



Hawaii Agriculture Research Center

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TESTIMONY BEFORE THE HOUSE COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

HB 2518

RELATING TO LAND CONSERVATION

February 6, 2008

Chairman Ito and Members of the Committee:

My name is Stephanie Whalen. I am President and Research Director of the Hawaii Agriculture Research Center (HARC). I am testifying today on behalf of the center, our research and support staff, and our members and clients.

HARC strongly supports HB 2518 Relating to Land Conservation.

In order to preserve some of the lands of Hawaii incentives are important. Because of the unique land holding situation in Hawaii many land owners do not qualify for the federal tax credits provided to those helping to preserve lands for the purposes proposed in this measure. Although there has been efforts to make an exception specifically for Hawaii to allow our land owners to receive these federal tax credits, those efforts have not been successful.

It is in the public interest of this state to provide those tax credits to ensure some lands for unique or special use are preserved in perpetuity.

Thank you for this opportunity to provide SUPPORT for HB 2518, preserving land in Hawaii for the public interest.



MAUI COASTAL LAND TRUST

Board of Directors
2008

Feb. 5, 2008

President
Gilbert Keith-Agaran

Rep. Ken Ito, Chair
Committee on Water, Land, Ocean Resources and Hawaiian Affairs

Vice President
Wesley Lo

RE: HB 2518 Re Land Conservation tax credit

Treasurer
Janice Lau

Dear Representative Ito,

Secretary
Helen Nielsen

I am testifying in enthusiastic support of the Land Conservation Tax Credit bill before you.

Susan Bradford

In Hawai'i we face enormous challenges in trying to protect valuable conservation lands when there are such large financial gains to be made by developing those lands to their highest economic gain. The conversion of agricultural lands, shoreline open spaces and culturally significant properties is occurring at breakneck speed and we have only limited regulatory powers to prevent the continued loss of the lands we all cherish.

Lucienne de Naie

Michael Foley

William Kamai

Janet Lau

In my day job as executive director of a nonprofit land conservation organization and in my community service as chairman of the State Natural Areas Reserve System and the Legacy Land Commission I'm blessed to be able to help bring additional tools to bear in working with willing owners to protect the conservation values of many special lands. In some cases these owners have strong conservation ethics and the financial resources to afford the loss of financial value that occurs when lands are permanently placed in protection. In far too many cases however, the owners are unable or unwilling to give up the financial value, whether from a disinterest in conservation as a public benefit or, more commonly, because they are land rich and cash poor. Their land is their wealth, and they're depending on its value for their retirement fund or the source of funds for sending their kids to college. At the state and county levels we have only very limited funding to be able to purchase either fee lands or conservation easements so as to protect conservation values. The Legacy Land Fund has only \$4.7 million a year to allocate. A single shoreline building site in a popular beach area can cost that much.

Kimokeo Kapahulehua

Dave Mackwell

Judy Mc Corkle

George Paresa

Jennifer Sabas

Steve Still

Hugh Starr

Patricia Stillwell

STAFF

Executive Director
Dale B. Bonar

The ability to offer landowners significant tax credits for placing their lands in permanent conservation is an extremely effective tool in dramatically increasing protection of our important lands. The cost to the state of utilizing such tax credits are very low in contrast to the costs to purchase the conservation values we wish to protect.

Development and Outreach Director
Diane Lee

As Pogo said, "We are surrounded by insurmountable opportunities". This Tax Credit offers an effective, demonstrably successful tool in helping surmount some of those opportunities. It is a win-win for all of us.

Project Manager
Scott Fisher

Please give this bill your enthusiastic approval.

Office Manager
Sally Gretz

Sincerely,

Land Steward
James Crowe

Dale B. Bonar
Executive Director

Summary of Existing State Conservation Credit Programs

	CALIFORNIA	COLORADO	CONNECTICUT	DELAWARE	GEORGIA	MARYLAND
LEGISLATION (Date of Enactment) Statutory Citation	Natural Heritage Preservation Tax Credit Act of 2000 (2000) Cal Public Resource Code §37000-37042	Credit Against Tax - Conservation Easements (1999) Colo. Rev. Stat. §39-22-52	Tax Credit for Donation of Open Space (2000) Conn. Gen. Stat. §12-217dd	Delaware Land & Historic Resources Protection Incentives Act of 1999 (1999) Del. Code Ann. Tit. 30, §§1801-1807; tit. 7, §§6901-6902	Credit for Donation of Real Property for Conservation Purposes (2000) Ga. Code Ann. §48-7-29.12	Income Tax Credit for Preservation and Conservation Easements (2001) Md. Code Ann. §10-723
LANDS ELIGIBLE TO EARN CREDITS Fee Title, Conservation Easement, or both	Fee Title & Conservation Easement	Conservation Easement only	Fee Title & Conservation Easement	Fee Title & Conservation Easement	Fee Title & Conservation Easement	Conservation Easement only
CREDIT VALUE AND LIMITATIONS Value as a % of FMV of donation	55% FMV	50% FMV	50% FMV	40% FMV	25% FMV	100% FMV
Maximum credit	Unlimited	\$375,000	Unlimited	\$50,000	\$250,000 Ind. \$350,000 Corp.	\$80,000
Cap on credit per year		\$375,000				\$5,000
Limit on # of credits that may be claimed		One credit per yr.				
Statewide cap	\$100,000,000/program lifetime			\$1,000,000/yr.		
CARRY FORWARD?	8 yrs.	20 yrs.	15 yrs.	5 yrs.	5 yrs.	15 yrs.
TRANSFERABLE?	No	Yes	No	No	No	No
REFUNDABLE?	No	Conditional on state surplus and limited to \$50,000/yr.	No	No	No	No
CERTIFICATION?	Yes - by CA Wildlife Conservation Board. Scope of review: appraisal, conservation value, donor/donee eligibility, public comments, etc.	No	No	Yes - by the DE Division of Revenue, Dept. of Finance. Scope of review: appraisal issues.	Yes - by GA Dept. of Natural Resources. Scope of review: conservation values, legality of CE, and donee's eligibility.	Yes - by MD Board of Public Works. Scope of review: cost benefit analysis.

* Annual credit of 25% of the property tax, up to \$5000, runs with the land and continues in perpetuity

Summary of Existing State Conservation Credit Programs

	MISSISSIPPI	N. CAROLINA	NEW MEXICO	NEW YORK	S. CAROLINA	VIRGINIA
LEGISLATION (Date of Enactment) Statutory Citation	Tax Credit [for] Natural Heritage Priority Conservation of Scenic Streams Land Donations (2003) Miss. Code Ann. §27-7-22.21	North Carolina Conservation Tax Credit Program (1999) NC Gen. Stat. §105-151.12 and §105-1230.34	Land Conservation Incentive Act (2004) NM Stat. §§75-9-1-5, §7-2-18.10; NM Code R. §3.13.20	Conservation Easement Tax Credit (2006) NY Tax §606(kk)	South Carolina Conservation Incentives Act (2001) SC Code Ann. §12-6-3515	Virginia land Conservation Incentives Act of 1999 (1999) VA Code Ann. §§58.1-510-513
LANDS ELIGIBLE TO EARN CREDITS Fee Title, Conservation Easement, or both	Fee Title & Conservation Easement	Fee Title & Conservation Easement	Fee Title & Conservation Easement	Conservation Easement only	Fee Title & Conservation Easement	Fee Title & Conservation Easement
CREDIT VALUE AND LIMITATIONS Value as a % of FMV of donation Maximum credit Cap on credit per year Limit on # of credits that may be claimed Statewide cap	50% transaction costs \$10,000 Once per lifetime	25% FMV \$250,000 Ind. \$350,000 Corp.	50% FMV \$250,000 \$250,000	25% Property Tax Unlimited \$5,000	Lesser of \$250/acre or 25% of Federal Conservation Easement deduction Unlimited \$52,500	40% FMV Unlimited \$100,000 (Note: unlimited amount may be transferred and used by 3rd parties)
CARRY FORWARD?	10 yrs.	5 yrs.	20 yrs.	*	Unlimited	10 yrs
TRANSFERABLE?	No	No	No	No	Yes	Yes
REFUNDABLE?	No	No	No	Yes	No	No
CERTIFICATION?	Yes - by MS Scenic Streams Stewardship Program or MS Natural Heritage Program. Scope of review: conservation values and 170(h).	Yes - by NC Dept. of Environment and Natural Resources. Scope of review: conservation values.	Yes - by NM Energy, Minerals and Natural Resources Dept. Scope of review: conservation values.	No	No, unless credits are being transferred. If transfer, certified by SC Dept. of Revenue.	Yes - but only on transactions where credit value is greater than \$1 million. Scope of review: conservation values, appraisal issues.

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Summary of Pending State Conservation Credit Legislation

	Hawai'i	Idaho	Kentucky	Massachusetts	Minnesota	Nebraska
LEGISLATION	HB2518/SB2198 Relating to Land Conservation	Idaho Ranch, Farm, and Forest Protection Act	HB354/BR 1229 An Act For Tax Credits For Conservation Easements	HB4218 Massachusetts Land Conservation Incentives	H.F. 1884 Minnesota Land Conservation Incentives Act	LB 488 (2007) LB 997 (2006) Act to allow income tax credit for perpetual conservation easement donations
LANDS ELIGIBLE TO EARN CREDITS	Fee Title & Conservation Easement	Conservation Easement	Conservation Easement	Fee Title & Conservation Easement	Fee Title & Conservation Easement	Conservation Easement
CREDIT VALUE AND LIMITATIONS						
Value as a % of FMV of donated land	50% FMV	50% FMV	<ul style="list-style-type: none"> • 25% FMV if CE* plus 15 years public access • 55% FMV if CE plus 30 years public access • 100% FMV if CE plus perpetual public access 	50% FMV	50% FMV	50% FMV
Maximum credit	\$2,500,000	\$500,000 (only one donation/taxpayer)	\$2,500,000	\$500,000	\$100,000 per taxpayer	Unlimited
Cap on credit per year			\$250,000			one as donor; unlimited as transferee
Limit on # of credits that may be claimed	one credit per year				unlimited	one credit per year and, if carried forward, must be used up before another credit granted
Statewide cap, if any		\$3,000,000	\$3,000,000 in 2009 \$5,000,000 in 2010 \$7,000,000 in 2011 \$10,000,000 thereafter	Unlimited	\$2,000,000	\$5,000,000
CARRY FORWARD?	Unlimited	15 yrs.	20 yrs.	10 yrs	20 years	15 yrs
TRANSFERABLE?	No	Yes	Yes	No	No	Yes
REFUNDABLE?	No	No	No	No	No	No
CERTIFICATION?	Approval by Director of Taxation; Director of Taxation and DLNR Chair may adopt rules to effectuate section.	Approval by State Tax Commissioner	Approval by Department of Revenue	Approval by Secretary of Environmental Affairs; Environmental Affairs and Dept. of Revenue to promulgate regulations	Approval by Tax Commissioner	Approval by Dept. of Revenue; Department of Natural Resources or appropriate agency

*CE=Conservation Easement

EST. STATE REVENUE IMPACT FROM LAND DONATION CREDITS

Value of land per acre	Value of 11,000 acres (avg. acres donated/yr in other states w/ tax credits)	Value of donation assuming development rights = 1/3 the land value	Total tax credit =50% of Donation	Tax credits claimed per year. Assumes value of donation equals annual income. Income tax rate =7.5% YR 1	YR 2	YR 3	YR 4	YR 5	YR 6	After five or six years donations often slow. On average taxpayers use 13 years to exhaust credit
500	5,500,000	1,833,333	916,667	68,750	137,500	206,250	275,000	343,750	412,500	
1,000	11,000,000	3,666,667	1,833,333	137,500	275,000	412,500	550,000	687,500	825,000	
2,000	22,000,000	7,333,333	3,666,667	275,000	550,000	825,000	1,100,000	1,375,000	1,650,000	
3,000	33,000,000	11,000,000	5,500,000	412,500	825,000	1,237,500	1,650,000	2,062,500	2,475,000	
4,000	44,000,000	14,666,667	7,333,333	550,000	1,100,000	1,650,000	2,200,000	2,750,000	3,300,000	
5,000	55,000,000	18,333,333	9,166,667	687,500	1,375,000	2,062,500	2,750,000	3,437,500	4,125,000	
6,000	66,000,000	22,000,000	11,000,000	825,000	1,650,000	2,475,000	3,300,000	4,125,000	4,950,000	
7,000	77,000,000	25,666,667	12,833,333	962,500	1,925,000	2,887,500	3,850,000	4,812,500	5,775,000	
8,000	88,000,000	29,333,333	14,666,667	1,100,000	2,200,000	3,300,000	4,400,000	5,500,000	6,600,000	
9,000	99,000,000	33,000,000	16,500,000	1,237,500	2,475,000	3,712,500	4,950,000	6,187,500	7,425,000	
10,000	110,000,000	36,666,667	18,333,333	1,375,000	2,750,000	4,125,000	5,500,000	6,875,000	8,250,000	
20,000	220,000,000	73,333,333	36,666,667	2,750,000	5,500,000	8,250,000	11,000,000	13,750,000	16,500,000	
50,000	550,000,000	183,333,333	91,666,667	6,875,000	13,750,000	20,625,000	27,500,000	34,375,000	41,250,000	

EST. STATE REVENUE IMPACT FROM MANAGEMENT INVESTMENT CREDITS

	YR 1	YR 2	YR 3	YR 4	YR 5	YR 6
Management Investment Credit \$36/ac. 11,000ac./yr.	198,000	396,000	594,000	792,000	990,000	1,188,000
Evaluation & Monitoring Costs to State	75,000	75,000	100,000	100,000	125,000	125,000

VALUE TO STATE FROM AVOIDED PURCHASES AND MANAGEMENT

	YR 1	YR 2	YR 3	YR 4	YR 5	YR 6
Land Acquisition Savings (assuming \$5,000/acre value)	55,000,000	110,000,000	165,000,000	220,000,000	275,000,000	330,000,000
Management Savings (assuming \$36/acre)	396,000	792,000	1,188,000	1,584,000	1,980,000	2,376,000
Total Savings	55,396,000	110,792,000	166,188,000	221,584,000	276,980,000	332,376,000
Net Savings From Conservation Tax Credits	54,435,500	108,946,000	163,431,500	217,942,000	272,427,500	326,938,000

Q&A Regarding Proposed Hawai'i State Conservation Tax Credit

Proposal

To enact legislation to provide State tax credits for landowners who donate a conservation easement and/or undertake conservation activities to protect habitat, agricultural lands and cultural resources.

1. What is a conservation easement?

A conservation easement is a legally binding agreement between a landowner and a nonprofit conservation organization or government agency that limits the uses to which the land may be put in order to protect important conservation, agricultural or cultural values.

Under a conservation easement, a landowner conveys some rights in his/her land while retaining other rights.

Conservation easements “run with the land” and bind future landowners to the terms of the easement.

2. Why provide tax benefits to landowners who donate conservation easements or otherwise manage their lands to promote conservation?

Landowners do not presently receive any benefits for the ecosystem services (*e.g.*, watersheds, carbon sequestration, open space) their lands provide, yet the public depends crucially upon the provision of these services.

To be attractive to landowners, conservation must be competitive with other existing or potential uses of the land – a goal that this proposal helps advance.

3. What federal tax benefits are currently available to landowners who donate conservation easements or take conservation action on their lands?

Landowners may receive a federal income tax deduction for all or a portion of the value of a donated easement. These easements must be perpetual to qualify for tax deductions.

The donor may apply the value of the conservation easement as a deduction up to 34% of their adjusted gross income and can carry the deduction forward up to 5 years.

Under the Pension Protection Act of 2006, the donor may apply the value of the conservation easement as a deduction up to 50% (100% for farmers) of their adjusted gross income and can carry the deduction forward up to 15 years. This Act expires 12/07, but may be extended.

Landowners may also receive federal tax credits for preservation of historic buildings

4. What other benefits are available to landowners who donate conservation easements or take conservation action on their lands?

Landowners who donate conservation easements can significantly lower their federal estate taxes, perhaps preventing their children from having to sell the land to pay the taxes.

Landowners with conservation easements may enjoy reduced property taxes for land under easement because of the reduced fair market value.

Landowners may also apply for a variety of federal and state grant programs to cost share land management and conservation projects on their land.

5. Do other states make tax credits available to landowners who donate conservation easements or take conservation action on their lands?

Twelve (12) states provide tax credits for landowners who donate conservation easements. Six other states are considering measures to establish conservation easement tax credits.

Each state determines how it will treat donations of conservation easements for income tax purposes. Most states limit the deduction to 25-50% of the value of the easement donation and place some sort of limit on the maximum amount of the credit. Several states also have per year and per landowner limits.

Fifteen (15) states provide tax credits for landowners who take action to preserve habitat or agricultural lands.

Twenty-nine (29) states provide tax credits for landowners who take action to protect historic or cultural resources.

6. How do state tax credits affect state budgets?

States have reported minimal reductions to state revenues in the first five years after adopting conservation easement tax credits. States with similar requirements to the

proposed Hawai'i bill issued an average of 10 tax credits per year for the first five years after enactment reducing revenues by less than \$400,000 per year.

The availability of conservation tax credits motivated preservation of an average of 11,000 acres per year at an average cost of three percent of the value of the land protected.

7. Why propose enactment of state tax credit legislation in Hawai'i?

Hawai'i has a very rich natural, cultural, and agricultural heritage. More than 90% of the plants and animals found in Hawai'i are found nowhere else on earth.

This island archipelago is faced with enormous conservation challenges, including feral ungulates, invasive weeds, incompatible land use, and conversion of natural and agricultural areas.

More than half the land in the state is in private ownership. There is tremendous financial pressure to convert native forest, ranch and agricultural lands to uses (*e.g.*, urban development) that generate greater income to the landowner.

Enactment of state tax credit legislation in Hawai'i would provide choices for landowners. A mix of existing federal and proposed state tax credits may enable landowners to conserve their land rather than sell it for development.

State tax credits would be voluntary and reward landowners to contribute to conservation.

8. What are the key provisions of the proposed Hawaii State Tax Credit legislation?

The proposed bill provides a State tax credit for a landowner who donates a conservation easement or completes a bargain sale that fulfills a conservation purpose OR voluntarily invests in management of their land to protect or enhance a conservation purpose.

The landowner would receive a tax credit equal to 50% of the fair market value of the easement or 50% of the amount invested in conservation management of their land.

The amount of the conservation credit a taxpayer claims shall not exceed \$2,500,000 per donation regardless of the value of the land or donated interest in the land.

If the tax credit exceeds the taxpayer's income tax liability, the excess tax credit over liability may be used as a credit against tax liability in subsequent years until exhausted.

9. What are the strengths of the proposed Hawai'i State Tax Credit legislation?

The proposed bill is consistent with federal tax law and state tax law and policy.

The conservation goals of this legislation are to be achieved by cooperation among public entities, non-profit organizations and landowners, consistent with state statute and policy.

The proposed bill adopts federal Treasury Regulations to determine if conservation easement donations qualify for state tax credits, making implementation consistent on the state and federal levels.

10. What makes a successful state tax incentive program for conservation investment?

- Tax credits generous enough to motivate property owners to invest in conservation
- Pre-certification of conservation investment by an appropriate state agency as being significant or important to guard against abuse
- Simplicity of administration achieved by using established forms and criteria for land management agreements
- Inclusive investment requirements favoring both small projects by lower-income taxpayers and large projects by higher income taxpayers

11. What makes unsuccessful state tax incentive programs for conservation investment?

- Insignificant tax credits that do not motivate conservation investment
- Haphazard ad hoc administration of the program inviting abuse, including transferability of credits or retroactive application
- Under-inclusive or over-inclusive requirements for acreage or minimum investment
- Sunset clauses or linking tax credits to state budget surpluses