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Statement of
ABBEY SETH MAYER
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before the
**HOUSE COMMITTEE ON WATER, LAND, OCEAN RESOURCES
AND HAWAIIAN AFFAIRS**
Friday, March 14, 2008
10:30 AM
State Capitol, Conference Room 312

in consideration of
**SB 2997, SD1, PROPOSED HD1
RELATING TO LAND USE.**

Chair Ito, Vice Chair Karamatsu, and Members of the House Committee on Water, Land, Ocean Resources, and Hawaiian Affairs.

The Office of Planning (OP) supports the intent of SB 2997, SD1, Proposed HD1, but has concerns about its provisions. SB 2997, SD 1 proposed to establish a State transfer of development rights system to assist in the long-term preservation of agricultural lands, conservation resources, rural open space, etc. The Proposed HD 1 replaces the SD 1 content with a proposal to amend Part III of Chapter 205, Hawaii Revised Statutes (HRS), 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. Permissible uses would be limited to those currently allowed on lands rated "A" or "B" by the Land Study Bureau's overall (master) productivity rating system. The landmark would have similar protections as important agricultural lands, and landowners would be eligible for agricultural incentives for important agricultural lands. The criteria and votes required for the reclassification and rezoning of landmark lands would be the

same as for important agricultural lands. The bill also designates the Galbraith Trust lands in Central Oahu as the Galbraith historical agricultural landmark.

This 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 the Proposed HD 1 provides this. 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.

In closing, OP respectfully requests that the language of SD 1 be retained or reinserted in the Proposed HD 1 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 Proposed HD 1. Should the Committee choose to reinstate TDR language, we further request that you consider the use of the alternative draft language attached to our testimony. This alternative draft resolves some of the jurisdictional issues raised by SD 1. This alternative draft is subject to change as it is still being reviewed by the Attorney General's Office. If the Committee chooses not to move the TDR discussion forward in this bill, we would appreciate the Committee's recommendation as to another bill that may be used for the TDR proposal.

Thank you for the opportunity to testify.

A BILL FOR AN ACT

RELATING TO LAND USE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to provide a means
2 of addressing the rapid and increasing loss of rural lands and
3 to protect our scenic, historic, recreational, cultural, natural
4 and archaeological resources that tourism depends on. As a
5 consequence to this situation, the legislature is currently
6 considering measures addressing the preservation of lands on the
7 north shore of O'ahu owned by Kuilima Resort and the Galbraith
8 Estate and the Ka'iwi coast on the south shore of O'ahu.

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

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

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

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

8 SECTION 2. Chapter 206E, Hawaii Revised Statutes, is
9 amended by adding a new part to be appropriately designated and
10 to read as follows:

11 **"PART . TRANSFER OF DEVELOPMENT RIGHTS**

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

1 development in existing communities. Thus, the legislature
2 finds and declares that the establishment of a state
3 transferable development rights system is in the public interest
4 and will promote the public health, safety, and general welfare
5 of the people of this State.

6 (b) There is established within the Hawaii community
7 development authority the Hawaii transfer of development rights
8 program as set forth in this part.

9 (c) The objectives of the Hawaii transfer of development
10 rights system are to:

- 11 (1) Preserve open space, scenic views, critical and
12 sensitive areas, and natural hazard areas;
- 13 (2) Protect lands and structures of aesthetic,
14 architectural, and historic significance;
- 15 (3) Retain open areas in which healthful outdoor
16 recreation can occur;
- 17 (4) Ensure that the owners of preserved, conserved, or
18 protected land may make reasonable use of their
19 property rights by transferring their right to develop
20 to eligible zones;
- 21 (5) Provide a mechanism whereby development rights may be
22 reliably transferred; and

1 (6) Ensure that development rights are transferred to
2 properties in areas or districts that have adequate
3 community facilities, including transportation, to
4 accommodate additional development.

5 **§206E-B Definitions.** As used in this part, unless the
6 context otherwise requires:

7 "Conservation easement" shall have the same meaning as in
8 section 198-1.

9 "Development rights" shall have the same meaning as in
10 section 46-162.

11 "Receiving district" shall have the same meaning as in
12 section 46-162.

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

21 "Sending district" shall have the same meaning as in
22 section 46-162.

1 "Sending parcel" means a parcel of land in the sending
2 district that is the subject of a transfer of development
3 rights, where the owner of the parcel is conveying development
4 rights of the parcel, and on which those rights so conveyed are
5 extinguished and may not be used by reason of the transfer of
6 development rights.

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

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

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

1 **§206E-C Designation of state receiving districts.** (a)

2 The hawaii community development authority shall adopt a
3 statewide plan that designates sending and receiving districts
4 for the state transfer of development rights program; provided
5 that the state receiving districts shall be limited to:

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

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

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

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

1 **§206E-D Right to transfer development rights.** (a) Each
2 transferor shall have the right to sever all or a portion of the
3 rights to develop from the parcel in a sending district and to
4 sell, trade, or barter all or a portion of those rights to a
5 transferee consistent with the purposes of this part.

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

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

- 12 (1) Purchase, sell, or convey transferable development
13 rights or credits;
- 14 (2) Receive funds from any source, including the proceeds
15 from the sale of development rights, grants, or
16 donations;
- 17 (3) Establish a system for the valuation of transferable
18 development rights;
- 19 (4) Establish procedures and require documents for the
20 transfer or application of development rights or
21 credits, including certificates and other instruments
22 of transfer, and associated easements;

- 1 (5) Manage the TDR bank special fund; and
- 2 (6) Maintain a registry of transferable development
- 3 credits issued and held by the TDR bank, including
- 4 records of the dates, amounts, and locations of
- 5 development rights purchases, sales, and conservation
- 6 easements.

7 **§206E-F Administration.** (a) The authority shall adopt
8 rules pursuant to chapter 91 for the administration of this
9 part.

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

- 13 (1) All proceeds from the sale of transferable
- 14 development rights or credits;
- 15 (2) All revenues from any taxes or fees, which are
- 16 enacted to provide a funding source for the purchase
- 17 of transferable development rights;
- 18 (3) Funds from county, federal, or private funding
- 19 sources and other state funding sources, including
- 20 grants from the land conservation fund pursuant to
- 21 section 173A-9; and
- 22 (4) Appropriations made by the legislature to the fund.

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

19 **206-G County transferable development rights program.** If
20 a county establishes a transferable development rights program
21 pursuant to section 46-163, the county and the authority may
22 jointly agree to use the TDR Bank established in section 206E-E

1 for transactions under the county transfer of development
2 rights program, and development rights credits created in
3 either state or county sending districts may be applied to
4 either state or county receiving districts."

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

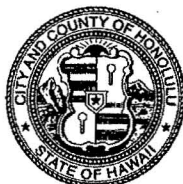
14 SECTION 4. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$ for fiscal
16 year 2008-2009, to be paid into the Hawaii transferable
17 development rights bank special fund created by this Act. The
18 sum appropriated by this Act shall be expended by the hawaii
19 community development authority of the department of business,
20 economic development, and tourism for the purposes of the fund.

21 SECTION 5. This Act shall take effect on July 1, 2050.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



HENRY ENG, FAICP
DIRECTOR

DAVID K. TANOUÉ
DEPUTY DIRECTOR

March 14, 2008

The Honorable Ken Ito, Chair
and Members of the Committee on Water,
Land, Ocean Resources & Hawaiian Affairs
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Ito and Members:

**Subject: SENATE BILL 2997 SD1 (Proposed HD1)
Relating to Land Use**

The Department of Planning and Permitting provides **comments** with regard to Senate Bill 2997 Sd1 (Proposed 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 should be clarified to say that the lands must be in active agricultural use, or were previously in agricultural use. 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 uses that would obliterate the value of the landmark.

The Honorable Ken Ito, Chair
and Members of the Committee on Water,
Land, Ocean Resources & Hawaiian Affairs
House of Representatives
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Thank you for this opportunity to comment.

Very truly yours,


Henry Eng, FAICP Director
Department of Planning and Permitting

HE: jmf
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**SB 2997 SD1 (PROPOSED HD1)
RELATING TO LAND USE**

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

MARCH 14, 2008

Chair Ito and Members of the House Committee on Water, Land, Ocean

Resources & Hawaiian Affairs:

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 (Proposed 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.

From: Jeannine Johnson [mailto:jeannine@hawaii.rr.com]
Sent: Tuesday, March 11, 2008 8:18 PM
To: WLHtestimony
Subject: Testimony in support of SB2997, SD1 (land use)

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

Re: SB 2997, SD1 RELATING TO LAND USE

Hearing: Friday, March 14, 2008 @ 10:30 am in Conf. Rm. 312

Dear Chair Ito and Vice Chair Karamatsu,

I **strongly support** SB2997, SD1 which establishes historic agricultural landmarks, designated by law, to be preserved and perpetuated as agricultural land for the benefit of the people of Hawaii. Providing an alternative for preserving valuable lands by allowing for the transferability of development rights between properties to compensate landowners who are willing to retain their land classification or down zone it to conservation or preservation will help protect our rural, scenic, historic, recreational, cultural, natural and archaeological resources.

Mahalo for your support.

Jeannine

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