

Testimony of The Nature Conservancy of Hawai'i
Commenting on S.B. 2378 Relating to Legacy Lands
Senate Committee on Ways and Means
Tuesday, February 28, 2012, 9:00AM, Room 211

The Nature Conservancy provides the following comments on S.B. 2378 SD1.

Since its inception in FY2006, the Legacy Land program has funded a diverse variety of positive environmental, cultural, historical, and agricultural land protection projects supported by State agencies, counties and non-profits. State funds have been more than doubled with matches of federal, county and private funds, and significant discounts from sellers.

Currently, applicants for Legacy Land funding participate in a transparent competitive process. Proposals are reviewed and ranked by a diverse Commission of experts from a variety of fields as required by the Legacy Land authorizing law. The Legacy Land Commission makes recommendations to the Board of Land and Natural Resources on funding. Senate and House leadership is consulted prior to BLNR approval. Following BLNR approval, funds are released by the Governor.

The DLNR has just published a notice of public hearings on a proposed set of administrative rules for the Legacy Land program. This is an important step in establishing an appropriate layer of formality to the Legacy Land application and management process.

We do note that the proposed rules include similar provisions to this bill on the State retaining conservation easements. We are pleased that in both this bill and the proposed rules that there is some flexibility on the part of the Board of Land and Natural Resources not to retain a conservation easement. This makes sense when in some instances it would not be necessary or desirable for the State to retain an easement when another appropriate entity is retaining an easement sufficient to ensure protection of the property, or the relatively small contribution by the Legacy Land program makes the cost and effort in monitoring a State easement infeasible.

We are a little concerned about the proposed §173A-5(i)(7) in this draft of SB 2378 that every project would need to consult with the Departments of Agriculture and Land and Natural Resources, as well as with State Agribusiness Development Corporation and the Public Land Development Corporation. We assume that the phrase "where practicable" at the end of this section means, for example, that a project that is strictly related to historic or natural resource preservation with no agricultural component would not need to consult with the Department of Agriculture, or that a strictly agricultural project would not need to consult with the DLNR.

Thank you for this opportunity to provide testimony.

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SB2378
RELATING TO LEGACY LANDS
WAYS AND MEANS

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The Office of Hawaiian Affairs (OHA) offers the following comments on SB 2378, which requires a conservation easement or deed restriction for lands purchased with State Legacy Land Conservation Funds.

OHA appreciates the State's efforts to protect land having value as a resource to the State and preserve the interests of the State. However, the proposed requirement for a deed restriction or conservation easement for all lands acquired through the Legacy Land Conservation Program potentially complicates land transactions.

Acquisitions through the Legacy Land Conservation Program (LLCP) often involve partner funding, which commonly requires easements as a condition of sale. In these instances, SB 2378 would result in overlapping conservation easements. Additionally the State, as "full or partial owner" of the easement, would likely take on redundant monitoring responsibilities for these overlapping easements.

Section 13-140-28 of the Legacy Land Conservation Program draft administrative rules requires projects receiving Legacy Land Conservation Funds to incorporate an easement, unless the project already includes an easement or the grant is to a county or State agency. Thus, the rules allow for protection of the State's interest while avoiding unnecessary complications with multiple overlapping easements.

Mahalo for the opportunity to testify on this important measure.