

HAWAII CAPITAL PARTNERS, LLP **LATE TESTIMONY**
SOUTH KONA LLC
1100 Alakea Street, Suite 2500
Honolulu, HI 96813

Senator Clayton Hee, Chair
Senator Russell S. Kokubun, Vice Chair
Committee on Water and Land
Wednesday, March 12, 2008, 2:45 P.M. Room 414

Opposition to H.B. 2247, Re. Historic Preservation (South Kona wilderness area)

As landowners affected by this measure, Hawaii Capital Partners, LLP, a Hawaii limited liability partnership (“HCP”), and its affiliate, South Kona LLC, a Hawaii limited liability company (“SK”), oppose this measure and ask that it be held in committee..

HCP and SK own certain lands or interests therein located in Kapua, South Kona, on the Island of Hawaii (“Kapua Property”). Title to the Kapua Property has been unreasonably encumbered by the cloud placed on it by Act 59, Session Laws of Hawaii 2003 (“Act 59”) since it was promulgated on July 1, 2003. HCP and SK oppose H.B. 2247 and any further extensions of Act 59.

The purpose of Act 59 was to establish the “South Kona wilderness area” on the Big Island and the act authorized the Department of Land and Natural Resources (“DLNR”) to acquire any private lands included in the South Kona wilderness area, including HCP and SK’s Kapua Property, by a “value-for-value exchange of other state lands.”

Since Act 59 was passed, the DLNR has not made any serious effort to complete the mandated Wilderness Management Plan in South Kona. Moreover, it is abundantly clear that the State has no comparable exchange property for the Kapua Property, and there is no indication that the DLNR will be willing or able to carry out the acquisition of the Kapua Property even if Act 59 is extended.

To extend Act 59 under such circumstances for an additional two and a half years past its expiration date would perpetuate an unreasonable cloud on title to the Kapua Property, effectively blocking the Kapua Property from being sold or otherwise alienated and further preventing the owners from deriving economic benefits from their land. In the absence of general fund revenues or bond funds being pledged to demonstrate the State’s good faith in continuing to pursue the acquisition of the Kapua Property, the continued extension of Act 59 would constitute an unlawful taking.

The State should not continue to tie up the Kapua Property for close to seven years by extending the current act without a good faith showing that the State has the ability to acquire the lands on reasonable terms. HCP and SK must therefore respectfully oppose the proposed H.B. 2247.

Thank you for this opportunity to testify.