

HB 324

HD2, SD1



THE RESORT GROUP

TO THE SENATE COMMITTEE ON WAYS & MEANS

**TWENTY SIXTH LEGISLATURE
Regular Session of 2011**

**Testimony of Abbey S. Mayer, Vice President, Government Relations
THE RESORT GROUP**

OPPOSING HB 324, HD2, SD1, Relating to Historic Preservation

Wednesday, March 30, 2011, 9:30 AM -- Room 211

Aloha Chair Ige, Vice-Chair Kidani, and Members of the Committee,

The Honolulu-based The Resort Group (TRG) acquires, master develops, repositions and markets domestic and international mixed use and master-planned resort communities. Led by Jeffrey R. Stone, TRG's resort development projects are carefully designed to balance resident, visitor and employee needs with community interests, local cultural values and adjacent land use requirements. Current projects include Ko Olina Resort & Marina and Makaha Valley Country Club on O'ahu, Princeville at Hanalei (Kaua'i), Lands of Kapu'a (Big Island), the Newport Beach Hotel in California and Cape Eleuthera, Bahamas.

BACKGROUND – HB 324, HD2, SD1 – PART I

In 2003, Act 59 Session Laws established a South Kona Wilderness Area and provided for the creation of a management plan for the area. Act 59 was subsequently repealed in 2007 by Act 215, Session Laws of 2006.

Named in both Act 59 and Part I of this current proposal, HB 324, HD2, SD1 (§6E-B(a)), are the lands of Kapu'a, approximately 7,780 total acres, including four TMK's that are designated as Lots D-2-1, 2, 3 & 4 (TMK's 8-9-06-03, 19, 28 & 35). Approximately 902 acres in Lot D-2-1 are currently in the State Conservation District, while the remaining 6,878 acres are in the State Agricultural District.

Approximately 70% of the interest in the Kapu'a parcels noted above are owned by TRG-controlled companies. The remaining 30% are owned by other partners.

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HB 324, HD2, SD1:

TRG has long supported, and continues to support the inclusion of the lands of Kapu'a in the South Kona Wilderness Area. We will work cooperatively with the State and other interested partners in the sale of these lands.

TRG opposes several aspects of this proposal, including: (1) **§6E-E Designation of Lands within the Conservation District**; (2) **§6E-C Construction prohibited**; (3) **§6E-D Land acquisition**; and (4) **SECTION 6**, which establishes an effective date, but does NOT establish a sunset date, as follows:

(1) **§6E-E Designation of Lands within the Conservation District**: Section §6E-E proposes to reclassify all lands described in §6E-B(a), including the lands of Kapu'a, automatically and immediately into the State Conservation District, without any proceedings before the State Land Use Commission (LUC), upon the effective date of this measure.

As stated in the State Attorney General's testimony previous drafts (HB 324, HD1 & HD2) dated March 2, 2011 and March 23, 2011 respectively, before the House Committee on Finance and the Senate Joint Committee on Economic Development And Technology And Water, Land, & Housing, TRG believes that this provision of HB 324, HD 2, SD1 would be considered a **regulatory taking**. TRG believes that the State should only act to redistrict Kapu'a **AFTER** purchasing the lands.

HB 324, HD2, SD1 authorizes the State to purchase the lands of Kapu'a, but until the closing these lands will remain in private ownership. TRG believes the down-zoning and subsequent devaluation of these lands is not a just manner in which to open negotiations, and through a takings claim, **will increase the ultimate cost of this measure to the State, both for the subsequent litigation and possible future rulings against the State**. TRG believes that retaining Agricultural Classification of the approximately 6,878 acres of Kapu'a will not adversely impact the State's ability to acquire these lands for preservation. **TRG humbly requests that the Committee delete §6E-E of HB 324, HD2, SD1, especially insomuch as it applies to the Kapu'a parcels.**

TRG would also like to note that Hawaii Revised Statutes, Chapter 205, gives sole authority for the redistricting of parcels greater than 15 acres in size to the State Land Use Commission (LUC), whose Administrative Rules provides a system of due process for all land owners seeking redistricting of their lands. This process allows for a comprehensive and holistic consideration of multiple, complex and often competing interests prior to deciding the appropriate disposition of the State Land Use Classification. Section §6E-E of HB 324, HD2, SD1 would deprive private land owners, immediate neighbors, other affected parties and the general public of the due process rights afforded by the LUC and its procedures.

(2) **§6E-C Construction prohibited**: §6E-C of HB324, HD2, SD1 bans the construction of new homes or other structures (with a few very limited exceptions) within 1,000 feet of the shoreline. This section also prohibits subdivision (and subdivision and reconsolidation) of the lands within 1,000 feet of the shoreline. This aspect of the bill also represents a **regulatory taking** by making private property "economically idle" without compensation. **Again, the costs of litigation and**

potential rulings against the State will dramatically increase the costs of this measure. TRG requests that the Lands of Kapu‘a be exempted from this Section of the bill.

(3) **§6E-D Land acquisition:** This section authorizes the DLNR to acquire the private lands named in the bill by donation or by a value-for-value exchange of other state lands, with the costs of appraisals being borne by the private landowners (or other funds or grants). While TRG is cognizant and understanding of the present difficulties the state is grappling with in respect to its budget shortfalls, we nevertheless are compelled to object to this provision of HB324, HD2, S D1. TRG notes that during the effective period of Act 59, several ideas for state lands exchange were explored. In all of these cases, regardless of complex valuation issues in each case, TRG found that land exchanges were very controversial, in that there is a great deal of public sentiment and often complicated legal histories tied to public lands. **TRG would ask the state to authorize condemnation for cash as the only method for acquisition of the Lands of Kapu‘a.**

(4) **SECTION 6:** This section establishes an effective date for the Act. TRG believes that if the Legislature decides to pass this measure in spite of our opposition, **an automatic sunset date for a maximum of two years after the effective date should be added** for several reasons. A short timeframe of efficacy would motivate the State, TRG and other private landowners to negotiate and conclude a transaction in the near-term. Also, an automatic sunset would limit the deleterious effects that this Act would have on the value of the private lands listed in the bill. At the same time, the automatic sunset would relieve the Legislature and all affected parties from having to pass another future Act to repeal this one, in the way the 2003 Act 59 was repealed in 2007 by Act 215 (Session Laws of 2006).

HB 324, HD2, SD1 – PART II

Part II of this measure creates a historic district in West Oahu, from Kapolei to Waipahu, which includes the Ewa Plain, Ewa marina, Kalaeloa and Ko Olina. Section §6E-G(b) of this bill authorizes the DLNR to collaborate with interested parties to preserve ‘historic properties’ within the district. **TRG, as master developer of Ko Olina Resort and Marina, is quite concerned that the purposes of ‘preservation’ as stated will conflict with the section’s internally inconsistent statements regarding the lack of affect the bill is to have on land use, zoning, development, permitting and building codes. The eventual effects of the creation of the West Oahu Historic District may also constitute regulatory takings over a huge and extremely valuable region, by limiting development without compensation.**

TRG recommends that your committee hold this entire measure as it opens the State to potentially huge liabilities at a time the State and your Committee is working tirelessly to limit new liabilities and close a budget shortfalls.

TRG thanks the Committee for the opportunity to provide comments.

Testimony of The Nature Conservancy of Hawai'i
Commenting on H.B. 324 SD 1 Relating to Historic Preservation
Senate Committee on Ways & Means
Wednesday, March 30, 2011, 9:30AM, Rm. 211

The Nature Conservancy of Hawai'i is a private non-profit conservation organization dedicated to the preservation of Hawaii's native plants, animals, and ecosystems. The Conservancy has helped to protect nearly 200,000 acres of natural lands for native species in Hawai'i. Today, we actively manage more than 32,000 acres in 11 nature preserves on Maui, Hawai'i, Moloka'i, Lāna'i, and Kaua'i. We also work closely with government agencies, private parties and communities on cooperative land and marine management projects.

The Nature Conservancy of Hawai'i submits the following comments on H.B. 324 SD 1:

The lands proposed under this bill to become the South Kona Wilderness Area include cultural resources as well native dry land forest cover, which is becoming increasingly rare throughout the state. The Nature Conservancy is available to continue to work with the State, the landowners, and other interested parties to help achieve appropriate protection for the resources in this land area.

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