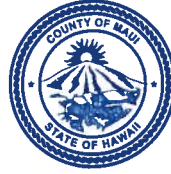


ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

March 28, 2014

Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair
and Members of the Senate Committee on Ways and Means
State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Aloha Chair Ige, Vice Chair Kidani, and Committee Members,

SUBJECT: SUPPORT FOR HB2101 HD1 SD1

Please accept this continued testimony in support House Bill 2101, House Draft 1, Senate Draft 1 to establish a secure funding source for the Kaho`olawe Island Reserve (Reserve). Many of you have recently been to Kaho`olawe, and would hopefully agree that providing the Reserve with a secure source of funding is both urgent and important.

Under the proposed bill, a portion of state conveyance tax revenue would be used to replenish the Kaho`olawe Rehabilitation Trust Fund with an annual cap and a sunset date in 2020. **I would ask that you retain the current language that would provide the Trust Fund with ten percent of conveyance tax revenue, with a cap of \$3.5 million, each year, and extend the sunset date to the original proposed language of 2026.**

As previous testimony has argued, this is a reasonable funding source for two reasons: first, the funding responsibility for Kaho`olawe rests with the State and, second, there is a rational basis for conveyance tax revenue to fund Kaho`olawe's programs and operations.

When the State accepted the return of Kaho`olawe from the United States in 1994, it clearly accepted the responsibility to preserve and manage the Reserve. The terms of this acceptance were also stated in the federally-mandated Kaho`olawe Island Conveyance Commission final report to Congress in 1993: "in the short term, federal funds will provide the bulk of the program support for specific soil conservation projects and related activities. **In the longer term, however, state revenues will be needed to continue and enhance those activities initiated with federal funds**" (emphasis added). This funding responsibility, therefore, belongs to the State.

Two current recipients of conveyance tax revenue have similar purposes as the Kaho`olawe Rehabilitation Trust Fund: the Land Conservation Fund and the Natural Area Reserve Fund. The Land Conservation Fund is used to acquire and manage certain special lands and can be used for land management techniques such as erosion control, reforestation and invasive species control, while the Natural Area Reserve System preserves, protects and manages unique natural resources. Both mirror the mission of the Kaho`olawe Rehabilitation Trust Fund to support management of the Reserve.

Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair
and Members of the Senate Committee on Ways and Means
March 28, 2014
Page 2

It makes sense to fund these programs through conveyance tax revenue. Our population increases each year, due both to natural growth of local families and to new people moving to Hawai'i. As our population increases, it becomes even more important to protect our natural, cultural and marine resources for the benefit of all of Hawai'i's people. Conveyance tax revenue is, therefore, a logical method to fund resources protection.

You have been told that without a secure funding source, Kaho'olawe's programs could continue for perhaps two more years. With 25 percent of the island remaining uncleared of unexploded ordnance, a continued round-the-clock 24/7 presence on Kaho'olawe is needed to ensure the protection of the general public. HB2101 HD1 SD1 provides secure funding, with a reasonable annual cap that will allow ongoing operations and programs to continue, and sunset date that coincides with the current strategic planning cycle.

Passage of HB2101 HD1 SD1 will fulfill the State's commitment to restore and protect the Reserve; **your support of the current proposed language providing the KIRC with ten percent of state conveyance tax revenue, capped at \$3.5 million annually, will be sincerely appreciated.**

Mahalo for your consideration!

Sincerely,



MICHELE MCLEAN
Deputy Planning Director, County of Maui
Chair, Kaho'olawe Island Reserve Commission

Mahalo!



HB2101 HD1 SD1
RELATING TO THE KAHO‘OLAWE ISLAND RESERVE
Senate Committee on Ways and Means

March 28, 2014

9:15 a.m.

Room 211

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB2101 HD1 SD1, which authorizes a portion of State conveyance tax revenue to be deposited into the Kaho‘olawe rehabilitation trust fund up to \$3.5 million for the long-term rehabilitation and maintenance of the Kaho‘olawe Island Reserve.

Kaho‘olawe, a kinolau of Kanaloa, remains a piko of Hawaiian culture, yet still retains visible scars from decades of previous mismanagement. Kaho‘olawe was critical to the Hawaiian cultural renaissance and continues to serve as an integral educational center for traditional navigation, hula, natural resource management and other cultural traditions and disciplines.

Since Kaho‘olawe’s return to the State of Hawai‘i in 1994, the Kaho‘olawe Island Reserve Commission (KIRC) has been tasked by the Legislature to manage Kaho‘olawe while it is held in trust for a future Native Hawaiian sovereign entity. With an initial \$44 million in federal funding to assist in restoration work, KIRC has begun the long road towards rehabilitation and maintenance of the island reserve. Marine and terrestrial components of the Kaho‘olawe Island Reserve are finally beginning to heal from decades of extreme damage.

While the federal funds were a noteworthy investment, they were never meant to establish a significant endowment for the long-term rehabilitation and maintenance of the Kaho‘olawe island reserve. As stated in the federally-mandated Kaho‘olawe Island Conveyance Commission (KICC) final report to Congress in 1993, “in the short term, federal funds will provide the bulk of the program support for specific soil conservation projects and related activities. In the longer term, however, state revenues will be needed to continue and enhance those activities initiated with federal funds.”

Accordingly, this bill seeks to allocate a portion of state conveyance tax revenue to replenish the Kaho‘olawe rehabilitation trust fund. OHA supports efforts to protect, preserve and restore Kaho‘olawe as a valuable natural and cultural resource for the benefit of Hawai‘i’s current and future generations.

Therefore, OHA urges the Committee to **PASS** HB2101 HD1 SD1. Mahalo for this opportunity to provide this testimony.

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
WAYS AND MEANS

Friday, March 28, 2014
9:15 AM
State Capitol, Conference Room 211

In consideration of
HOUSE BILL 2101, HOUSE DRAFT 1, SENATE DRAFT 1
RELATING TO THE KAHO'OLAWE ISLAND RESERVE

House Bill 2101, House Draft 1, Senate Draft 1 proposes to deposit a percentage of conveyance tax revenue annually into the Kaho'olawe Rehabilitation Trust Fund, up to a maximum. **The Department of Land and Natural Resources (Department) offers the following comments.**

Currently, beneficiaries of the Conveyance Tax include the Department's Natural Area Reserve Fund and Land Conservation Fund. To protect Hawaii's invaluable ecosystems and water supplies, the Natural Area Reserve Fund was created for the Natural Area Partnership Program, the Natural Area Reserves, projects undertaken in accordance with watershed management plans, and the Youth Conservation Corps. The Land Conservation Fund supports the Legacy Land Conservation Program (LLCP). The LLCP protects rare and unique cultural, natural, agricultural, and recreational resources from destruction by funding the acquisition of fee title or conservation easements by nonprofits, counties, and state agencies.

The Legislature has determined that there is a clear nexus between the source of the conveyance tax and providing funding for watershed protection and other natural resource preservation programs. The development, sale, and improvement of real estate in Hawaii adds additional pressure on natural areas, coastal access, agricultural production, and Hawaii's water resources and watershed recharge areas (Act 156, Session Laws of Hawaii 2005).

These programs support active land management and acquisition, including defending important conservation areas against threats from development and invasive species and also by restoring these areas by planting native species and monitoring recovery, which increases property values and provides a direct nexus to real estate. Dedicated funding for these programs is critical for the protection of these public trust resources.

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

JESSE K. SOUKI
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



WRITTEN ONLY

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
HOUSE BILL NO. 2101, H.D. 1, S.D. 1

March 28, 2014

RELATING TO THE KAHO'OLAWA ISLAND RESERVE

House Bill No. 2101, H.D. 1, S.D. 1, requires the Chairperson of the Board of Land and Natural Resources to appoint the Executive Director of the Kaho'olawe Island Reserve Commission; authorizes 10% of the conveyance tax revenues, provided that no more than \$3,500,000 per fiscal year, shall be paid into the Kaho'olawe Rehabilitation Trust Fund for the long-term rehabilitation and maintenance of the Kaho'olawe Island Reserve; and repeals the measure on June 30, 2020 or upon the recognition of the sovereign Native Hawaiian entity by the State and the United States, whichever occurs sooner.

The Department of Budget and Finance would like to point out that the taxes from the conveyance fund are currently distributed as follows: 10 percent to the land conservation fund; 25 percent to the natural area reserve fund; 30 percent to the rental housing trust fund; and the remaining 35 percent to the general fund. The general fund revenue decline that would result from this legislation is currently not accounted for in the State's six-year general fund financial plan.

In light of the most recent Council on Revenues' tax projections, measures such as House Bill No. 2101, H.D. 1, S.D. 1, should be reconsidered based on their negative impact on general fund revenues and the sustainability of general funded programs throughout the State.

Protect Kaho‘olawe ‘Ohana
P.O. Box 39
Kaunakakai, Hawai‘i 96748



Testimony Presented Before the
Senate Ways and Means Committee
Friday, March 28, 2014
9:15am
House Conference Room 211

By
Noa Emmett Aluli, M.D.
Protect Kaho'olawe 'Ohana

IN SUPPORT OF HB 2101, HD1, SD1

Chairperson Hanohano Vice-Chair Cullen and members of the House Committee on Ocean, Marine Resources and Hawaiian Affairs. Aloha. My name is Noa Emmett Aluli and I am testifying on behalf of the Protect Kaho'olawe ‘Ohana (‘Ohana) in support of HB 2101, HD1, SD1.

I have been a physician in primary family health care on Moloka‘i since 1978 and a Medical Director of Molokai General Hospital since 1995. I am a founding member and spokesperson for the Protect Kaho‘olawe ‘Ohana (‘Ohana) and currently serve on the Kaho‘olawe Island Reserve Commission.

The Protect Kaho‘olawe ‘Ohana was formed following the first occupations of the island in January 1976. The ‘Ohana led the grassroots islandwide movement to stop the bombing and all military use of the island. In 1980, as a result of a civil suit, *Aluli v Brown*, the ‘Ohana was recognized as a steward for the island and granted access for cultural, educational and religious purposes. For 38 years, and ongoing, the ‘Ohana has engaged over 15,000 community participants from all islands and backgrounds in the ongoing stewardship of the island, fulfilling its mission, “to perpetuate aloha ‘aina throughout our islands through cultural, educational, and spiritual activities that heal and revitalize the cultural and natural resources of Kaho‘olawe”.

We have come to know and love the island as a unique and sacred place that has transformed and reconnected our generation of Native Hawaiians with our ancestral gods and kupuna. It is a ‘Piko" or center for the revitalization of native indigenous cultural practices and science. In recognition of the island as a national cultural treasure, the U.S. Congress, in an unprecedented action, returned the island to the people of Hawai‘i in 1994 and conducted a \$400 million clean up of unexploded ordnance from 1994 through 2004. Of that amount, \$44 million was turned over to the State of Hawai‘i to initiate the restoration of the island's cultural and natural resources. This money was placed in the Kaho‘olawe Rehabilitation Trust Fund and will run out in 2016.

The U.S. Navy only cleared nine (9) percent of the island of unexploded ordnance to a depth of 4 feet. In this area, the Navy can only guarantee that it is ninety percent confident that eighty-five percent of the ordnance was cleared. Sixty-eight (68) percent of the island has only been surface cleared of ordnance. Twenty-three (23) percent has not been cleared at all. The majority of the island and all of its surrounding ocean still poses to the general public the risk of exposure to unexploded ordnance. Therefore any access to the island is still escorted. Control of access to the island was turned over from the U.S. Navy to the State of Hawai'i in 2004.

The Hawai'i state legislature passed HRS 6-K for the management of the island by the Kaho'olawe Island Reserve Commission (KIRC) as a trust for eventual transfer to the Native Hawaiian sovereign governing entity. KIRC provides a vital service to the people of the State of Hawai'i in its work to restore and protect the cultural and natural resources of the island, and provide safe escorted public access. Despite the ongoing danger of widespread unexploded ordnance KIRC has accomplished a significant amount of restoration in key areas of the island.

HB 2101, HD1, SD1 seeks to allocate a portion of state conveyance tax revenue to replenish the Kaho'olawe rehabilitation trust fund to be used for the long-term rehabilitation and maintenance of the island reserve. As a partner with the Kaho'olawe Island Reserve Commission (KIRC) in the stewardship of the cultural and natural resources of the island of Kanaloa Kaho'olawe, the Protect Kaho'olawe 'Ohana supports HB2101, HD1, SD1 as a means of replenishing the Kaho'olawe Rehabilitation Trust Fund so that the KIRC can continue to restore the island and provide safe and meaningful access to the island.

Aloha . . . Aloha 'Āina



LAND USE RESEARCH
FOUNDATION OF HAWAII

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March 27, 2014

Senator David Y. Ige, Chair
Senator Michelle N. Kidani, Vice Chair
Senate Committee on Way and Means

Comments and Concerns Regarding HB 2101, HD1 SD1, Relating to Kaho‘olawe Island Reserve (Requires the Chairperson of the Board of Land and Natural Resources to appoint the executive director of the Kaho‘olawe Island Reserve Commission. Deposits ten percent of conveyance tax revenue annually into the Kaho‘olawe Rehabilitation Trust Fund, up to a maximum amount of 3,500,000 per fiscal year. Clarifies the purpose of the deposits shall be to for the long-term rehabilitation and maintenance of the Kaho‘olawe Island Reserve. Repealed on June 30, 2020, or upon the recognition of a sovereign native Hawaiian governing entity, whichever occurs sooner. Effective July 1, 2014).

Friday, March 28, 2014, 9:15 a.m., in Conference Room 211

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF’s mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii’s significant natural and cultural resources, and public health and safety.

LURF **supports the intent** of this measure, and respectfully requests that this **Committee provide continuing appropriations for the Kaho‘olawe Rehabilitation Trust Fund (“KRTF”) through the General Fund appropriation process rather than through a means removed from the normal legislative budget and appropriation process (conveyance tax).**

Based on the following reasons and considerations, LURF **opposes** HB 2101, HD1, SD1, because it would be an illegal use of conveyance tax funds, and respectfully requests that this measure be **held in Committee.**

1. It is unnecessary to use of the conveyance tax to replenish special funds such as the KRTF (which does not have any “nexus” to the conveyance tax). Recognizing the importance of the long-term rehabilitation and maintenance of the Kaho‘olawe island reserve, the 2014 Legislature should replenish funding for the

KRTF through a State General Fund appropriation, just like it did for NARF in 2013.

2. Based on the 2012 State Auditor's Report, the application of the Conveyance Tax revenue collected pursuant to HB 2101, HD1 to replenish the KRTF is arguably illegal and in violation of HRS Sections 37-52.3 and 37-52.4.
3. According to the 2012 State Auditor's Report, special funds created for worthy purposes, deserve funding through broad taxes on the public and the State General Fund, rather than through the Conveyance Tax, which targets few, is unreliable, and fluctuates with the housing market. The KRTF is such a special fund with a worthy purpose, so it deserved funding through broad taxes on the public – rather than a tax on only a few who sell their property.
4. HB 2101, HD1, SD1 would violate Act 130, (SLH 2013), which sets the legal criteria for establishing and continuing to fund a special fund such as the KRTF
5. This measure is also flawed, because it does not indicate any attempts to comply with HRS Section 6K-9.5(a), which lists existing, alternative and more legally appropriate sources of funding for the KRTF.
6. If this bill is passed, it should exempt landowners who have provided substantial support for the preservation and protection of Hawaii's great treasures of historical and cultural significance.

HB 2101, HD1, SD1. This measure requires the Chairperson of the Board of Land and Natural Resources to appoint the executive director of the Kaho'olawe Island Reserve Commission; deposits ten percent of conveyance tax revenue annually into the KRTF, up to a maximum amount of 3,500,000 per fiscal year; clarifies the purpose of the deposits shall be to for the long-term rehabilitation and maintenance of the Kaho'olawe Island Reserve; repeals on June 30, 2020, or upon the recognition of a sovereign native Hawaiian governing entity, whichever occurs sooner; requires the Kaho'olawe Island Reserve Commission to report annually to the Legislature on the amount of deposits made into and amount and details of expenditures made from the KRTF; and its effective date is July 1, 2014.

Background. The Hawaii Conveyance Tax was never intended as a revenue-generating tax to provide funding for non-conveyance tax-related funds. Hawaii Revised Statutes ("HRS"), Chapter 247 (Conveyance Tax), was purposefully enacted in 1966 to provide the State Department of Taxation ("DoTAX") with informational data for the determination of market value of properties transferred, and to assist the DoTax in establishing real property assessed values. In short, the sole intent of the conveyance tax was originally to cover the administrative costs of collecting and assessing said informational data, which necessarily entails the recording of real estate transactions, as performed by the Bureau of Conveyances. As such, the conveyance tax should not be utilized as a vehicle to generate revenue, especially for non-conveyance tax-related funds and programs.

Since the enactment of HRS Chapter 247, however, the State Legislature has proposed, and has successfully implemented changes to the law 1) to allow application of conveyance tax revenue to a number of non-conveyance type uses (land conservation fund; rental housing trust fund; and NARF) to the point where there is no longer any clear nexus between the benefits sought by the original Act and the charges now proposed to be levied upon property-holding entities transferring ownership; and 2) also to increase the tax rates to the point where said revenues now appear to far exceed the initially stated purpose of, or need identified in the Act.

This measure, which proposes to fund the KRTF through conveyance taxes, without a sufficient nexus, and without demonstrating any effort to seek legal sources of funding, raises issues that are identical to the 2013 proposed funding of NARF through conveyance taxes.

LURF's Position.

1. **It is unnecessary to use of the conveyance tax to replenish special funds such as the KRTF (which are non-related to the conveyance tax).** Recognizing the importance of the long-term rehabilitation and maintenance of the Kaho'olawe island reserve, the 2014 Legislature should replenish funding for the KRTF through a State General Fund appropriation, just like it did for NARF in 2013.

As explained above, last year, during the 2013 Regular Session, sufficient general funding for the NARF was successfully earmarked by this Legislature. Standing Committee Report No. 928, dated March 11, 2013, and relating to HB 200, HD1 (the State Budget for FY2014-2015), confirms that the Committee on Finance, recognizing the importance of projects that preserve the State's natural resources, appropriated \$8.5 million to the NARF.

Instead of funding the KRTF through conveyance taxes, LURF supports funding for KRTF in 2014, through an appropriation from the State General Fund.

2. **Based on the 2012 State Auditor's Report, the application of the Conveyance Tax revenue collected pursuant to this bill, to replenish the KRTF is arguably illegal and in violation of HRS Sections 37-52.3 and 37-52.4.** LURF believes that the legal analysis of this measure and the proposed conveyance tax funding of the KRTF would be identical to the legal analysis and State Auditor's 2012 findings relating to the conveyance tax funding of the NARF.

Legal criteria for special funds. The legal criteria for the establishment and continuance of special and revolving funds (including special funds such as KRTF and NARF), was enacted by the 2002 Legislature through Act 178, SLH 2002; HRS Sections 37-52.3 and 37-52.4. According to the law, in order to be approved for continuance, a special fund must:

- serve the purpose for which it was originally established;
- reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program (as opposed to serving primarily

as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process);

- provide an appropriate means of financing for the program or activity; and
- demonstrate the capacity to be financially self-sustaining.

The first and second criteria are nearly identical to those in Act 240, SLH 1990, codified in Section 23-11, HRS, which requires the State Auditor to review, each session, all legislative bills which propose to establish new special or revolving funds.

2012 State Auditor's Report findings. The 2012 Auditor's Report was issued in July, 2012, and applied the criteria in HRS Sections 37-52.3 and 37-52.4 to forty-seven (47) funds and accounts that were the subject of general fund transfer authorizations during FY2009, FY2010, and FY2011, including the NARF. The Report includes an analysis of the NARF (which LURF believes would also be applicable to the KRTF), and states:

“...the Natural Area Reserve Fund has minimal linkage between the benefits and the fund revenue, which comes from conveyance taxes paid on real estate transactions. The fund supports programs such as the Natural Area Partnership and Forest Stewardship programs, projects undertaken in accordance with watershed management plans, and the Youth Conservation Corps. Individuals that pay this tax may benefit from the Natural Area Reserves program, but so do other Hawai'i residents and visitors to the state.” (2012 Auditor's Report, p. 30)

The 2012 Auditor's Report concluded that the **NARF did not meet the criteria for continuance, because there was no clear link between the benefits sought and user or beneficiary charges.** The Auditor further concluded that **the NARF fund earmarked by the Legislature should be repealed and that the unencumbered balance should lapse to the General Fund.** LURF believes that this legal analysis of NARF funding through the conveyance tax, would be identical to the legal analysis of SB 2743, or any similar attempt to fund the KRTF through conveyance taxes.

In letters dated June 18, 2012 and June 22, 2012 commenting on the draft 2012 Auditor's Report, the State Director of Finance and the State Attorney General, respectively, stated that in general, that they both agreed with the Auditor's recommendations, and did not dispute or object to the Auditor's conclusions (which included the conclusion and recommendation that the NARF funding through the conveyance tax did not meet the criteria for continuance as a special fund, and that the NARF should be repealed).

Despite the State Auditor's findings, this measure is being proposed to replenish the KRTF, using conveyance tax revenues, even though the KRTF does **not** to have a

clear link or nexus between the benefits sought and charges made only upon the sellers of real property, or the beneficiaries of the program – which is every Hawaii resident and visitor. Thus, this measure is subject to legal challenge, and the State could be subject to a possible class-action lawsuit by all parties who paid Conveyance Taxes to finance the KRTF.

3. **According to the 2012 State Auditor’s Report, worthy programs (such as the KRTF) deserve funding through broad taxes on the public and the State General Fund, rather than through the Conveyance Tax which targets few, is unreliable, and fluctuates with the housing market.** In its 2012 Report, the State Auditor also found that the beneficiaries of such special funds and conservation/ preservation programs are state residents as a whole, and such programs are so important that they **should be supported by funding from a broader tax on all state residents,** because of the broad state benefit.

As explained in the 2012 Auditor’s Report:

“Designating revenue for specific purposes flows from the “benefit theory” of public finance, which postulates that those who benefit from a program should pay for it. Revenue earmarking is more defensible when there is a clear benefit-user charge as opposed to when there is no such linkage and earmarking is used solely as a political shield to protect a program by providing it with an automatic means of support.” (2012 Auditor’s Report, p. 28)

The Auditor’s Report also found that the NARF fell into the category of a “revenue earmark” with “no clear benefit-user charge” and that the NARF “is used solely as a political shield to protect a program by providing it with an automatic means of support.” (See 2012 Auditor’s Report, p. 28)

LURF believes that an Auditor review or legal review of this measure would similarly find that the use of the conveyance tax to fund the KRTF is a “revenue earmark,” with “no clear benefit-user charge;” and that this measure is being “used solely as a political shield to protect a program by providing it with an automatic means of support.”

Moreover, because the Conveyance Tax is dependent on widely fluctuating activity in the real estate market, it is considered an undependable source and should not be relied upon to fund important programs such as the KRTF.

4. **HB 2101, HD1, SD1 would violate Act 130, (SLH 2013).** During the 2013 legislative session, HB 504 (now Act 130 (SLH 2013)) also directly addressed the issue relating to use of special funds and reinforced the requirement that special and revolving funds must reflect a clear link between the program funded and the source of revenue. The principles underlying Act 130 are clear, and the Act settles without question, the fact that special, revolving, and trust funds must, amongst other things:

- a. **serve a need** as demonstrated by the purpose of the program to be supported by the fund; the scope of the program; and an **explanation of why the program cannot be implemented successfully under the general fund appropriation process**; and
- b. **reflect a clear nexus** between the benefits sought and charges made upon the program users or beneficiaries; or a clear link between the program and the sources of revenue, **as opposed to serving primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process**.

As applied to this case, Act 130 thus makes it unequivocally clear that it is **improper** to channel conveyance tax revenue obtained through assessments targeted solely at sellers of real estate to special, revolving, or trust funds/programs with no nexus or clear link to the sources of revenue.

Moreover, emphasis is put on **the requirement that special funds be supported when and if at all possible, through the general fund appropriation process rather than through a means removed from the normal legislative budget and appropriation process**.

As stated above, in 2013, the conveyance tax was **not** increased and NARF was **not** provided with a larger percentage of the conveyance tax. Instead, LURF understands that \$8.5 million from the General Fund was appropriated for NARF during the 2013 legislative session through HB 200, HD1 (the State Budget for FY2014-2015).

Based on the above, it would be more appropriate to support a General Fund appropriation for the KRTF in 2014 and in the future.

5. **HB 2101, HD1, SD1 is fatally flawed, because it does not confirm attempts to comply with HRS Section 6K-9.5(a), which lists existing, alternative and more legally appropriate sources of funding for the KRTF.** HRS Section 6K-9.5(a) specifically identifies several sources of funding for the KRTF and the rehabilitation and environmental restoration of the island of Kaho‘olawe, or purposes consistent with this chapter. Under this section of the law, the possible sources of KRTF funding, are as follows:

“(1) All moneys received from the federal government for the rehabilitation and environmental restoration of the island of Kaho‘olawe or other purposes consistent with this chapter;

(2) Any moneys appropriated by the legislature to the trust fund;

(3) Any moneys received from grants, donations, or the proceeds from contributions; and

(4) The interest or return on investments earned from the moneys in the trust fund.”

However, HB 2101, HD1, SD1 does **not** confirm attempts to comply with HRS Section 6K-9.5(a), by seeking alternative sources of funding for the KRTF, and it does **not** include any audit or evaluation of the interest or return on investments earned from the moneys in the KRTF.

Given the “lack of a clear nexus” and what appears to be the lack of effort to fund the KRTF in compliance with HRS Section 6K-9.5(a), it seems clear that this measure is illegal, because it serves “primarily as a means to provide the program or users with an automatic means of support that is removed from the normal budget and appropriation process,” in violation of Act 130 (SLH 2013).

In lieu of improperly funding the KRTF through conveyance taxes that only target sellers of property, other possible legitimate means to fund the KRTF should be explored, including the following:

- a. Consistent with HRS Section 6K-9.5(a)(1), funding support could be available through other federal programs or grants from private foundations which support soil conservation projects and related activities;
- b. Consistent with HRS Section 6K-9.5(a)(1), funding support could be available through other federal programs or grants which support innovative programs that emphasize ancestral and traditional knowledge or utilize a cultural approach of respect and connectivity to the environment, and integrate ancient and modern resource management techniques;
- c. Consistent with HRS Section 6K-9.5(a)(3), funding support could be available through other grants, donations, or proceeds from contributions from private organizations or foundations which support soil conservation projects and related activities;
- d. Consistent with HRS Section 6K-9.5(a)(3), funding support could be available through other grants, donations, or proceeds from contributions from private organizations or foundations which support and innovative programs that emphasize ancestral and traditional knowledge or utilize a cultural approach of respect and connectivity to the environment, and integrate ancient and modern resource management techniques;
- e. Consistent with HRS Section 6K-9.5(a)(3), funding support could be available through other grants, donations, or proceeds from

contributions, such as voluntary donations by rental car lessors or hotel room guests (e.g., HB 760, HD1, SD1, carried over from the 2013 Regular Session and which proposes to require lessors of rental motor vehicles to include an option to the lessee in the motor vehicle agreement to contribute a sum to the Department of Land and Natural Resources for the preservation of the environment); and

- f. Consistent with HRS Section 6K-9.5(a)(3), funding support could be available through other grants, donations, or proceeds from contributions, such as an income tax refund check-off box (which was proposed in 2013 by HB 571 and carried over from the 2013 Regular Session, to permit all Hawaii taxpayers to voluntarily designate a specified amount of the taxpayer's income tax refund to be deposited into the State's Early Learning Trust Fund).

Given the failure to comply with the "clear nexus" and "clear link" requirements for special and revolving funds, and also given that sufficient general funding and alternative methods to secure revenues for these funds exist, expansions and deviations of HRS Chapter 247 which go beyond the scope of the original intent of the conveyance tax law are concerning. Since this proposed bill, appears to unlawfully target only the sellers of real property in the State, it could be characterized as imposing an improper penalty, hidden tax, or surcharge, which may be subject to legal challenge.

6. **If HB 2101, HD1, SD1 is passed, it should exempt landowners who have provided substantial support for the preservation and protection of Hawaii's great treasures of historical and cultural significance.** It is ironic and unfair that the entities which will be hardest hit by this bill are Hawaii's large Kamaaina and Kamaaina-at-heart landowners that are stewards of the land, and are the leading partners in, and contributors to programs which are similar to the conservation and cultural preservation purposes intended to be funded by this bill and those who build and sell affordable housing for Hawaii's people.

At the very least, this measure should be amended to exempt those landowners who have provided substantial support for the preservation and protection of Hawaii's great treasures of historical and cultural significance, those that support and participate in conservation and watershed programs, or those that provide innovative programs that emphasize Hawaiian ancestral and traditional knowledge or utilize a cultural approach of respect and connectivity to the environment, and integrate ancient and modern resource management techniques.

For the reasons stated above, LURF supports the continued funding of the KRTF through General Fund appropriations, but must respectfully ask that this Committee consider **holding HB 2101, HD1, SD1 in this Committee.**

Thank you for the opportunity to provide comments regarding this proposed measure.



KŪKULU KE EA A KANALOA

KAHO‘OLAWE ISLAND RESERVE COMMISSION

811 Kolu Street, Suite 201, Wailuku, HI 96793
Telephone (808) 243-5020 Fax (808) 243-5885
Website: <http://kahoolawe.hawaii.gov>

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COLETTE Y. MACHADO

Michael K. Nāho‘opi‘i
Executive Director

**Testimony of
MICHAEL K. NAHO‘OPTI
Executive Director**

Before the Senate Committee on

WAYS & MEANS

Friday, March 28, 2014

9:15 AM

State Capitol, Conference Room 211

**In consideration of
HOUSE BILL 2101 HD1 SD1
RELATING TO THE KAHO‘OLAWE ISLAND RESERVE**

House Bill 2101 HD1 SD1 authorizes a portion of the conveyance tax revenues to be used to replenish the Kaho‘olawe Rehabilitation Trust Fund for the long-term restoration of Kaho‘olawe. The Kaho‘olawe Island Reserve Commission (KIRC) supports this measure that would provide permanent state statutory funding for the restoration of Kaho‘olawe.

When the State of Hawai‘i accepted the return of the island of Kaho‘olawe in 1994, it accepted the responsibility “to preserve and protect a corner of their island state so that future generations can become familiar with their island’s past human and natural heritage. For many Native Hawaiians and others, Kaho‘olawe is a special place that has been sanctified by the loss of life in a struggle between traditional values and Western concepts of land use and management” (Kaho‘olawe Island: Restoring a Cultural Treasure, Kaho‘olawe Island Conveyance Commission). It is our conviction that accountability must be assumed by the State; it has a responsibility to the people of Hawaii and their future to preserve and protect Kaho‘olawe.

March 28, 2014

The Honorable David Y. Ige, Chair
Senate Committee on Ways and Means
State Capitol, Room 211
Honolulu, Hawaii 96813

RE: H.B. 2101, H.D.1, S.D.1, Relating to the Kaho'olawe Island Reserve

HEARING: Friday, March 28, 2014 at 9:15 a.m.

Aloha Chair Ige, Vice Chair Kidani, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, submitting comments on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,300 members. HAR **opposes Sections 3 and 4** of H.B. 2101, H.D.1, S.D.1, which deposits a percentage of conveyance tax revenue annually into the Kaho'olawe Rehabilitation Trust Fund, up to a maximum amount.

While HAR supports the intent of replenishing the Kaho'olawe Rehabilitation Trust Fund for the long-term maintenance of the island, we oppose the funding mechanism which, we believe, should be directly supported through the general fund, and not through the Conveyance Tax.

The Conveyance Tax should not be utilized as a revenue-generating tax to provide funding for special funds, when the sole objective and intent of the Conveyance Tax was to cover administrative costs of recording real estate transactions. Since the inception of the Conveyance Tax in 1966, the Legislature has continually considered and implemented changes to both the application and allocation of the Conveyance Tax with the intent to generate funds for unrelated projects and programs.

The Conveyance Tax is a tax on the sales of homes and other properties, regardless of whether the sale is at a loss or a gain. The amount of revenue generated fluctuates with increases or decreases in the housing market. These funds should not be continually targeted and instead should be reserved for housing-related programs and the improvement of the Bureau of Conveyances. The operation of the Kaho'olawe Island Reserve Commission, while important, does not meet that particular criteria.

Moreover, transparency in government, a goal we can all support, suggests that the funding source for Kaho'olawe rehabilitation be clearly identified and all proposed costs expressed in a simple and direct manner. Unfortunately, allocating a portion of the conveyance tax for an otherwise commendable purpose fails to meet a reasonable test for transparency.

Furthermore, the Conveyance Tax fluctuates with the increase or decrease in the housing market. In a down market, there will be a gap between the Funds needs and the taxes collected. Real estate is cyclical, by tying in a special fund to the Conveyance Tax; it will become a target to increase the Tax during a down market. As such, the Conveyance Tax is an unstable means of funding.

Mahalo for the opportunity to offer comments in opposition to Sections 3 and 4 of H.B. 2101, H.D.1, S.D.1.

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: anelamarie@gmail.com
Subject: *Submitted testimony for HB2101 on Mar 28, 2014 09:15AM*
Date: Wednesday, March 26, 2014 9:53:17 PM

HB2101

Submitted on: 3/26/2014

Testimony for WAM on Mar 28, 2014 09:15AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Anela Evans	Individual	Support	No

Comments:

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Cc: bradandmyra@gmail.com
Subject: Submitted testimony for HB2101 on Mar 28, 2014 09:15AM
Date: Thursday, March 27, 2014 3:40:02 AM

HB2101

Submitted on: 3/27/2014

Testimony for WAM on Mar 28, 2014 09:15AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Brad Keitt	Individual	Support	No

Comments: Kaho‘olawe is a unique ecosystem preserving immensely valuable cultural and biological resources. It is surrounded by the richest marine ecosystems remaining in the Main Hawaiian islands and providing replenishment of fish and invertebrates to other islands’ waters. The KIRC’s massive restoration program designed to revitalize the ecology and cultural history of the island will benefit all of Hawai‘i’s people for generations to come. Please support bill (SB2743 or HB2101).

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Cc: kaonohilee@hawaiiantel.net
Subject: *Submitted testimony for HB2101 on Mar 28, 2014 09:15AM*
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HB2101

Submitted on: 3/26/2014

Testimony for WAM on Mar 28, 2014 09:15AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Carol-Marie K. Lee	Individual	Support	No

Comments:

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Cc: dtokishi@kirc.hawaii.gov
Subject: *Submitted testimony for HB2101 on Mar 28, 2014 09:15AM*
Date: Thursday, March 27, 2014 8:01:35 AM

HB2101

Submitted on: 3/27/2014

Testimony for WAM on Mar 28, 2014 09:15AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Dean Tokishi	Individual	Support	No

Comments:

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Cc: dheyak@momi.org
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HB2101

Submitted on: 3/27/2014

Testimony for WAM on Mar 28, 2014 09:15AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Dheya Kealoha	Montessori School of Maui	Support	No

Comments: The students of Montessori School of Maui have greatly benefited from participating in the KIRC program. It is an integral part of their education to have experiences such as these. Many of our participants have declared that this has been a life-changing experience for them. Please support the KIRC program for the community of Hawaii.

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Subject: Submitted testimony for HB2101 on Mar 28, 2014 09:15AM
Date: Wednesday, March 26, 2014 4:33:31 PM

HB2101

Submitted on: 3/26/2014

Testimony for WAM on Mar 28, 2014 09:15AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
James Bruch	Individual	Support	No

Comments: Kaho'olawe is a unique ecosystem preserving immensely valuable cultural and biological resources. It is surrounded by the richest marine ecosystems remaining in the Main Hawaiian islands and providing replenishment of fish and invertebrates to other islands' waters. The KIRC's massive restoration program designed to revitalize the ecology and cultural history of the island will benefit all of Hawai'i's people for generations to come. This bill supports the People of Hawaii and ensures safe and meaningful access to the island of Kaho'olawe. Please support bill (HB2101).

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Subject: *Submitted testimony for HB2101 on Mar 28, 2014 09:15AM*
Date: Wednesday, March 26, 2014 5:48:53 PM

HB2101

Submitted on: 3/26/2014

Testimony for WAM on Mar 28, 2014 09:15AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
KEANI RAWLINS-FERNANDEZ	Individual	Support	No

Comments:

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Cc: kmchugh@kirc.hawaii.gov
Subject: Submitted testimony for HB2101 on Mar 28, 2014 09:15AM
Date: Thursday, March 27, 2014 7:52:15 AM

HB2101

Submitted on: 3/27/2014

Testimony for WAM on Mar 28, 2014 09:15AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Kelly McHugh	Individual	Support	No

Comments: I urge you to also support this critically important legislation. Thank you.

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Kelvin Ho
PO Box 769
Lawai, Hawaii 96765

March 27, 2014

Testimony in Support of HB 2101, HD1, SD1

Chairperson Hanohano Vice-Chair Cullen and members of the House Committee on Ocean, Marine Resources and Hawaiian Affairs

I am a 20+ year member of the protect Kaho`olawe `Ohana member from Kaua`i and wish to submit testimony in favor of these bills. In its history with this sacred island and in fulfilling its mission of perpetuating aloha`aina, in its commitment and actions to heal and revitalize Kaho`olawe, we have had a strong working relationship with KIRC from its beginning. Along with all the KIRC has done in the restoration of the island and providing safe access to the communities of the state of Hawaii, they have consistently supported the PKO in its activities and accesses as well. It has been and continues to be a good working partnership. Since it's beginning in 1993 the KIRC hasn't received funding from the state yet it has fulfilled its kuleana of restoration through the management of the funds allocated by the Federal government. The KIRC was formed by the Hawaii State Government to fulfill this kuleana and protect the invaluable resources of this sacred place. We are asking that you see the critical importance of preserving this rare and completely unique place what is at the Piko of these islands and vote in favor of allocating a portion of state conveyance taxes to replenish the Kaho`olawe trust fund so that KIRC can continue to fulfill their purpose for all of Hawaii.

Mahalo, for your consideration,
Aloha `Aina,
Kelvin Ho

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: lwhite@kirc.hawaii.gov
Subject: *Submitted testimony for HB2101 on Mar 28, 2014 09:15AM*
Date: Thursday, March 27, 2014 10:25:37 AM

HB2101

Submitted on: 3/27/2014

Testimony for WAM on Mar 28, 2014 09:15AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Lopaka White	Individual	Support	No

Comments:

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Date: Thursday, March 27, 2014 8:19:03 AM

HB2101

Submitted on: 3/27/2014

Testimony for WAM on Mar 28, 2014 09:15AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Paul K Higashino	Individual	Support	No

Comments:

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Date: Thursday, March 27, 2014 11:55:10 AM

HB2101

Submitted on: 3/27/2014

Testimony for WAM on Mar 28, 2014 09:15AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Phil Barnes	Individual	Support	No

Comments: I would urge you to support HB2101. The restoration of Kahoolawe is still far from a completed process. The Navy has started the job but it is now time for the state to take over the remainder of this process. The potential of Kahoolawe to serve as a focal point for the protection and reestablishment of Hawaiian natural and cultural resources is a rare opportunity. Thank you for your consideration.

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HB2101

Submitted on: 3/27/2014

Testimony for WAM on Mar 28, 2014 09:15AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Terri Gavagan	Individual	Support	No

Comments: I strongly urge you to support this very important bill. Mahalo.

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