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GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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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, Proposed House Draft 1 - Relating To Land Use

**BEFORE THE HOUSE COMMITTEE ON
WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS**

March 14, 2008

Senate Bill 2997, Senate Draft 1, Proposed 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. The Department of Land and Natural Resources (Department) is interested in continuing the discussion on the concept of establishing transferable development rights (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.



**TESTIMONY TO THE HOUSE COMMITTEE ON WATER, LAND, OCEAN RESOURCES &
HAWAIIAN AFFAIRS
FRIDAY, MARCH 14, 2008, AT 10:30 A.M.
ROOM 312, STATE CAPITOL**

RE: S.B. 2997 SD1 HD1 Relating to Land Use

Chair Ito, Vice Chair Karamatsu, and Members of the Committee:

My name is Christine H. Camp, Chair of The Chamber of Commerce of Hawaii, Land Use and Transportation Committee. The Chamber of Commerce of Hawaii strongly opposes S.B. No. 2997 SD 1, HD1.

The Chamber is the largest business organization in Hawaii, representing over 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. The organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

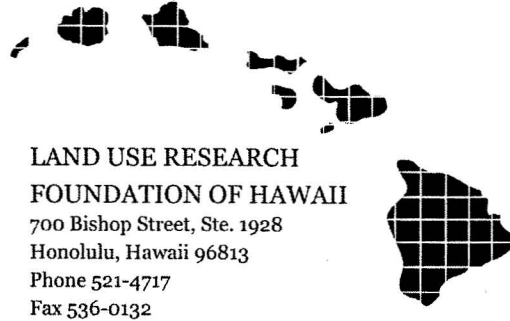
The purpose of this Act is to:

1. Enable the legislature to designate certain agricultural lands as historic agricultural landmarks because of their special historical, cultural, and visual value to the State;
2. Provide incentives for historic agricultural landmarks similar to the proposed incentives for important agricultural lands under section 205-46, Hawaii Revised Statutes;
3. Provide that historic agricultural landmarks can only be designated by law; and
4. Establish standards and criteria for reclassification or rezoning, to better preserve the historic agricultural landmarks for the education, pleasure, and welfare of the people of Hawaii.

While we understand the emotional connection we all have to past land uses, we need to recognize that land uses are generally influenced by market forces. There is a reason why the prior or historic agricultural operations have diminished or ceased on many of the agricultural properties in Hawaii. The reason is economics.

Rather than stifling the market and potentially depriving owners of the economic use of these properties, it may be more appropriate for government to simply acquire these lands of special historical, cultural, and visual value to the State.

For these reasons, we strongly opposes SB 2997 SD 1 HD 1. Thank you for this opportunity to express our views.



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March 14, 2008

BY E-MAIL

The Honorable Representative Ken Ito, Chair and Members,
House Committee on Water, Land, Ocean Resources & Hawaiian Affairs
State Senate, Room 312
Honolulu, Hawaii 96813

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

Dear Chair Ito 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 strong opposition to SB 2997, SD1, Proposed HD1 ("HD1")**.

SB 2997, SD1, Proposed 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, the House has proposed 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, in this case, it appears that the legislature is disingenuously attempting to exercise its powers of eminent domain (condemnation), 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.” LURF is also opposed to the bill as drafted, for the following reasons:

- **The HAL program changes the concept of Agricultural land and 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.”**
- **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 a 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 new HAL designation would unfairly prohibit requests from landowners.** The bill unfairly gives the Legislature the power to designate HAL, 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?

Conclusion. LURF opposes S.B. No. 2997, SD1, Proposed HD1, for the foregoing reasons. It is LURF's position that S.B. No. 2997, SD1, proposed HD1 should be rejected, and if the Senate 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.