

LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LT. GOVERNOR



KURT KAWAFUCHI  
DIRECTOR OF TAXATION

SANDRA L. YAHIRO  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF TAXATION  
P.O. BOX 259  
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510  
FAX NO: (808) 587-1560

## SENATE COMMITTEE ON WAYS & MEANS

### TESTIMONY REGARDING SB 2198 SD 1 RELATING TO LAND CONSERVATION

**TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)**

**DATE: FEBRUARY 25, 2008**

**TIME: 10:30AM**

**ROOM: 211**

---

This legislation provides a nonrefundable income tax credit for bargain sales or contributions of land for purposes of preservation.

The Committee on Water & Land passed this measure unamended.

The Committee on Economic Development & Taxation made amendments to the bill related to the determination of fair market value.

The Department of Taxation provides comments on this legislation.

The Department very much recognizes the importance of preserving conservation and culturally relevant lands in order to maintain Hawaii's priceless lands. However, the Department has issues with administering this tax credit.

#### **I. TECHNICAL COMMENTS**

The following technical flaws are apparent:

**USE OF FAIR MARKET VALUE**—The Department is always apprehensive when "fair market value" is used as the standard by which a tax credit or other tax incentive is calculated. Fair market value can mean something different to anyone, especially when a tax benefit is involved. The concern for the Department relates more to perceived frauds and abuses of land prices used to calculate the amount of the credit.

This bill was amended to clarify that fair market value for purposes of the credit is to be determined pursuant to federal law regulating appraisals for charitable purposes. Assuming fair

market value is the only measure that can be used for this credit and use of an appraisal is the preferred method, the Department strongly suggests that the bill be amended to incorporate a penalty similar to Internal Revenue Code § 6695A that will penalize an appraiser who is complicit in a fraudulent land deal for purposes of this credit. An additional penalty similar to that provided under § 6662 of the Internal Revenue Code would prohibit taxpayers from similarly misusing any appraisals.

**PROPERTY CLASS STANDARDS**—The Department is concerned about certain of the definitions used with the credit. For example, "conservation and preservation purpose" and "cultural property" are both very broad terms and the express definitions only increase the expanse of these definitions. The Department recognizes the rulemaking authority; however settling the issue in statute is the preferred method.

**PUBLIC OR PRIVATE CONSERVATION AGENCY**—There is concern over who will be running any conservation program. In order to ensure continuity and consistency, the Department suggests amending the bill to ensure some specific government agency be charged with implementing the conservation program before any tax credit is available.

**PASS-THROUGH ENTITY PROVISION**—Subsection (g) is unnecessary and confusing. Well-settled principles of partnership (pass-through) entity law typically do not allow any tax consequences for the "entity." All tax attributes of a partnership flow through to the partners that realize the tax consequences on individual tax returns. When an election is made by a partnership or limited liability company to be taxed at the entity level as a corporation, the entity is then considered a corporation for tax purposes and no longer a pass-through. The Department strongly suggests that subsection (g) be eliminated entirely. The Department submits that existing conformity to partnership and corporate tax principles is sufficient.

**DOUBLE TAX BENEFIT**—Generally, the taxpayer would receive a charitable contribution deduction for the donation of the property to a government entity or a nonprofit entity. In addition, arguably providing a tax credit in exchange for the donation could be treated as taxable sale of the property.

**RULEMAKING**—The Department already has broad rulemaking authority. Subsection (i) is unnecessary. There is also a conflict between subsection (i) and (j). Do both agencies get to make concurrent rules? Will one agency's rules trump the other?

**CERTIFICATION PROCESS**—In light of the Department's concerns, the Department also suggests a certification process whereby, rather than the Board of Land & Natural Resources being authorized to make rules for this credit, the DLNR could be authorized to certify credits, maintain information, and simply send a certificate to the Department to process the credit. Other similar certification processes are currently administered with the Department of Business, Economic Development & Tourism and the Hawaii Film Office. *See e.g.*, HRS § 235-17.

## **II. REVENUE IMPACT**

This legislation will result in a revenue loss of approximately \$3.2 million for FY 2009.

The Legacy Land Conservation program under DLNR provides matching funds for non-profits to engage in land purchases for conservation. In many of these cases, a part of the land interest is gifted to the non-profit. It is assumed that most conservation land donation transactions goes through this mechanism.

Gifts through the Legacy Lands project for 2008 are projected to be \$3,238,500. We assume that this covers half of all eligible transactions under the credit (including investments covered in section (c) paragraph (2)). Thus we project the value of eligible transactions to be \$6.5 million, of which a 50% tax credit would cause of revenue loss of \$3.2 million.

Impact for future years is indeterminate, due to the large volatility in gift amounts from year-to-year.

LINDA LINGLE  
Governor



SANDRA LEE KUNIMOTO  
Chairperson, Board of Agriculture

DUANE K. OKAMOTO  
Deputy to the Chairperson

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512

TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS  
MONDAY, FEBRUARY 25, 2008  
10:30 a.m.  
Room 211

SENATE BILL 2198, SENATE DRAFT 1  
RELATING TO LAND CONSERVATION

Chairperson Baker, Vice-Chair Tsutsui and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2198, Senate Draft 1 that seeks to establish a tax credit to encourage the preservation and protection of certain donated or "bargain sale" lands in the State at less than fair market value, and in perpetuity. The Department of Agriculture supports the intent of this bill. We defer to the Department of Taxation regarding the tax credit and its implications on the State budget.

We gratefully note that Senate Draft 1 has incorporated our recommended amendment within Section 205-45 to allow holders of interest in lands qualifying for the land conservation incentive tax credit to petition the State Land Use Commission for designation as Important Agricultural Lands (IAL), thereby allowing access to incentives for IAL that will be developed and enacted by the legislature.

THE  
TRUST  
for  
PUBLIC  
LAND



THE TRUST FOR PUBLIC LAND'S TESTIMONY IN SUPPORT  
SB 2198

Senate Committee on Ways and Means  
Monday, February 25, 2008, 10:30 a.m., Room 211  
testimony@capitol.hawaii.gov

Hawaii Office  
212 Merchant St.  
Suite 320  
Honolulu, HI  
96813  
T: 808-524-8560  
F: 808-524-8565  
www.tpl.org

Dear Chairperson Baker and Vice Chair Tsutsui:

The Trust for Public Land (TPL) supports SB 2198 Relating to Land Conservation.

As development and urban sprawl increase, concern about the future of land use and its relation to Hawai'i's natural resources, economy and heritage have come to the forefront of community concern. Some of these concerns are protected and embodied in recent laws providing funding for the acquisition of private lands for public conservation purposes. The recent State Legacy Lands Act is but one example.

Funding from programs such as the Legacy Lands Conservation Program yield great benefits to the people of Hawai'i, but further incentives are necessary to provide alternatives to the tremendous financial pressures to convert needed agricultural or conservation land to other uses that generate greater revenue. It is also impossible for the government to acquire and take care of all of these lands.

S.B. 2198 provides a voluntary incentive for private landowners to protect our precious lands and offers an alternative to acquisition and government management. It advances conservation by creating a competitive class of land use in an economy where conversion by private landowners to other uses are an attractive or economic necessity.

We urge you to support SB 2198.

Very truly yours,

Lea Hong  
Hawaiian Islands Program Director



Testimony of The Nature Conservancy of Hawai'i  
Supporting with Amendments S.B. 2198 SD 1 Relating to Land Conservation  
Senate Committee on Ways & Means  
Monday, February 25, 2008, 10:35 PM, Room 211

The Nature Conservancy of Hawai'i supports S.B. 2198 SD 1, with the amendments suggested below.

Undeveloped private lands often provide significant benefits and services to the general public such as watersheds, erosion control, carbon sequestration, green space, recreational opportunities, and cultural preservation. However, landowners do not presently receive any remuneration for the ecosystem services their lands provide. While the public depends upon the provision of these services, society often treats them as essentially free.

For many private landowners, there is significant pressure to convert forests, ranch and agricultural lands, open spaces, and lands with historical or cultural features to uses that generate greater income to the landowner. A mix of existing government and private funding for conservation land purchases, as well tax incentives like those in this bill can enable landowners a variety of options to avoid conversion and help government achieve a public benefit. Indeed, tax incentives that allow landowners to retain ownership while committing to protection can help achieve public conservation priorities without requiring the government to expend many millions more to buy and manage the land itself.

**While we are in strong support of this bill, we request that a provision added by the prior committee be removed or amended. At page 5, lines 3-4, the bill now requires "that the taxpayer provides reasonable public access to lands under this section." We recommend that this provision be removed entirely, or moved to page 2 at the end of the definition of "conservation or preservation purpose" as follows:**

"Conservation or preservation purpose" means:

- (1) Protection of open space for scenic values;
- (2) Protection of natural areas for wildlife habitat, biological diversity, or native forest cover; or
- (3) Preservation of forest land, agricultural land, watersheds, streams, rainfall infiltration areas, outdoor recreation including hiking, biking and walking trails, and historic or cultural property;

provided that the resources or areas protected or preserved are designated as significant or important by a relevant state agency **and that such agency shall work with the taxpayer to identify opportunities for public access if appropriate and reasonable.**

While public access is clearly appropriate for donations of land or easements for public recreation, open space or coastal access, public access can be problematic in remote areas, fragile ecosystems, agricultural lands, or certain historic or cultural sites. In these latter instances, "reasonable public access" becomes difficult to define and possibly inappropriate considering such issues as public safety, injury liability, disruption of ranch or farm operations, illegal activity, vandalism, spread of invasive species, and wildfires.

For additional background, we attach a Q&A about this bill, a comparison of similar legislation in other states, and some revenue impact analysis.

#### Attachments

#### BOARD OF TRUSTEES

S. Haunani Apoliona Peter D. Baldwin Christopher J. Benjamin Zador W. Brown, Jr. Carl A. Carlson, Jr. David C. Cole Samuel A. Cooke  
Peter H. Ehrman Kenton T. Eldridge Guy Fujimura J. Stephen Goodfellow Thomas Gottlieb James J.C. Haynes Ron Higgins Peter Ho  
Stanley Hong J. Douglas Ing Mark L. Johnson Dr. Kenneth Kaneshiro Bert A. Kobayashi, Jr. Faye Watanabe Kurren Duncan MacNaughton  
Bill D. Mills Wayne Minami Michael T. Pfeffer H. Monty Richards Jean E. Rolles Scott Rolles James Romig Eric Yeaman

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

### **Proposal**

To enact legislation to provide State income tax credits for landowners who donate land, establish a conservation easement, or undertake conservation activities to protect habitat, open space, agricultural lands, and cultural and historic resources.

### **1. What are the key provisions of the proposed Hawai'i Conservation Tax Credit legislation?**

The proposed bill would provide a State income tax credit to a landowner who:

- ✓ donates land (incl. a bargain sale) or a conservation easement; or
- ✓ voluntarily invests in management of their land

for a conservation purpose.

A conservation purpose includes preservation of natural, recreational, agricultural, open space, cultural and historic areas.

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

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.

### **2. 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 invasive species, 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 forests, ranch and agricultural lands, and cultural and historic sites to uses 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 who contribute to conservation.

**3. Why provide tax benefits to landowners who donate land, conservation easements or otherwise manage their lands to promote preservation?**

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.

**4. 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 their land while retaining other rights.

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

**5. What federal tax benefits are currently available to landowners who donate land, 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 donated land or a conservation easement. Easements must be perpetual to qualify for tax deductions.

Federal law allows the donor to apply the value of the donation as a deduction up to 50% (100% for farmers) of their adjusted gross income and can carry the deduction forward up to 15 years. Landowners may also receive federal tax credits for preservation of historic buildings.

**6. What other benefits are available to landowners who donate land, conservation easements, or take conservation action on their lands?**

Landowners who donate land or 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.

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

Twelve (12) states provide such tax credits for landowners. Six other states are currently considering measures to establish these tax credits.

Each state determines how it will treat donations for income tax purposes. Most states limit the deduction to 25-50% of the fair market value of the 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.

**8. 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.

**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 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

## Summary of Existing State Conservation Credit Programs

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	Delaward 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
<b>LANDS ELIGIBLE TO EARN CREDITS</b> 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
<b>CREDIT VALUE AND LIMITATIONS</b> 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.		
<b>CARRY FORWARD?</b>	8 yrs.	20 yrs.	15 yrs.	5 yrs.	5 yrs.	15 yrs.
<b>TRANSFERABLE?</b>	No	Yes	No	No	No	No
<b>REFUNDABLE?</b>	No	Conditional on state surplus and limited to \$50,000/yr.	No	No	No	No
<b>CERTIFICATION?</b>	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

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	50% transaction costs	25% FMV	50% FMV	25% Property Tax	Lesser of \$250/acre or 25% of Federal Conservation Easement deduction	40% FMV
Maximum credit	\$10,000	\$250,000 Ind. \$350,000 Corp.	\$250,000	Unlimited	Unlimited	Unlimited
Cap on credit per year			\$250,000	\$5,000	\$52,500	\$100,000 (Note: unlimited amount may be transferred and used by 3rd parties)
Limit on # of credits that may be claimed	Once per lifetime					
Statewide cap						
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.

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

## Summary of Pending State Conservation Credit Legislation

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"> <li>• 25% FMV if CE* plus 15 years public access</li> <li>• 55% FMV if CE plus 30 years public access</li> <li>• 100% FMV if CE plus perpetual public access</li> </ul>	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**

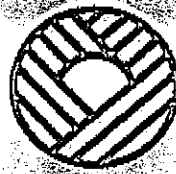
Value of land per acre	Value of 11,000 acres (avg. acres donated/yr in other states w/ tax credits)	Value of donation assuming development rights = 1/3 the land value	Total tax credit =50% of Donation	Tax credits claimed per year. Assumes value of donation equals annual income. Income tax rate =7.5% YR 1	YR 2	YR 3	YR 4	YR 5	After five or six years donations often slow. On average taxpayers use 13 years to exhaust credit YR 6
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



---

**MAUI LAND & PINEAPPLE COMPANY, INC.**

---

February 22, 2008

The Honorable Senator Rosalyn H. Baker, Chair  
The Honorable Senator Shan S. Tsutsui, Vice Chair  
Committee on Ways and Means  
Hawaii State Senate  
Hawaii State Capitol  
415 South Beretania Street, Room 211  
Honolulu, Hawaii 96813

Subject: SB 2198, SD 1 – Relating to Land Conservation

Dear Honorable Chair Baker, Honorable Vice Chair Tsutsui and Committee Members:

Maui Land & Pineapple Company, Inc. ("ML&P") strongly supports SB 2198, SD 1, Relating to Land Conservation.

More than half of ML&P's land on West Maui is zoned conservation by the State of Hawaii. These lands are part of the West Maui Mountains Watershed Partnership and consist of important watershed lands which provide about 70% of the potable water source for the entire population of the island of Maui. Undeveloped private lands often provide significant benefits and services to the general public such as watersheds, erosion control, carbon sequestration, green space, recreational opportunities, and cultural preservation. However, landowners do not presently receive any remuneration for the ecosystem services their lands provide. While the public depends upon the provision of these services, society often treats them as essentially free.

For many private landowners, there is significant pressure to convert forests, ranch and agricultural lands, open spaces, and lands with historical or cultural features to uses that generate greater income to the landowner. However, such conversions often result in lost opportunity for future generations to enjoy precious land areas in the way that their parents and grandparents enjoyed them. To be attractive to landowners, conservation must be competitive with other existing or potential uses of the land – a goal that H.B. 2518 helps advance.

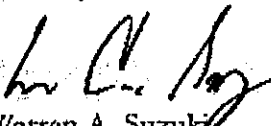
Like the Legacy Lands Act approved by the Legislature in 2005, SB 2198, SD 1, can help provide opportunities and additional choices for land conservation in Hawaii. A mix of existing government and private funding for conservation land purchases, as well as tax incentives like those in SB 2198, SD 1, can enable landowners a variety of options to suit their needs as well as help government to achieve a public benefit.

The Honorable Senator Rosalyn H. Baker, Chair  
The Honorable Senator Shan S. Tsutsui, Vice Chair  
February 22, 2008  
Page - 2 -

The tax incentives proposed in SB 2198, SD1, will be another tool like the Legacy Lands Act for government and private partners to achieve the important public policy goal of protecting and managing some of the islands' treasured natural areas, agricultural lands, open spaces, and historical sites. Indeed, tax incentives that allow landowners to retain ownership while committing to protection can help achieve public conservation priorities without requiring the government to expend many millions more to buy and manage the land itself.

We sincerely appreciate the opportunity to provide our testimony. If you have any questions or wish to discuss our testimony, please do not hesitate to contact me at (808) 877-3882.

Mahalo,



Warren A. Suzuki  
Senior Vice President



**testimony**

---

**From:** Kiersten Faulkner [Kiersten@historichawaii.org]  
**Sent:** Friday, February 22, 2008 8:36 AM  
**To:** testimony  
**Subject:** Support for SB 2198

**VIA EMAIL:** [testimony@capitol.hawaii.gov](mailto:testimony@capitol.hawaii.gov)

**To:** Senator Rosalyn H. Baker, Chair  
 Senator Shan S. Tsutsui, Vice Chair  
 Committee on Ways and Means

**From:** Kiersten Faulkner  
 Executive Director, Historic Hawai'i Foundation

**Committee Date:** Monday, January 28, 2008  
 2:45 p.m.  
 Conference Room 414

**Subject:** **Support of SB2198 Relating to Land Conservation**

On behalf of Historic Hawai'i Foundation (HHF), I am writing in support of SB2198. Since 1974, Historic Hawai'i Foundation has been a statewide leader for historic preservation. HHF works to preserve Hawaii's unique architectural and cultural heritage and believes that historic preservation is an important element in the present and future quality of life and economic viability of the state.

Historic Hawai'i Foundation supports SB2198, which would provide a credit against state taxes to encourage the preservation and protection of conservation land in the State.

Hawaii's essential character is a combination of its unique flora and fauna, distinct history and culture, and the places where people enjoy the benefits of Hawaii's natural, historic and cultural resources.

Preserving and perpetuating these places for the use and enjoyment of present and future generations will take several efforts in combination, including public-private partnerships and strategic investments.

The use of conservation easements is one such program. Owners of properties with natural, conservation, historic and cultural significance have a special responsibility for conserving those resources. Many have the desire to see the land and its inherent values protected in perpetuity and voluntarily restrict future development that would negatively impact those resources. SB2198, by providing a tax credit for conservation easements, would help make that protection economically feasible and financially viable. The benefits for Hawai'i will be felt for generations at a much lower cost to the State than from fee simple purchase and public ownership.

Therefore, Historic Hawai'i Foundation urges your support for SB2198 to provide a land conservation incentives tax credit.

Very truly yours,

Kiersten Faulkner

Kiersten Faulkner, AICP  
 Executive Director  
 Historic Hawai'i Foundation

680 Iwilei Road Suite 690  
 Honolulu, HI 96817  
 808-523-2900 (tel)  
 808-523-0800 (fax)  
[Kiersten@historichawaii.org](mailto:Kiersten@historichawaii.org)  
[www.historichawaii.org](http://www.historichawaii.org)

2/22/2008

## testimony

---

**From:** Gretchen C. Daily [gdaily@stanford.edu]  
**Sent:** Friday, February 22, 2008 11:52 AM  
**To:** testimony  
**Subject:** Testimony supporting S.B. 2198

**Attachments:** clip\_image001.gif; clip\_image002.gif



clip\_image001.gif  
(194 B)



clip\_image002.gif  
(284 B)

Testimony of Gretchen C. Daily  
Supporting S.B. 2198 Relating to Land Conservation []

Gretchen C. Daily  
Professor, Biology Department  
Director, Center for Conservation Biology Senior Fellow, Woods Institute for the  
Environment Chair, The Natural Capital Project Stanford University []

I write in support of S.B. 2198 Relating to Land Conservation.

I write as a conservation biologist to express my professional support for enacting tax credits for conservation in Hawaii. The proposed bill would immediately place the Hawaii legislature on the forefront of conservation policy nation-wide. It would provide private landowners with critical financial incentives for conserving ecosystem services that offer important benefits to all Hawaiian citizens. Hawaii is justly famous for the beauty of its natural heritage. That heritage also functions as valuable environmental infrastructure, an infrastructure that harvests rain, stores water, ensures water quality, sequesters carbon and protects communities from floods.

The act will also help Hawaiian landowners protect biodiversity, irreplaceable agricultural lands, cultural resources and recreational opportunities. Conserving these resources is not a subsidy: it is an investment in Hawaii's future.

At the Natural Capital Project, a joint venture to align economic forces with conservation, we work in China, in the United States, in Latin America, and in Africa. Many states and nations are moving towards creating comprehensive tax and financial incentives for private landowners to protect and manage land in a fashion that provides public benefits. The proposed tax credits for land conservation and conservation management would position Hawaii to lead the way in this global trend.

Thank you for your time and consideration.

<> <> <> <> <> <> <> <> <> <> <> <>

Gretchen C. Daily  
Department of Biological Sciences  
and Woods Institute for the Environment  
371 Serra Mall  
Stanford University

## McCandless Ranch

February 22, 2008

Testimony from McCandless Ranch, South Kona, Hawaii  
Supporting with Amendments S.B. 2198 SD 1 Relating to Land Conservation  
Senate Committee on Ways & Means  
Monday, February 25, 10:35PM, Room 211

McCandless Ranch supports S.B. 2198 SD 1, with the amendment suggested below.

For the past 90 years, McCandless has been in the ranching business on the Big Island of Hawaii. We have had the privilege of managing and stewarding one of the most intact and pristine native forests in the state.

On private property, it has become more and more difficult to do conservation work because, simply put, conservation happens after the bills are paid.

By allowing tax credits for the donation portion of a Conservation Easement Sale, the state would be stretching their conservation dollar AND they would be helping and encouraging the land owner to reach their conservation goals; a win-win situation.

However, while we are in strong support of this bill, we request that a provision added by the prior committee be removed or amended. At page 5, line 3-4, the bill now requires "that the taxpayer provides reasonable public access to lands under this section." From a landowner's perspective, we believe this will severely restrict the number of private landowners that may otherwise be interested in a Conservation Easement Sale, to the point of rendering this legislation meaningless.

Thank you for the opportunity to testify.

  
Keith F. Unger  
McCandless Ranch

## L E G I S L A T I V E

**TAXBILLSERVICE**

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** INCOME, Land conservation incentives tax credit

**BILL NUMBER:** SB 2198, SD-1

**INTRODUCED BY:** Senate Committee on Economic Development and Taxation

**BRIEF SUMMARY:** Adds a new section to HRS chapter 235 to allow an eligible taxpayer who is the owner of land to claim a land conservation incentives tax credit if the taxpayer: (1) donates the land in perpetuity or completes a bargain sale in perpetuity to the state or public or private conservation agency that fulfills a conservation or preservation purpose provided that any donation or sale that represents a less-than-fee interest qualifies as a charitable contribution deduction under IRC section 170(h); or (2) voluntarily invests in the management of land to protect or enhance a conservation or preservation purpose under a land protection, conservation, or management agreement. Requires the taxpayer to provide reasonable public access to lands under this section. Donations of land for open space to fulfill density requirements to obtain subdivision or building permits do not qualify for the credit.

Permits a holder of an interest in agricultural lands to petition the land use commission for designation of the agricultural lands as important agricultural lands so as to be able to claim the credits proposed in this measure.

The amount of the tax credit shall be 50% of the fair market value of the land that the eligible taxpayer donates in perpetuity on or after January 1, 2008 for a conservation or preservation purpose to the state or public or private conservation agency; or 50% of the amount invested in the management of land. Limits the credit to \$2.5 million per donation regardless of the value or interest in the land. The credit may be claimed only once per tax year. Delineates procedures for the claiming of the credit by a pass-through entity. This credit shall be repealed on December 31, 2012.

Credits in excess of a taxpayer's income tax liability may be applied to subsequent income tax liability. Claims for the credit, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year. The director of taxation may adopt rules pursuant to HRS chapter 91 and prepare the necessary forms to claim the credit and may require proof to claim the credit.

Defines "bargain sale," "conservation or preservation purpose," "cultural property," "eligible taxpayer," "interest in land or real property," "land" and "public or private conservation agency" for purposes of the measure.

Amends HRS section 205-45 to allow a holder of interest in agricultural land that qualifies for the land conservation initiative tax credit to petition the commission for the designation of agricultural lands as important agricultural lands.

**EFFECTIVE DATE:** Tax years beginning after December 31, 2007

SB 2198, SD-1 - Continued

**STAFF COMMENTS:** This measure proposes an incentive in the form of an income tax credit to encourage a landowner to donate, complete a bargain sale to the state or a conservation agency, or voluntarily invest in the management of land to protect or enhance a conservation or preservation purpose.

While the credit may be intended as an incentive, it lacks accountability. In considering this measure, lawmakers should ask themselves just how much will this program cost the state treasury? If this program required an appropriation, how much would lawmakers be willing to appropriate for this program? The financial impact of the proposed credit is no different from the expenditure of public dollars albeit out the back door and hidden from public scrutiny.

Tax credits generally are designed to mitigate the tax burden of those individuals or businesses that do not have the ability to pay their share of the tax burden. These credits are justified on the basis that low-income taxpayers should be relieved of the burden imposed by taxes that are not based on the income of the taxpayer, such as the general excise tax. The proposed credit contained in this measure bears no relationship to the tax burden of the landowner. Thus, the credit amounts to nothing more than a subsidy by state government. Such subsidies are more accountable if funded with a direct appropriation of state funds.

Digested 2/22/08



# KAUA'I PUBLIC LAND TRUST

Gary L. Blaich, M.D.  
POB 1434  
Kilauea, HI 96754

2/24/2008

Senator Rosalyn H. Baker, Chair, Committee on Ways and Means  
Rm 201  
State Capitol  
Honolulu, Hawaii 96813

re: SB 2198

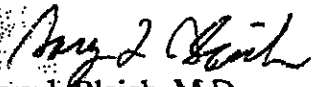
Dear Senator Baker and Committee Memebers:

Hawai'i is on the maps of the world wide real estate market. Such exposure is understandable because we are blessed to live in such a beautiful place with friendly, close knit, family oriented communities and plenty aloha.

Unfortunately, these desirable features make our lands a highly valued commodity and render land conservation efforts more expensive and more difficult. Any measure that will make land conservation more attractive to land owners is key and urgently needed. The changes proposed in SB 2198 would add to some of the incentives already available through the federal tax code. SB 2198 is important to enact so that we can further stimulate land conservation in Hawaii.

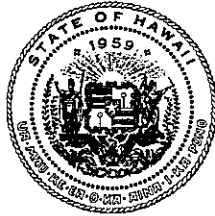
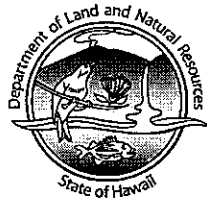
Mahalo for holding hearings on SB 2198.

Aloha nui loa,



Gary L. Blaich, M.D.  
President, Kaua'i Public Land Trust

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
FIRST DEPUTY

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT

ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAIKOLOAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

TESTIMONY OF THE CHAIRPERSON  
OF THE BOARD OF LAND AND NATURAL RESOURCES

on Senate Bill 2198, Senate Draft 1 – RELATING TO LAND CONSERVATION

BEFORE THE SENATE COMMITTEE ON  
WAYS AND MEANS

February 25, 2008

Senate Bill 2198, Senate Draft 1 provides a land conservation incentive tax credit to encourage the preservation and protection of land in the State. The Department of Land and Natural Resources (Department) supports the intent of this measure to provide incentives for landowners to preserve and protect their important mauka lands, but defers to the Department of Taxation on its feasibility and fiscal implications.

Over half of the lands in Hawai'i are privately owned and *mauka* lands, including intact forests, open woodlands, and pasture lands, and provide a significant amount of "ecosystem services," that support all of Hawaii's residents and visitors. These services include the delivery of clean drinking water, carbon sequestration that stabilizes the climate, cultural practices, opportunities for recreation, and many others. These lands also play a critical role in supporting Hawaii's unique native plants and animals. It is essential to provide solid stewardship incentives for private landowners to care for *mauka* lands that are critical in ecosystem service production.

The Department participated in a working group formed in response to House Concurrent Resolution 200, 2006 Legislative Session, to conduct an analysis of local, national, and international incentive programs that promote landowner protection of important *mauka* lands and recognize the public benefits of the ecosystem services provided by those lands. The establishment of state tax credits for donated conservation easements and landowner-funded activities that promote conservation on private lands was one of the key recommendations in the working group report (<http://hawaii.gov/dlnr/reports/2008/division-of-forestry-wildlife/FW08-Important-Mauka-Lands-Report.pdf>).

Promoting conservation easements is a valuable conservation tool. Conservation easements are restrictions placed on land to enhance conservation values. They are either voluntarily sold or donated by a landowner. The Legacy Land Conservation Program, Chapter 173A, Hawaii Revised Statutes, provides State funding for the acquisition of conservation easements on lands having value as a resource to the State. This measure would provide tax credits for landowners that donate or make a bargain sale of land or conservation easements or voluntarily invest in conservation management. These credits would be added to Federal tax benefits for these

actions. The combination of existing federal tax benefits and proposed state tax credits will likely provide an immediate stimulation to expanded conservation actions and promote delivery of ecosystem services on *mauka* lands throughout the State with its public benefits.

The Department is aware of the Department of Taxation's concerns with certifying what donations of land or investments in management of land qualify for the tax credit. The Department is the appropriate agency to certify donations or management actions for natural and cultural resources and the Department of Agriculture would be the appropriate agency for agricultural easements or management. The Department is willing to work with the Department of Taxation on how best to implement such a process and identify ways to streamline the process and book-keeping and reporting requirements.

The Department notes that the Senate Draft 1 also amended the measure to require the taxpayer to provide reasonable public access to the lands qualifying for the tax credit. Requiring public access to all potential lands will be a disincentive for some landowners to participate. While appropriate for some lands such as beach or recreational access, open public access may not be appropriate for other lands such as cultural and historic properties, and working farms or ranches that have legitimate concerns about vandalism, resource theft, and liability. The taxpayer should be required to provide access to the public or private conservation agency holding the conservation easement to monitoring the status of the conservation easement or to verify that conservation management actions have been implemented on the property. Public access should be encouraged and required where appropriate to fulfill the purpose of the easement, but not be required in cases where it would jeopardize or degrade resources intended for protection or create an undue hardship or liability for the landowner.