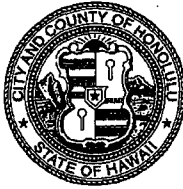


TESTIMONY
SB 2997
LATE

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

February 25, 2008

The Honorable Clayton Hee, Chair
and Members of the Committee on Water & Land
Senate
State Capitol
Honolulu, Hawaii 96813

LATE TESTIMONY

Dear Chair Hee and Members:

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

The Department of Planning and Permitting **strongly opposes** Senate Bill 2997 proposed SD1 that would establish a transfer of development rights program for scenic, historic, recreational, cultural, and other resources. It also creates a new fifth state land use district, "rural legacy area."

The bases for our objection:

1. We do not believe the purpose of protecting our resources should be for the benefit of tourism, as stated in Section 1 of the bill. Resource protection should be an element of statewide sustainability for the benefit of our people, for the education of our children, and for the legacy we leave for future generations.
2. The bill fundamentally violates county home rule, as it not only gives county zoning powers to the state land use commission, but allows it to override county zoning through the proposed "Overlay District." In addition, we believe that brokering of development rights goes beyond the purpose of the land use commission
3. If the valued resource is in the state conservation district or state agricultural district, we assert that there are no urban development rights available to "sell." For example, the city only allows "farm dwellings" in the state agricultural district, and this use is not permitted on residentially zoned lands.
4. As outlined, we do not believe the state land use commission has any resources which enable it to administer a broad, intensive, complex program as outlined in the bill particularly as these resources would likely exist in each of the four counties.
5. The bill's language is confusing.
 - a. It mixes concepts of state redistricting, with county zoning. Section 3 of the bill states that eligible rural legacy lands may "consist of lands in preservation, conservation, agriculture, forestry, and as determined by the legislature or the commission." Does this mean that lands under state Urban District but zoned preservation are eligible?

The Honorable Clayton Hee, Chair
and Members of the Committee on Water & Land
Senate
Re: Senate Bill 2997, Proposed SD1
February 25, 2008
Page 2

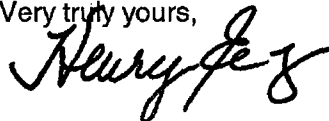
- b. Section 1 of the bill states that the purpose of the bill is to "protect our scenic, historic, recreational, cultural, natural and archeological resources." However, under Section 3 of the bill, the definition of "rural legacy area" only includes lands of historic, cultural and visual value."
 - c. The bill also offers two processes for designation of "rural legacy" lands: legislation or action by the state land use commission, but is unclear how this dual processing will be administered, and appears to create joint responsibility for state districting between the legislature and the land use commission.
 - d. Once designated a rural legacy area, uses on it are only those allowed under the state agricultural district (which could be harmful to the subject resources) or "for preservation or conservation"; it is not clear who makes the decision on acceptable uses, especially given that the legislature would be involved in decision-making.
6. There is no requirement that the land use commission give any consideration for county long range planning, zoning, or availability of infrastructure when conveying development rights to the "receiving parcel".
 7. We do not believe a Development Rights Bank has the same function as a Fund, and therefore, question whether the proposed bank can accept implied monetary revenues received "from the sale of development rights or grants or donations."
 8. The brokering of development rights goes beyond the purpose of the land use commission

We agree that our heritage and natural resources should be protected, but a transfer of development rights program is not the solution. Other incentives should be studied, such as tax credits to cover maintenance and liability costs, outright or partial government purchase, and other financial incentives.

We urge you to file this bill.

Thank you for this opportunity to comment.

Very truly yours,



Henry Eng, FAICP Director
Department of Planning and Permitting

HE: jmf
sb2997sd1-kh.doc



LATE TESTIMONY

LAND USE RESEARCH
FOUNDATION OF HAWAII
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Phone 521-4717
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February 25, 2008

By E-MAIL

The Honorable Senator Clayton Hee, Chair, and Members
Committee on Water and Land
State Senate, Room 414
Honolulu, Hawaii 96813

**Re: Testimony in Opposition to SB No. S.B. 2997, Proposed SD1
Relating to Land Use (Rural Legacy Lands, Transfer of
Development Rights)**

Dear Chair Hee and Members:

My name is David 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.

We appreciate the opportunity to provide our testimony **in opposition to S.B. No. 2997, proposed SD1.**

S.B. No. 2997, Proposed SD 1. The original S.B. No. 2997 was the "Use it or Lose it" bill proposed by the Governor's Package. It appears that the original SB 2997 is being gutted and replaced with this proposed SD1, which would allow for the establishment of Rural Legacy Lands and Transfer of Development Rights for rural lands ("TDRs"). In summary, the bill provides as follows:

- **Description:** Creates a new state land use (SLU) classification called "Rural Legacy Area" ("RLA") and establishes a process for TDR.
- **Objective:** The objective of designating an RLA is to restrict the land use to its present zoning or to rezone it to preservation or conservation to preserve and perpetuate the land for the continuing benefit of the people of the State. The uses allowed within an RLA shall be restricted to the permitted uses listed in section 205-4.5 for preservation or conservation.
- **Purpose:** The purposes stated in the SD1 are as follows:
 - preserve open space, scenic views, coastal and sensitive areas, and natural hazard areas;
 - protect lands and structures of aesthetic, architectural, and historic significance;
 - retain areas in which healthful outdoor recreation can occur;

- ensure that owners of preserved, conserved or protected lands can make use of their real property rights by transferring their development rights to eligible zones;
- provide a mechanism for TDR; and
- ensure that TDRs go to areas that have adequate facilities (including transportation) to accommodate additional development.
- **Operation of RLA and TDR**
 - **RLA as new SLU Classification (Sending Districts and “TDR-S”).** Creates a new SLU classification: Rural Legacy Area, aka “Sending Districts” and “TDR-S.”
 - **New SLU Development Plan.** Calls for a new state-wide Development Plan, whereby the State Land Use Commission (SLUC) would designate both RLA and “Higher Density Areas” (that would encourage economic and housing development), based only on requests from the Community or Government Agencies.
 - **“Receiving Districts” (TDR-R).** Establishes the concept of a “Receiving District” which are areas identified by the State and County for higher density to build affordable homes.
 - **Designation of RLA by SLUC or Legislature.** RLA may consist of lands in Preservation, Conservation, Agriculture, or Forestry, and as determined by the legislature or the SLUC.
 - **New TDR Program.** Creates a new TDR program which would allow transfer of development rights from an RLA to a Receiving Area.
 - **New State TDR Bank.** RLA landowners could sell development rights to a TDR Bank administered by the State, which would store and sell development rights to landowners in a receiving area designated for high density; State would compensate RLA landowners who are willing to retain land and re-designate it to Conservation and downzone it to Preservation. The SD1 proposes to give the TDR Bank the following powers:
 - Purchase and sell or convey development rights;
 - Recommend to a state agency whether the State should acquire development rights by condemnation;
 - Hold indefinitely development rights it possesses for conservation or other purposes;
 - Receive donations of development rights from any person or entity; and
 - Receive funding from any source, the proceeds from the sale of development rights, grants, or donations.
 - **State Fundraising tool to preserve Rural lands.** The TDRs will allow the State to raise funds to augment other resources to preserve Rural lands for the public.
 - **“Automatic” SLU boundary amendments to Conservation based on County rezoning.** Allows the state to “automatically” amend boundary amendments to be consistent with County rezoning to Conservation or Preservation.
 - **Examples from other jurisdictions.** The bill notes that since the 1990’s, TDRs have been successful in Maryland, New Jersey, Colorado and Washington.

LURF’s Position and Comments. In general, it appears that LURF could **support the intent and concept of SB 2997, proposed SD1** – it recognizes rural areas and

would allow TDRs (compensation to landowners for leaving rural lands as open space). **However, LURF is opposed to the bill as drafted, for the following reasons:**

- **It changes the concept of Rural land to more of a conservation and preservation intent.**
- **The brokering and transfer of Rural development rights is not within the purpose or jurisdiction of the SLUC.** 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). Given the Commission's limited authority and review of such broad land uses, it would make more sense for the SLUC to review the broader issues relating to the location of various land use activities, including housing, conservation, agricultural and rural areas. The Counties are each responsible for their own general plans, community plans, zoning, and subdivision approvals and would be better equipped to perform detailed reviews of projects and their impacts on communities. The SLUC does not have the staff, expertise, or funding to administer such an extensive (all counties), complex and detailed (county plans, zoning, subdivision, etc.) program. Rather than adjudicating the details of the eligibility of lands for such a program and administering a transfer of development rights program and Development Rights Bank which do not involve state functions, the SLUC should focus on broader public policy and land use issues and leave such detailed review and enforcement to the Counties.
- **Proposed S.B. No. 2997, SD1 violates "County Home Rule."** This proposed bill violates County Home Rule by transferring County zoning powers ("overlay District") to the SLUC. A TDR program should not be administered by the State, but should allow Counties to determine the receiving areas.
- **The New SLU Development Plan would unfairly prohibit requests from landowners.** The bill calls for limiting the SLUC and legislature to designate both RLA and "Higher Density Areas," based only on requests from the Community or Government Agencies, without the input of the landowners.
- **The Rural Legacy Lands classification and Transfer of Development Rights program is unconstitutionally vague and ambiguous, confusing, and would be difficult to administer and enforce.**
 - The proposed SD1 muddles-up the concepts of state land use districts with county zoning, by using interchangeable references.
 - It will be confusing and unmanageable if both the Legislature and SLUC have the power to designate Rural Legacy Lands. What happens if the SLUC and Legislature disagree? How would such disputes be resolved?
 - It is unclear what government agency would have the jurisdiction of determining acceptable uses within Rural Legacy Lands – the SLUC? The Legislature? Or the Counties? What happens if the SLUC, Legislature, and Counties disagree? How would such disputes be resolved?
 - The definition of "Development Rights" (§205-C) is confusing. The bill states: "Development rights exclude the rights to the area of or height of a sign."
- **The proposed bill does not address Act 205, SLH 2005 (AG to Rural reclassification) and is inconsistent with the purposes, policies and procedures of Act 205.** This bill has a major flaw, because it should also address a process for identifying and reclassifying existing Ag lands to Rural lands, pursuant to Act 205, SLH 2005 (which was supposed to work hand-in-

hand with IAL's Act I83, SLH 2005). Furthermore, proposed S.B. No. 2997, SD1 will frustrate the purposes of Act 205 and conflict with the procedures and policies of Act 205.

- **No Affordable housing.** It appears that S.B. No. 2997, SD1 will not allow much needed affordable housing developments on Rural lands.
- **Instead of creating a State TDR program, perhaps this bill could provide funding to encourage the counties to develop TDR programs.** TDRs will become a very important issue in the near future, with issues such as incentives for the identification and dedication of Important Agricultural lands (see, H.B. No. 2807, HD1) , and with the development of Transit Oriented Development in the City and County of Honolulu.

Conclusion. LURF opposes S.B. No. 2997, proposed SD1, for the foregoing reasons. It is LURF's position that S.B. No. 2997, SD1 should be rejected, and if the Senate wishes to pursue the issues of TDRs or reclassification of lands as incentives to compensate landowners for leaving rural lands as open space or designating Important Agricultural Lands, perhaps this bill could provide funding to encourage the counties to develop such TDR programs for rural and important agricultural lands (See, H.B. No. 2807, HD1).

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



**The Chamber of
Commerce of Hawaii**
Since 1850

LATE TESTIMONY

TESTIMONY TO THE SENATE COMMITTEE ON WATER AND LAND
MONDAY, FEBRUARY 25, 2008, AT 2:45 P.M.
ROOM 414, STATE CAPITOL

RE: S.B. 2997 Relating to Land Use

Chair Hee, Vice Chair Kokubun, 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 opposes S.B. No. 2997.

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 Bill is to provide an alternative to preserving valuable lands through creating a new classification referred to as a rural legacy area which would be the "sending" area for transfer of development rights program to a "receiving area" where the State or a county has designated for higher density to build affordable homes.

The Bill propose to amend Chapter 205 HRS and require the State Land Use Commission to prepare a statewide development plan, the State land use commission would designate rural legacy areas by request from a community or by a governmental agency and higher density areas that would encourage economic and housing developments. Landowners in the rural legacy areas would be allowed to sell their land's development rights to a transfer development rights (TDR) bank where the State would store and sell to landowners in a receiving area designated for high density. This 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.

TDR's allows the State to raise funds to augment other resources to preserve rural lands for the public. In an effort to promote preservation actions by governmental agencies, this measure also allows for the State to automatically amend their boundary amendments to be consistent with a county's re-zoning of lands to conservation or preservation.

On the surface, it appears that the bill is attempting to provide a process for landowners to "voluntarily" preserve their lands with some economic return through transfer development rights. The Bill also appears to provide for the State to realize some profit from the buying and selling of development rights to fund

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The Chamber of Commerce of Hawaii Testimony on SB 2997
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other land acquisitions.

It is unclear from the bill how the LUC would oversee and direct growth without the involvement of the counties. While the Districts and designation of districts must comply with existing county plans and be approved by the respective Planning Commissions, there is no consideration provided to the counties in how the density or development rights will be distributed. Considering that there is already significant and unnecessary duplication of authority between the State Land Use Commission on reclassification of lands and subsequent County zoning, this added layer of rural TDR's would seem to further confuse the roles and responsibilities of the State and Counties.

In addition, it is unclear from the bill how the development rights will be valued, and if there will be a difference in valuation between development rights purchased by the State and development rights sold by the State. To generate some type of profit, the state would need to be providing some value from the time the rights are purchased to the time the rights are sold. The bill is not clear in how this enhanced valuation will occur.

We would strongly encourage the Legislature to create incentives for the Counties to develop a TDR program for preservation of natural resource lands as well as to encourage designation of Important Agricultural Lands rather than attempt to create another layer of land use entitlements over the existing system.

For these reasons, we cannot support SB 2997 as drafted. Thank you for this opportunity to express our views.

TESTIMONY
SB 2997
LATE
(END)