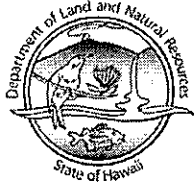


SCR168

**REQUESTING THAT THE LEGACY LAND CONSERVATION COMMISSION APPLY A CONSERVATION EASEMENT AS DEFINED IN SECTION 198-1, HAWAII REVISED STATUTES, TO LAND ACQUIRED PURSUANT TO THE LEGACY LAND CONSERVATION PROGRAM.
Legacy Land Conservation Commission; Conservation Easement**

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committee on
WATER, LAND, AND HOUSING**

**Tuesday, April 5, 2011
1:20 PM
State Capitol, Conference Room 225**

**In consideration of
SENATE CONCURRENT RESOLUTION 168/SENATE RESOLUTION 104 -
REQUESTING THAT THE LEGACY LAND CONSERVATION COMMISSION APPLY
A CONSERVATION EASEMENT AS DEFINED IN SECTION 198-1, HAWAII
REVISED STATUTES, TO LAND ACQUIRED PURSUANT TO THE LEGACY
LAND CONSERVATION PROGRAM.**

Senate Concurrent Resolution 168/Senate Resolution 104 request that the Board of Land and Natural Resources impose conservation easements on all land acquired under the Legacy Land Conservation Program (LLCP), including State-owned lands acquired previous to the adoption of the resolution. The Department of Land and Natural Resources (Department) supports having long-term protection of the lands and resources acquired under the LLCP program, but requiring the State to impose a conservation easement on all properties, particularly properties purchased for government agencies, duplicates existing adequate protections, and a blanket requirement is not needed.

The Department appreciates the continued support of the Legislature in developing this valuable program, and has the following comments.

Conservation easements are valuable in providing for the long-term preservation of resources, however, the decision of when to use a conservation easement merits a case-by-case consideration. Conservation easements should be imposed when: (1) There is a demonstrated need for the type of protection that a conservation easement offers and; (2) There is an appropriate conservation easement-holding organization with consistent funding and a planned program for managing the drafting and long-term monitoring and enforcement of the conservation easements. A conservation easement under this Program should not be required when the acquisition is for a fee ownership by a state or county government entity, or if for a non-profit, if a federal, state or county government agency is identified a holder or co-holder of a conservation easement as a condition of the purchase.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

State lands acquired through the Legacy Land Program are restricted when they are encumbered under executive order and put into a given state designation, e.g., Forest Reserve, State Park, or Natural Area Reserve. Conservation easements over these properties would be duplicative to status of the executive order particularly when held and administered by the Department. Many of the lands acquired with Legacy Land Program funding are for conservation easements to either the Federal Government or accredited land trusts with a track record of good baseline documentation and conservation easement agreements that are well-written, annual monitoring, and a responsive enforcement mechanism. Land trusts may establish endowments to assure long-term funding for these purposes.

The Department agrees that it should impose conservation easements or be a co-holder of easements on acquisitions for non-governmental entities that are not covered by a conservation easement to another government agency or an accredited land trusts. The Department is in the process of developing rules to propose that approach as a default for the program. This process will encourage applicants to come to the Legacy Land Commission with adequate protections incorporated in their projects (e.g., a conservation easement to an accredited land trust entity). However, if the Department is to take on the responsibilities for more conservation easements in the future, then it needs long-term funding for the monitoring and enforcement of an accumulating-increased numbers of conservation easements.



HAWAIIAN ISLANDS LAND TRUST

Board of Directors
2011

April 3, 2011

President
Helen Nielsen

Senator Donovan Dela Cruz, Chair

Vice President
Bill Chase

Senator Malama Solomon, Vice Chair
Hawaii Senate

Treasurer
Janice Lau

Committee on Water, Land and Housing

Secretary
Fred Langille

**THE HAWAIIAN ISLANDS LAND TRUST TESTIMONY
COMMENTS ON SCR 168 AND SR 104
Senate Committee on Water, Land and Housing
Tuesday April 5, 2011, 1:20pm Rm. 225**

Rick Bennett

John Henshaw

Donna Howard

Peter McKenney

Peter Merriman

McD Philpotts

Jonathan Scheuer

David Shores

Jo Ann Yukimura

My name is Dale Bonar and I am the Executive Director of the Hawaiian Islands Land Trust. In addition for the past 5 years, I have served as the Chairperson of the State Natural Areas Reserve System and the Legacy Land Conservation Fund Commission.

Staff

Dale B. Bonar
Executive Director

Kathleen Buenger

James Crowe

Denby Freeland-Cole

Scott Fisher

Monica George

Jennifer Luck

Cynthia Rezendes

Doug Sensenig

Sara Smith

While I have no opposition to the State holding conservation easements on lands acquired by NGOs or other jurisdictions, this may create confusion for those projects in which an NGO or jurisdiction is using Legacy Land Funds to purchase a conservation easement from the landowner, and not the fee interest. In this instance, it is duplicative to have both the state and the NGO or jurisdiction hold the easement.

One of the great benefits of having an Accredited Land Conservation Organization as the easement holder is that it relieves the State of the ongoing monitoring/enforcement activities that accompany stewardship of conserved properties. In all of the projects to date which have received state funding for easement acquisitions, the deed contains specific language which prevents any change in the easement that is not approved by the BLNR.

If the decision is made to require the State always hold an easement on non-fee properties, it would mean the state would need to co-hold the easement with the NGO/jurisdiction, so that both are the "Donee". Only the landowner holding fee interest can be the "Donor" of an easement. The NGO has no legal ability to give the state an easement on an easement.

A final note: easements should be monitored (and enforced if necessary) on an annual basis. This is especially critical when the landowner sells the easement at below FMV, and claims a donation from the IRS for the donated portion of the value. The IRS requires all such easements be monitored at least annually, and any violations be enforced immediately. (See Section 170(h) of the IRS Code)..Should the DLNR be required to hold the easement, it must be recognized that this creates an additional burden on DLNR staff and that additional resources should be provided to DLNR to cover those responsibilities.

Thank you for your consideration of this issue.

Sincerely,

Dale B. Bonar, Ph.D.
Executive Director

1.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale B. Bonar". The signature is written in a cursive style with a large initial "D" and a prominent "B".

Dale B. Bonar, Ph.D.
Executive Director

THE
TRUST
for
PUBLIC
LAND



HAWAII

**THE TRUST FOR PUBLIC LAND'S TESTIMONY
REGARDING SENATE CONCURRENT RESOLUTION 168
RELATING TO LEGACY LAND CONSERVATION PROGRAM
Senate Committee on Water, Land and Housing
Tuesday, April 5, 2011, 1:20 p.m., Room 225**

While the Trust for Public Land's (TPL's) Hawaiian Islands Program understands the good intent of Senate Concurrent Resolution 168 regarding the Legacy Land Conservation Program and does not oppose it, TPL has the following comments and concerns:

- SB120 HD1, which will be heard by the House Finance Committee today at 4:30 p.m., proposes to zero out the Legacy Land Conservation Fund for the next two years. If SB120 HD 1 is passed, there will be no resources or staff to implement this Committee's recommendations.
- The State itself is sometimes the grantee of the Legacy funds (e.g., Honouliuli Forest Reserve, Lapakahi State Historical Park, Hamakua Marsh). Placing a conservation easement in favor of the State on State owned property would be redundant, legally confusing, and require the State to incur additional and unnecessary legal and recording costs.
- TPL's understanding of why Commission staff have not required conservation easements on Legacy projects is that there were legal concerns that, if the State used State funds to acquire an interest in land owned by the County or non-profits like a conservation easement, that use of funds could trigger the need to do an environmental assessment under HRS Section 343-5(a)(1). This would unnecessarily increase the cost of Legacy project for the State, counties, and non-profit organizations. Our understanding is that staff were researching the possibility of adding to the list of departmental exemptions to HRS Chapter 343

these types of conservation easements that could be acquired by the State to safeguard its Legacy investments in property owned by entities other than the State.

- If the Legacy Land Conservation Program were to require the recording of easements in the State's favor for all projects, it may be impossible to provide sufficient funding to DLNR to insure annual independent monitoring of the easements. 29 Legacy projects have been funded through this fiscal year. As the number of projects and easements grows, the Legislature may be setting the State and the Department up for unintended but continually increasing staff costs, or a situation in which the Department is unable to fulfill this Committee's desires because it does not have sufficient staff or funding.

TPL was one of the many conservation and affordable housing organizations that supported the creation of the LLCF in 2005 -- which was passed by the vast majority of both the House and Senate. We appreciate this Committee's support of, and desire to protect the State's investments in Legacy projects. I apologize I cannot be present at this hearing due to other commitments.

Mahalo for this opportunity to testify -

A handwritten signature in cursive script that reads "Lea Hong". The signature is written in black ink and is positioned below the text "Mahalo for this opportunity to testify -".

Lea Hong
Hawaiian Islands Program Director
1136 Union Mall, Suite 202
524-8563 (office), 783-3653 (cell)