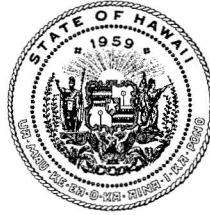


LINDA LINGLE
GOVERNOR OF HAWAII



**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
Kahoolawe Island Reserve Commission
Land
State Parks

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

on Senate Bill 2198, Senate Draft 2 – RELATING TO LAND CONSERVATION

**BEFORE THE HOUSE COMMITTEES ON
WATER, LAND, OCEAN RESOURCES AND HAWAIIAN AFFAIRS
and
AGRICULTURE**

March 14, 2008

Senate Bill 2198, Senate Draft 2 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.

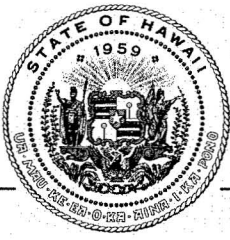
The Department participated in a working group formed in response to House Concurrent Resolution 200, 2006 Legislative Session, to conduct an analysis of local, national, and international incentive programs that promote landowner protection of important *mauka* lands and recognize the public benefits 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 version of the bill, amended the measure to require that the state agency work with the taxpayer to identify opportunities for public access if appropriate and reasonable. The Department supports this approach because it allows flexibility in dealing with 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.



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

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

OFFICE OF PLANNING

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Statement of
ABBEY SETH MAYER
Interim Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
**HOUSE COMMITTEE ON WATER, LAND, OCEAN RESOURCES &
HAWAIIAN AFFAIRS**
AND
HOUSE COMMITTEE ON AGRICULTURE
Friday, March 14, 2008
9:15 AM
State Capitol, Conference Room 325

in consideration of
SB 2198, SD 2
RELATING TO LAND CONSERVATION.

Chairs Ito and Tsuji, Vice Chairs Karamatsu and Brower, and Members of the House Committees on Water, Land, Ocean Resources, and Hawaiian Affairs and Agriculture.

The Office of Planning (OP) supports the intent of SB 2198, SD 2, but defers to the Department of Taxation on this measure. This measure would establish a land conservation incentives tax credit for the donation or bargain sale of conservation lands in perpetuity, or a voluntary investment in support of land management activities of lands under a conservation easement.

OP believes this measure provides an incentive for the long-term use and protection of important agricultural land (IAL), in which the public benefit to be derived is clear and will be sustained into the future. This bill would add another tool to an

agricultural incentives package that would satisfy the requirements of Act 183, Session Laws of Hawaii 2005. Passage of a package of incentives is critical to the initiation of efforts to designate important agricultural lands statewide.

We offer for your consideration the following amendments to strengthen the application of the tax credit to lands designated as important agricultural lands.

1. Section 2, Designation of IAL by holder of interest in lands, page 1, lines 6-13: simplify the amendment by replacing the existing language with the following:

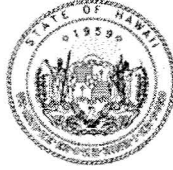
“(a) A farmer or landowner with lands **or a holder of an interest in lands** qualifying under section 205-44 may file a petition for declaratory ruling with the commission at any time in the designation process.”

2. Section 3, Definition of “conservation or preservation purpose,” page 2, lines 7-10: amend the reference to agricultural land in Item (3) of the definition to mean designated important agricultural lands as follows:

“(3) Preservation of forest land, [agricultural land,] watersheds, streams, rainfall infiltration areas, outdoor recreation areas, including hiking, biking, and walking trails, [and] historic or cultural property[;], **or land designated as important agricultural land pursuant to part III of chapter 205;...**”

Thank you for the opportunity to testify.

LINDA LINGLE
Governor



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

SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEES ON
WATER, LAND, OCEAN RESOURCES, AND HAWAIIAN AFFAIRS
AND
AGRICULTURE

FRIDAY, MARCH 14, 2008
9:15 a.m.
Room 325

SENATE BILL 2198, SENATE DRAFT 2
RELATING TO LAND CONSERVATION

Chairs Ito and Tsuji and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill No. 2198, Senate Draft 2 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 defers to the Department of Taxation on the fiscal implication of this bill and offers three amendments to ensure that only significant agricultural lands or Important Agricultural Lands (IAL) that are protected by the provisions in this bill will qualify for the tax credit.

The first amendment is to Section 2 (page 1, lines 4-13) to clarify that only agricultural lands qualifying for the land conservation tax credit that are designated as IAL may access incentives for IAL that will be developed and enacted by the Legislature. The amendment is in bold and double-underlined.

SECTION 2. Section 205-45, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A farmer or landowner with lands qualifying under section 205-44 may file a petition for declaratory ruling with the commission at any time in the designation process. The

holder of an interest in agricultural lands that qualifies for the land conservation incentives tax credit under section 235- may petition the commission for designation of the agricultural lands as important agricultural lands, and, **upon designation,** enjoy the incentives for important agricultural lands provided under section 205-46."

The second amendment is to Section 3, page 2, line 15 and is meant to limit agricultural lands qualifying for the land conservation tax credit to "significant agricultural lands" as declared by the Department of Agriculture or designated as IAL pursuant to Chapter 205. This ensures that agricultural lands with characteristics such as high productivity potential, currently in agricultural production, and with sufficient quantities of irrigation water are protected. The amendment is in bold print and double-underlined.

SECTION 3. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§235- Land conservation incentives tax credit; definitions. (a) As used in this section:

"Bargain sale" means a sale where a taxpayer is paid less than the fair market value for land or an interest in land.

"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 areas, 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 the state agency work with the taxpayer to identify opportunities for public access if appropriate and

reasonable[-]; provided further that the agricultural land has been declared as significant agricultural land by the department of agriculture, or designated as important agricultural land pursuant to chapter 205, part III."

The third amendment is to add a definition of "significant agricultural land", which are agricultural lands that nearly qualify for IAL designation. Page 4, after line 2

"Significant agricultural land" means agricultural lands that possess at least five of the eight criteria used to identify important agricultural lands in section 205-44."

TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Land conservation incentives tax credit

BILL NUMBER: SB 2198, SD-2

INTRODUCED BY: Senate Committee on Ways and Means

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: July 1, 2010, applicable to tax years beginning after December 31, 2007

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 3/12/08

HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO
Gentry Pacific Design Center, Suite 215A
560 N. Nimitz Highway, #50
Honolulu, Hawaii 96817
(808) 524-2249 - FAX (808) 524-6893

March 13, 2008

Honorable Representative Ken Ito, Chair
Honorable Representative Jon Riki Karamatsu, Vice Chair
Members of the House Committee on Water, Land, Ocean Resources &
Hawaiian Affairs
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

RE: IN OPPOSITION OF SB2198, SD2
RELATING TO LAND CONSERVATION
Hearing: Friday, March 14, 2008, 9:15 a.m.

Dear Chair Ito, Vice Chair Karamatsu and the House Committee on Water, Land,
Ocean Resources & Hawaiian Affairs:

For the Record my name is Buzz Hong the Executive Director for the Hawaii
Building & Construction Trades Council, AFL-CIO. Our Council is comprised
of 16-construction unions and a membership of 26,000 statewide.

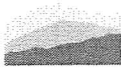
The Council OPPOSES the passage of SB2198, SD2, which provides a tax
credit to encourage the preservation and protection of conservation land in
the State.

Thank you for the opportunity to submit this testimony in opposition of SB2198,
SD2.

Sincerely,

William "Buzz" Hong

WBH/dg



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**THE TRUST FOR PUBLIC LAND'S TESTIMONY IN SUPPORT
SB 2198
House Committee on Water, Land, Ocean resources and Hawaiian Affairs
House Committee on Agriculture
Friday, March 14, 2008, 9:15 a.m., Room 325
WLHtestimony@capitol.hawaii.gov**

Dear Chairpersons Ito and Tsuji:

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 S.B. 2198, SD2 Relating to Land Conservation
House Committee on Water, Land, Ocean Resources & Hawaiian Affairs
House Committee on Agriculture
Friday, March 14, 2008, 9:15AM, Room 325

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawai'i's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on O'ahu, Maui, Moloka'i, Lāna'i, Hawai'i and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy of Hawai'i supports S.B. 2198, SD2 Relating to Land Conservation.

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.

Should the Committee choose to retain the text of this bill—rather than replace it with the text of H.B. 2518, HD 1—we ask that you consider lengthening or, preferably, eliminating the 2012 sunset date in Section 5 in favor of a reporting requirement by the relevant state agencies.

The sunset provision in S.B. 2198, SD2 does not give land owners much time to become educated and to take advantage of the tax credits. In other states, it took at least three years before even a nominal number of land owners completed the process. In many cases, landowners will want to test the water with a small donation and follow up a few years later with a more meaningful donation.

California adopted a 10-year sunset, prior to which they could assess the effectiveness of their legislation. For many other states, rather than adopting a sunset provision, they implemented a reporting requirement to gather data about the use of the tax credits. After collecting data, many states increased the tax credit available and how long it could be carried forward. **States have found that the tax credits were useful money savers in their quest to protect scarce resources.** The longer the programs have been underway, the trend has been to create more generous incentives to inspire more landowners to donate.

BOARD OF TRUSTEES

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MAUI LAND & PINEAPPLE COMPANY, INC.

March 12, 2008

The Honorable Representative Ken Ito, Chair
The Honorable Representative Riki Karamatsu, Vice Chair
Committee on Water, Land, Ocean Resources & Hawaiian Affairs
Hawaii State House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

The Honorable Representative Clift Tsuji, Chair
The Honorable Representative Tom Brower, Vice Chair
Committee on Agriculture
Hawaii State House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Subject: SB 2198, SD2 (SSCR2818) - Relating to Land Conservation

Dear Honorable Chair Ito, Honorable Vice Chair Karamatsu, Honorable Chair Tsuji,
Honorable Vice Chair Brower and Committee Members:

Maui Land & Pineapple Company, Inc. ("ML&P") strongly supports SB 2198, SD 2 (SSCR 2818) - 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

The Honorable Representative Ken Ito, Chair
The Honorable Representative Riki Karamatsu, Vice Chair
The Honorable Representative Clift Tsuji, Chair
The Honorable Representative Tom Brower, Vice Chair
March 12, 2008
Page - 2 -

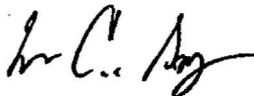
and grandparents enjoyed them. To be attractive to landowners, conservation must be competitive with other existing or potential uses of the land – a goal that SB 2198, SD 2 helps advance.

Like the Legacy Lands Act approved by the Legislature in 2005, SB 2198, SD 2 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 2 can enable landowners a variety of options to suit their needs as well as help government to achieve a public benefit.

The tax incentives proposed in SB 2198, SD 2 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

From: Jeannine Johnson [mailto:jeannine@hawaii.rr.com]
Sent: Wednesday, March 12, 2008 6:00 PM
To: WLHtestimony
Subject: Testimony in strong support of SB2198 SD2 (land conservation)

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS
Rep. Ken Ito, Chair
Rep. Jon Riki Karamatsu, Vice Chair

COMMITTEE ON AGRICULTURE
Rep. Clift Tsuji, Chair
Rep. Tom Brower, Vice Chair

Re: SB 2198, SD2 RELATING TO LAND CONSERVATION

Hearing: Friday, March 14, 2008 @ 9:15 am in Conference
Room 325

Aloha kākou,

I **strongly support** SB 2198 SD2 which provides a tax credit to encourage the preservation and protection of conservation land in the State. Taxpayers who donate land in perpetuity or completes a bargain sale in perpetuity to the State or public or private conservation agency or invests in the management of land to protect or enhance a conservation or preservation purpose under a land protection agreement with a conservation or preservation purpose should be given this incentive and due consideration for their efforts.

Mahalo.

Jeannine

Jeannine Johnson
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Honolulu, Hawai'i 96821
Ph: 373-2874 / 523-503 (w)
Email: jeannine@hawaii.rr.com
"PUPUKAHI I HOLOMUA"
(Unite in Order to Progress)