



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

Testimony of Linda L. Smith
Senior Policy Advisor to the Governor

Before the

Senate Committee on Water and Land

Friday, April 18, 2008, 1:30 p.m.
State Capitol, Conference Room 414

HCR 346 Urging the Administration to Complete the Purchase of Turtle Bay
Resort and the Surrounding Undeveloped Lands and Committing to Assist with
the Purchase

Chair Hee and Members of the Committee:

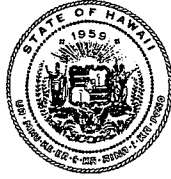
Thank you for the opportunity to address this significant resolution on the acquisition of Turtle Bay. In particular, we want to thank Senator Hee for his work to get prompt consideration of this measure during the 2008 legislative session.

The Administration sees this Concurrent Resolution as supportive of and complimentary to SB 2423, the legislation currently in conference committee, to provide tools for the acquisition of these properties. For the record, I have attached a copy of my testimony on SB 2423 which gives the underlying rationale as to why Governor Lingle believes this project is, in the long-run, in the best interest of the public.

This Concurrent Resolution reaffirms many of the points the Legislature would like to see considered as we pursue the acquisition. It provides guidance and a framework for us going forward. We are particularly appreciative that the Legislature has included language indicating they are committed to a good faith review of the terms of the acquisition of the Turtle Bay Resort. This is welcomed by all who are deeply involved in this significant effort.

I am also attaching for the record a letter Governor Lingle received from Congressman Abercrombie and Congresswoman Hirono which indicates that these members of our delegation have done extensive research on possible federal funding possibilities and which provides us with helpful information on

how we can work with the delegation to move this project forward. We very much appreciate the support and encouragement received from these members who represent us in Washington D. C.



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

*attachment
to HCR 346
Testimony*

Testimony of Linda L. Smith
Senior Policy Advisor to the Governor

Before the

House Committee on Finance

Friday, March 28, 2008, 4:30 p.m.
State Capitol, Conference Room 308

SB 2423, SD2, HD1 Relating to Land Acquisition

Chair Oshiro and Members of the Committee:

Thank you for the opportunity to represent Governor Lingle on SB 2423, SD2, HD1 in support of this measure that provides tools for the acquisition of lands at the area known as Turtle Bay on Oahu's North Shore.

Before discussing the specifics of SB 2423, SD2, HD1, I would like to provide some history behind the Governor's State of the State Address when she introduced the idea that the State, in collaboration with private, public, and non-profit partners, should purchase the 850-acre Turtle Bay property. For several years the Lingle-Aiona Administration has been monitoring activities on the North Shore. Governor Lingle has long been troubled by the proposed development of a major resort complex in this area and the impact this would have both on the public infrastructure and the quality of life for Oahu residents and visitors.

She was encouraged last year by two significant purchases of land supported by the North Shore community. A coalition of community, public, and non-profit organizations came together to preserve the Waimea Valley and to purchase Pupukeya-Paumalu. During her State of the State Address the Governor recognized several of the community leaders who were instrumental in these efforts.

When it was announced that the Turtle Bay creditors filed a foreclosure lawsuit against the Turtle Bay owners, Governor Lingle recognized this was the opportune time for the State to publicly express its interest in preserving and protecting nearly five miles of pristine coastline and some of the last remaining open space along the North Shore.

The Legislature also has long recognized the significance of this area and in 2006 proposed House and Senate Resolutions calling for the rigorous reexamination of the expansion of the Turtle Bay Resort. While neither of the 2006 resolutions passed, in 2007 the Legislature enacted HCR 194 that requested the Senate Committee on Judiciary and Labor and the House Committee on Labor to convene a joint hearing on the impacts of the Turtle Bay Resort expansion on the vibrant North Shore of Oahu. Unfortunately, this joint hearing never took place.

In 2008 we have the opportunity to join together, Legislative and Executive branches, private and non-profit, community-based and national, federal and local, to save this unique and special place.

SB 2423 SD 2, HD1 is modeled along the lines of the successful Kukui Gardens legislation that allowed the preservation of affordable housing in downtown Honolulu. First, it provides unspecified sums for the Governor, or her designee, to negotiate with the current landowner, Oaktree Capital Management, and to enter into cooperative agreements with other entities to help acquire the property. Second, it further authorizes the issuance of an unspecified amount of general obligation bonds for the possible purchase of the property and provides that these bonds shall not lapse until June 30, 2010. Third, it authorizes the use of eminent domain powers should an agreement not be reached.

We appreciate the fact that HD1 includes language that allows the State to acquire both the improved and unimproved lands. We also appreciate that the language in HD1 includes provisions allowing the State to use private investments and donations, federal funds, special funds, public lands, and other assets to carry out the negotiations and proceed with the acquisition. Governor Lingle has been encouraged by the outpouring of support she has received from a wide variety of organizations and entities who want to help in this endeavor.

To ensure the success of this endeavor, Governor Lingle met with Department of the Interior Secretary Dirk Kempthorne in late February to gain federal support for this effort. We are in regular communications with Secretary Kempthorne's staff and are exploring several funding streams suggested by his office. Governor Lingle also held a Community "Talk Story" on March 4th that was attended by an estimated 500 people, the vast majority of whom supported the project.

Governor Lingle also formed the Turtle Bay Advisory Working Group in early March and that group has already met several times. Representative Magaoay is an active member. Additionally, the Governor has had constructive conversations with Oaktree Capital Management and their interests in selling the property and Benchmark Resorts on the long-term viability of the resort.

Regarding the funding for this effort, we would like to suggest that section 6 of the bill be deleted, since the Administration does not believe that general funds are

needed at this time. We would request that section 7 be amended to reflect the appropriation of \$250,000 from the Special Land and Development Fund for the purposes of negotiating with Oaktree Capital Management, Kuilima Resort Company, or other parties of interest. We would ask that the amounts in section 8 remain blank and that the Governor's team have an opportunity to work with the conferees on this portion of the legislation.

We appreciate the support this project has received from the Legislature, members of the public, federal agencies, national organizations, and even international organizations in pursuit of the truly worthy goal of preserving Turtle Bay.



Congress of the United States

House of Representatives

Washington, DC 20515

April 17, 2008

The Honorable Linda Lingle
Governor
Executive Chambers
Hawaii State Capitol
Honolulu, Hawaii 96813

Linda Lingle
Dear Governor Lingle:

Thank you for your letter dated March 31, 2008 in which you asked for specific steps our offices can take to assist you in your proposal for the state to purchase Turtle Bay Resort. We have done extensive research on federal funding possibilities and hope this information is useful to you.

The House Appropriations Committee has a long-standing prohibition against earmarking funds for state land acquisition projects. As a result, it is not possible for us to obtain an earmark for the Turtle Bay purchase. There are several grant programs that the State of Hawaii could apply for, and we support full funding for many of them throughout the appropriations process. You mentioned two of them in your letter, the Land and Water Conservation Fund and the Cooperative Endangered Species Conservation Fund, which we discuss more fully below.

Land and Water Conservation Fund

The Land and Water Conservation Fund (LWCF) Act of 1965 was enacted to help preserve, develop, and assure access to outdoor recreation facilities to strengthen the health of U.S. citizens. LWCF has been the principal source of monies for land acquisition for outdoor recreation by the four federal agencies, the National Park Service, Bureau of Land Management, Fish and Wildlife Service, and Forest Service. For these federal acquisitions, Congress typically identifies which areas are to be acquired with the funds it provides. Since your proposed acquisition is not by one of the named federal entities, this is not a viable funding stream.

LWCF also funds a matching grant program to assist states in recreational planning, acquiring recreational lands and waters, and developing outdoor recreational facilities. The allocation for each state is determined by formula based on law and subsequent approval of the "certificate of apportionment" by the Secretary of the Interior. Since FY 2003, the State of Hawaii has received less than \$ 1 million each year. In FY 2006 and 2007, Hawaii received just under \$300,000. As you are aware, states award their grant money through a competitive selection process based on

statewide recreation plans. Based on your criteria for administering this grant program, you may be able to utilize these funds for the Turtle Bay proposal.

President Bush zeroed out the LWCF program in his FY 2009 budget. However, we have contacted the House Appropriations Committee with our support for continued funding for LWCF to at least meet FY 2008 levels. Should it be funded, this will ensure Hawaii will continue to receive funding through the stateside assistance program.

Cooperative Endangered Species Conservation Fund

This grant program was established in section 6 of the Endangered Species Act and is used to fund U.S. Fish and Wildlife Service (FWS) participation in a wide array of voluntary conservation projects for candidate, proposed and listed species. **The House does not earmark this fund under any circumstance.** It is purely a grant program and funds are obtained through an application process through the U.S. Fish and Wildlife Service.

This Fund consists of three programs, the Habitat Conservation Planning Assistance Grants Program, the Habitat Conservation Plan Land Acquisition Grants Program and the Recovery Land Acquisition Grants Program. The Habitat Conservation Plan (HCP) Assistance Program provides grants to states and territories to support the development of HCPs. HCPs are agreements between a landowner and the FWS, allowing a landowner to undertake otherwise lawful activities on their property that may result in the death, injury or harassment of a threatened or endangered species.

The other two grants are land acquisition programs more suitable to your purpose. The HCP Land Acquisition Program provides grants to states or territories for land acquisition associated with approved HCPs. The grants are targeted to help landowners who volunteer to conserve imperiled species on their lands. In FY 2008, the FWS dispersed \$35.3 million through this program with grants ranging from \$1.7 million to \$6.5 million. The Recovery Land Acquisition Grants Program funds state acquisition of habitat for endangered and threatened species with approved recovery plans. In FY 2008, the FWS dispersed \$14 million through this program with grants ranging from \$88,000 to \$1.5 million.

Grant awards for FY 2008 were announced on March 20, 2008. Hawaii received three grants, all awarded through the Recovery Land Acquisition Grants Program. Two of the three grants were obtained by the Department of Land and Natural Resources. The first grant was \$360,000 toward the purchase of the 3,582 acre Honouliuli property, permanently protecting over 90 rare species. The second was \$740,000 to acquire 65 acres of wetlands to add to the Hamakua Marsh Wildlife Sanctuary. Although FY 2008 funding has been expended, it is our understanding proposals for FY 2009 funding will be accepted this summer or fall.

Other Grant Programs

The **Army Compatible Use Buffer Program (ACUB)** funding has been utilized in land conservation purchases on Oahu over the last few years. In 2002, Congress authorized the Department of Defense to form partnerships with state and local governments and non-profit conservation groups, to create buffers in the vicinity of military bases to prevent incompatible development and preserve habitat. Funding decisions are made by the Office of the Secretary of Defense based on input on project priorities from the military services. In Hawaii, ACUB funding was used for the purchase of Pupukea-Paumalu (\$3.34 million in 2008), Moanalua Valley (\$900,000 in 2007), and Waimea Valley (\$3.5 million in 2006). The first step would be to add the Turtle Bay purchase proposal to the local project priority list which already includes four other land acquisitions.

The Farm Bill is not an appropriate vehicle from which to seek funding for state or local government acquisition of agricultural land. The bill governs federal farm and food policy and covers a wide range of programs including commodity price and income support, farm credit, agricultural conservation, research, rural development, and foreign and domestic food programs, among others. Although the bill does allocate mandatory funds among programs under the jurisdiction of the Committee, there would be no opportunity to earmark a land acquisition project such as this.

In addition, there are three more grant programs you may want to consider. The first is the **National Coastal Wetlands Conservation Grant Program** administered by the FWS. The program provides matching grants to States for acquisition, restoration, management or enhancement of coastal wetlands. Typically, between \$13 million and \$17 million in grants are awarded annually through a nationwide competitive process. Grants awarded under the National Coastal Wetlands Conservation Grant Program cannot exceed \$1 million for an individual project. Applications for FY 2008 are due to the FWS regional office by May 23, 2008.

Second, you could also consider the **Coastal and Estuarine Land Conservation Program** administered through the National Oceanic and Atmospheric Administration (NOAA). This program was recently utilized to help purchase the Pupukea-Paumalu coastal bluff (a \$2 million contribution). There is a \$3 million project limit on this program. This program is now strictly a competitive grant program and funds can not be earmarked. It is our understanding that NOAA plans to issue a funding announcement for FY 2009 in late May or early June of this year.

Third, the **Farm and Ranch Land Conservation Program** might be an option for the state as the program provides some funding for purchase of easements to keep land in agriculture. Hawaii has been allocated approximately \$1.8 million per year under this program in recent years. However, the ability of the USDA Natural Resource Conservation Service (NRCS) to release the funds, which have been obligated to Hawaii agricultural land protection projects, has been stymied by provisions in state law reserving all mineral rights to the state. USDA cannot approve purchasing an easement if the state retains the right to mineral rights. We understand that NRCS has been working with DLNR to resolve this matter via a Memorandum of

Agreement. Failure to resolve this matter could result in Hawaii receiving smaller allocations from the national program in the future.

Conclusion

Should the Legislature opt to explore the possibility of buying all or part of the land in question at Turtle Bay, federal participation is extremely limited by the prohibition on funding state land acquisitions. However, we support overall funding for all of the grant programs listed in this letter and will continue to do so as the appropriations process for FY 2009 proceeds. In addition, we would encourage you to explore the option of a public/private partnership with land conservation foundations which have a record of success both in the Islands and on the mainland.

If you would like us to continue looking for grant programs that may be applicable to this proposal, we would need more information regarding your proposal. At a minimum:

- How much land are you considering purchasing?
- How much federal funding are you seeking?
- What percentage would the federal funding be of the proposal's total cost?
- How much funding would other partners be able to contribute to the purchase?

The federal government often views the number of partners and how much they are contributing as an indicator of public support for the project. A map and description of the qualities/attributes of each of the parcels would also be helpful.


In your letter, you mention meeting with Interior Secretary Dirk Kempthorne in February and his support for your initiative. We would appreciate your providing us with details on the support/assistance that will be provided by the Department of Interior through the administration.

We too have heard the concerns of the North Shore community and other residents of Hawaii who are troubled by the threat of overdevelopment of this area. We share the community's concern about the impact that the proposed mega-development would have on the environment, infrastructure, and quality of life. However, not knowing how much the land/resort will cost or what arrangements you are planning for its purchase, we are concerned about the opportunity costs of this acquisition and how it might affect prospects for acquiring/protecting other special properties throughout the state. As you know, development pressures have been increasing, especially on the neighbor islands, and funds spent on Turtle Bay cannot be spent on other priority acquisitions. Looking for creative partnerships to achieve the goals of preserving open space and coastal protection that we all share is critical in view of these concerns.

Last, the Turtle Bay situation is further complicated by the ongoing mortgage foreclosure lawsuit. The effect of these as yet unsettled claims on any potential purchase of the existing

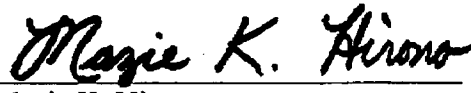
resort portion, as well as the valuation of the undeveloped land portion, is not known at this time. This lawsuit and the resulting uncertainty could raise concerns about using federal taxpayer dollars in a public bailout of a failed corporation.

As you monitor the ongoing situation and provide us with appropriate information, we will certainly explore seeking federal dollars, however limited, in furtherance of protecting the area for future generations.



Neil Abercrombie
Member of Congress


Akaka



Mazie K. Hirono
Member of Congress

cc: The Honorable Daniel K. Inouye
The Honorable Daniel K. Akaka
The Hawaii State Legislature
Turtle Bay Advisory Working Group

testimony

From: Mark Cunningham [mrc123@mac.com]
Sent: Friday, April 18, 2008 2:07 AM
To: testimony
Subject: HCR 346

Aloha Committee on Water & Land,

I strongly support the passing of HCR 346. Thank you all for your hard work and dedication on it's behalf.

Sincerely, Mark Cunningham

Mark Cunningham
mrc123@mac.com
P.O. Box 504
Haleiwa, HI 96712

Home: 808-206-8502
Cell: 808-224-2626

Senate Committee on Water and Land
Hearing: April 18, 2008, 1:30 p.m., Conf. 414

HCR346 & SR95 Proposed SD1s

Dear Chair Hee, Vice-Chair Kokubun, and Members:

I write in **STRONG SUPPORT of HCR346 & SR95 Proposed SD1**. This resolution, alongside SB2423 SD2 HD2, scheduled for Conference today, provides critical support from the Legislature for rapid and successful progress on the Governor's negotiations to acquire the Turtle Bay resort lands in the public interest.

I commend the Committee for its quick and supportive action on this resolution.

The public-private negotiations over complex land acquisitions like Turtle Bay require a full range of tools, agility, and flexibility.

The market conditions are currently ideal for negotiations, but as the Legislature knows, the pathway ahead will require patience and creativity to reach a win-win agreement between the landowner -- who is willing to sell and actively marketing the property on the market -- and the State of Hawaii.

In passing this resolution, the Legislation will send another strong signal to the landowner that the State is ready, willing, and able to move forward with negotiations.

Because the Turtle Bay property is the subject of a foreclosure action by the creditors, this is a unique opportunity. The forward vision of the Legislature on this issue will be appreciated in perpetuity by residents and visitors alike.

The success of the Turtle Bay initiative will, in turn, serve as a model for other communities statewide who are facing similar challenges in preserving keystone lands for future generations.

Mahalo for your support.

Sincerely,

Denise Antolini
Pupukea resident, 638-5594
Member, Governor's Turtle Bay Advisory Working Group

From: Info@KeeptheNorthShoreCountry [mailto:info@keepthenorthshorecountry.org]
Sent: Friday, April 18, 2008 9:30 AM
Subject: HCR 346 SD1 and SR 95 SD1 - SUPPORT

Chair Hee and Members of the Senate Committee on Water and Land:

Keep the North Shore Country strongly supports HCR 346 SD1 and SR 95 SD1.

Mahalo for your hard work and leadership on this critical issue for the future of Oahu.

Respectfully,

Gil Riviere
Keep the North Shore Country
66-250 Kamehameha Hwy, Suite D103
Haleiwa, HI 96712

Phone: 808-220-2280
EMail: info@keepthenorthshorecountry.org
Website: www.keepthenorthshorecountry.org

From: Lucky Cole [mailto:lucky@hawaii.rr.com]

Sent: Friday, April 18, 2008 10:09 AM

Cc: 'Gil Riviere'

Subject: Support of HCR 346 & SR95

Aloha,

My wife, Marilyn, and I support HCR 346 & SR95 and Senator Hee's great efforts to support the non partisan initiative to acquire the unimproved lands at the Turtle Bay Resort to avoid the huge impact of the proposed expansion.

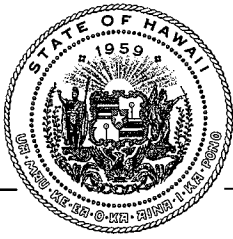
Mahalo!

Schuyler "Lucky" Cole (R), CEO

Team Real Estate, Inc. & COLINET LLC

808-638-7289; 808-638-8736 fax; 808-554-8113 cell;

www.teamrealestate.com



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR
ABBEY SETH MAYER
DIRECTOR
OFFICE OF PLANNING

OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824

Statement of
ABBEY SETH MAYER
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON WATER AND LAND
Friday, April 18, 2008
1:30 PM
State Capitol, Conference Room 414

in consideration of
HCR 346, PROPOSED SD1
**URGING THE ADMINISTRATION TO COMPLETE THE PURCHASE OF
TURTLE BAY RESORT AND THE SURROUNDING UNDEVELOPED LANDS
AND URGING THE COMMITMENT OF THE LEGISLATURE TO ASSIST
WITH THE PURCHASE.**

Chair Hee, Vice Chair Kokubun, and Members of the Senate Committee on Water and Land.

The Office of Planning (OP) **supports** the intent and purpose of House Concurrent Resolution No. 346, Proposed SD1. This resolution urges the Administration to complete the negotiations for the purchase of the Turtle Bay Resort and the surrounding undeveloped lands, and would also commit the Legislature to a good faith review of the terms of the acquisition within the bounds of existing law. The Turtle Bay Resort and Hotel property includes about five miles of coastline, much of which is undeveloped and other large tracts that remain in their natural state. The property is also a critical piece in maintaining rural character of the North Shore. Acquisition of the Turtle Bay property will protect this area and allow the community as a whole to shape its future.

Thank you for the opportunity to testify.

testimony

From: Kevin Kelly [kevink@hawaii.edu]
Sent: Friday, April 18, 2008 10:44 AM
To: testimony
Subject: COMMITTEE ON WATER AND LAND, Friday, April 18, 2008, 1:30 p.m.

Re: Strong Support for HCR 346 SD1; *LSR 95 SD1*

URGING THE ADMINISTRATION TO COMPLETE THE PURCHASE OF TURTLE BAY RESORT AND THE SURROUNDING UNDEVELOPED LANDS AND COMMITTING TO ASSIST WITH THE PURCHASE

Chairman Hee, Vice-chair Kokubun,

Thank you for your continued hard work and support for the state's acquisition of the Turtle Bay property. The preservation of open land has become a priority to its citizens and the beneficiaries of our actions today, will be the generations to come who will have a place in the country to keep them in touch with the environment we hold so dear.

Thank you for the opportunity to testify on this resolution.

Kevin Kelly
Kahuku



April 18, 2008

Aloha Chairperson Hee and Vice Chair Kokubun:


The Trust for Public Land (TPL) supports the House Concurrent Resolution 346 (HCR 346), "URGING THE ADMINISTRATION TO COMPLETE THE PURCHASE OF TURTLE BAY RESORT AND THE SURROUNDING UNDEVELOPED LANDS AND URGING THE COMMITMENT OF THE LEGISLATURE TO ASSIST WITH THE PURCHASE."

TPL conserves land for people to enjoy as parks, gardens and other natural places, ensuring livable communities for generations to come. Nationwide, TPL has five program initiatives: (1) providing parks for people, (2) protecting working lands (farms, ranches, and forests), (3) conserving natural lands (wilderness, wildlife habitat), (4) safeguarding heritage lands (cultural and historical resources), and (5) preserving land to ensure clean drinking water and the natural beauty of our coasts and waterways. In Hawai'i, TPL has worked with public and private partners to conserve over 36,000 acres of land in the State, including Pūpūkea-Paumalū and Waimea Valley on O'ahu, Wao Kele o Puna on Hawai'i Island, Mū'olea Point on Maui, and Lumaha'i Beach on Kaua'i.

TPL commends the Legislature for its support of the initiative to protect the Turtle Bay Resort and surrounding lands, and believes that by working in partnership with the Legislature, federal agencies, our Congressional delegation, the community, the business community, and private donors, we can together, achieve our vision of preserving the unique rural character of North Shore, and at the same time, enhancing much needed jobs provided at the existing resort and golf courses.

TPL supports HCR 346 and is diligently participating in the Governor's Working Group, and the community in collaborative efforts to acquire and protect these precious lands for the betterment of all.

Mahalo for this opportunity to testify.


Lea Hong
Hawaiian Islands Program Director