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Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
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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 SENATE COMMITTEE ON WATER AND LAND
JANUARY 28, 2008
2:45 p.m.
Room 414

SENATE BILL 2198
RELATING TO LAND CONSERVATION

Chair Hee, Vice-Chair Kokubun and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2198 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 measure provided that it does not displace or adversely affect the priorities in the Executive Biennium Budget and offers one amendment that could help to protect more agricultural lands. We defer to the Department of Taxation regarding the tax credit and its implications on the State budget.

We recommend an amendment that will help to designate important agricultural lands and offer land owners of these lands access to incentives for important agricultural lands that will be developed and enacted by the legislature, provided they do not conflict with the provisions of this new section.

We would like to add the following amendment to be inserted on page 2, after line 3:

"The holder of the interest in agricultural lands protected or preserved pursuant to this section may petition the state land use commission for designation of the affected agricultural lands as important agricultural land, pursuant to section 205-45 and have access to incentives developed and enacted pursuant to Part III of chapter 205 that do not adversely affect the provisions of this section."

Testimony of The Nature Conservancy of Hawai'i
Supporting S.B. 2198 Relating to Land Conservation
Senate Committee on Water and Land
Monday, January 28, 2008, 2:45 PM, Room 414

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 and also work closely with government agencies and private landowners on cooperative land management projects.

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

More than half the land in Hawai'i is in private ownership. 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 S.B. 2198 helps advance.

Like the Legacy Lands Act approved by the Legislature in 2005, S.B. 2198 can help provide opportunities and additional choices for land conservation in Hawai'i. A mix of existing government and private funding for conservation land purchases, as well tax incentives like those in S.B. 2198 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 S.B. 2198 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 islands' treasured natural areas, agricultural lands, opens 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.

Some additional questions and answers about conservation tax credits are attached.

Attachment

BOARD OF TRUSTEES

S. Haunani Apoliona Peter D. Baldwin Christopher J. Benjamin Zadoc 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.
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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?

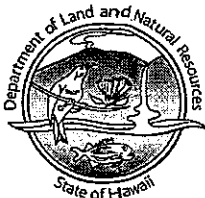
Insignificant tax credits that do not motivate conservation investment

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

LINDA LINGLE
GOVERNOR OF HAWAII



LATE

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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES
on Senate Bill 2198 – RELATING TO LAND CONSERVATION

BEFORE THE SENATE COMMITTEE
ON
WATER AND LAND

January 28, 2008

Senate Bill 2198 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 (HCR) 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 (LLCP), 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.

Below are excerpts from the HCR 200 Report, Exhibit F. - *Overview of Conservation Easements and Related Tax-benefits*, with additional information on the benefits of State Tax Credits.

- **What are the benefits to a landowner of donating or selling a conservation easement over all or part of his or her land?**
 - Landowners may receive a federal income tax deduction for all or a portion of the value of a donated conservation easement
 - In 12 states, landowners may receive a state tax credit for all or a portion of the value of a donated conservation easement
 - Landowners who donate conservation easements can significantly lower their estate taxes
 - Landowners with conservation easements may enjoy reduced property taxes for land under easement

- **State Tax Credit Benefits**
 - In addition to federal income tax deductions, landowners who donate conservation easements may also be eligible for a state tax credit. Twelve states currently offer some form of state tax benefit based on the value of a donated easement, though there is no uniform model.
 - Most of these states adopt the eligibility criteria found in the federal Internal Revenue Code section 170(h).
 - The state tax credit may be for all or a portion of the fair market value of the easement, subject to an annual cap, and may allow any unused value be carried forward for a set period of years.
 - Some states make the credits tradable – meaning the tax credits may be sold to a third party for cash (usually at a reduced rate)
 - Some states also allow landowners to seek credits based on transaction costs from the easement donation (e.g. assessors fees) or for stewardship and other land management costs

HAWAII FARM BUREAU FEDERATION
2343 ROSE STREET
HONOLULU, HI 96819

LATE

JANUARY 28, 2008

HEARING BEFORE THE
SENATE COMMITTEE ON WATER AND LAND

TESTIMONY ON SB 2198
RELATING TO LAND CONSERVATION

Chair Hee and committee members:

My name is Alan Takemoto, Executive Director, of the Hawaii Farm Bureau Federation, which is the largest non-profit general agriculture organization representing approximately 1,600 farm and ranch family members statewide.

The Hawaii Farm Bureau Federation supports SB 2198 which provides a tax credit to encourage the preservation and protection of land in the State.

Similar to the Important Agricultural Lands legislation (Act 183) passed by the legislature in 2005 which provides the framework of establishing a menu of incentives to encourage farmers and landowners to dedicate their land as important agricultural lands. SB 2198 can also be included as part of these incentive measures for important agricultural lands.

The best lands to develop for urban development are also the best lands for our most productive agricultural lands in the State. While the State has a limited amount of funds, we encourage that these incentives could be used towards lands that are deemed as Important Agricultural Lands in Act 183.

The Hawaii Constitution, Article XI, section 3, recognizes the importance of our agricultural lands and, thus we urge the passage of this measure in conjunction with the implementation of Act 183.

Thank you.

From: Lehua Lopez-Mau [mailto:HILTHawaii@earthlink.net]

Sent: Monday, January 28, 2008 12:39 PM

To: testimony; Sen. Clayton Hee; Sen. Russell Kokubun; Sen. Carol Fukunaga; Sen. Jill Tokuda; Sen. Paul Whalen

Cc: Dr. Rick Bennett; Kaleo Kualii; Larry R. Baird; Mike Katz; Pat Fisher; Sharon Brown; Stephanie Amick

Subject: Support for SB 2198 Conservation Tax Credits

Aloha,

This message is for members of the Senate Water and Land Committee who are meeting today to consider SB 2198.

The Hawai'i Island Land Trust, a non-profit, tax-exempt land trust organization on Hawai'i Island, whose mission is to facilitate the preservation and protection of lands on Hawai'i Island with important agricultural, ranching, cultural, and environmental values, supports IN PRINCIPLE the intent of SB 2198 Relating to Land Conservation, a bill that creates tax incentives for landowners in the state to protect and manage their agricultural, ranching, environmentally-sensitive, and culturally-important lands for future generations. We urge the members

of the Senate Water and Land Committee to consider the positive benefits of this proposed legislation to landowners who may receive tax incentives to protect their lands and to the general public who will reap the conservation values of protected land.

Malama i ka 'aina,

Lehua Lopez-Mau, Executive Director

Hawai'i Island Land Trust

P.O. Box 976, Kealahou, HI 96750

Phone: 322-0066

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Testimony of Gretchen C. Daily
Supporting S.B. 2198 Relating to Land Conservation
Senate Committee on Water and Land
Monday, January 28, 2008, 2:45 PM, Room 414

*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.

LATE TESTIMONY



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

**Senate Committee on Water and Land
Monday, January 28, 2008, 2:45 p.m., Room 414
(25 Copies Needed) Fax to 586-6659**

Dear Chairperson Hee and Members of the Committee on Water and Land:

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 generatate 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.

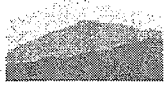
We urge you to support SB 2198.

Very truly yours,


Lea Hong
Hawaiian Islands Program Director

LATE TESTIMONY





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SB 2198

Senate Committee on Water and Land
Monday, January 28, 2008, 2:45 p.m., Room 414
(25 Copies Needed) Fax to 586-6659

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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 Maui Land & Pineapple Company, Inc.
Supporting S.B. 2198 Relating to Land Conservation
Senate Committee on Water and Land
Monday, January 28, 2008, 2:45 PM, Room 414

Maui Land & Pineapple Company, Inc. supports S.B. 2198 Relating to Land Conservation.

More than half of Maui Land & Pineapple Company's land on West Maui is zoned conservation by the State of Hawai'i. 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 S.B. 2198 helps advance.

Like the Legacy Lands Act approved by the Legislature in 2005, S.B. 2198 can help provide opportunities and additional choices for land conservation in Hawai'i. A mix of existing government and private funding for conservation land purchases, as well tax incentives like those in S.B. 2198 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 S.B. 2198 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 islands' treasured natural areas, agricultural lands, opens 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.

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Malama i ka 'aina,
Lehua López-Mau, Executive Director
Hawai'i Island Land Trust
P.O. Box 976, Kealahou, HI 96750
Phone: 322-0066