

February 14, 2008

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Representative Maile Shimabukuro, Chair  
Committee on Human Services & Housing

Representative Ken Ito, Chair  
Committee on Water, Land, Ocean Resources & Hawaiian Affairs

House of Representatives  
Hawaii State Capitol  
415 South Beretania Street Room 420 Honolulu, Hawaii 96813

**SUBJECT: HOUSE BILL 2732**

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I support passage of House Bill 2732.

I support it for the sake of Hawaii's sustainability, and as we have learned, affordable housing as an integral part of sustainability. Without affordable housing our future generations will not remain here to help build Hawaii's future.

When the Sustainability 2050 draft was shared with The Honolulu Advertiser's Teen Editorial Board (Sept. 2007) they were asked how many saw themselves living in Hawaii at age 35. None of them raised their hands. For them, Hawaii lacked hope.

But does it matter if they leave when there are so many others coming to Hawaii? Statistically we are at a point where more than half of the people here were not born here.

I love this land, as do other *keiki o ka aina* whose families have been here for many generations. Those who grew up here have been gifted with a spirit we cherish. *Aloha* is what we perpetuate in our relationship with each other and in the way we've been taught to care for this special place. And Hawaii is unique because it is nurtured by the people of this land we affectionately refer to as "locals."

Today we are facing a drastic shortfall of affordable housing for full-time local residents. At the same time we have an abundance of "signature" glass condos for the luxury class of part-time newcomers.

You cannot sustain a healthy community without hope.  
You cannot sustain a promising future without personal commitment.  
You cannot sustain Hawaii without *aloha*.

The *Alii* of Hawaii have a lesson for us.

Queen Liliuokalani put her land in trust for the care of orphaned and indigent children;  
King Lunalilo established a home for the care of indigent elderly  
Queen Emma and Kamehameha IV established Queen's Hospital to "stay the wasting hand that was destroying their people";  
Queen Kapiolani established a hospital to ensure the survival of both mother and child in childbirth; and  
Princess Pauahi willed her land to the education of her people.

What they had in their minds and in their hearts was the survival of their people.

Recognizing their *kuleana* as leaders of their people, the *Alii* provided care for needy elderly and children who were the most vulnerable; provided a hospital to halt the dessimation of their people; and gave Hawaiians a stake in their future through education. That was how they contributed toward the sustainability of their people as their birthright.

As leaders, you now have the kuleana to shape a plan, provide the leadership, and make a commitment to Hawaii's future.

Permit me to share a difficult choice Regents had to make in the late 80's when we were facing a major revenue shortfall due to a downturn in the real estate market in Hawaii when Japanese investors defaulted on loans. At that time, a consideration was that we close the Medical and Law Schools and pay the tuitions for local students to attend mainland schools because it was a cheaper alternative.

Instead of closing the schools, an alternative was recommended. In addition to meeting the required enrollment of Hawaii and Pacific Island students, non-resident students who had to pay a higher tuition were added to the enrollment. An increase in the tuition structure, the addition of non-resident students and the shared cost of professors rescued our medical and law schools.

Experience also taught us that students tend to practice where they intern. And more typically, because students choose to intern at major hospitals, they were required to rotate to rural and underserved areas.

Today, the rural and underserved areas are served by graduates from our medical school. In addition, Hawaiian physicians have formed an organization, *Kauka Hui*, to research and address the health issues that have led to chronic problems among Hawaiians. That commitment grew out of the love for the place in which our physicians were nurtured.

We must remember that the best decisions are not necessarily the most profitable ones. The best decisions are the ones in which we make an investment in our people and in their well-being. The return is manifested in good families, a strong community, capable leaders, and a promising, sustainable future for ourselves and for our state.

Let me leave you with this saying: "Never make a decision in bad times that you would not make in good times." In the wisdom of your decision rests the preservation of our future.

Thank you and *Aloha*.



February 14, 2008

The Honorable Maile S.L. Shimabukuro, Chair and Members  
Committee on Human Services and Housing  
The Honorable Ken Ito, Chair, and Members  
Committee on Water, Land, Ocean Resources & Hawaiian Affairs  
State House of Representatives, Conference Room 329  
Honolulu, Hawaii 96813

**Subject: Testimony in Opposition to H.B. No. 2732 Relating to Kakaako  
(50% affordable housing requirement)**

Dear Chairs Shimabukuro, Ito and Committee Members:

My name is David Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable and rational land use planning, legislation and regulations affecting common problems in Hawaii.

While LURF supports the development of housing projects in Kakaako which include affordable housing units, we are **opposed to H.B. No. 2732 in its current form and recommends that the bill should be held**. LURF's opposition is based on, among other things, the following: it imposes substantial affordable housing requirements (50% of total floor area) without the required legal nexus and proportionality, does not include adequate economic incentives to encourage the development of affordable housing, the proposed implementation procedures are fundamentally unfair, and it is inconsistent with the current visions, plans and processes of the Hawai'i Community Development Authority ("HCDA"), which has jurisdiction over the Kakaako area. We would strongly recommend that the supporters of this bill should work with HCDA, the Hawai'i Housing Finance and Development Corporation ("HHFDC"), the major land owners and stakeholders in Kakaako and other government agencies to develop a consensus regarding the development of housing projects in Kakaako which include affordable housing units.

**S.B. No. 2294.** The proposed bill significantly alters the development of housing in Kakaako by proposing a substantial increase in the reserved housing requirement for a planned development in the Kakaako Community Development District, Mauka Area, and includes the following:

- "Reserved Housing unit" means a multi-family dwelling unit that is developed for the following:

- Purchase by a family that has an income of not more than one hundred forty percent of the median income, or
- Rent by a family that has an income of not more than one hundred percent of the median income
- The reserved housing requirement applies to every planned development lot of at least one acre, even if the developer intends to construct only commercial, industrial, or resort uses on the lot;
- At least fifty percent (50%) of the floor area of the planned development is required to be constructed and made available as reserved housing units for low and moderate income families;
- The floor area countable for establishing the percentage for reserved housing units is the total floor area of every building of the planned development, except the floor area developed for community or special facility uses and even includes basements, elevator shafts, corridors and stairways;
- In order to facilitate the adoption of the rules, the HCDA is required to adopt implementing rules without regard to the notice and public hearing requirements of Chapter 91, Hawaii Revised Statutes (“HRS”); and
- To prevent a flurry of applications for planned developments before the adoption of the rules, this bill would prohibit HCDA from accepting such applications until the rules take effect.
- HCDA may allow the developer to make an in-lieu cash payment determined by HCDA, which may vary depending upon projected gross revenue of the developer from the planned development, amount of reserved housing units to be provided, affordability of non-reserved housing units to be provided for the planned development, affordability of non-reserved housing units to be provided in the planned development, estimated development cost of the reserved housing units if provided on the same lot as the planned developments, or other factors deemed appropriate by HCDA.

**Problems with the proposed S.B. No. 2294.**

- The proposed bill is unconstitutional, as it lacks a rational nexus to the development of residential, commercial, industrial and resort uses.
- The legislation is not based on any study, statistics or legal policy which would justify imposing such a reserved affordable housing requirement on the uses in Kakaako.
- The bill is also unconstitutional, because there is no study, statistics or legal policy to justify the fifty percent (50%) reserved affordable housing proportional requirement on the residential, commercial, industrial, or resort uses projects in Kakaako.
- The portions of the bill which allow HCDA to adopt rules without regard to the notice and public hearing requirements of Chapter 91, HRS are a violation of the State’s administrative laws, and also may violate procedural due process rights;
- The portions of the bill which prohibit HCDA from accepting applications for planned developments until the rules take effect – are fundamentally unfair, may also violate procedural due process rights, as well as constitute an unconstitutional taking;
- We also understand that the proposed draft bill is inconsistent with HCDA’s plans, policies and processes for Kakaako-Mauka. We understand that HCDA’s Kakaako-Mauka plans were developed through a comprehensive planning process, involving many stakeholders and issues. This proposed bill significantly

alters those plans, policies and processes without the necessary public input and participation;

- Instead of using a punitive “stick” of mandating every Kakaako developer provide affordable housing equal to 50% of the total floor area of the planned development - - the State should use “carrots,” to encourage, entice, incentivize developers to build more housing products for a wide range of need, rather than restricting development and affordable housing with overbearing conditions and mandates.

**Conclusion.** LURF appreciates the opportunity to express our views on this matter and while we understand the intent of this bill, we urge you and your committee **not to pass this measure in its current form**, because it unconstitutionally imposes substantial affordable housing requirements without the required legal nexus, does not include adequate economic incentives, the proposed implementation procedures are fundamentally unfair, and it is inconsistent with the current visions, plans and processes of the HCDA. Instead of passing this bill, we would strongly recommend that the supporters of this bill should work with HCDA, HHFDC, the major land owners and stakeholders in Kakaako and other government agencies to develop a consensus regarding the development of housing projects in Kakaako which include affordable housing units.

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