



EARTHJUSTICE
BECAUSE THE EARTH NEEDS A GOOD LAWYER



**SIERRA CLUB
OF HAWAI'I**



**Native Hawaiian
LEGAL CORPORATION**



**KE ONE O
KĀKUHIIHEWA**
O'ahu Council of the
Association of Hawaiian Civic Clubs



**Conservation
Council for
Hawai'i**

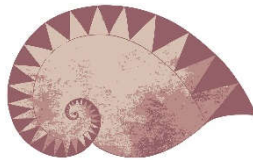
HAPA
HAWAI'I ALLIANCE for PROGRESSIVE ACTION



KAHEA
THE HAWAIIAN-ENVIRONMENTAL ALLIANCE



**Hawai'i
Peace &
Justice**



Pono Hawai'i Initiative

Nā Pua Ho'āla i ka Pono - The Flowers Awaken in Peace and Justice



Kai Palaoa

Kinolau o Kanaloa
(divine manifestations of the god of the sea, Kanaloa)



**Kūpuna
for the
Mo'opuna**

*committed to the well being of Hawai'i
for the next generations to come*

'Āina Aloha
ECONOMIC FUTURES



Kahuku Community Association
WWW.KAHUKUCOMMUNITYASSOCIATION.ORG

Dear Honorable Members of the Hawai'i State Legislature,

As a diverse group of community organizations and community leaders who believe that accountability and oversight is critical to the stewardship of our public lands, **we urge you to please vote NO on HB499 HD2 SD2 CD1**, a measure which would allow the Department of Land and Natural Resources (DLNR) and Board of Land and Natural Resources (BLNR) to directly negotiate 40-year lease extensions with industrial, commercial, resort, mixed-use, and government/military lessees of public lands.

Upholding the public interest and the public trust in our limited public lands and resources is a concern for all of who live in these islands. Ensuring that our public lands are used appropriately and consistent with the public interest and the public trust requires periodic, consistent review of their existing uses, particularly with the drastic environmental and socioeconomic changes anticipated for the post-COVID, climate change era. HB499 HD2 SD2 CD1 could preclude a meaningful review of any industrial, commercial, resort, mixed-use, and government/military use of any public lands – including uses which may have been initiated up to 65 years ago – for an additional 40 years. **Instead of**

reassessing uses at the end of existing 65-year leases, and making new determinations on the best potential uses of our public lands, the DLNR and BLNR would be allowed to simply extend these uses for another four decades, in exchange for infrastructure and building upgrades that all but guarantee the further continuation of potentially inappropriate or outdated uses.

Moreover, 40-year lease extensions may also result in private lessees maintaining a continuous and uninterrupted leasehold interest in public lands for up to 105 years. **Such a long-term and uninterrupted leasehold interest will inevitably result in an expectation by a lessee that their control of leased public lands will be continued indefinitely.** The breadth of this measure, which is applicable to any industrial, commercial, resort, mixed-use, or government/military lease of public land, on any island, may result in a tidal wave of century-long leases and the ensuing political pressure from lessees to effectively if not outright privatize our public lands. **This would be particularly detrimental to Native Hawaiians whose unrelinquished claims to public “ceded” lands, which were taken from their established government without consent or compensation and under the threat of violence and bloodshed, may be foreclosed for generations into the future.**

While we appreciate that the DLNR and the BLNR may exercise discretion as to whether or not to allow the lease extensions contemplated under HB499 HD2 SD2 CD1, past practices and decisionmaking raise substantial concerns regarding whether and how such discretion will be exercised. Notable, highly publicized examples include a decades-long practice of directly issuing hundreds of annual revocable permits to the same permittees, for decades at a time, with little oversight or accountability – and often without complying with the DLNR’s own Revocable Permits Task Force recommendations adopted by the Board of Land and Natural Resources;¹ the repeated approval of subleases for highly controversial observatory development projects that required nominal rents of a nominal \$1, which has contributed to the conflict and controversy surrounding Mauna Kea and Haleakalā;² the failure to properly inspect or enforce lease conditions for lands leased to the military for highly destructive live-fire training;³ the failure to hold a beachfront luxury resort accountable for its highly profitable, unpermitted commercial use of public lands;⁴ and the reissuance or “holdover” of revocable permits for the diversion of hundreds of millions of gallons of water per day from East Maui streams for decades, without an environmental assessment and without addressing the concerns of environmentalists and impacted Native Hawaiian communities.⁵ **These and many more examples indicate a pattern of disregard for the public interest and the public trust in the DLNR and BLNR’s exercise of discretion over public lands and resources, raising significant doubts as to whether and how such discretion will be used appropriately in the four-decade extensions authorized by HB499 HD2 SD2 CD1.**

Finally, we appreciate that there may be a legitimate need in some instances to address infrastructure maintenance on public lands, where such maintenance needs were not anticipated and incorporated in existing leases issued by the BLNR. **However, the voluminous testimonies submitted in opposition to**

¹ See Teresa Dawson, *DLNR, Land Board Struggle to Resolve Concerns Over Revocable Permits*, Environment Hawai‘i (March 3, 2019), <https://www.environment-hawaii.org/?p=11043>.

² Office of the Governor, News Release: Governor David Ige Announces Major Changes in the Stewardship of Mauna Kea (May 26, 2015), <https://governor.hawaii.gov/newsroom/news-release-governor-david-ige-announces-major-changes-in-the-stewardship-of-mauna-kea/>.

³ John Burnett, *High court rules state breached trust duties at Pohakuloa Training Area*, Hawaii Tribune Herald (Aug. 23, 2019), <https://www.hawaiitribune-herald.com/2019/08/23/hawaii-news/high-court-rules-state-breached-trust-duties-at-pohakuloa-training-area/>.

⁴ See Teresa Dawson, *Board Talk: Board Tacks ‘Penalty’ Onto Kahala Hotel Rent*, Environment Hawai‘i (Nov. 1, 2019), https://www.environment-hawaii.org/?p=11910&fbclid=IwAR3GiL5_AwtY_6epRGsee_bFxoB_Nzrh0k2t0MV03F1wP6ZfCHqGTE2esI.

⁵ See Teresa Dawson, *Decades-long Dispute Over Maui Water Finally Reaches State Supreme Court*, Environment Hawai‘i (May 30, 2020), <https://www.environment-hawaii.org/?p=12604>.

this bill clearly demonstrate that this bill, as drafted, does not provide a sufficient and appropriate framework to address such needs, while safeguarding the public interest and the claims of the Native Hawaiian community in our limited public and “ceded” land base.⁶ We accordingly urge and implore you to please vote no on HB499 HD2 SD2 CD1, and allow for more time and discussion on a matter that may impact critical lands and resources for generations to come.

Mahalo nui loa for your careful consideration of our concerns.

<i>Kanaeokana</i>	<i>Sierra Club of Hawai‘i</i>	<i>Native Hawaiian Legal Corporation</i>	<i>Earthjustice Mid-Pacific Office</i>
<i>‘Āina Aloha Economic Futures</i>	<i>Conservation Council for Hawai‘i</i>	<i>O‘ahu Council of the Association of Hawaiian Civic Clubs</i>	<i>Hawaiian Affairs Caucus of the Democratic Party of Hawai‘i</i>
<i>Ka Lāhui Hawai‘i Kōmike Kalai‘āina</i>	<i>‘Īlio‘ulaokalani Coalition</i>	<i>Kupu‘āina Coalition</i>	<i>Hawai‘i Peace and Justice</i>
<i>Nā Kia‘i</i>	<i>Real Food Generation</i>	<i>Kahuku Community Association</i>	<i>Mauna Kea Anaina Hou</i>
<i>Mauna Kea Hui</i>	<i>Hawai‘i Alliance for Progressive Action</i>	<i>KAHEA: The Hawaiian-Environmental Alliance</i>	<i>West Maui Preservation Association</i>
<i>Pono Hawai‘i Initiative</i>	<i>Kūpuna for the Mo‘opuna</i>	<i>Temple of Lono</i>	<i>Mauna Kea Moku Nui ‘Aelike/ Consensus Building ‘Ohana</i>
<i>Kai Palaoa</i>	<i>Malu ‘Āina</i>	<i>Kū Kia‘i Kahuku</i>	<i>Nanaikapono Hawaiian Civic Club</i>
<i>King Kamehameha Hawaiian Civic Club</i>	<i>Waialua Hawaiian Civic Club</i>	<i>‘Ohana Ho‘opakele</i>	<i>Aloha ‘Āina Life and Education Center</i>
<i>Na Kupuna Moku o Keawe</i>	<i>Aloha ‘Āina Legal Group</i>	<i>Pratt Law Hawai‘i LLC</i>	<i>Law Office of Aaron K. Wills</i>
<i>Dr. Jon Osorio</i>	<i>James “Sparky” Rodrigues</i>	<i>Edward Halealoha Ayau</i>	

⁶ See Testimonies submitted on HB499, https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&billnumber=499&year=2021.