

SB2378

Allows for the acquisition of lands through the legacy conservation fund for regulatory functions of the state. Restricts the application for and granting of legacy land funding to the department of land and natural resources, department of agriculture, agribusiness development corporation, and public land development corporation.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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

**Before the Senate Committees on
WATER, LAND, AND HOUSING
&
AGRICULTURE**

**Thursday, February 2, 2012
2:45 P.M.
State Capitol, Conference Room 229**

**In consideration of:
SENATE BILL 2378
RELATING TO LEGACY LANDS**

Senate Bill 2378 proposes allowing grants from the Land Conservation Fund (LCF) for the acquisition of lands through the Legacy Land Conservation Program ("Program") for regulatory functions of the State and restricting grants of Program funding to the Department of Land and Natural Resources, Department of Agriculture, Agribusiness Development Corporation, and Public Land Development Corporation. The Department of Land and Natural Resources (Department) appreciates the intent to increase the Department's land base for conservation purposes, but is concerned that nonprofit land conservation organizations will no longer be qualified recipients of Legacy Land grants. One of the original intents of the Program was to tap into increased support and resources from the many conservation partners active in the state. These agencies and nonprofits seek and bring community support, landowner commitment, and matching federal, county, and private funding to the program that State agencies may not even qualify to receive.

The Department proposes that restricting grants of Program funding to "the Department of Land and Natural Resources, Department of Agriculture, Agribusiness Development Corporation, Public Land Development Corporation and nonprofit land conservation organizations who partner with these departments and agencies on a grant submission" would allow for greater matching fund opportunities and honor the intent of the proposed legislation.

The Department also comments that the phrase "regulatory purposes," would need to be defined and prioritized within the content of the LCF and the other resource protection purposes.

**WILLIAM J. AILA, JR.
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LAND
STATE PARKS**

THE
TRUST
for
PUBLIC
LAND



HAWAII

**THE TRUST FOR PUBLIC LAND'S TESTIMONY
IN OPPOSITION TO SB 2378 RELATING TO LEGACY LANDS
Senate Committees on Agriculture and Water, Land and Housing
Thursday, February 2, 2012, 2:45 p.m., Room 229**

The Trust for Public Land's Hawaiian Islands Program strongly opposes Senate Bill 2378. The Trust for Public Land was one of the many conservation organizations that supported the passage of the Legacy Lands Act in 2005, which established the Legacy Land Conservation Fund (LLCF). The Legislature created the LLCF with broad support from the conservation and affordable housing community, and by a vast majority of both the House and Senate. The Trust for Public Land opposes SB 2378 because: (1) Senator Pohai Ryan has been working with the Legacy Land Commission and BLNR staff on rules and policies governing the Commission for over a year and these efforts should be allowed play out before further substantive changes are made to the law, and (2) the bill would undermine the clear purpose of the law --- conserving Hawai'i's Legacy lands for future generations.

1. Senator Ryan's Efforts Should Recognized

Throughout 2011, Senator Pohai Ryan has been working with the staff of BLNR and the Legacy Land Commission to promulgate administrative rules and revise policies to improve the LLCF's operations. The participants in this effort have invested a great deal of time and energy behind-the-scenes in improving the LLCF and its processes. The Legislature should allow these efforts to move forward before making additional substantive changes in the law. Otherwise, the passage of administrative rules will be delayed yet again (rules have not been passed since the law's passage in 2005) in light of further amendments to the law and the lengthy review of those rules by the Attorney General.

2. The Bill Proposes Changes That Undermines Land Conservation

The bill proposes changes that undermine the very purpose of the LLCF -- land conservation: (1) the bill proposes to restrict funding to four state agencies; (2) the bill excludes important partners in land conservation - other state agencies, the counties, and non-profit land conservation organizations; and (3) the bill allows Legacy funds to be spent on "regulatory functions" rather than on land conservation. With these changes, less, rather than more, land conservation will likely occur.

a. BLNR, DOA, ADC, and PLCD can already apply for Legacy funds

Currently, state and county agencies and non-profit land conservation may apply and compete for Legacy funding (10% of the real estate conveyance tax). The Legacy Land Commission receives the applications, reviews the applications, conducts site visits, holds public hearings, ranks the applications, and makes recommendations for funding to BLNR. The Commission consults with the Senate President and the Speaker of the House regarding its recommendations. BLNR approves (or does not approve) the recommendations, and the Governor releases the funding.

The bill proposes that eligible applicants be limited to four state agencies: BLNR, the Department of Agriculture (DOA), the Agribusiness Development Corporation (ADC), and the Public Land Development Corporation (PLDC). However, these four agencies may already apply and compete for funding as state agencies under the current law. If these four agencies propose important, ready-to-go, and community supported projects, they will rank high and will be funded. Competition improves the quality of applications, and assures that only the top-ranked and best projects will be funded. In fact, BLNR has been a successful applicant on many occasions (e.g., Hamakua Marsh, Kainalu Ranch, Honouliuli Forest Reserve in partnership with The Trust for Public Land) and has a definite advantage over other applicants since the State has a long track record of owning and managing conservation lands. DOA, ADC, and PLDC can similarly apply, compete, and be successful. There is no need to change the law.

b. The bill excludes other state agencies, counties, and non-profits

In addition, the bill excludes other state agencies (e.g., the Office of Hawaiian Affairs), counties (e.g., parks departments), and non-profit land trust organizations (e.g., The Trust for Public Land, the Nature Conservancy, and Hawaiian Islands Land Trust) from applying for Legacy funding. This will discourage the public-private partnerships that have been the hallmark of the success stories of the Legacy Land Conservation Program.

For example, the Trust for Public Land was a co-applicant with the State Parks Department for Legacy funding for an addition to the Lapakahi State Historical Park (completed in 2011). The Trust for Public Land, as a private partner, was able to enter into a contract with the landowner and secure the property before a sale to a private

developer, assist the Office of Planning in applying federal NOAA Coastal Estuarine Land Conservation Program (CELCP) funds, work with NOAA's staff in D.C. to improve the application, lobby the Congressional delegation regarding the project and for general funding for the NOAA CELCP program, work with community partners to organize public support for the project and its future maintenance, and contract for appraisals and environmental surveys. In the end, TPL helped the Parks Division bring in \$1,175,000 in federal funding to Hawai'i -- the #1 ranked NOAA CELCP project in the nation competing among 57 projects nationwide. The Trust for Public Land, as a private partner, was able to do many things that the State Parks Division could not do or was unable to do in a timely fashion to meet landowner or NOAA imposed time-frames. Public-private partnerships like this can achieve important land conservation. This bill would discourage these successful public-private partnerships by needlessly excluding non-profit land conservation organizations from the program.

The bill also proposes to exclude other state agencies and counties. The Office of Hawaiian Affairs is a state entity, and is currently eligible to apply to the LLCFF. OHA has accomplished a great deal of important land conservation -- OHA has acquired and protected Wao Kele O Puna, Pahua Heiau, and Waimea Valley. Under the bill, OHA could not apply for Legacy funding. Land conservation important to OHA's Hawaiian beneficiaries is less likely to get done. Likewise, the Department of Hawaiian Home Lands would also be excluded, and land conservation important to its beneficiaries would be less likely to get done. At the urging of its beneficiaries in the Paukūkalō Hawaiian Homestead, the Department of Hawaiian Home Lands, in partnership with The Trust for Public Land, previously applied for Legacy funding to acquire and protect the Paukūkalō Coastal Wetlands in Wailuku, Maui.

County agencies have also accomplished significant land conservation with Legacy funding, including an expansion of Black Pot park (Hanalei) on Kaua'i, and the acquisition of the Kāwā surfing beach in Ka'u and coastal lands at Pāo'o and Kaiholena in Kohala on Hawai'i Island. There are many Legacy lands that need to be protected in Hawai'i and passed to future generations. Other state agencies, county agencies, and non-profit land conservation organizations are important partners in that effort. This bill would exclude those partners. Less land conservation is likely to occur.

c. The bill does not define "regulatory functions"

Finally, the bill allows Legacy funds to be used for "regulatory functions," which is not defined. The term "regulatory functions" is so broad and ambiguous that the entire fund could be spent on almost anything so that little or no land conservation would occur. Already, serial amendments to LLCFF have resulted in the dilution of the LLCFF's purpose of voluntary land conservation, spreading funds thin among a never-ending list of activities: administrative costs (up to 5%), operation, maintenance, and management of lands acquired with the Fund (up to 5%), invasive species control, and re-forestation and sediment control. "Regulatory functions" simply goes too far in chipping away at the core of law's purpose -- providing a means of achieving voluntary land conservation of important Legacy lands for Hawai'i's future generations.

Mahalo for this opportunity to testify -

A handwritten signature in black ink that reads "Lea Hong". The signature is written in a cursive style with a large, looping initial "L" and a long, sweeping tail on the "g".

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Testimony of The Nature Conservancy of Hawai'i
Opposing S.B. 2378 Relating to Legacy Lands
Senate Committee on Agriculture
Senate Committee on Water, Land, and Housing
Thursday, February 2, 2012, 2:45PM, Room 229

The Nature Conservancy opposes S.B. 2378. We are unclear what purpose would be served or what problem would be solved by limiting the Legacy Land Program to only four State agencies (DOA, DLNR, ADC, and PLDC) and completely excluding other State agencies, the counties, and non-profit organizations from the program.

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. In most instances, it has been the very organizations that are proposed for elimination by this bill that have had the ability to secure significant non-State matching funds that have greatly leveraged the State funds contributed by the Legacy Land program. This bill would discourage the kind of multi-agency and public-private partnerships that have been the hallmark of the Legacy Land program's success and leverage to date.

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.

All of the State agencies proposed in this bill for exclusive qualification already have the ability to apply for Legacy Land funds under the current law. In fact, DLNR and ADC have put forward successful applications via the current process.

We think this bill would create a significant negative limitation to the Legacy Land program and eliminate a lot of the features that have made it a success. If there are types of projects or agencies that have not been well represented in the application process, the solution is to work together to put forward strong qualified projects, not eliminate other program participants.

Thank you for this opportunity to provide testimony.

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Maika'i Kamakani 'O Kohala, Inc.

Responsibility & Accountability to Native Hawaiian Values

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MAIKA'I KAMAKANI 'O KOHALA, INC.'S TESTIMONY IN OPPOSITION TO SB 2378 RELATING TO LEGACY LANDS

Senate Committees on Agriculture and Water, Land and Housing
Thursday, February 2, 2012, 2:45 p.m., Room 229

Maika'i Kamakani 'O Kohala, Inc. ("Maika'i") strongly opposes Senate Bill 2378. Maika'i is a nonprofit 501(c)(3) Kohala community organization, firmly grounded in Kohala and native Hawaiian culture. With funding from the Legacy Land Conservation Program, and many private foundations and individuals, Maika'i is poised to take ownership and the management responsibility for the 27.5-acre coastal property on Kauhola Point in Hala'ula, North Kohala, Hawai'i Island. Maika'i opposes SB 2378 as this bill would undermine the purpose of the Legacy Lands Act which is to conserve Hawai'i's legacy lands for future generations. Under SB 2378, solid conservation projects lead by nonprofit organizations which preserve important cultural and natural resources such as Kauhola Point, would not be eligible for funding.

The protection of Kohala's beloved Kauhola Point is now possible due to three dedicated 501(c)(3) nonprofit organizations – The Trust for Public Land ("TPL"), Maika'i, and Malama Kai Foundation ("MKF"). Knowing about TPL's long history of assisting communities and government agencies to conserve land, the Kauhola Point landowner initially contacted TPL to inquire about a sale to TPL rather than a developer. TPL then reached out to the Kohala community who directed TPL to Maika'i and MKF. Maika'i is a trusted organization of native Hawaiian cultural practitioners, leaders and kupuna (elders) who are deeply rooted through ancestral ties and present-day commitments in the Kohala community. Maika'i has provided the personal knowledge of Ohau Heiau, a Hawaiian cultural place of worship on the Kauhola Point property, as well as familiarity with the Kohala customs of protocol and care for Hawaiian cultural sites. Maika'i also accommodated the capacity to own real property, and the willingness to accept the responsibility of Kauhola Point land ownership for the benefit of all concerned residents of and visitors to Kohala.

MKF nurtures a user-based system of land and ocean stewardship at Kauhola Point involving surfers, fishermen, Kohala middle and high school students, community educators, kupuna, Hawaiian cultural practitioners, and natural resource managers. MKF's efforts dovetailed amiably with Maikai's strengths, and paired Hawaiian cultural knowledge with community stewardship and science-based education. TPL possesses transactional knowledge and expertise to guide and monitor the transfer of Kauhola Point to Maika'i. The Kauhola Point landowners are experiencing great financial hardship which necessitates the sale of this property in prompt execution. As a nonprofit, TPL is able to expeditiously secure private funding, and is currently prepared to oversee the conveyance of the property to Maika'i by the end of March, 2012.

Kauhola Point truly is a legacy land which will now be protected due to the efforts of these dedicated nonprofits, with the support of the Legacy Land Conservation Program. Maika'i, as well as its nonprofit partners, has in effect accepted the responsibility often held by government to safeguard and steward places of importance to the people of Hawai'i. Kauhola Point affords Kohala families a safe and beautiful place to spend quality time together and engage in healthy outdoor activities, is a recognized model of community stewardship, and connects us to our quickly vanishing ancestral past. Kauhola Point is a community-gathering place from wā kahiko (ancient times) to present day. Kamehameha I utilized the property to rest after warfare and focus on peacetime activities -- recreation, marriage and agriculture. Kamehameha taught his most beloved wife Ka'ahumanu how to surf in the waters of Maliu off the property's shores. As noted on an 1893 Hawaiian government map, the property was the site of "Kamehameha I's taro patches" and Ohau heiau. During the sugarcane era, the property was the official recreation area for plantation families, and the site of numerous company picnics and softball games. To this day, children in North Kohala grow up camping, fishing, swimming, and learning how to surf at "lighthouse," a loving nickname given to the property and surrounding area due to the iconic Kauhola Point Lighthouse which once stood guard there. Kohala middle and high school children are provided an outdoor classroom for marine educational programs, wherein community educators also envision involving students in on-site agriculture, native reforestation, and shorebird rehabilitation.

Maika'i will engage the North Kohala community at every level in planning for the future of this property as a North Kohala community resource. Ownership of the Kauhola Point property by Maika'i will truly be likened to ownership by the people of North Kohala. Once acquired, Maika'i will ensure public access is maintained for recreational, cultural, and sustenance purposes; for the area will remain an undeveloped open space in perpetuity. Maika'i envisions a native vegetated landscape protecting our precious watershed by providing habitat for native species, and maintaining the open viewplane for all in Kohala to enjoy. Maika'i intends to revitalize agriculture on the property and would like to reopen Kamehameha I's Taro Patches and grow other organic food crops on site. Maika'i has begun to connect with The Trust for Public Land's conservation agency partners to secure restoration funding and science-based guidance for the property. Agricultural and native plant efforts will be completed in partnership with Malama Kai Foundation's Ocean Warriors Program, utilizing Kauhola Point as a continued outdoor classroom to instruct Kohala middle school students in land stewardship, Hawaiian cultural knowledge, values, and science.

Maika'i shares an anxious enthusiasm in supporting The Hawai'i Wildlife Center's efforts to rehabilitate native sea and shorebirds by offering Kauhola Point as a rehabilitation and release site. The Hala'ula ahupua'a of Kohala was once known for the extensive naupaka (native coastal groundcover) and red hala tree groves which provided habitat to numerous native sea and shorebirds. Due to invasive species, development, and sugarcane cultivation, much of the coast's native bird habitat is gone. Today, Hawai'i has the most endangered birds not only in the United States, but also in the world. (Audubon Society, March 2006). Kauhola Point's peninsula formation, windy shores, present native coastal plants, and location directly down the road from The Hawai'i Wildlife Center, make it a prime area for restoration efforts of native sea and shorebird habitat. The Center has shown sincere interest in releasing rehabilitated native birds at Kauhola Point by providing innovative conservation practices such as manmade burrows and dummies to nurture a native sea and shorebird population there. Once Kauhola Point is acquired by Maika'i, the organization will ensure access to the property for sea and shorebird rehabilitation, release and monitoring. Maika'i and MKF's Ocean Warriors Program will also replant native vegetation which

will provide habitat for the birds as well as restore security and stability to the active eroding of the coastline. This special coastal system will enhance the environmental educational opportunities for the Ocean Warriors Program as well as the broader public.

In conclusion, Kauhola Point clearly establishes the intent of the Legacy Lands Act by accomplishing its purpose of conserving Hawai'i's legacy lands for future generations. Kauhola Point also demonstrates how nonprofit organizations assist the State in achieving this goal. To close the door for nonprofits to compete for Legacy funding would be to steel vault a strength and comradery on many more conservation projects which are deserving of full consciousness of protection. Think about our future, for "Land is likened to an Ali'i and we are just its stewards of the 'Āina". Let's provide an honor to continue this progressive way of managing our Hawai'i.

Malama Pono in Sincere Aloha,

Stephanie N. Naihe Laxton
Founder/President



Testimony of The Moloka'i Land Trust
Opposing S.B. 2378 Relating to Legacy Lands
Senate Committee on Agriculture
Senate Committee on Water, Land, and Housing
Thursday, February 2, 2012, 2:45PM, Room 229

The Moloka'i Land Trust opposes S.B. 2378. Limiting the Legacy Land Conservation Program to only four State agencies (ADC, DLNR, DOA, and PLDC) while excluding all other State agencies, counties, and non-profit conservation organizations severely curtails the effectiveness the program in supporting public-private partnerships and leveraging additional funds as a match to the State for conservation purposes.

Currently, all four State agencies are eligible to apply for funding through LLCPP. The review process is transparent, and projects are funded (or not) based on the merits and conservation values contained in each application. Proposals are reviewed and ranked by a diverse Commission of experts with a wide range of backgrounds as required by the Legacy Land authorizing law. This Commission makes recommendations to the Board of Land and Natural Resources on funding. Projects are reviewed by Senate and House leadership before BLNR approval. The Governor authorizes the release of the final funds. Because of this wide reaching review and approval process, the possibility of abuse of the program is severely limited.

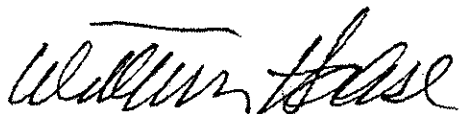
Many of the current eligible applicants to the LLCPP contribute significant matching sources of funds for the direct conservation of land in the State through the LLCPP, doubling the State's contribution for protection. MLT and the County of Maui were able to work together through the LLCPP to preserve the 200 acre Kawaikapu watershed on East Molokai in 2010. With the recent push by the State to increase watershed protection, this project is a shining example of how to use current funding sources through non-profit conservation organizations and the Counties to achieve this new mandate. This project would not have been possible under the new proposed language contained within S.B. 2378.

MLT is also concerned with the undefined term "regulatory functions" as a use of the LLCPP funds. The purpose of this program is to provide a means of achieving voluntary land conservation of important Legacy lands for Hawai'i's future generations. The term "regulatory functions" is so broad and

ambiguous that the entire fund could be spent on almost anything so that little or no land conservation would occur.

We feel that S.B. 2378 would have a significant negative impact on the function of the LLC and reduce or eliminate a lot of the elements that have helped make this program such a success in conserving thousands of acres across the State, and bringing in millions of additional outside dollars.

Thank you for this opportunity to provide testimony on this important topic.



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January 30, 2010

TO: Senator Clarence K. Nishihara, Chair
Committee on Agriculture
Senator Donovan M. Dela Cruz, Chair
Committee on Water, Land and Housing

RE: Testimony in opposition to SB 2378

I am providing this testimony in strong opposition to SB 2378 which would restrict the Legacy Lands Conservation Fund (LLCF) to use by only four State Departments and would exclude the counties, and conservation nonprofits from accessing these funds, as well as other State agencies such as Office of Hawaiian Affairs who actively protects legacy conservation lands. Yet these organizations have been essential partners in so many of the efforts toward conservation and sustainability over the last several years. The following points emphasize the benefits to the State of partnering with the counties and NPOs.

1. **Leverage:** The LLCF, born of the Legacy Land Act in 2005, has already allocated funding for the permanent protection of 8,000 acres of land by DLNR, ADC, local jurisdictions and conservation nonprofit organizations. Although the State Agencies can receive 100% project funding from the LLCF, the counties and nonprofits are required to provide at least 25% matching funds, extending the LCF dollars through leverage of funds from county open space programs, federal resource agency grants, bargain sales from landowners, and donations from foundations and private donors. As a result, the \$ 21.5 million provided by the LLCF in the first five years to the counties and nonprofits translates into over \$67.1 million of protected value of agricultural, native habitat, cultural, and watershed lands.

2. **Monitoring and Enforcement:** Nonprofit land conservation organizations can provide significantly more assurance of regular monitoring and enforcement of Conservation Easements which we are required to do by law. We stay in regular contact with landowners, perform regular site visits at least annually, can respond very quickly if violations occur, and have third-party standing for enforcement. We must demonstrate to the IRS that we have the resources and commitment to pursue monitoring and enforcement or we lose our IRS nonprofit charter. We also bring extensive professional experience in all areas of conservation and in working with local, state and federal agency personnel to ensure conservation values are effectively preserved. The State does not currently have the budget or manpower to meet the standards of oversight of conservation easements to which the nonprofit conservation easement holders must adhere,

3. **Agricultural Lands:** The intended impact of this bill would appear to be to shift funds so that the focus is on agricultural lands. In reality, one-half of the projects which have protected by the Legacy Lands Fund since its inception in 2005 have been lands zoned agriculture, with conservation zoned lands in second place. And many of those conservation-zoned lands also have portions which are agriculturally zoned. Every one of the State Departments which are selectively targeted by this bill (HDOA, ADC, PLDC and DLNR) currently have access to Legacy Lands Funds, although only ADC and DLNR have ever submitted applications. And all of those applications have been approved! Agricultural land protection is also a priority for many of the nonprofit land organization. The Hawaiian Islands Land Trust currently protects, *in perpetuity*, over 17,000 acres of land in all counties. **The vast majority, over 15,000 of these acres, are working ranch and farmlands.** Preventing conservation nonprofits from accessing Legacy Lands funding will most likely lead to less protection of agricultural lands than could be accomplished.

Summary:

The lands protected to date include the full range of conservation values the LLCF was established to protect: lands with significant cultural, agricultural, recreational, native habitat and watershed values, and this bill would undermine the clear purpose of the law --- conserving Hawaii's Legacy lands for future generations.

If indeed **The Environment is Our Economy**, as is so often claimed by the administration, legislature, HTA, editorials and chambers of commerce, then this Bill significantly reduces our ability to protect conservations lands, and therefore our economy.

Please do not approve SB 2378.

Sincerely,



Dale B. Bonar, Ph.D.
Executive Director

Testimony against SB 2378

Kamakani O Kohala Ohana strongly opposes this measure to change the Legacy Land Conservation Program. It is ill-conceived and done without any review by the communities most affected by it, specifically the North Kohala district on the Big Island. The Legacy Land Program has assisted the purchase or pending purchase of four coastal properties in North Kohala.

Under this bill none of them would have been possible.

Under this bill, nonprofits and counties are not eligible to compete for the funding, so past and current projects like Lapakahi, Pao`o, Kaiholena North and South, and Kauhola (all projects where nonprofits and Hawai`i County were the applicants and co-applicants) would not have been eligible to even compete for Legacy funding.

Our group with the backing of 400 families in North Kohala has partnered with 8 other Kohala community groups in working toward the preservation of an open coastline in our district for over 25 years. Our dedication to working with land owners, government agencies, land trusts and grantees is well known. Cooperation in funding is an essential element of what we do. Our experience tells us that this bill works against the better efforts of the State. Please drop it.

Toni Withington -- Spokesperson

January 31, 2012

Senators Solomon, Kahele and Tsutsui—

I oppose SB 2378 as it restricts the State Legacy Land Fund to 4 state agencies shutting out non-profits and communities who have worked hard and been successful in acquiring lands for conservation and public stewardship. In Kohala, we have been more than fortunate, having the help of State Legacy funding in purchasing important cultural lands at Kaiholena, Pao'o, and Nu'uano. I firmly oppose this bill..

Joseph A. Carvalho
Kohala

Testimony for WLH/AGL 2/2/2012 2:45:00 PM SB2378

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Nancy Davlantes
Organization: Individual
E-mail: ndavlantes@aol.com
Submitted on: 2/1/2012

Comments:

There is no reason for a bill to restrict applicants to the Legacy fund to only four state agencies - BLNR, the Dept. of Agriculture, the Agribusiness Development Corporation, and the Public Land Development Corporation. These agencies can already apply under the existing law. Under the existing law, applicants must submit applications and compete with other applicants for funding, and that's the best system for ensuring that only the best, most prepared/ready-to-go, and significant land projects get funded. Competition ensures good land conservation

Other state agencies, counties and non-profit land conservation organizations must continue to be allowed to apply for funding. Non-profit land conservation organizations have used Legacy funding to protect important places such as Lapakahi State Historical Park on the Big Island, important agricultural land on Moloka'i, and are working on dedicating ag land at Turtle Bay and in Windward O'ahu to agriculture in perpetuity.

This bill would undermine the public-private partnerships that have made the Legacy Land law a success.

I also oppose the provision that would allow Legacy funds to be used for undefined "regulatory functions." The existing law already allows up to 5% of the fund to be used for administrative expenses, up to 5% for maintenance, operations and managements of lands acquired with Legacy funds, invasive species control, and re-forestation and sediment control. Allowing undefined expenditures on "regulatory functions" would allow more money to be siphoned away from the law's primary mission -- to conserve land.

Senator Pohai Ryan has been working closely with the BLNR and Legacy Land Commission to promulgate rules and refine policies to improve Legacy land processes and that process should be allowed to continue.

Dane Wicker

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 01, 2012 9:34 AM
To: WLH Testimony
Cc: rick.ck.barboza@gmail.com
Subject: Testimony for SB2378 on 2/2/2012 2:45:00 PM

Testimony for WLH/AGL 2/2/2012 2:45:00 PM SB2378

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Rick Barboza
Organization: Individual
E-mail: rick.ck.barboza@gmail.com
Submitted on: 2/1/2012

Comments:

Dane Wicker

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 01, 2012 8:11 AM
To: WLH Testimony
Cc: i.pestana@yahoo.com
Subject: Testimony for SB2378 on 2/2/2012 2:45:00 PM

Testimony for WLH/AGL 2/2/2012 2:45:00 PM SB2378

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Ikaika Pestana
Organization: Individual
E-mail: i.pestana@yahoo.com
Submitted on: 2/1/2012

Comments:

1. Bill restricts applicants to the Legacy fund to only four state agencies - BLNR, the Dept. of Agriculture, the Agribusiness Development Corporation, and the Public Land Development Corporation. Under the current law, state and county agencies and non-profit land conservation organizations may apply. The four agencies granted exclusive rights to apply for funds can already apply under the existing law. Under the existing law, applicants must submit applications and compete with other applicants for funding. Only the best, most prepared/ready-to-go, and significant land projects get funded. Competition ensures good land conservation. These four agencies can already compete for funds, and will get funded if they submit good applications. BLNR has already been successful in applying for funds (e.g., Hamakua Marsh, Honouliuli Forest Reserve, Kainalu Ranch). There is no reason why the four agencies cannot compete well for funds.
2. The Legacy Land law currently allows other state agencies, counties and non-profit land conservation organizations to apply for funding. The bill excludes these entities. Other state agencies like the Office of the Hawaiian Affairs, which has conserved Wao Kele O Puna, Waimea Valley, and Pahua Heiau, would be excluded from applying. Counties (which have used Legacy funding to expand Black Pot park in Hanalei on Kaua'i, and purchase coastal land along the Kohala and Ka'u coastlines on Hawai'i island) would also be excluded. Non-profit land conservation organizations like The Nature Conservancy, The Trust for Public Land, the Hawaiian Islands Land Trust, the Moloka'i Land Trust, and the North Shore Community Land Trust, would also be excluded. These non-profit land conservation organizations have used Legacy funding to protect important places such as Lapakahi State Historical Park on the Big Island, important agricultural land on Moloka'i, and are working on dedicating ag land at Turtle Bay and in Windward O'ahu to agriculture in perpetuity with the support of Legacy funds.
3. By excluding non-profit land conservation organizations, counties, and other State agencies, the bill undermines the public-private partnerships that have made the Legacy Land law a success. For example, The Trust for Public Land partnered with the Division of Forestry and Wildlife to apply for Legacy funding to purchase Honouliuli Forest Reserve, a watershed with dozens of endangered and threatened species, cultural sites, and important forest watershed that contributes to the Pearl Harbor aquifer. The Trust for Public Land was able to work with other private investors to purchase a larger acreage from the James Campbell Company (the company refused to sell smaller lots), subdivide out the forest reserve, secure private interim financing to purchase the land on to meet the landowner's requirements, raise substantial federal funding (over \$2 million), and transfer it to the State (with a 400K endowment for management at the HI Community Foundation). Without the

help of private partners like the Trust for Public Land, the transaction could not have occurred.

4. The bill also proposes to allow Legacy funds to be used for undefined "regulatory functions." The existing law already allows up to 5% of the fund to be used for administrative expenses, up to 5% for maintenance, operations and managements of lands acquired with Legacy funds, invasive species control, and re-forestation and sediment control. Allowing undefined expenditures on "regulatory functions" would allow more money to be siphoned away from the law's primary mission -- to conserve land.

5. Senator Pohai Ryan has been working closely with the BLNR and Legacy Land Commission to promulgate rules and refine policies to improve Legacy land processes. That process should be allowed to continue -- if substantial changes are made to the law, the rules would have to be amended and go out (yet again) for public hearing and AG review.

Dane Wicker

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 01, 2012 7:28 AM
To: WLH Testimony
Cc: alohaxtc@hawaii.rr.com
Subject: Testimony for SB2378 on 2/2/2012 2:45:00 PM

Testimony for WLH/AGL 2/2/2012 2:45:00 PM SB2378

Conference room: 229
Testifier position: Oppose
Testifier will be present: No
Submitted by: Harvey Arkin
Organization: Individual
E-mail: alohaxtc@hawaii.rr.com
Submitted on: 2/1/2012

Comments:

Aloha,

1. Bill restricts applicants to the Legacy fund to only four state agencies - BLNR, the Dept. of Agriculture, the Agribusiness Development Corporation, and the Public Land Development Corporation. Under the current law, state and county agencies and non-profit land conservation organizations may apply. The four agencies granted exclusive rights to apply for funds can already apply under the existing law. Under the existing law, applicants must submit applications and compete with other applicants for funding. Only the best, most prepared/ready-to-go, and significant land projects get funded. Competition ensures good land conservation. These four agencies can already compete for funds, and will get funded if they submit good applications. BLNR has already been successful in applying for funds (e.g., Hamakua Marsh, Honouliuli Forest Reserve, Kainalu Ranch). There is no reason why the four agencies cannot compete well for funds.

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3. By excluding non-profit land conservation organizations, counties, and other State agencies, the bill undermines the public-private partnerships that have made the Legacy Land law a success. For example, The Trust for Public Land partnered with the Division of Forestry and Wildlife to apply for Legacy funding to purchase Honouliuli Forest Reserve, a watershed with dozens of endangered and threatened species, cultural sites, and important forest watershed that contributes to the Pearl Harbor aquifer. The Trust for Public Land was able to work with other private investors to purchase a larger acreage from the James Campbell Company (the company refused to sell smaller lots), subdivide out the forest reserve, secure private interim financing to purchase the land on to meet the landowner's requirements, raise substantial federal funding (over \$2 million), and transfer it to the

State (with a 400K endowment for management at the HI Community Foundation). Without the help of private partners like the Trust for Public Land, the transaction could not have occurred.

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5. Senator Pohai Ryan has been working closely with the BLNR and Legacy Land Commission to promulgate rules and refine policies to improve Legacy land processes. That process should be allowed to continue -- if substantial changes are made to the law, the rules would have to be amended and go out (yet again) for public hearing and AG review.

Mahalo,
Harvey Arkin

SENATE COMMITTEE AGRICULTURE

SENATE COMMITTEE ON WATER, LAND, AND HOUSING

ATTN: CHAIRS CLARENCE NISHIHARA AND DONOVAN DELA CRUZ
Testimony Opposing SB 2378, RELATING TO LEGACY LANDS
February 2, 2012, 2:45 p.m.
Conference Room 229

Aloha,

I respectfully provide testimony in opposition to the bill.

While understanding the desire to direct to the Legacy Lands Conservation funds to state organizations, I would encourage that you reconsider removing nonprofit conservation organizations from being eligible for these funds.

A clear example of how valuable these funds are to communities, the Hawaiian Islands Land Trust this year approached the Legacy Lands Commission for funding to acquire a 9 acre property in Hau`ula which contains a heiau and whose family was entertaining selling the property. In fact, the family had placed the property up for sale in the past and rejected an offer made when they realized they preferred the land be acquired by "someone" whose interest was to steward and maintain the cultural importance of the property. This particular parcel has been supported twice by the Conference of Hawaiian Civic Clubs as an important property with one of the last relatively intact heiau left in the Ko`olauloa region.

This property was the catalyst for the Hau`ula Community Association and the Kao`olauloa Hawaiian Civic Club to come together to commit to help steward and maintain the property and to make sure that it would be a valuable piece of their heritage for the community.

This property would not necessarily have been protected without the help of funding from the Legacy Lands Conservation Fund. With this funding, along with other funding resources, this property jewel is within reach of preservation and a source of community pride and cohesiveness.

A project such as this is not necessarily within the scope of the DLNR, DOA, agribusiness development corporation or the public land development corporation. To totally eliminate support for these types of projects proposed by valid nonprofit conservation organizations that give a community a "sense of place" would be very short-sighted as it builds and enhances a community's cultural pride.

I request you re-consider the elimination of nonprofit conservation organizations as a valid organization to request funds from the Legacy Lands Conservation Fund.

Mahalo,

Cynthia K.L. Rezentes
Wai`anae resident

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 01, 2012 6:47 AM
To: WLH Testimony
Cc: farmfreshhawaii@gmail.com
Subject: Testimony for SB2378 on 2/2/2012 2:45:00 PM

Testimony for WLH/AGL 2/2/2012 2:45:00 PM SB2378

Conference room: 229
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: Juanita Kawamoto Brown
Organization: Individual
E-mail: farmfreshhawaii@gmail.com
Submitted on: 2/1/2012

Comments:

As a citizen advocate I oppose this bill as it is placing a fiscal responsibility that should totally support and sustain the needs of the people into departments that are controlled by boards that are in favor of big business operations without the oversight of community and public hearing processes that could balance the disbursement of the people of Hawaii's hard earned tax dollars. The quasi public boards have no track record to support this kind of fiscal responsibility and should not be given carte blanche to use these monies as they deem fit without the people knowledge of support. The 99% of the people who make up the masses must be properly represented and the movement of bills like this can through off the fragile balance needed to protect and preserve fiscally sound judgement for Hawaii's people and future.

SB3011

Requires DLNR to transfer title to public agricultural lands under its jurisdiction to the agribusiness development corporation.

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 Committees on
AGRICULTURE
and
WATER, LAND AND HOUSING**

**Thursday, February 2, 2012
2:45 PM
State Capitol, Conference Room 229**

**In consideration of
SENATE BILL 3011
RELATING TO PUBLIC LANDS**

Senate Bill 3011 directs the Department of Land and Natural Resources (Department) to transfer title in all lands under its jurisdiction that are within an agricultural land use district to the Agribusiness Development Corporation (ADC) by January 1, 2013, excluding lands that are being used by the Department for its offices or other administrative purposes. The Department opposes this bill.

Senate Bill 3011 conflicts with Act 90 of the Session Laws of the State of Hawaii, 2003. Act 90 directed the Department to transfer non-agricultural park lands to the Department of Agriculture. Non-agricultural park lands include lands that are within the agricultural land use district. A substantial amount of land has already been transferred to the Department of Agriculture (DOA) pursuant to Act 90. If Senate Bill 3011 were to be enacted, it would impose inconsistent statutory obligations on the Department with no guidance on how to resolve the conflict.

Additionally, the bill is too broad. Senate Bill 3011 excludes lands that are being used by the Department for its offices or other administrative purposes. However, approximately 80,000 acres of state parks, forest reserves, wildlife sanctuaries and game management areas are located in the agricultural land use district. The lands are generally not used for offices or administrative purposes. But due to the sweeping language of the bill, these park and forest areas may have to be transferred to ADC.

Senate Bill 3011 speaks in terms of transferring title in the lands to ADC. However, land transfers are generally made pursuant to Section 171-11, Hawaii Revised Statutes (HRS), on

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

executive orders. Lands transfers to ADC should be in accordance with Section 171-11, HRS, and not by a deed or similar conveyance.

Further, the bill provides that for all lands that are transferred pursuant to the bill, the Department shall retain all regulatory and enforcement functions and the ADC shall assume all commercial and revenue-generating functions. Under this language, the Department would apparently remain responsible for functions such as reviewing any environmental assessments required for projects on the land pursuant to Chapter 343, HRS. But when land is set aside to an agency under Section 171-11, HRS, the agency assumes such responsibilities. There is no explanation in the bill why set-asides to ADC would require different treatment.

Finally, the Department needs to retain some appropriate public lands currently zoned in the agricultural district to enable the restoration of key, currently degraded watersheds for water production, and the development of both biomass and commercial forestry operations in the future. The Department is the more appropriate lead agency for the future development and management of biomass and commercial forestry, and restoration of some public agricultural lands back into productive watershed. The Department has professionally trained foresters, botanists, ecologists, wildlife biologists, environmental planners, etc. Also DOA and ADC generally do not consider forest plantations (trees) an agricultural crop, and therefore do not prioritize forestry projects as part of their mission. In contrast, the Department's mission is for the long-term protection of forests and watersheds. Similarly, certain of the Department's lands in the agricultural district are set aside as Natural Area Reserves by Chapter 195, HRS. The Department is the more appropriate lead managing agency to preserve in perpetuity these areas which support communities, as relatively unmodified as possible, of the natural flora and fauna, as well as geological sites of Hawaii.

For the reasons stated above, the Department opposes Senate Bill 3011, as currently drafted.

SENATE COMMITTEE AGRICULTURE

SENATE COMMITTEE ON WATER, LAND, AND HOUSING

ATTN: CHAIRS CLARENCE NISHIHARA AND DONOVAN DELA CRUZ
Testimony Opposing SB 3011, RELATING TO PUBLIC LANDS
February 2, 2012, 2:45 p.m.
Conference Room 229

Aloha,

I respectfully provide testimony in opposition to the bill.

While probably well-intentioned this bill may have deleterious effects on actions that have recently occurred to transfer lands from the Department of Agriculture to the Department of Land and Natural Resources.

Within the Wai`anae valley a large tract of land was under the Department of Agriculture's management and leased to a rancher. Unfortunately, due to the lack of ability to enforce the particulars of the lease, cattle were not contained within the leased ranch property and eventually found their way into a forest area managed by the Department of Forestry and Wildlife within DLNR. Since the transfer of land from DOA to DLNR, DLNR has worked with a community group to start to round-up feral cattle and contain them on the ranch lands as much as possible. In addition, DOFAW is also determining how best to remove the feral cattle from the forestry lands before further destruction occurs on these lands.

In addition, this property is heavily populated with cultural sites, including at least two heiau. These cultural sites need to be identified and placed under protection before there can be extensive use of appropriate portions of the property again for agricultural uses and some of the property should be removed from being able to be utilized for agricultural purposes to preserve and protect these unique sites. Per Professor Ross Cordy, this site appears to have one of the most intact, remote cultural complexes left on the island.

Each identified agricultural property within DLNR should definitely be looked at to determine if the land is clearly more suited for management for agricultural use but to dictate a broad brush stroke without further understanding the uniqueness of some of the lands may mean the loss of lands for other uses, e.g. cultural and historical purposes, restoration of forest lands for fire management, etc.

I encourage you to reconsider the blanket transfer of lands from DLNR to DOA and modify the conditions in which this transfer makes sense or to HOLD the bill at this time until DLNR and DOA may work together to compile a listing of lands where it makes sense to make a transfer and identify those distinct properties for transfer.

Mahalo,

Cynthia K.L. Rezentes
Wai`anae resident

[REDACTED]

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 01, 2012 7:02 AM
To: WLH Testimony
Cc: farmfreshhawaii@gmail.com
Subject: Testimony for SB3011 on 2/2/2012 2:45:00 PM

Testimony for WLH/AGL 2/2/2012 2:45:00 PM SB3011

Conference room: 229
Testifier position: Oppose
Testifier will be present: Yes
Submitted by: Juanita Kawamoto Brown
Organization: Individual
E-mail: farmfreshhawaii@gmail.com
Submitted on: 2/1/2012

Comments:

I strongly oppose this bill as its purpose is to give carte blanche and access to an entity that was designed purely to manage and operate water irrigation systems left behind by plantations and is being manipulated to support exclusive fiscal advantages to who this quasi public board would deem fit. No oversight from the people of Hawaii who will suffer at an kinds of business decisions that will come out of the current ADC and its lack of public policy. The DOA is the only place this kind of responsibility should be supported and not a sub standard entity that can run away from the overview of the people.