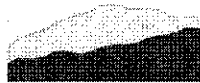


SR104

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

THE
TRUST
for
PUBLIC
LAND



HAWAII

**THE TRUST FOR PUBLIC LAND'S TESTIMONY
REGARDING SENATE RESOLUTION 104
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 Resolution 104 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 -



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