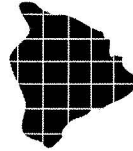




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LATE TESTIMONY

March 27, 2008

BY E-MAIL

The Honorable Representative Tommy Waters, Chair and Members,
 House Committee on Judiciary
 State Senate, Room 302
 Honolulu, Hawaii 96813

**Re: SB 2997, SD1, HD1 Relating to Land Use
 (Historic Agricultural Landmarks)**

Dear Chair Waters and Committee 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.

LURF is providing our testimony **in opposition to SB 2997, SD1, HD1 ("HD1")**.

SB 2997, SD1, HD1. The original SB 2997 was the "Use it or Lose it" bill proposed by the Governor's Package. The original SB 2997 was gutted by the Senate and replaced with a proposed SD1, which would have allowed for the establishment of Rural Legacy Lands and Transfer of Development Rights for rural lands. Now, a House committee has approved an HD1, which attempts to establish "Historical Agricultural Landmarks." In summary, the bill provides as follows:

- **Description:** Establishes a new state land designation of Historic Agricultural Landmarks ("HAL") and establishes a process under chapter 205 to designate HAL by law. This bill also designates the agricultural lands which are part of the George Galbraith Trust as HAL;
- **Objectives:** The objective of designating a HAL is to restrict the land use to its present agricultural uses and to preserve and perpetuate the land for the continuing benefit of the people of the State of Hawaii. The uses allowed within the HAL shall be restricted to the permitted agricultural uses listed in section 205-4.5;
- **Purpose:** The purposes stated in the HD1 are as follows:
 - Enable the legislature to designate certain agricultural lands as HAL, because of their special historical, cultural, and visual value to the State;

- Provide incentives for HAL similar to the proposed incentives for Important Agricultural Lands (“IAL”), under Section 205-46, Hawaii Revised Statutes;
- Provide that HAL can only be designated by law; and Establish standards and criteria for reclassification or rezoning, to better preserve the HAL for the education, pleasure, and welfare of the people of Hawaii.

LURF’s Position and Comments. At first blush, it appears that LURF might consider supporting the concept of HD1, which calls for incentives for the designation of HAL. However, LURF is opposed to the bill as drafted, for the following reasons:

- **The HAL process could amount to an unconstitutional taking.** The law already provides for an “eminent domain” or “condemnation” process, when the government wants the use of private property. This bill appears to allow the government to declare a restricted use for private property, without compensation to the landowner. In this case, it appears that the legislature is disingenuously attempting to exercise its powers of eminent domain, but without the necessity of the State paying for the land or having the State actually own the land. Under the circumstances, we believe that this HAL legislation would result in “unconstitutional takings.”
- **The State should purchase the HAL lands.** If the State legislature feels that these HAL lands are so valuable to the State that it would pass legislation declaring the lands as HAL, the State should purchase the lands for fair market value.
- **The new HAL designation procedures are unfair and could violate due process, as it would prohibit input and requests from landowners.** The bill unfairly gives the Legislature the power to designate HAR, without allowing the landowners to provide input or the right to appeal.
- **The HAL program is unconstitutionally vague and ambiguous, confusing, and would be difficult to administer and enforce.**
 - The proposed HD1 muddles-up the concepts of historic sites, conservation and preservation lands, state land use districts and county zoning, by using interchangeable references.
 - It will be confusing and unmanageable if the Legislature, the SLUC, the Department of Agriculture and the Counties have jurisdiction over agricultural lands and HAL. What happens if there are differences of opinions between the various government entities who have jurisdiction over agricultural lands and HAL?
 - It is unclear what government agency would have the jurisdiction over determining and enforcing acceptable uses within the HAL – the SLUC? The Legislature? Department of Agriculture? State Historic Sites division?
- **The HAL program changes the concept of Agricultural land and Important Agricultural lands (“IAL”), to more of a conservation and preservation intent, rather than for the purposes stated in HRS §205-46, “to achieve long-term agricultural viability and use.”**
- **The current Act 183 relating to IAL, already provides a process to preserve viable agricultural lands and will provide incentives for landowners to designate their lands as IAL.**
- **There are already State and federal laws and programs that govern “historic sites.”** This legislation would be redundant and duplicative of existing State and Federal programs relating to Historic sites. If an agricultural

site or area is truly historic, it should qualify as a historic site and be protected under existing government programs.

- **The designation of land uses is not within the purpose or jurisdiction of the legislature.** The State Land Use Commission was originally established to consider reclassification of lands among the four state land use districts (Urban, Rural, Agricultural and Conservation). The State Department of Agriculture and the Counties also have jurisdiction over agricultural lands. The Counties are each responsible for their own general plans, community plans, zoning, and subdivision approvals for agricultural lands and would be better equipped to perform detailed reviews of the use of agricultural lands and their impacts on communities. The Legislature does not have the staff, expertise, or funding to administer such an extensive (all counties), complex and detailed (county plans, zoning, subdivision, etc.) HAL program.
- **Proposed HD1 violates “County Home Rule.”** This proposed bill violates County Home Rule by overruling the County zoning powers. A program such as HAL, should not be administered by the State Legislature.
- **The Transfer of Development Rights concept has some merit.** If this legislation move forward, the issue of the TDRs might be a vehicle to provide compensation to the affected landowners.

Conclusion. LURF opposes S.B. No. 2997, SD1, HD1, for the foregoing reasons. It is LURF’s position that S.B. No. 2997, SD1, HD1 should be held, and if the Legislature wishes to pursue the issues of preserving certain HAL, it should compensate landowners for the fair market value of the lands via the condemnation process.

LURF appreciates the opportunity to express our views on this matter.

COMMITTEE ON JUDICIARY
Representative Tommy Waters, Chair
Representative Blake K. Oshiro, Vice Chair

TESTIMONY – SENATE BILL 2997, SD1, HD1

March 27, 2008

LATE TESTIMONY

REPORT TITLE: Land Use; Historic Agricultural Landmark

Chair Waters, Vice Chair Oshiro and Members of the Committee:

My name is Josie Bidgood and I represent Bank of Hawaii in its role as the trustee of the trust established by the Estate of George Galbraith (deceased). Bank of Hawaii and its predecessor have been the trustee for more than 100 years.

We are aware of the recent changes to Senate Bill 2997 and wish to make comment on the bill as currently drafted.

The Bill now appears to single out the Galbraith land for special classification. We do not believe this is appropriate because many of the statements made in Section 1 about the historical use of the Galbraith land could also be made about other land in that area. Trustee believes it is inappropriate to treat the Galbraith land differently from other similarly situated land. For that reason, Trustee opposes the Bill.

Besides treating the Galbraith land differently from other similarly situated land, the Bill is unnecessary to protect the public interest. The Galbraith land is currently classified as agricultural by the State and zoned agricultural by the City and County. Any changes to this would require approval by both the Land Use Commission and the City Council. These bodies are adequate to protect the public interest.

In addition, Section 1 contains several factual errors. The land has not been used for pineapple production since mid-year 2004 when Del Monte surrendered its lease. The land is not in agricultural production and there are no agricultural employees. In 2005 the Trust sold the parcels of lands where Poamoho Camp is located. The remaining Galbraith property does not provide housing to former pineapple plantation workers.

Thank you for the opportunity to submit testimony.

Josie Bidgood
Bank of Hawaii as Trustee
of the Estate of George Galbraith (deceased) and
not in its individual capacity

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