time. This bill would result in further loss of production – threatening the livelihood of this practice.

As a Hui, it is our mission to support and enhance the mauka and makai biocultural resources in the Wai'oli Stream and Hanalei Valley watersheds, to protect the natural and cultural resources that enable traditional and customary Native Hawaiian practices, to maintain habitat for endangered Hawaiian waterbirds, and to engage the greater Kaua'i community through educational outreach programs and initiatives relating to the farming of taro and community-based stewardship of water resources. Our small community has always been close. However, we did not formally organize as a non-profit until the devastating floods of 2018 made it painfully clear that our entire community and way of life was at risk. It has been nearly two years since the flood. As farmers, we understand that there are things that are out of our control such as weather conditions, fuel/equipment prices, and environmental changes, which affects our ability to farm. Upon hearing about HB 2386, it was very disheartening as this is another issue that we have to deal with that impacts our ability to continue farming taro in Wai'oli.

It is my understanding that Mr. Miller bought this land, knowing that it was landlocked. His intent was to build a house. The impact of having a house with a septic system so close to our water supply is something that I cannot fathom. All the farmers in the Wai'oli watershed rely on a single water source and the potential consequences are grave, not only for our crops, but for the overall health of the farmers.

It is disheartening to see how we are losing Hanalei's very identity, where taro farming is such a big component. Our small community still has so much more work to even recover from the 2018 floods. If HB 2386 passes, my fear is that this additional burden will be the last straw and will force additional farmers to give up their farms.

Please kōkua by killing HB 2386 today.

Mahalo for your time and consideration.

Reid K. Yoshida
President, Wai'oli Valley Taro Hui
Kaua'i, Hawai'i
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HOUSE COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

ATTN: CHAIR RYAN I. YAMANE & VICE-CHAIR CHRIS TODD

Testimony in Strong Opposition to HB 2386:

Relating to Property Access

January 31, 2020, 9:00 a.m.

Conference Room 325

Dear Chair Yamane, Vice-Chair Todd, and Members of this Committee,

My name is JoAnne Kaona and I am a fourth generation kalo farmer in Wai'oli. I am also the Secretary for the Wai'oli Valley Taro Hui. I was born and raised on Kaua'i, grew up in Wai'oli, and I have been helping my Dad farm 3.5 acres of land for about 15 years. My father's name is Clarence "Shorty" Kaona and while he could not be here for this hearing, he too is in strong opposition to HB 2386. For me, kalo farming means 'ohana. My Dad took over kalo farming from his Dad and his Dad took over from his Dad. At 84 years old, my Dad is still kalo farming and I'm preparing for when he's ready for me to take over. I want to be able to pass down this piece of who we are to future generations. For our 'ohana, and for our tight-knit community in Wai'oli, kalo farming has been the foundation of our community for decades.

Along with my work at the Waipā Foundation, a nonprofit in the neighboring ahupua'a, I have been heavily involved with the work that the Wai'oli Valley Taro Hui has undertaken recently. While we are all just small family farmers wanting to carry on kalo cultivation in a traditional manner, we all acknowledge that we are collectively affected by the recent devastation, flooding, and State of Emergency. We have always worked together as a community to maintain the lo'i kalo system we share because we all recognize the importance of its viability – this has been the case for generations. Waipā Foundation is one of many organizations that is committed to educating communities on aloha 'āina, sustainability, natural resource management, and traditional and customary Hawaiian practices. The Wai'oli Valley Taro Hui farmers all play a key role in the success of that education and in providing food for Kaua'i communities and the State of Hawai'i.

Unfortunately, along with natural disasters threatening the continuation of kalo cultivation, this bill will directly and negatively interrupt this long-standing community practice. As my fellow Hui members (Bobby Watari, Chris Kobayashi, Reid Yoshida, Conrad "Kimo" Inanod, etc.) also share, Michael Miller's complete disregard for the makeup of this community is evident in the many ways he has tried to seek special treatment. Since 1996, Miller has actively sued many families in the area. In fact, my Dad, Shorty Kaona, was named in the multiple suits Mr. Miller has unsuccessfully brought. It has been traumatic and stressful for my whole 'ohana.

If passed, this bill would set an alarming precedent and gravely impact the viability of kalo farming not only in Wai'oli, but throughout the State of Hawai'i as well. Further, this bill also seeks to amend well-established laws that have roots in the Hawaiian Kingdom. But ultimately,

I ask you to **please kill bill HB 2386** because it would directly hurt our already-struggling community.

Mahalo nui for your time and consideration.

JoAnne Kaona
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HOUSE COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS
CHAIR RYAN I. YAMANE & VICE-CHAIR CHRIS TODD

Testimony in Strong Opposition to HB 2386:
Relating to Property Access

January 31, 2020, 9:00 a.m.
Conference Room 325

Chair Yamane, Vice-Chair Todd, and Members of this Committee:

Mahalo for this opportunity to submit testimony in **strong opposition** to HB 2386: Relating to Property Access. I am a Law Professor at the William S. Richardson School of Law, the founding director of Ka Huli Ao Center for Excellence in Native Hawaiian Law, and the editor-in-chief of *Native Hawaiian Law: A Treatise*, the definitive resource on Native Hawaiian legal issues. Prior to my academic career, I worked at the Native Hawaiian Legal Corporation for more than a decade, litigating Native Hawaiian traditional and customary access and gathering rights issues, as well as land title cases. I submit this testimony in my personal capacity as a private citizen and an attorney.

This bill is deeply flawed and, if enacted, would upend a century and half of Hawai‘i statutory and case law on kuleana access rights. Hawai‘i Rev. Statutes (HRS) § 7-1, which this bill seeks to amend, was originally enacted as part of the 1850 Kuleana Act, and modified in 1851, by Kamehameha III and the Hawaiian Kingdom Legislature. It was specifically enacted to articulate and protect the rights of native tenants (maka‘āinana or hoa‘āina) receiving kuleana awards in the mid-19th Century Māhele process. As you know, that process separated out the interests of the King, Government, Ali‘i/Konohiki, and native tenants in the lands of the Kingdom and resulted in allodial or fee simple title. In discussions in the Privy Council on this provision, Kamehameha III stated, “a little bit of land, even with allodial title, if they [the tenants] were cut off from all other privileges, would be of very little value.” Privy Council Minutes (July 13, 1850). The rights articulated in HRS § 7-1 were always meant to attach to the lands of the native tenants – not to any other lands, because the “landlords” (King, Government, and Ali‘i/Konohiki) already had substantial rights. Amending the law as set out in HB 2386 would directly contradict the intentions of the King and Legislature and the purpose of the original Kuleana Act. Moreover, by exponentially broadening the class of people who are able to exercise such rights, these amendments create a number of unknown and potentially damaging impacts – impacts that eventually would harm kuleana access, gathering, and water rights and those very native tenants the law was originally intended to protect.

Finally, if these amendments are meant to ensure that all landowners have reasonable access rights to their own lands, they are not necessary. Landowners in Hawai‘i already have access rights through the doctrine of “easement by necessity.” Hawai‘i statutory and caselaw is sufficiently well-developed on the easement by necessity doctrine, and the burdensome amendments proposed by HB 2386 to the existing law are totally unnecessary.

Passage of HB 2386 would undo well-established Hawai‘i law, directly contradict the very purpose for which HRS § 7-1 was enacted, and put kuleana rights in danger. Thus, I urge you to hold this bill. Mahalo again for the opportunity to present this testimony in **strong opposition** to HB 2386.

House Committee on Water, Land & Hawaiian Affairs

Representative Ryan Yamane, Chair

Representative Chris Todd, Vice Chair

Friday, January 31, 2020, 9:00AM

Conference Room 325

Re: Testimony in **Strong Opposition** to **H.B. 2386**, Relating to Property Access

Mahalo for the opportunity to submit testimony in **strong opposition** to H.B. 2386.

My name is Letani George Peltier. I am a Native Hawaiian attorney and a Legal Fellow at Ka Huli Ao Center for Excellence in Native Hawaiian Law at the William S. Richardson School of Law at the University of Hawai‘i at Mānoa. I am submitting this testimony in my personal capacity and as part of my kuleana as a Native Hawaiian.

House Bill 2386 seeks to amend HRS § 7-1, a statute that originates from the Kingdom era which was intended to provide native tenants with the right to gather certain items necessary for their subsistence. This statute, along with Article XII, § 7 of the Hawai‘i State Constitution and HRS § 1-1, forms the bedrock foundation of the legal framework that protects traditional and customary Native Hawaiian practices (so-called “T&C rights”).

Although the proposed amendments to HRS § 7-1 seem innocuous, the ramifications are potentially devastating. The enumerated rights in the HRS § 7-1 were not intended to be provided to anyone and everyone. House Bill 2386 would broadly expand the statute and allow any landowner to exercise these rights. Not only would this erode one of the core protections for traditional and customary Native Hawaiian practices, but it could potentially create user conflicts as the number of people able to utilize HRS § 7-1 would increase dramatically.

I urge this committee to oppose this bill. Thank you again for the opportunity to testify.

HB-2386

Submitted on: 1/30/2020 6:22:44 AM

Testimony for WLH on 1/31/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Tina Taniguchi	Individual	Oppose	No

Comments:

Hawaii is not the wild west! Hawaii is legally still it's own sovereign nation. Gathering rights are in place (not being abused, not always recognized) partially due to the fact that Hawaii is still legally a sovereign nation. Giving private landowners the right to remove water that passes through their property that is then used in someone's lo'i is not a gathering practice and in facts takes from others hence the "wild west". I am in opposition of bill 2386, and any that abuses this land and its people.

HOUSE COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

ATTN: CHAIR RYAN I. YAMANE & VICE-CHAIR CHRIS TODD

Testimony in Strong Opposition to HB 2386:
Relating to Property Access

January 31, 2020, 9:00 a.m.
Conference Room 325

Dear Chair Yamane, Vice-Chair Todd, and Members of this Committee,

I'm Bobby Watari and I am a 3rd generation taro farmer who has been farming fulltime for the past 39 years. I learned to farm from my father, who came to Hanalei for this purpose in the 1950s. My dad started growing taro on 15 acres, and I have since taken over that land and added to it. I cultivate some kuleana land that my family owns and I lease other lo'i from Waioli Corporation. Farming has been my life, and I am now grooming my step-son Kaisen to take over our operations. I am not sure if my daughter Lily is interested in farming, but it feels like I am working constantly to ensure that our farm is operational and healthy so that my kids even have the option of continuing this important family tradition.

My family is part of a small hui of about a dozen farmers, the Wai'oli Valley Taro Hui, and together we grow wetland kalo in Wai'oli and Hanalei Valleys. In Wai'oli, we use a traditional Hawaiian water and lo'i system that researchers have documented as having been in place since before the arrival of Captain Cook in the 1700s. We are honored to continue this important Hawaiian tradition that has been our way of life in Wai'oli for many hundreds of years. We feed our community by supplying taro to small community poi mills like the Waipā Foundation and larger commercial operations such as Hanalei Poi and even millers on O'ahu. My son Kaisen also provides lū'au leaf so local families can make laulau and more. Altogether, our Hui stewards about one third of the taro grown in Wai'oli today, which I understand is about 25% of the lo'i cultivated statewide.

Our Hui formally organized last year, creating a state non-profit and securing federal tax exempt status to help us begin to recover in the wake of the devastating floods of 2018. Although that was nearly two years ago now, we are still in basic recovery mode. Just this week, the governor extended the emergency proclamation for our area, which recognizes that we are still in a state of disaster and recovery. Our water system needs major repairs and we have been working diligently with County, State, and Federal entities to secure the approvals necessary for us to fix our water intake and ditch system, restore our water supply, and so much more. In the meantime, it has been very difficult to continue to farm taro with so little water. Planting, harvesting, weed control – everything, really – has been made exponentially more difficult without enough water. Some in our Hui have had to give up farming fulltime and take other jobs because they cannot continue – going on two years now – without a regular paycheck.

To be honest, when i found out about HB 2386, I couldn't believe it. This bill is yet another threat to our ability to continue our way of life in Wai'oli. **Please kill HB 2386.**

For about 30 years now, our small community has been dealing with Michael Miller. He bought a royal patent grant – not a kuleana – from my late uncle and neighbor James Masada. Since then, he has sought an access and utility easement along our small farm road (that is on top of the banks of taro patches). We initially allowed him to use our road, but when he built an unpermitted structure and started living there, we asked him to stop. He appeared before the Board of Land and Natural Resources and filed lawsuits, and each of these decisionmaking bodies considered all of the evidence and ruled against Mr. Miller. In 1998, after hearing testimony about how the lo'i bank was too narrow for vehicles and utility wires, the Land Board denied Miller's request for an easement. He then took us to court. After the Circuit Court ruled in our favor, Miller appealed and in February 2018 the Intermediate Court of Appeals also concluded that "based on the evidence presented at trial, Miller is not entitled to the specific easement he requests pursuant to HRS § 7-1 or an express or implied grant of easement." *Miller v. Waioli Corporation, et. al* (Feb. 27, 2018). Since the courts determined that Mr. Miller did not meet the legal requirements, he has now come to you, and HB 2386 seeks to change those requirements so Mr. Miller can persist in his efforts. This is the poster child for special interest legislation and the consequences are grave.

We are a small taro growing community struggling to continue our traditional, Hawaiian way of life. Mr. Miller bought this land knowing that it was landlocked. He then built a shack – without permits – in the middle of land that has been farmed in taro for hundreds of years. Because of our Native Hawaiian farming techniques and the need to have fresh water running through the lo'i at all times to keep the taro cool and prevent rot, having a cesspool or septic system in the vicinity will be a grave threat. You cannot put a toilet and other runoff in the middle of the community water supply. All of the taro farmers in our Hui share a single water system. So, this threatens all of us.

Please do not add more to the burden that our Wai'oli taro farmers are already struggling with. On Kaua'i's North Shore much work remains to recover from the 2018 floods. If passed, HB 2386 may put even more taro farmers out of business.

At some point, Mr. Miller's quest must end. **Please end it today by killing HB 2386.**

Mahalo for your time and consideration.

Robert "Bobby" Watari
Kaua'i, Hawai'i

HB-2386

Submitted on: 1/30/2020 12:34:32 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Spacer	Individual	Support	No

Comments:

Aloha Representatives.

I SUPPORT this bill.

It has been made clear to me there are kuleana owners on Kauai and elsewhere who have land locked kuleanas and are denied vehicular access to their kuleanas. If one owns property in this modern era, one needs vehicular access for farming, ex. to transport produce to markets, or to transport building materials. These modern day realities did not exist when the law governing kuleanas was created. The bill seeks to mandate access. Please support this bill. Mahalo.

January 29, 2020

Committee On Water, Land & Hawaiian Affairs
State Capitol, Conference Room 325
415 South Beretania Street
Honolulu, Hawai'i 96813

**RE: TESTIMONY IN STRONG OPPOSITION TO HB2386
Relating to Property Access, Extends the application of gathering
rights to lands owned in fee simple and to landlords and landowners.
Authorizes an action for easement by necessity for landlocked parcels
not previously under a unity of title with the prospective subservient
estate.**

Aloha Chair Yamane and Members of the Committee on Water, Land & Hawaiian Affairs,

Mahalo for taking the time to consider my concerns regarding property access for kuleana properties that would affect our taro farmers in Wai'oli Valley.

My name is Kaisen Carillo. I come from multiple generations of taro farmers on both sides of my family. My mother's side of the family, the Haradas, started farming with my great grandfather Genichi Harada. My great grandfather's daughter [Lily] married Ahfook Tai Hook, both are my grandparents and still farm in Wai'oli even at 82 years old. Finally, my mom Lillian, daughter of Ahfook, married Bobby Watari, who also farms in Wai'oli Valley.

That leaves me, a 27-year-old 4th generation Native Hawaiian taro farmer in Wai'oli and Lumaha'i Valleys. I am one of only three farmers in Wai'oli younger than 35 years old. I have just started my own family and I am raising my 2-year-old daughter to farm this land as well. I spent some time outside of Kaua'i, going to school, earning my associate's degree in hospitality and my bachelor's degree in business. I'm grateful to have gotten these degrees and have been putting them to good use since I moved back to Kaua'i from O'ahu about 3 years ago.

Now, as an adult, I am able to use my formal education to expand my own farming efforts and am currently being groomed to run our family-operated farm.

Since the 2018 floods, though, things have really been hard. As a full-time farmer with a young family, it's been stressful trying to figure out how to provide for my family. I need to not only repair the damage to my farm, but also provide for my family's needs.

The easement we received from the BLNR was the necessary first step, not just for me, but our whole farming community in Wai'oli Valley to get back on our feet. We still have a long way to go, but we worked really hard with the government to get the easement so we could return, as best as possible, to our way of life. A way of life that has provided for my family for over 4 generations directly, but really for Native Hawaiian families like ours since time immemorial.

While I am not a lawyer, it is not difficult to understand the intent here. I understand the importance of following processes when they are made to ensure things are done in a pono way. To me, this bill includes language that does not respect the processes already in place.

Also, you do not have to be a lawyer to understand the language in the Intermediate Court of Appeals ruling against Mike Miller. As a long-time aggravator in our tight-knit community, Mr. Miller has been trying to gain access to a property that he, with full-knowledge, purchased without access. After he was denied an easement by the BLNR and then by the Courts, it seems pretty suspicious to me that this bill conveniently goes around all the processes that prevented Mr. Miller from gaining access through the proper channels to begin with. As a last resort, it is clear to me that Mr. Miller is seeking a self-serving bill from the legislature.

Besides the impact that I and other Wai'oli Valley Taro Hui members are concerned about, approving this bill will send a bad message to young people, like me, who are trying to preserve ancestral traditions and lifestyles. It will show that if you have a lot of resources and you don't get what you want through the steps in place, you can still go around the system.

At first look, while this bill does not seem to be ill-intended, it will have negative consequences for us in Wai'oli Valley. I urge you to send a message to special interest individuals trying to cause trouble in our and other rural communities that you, our policymakers, do not serve them.

Mahalo for the opportunity to explain why this issue is so incredibly important to vote against. It will harm our way of life in Wai'oli. Please kill HB 2386.

Mahalo,

Kaisen Carillo

Wai'oli, Kaua'i, Hawai'i

hanaleikalo@gmail.com

January 29, 2020

Committee On Water, Land & Hawaiian Affairs
State Capitol, Conference Room 325
415 South Beretania Street
Honolulu, Hawai'i 96813

RE: TESTIMONY IN STRONG OPPOSITION OF HB2386
Relating to Property Access, Extends the application of gathering rights
to lands owned in fee simple and to landlords and landowners.
Authorizes an action for easement by necessity for landlocked parcels
not previously under a unity of title with the prospective subservient
estate.

Aloha Chair Yamane and Members of the Committee On Water, Land & Hawaiian Affairs,

Mahalo for this opportunity to testify on this important matter. As a kalo farmer in Wai'oli Valley, Kaua'i and a member of the Wai'oli Valley Taro Hui, I am in **strong opposition of HB2386** and urge you to strike this bill down.

My name is Chris Kobayashi and my family has been living and farming in Wai'oli Valley for three generations and over one hundred years. My grandfather moved here from Japan and chose to begin farming in Wai'oli. Initially, my family farmed rice, but by the early 1940s we expanded to wetland kalo and other crops.

My father was born in 1920 on the same land where I was born and raised and continue to farm today in Wai'oli. My father lived here and farmed throughout his life. As he and his one worker got older, he spoke to me one day – wondering and realizing that there may be no one left to carry on and maintain our kalo farm. Though I never told him, in that very moment, that was when I made the decision and commitment to take over the farm and carry on his legacy. I knew how much he and my mom had struggled to raise 5 children while farming, and I thought of all of his blood, sweat, and tears that had gone into clearing, preparing, planting, maintaining, and taking care of the kalo and the land. I thought: I can't let all that he put into our farm be for nothing.

Today, our farm allows us to grow food for ourselves and supply good kalo to small poi millers who make poi or pa'i'ai for their communities; to support 'āina-based knowledge programs and organizations on different islands who teach young children, students, and families who do traditional ku'i with their traditional food. It has been a heartfelt honor to have been a part of this and we hope to continue to be a source for these friends and others. In addition, our family is dedicated to organic farming and hope to provide food sustainability to our communities and islands.

We have been informed by various reputable sources that this bill is part of special legislation submitted on behalf of Mike Miller who is attempting to circumvent prior administrative and legal processes and decisions. Last year, the Wai'oli Valley Taro Hui sought an easement from the Board of Land and Natural Resources after our mānowai, the means to supply water to our kalo patches, was destroyed by the 2018 floods. We, as simple farmers, followed the law to get that easement even when it seemed impossible. We understand and support the safeguards that the administrative process provides when seeking an easement, and I feel it is unfair that this bill, if passed, would be a work around for those who do not want to go through the proper processes.

This bill is another example of how Mr. Miller has been, and continues to be, a great source of trouble for our small, rural farm town. About 30 years ago, Mr. Miller put a PVC pipe right through our communal 'auwai bank without the farmers' knowledge. This caused a huge break in the bank and our source of water for all the farms and lo'i dependent on this 'auwai system. We were forced to hand carry 30 feet of culvert piping, 80 pound bags of cement, and multiple bags of sand and gravel. All of this to make repairs to return water to the historical lo'i that were dried and cracking from no water. Mr. Miller didn't help us or apologize for the damage he caused.

For us in Wai'oli, this bill would significantly disrupt our lifestyle, the character of our valley, and our ability to farm kalo in a traditional manner. It would allow those who do not currently have legal access to trample on our narrow kalo banks, and further destroy the kalo patches we have worked so hard to restore after the floods. It could also allow individuals to build houses with toilets in the middle of our valley, causing pollution to the lo'i that feed our community and hindering our ability provide kalo for all of Hawai'i.

Our farm, and the Wai'oli Valley Taro Hui as a whole, **humbly ask you to vote against this bill.**

Thank you again for this opportunity to testify. Please vote against this measure today.

Mahalo,

Chris Kobayashi
Kaua'i, Hawai'i
waioli2.c@gmail.com

HB-2386

Submitted on: 1/30/2020 1:42:18 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
maelani Lee	Individual	Oppose	No

Comments:

Aloha,

land owners= People holding Falsified documents of illegal titles that were not legally transferred to them directly by an heir of the land, under the great mahele.

i, Maelani Ann Lee, hereby oppose this bill. According to the 1850's, gathering rights, water rights and any land rights are and always should be under the heirs of such land. "Land owners" do not have legal transfer of title, in most cases, and should not be honored rights as much as heirs. Heirship has been granted through the Great Mahele and should remain the same. Gathering rights should be always given to heirs and the families, not to landlords or tenants who do not have the correct land titles such as Royal Patents or Land Commission Awards.

I also oppose this bill because it will go against Hawaiian blooded heirs on their own land with no control. The land should not be used "for profit", at all, regardless of land title or Kuleana land, royal patent and land commission awards. Hawaiians use the land for gathering purposes for ceremonies, ho'okupu or gifts to our gods or ancestors and for living and farming. Nothing is sold for profit. Hawaiians or heirs also currently have the right to farm on their lands to support themselves and their families, which is needed for our economy and future. These lands in Hawai'i are not for foreigners to come here and want to make a profit on the land. The lands are for cultural sustainability, not for profit especially if any one plans to build or grade on land that has a taro farm or any farm already in existence from the past heirs.

I have filed as an heir to different land parcels and ahupua'a on all islands. I am probably the heir with the most land and I do not support a Bill that would give more benefit(s) to people who do not carry heirship for land in Hawai'i. Land should remain in the Hawaiian families.

Please do not pass this bill for it will disrupt or interfere with my families Kuleana lands and Royal patent Lands. Most of these titles that foreigners have, are not clear titles transferred to them since the Great Mahele. Most of them have illegal documents claiming ownership that someone or some company have falsified for profit. These

foreigners need to do research on the land prior to purchasing to see if they will have the legal transfer of documents for ownership, so that they will know whether or not the land that they purchased was bought from an heir, legally and or if it's illegal to purchase.

Please do not pass this bill. I would testify in person, but I will be off island in Maui.

Sincerely,

Maelani Lee

maelanilee@yahoo.com

(808)369-5383

HOUSE COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

ATTN: CHAIR RYAN I. YAMANE & VICE-CHAIR CHRIS TODD

Testimony in Strong Opposition to HB 2386:
Relating to Property Access

January 31, 2020, 9:00 a.m.
Conference Room 325

Dear Chair Yamane, Vice-Chair Todd, and Members of this Committee,

My name is Conrad “Kimo” Inanod and I am a kalo farmer in Wai‘oli Valley and the Vice President of the Wai‘oli Valley Taro Hui. I’m sorry that I am not able to come to O‘ahu, I have ‘ohana kuleana.

Like many others in our Hui, my family has been farming kalo and stewarding Wai‘oli’s natural and cultural resources since before I was born. I am a fourth generation Native Hawaiian kalo farmer. I cultivate one kuleana that my family owns and about seven acres that I lease from Wai‘oli Corporation. I also help to mālama Wai‘oli Stream and the larger watershed.

I was raised by my grandpa, James Masada, right here in Hanalei. My grandpa sold kalo land to Michael Miller, who has been seeking additional access to that land. Mr. Miller knew what he was getting when he bought the land, but he has been fighting for the past 30 years to change the landscape of Wai‘oli. He hasn’t been able to get the access he wants from the Board of Land and Natural Resources or from the courts so now he is here, pushing this HB 2386.

This bill would give Mr. Miller and others like him the ability to disrupt these important family and native traditions. Allowing this bill to pass will give him the chance to build a road and utilities through our kalo fields and put up a house in the middle of our lo‘i. In fact, his parcel is located directly next to the ‘auwai (irrigation) system that feeds all of the lo‘i in the area as it has for decades. The Hui is still struggling to rebuild from the devastating floods of 2018, which has cut off much of our access to water necessary to grow kalo. What Mr. Miller proposes to do in the middle of our lo‘i will ruin the quality of the water we need to farm, the safety of the food we produce, and the way of life in our community since before western contact.

This is about protecting and restoring our quality of life as Native Hawaiian practitioners and small family farmers. Kaua‘i’s North Shore has changed dramatically, and our sleepy farming community has been transformed into a bustling tourist destination and construction zone. Please help us keep the spirit of Wai‘oli and family farming alive by stopping HB 2386.

Mahalo piha,

C. Kimo Inanod
Kaua'i, Hawai'i
conradinanod@yahoo.com

HOUSE COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

ATTN: CHAIR RYAN I. YAMANE & VICE-CHAIR CHRIS TODD

TESTIMONY IN STRONG OPPOSITION TO HB 2386:
RELATING TO PROPERTY ACCESS

JANUARY 31, 2020, 9:00 A.M.
CONFERENCE ROOM 325

DEAR CHAIR YAMANE, VICE-CHAIR TODD, AND MEMBERS OF THIS COMMITTEE:

Thank you so much for the opportunity to testify in strong opposition to this important matter. As a kalo farmer in Wai'oli Valley, Kaua'i and a member of the Wai'oli Valley Taro Hui, I urge you to please vote today to kill HB 2386.

My name is Nathaniel Temanu Tin-Wong. I was born and raised on Kaua'i and grew up with a deep appreciation for the land. My dad is a fisherman, and I have so many memories of my grandfather growing food in our yard. My wife, Dominique, and I, and our two beautiful daughters recently moved back to Wai'oli Valley where our families have farmed for generations. My daughters are fourth generation from Hanalei, and as a young Hawaiian family, it is so important to us that we raise our family with the values and tradition of living with the land, and farming kalo as our ancestors have always done.

At the end of 2015 I had the opportunity to farm a lo'i with Aunty Chris Kobayashi and Uncle Deme Rivera. They noticed that I was really interested in kalo, and ku'i kalo, and they offered my 'ohana the chance to start farming one of their lo'i. We were so lucky to be in the right place at the right time, and we said of course! We learned how to farm kalo organically, using practices like cover cropping and using organic fertilizers.

The floods in 2018, made worse by Hurricane Lane, caused extensive damage to our farmland and water system. It is nearly two years later and we are still working to make major repairs. To this day, lo'i remain empty and the lack of water is causing major difficulties for families to make ends meet. It feels as if we have to restore the entire ahupua'a just to grow our kalo again but it is important to rebuild so that my family and other families can maintain our way of life.

As a young father of two, I feel that it is so important for my generation to learn from the older generation that has been farming all of these years. We need to keep the kalo alive, and start stepping into that role. Having the opportunity to raise my children in this way of life, learning about kalo, and invasive species, getting them up to see how to care for the mānowai, and having them around as I work is the biggest blessing. I want to give them this lifestyle, and I feel that it's part of my duty to keep kalo farming alive for my children.

HB 2386 threatens my ability to do this for my children. I have several worries about this bill. I will talk about two:

1) It seems to benefit few at the cost of many. There are already access rights inherent to kuleana lots. I am a Hawaiian and I have a kuleana, there are no utilities and I believe it should stay that

way as that kind of infrastructure would be harmful to the flood prone area where it is. So what other land holders will benefit from this law? Is there a great need and number of non-kuleana land holders who need access?

2) I farm lo‘i on leased kuleana. As I mentioned we grow kalo. The entire kalo plain of Hanalei flooded in 2018 and it will again. There are several lots in the Hanalei bay, one in the SMA another in conservation, both are in the flood zone, in old lo‘i (wetland fields), one is along a ditch we use to irrigate our fields. There are currently illegal structures in these fields. I worry about peoples sewage and their ‘opala. When it floods, what harmful things will wash into the kalo fields? As housing is a shortage and more people come from away to live in paradise, illegal structures have increased in kalo areas. This bill could be misused to increase access and even utilities to these areas. People are so worried about having clean and safe food to eat, think about what putting a road right through our lo‘i will do to the safety of the food. Or worse, what about increased access for unpermitted structures in wetlands and SMAs? If this happens, what kind of pollution will we have to deal with? We are small family farmers who farm for the sake of our community, as much as for the sake of our family. Runoff from a road or construction will pollute the waters we use to cool our kalo. When we cannot produce clean food for our community, we will no longer be kalo farmers. I do not want that to happen to my family or the other families around me.

I struggle to farm my kalo organically, to know what goes into my fields. Kalo is a root crop that takes 1-year, that’s 12-months to grow. The dangers of abuse are great.

As a kalo farmer I am asking you to kill this bill.

As a Hawaiian and a kuleana land holder I am asking you to kill this bill. We need your kōkua. Please help us continue our livelihood and help me pass on this tradition to my children by stopping HB 2386.

Thank you again for this opportunity to testify.

Mahalo,

Nathaniel Tin-Wong
liveinthenaau@gmail.com

HB-2386

Submitted on: 1/30/2020 3:22:43 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Oppose	No

Comments:

Oppose.



BEFORE THE HOUSE WATER, LAND AND HAWAIIAN AFFAIRS COMMITTEE

JANUARY 31, 2020

Senate Bill 2386

Relating to property access

LATE

Aloha Chair Yamane, Vice-Chair Todd, and Members of the Committee,

Ka Lāhui Hawai'i Political Action Committee (KPAC) OPPOSES House Bill 2386 which extends ancestral gathering, water, and easements rights that belong to Kuleana lands owners to all landlords and landowners of private lands owns in fee simple.

Kuleana lands were a gift from King Kamehameha III to the maka'āinana or the common people of Hawai'i. The Kuleana Land Act of 1850 allowed maka'āinana to claim the lands they were living upon and cultivating. Despite 170 years of pressure to sell and threats of adverse possession or quiet title by large landowners, many Kuleana land owners continue to hang on to their ancestral lands which average about an acre in size. Kanaka Maoli have a genealogical tie to these lands – our creation chants recite that the first Kanaka Maoli was born from Wākea (Sky-father) and Papa-hānau-moku (Earth-mother). Therefore, the overall well-being of the Kanaka Maoli people is intrinsically intertwined with our ancestral lands and our ability to practice our traditional gathering and access rights and this is especially true for Kuleana land owners. There was a historical and cultural basis as well as a practical purpose why King Kamehameha III signed the Kuleana Land Act of 1850. He knew that the maka'āinana lived closest with the land and was going to be given the smallest parcels of lands and these gathering, water rights and easement rights provided the common people with the resources necessary for life which could not all be found on the lands awarded.

House Bill 2386 is asking to extend these precious rights that are attached to Kuleana lands and were given to Kuleana landowners by King Kamehameha III to ALL private landowners - some who may not have any ancestral or cultural connection to the lands they acquired and some who may have knowingly brought a landlocked parcel and is now seeking a way to gain easement rights. This is a misappropriation and perversion of our cultural and traditional practices and the laws that was set up to protect them. HB 2386 also puts Kuleana land owners at greater risk of having their lands swallowed up by private landowners easements and paves the way for finite resources attached to Kuleana lands being exploited in a way that only happens when these resources are taken out of cultural and historical context.

Respectfully submitted,

M. Healani Sonoda-Pale

Chair, KPAC

HB-2386

Submitted on: 1/30/2020 3:57:40 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Ashley Gutierrez	Individual	Oppose	No

Comments:

I strongly oppose this bill because water is life.

HB-2386

Submitted on: 1/30/2020 4:26:51 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Maiki Ann Mafi	Individual	Oppose	Yes

Comments:

Give HAWAIIAN LANDS back to HAWAIIANS! Prove there was transfers to ownership before just lying to the public about the real situation. All fraud!

HB-2386

Submitted on: 1/30/2020 5:08:06 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Vickery	Individual	Oppose	No

Comments:

HB-2386

Submitted on: 1/30/2020 5:31:05 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Lourdes millan	Individual	Oppose	No

Comments:

I am strongly against this

Enough is enough

This is just another sneaky way to take away lands from hawaiians just wrong in so many levels

HB-2386

Submitted on: 1/30/2020 6:06:17 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Tanya Aynessazian	Individual	Oppose	No

Comments:

HB-2386

Submitted on: 1/30/2020 6:48:27 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Iseri	Individual	Oppose	No

Comments:

Because House Bill 2386 extends rights previously exclusive to Kuleana Lands granted by King Kamehameha III to all private landowners, I must oppose this bill. This is because the rights were and are exclusively based on the cultural and ancestral connections of the rights holders to the land itself. If this bill was to pass, private landowners of landlocked parcels would be able to construct easements that intrude on surrounding Kuleana lands.

HB 2386 also puts Kuleana landowners at greater risk of having their lands swallowed up by private landowners easements and paves the way for finite resources attached to Kuleana lands being exploited in a way that only happens when these resources are taken out of cultural and historical context. This is misappropriation and perversion of Hawaiian cultural and traditional practices and the law(s) that were set up to protect them.

HB-2386

Submitted on: 1/30/2020 6:56:01 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Rhonda	Individual	Oppose	No

Comments:

JANUARY 31, 2020

Senate Bill 2386

Aloha Chair Yamane, Vice-Chair Todd, and Members of the Committee,

I OPPOSE, House Bill 2386 because it would extend ancestral rights that belong to Kuleana land owners to landowners of private lands.

King Kamehameha III gifted maka'Ā• inana or the common people of Hawai'i Kuleana lands along with inherent rights.

Kanaka Maoli have a genealogical tie to their Kuleana Lands.

The Kuleana Land Act of 1850 was signed by King Kamehameha III. King Kamehameha III knew maka'Ā• inana lived hand in hand with the land and they were going to be given the smallest pieces so Kuleana rights were given to provided the maka'Ā• inana the resources they needed that could not be found on the land they were personally awarded.

House Bill 2386 wants to give the rights of Kuleana landowners to ALL private landowners - even tho they may not have any ancestral or cultural connection to the land. This would go against the intent and could cause harm to cultural and traditional practices.

Once Again I oppose HB 2386

Mahalo,
Rhonda Vincent

HB-2386

Submitted on: 1/30/2020 7:12:11 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Kaylene Sheldon	Individual	Oppose	No

Comments:

Aloha kakou,

My name is Kaylene Kauwila Sheldon. I am a Native Hawaiian, registered voter, tax payer, mother, grand mother, daughter, sister, niece and a descendant of a kuleana land owner. My ohana was given kuleana lands from their ali'i in good faith because my ohana served as kaukau ali'i to Kamehameha and to Kamehameha III. To my understanding this SB 2386 will extend itself for foreigners, settlers, and developers who come to Hawaii for their beach fronts and they may bring diseases of all sorts which is detrimental and tragic. I oppose HB 2386 because:

1. It extends my ohana's ancestral gathering, water, and easements rights that belong to Kuleana lands owners to all landlords and landowners of private lands owns in fee simple.
2. Kuleana lands were a gift from King Kamehameha III to the maka'āīnana or the common people of Hawai'i.
3. Our ohana have a genealogical tie to these lands – my ohana has lands from Kaua'i, Hawaii island, and Oahu which were lost due to the increase of land taxes and the different mindset of capitalism vs. aloha 'āina. My ohana still live on kuleana lands, the little of what was left before the overthrow of the Hawaiian Kingdom.
4. There was a historical and cultural basis as well as a practical purpose why King Kamehameha III signed the Kuleana Land Act of 1850. He knew that the maka'āīnana lived closest with the land and was going to be given the smallest parcels of lands and these gathering, water rights and easement rights provided the common people with the resources necessary for life which could not all be found on the lands awarded. From keiki, we were taught from our kāpuna how to keep the land in its pristine state. Gathering rights is our inherit and cultural rights. There is protocol when we pick and there is appropriate ways to conserve the foliage, plants, flowers, trees, on the land and in the ocean. Each of my siblings play a large role in these gathering rights from fishermen, hunters, lei makers, hula adornments to onshore gathering. We take our roles very seriously.

5. House Bill 2386 is asking to extend these precious rights that are attached to Kuleana lands and were given to Kuleana landowners by King Kamehameha III to ALL private landowners - some who may not have any ancestral or cultural connection to the lands they acquired and some who may have knowingly brought a landlocked parcel and is now seeking a way to gain easement rights. This is a misappropriation and perversion of our cultural and traditional practices and the laws that was set up to protect them.

6. HB 2386 also puts Kuleana land owners at greater risk of having their lands swallowed up by private landowners easements and paves the way for finite resources attached to Kuleana lands being exploited in a way that only happens when these resources are taken out of cultural and historical context.

7. My ohana did not work hard at perserving what little of what we have left so that investors, outside foreigners and settler can come down and rape our lands. Please kill this bill.

Me ka mana'o maika'i,

Kaylene Kauwila Sheldon

HB-2386

Submitted on: 1/30/2020 6:57:43 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl	Individual	Oppose	No

Comments:

These rights should not be extended to all private landowners. Kuleana lands were given for a purpose. PLEASE stop attempting to nullify and take away Kanaka rights.

HB-2386

Submitted on: 1/30/2020 7:21:23 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Sheadon Freitas	Individual	Oppose	No

Comments:

**HOUSE COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS
ATTN: CHAIR RYAN I. YAMANE & VICE-CHAIR CHRIS TODD**

**Testimony in Strong Opposition to HB 2386:
Relating to Property Access**

**January 31, 2020, 9:00 a.m.
Conference Room 325**

Aloha Chair Yamane, Vice-Chair Todd, and Members of this Committee,

Mahalo for the opportunity to testify in strong opposition on this important matter.

My name is Tori Reiko-Keonaonaokalikolehua Maeshiro and I am a third-year law student at the William S. Richardson School of Law pursuing a certificate in Environmental Law. In this last semester of law school, I am enrolled in the Environmental Law Clinic, a class that has us working closely with the Wai'oli Valley Taro Hui on Kaua'i, which brought my attention to HB 2386. Although I chose to attend law school out of a love for our environment, a passion for agriculture, and a hope to see Hawai'i become food sustainable, I am writing this testimony out of desperation for our dwindling native traditions and culture.

I was born and raised in the Salt Lake/Aliamanu district of Honolulu and did not have much exposure to Native Hawaiian culture. As a descendent of a Native Hawaiian, I am ashamed to say that I know little about my culture and have precious little to pass down to my children in the way of heritage. It is in rural pockets like Wai'oli Valley where new generations can not only learn about but also practice native traditions like kalo farming to perpetuate the culture we all hold dear. How many of us can say that we know how to farm kalo? How many of us have the knowledge to build a lo'i system and effectively manage a resource like a watershed? I certainly do not and there is no one in my family who can say that they do.

HB 2386 is the final nail in the coffin for gems like the Wai'oli Valley Taro Hui who are working so hard to produce food for their community and continue the tradition of family farms on kuleana and other land. Due to the flooding in 2018 and the damage their lands and water system sustained, some of the kalo farmers have moved away from farming to be able to care for their families. HB 2386 will simply compound the issue. It may not happen immediately, but it will happen. Section 7-1 was enacted to protect the rights of native tenants and to allow our culture to continue in spite of the overwhelming pressure to conform to a new culture. The addition of words like "landowner" goes against the purpose of the statute by expanding the class of people protected by HRS 7-1. A statute that was meant to protect native people will now pull the rug out from under them. Moreover, the addition of a section requiring the circuit court to grant an easement by necessity so long as only four requirements are met will open the floodgates for all manner of landowners to invade these precious cultural and agricultural kīpuka. We are already losing much of our previously unspoiled lands to those who wish to develop instead of nurture them, please do not allow this bill to continue to perpetuate this travesty.

Please put an end to this egregious behavior by stopping this bill. Please help protect my culture and the culture of thousands of others so that we as a community can grow. For many like me, my identity is tied to my culture and for much of my life, it was as if I was walking around with blinders on, because I did not know part of who I was. I strongly urge you to kill this bill so future generations will still have the ability to learn who they are long before they have to mourn the loss of their culture.

Mahalo again for the opportunity to testify in strong opposition to HB 2386.

HOUSE COMMITTEE ON WATER, LAND, & HAWAIIAN AFFAIRS

ATTN: CHAIR RYAN I. YAMANE & VICE-CHAIR CHRIS TODD

Testimony IN STRONG OPPOSITION TO H.B. 2386:

Relating to Disposition of Water Licenses By the Board of Land and Natural Resources

**January 31, 2020
Conference Room 325**

LATE

Dear Chair Yamane, Vice-Chair Todd, and Members of this Honorable Committee,

I am a third-year law student at the William S. Richardson School of Law and currently participating in the school's Native Hawaiian Rights and Environmental Law Clinics. Up until this point in my journey, law has for the most part been conceptual. We discuss, debate and grapple with its complexities but it only becomes real when we work with clients and see the true effects of our laws in practice. This is one of the reasons I was inspired to attend law school; to advocate for those of whom our laws seldom bring justice, if ever.

An offhand reading of the text of House Bill 2386 may seem benign to some who may be unfamiliar with Hawai'i's code or with Hawai'i's complex political history. However, the significance of H.R.S. 7-1 in particular is great and should not be underestimated by anyone in Hawai'i, least of all our lawmakers.

In 1850, Hawai'i's legislature passed a statute, known as the Kuleana Act, which was designed to give ho'a'aina the opportunity to obtain titles to those lands which they lived on and cultivated. Section 7 of that act is the foundation for our Native traditional and customary practices today and is now codified in H.R.S. 7-1. In fact, the provisions set forth in H.R.S. 7-1 were so important that they were also adopted into our State Constitution via Article VII, section 7.

Furthermore, our courts of law have consistently recognized Native Hawaiian traditional and customary practices by applying these same statutory and constitutional provisions. I think it is also important to convey how much time, effort and dedication has been put into developing and expanding our case law all in an effort to protect Native Hawaiians. There is no need to amend H.R.S. 7-1, nor is there a need for any of the amendments proposed in this bill which only seeks to create exceptions where none are warranted.

I strongly urge the members of this committee to oppose H.B. 2386.

Mahalo for your time and consideration.

Ashley B. Kaono

HB-2386

Submitted on: 1/30/2020 9:07:32 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Sage-Lee Medeiros-Garcia	Individual	Oppose	No

Comments:

Strongly oppose with confidence. For a race of people specifically designated by historic law to own kuleana lands to be given a proposal of an idea that reaches out and grabs land from them, I believe, stems from an ethnic divide and a lack of respect for a group of people. The reason for its existence is to help bring and raise back up people who have struggled to maintain and grow identity, protection, and governance. Protections from this selfishness and attack should be afforded and maintained. Strongly oppose with high lack of confidence in the integrity and intent of bill 2386.

Very respectfully

Maika

HB-2386

Submitted on: 1/30/2020 9:36:25 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Mahina Lopes	Individual	Oppose	No

LATE

Comments:

This bill threatens natural and cultural resources and would further encourage land speculation by non-Hawaii residents. Please do not pass HB2386.

HB-2386

Submitted on: 1/30/2020 9:46:11 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
MaryAnn Omerod	Individual	Oppose	No

Comments:

1. House Bill 2386 which extends ancestral gathering, water, and easements rights that belong to Kuleana lands owners to all landlords and landowners of private lands - owns in fee simple.
2. Kuleana lands were a gift from King Kamehameha III to the maka'Ā• inana or the common people of Hawai'i.
3. Kanaka Maoli has a genealogical tie to these lands – our creation chants recite that the first Kanaka Maoli was born from WĀ• kea (Sky-father) and Papa-hĀ• nau-moku (Earth-mother).
4. There was a historical and cultural basis as well as a practical purpose why King Kamehameha III signed the Kuleana Land Act of 1850. He knew that the maka'Ā• inana lived closest to the land and was going to be given the smallest parcels of lands and these gathering, water rights, and easement rights provided the common people with the resources necessary for life which could not all be found on the lands awarded.
5. House Bill 2386 is asking to extend these precious rights that are attached to Kuleana lands and were given to Kuleana landowners by King Kamehameha III to ALL private landowners - some who may not have any ancestral or cultural connection to the lands they acquired and some who may have knowingly brought a landlocked parcel and is now seeking a way to gain easement rights. This is misappropriation and perversion of our cultural and traditional practices and the laws that were set up to protect them.
6. HB 2386 also puts Kuleana landowners at greater risk of having their lands swallowed up by private landowners easements and paves the way for finite resources attached to Kuleana lands being exploited in a way that only happens when these resources are taken out of cultural and historical context.

HB-2386

Submitted on: 1/30/2020 11:10:38 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Kekoa Kaaiawaawa	Individual	Oppose	No

Comments:

HB-2386

Submitted on: 1/30/2020 11:14:32 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Tanya K.D. Alana	Individual	Oppose	No

Comments:

I strongly oppose this bill. This fake state and the United States of America has taken enough from the aboriginal Hawaiians. All of these laws that are being passed is adding the continual process of genocide against the aboriginal Hawaiians and we are tired of it! All you people do is take take take.

The United States broke the treaty between the Kingdom of Hawai'i and itself. President Cleveland wrote that "the provisional government owes its existence to an armed invasion by the United States. By an act of **war**...a substantial wrong has been done." Here he admits that this was an act of war, which is a breach of the treaty. Your congress also wrote an apology law in 1993, stating it was an "illegal overthrow" yet you people are still using your courts to steal the land!! You people are also in total and complete disregard to the facts pointed out by the International Court of Arbitration. HAWAI'I IS UNDER A BELIGERENT AND ILLEGAL OCUPATION BY THE UNITED STATES GOVERNMENT.

I again strongly OPPOSE THIS BILL!!! You people have NO RIGHT TO HAWAIIAN LANDS!! We the aboriginal Hawaiians will continue to fight for our land and our rights as sovereign people of the Independent State of Hawai'i.

HB-2386

Submitted on: 1/30/2020 11:15:25 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Pamela M Williams	Individual	Oppose	No

Comments:

As a Kanaka Maoli and a registered voter, I strongly oppose HB2386!

Pamela M Williams, BSW

HB-2386

Submitted on: 1/30/2020 11:16:40 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Matthew Villanueva	Individual	Oppose	Yes

Comments:

Aloha kakou,

I'm Matthew Villanueva a native Hawaiian, cultural practitioner, and a registered/practicing voter. Although I cannot ,yet, trace my lineage to anyone with kuleana lands I still strongly support those who can. HB2386 as well as its companion bill SB2097 are atrocious and almost tyranical! Here are a few points I hope that you will take into consideration.

1. House Bill 2386 which extends ancestral gathering, water, and easements rights that belong to Kuleana lands owners to all landlords and landowners of private lands - owns in fee simple.
2. Kuleana lands were a gift from King Kamehameha III to the maka'Ā• inana or the common people of Hawai'i.
3. Kanaka Maoli have a genealogical tie to these lands – our creation chants recite that the first Kanaka Maoli was born from WĀ• kea (Sky-father) and Ho'ohokukalani(Mother of Haloa).
4. There was a historical and cultural basis as well as a practical purpose why King Kamehameha III signed the Kuleana Land Act of 1850. He knew that the maka'Ā• inana lived closest with the land and was going to be given the smallest parcels of lands and these gathering, water rights and easement rights provided the common people with the resources necessary for life which could not all be found on the lands awarded.
5. House Bill 2386 is asking to extend these precious rights that are attached to Kuleana lands and were given to Kuleana landowners by King Kamehameha III to ALL private landowners - some who may not have any ancestral or cultural connection to the lands they acquired and some who may have knowingly brought a landlocked parcel and is now seeking a way to gain easement rights. This is a misappropriation and perversion of our cultural and traditional practices and the laws that was set up to protect them.
6. HB 2386 also puts Kuleana land owners at greater risk of having their lands swallowed up by private landowners easements and paves the way for finite resources

attached to Kuleana lands being exploited in a way that only happens when these resources are taken out of cultural and historical context

HB-2386

Submitted on: 1/30/2020 11:31:21 PM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Stephanie Manera	Individual	Oppose	No

Comments:

To: Rep. Ryan I. Yamane, Chair
Rep. Chris Todd, Vice Chair
Members, Committee on Water, Land, and Hawaiian Affairs

LATE

From: Jamie Rodrigues, MSW

Hearing: House of Representatives Committee On Water, Land, and Hawaiian Affairs
Friday, January 21, 2020 at 9:00 a.m. in Conference Rm. 325

Testimony in opposition of HB2386, Relating to Property Access

My name is Jamie Rodrigues and I strongly OPPOSE this measure. My concern lies in the ability for fee simple landowners to encroach upon the rights of those owners of landlocked parcels. Entering into a court process to force development of a legal access for ingress, egress, or utilities purposes on a landlocked parcel paid for by the landlocked parcel owner is inappropriate and unjust. This bill puts all responsibility on the landlocked parcel owner. This bill ensures encroachment upon the landlocked parcel owner's property, in addition to, financially displacing the landlocked parcel owner and removing his/her rights to restrict access to his parcel. This bill is designed to remove the rights of the landlocked owner for the benefit of fee simple land owners. Where is the fee simple owner responsibility placed? Once a purchase is made, access to the fee simple parcel shall be the responsibility of the fee simple landowner and no other. This measure/bill is not acceptable.

Thank you for the opportunity to provide testimony in strong opposition of HB2386. Once again, I urge your opposition of this bill. If you have any questions, please contact Jamie Rodrigues at 808-368-2462 or by email at Jamiear@hawaii.edu.

HB-2386

Submitted on: 1/31/2020 1:25:09 AM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Raul Nohea Goodness	Individual	Oppose	No

Comments:

HB-2386

Submitted on: 1/31/2020 6:34:16 AM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Rebekah Luke	Individual	Oppose	No

Comments:

My name is Rebekah Luke. I live in Kaaawa, Oahu. I oppose HB2386. Please preserve traditional and cultural kuleana land rights for kuleana landowners and do NOT extend them to all landowners. Mahalo.

HB-2386

Submitted on: 1/31/2020 7:17:27 AM

Testimony for WLH on 1/31/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Kananiloaanuenue Ponciano	Individual	Oppose	No

Comments:

Aloha,

I am writing this testimony in STRONG OPPOSITION to HB2386. my reasons below are listed below.

Major POINTS:

1. House Bill 2386 which extends ancestral gathering, water, and easements rights that belong to Kuleana lands owners to all landlords and landowners of private lands owns in fee simple.
2. Kuleana lands were a gift from King Kamehameha III to the maka'Ā• inana or the common people of Hawai'i.
3. Kanaka Maoli have a genealogical tie to these lands – our creation chants recite that the first Kanaka Maoli was born from WĀ• kea (Sky-father) and Papa-hĀ• nau-moku (Earth-mother).
4. There was a historical and cultural basis as well as a practical purpose why King Kamehameha III signed the Kuleana Land Act of 1850. He knew that the maka'Ā• inana lived closest with the land and was going to be given the smallest parcels of lands and these gathering, water rights and easement rights provided the common people with the resources necessary for life which could not all be found on the lands awarded.
5. House Bill 2386 is asking to extend these precious rights that are attached to Kuleana lands and were given to Kuleana landowners by King Kamehameha III to ALL private landowners - some who may not have any ancestral or cultural connection to the lands they acquired and some who may have knowingly brought a landlocked parcel and is now seeking a way to gain easement rights. This is a misappropriation and perversion of our cultural and traditional practices and the laws that was set up to protect them.
6. HB 2386 also puts Kuleana land owners at greater risk of having their lands swallowed up by private landowners easements and paves the way for finite resources

attached to Kuleana lands being exploited in a way that only happens when these resources are taken out of cultural and historical context.

I urge the Hawaii State Senators to oppose this Bill.

Best,

Kananiloa'anuenue Ponciano

PO BOX 830

Kahuku, HI 96731