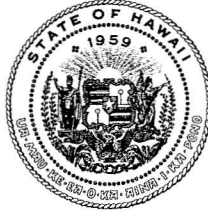


LINDA LINGLE
GOVERNOR OF HAWAII



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 2997, Senate Draft 1, House Draft 1 - Relating To Land Use

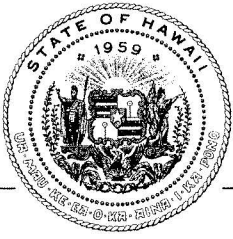
**BEFORE THE HOUSE COMMITTEE ON
JUDICIARY**

March 27, 2008

Senate Bill 2997, Senate Draft 1, House Draft 1, establishes historic agricultural landmarks, designated by law, to be preserved and perpetuated as agricultural land for the benefit of the people of Hawaii. While the Department of Land and Natural Resources (Department) takes no position on House Draft 1 of this measure, the Department nonetheless prefers the direction taken in the Senate Draft with regard to transferable development rights (TDR), and is interested in continuing the discussion on the concept of establishing TDR and some form of a statewide TDR bank where the State would store and sell these development rights to landowners in a receiving area designated for high density. This tool would allow the State to offer compensation to landowners who are willing to retain their land classification or down zone it to conservation or preservation. This approach offers a possible alternative vehicle for preserving such rural lands as those on the north shore of Oahu owned by Kuilima Resort.

The Department prefers simple enabling legislation, and as such, urges the Committee to keep the concept of TDR alive in some form in this measure in order to allow the Department to work with the Legislature and the Office of Planning on proposed amendments.

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**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

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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 JUDICIARY
Thursday, March 27, 2008
2:25 PM
State Capitol, Conference Room 325

in consideration of
SB 2997, SD 1, HD 1
RELATING TO LAND USE.

Chair Waters, Vice Chair Oshiro, and Members of the House Committee on
Judiciary.

The Office of Planning (OP) supports the intent of SB 2997, SD1, HD1, but has concerns about the bill in its current form. In particular, OP urges the Committee to reinstate the provisions of SB 2997, SD 1 to establish a State transfer of development rights (TDR) system for the long-term preservation of agricultural lands, conservation resources, rural open space, and so forth.

HD 1 replaced the TDR provisions with the existing language to enable the designation of historical agricultural landmarks, by law, to preserve and protect agricultural lands of historical, cultural, and visual value to the State. The landmark designation would have similar protections as that of important agricultural lands (IAL), and landowners would be eligible for agricultural incentives for important agricultural

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lands. HD 1 also designates the Galbraith Trust lands in Central Oahu as the Galbraith historical agricultural landmark.

The landmark concept is not dissimilar to the designation of State or national monuments and landmarks, and could acknowledge the historical and cultural role of agriculture in our State's and community's heritage. However, landmark designations typically confer the notion of permanency of the designation as well as long-standing protection of the structure, site, or area so designated. It is not clear that HD 1 would provide long-standing protection. Furthermore, clarification is needed as to whether and how the landmark would be maintained and managed, and what the role of the State would be with respect to maintenance or management of the landmark.

While the landmark designation, like the IAL designation, may be a first step in the protection of landmark agricultural land like the Galbraith lands, it is important to recognize the limitations of both this bill and the current law in ensuring long-term dedication of the lands to agricultural use.

Restricting land use to the permissible uses allowed under Section 205-4.5 provides no further protection than is currently available for agricultural lands, and won't preclude development in the form of large-lot residential subdivisions. Nor does requiring a two-thirds vote for reclassification and rezoning significantly raise the bar in hindering the conversion of such lands to urban or non-agricultural uses.

In closing, it will be difficult to secure the long-term use of the Galbraith lands as agricultural lands without enacting legislation that: (1) establishes restrictive permissible uses and development standards for landmark agricultural lands; and (2) establishes State

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programs for the transfer of development rights or purchase of development rights, and funding, that would enable land to be protected for agricultural use in perpetuity.

For this reason, OP respectfully requests that the language of SD 1 be retained or reinserted in this bill to allow further discussion of the establishment of transferable development rights (TDR) systems in Hawaii. We believe that the TDR tool would provide more lasting protection for our valued agricultural lands than that offered in the current bill. We have attached alternative language for such a proposal for your consideration.

Thank you for the opportunity to testify.

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ATTACHMENT TO OFFICE OF PLANNING TESTIMONY ON

SB 2997, SD 1, HD1:

Proposed Alternative Language for the Establishment of a State Transfer of Development Rights Program for Insertion in Bill

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"PART II

SECTION . The purpose of this Act is to provide a means of addressing the rapid and increasing loss of rural lands and to protect our scenic, historic, recreational, cultural, natural and archaeological resources that tourism depends on. As a consequence to this situation, the legislature is currently considering measures addressing the preservation of lands on the north shore of O'ahu owned by Kuilima Resort and the Galbraith Estate and the Ka'iwi coast on the south shore of O'ahu.

The purpose of this Act is to provide an alternative for preserving valuable lands by allowing for the transferability of development rights between properties, thereby offering compensation to landowners who are willing to retain their land classification or down zone it to conservation or preservation.

This Act does not replace but supplements current statutory resources that are designed to preserve lands designated as valuable lands such as tax credits to landowners or moneys for purchasing lands.

Transfer of development rights programs have existed since the 1990s and have been used successfully in Maryland, New Jersey, Colorado, and Washington.

Proposed Alternative Language for State TDR Program

Page 2

1 This Act would establish a state transfer of development
2 rights program that would complement and work in conjunction
3 with any transfer of development rights systems adopted by a
4 county under part IX of chapter 46, Hawaii Revised Statutes.

5 SECTION . Chapter 206E, Hawaii Revised Statutes, is
6 amended by adding a new part to be appropriately designated and
7 to read as follows:

8 "PART . TRANSFER OF DEVELOPMENT RIGHTS

9 §206E-A Establishment of Hawaii transfer of development
10 rights program; purpose and objectives. (a) The legislature
11 finds that the people of Hawaii have a substantial interest in
12 the preservation of the agricultural, rural, and open space
13 resources of the State and the orderly accommodation of regional
14 growth in areas planned for growth. The legislature further
15 finds that the establishment of transferable development rights
16 or credits on a regional scale serves this public interest by
17 enabling development credits from rural and conservation lands
18 to be used to promote the development of new communities
19 consistent with county land use plans and to enhance community
20 development in existing communities. Thus, the legislature
21 finds and declares that the establishment of a state
22 transferable development rights system is in the public interest

03-018

Proposed Alternative Language for State TDR Program

Page 3

1 and will promote the public health, safety, and general welfare
2 of the people of this State.

3 (b) There is established within the Hawaii community
4 development authority the Hawaii transfer of development rights
5 program as set forth in this part.

6 (c) The objectives of the Hawaii transfer of development
7 rights system are to:

8 (1) Preserve open space, scenic views, critical and
9 sensitive areas, and natural hazard areas;

10 (2) Protect lands and structures of aesthetic,
11 architectural, and historic significance;

12 (3) Retain open areas in which healthful outdoor
13 recreation can occur;

14 (4) Ensure that the owners of preserved, conserved, or
15 protected land may make reasonable use of their
16 property rights by transferring their right to develop
17 to eligible zones;

18 (5) Provide a mechanism whereby development rights may be
19 reliably transferred; and

20 (6) Ensure that development rights are transferred to
21 properties in areas or districts that have adequate

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Proposed Alternative Language for State TDR Program

Page 4

1 community facilities, including transportation, to
2 accommodate additional development.

3 **§206E-B Definitions.** As used in this part, unless the
4 context otherwise requires:

5 "Conservation easement" shall have the same meaning as in
6 section 198-1.

7 "Development rights" shall have the same meaning as in
8 section 46-162.

9 "Receiving district" shall have the same meaning as in
10 section 46-162.

11 "Receiving parcel" means a parcel of land in a receiving
12 district that is the subject of a transfer of development
13 rights, where the owner of the parcel is using development
14 rights, directly or by intermediate transfers, from one or more
15 sending parcels, and on which the density or intensity of
16 development may be increased or the development application
17 receives other benefits by reason of the transfer of development
18 rights.

19 "Sending district" shall have the same meaning as in
20 section 46-162.

21 "Sending parcel" means a parcel of land in the sending
22 district that is the subject of a transfer of development

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Proposed Alternative Language for State TDR Program

Page 5

1 rights, where the owner of the parcel is conveying development
2 rights of the parcel, and on which those rights so conveyed are
3 extinguished and may not be used by reason of the transfer of
4 development rights.

5 "Transfer of development rights" means the process by which
6 development rights are transferred whereby the owner of a parcel
7 in the sending district may convey development rights to the
8 owner of a parcel in the receiving district or other person or
9 entity, whereby the development rights so conveyed are
10 extinguished on the sending parcel and may be exercised on the
11 receiving parcel in addition to the development rights already
12 existing regarding that parcel or may be held by the receiving
13 person or entity.

14 "Transferable development credit" means the value
15 established for a transferable development right created
16 pursuant to this part or pursuant to a county transfer of
17 development rights ordinance.

18 "Transferee" means the person or legal entity, including a
19 person or legal entity that owns property in a receiving
20 district who purchases development rights.

21 **§206E-C Designation of state receiving districts. (a)**

22 The hawaii community development authority shall adopt a

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Proposed Alternative Language for State TDR Program

Page 6

1 statewide plan that designates sending and receiving districts
2 for the state transfer of development rights program; provided
3 that the state receiving districts shall be limited to:

4 (1) Lands for which a state agency is the sole land use
5 permitting authority; or

6 (2) State lands, where the development of these lands is
7 consistent with the land use maps of the adopted
8 county general plan, development, or community plans.

9 The authority shall develop the statewide plan in
10 collaboration with the department of land and natural resources,
11 the department of agriculture, the office of hawaiian affairs,
12 the office of planning, other state agencies as necessary, and
13 the county planning departments.

14 (b) State agencies with sole land use permitting authority
15 may require the use of transferable development rights in the
16 exercise of their permitting authority. The amount or value of
17 the transfer of development rights to be applied to a receiving
18 parcel shall be determined by the state agency exercising land
19 use permitting authority.

20 **§206E-D Right to transfer development rights.** (a) Each
21 transferor shall have the right to sever all or a portion of the
22 rights to develop from the parcel in a sending district and to

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Proposed Alternative Language for State TDR Program

Page 7

1 sell, trade, or barter all or a portion of those rights to a
2 transferee consistent with the purposes of this part.

3 (b) The development rights of a sending parcel shall be
4 extinguished upon the transfer of the development rights.

5 **§206E-E Development rights bank.** (a) There is
6 established within the authority the Hawaii transferable
7 development rights bank, hereinafter referred to as the TDR
8 bank. The TDR bank shall be authorized to do the following:

- 9 (1) Purchase, sell, or convey transferable development
10 rights or credits;
- 11 (2) Receive funds from any source, including the proceeds
12 from the sale of development rights, grants, or
13 donations;
- 14 (3) Establish a system for the valuation of transferable
15 development rights;
- 16 (4) Establish procedures and require documents for the
17 transfer or application of development rights or
18 credits, including certificates and other instruments
19 of transfer, and associated easements;
- 20 (5) Manage the TDR bank special fund; and
- 21 (6) Maintain a registry of transferable development
22 credits issued and held by the TDR bank, including

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Proposed Alternative Language for State TDR Program

Page 8

1 records of the dates, amounts, and locations of
2 development rights purchases, sales, and conservation
3 easements.

4 **§206E-F Administration.** (a) The authority shall adopt
5 rules pursuant to chapter 91 for the administration of this
6 part.

7 (b) There is created in the state treasury the Hawaii
8 transferable development rights bank special fund, into which
9 shall be deposited:

10 (1) All proceeds from the sale of transferable
11 development rights or credits;

12 (2) All revenues from any taxes or fees, which are
13 enacted to provide a funding source for the purchase
14 of transferable development rights;

15 (3) Funds from county, federal, or private funding
16 sources and other state funding sources, including
17 grants from the land conservation fund pursuant to
18 section 173A-9; and

19 (4) Appropriations made by the legislature to the fund.

20 Moneys in the Hawaii transferable development rights bank
21 special fund shall be used to purchase the development rights
22 of qualified sending parcels and to administer the state

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Proposed Alternative Language for State TDR Program

Page 9

1 transferable development rights program and TDR bank; provided
2 that the total amount of funds used for administrative purposes
3 shall not exceed the lesser of \$100,000 per year or one per
4 cent of the unencumbered funds in the special fund. All
5 unexpended and unencumbered moneys remaining in the Hawaii
6 transferable development rights bank special fund at the close
7 of each fiscal year shall be retained in the special fund. All
8 interest earned on the deposit of moneys in the fund shall
9 become a part of the fund. Appropriations or authorizations
10 from the fund shall be expended by the authority for the
11 purposes of this part. The executive director of the authority
12 shall prepare and submit an annual report to the governor and
13 the legislature on the use of the Hawaii transferable
14 development rights bank fund. The report shall describe funds
15 deposited into and expenditures made from the fund.

16 **206-G County transferable development rights program.** If
17 a county establishes a transferable development rights program
18 pursuant to section 46-163, the county and the authority may
19 jointly agree to use the TDR Bank established in section 206E-E
20 for transactions under the county transfer of development
21 rights program, and development rights credits created in

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Proposed Alternative Language for State TDR Program

Page 10

1 either state or county sending districts may be applied to
2 either state or county receiving districts."

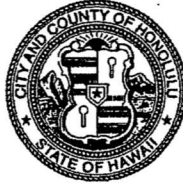
3 SECTION . There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$50,000, or so much
5 thereof as may be necessary for fiscal year 2008-2009, for
6 consulting services to assist the State in the establishment of
7 the state transfer of development rights program and the Hawaii
8 transferable development rights bank. The sum appropriated by
9 this Act shall be expended by the hawaii community development
10 authority of the department of business, economic development,
11 and tourism.

12 SECTION . There is appropriated out of the general
13 revenues of the State of Hawaii the sum of \$ for fiscal
14 year 2008-2009, to be paid into the Hawaii transferable
15 development rights bank special fund created by this Act. The
16 sum appropriated by this Act shall be expended by the hawaii
17 community development authority of the department of business,
18 economic development, and tourism for the purposes of the
19 fund."

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DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR

HENRY ENG, FAICP
DIRECTOR

DAVID K. TANOUE
DEPUTY DIRECTOR

March 27, 2008

The Honorable Tommy Waters, Chair
and Members of the Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Waters and Members:

**Subject: SENATE BILL 2997 SD1, HD1
Relating to Land Use**

The Department of Planning and Permitting provides **comments** with regard to Senate Bill 2997 SD1, HD1. This bill would designate lands owned by the Galbraith Trust, north of Wahiawa, to fall under a new designation, "historic agricultural landmark". With such designation, properties would be entitled to the incentives associated with designation as Important Agricultural Lands (IAL),

We are not sure how this new designation would affect other provisions of Act 183 (2005), which created the framework for IAL identification, protection, and regulation. For example, are lands designated as a historic agricultural landmark, considered IAL or not? This makes a difference in the "50%" provision under Section 205-49(A)(3), HRS, in terms of how much more land owned by a particular entity can be designated IAL.

If a property is designated as a historic agricultural landmark, primarily for historic, cultural or visual values, it is unclear how incentives being considered for IAL will be helpful. Perhaps the definition of historic agricultural landmark, as given under sub-section (3), should be clarified to say that the lands must be in active agricultural use, or were previously in agricultural use, or have some other connection to agriculture. Otherwise, this could become a program to preserve open space, views or historic sites without ties to agriculture.

If a property is designated as a historic agricultural landmark, it would seem that particular attention should be given to what uses are placed on it, rather than across-the-board allowance of all uses permitted in the state agricultural district. There may be some permitted uses, such as biofuel processing facilities or storage buildings that would obliterate the value of the landmark, but under current Chapter 205, HRS provisions, there is no discretionary review process to restrain or limit uses permitted outright.

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The Honorable Tommy Waters, Chair
and Members of the Committee on Judiciary
House of Representatives
Re: Senate Bill 2997 SD1, HD1
March 27, 2008
Page 2

In short, while we are not opposed to the landmark program, there should be greater detail in the bill to better accomplish its objectives,

Thank you for this opportunity to comment.

Very truly yours,



Henry Eng, FAICP Director
Department of Planning and Permitting

HE: jmf
sb2997sd1hd1-k

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**SB 2997 SD1 HD1
RELATING TO LAND USE**

**PAUL T. OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.**

MARCH 27, 2008

Chair Waters and Members of the House Committee on Judiciary:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) and its agricultural companies Hawaiian Commercial & Sugar Company and Kauai Coffee Company, Inc. on SB 2997 SD1 HD1, "A BILL FOR AN ACT RELATING TO LAND USE."

This bill proposes to enable the Legislature to designate certain agricultural lands as historic agricultural landmarks, thereby restricting their land use for agricultural purposes. Lands designated as Historical Agricultural Landmarks will be eligible for incentives enacted for IAL. We believe that in lieu of this bill, that the presently existing IAL Law could be utilized to elevate lands intended to be historic agricultural landmarks by designating them as IAL. We believe that the additional statutorily imposed requirements for IAL designated lands along with the IAL incentives should significantly enhance the probability of these lands remaining in agricultural production.

Thank you for the opportunity to testify.

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**Hawaii
Association of
REALTORS®**
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March 26, 2008

The Honorable Tommy Waters, Chair
House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: S.B. 2997, SD1, HD1, Relating to Land Use
Hearing Date: Thursday, March 27, 2008 @ 2:25 p.m., Room 302

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS®
(HAR) **opposes** S.B. 2997, SD1, HD1.

The language inserted in S.B. 2997, SD1, HD1 would provide a statutory means of preserving lands without the necessity of an outright acquisition through eminent domain. S.B. 2997, SD1, HD1 sets a bad example of how a specific plot of property can be statutorily taken for a specific use. The bill further deprives the landowner of due process in a court of law. Such an attempt to designate a specific plot of land that does not allow for input and appeal by the landowner is a taking.

Mahalo for the opportunity to testify.

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