HB 1273 HD1

Mililani Town Association

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March 15, 2009

Senator Mike Gabbard, Chair
Senator J. Kalani English, Vice-Chair
Committee on Energy and Environment
State Capitol
Honolulu, HI 96813

VIA EMAIL: ENETestimony@Capitol.hawaii.gov

Re: H.B. No. 1273 HD 1 – Relating to Energy
Hearing: Tuesday, March 17, 2009, 3:00 pm, Conf Room 225

Dear Chair Gabbard, Vice-Chair English and Committees Members

My name is Eric Matsumoto, Vice-President of the Mililani Town Association (MTA). I have served in MTA leadership capacities for 24 of the last 30 years serving on the board. MTA encompasses 16,000 plus units involving both single family units and townhouse projects.

We strongly support the provisions of this amended bill to allow those members of planned communities and townhouses who desire to use clotheslines for drying clothes where otherwise would not be permitted, while at the same time allowing for the associations of planned communities and townhouses to have the ability to provide reasonable restrictions.

It should be noted that, in its governing documents, MTA does permit homeowners to erect clotheslines, which were in the past erected by the developer as a matter of the development plan for each unit until approximately the 1970's. They were effective in drying clothes, but unfortunately, the practice ceased when homeowners began to rely primarily on electric clothes dryers.

We accordingly urge this bill, as amended, be passed.

Sincerely yours,

Eric M. Matsumoto
Vice-President, Board of Directors

Cc: Senator Kidani
Senator Bunda
Representative Lee
Representative Yamane

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
March 17, 2009, 3:00 P.M.
Room 225
(Testimony is 3 pages long)

TESTIMONY IN SUPPORT OF HB 1273 HD1, SUGGESTED AMENDMENT

Chair Gabbard and members of the committee:

The Blue Planet Foundation strongly supports the intent of House Bill 1273 HD1, ensuring that Hawai'i homeowners have the choice to save money and save energy by using a clothesline to dry their clothes.

Blue Planet believes that this measure should be amended to clarify that homeowners will be allowed to use a clothesline for its intended purpose—drying clothes—not just disallowing their prohibition. **To accomplish this outcome we suggest HB 1273 HD1 be amended to contain the language in SB 1338 SD1 (as drafted by this committee).**

Electric clothes dryers can consume upwards of 10% of a household's energy demand. Reducing the use of clothes dryers could substantially decrease the amount of fossil fuel electricity that Hawaii's households require. Unfortunately, many homeowner associations prohibit the use of using the sun to dry clothes—clotheslines—and some simply make it very difficult to use a clothesline. For example, the Declaration of Covenants, Conditions, and Restrictions for the Ewa by Gentry development state that "...no outside clothes line or other outside clothes drying or airing facilities shall be maintained on any lot unless the same are screened from view and are not visible from neighboring property." While such an aesthetic condition might have been acceptable 20 years ago, it makes no sense today to restrict smart energy-saving behavior given what we now know about global climate change.

While we know this clothesline measure has drawn chuckles from some, it's value is very serious: to provide residents the option of reducing their energy use if they chose. Given the

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cost of electricity and urgent need to move toward energy independence, Hawai'i homeowners should have the choice to save money and save energy by using the hot sun and trade winds to dry their clothes. This may sound frivolous, but when you consider that the average family produces over one ton of greenhouse gas annually from typical electric clothes dryer usage, any restriction on clothesline use seems inappropriate. Yet this measure doesn't prevent any homeowner association rules on clothesline usage, only those that are unreasonable. Clotheslines also save money. Families switching to a clothesline can expect to save hundreds annually on their electricity bill.

This measure is a logical extension to the bill passed into law in 2005 prohibiting restrictions that prevent individuals from installing solar energy devices on houses or townhomes that they own.

While we are searching for ways to reduce our dependency on fossil fuel, save residents' money, and decrease global warming pollution, let's not forget about the basic—and decidedly low-tech—approaches to energy conservation. This bill removes yet another barrier to local residents doing the right thing for the environment and the economy.

Last year this measure passed the legislature with broad support. The bill, however, was vetoed by the Governor. Governor Linda Lingle suggested that the bill of concern because it may invalidate community associations existing contractual bylaws or rules. We do not believe this is a concern for HB 1273 HD1 the following reasons:

1. House Bill 1273 HD1—if amended—allows the enactment of rules or bylaws governing clotheslines as long as they are not unreasonable.

2. Locally, Act 157 (2005), disallowing most restrictions on solar device usage, has not been challenged.

3. Case law is supportive. In Applications of Herrick and Irish, 82 Hawai`i 329 (1996): "In deciding whether a state law has violated the federal constitutional prohibition against impairment of contracts, U.S. Const., art. I, § 10, cl. 1, we must assay the following criteria: (1) whether the state law operated as a substantial impairment of a contractual relationship; (2) whether the state law was designed to promote a significant and

legitimate public purpose; and (3) whether the state law was a reasonable and narrowly-drawn means of promoting the significant and legitimate public purpose."

4. The goal of HB 1273 HD1 is to promote a significant and legitimate public purpose, namely, the critical goal of reducing Hawaii's expensive dependency on imported fossil fuel.

5. Nationally, association rules have been invalidated or overridden in the past: Jim Crow laws and the FCC allowing satellite dishes are two significant examples.

6. The courts have often found that prohibiting the enforcement of pre-existing restrictive covenants does not violate the contracts clause. "There is no unconstitutional retroactive impairment of contract rights where the legislature operates pursuant to a strong state interest, does not drastically alter the pre-enactment right and does not unreasonably destroy reliance on the right." Westwood Homeowners Association v. Tenhoff, 745 P.2d 976, 983 (Ariz. App. 1987) (retroactive application of public policy prohibiting enforcement of restrictive covenants that bar group homes for the disabled in residential neighborhoods does not violate the contracts clause) [1]

Blue Planet believes that HB 1273 HD1—if amended to look like SB 1338 SD1—is a fair, balanced, and necessary policy to remove yet another barrier for local residents to do the right thing in decreasing their energy use.

As Benjamin Franklin reminds us, "We must hang together...else, we shall most assuredly hang separately."

Thank you for the opportunity to testify.

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[1] See also: Ball v. Butte Home Health, Inc. 70 Cal.Rptr.2d 246 (Cal App. 3 Dist. 1997) (retroactive application of law forbidding enforcement of restrictive covenants that prohibit group homes for the disabled does not violate the contracts clause).
Barrett v. Dawson, 71 Cal.Rptr.2d 899 (Cal.App.4 Dist. 1998) (retroactive application of statute prohibiting enforcement of restrictive covenant barring day cares homes in residential neighborhoods does not violate the contracts clause).

THE GAS COMPANY

P.O. Box 3000
Honolulu, HI 96802-3000

March 17, 2009

Testimony for HB 1273, HD 1 Relating to Household Energy Demand

Aloha Chair Gabbard, Vice Chair English and Members of the Committee on Energy & Environmental Protection:

My name is Stephanie Ackerman. I am Vice President Public Policy and Communications for The Gas Company. Thank you for the opportunity to provide testimony on HB 1273, HD 1 Relating to Household Energy Demand.

The Gas Company supports the intent of HB 1273, HD 1 which would allow homeowners to erect or use a clothesline and have reasonable access to sun and wind to dry their clothes.

The Gas Company supports the State's initiatives to promote renewable energy, energy efficiency, and the diversification of energy resources. The Gas Company therefore supports measures that promote consumer choices in adopting efficient alternative energy solutions included in HB 1273, HD 1.

Thank you for the opportunity to offer these comments.

LAND USE RESEARCH
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Via Capitol Website

March 17, 2009

Senate Committee on Energy and Environment
Hearing Date: Tuesday, March 17, 2009, 3:00 PM in CR 225

Testimony in Opposition HB 1273 HD1– Relating to Energy
(Clothesline Bill)

Honorable Chair Mike Gabbard, Vice Chair J. Kalani English and Senate Committee on Energy and Environment:

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, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawai'i's significant natural and cultural resources and public health and safety.

While LURF and its members support the intent of this bill and recognize the importance of reducing the use of fossil fuels and voluntarily support renewable energy – in fact many of LURF's members install energy efficient appliances and include other renewable energy devices in the housing units they produce. Notwithstanding those facts, however this bill is not the answer to significant reduction in energy consumption. HB 1273 HD1 would result in an unnecessary prohibition and mandate, as many developments and homeowner associations already allow clotheslines; it will alter the existing and contractual terms and expectations of existing residents; it could result in the criminal prosecution of homeowner association board members; laundry hanging in plain view will impact aesthetics and decrease property values; and its terms are vague, ambiguous and subject to dispute and litigation. Thus, LURF must testify **in opposition to the current version of HB 1273 HD1.**

HB 1273 HD1. The purpose of HB 1273 HD1 is to prohibit real estate contracts, agreements, and rules from precluding or rendering ineffective the use of clotheslines on the premises of single-family dwellings or townhouses. As stated in HD1, for aesthetic reasons, many homeowners' associations prohibit the use of clotheslines. Despite the fact that many existing developments and master planned communities already allow clotheslines with certain restrictions, the purpose of this bill is to mandate a state-wide

change in some existing contracts, agreements and rules, by prohibiting real estate contracts, agreements, and rules from precluding or rendering ineffective, the use of clotheslines on the premises of single-family residential dwelling or townhouse. This proposal unfairly changes the current rules and regulations of private home associations, which are in place to protect property values and aesthetics for the good of the whole development.

The House Committees on Energy and Environmental Protection and Housing amended this bill to its current **HD1 version** by:

> (1) Adding a new section containing legislative findings and purpose;
>
> (2) Setting out the clothesline provisions as a new section to the chapter on energy resources rather than as an amendment to a section in the same chapter on the placement of solar energy devices;
>
> (3) Deleting the conforming amendment to the tax laws on tax credits for renewable energy technologies; and
>
> (4) Making necessary conforming technical amendments.

HB 1273 HD1 adds a new section to Chapter 196 of the Hawaii Revised Statutes and entitles it "Placement of clotheslines." This bill indicates that:

> (a) Notwithstanding any law to the contrary, no person shall be prevented by any covenant, declaration, bylaws, restriction, deed, lease, term, provision, condition, codicil, contract, or similar binding agreement, however worded, from installing a clothesline on any single-family residential dwelling or townhouse that the person owns. Any provision in any lease, instrument, or contract contrary to the intent of this section shall be void and unenforceable.

HB 1273 HD1 also includes the following vague and ambiguous provision, which provides that "[e]very private entity may adopt rules that reasonably restrict the placement and use of clotheslines for the purpose of drying clothes on the premises of any single family residential dwelling or townhouse." (emphasis added). This provision could lead to unnecessary disputes and litigation as to the "reasonableness" of any restrictions imposed by any private entity, which would likely include enforcement by Board Associations.

Furthermore, HB 1273, HD1 adds the following definitions:

> "Clothesline" means a rope, cord, or wire or similar device on which laundry is hung to dry.
>
> "Private entity" means any association of homeowners, community association, condominium association, cooperative, or any other non-governmental entity with covenants, bylaws, and administrative provisions with which the homeowner's compliance is required."

LURF's Position. LURF **opposes HB 1273 HD1**, based on the following concerns:

- **Unnecessary prohibition and mandate.** This bill is an unnecessary prohibition and mandate, as many of the established communities already have existing Design Covenants, Codes and Restrictions (DCCRs) in place which allow clotheslines, as long as the hanging laundry is not within the view of neighbors or

the public. Many existing developments and master-planned communities with single-family dwellings and multi-family townhouse developments which have been in existence for many years, have rules and regulations which allow clotheslines with some restrictions - - these restrictions recognize that the homes in the community were purchased by owners seeking a well-planned community that had rules that would protect their property values by maintaining the aesthetics around their property and ensure peace, health, comfort, safety and general welfare of the owners and their family members;

- **Issues relating to alleged "unreasonably restrictive clothesline regulations," should be resolved through the mediation or arbitration provisions of DCCRs, and not through a state-wide statute? Does the number of homes affected warrant a statewide statute?** The text of the bill includes a claim that "many homeowners' associations prohibit the use of clotheslines or render them ineffective through unreasonably restrictive regulation" – What homeowner associations? What are the unreasonably restrictive regulations? How many homes are we talking about? Do the true facts warrant a statewide prohibition and mandate? Aren't there arbitration and mediation provisions in the DCCRs to address any "unreasonably restrictive" regulations? Again, does this situation really warrant a statewide prohibition and mandate which would change existing contracts, reduce property values and result in litigation?

- **How will this proposed mandate be administered or monitored? What are the penalties for violation? Will the boards of community associations be subject to criminal prosecution?** The proposed legislation does not include an enforcement provision – thus, there are several important unanswered questions - - Who decides what is an "unreasonable restriction" under the new law – a criminal judge? Will there be a sliding scale of what is an "unreasonable restriction," depending on the type of community or housing complex, or the location of the clothesline (say next to a golf course hosting a nationally televised tournament)? Does the proposed law anticipate the criminal prosecution of board of directors who believe they have crafted DCCRs which allow clotheslines with reasonable restrictions? Will homeowner associations need to hire attorneys to draft clothesline rules and regulations and attorneys to provide a criminal defense for board members?

- **Alteration of existing contractual terms and homeowner expectations.** The bill seeks to change the terms and conditions of the DCCRs of planned community associations, many of which banned clotheslines and hanging laundry in plain view of neighbors and the general public. These aesthetics and DCCRs were relied on by buyers and made a part of the deeds for those properties. The new law would alter these contractual terms – make clotheslines and hanging of laundry allowable anywhere – except that the board could impose "reasonable restrictions;

- **Adverse impact on aesthetics and decrease in property values.** This bill could adversely affect aesthetics and decrease property values, by allowing the view of hanging laundry throughout a development. It is important to realize that the reason many homeowners buy into planned communities is because DCCRs are in place to regulate and ensure proper uses for the good of the whole; and

- **Disputes and litigation.** The provision allowing Board of Directors to determine what type of clotheslines would be allowed could open the door to disputes by residents who challenge the "reasonableness" of the regulations, or by residents who fail to conform with clothesline guidelines implemented by the board. This bill may also trigger other internal conflicts between home associations and homeowners and could lead to **unnecessary litigation** among homeowners and community associations.

Conclusion. While we support energy efficiency, the reduction of fossil fuels and the voluntary implementation of renewable energy, we must respectfully recommend that **HB 1273, HD1 be held**, because it is an unnecessary prohibition and mandate, in light of the fact that many homeowner associations already allow clotheslines; the proposed bill may alter the existing and contractual terms and expectations of buyers in planned communities; the "reasonable regulation" provisions of the bill will result in disputes and it could subject homeowner association board members to criminal prosecution if their rules or regulations relating to clotheslines were found to be "unreasonable;" it would adversely impact aesthetics and decrease property values; and the term "unreasonable restriction" is vague, ambiguous and subject to dispute and litigation. Instead of passing a bill with such a prohibition and mandate - - we would recommend that more incentives be implemented that encourage renewable energy installations that would reduce the consumption of fossil fuel generated electricity.

Thank you for the opportunity to testify on this matter.

Sierra Club
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SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

March 17, 2009, 3:00 P.M.
(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF HB 1273 HD1, WITH AMENDMENT

Aloha Chair Gabbard and Members of the Committees:

The Sierra Club, Hawai`i Chapter, with 5500 dues paying members statewide, supports HB 1273 HD1, ensuring that Hawai'i homeowners have the choice to save money and save energy by using a clothesline to dry their clothes. The Sierra Club believes an amendment is necessary, however, to ensure that this bill actually accomplishes its goals and allows the orderly use of clotheslines.

Electric clothes dryers can consume over 10% of a household's energy demand. Reducing the use of clothes dryers could substantially decrease the amount of fossil fuel electricity that Hawaii's households require.

Unfortunately, many homeowner associations prohibit the use of using the sun to dry clothes —clotheslines—and some simply make it very difficult to use a clothesline. For example, the Declaration of Covenants, Conditions, and Restrictions for the Ewa by Gentry development state that "...no outside clothes line or other outside clothes drying or airing facilities shall be maintained on any lot unless the same are screened from view and are not visible from neighboring property." This situation continues today -- the Sierra Club recently received a complaint about residents being forced to hang their clothes in closed carports.

As currently drafted, HB 1273 HD1 residents could be denied the ordinary use of clotheslines by limiting access to air or sunlight (such as forcing homeowners to hang clotheslines in a carport). Such a result would gut the intent of this bill. Accordingly, page 1, line 16, of HB 1273 should be amended to state:

> provided that the restrictions do not prohibit the use of clotheslines altogether or deny access to air or sunlight requirements reasonably necessary for the effective use of the clothesline.

While we are searching for ways to reduce our dependency on fossil fuel, save residents' money, and decrease global warming pollution, let's not forget about the basic—and decidedly low-tech—approaches to energy conservation. **This bill, as amended, is a fair and balanced means to allow local residents to do the right thing for Hawaii's environment and economy.**

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 15, 2009 10:11 PM
To: ENETestimony
Cc: carl.imparato@juno.com
Subject: Testimony for HB1273 on 3/17/2009 3:00:00 PM

Testimony for ENE 3/17/2009 3:00:00 PM HB1273

Conference room: 225
Testifier position: oppose
Testifier will be present: No
Submitted by: Carl Imparato
Organization: Individual
Address: PO Box 1102 Hanalei, HI
Phone: 808-826-1856
E-mail: carl.imparato@juno.com
Submitted on: 3/15/2009

Comments:
Aloha Committee Chairs and Members,

I urge you to reject HB 1273. The sanctity of contracts is an extremely important principle. Our state and county governments should respect and uphold contracts - including deeds, leases, homeowner association covenants and similar binding agreements - and should interfere with such contracts only in the rare case in which a clear and overwhelming injustice must be redressed. That is clearly not the case with this "clotheslines" bill.

I believe that there is no legitimate justification for government interference with contracts in this instance: the goal of energy conservation falls far below the threshold that would justify the state government's voiding of pre-existing contracts. And I am also concerned that approval of HB 1273 would set a terrible precedent, starting government down the slippery slope of voiding contracts based on any number of trivial justifications and policies that might be in vogue in the future.

For these reasons, I respectfully ask you to uphold one of the most important principles of law by voting NO on HB 1273.

Thank you for this opportunity to testify,

Carl Imparato
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