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Via E-mail

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The Honorable Representative Marcus Oshiro, Chair and Members
House Committee on Finance
Hawaii State Capitol
415 S. Beretania Street, Room 308
Honolulu, HI 96813

**OPPOSITION TO SB 2833, SD1 RELATING TO SUSTAINABILITY
(Enacts the Hawaii 2050 Sustainability Plan, Establishes and funds
the Sustainability Council)**

Dear Chair Oshiro, and Members:

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

SB 2833 SD1. This bill would enact the Hawaii 2050 Sustainability Plan ("Plan"); and establish a Sustainability Council to coordinate, implement, measure and evaluate the progress of the Plan and activities; and it appropriates an unspecified amount of funds to the Sustainability Council.

LURF's Position. While LURF supports the intent of the Plan, we must testify **in strong opposition to the SB 2833 SD1**, based on, among other things, the following grounds:

- **The legislature cannot legally enact, adopt or set forth the Plan, when the Plan is not made part of SB2833, SD1.** Section ___-1 (1) states: "The purpose of this chapter is to: (1) set forth the Hawaii 2050 Sustainability Plan, which shall serve as a guide for the future long-range development of the State...." We question the legality of the legislature "enacting, adopting or setting forth" the Plan when it is not part of the bill, and the legislators would not have knowledge of the specific provisions of the Plan.
- **The Plan includes many flaws which make it confusing and unenforceable.** These flaws are explained in the attached LURF "Comments to

Draft Hawaii 2050 Sustainability Plan,” dated November 13, 2007, and summarized as follows:

- **If enacted by the Legislature, will the authority and force of the Plan exceed all other State Plans, laws, rules and regulations and county ordinances and rules and regulations?**
- **The Plan does not include criteria, guidelines and a process to resolve inherent conflicts between differing Goals and Strategic Actions.**
- **The Plan and supporting documents do not address how the implementation of the Goals and Strategic Actions will impact Hawaii’s “economic sustainability.”**
- **Who will fund the substantial costs of implementing the public infrastructure improvements required by the Plan?** The implementation of the Plan will mean increased costs – Smart Growth/increasing density in the urban core will require funding of costly public infrastructure improvements.
- **The Plan refers to Government incentives for sustainable practices, but does not provide specifics.** If the legislature is approving a plan which calls for government incentives, those incentives should be identified.
- **If the Plan will be a compliance/policy guidance document, its definitions should be clearly defined, interpreted and capable of implementation.**
- **The Task Force repeatedly described “Smart Growth” as, among other things, “increasing density,” however, this definition or concept is not specifically stated in the Plan.**
- **The Plan’s description of agricultural lands and Important Agricultural Lands (IAL) is inconsistent with Act 183, which refers to IAL as “viable” agricultural lands.**
- **The Plan does not provide sufficient definitions relating to its requirements.**
- **Instead of imposing specific mandates, the Plan should serve as a guide towards the creation of a sustainable Hawaii.**
- **Problems with the proposed Sustainability Council.** LURF is also opposed to the establishment of a Sustainability Council, based on, among other things, the following:
 - **There is no need for another duplicative layer of government, which would be contrary to the concept of sustainability.** The proposed Sustainability Council would perform many of the same functions as existing government departments and agencies, and such wasted personnel, funding and supplies would be contradictory to the concept of sustainability.
 - **The powers of the proposed Sustainability Council are too broad and absolute – it would be completely autonomous, not answer to any other government agency or the legislature, and could be a “4th Branch of Government.”** The Plan calls for the proposed Sustainability Council to be “placed administratively” under first the Auditor’s Office, then later the Office of Planning – this means that neither office has the ability to supervise it, and that it would be a completely autonomous branch of government. The Plan also calls for a

dedicated revenue source and funding stream to insulate itself from requesting funding from the legislature.

- **The function of proposed Sustainability Council is not clear – is it “advisory only” or another “regulatory and enforcement” agency?** During the Task Force meetings, the attendees were repeatedly assured that the Sustainability Council would be “advisory only.” However, despite repeated requests to include specific language confirming its “advisory” nature, the Task Force refused include such language, and instead, this bill and Plan include references to, “coordinate, implement, measure and evaluate . “
- **The proposed Sustainability Council will be yet another enforcement agency,” which will delay planning and permitting.** Based on the discussions in the Task Force Meetings and the provisions of the Plan, it is anticipated that the Sustainability Council will review and approve all development projects.
- **It is anticipated that the functions of the proposed Sustainability Council will result in costly in litigation.** Its powers under § _-6 (1) include the power to “sue or be sued,” and § _-8 refers to legal questions as to the validity of this chapter and proposes a court calendar preference over all civil cases, except election cases. Why do the Task Force and this bill assume that the proposed Sustainability Council will be involved in such litigation?
- **The expense of the proposed Sustainability Council is not warranted, based on the numerous existing State and County departments and agencies which could address the goals and objectives of the Plan.**

Thank you for the opportunity to express our concerns on this matter.