LATE

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

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

ESTHER KIA'AINA
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 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
WAYS AND MEANS

Wednesday, February 20, 2013
9:45 AM
State Capitol, Conference Room 211

In consideration of
SENATE BILL 708, SENATE DRAFT 1
RELATING TO THE LEGACY LAND CONSERVATION PROGRAM

Senate Bill 708, Senate Draft 1, proposes to amend Section 173A-2.6, Hawaii Revised Statutes, to require the Legacy Land Conservation Program ("Legacy Land") to repeal the requirement that state and county agencies and nonprofit land conservation organizations receiving Legacy Land funding must provide easements, deed restrictions, or covenants to county and federal natural resource conservation agencies. The bill would allow the Board of Land and Natural Resources ("Board") and other state agencies and nonprofit organizations to require conservation easements, agricultural easements, deed restrictions, or covenants over properties acquired by Legacy Land grant recipients. The bill also allows the Board and other state agencies and organizations to exempt a project from this requirement. Given that the bill allows the Board the flexibility to require deed restrictions and covenants as options for what types of restrictions the Board may require as a condition of the receipt of funds, the Department of Land and Natural Resources (Department) supports the bill, however; the Department notes concerns regarding the potential practice of requiring that conservation easements be held by the Board.

Legacy Land provides grants to nonprofit land conservation organizations, state agencies, and counties, for the purchase of land and conservation easements, with the purpose of protecting resources having value to the State. Currently, as a condition of the receipt of funds, the Department requires grant recipients to place restrictions in the deeds of properties acquired with Legacy Land funds. The restrictions contain statutory approval and payback provisions and broad resource protection language. Per the restrictions, state recipients of Legacy Land funds must approach the Board for approval prior to selling, leasing, or otherwise disposing of the land, and in the event that the land is sold for purposes not consistent with the deed and grant restrictions, the portion of the net proceeds of a sale, equal to the proportion that the grant by the State bears to the original cost of the land, must be returned to the State and re-deposited to the Land Conservation Fund. Also per the restrictions, the owner must manage the land in a manner consistent with the protection of the resources as described in the original grant application.

A conservation easement is a specific type of deed restriction that requires further dedication of staff time, more thorough due diligence, and greater expense. The standard practices for assessing and deciding to hold perpetual conservation easements are:

- Ensuring secure long term stewardship and enforcement funding;
- Procuring a baseline documentation report that documents the important conservation values protected by the easement and the relevant conditions of the property as necessary to monitor and enforce the easement;
- Conducting annual on-site inspection to monitor and document conservation values;
- Maintenance of working relationships with the landowners;
- Establishment of an enforcement policy and procedure; and
- Creating a system for tracking reserved and permitted rights and approvals.[1]

The Legacy Land Program is currently administered to meet statutory goals of resource protection while balancing efficiency, flexibility, and maximum public benefit for the state resources expended. If the Department is directed to take conservation easements on projects funded with Legacy Land funds, this practice would alter the Program's workload and expenses significantly, and may reduce the program's efficiency in collaborating with nonprofit and county partners to protect land and resources.

[1] Land Trust Standards and Practices, 2004, The Land Trust Alliance. Available at: https://www.landtrustalliance.org/training/sp/lt-standards-practices07.pdf.

LATE

THE TRUST for PUBLIC LAND

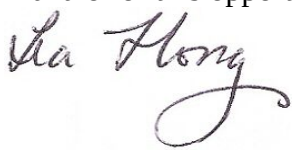
CONSERVING LAND FOR PEOPLE

THE TRUST FOR PUBLIC LAND'S TESTIMONY
REGARDING SB 708, SD 1 RELATING TO THE LEGACY LAND CONSERVATION PROGRAM
Senate Committees on Ways & Means
Wednesday, February 20, 2013, 9:45 a.m., Room 211

The Trust for Public Land does not believe SB 708, SD 1 is necessary. Initially, SB 708 amended the law creating the Legacy Land Conservation Program to give agricultural lands and absolute priority for funding. SB 708, SD 1 now deletes the previously proposed agricultural priority, but includes amendments requiring the Board of Land and Natural Resource to acquire a conservation easement or other deed restriction ensuring the purposes of the program over land or interests in land acquired with Legacy Land funding. These changes are not necessary.

Former Senate President Colleen Hanabusa previously raised this concern several years ago and changed the law to require the Board to acquire a conservation easement over land or interests in land acquired with Legacy Land funding. The current law requires the Board to acquire a conservation easement over land acquired with Legacy Land funding: "The board shall require as a condition of the receipt of funds that it be an owner of any such conservation easement." HRS §§174A-4(c), (d) and (e). The proposed changes do not appear to be necessary.

Mahalo for this opportunity to testify -



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

LATE

The Nature Conservancy
Protecting nature. Preserving life.

The Nature Conservancy of Hawai'i
923 Nu'uanu Avenue
Honolulu, HI 96817

Tel (808) 537-4508
Fax (808) 545-2019

nature.org/hawaii

Testimony of The Nature Conservancy of Hawai'i
Commenting on S.B. 708 SD 1 Relating to the Legacy Land Conservation Program
Senate Committee on Ways and Means
Wednesday, February 20, 2013, 9:45AM, Room 211

The Nature Conservancy provides the following comments on S.B. 708 SD1:

1. If the purpose of this legislation is to require BLNR to hold a conservation easement on any property it funds from the Legacy Land program unless the BLNR specifically exempts such easement, then the current law already requires that in the existing language of HRS §173A-4(c),(d) and (e).

2. The proposed amendment to HRS §173A-4(c), (d) and (e) to clarify that the BLNR "be an owner any such conservation or agricultural easement [~], deed restriction or covenant" is a reasonable amendment to the law for consistency and housekeeping purposes. This amendment would make clear that acceptable protections include not only conservation easements, but also agricultural easements, deed restrictions or covenants. Deed restrictions or covenants can often be sufficient protections for the State's interests without having to take the more involved and often costly step of owning and managing an easement interest.

3. It does not seem necessary or desirable to delete appropriate county and federal natural resource agencies from HRS §173A-4(c), (d) and (e) as proposed in the SD1. Allowing county or federal agencies to hold easements, deed restrictions or covenants in no way diminishes the requirement in the law that the BLNR also be an owner of such interests. And, there are instances where it may be desirable, for example, for a county parks authority or a federal forestry agency to also be an owner of such protective interests. We don't think the county and federal agencies need to or should be eliminated from the existing law as proposed in the SD1.

4. Finally, the proposed §173A-4(f) rulemaking provision seems reasonable. Indeed, DLNR has undertaken rulemaking already.

Thank you for this opportunity to provide testimony.