HB 1750
Relating to Affordable Housing

HOUSE COMMITTEES ON HOUSING and
ENERGY & ENVIRONMENTAL PROTECTION

February 15, 2022    10:45 a.m.   Conference Room 423

Aloha e Chairs Nakamura and Lowen, Vice Chairs Hashimoto and Marten, and Members of the Committees,

The Native Hawaiian Legal Corporation **strongly OPPOSES HB1750**, which would circumvent environmental regulations critical to protecting natural and cultural resources located on state public trust and “ceded” lands.

While actual affordable housing that prioritizes the needs of our communities is an important goal, this bill does nothing to ensure that those needs are met. Shockingly, HB1750 provides a **blanket exemption** from Hawai‘i’s environmental protection laws for “affordable housing” projects but **does not define affordable housing**. This overbroad exemption is open and vulnerable to abuse by commercial interests and does nothing to ensure that projects built on our state trust lands will be truly affordable. At the same time, it will fast-track the commercial development of public trust lands and avoid critical protections for our State’s natural and cultural resources.

HB1750 suggests that state and county lands are unfairly subject to stricter land use regulations then privately owned properties. However, these regulations make sense in light of the State’s constitutional mandate to closely monitor and protect the integrity of trust lands. The State holds title to its lands “as a public trust for native Hawaiians and the general public.” Haw. Const. Art. XII § 4. As a trustee, the State has a duty to “protect and maintain the trust property and regulate its use” and must “use reasonable care and skill to preserve the trust property.” *Ching v. Case*, 145 Hawai‘i 148, 152, 449 P.3d 1146, 1150 (2019); see also Haw. Const. Art. XI § 1 (“For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii’s natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people.”). The State is also required to “take an active roll” and “ensure [trust property] is not harmed[.]” *Id.*
Hawai‘i Revised Statutes (“HRS”) chapter 343, as it applies to state lands, is intended to assist the State in meeting its constitutional duties to preserve and protect state trust property. The Hawai‘i Environmental Policy Act was enacted in 1974 “to establish a system of environmental review which [would] ensure that environmental concerns are given appropriate consideration in decision making along with economic and technical considerations.” HRS § 343-1. In fact, the legislature already found that Chapter 343 is vital to protecting our natural resources:

[t]he legislature finds that the quality of humanity’s environment is critical to humanity’s well being, that humanity’s activities have broad and profound effects upon the interrelations of all components of the environment, and that an environmental review process will integrate the review of environmental concerns with existing planning processes of the State and counties and alert decision makers to significant environmental effects which may result from the implementation of certain actions.

HRS § 343-1.

Given chapter 343’s importance to protecting our State’s natural and cultural resources, this bill would eliminate a critical mechanism to identify, through expert, practitioner, and public review and input, potentially irreparable environmental, cultural, and socioeconomic impacts from development on public and “ceded” lands, as well as mitigation measures intended to avoid such impacts.

As this measure seeks to streamline and encourage the development of State ceded lands, it must be considered in context:

The [n]ative Hawaiian [p]eople continue to be a unique and distinct people with their own language, social system, ancestral and national lands, customs, practices and institutions. “The health and well-being of the [n]ative [H]awaiian people is intrinsically tied to their deep feelings and attachment to the land.” Aina, or land, is of crucial importance to the [n]ative Hawaiian [p]eople -- to their culture, their religion, their economic self-sufficiency and their sense of personal and community wellbeing. Aina is a living and vital part of the [n]ative Hawaiian cosmology and is irreplaceable. The natural elements -- land, air, water, ocean -- are interconnected and interdependent. To [n]ative Hawaiians, land is not a commodity; it is the foundation of their cultural and spiritual identity as Hawaiians. The aina is part of their ohana, and they care for it as they do for other members of their families. For them, the land and the natural environment is alive, respected, treasured, praised, and even worshiped.


For the above stated reasons, the Native Hawaiian Legal Corporation OPPOSES HB1750. Mahalo for the opportunity to testify.
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