

**Testimony on HB1593
Relating to Real Property
House Committee on Judiciary
Keali'i Lopez, President and CEO of 'Ōlelo Community Television
February 26, 2009**

Chair Karamatsu, Vice-Chair Ito, members of the House Committee on Judiciary. Aloha, I'm Keali'i Lopez, president and CEO of 'Ōlelo Community Television, and we support of HB1593.

We are a local non-profit organization located in Mapunapuna. The building that we own is located on a parcel of land that we lease. We have 26 years remaining on our lease and could soon see our lease rent increase substantially when we renegotiate terms later this month.

A substantial increase in lease rent, coupled with major increases in our other operating expenses would place us in a very precarious financial position. In this respect, we are no different from a small business that operates on a very slim margin. However, we are unable pass these increases on to our customers.

We understand that lessors have rights, to include the expectation of a reasonable return on their investments, but clearly there is a need for safeguards to ensure that lessees are not subject to unreasonable increases that drastically curtail services or force them out of business.

We are members of the Citizens for Fair Valuation, a non-profit organization committed to ensuring fair valuation of the commercial and industrial ground leases in the Sand Island, Mapunapuna and Kalihi Kai areas. We believe that fair interpretation of leases is crucial to the health of non-profit organizations and small businesses that all of us rely upon.

Because of this, we ask that you support that the term of "fair and reasonable" in commercial ground leases that are renegotiated have these equity provisions. In summary, I ask for your support of HB1593. That concludes my testimony.

February 25, 2009

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY
THURSDAY, FEBRUARY 26, 2009, AT 2:15 P.M.
ROOM 325, HAWAII STATE CAPITOL

RE: HB 1593 – Relating to Real Property – Testimony in Support

Aloha Chair Karamatsu, Vice Chair Ito, and Members of the Committee:

My name is Robert Creps and I am a Kailua resident. I am the Senior Vice President of Administration for Grace Pacific Corporation. Grace Pacific holds a ground lease for 78,000 square feet at 110 Puuhale Road, just off of Sand Island Access Road.

I would like to portray the great disparity between the expectations of HRPT and my fellow lessees as to future ground rents with numbers and a graph.

The data was obtained from the following sources:

- 1) April 1, 1997 letter from the Damon Estate various Mapunapuna lessees regarding ground rent for the period January 1993 through December 2012.
- 2) June 13, 1997 letter from Damon Estate to various Sand Island lessees regarding ground rent for the period July 1997 through June, 2017.
- 3) Offer to commence negotiations from HRPT to a Sand Island lessee, with proposed terms.

Attached to this testimony are the data as well as a graph portraying the numbers. It is significant to note that a "paradigm shift" has occurred in the expectations of HRPT with their November "offer". My fellow lessees and I have looked at our businesses and can find no corresponding paradigm shift in our ability to pay rent.

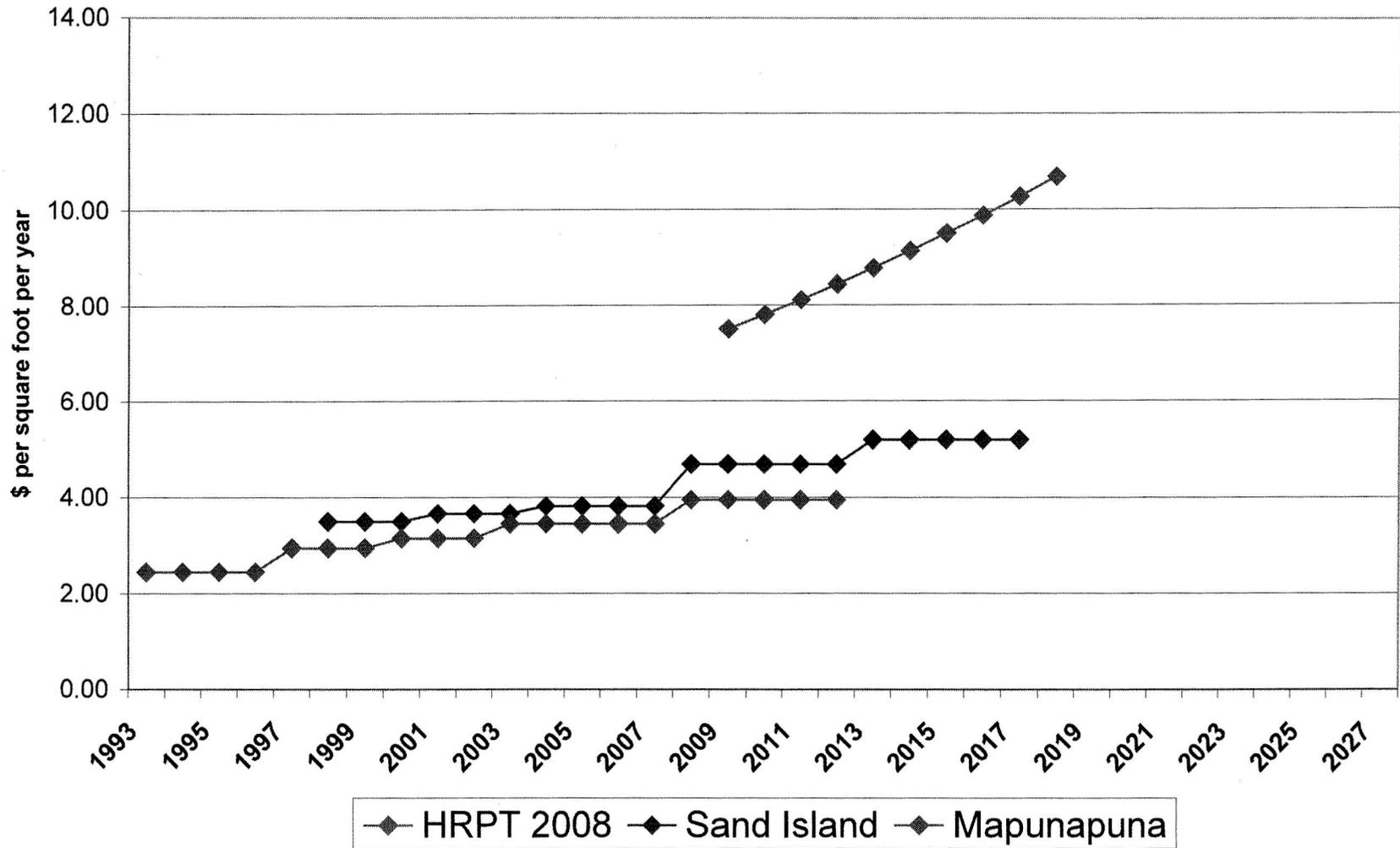
It also should be noted that, contrary to prior testimony from HRPT that "after 10 years it is reasonable to expect a doubling of rents", that in reality, ground rents have increased periodically and in an orderly manner.

Action is needed now. Fair and reasonable rent means fair and reasonable to both sides. I urge you to pass HB 1593. Thank you.

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY			
THURSDAY, FEBRUARY 26, 2009, AT 2:15 P.M.			
ROOM 325, HAWAII STATE CAPITOL			
HB 1593 – Relating to Real Property			
Attachment to Testimony of Robert Creps			
	Mapunapuna	Sand Island	HRPT 2008
year	\$ per square foot per year		
1993	2.45		
1994	2.45		
1995	2.45		
1996	2.45		
1997	2.95		
1998	2.95	3.50	
1999	2.95	3.50	
2000	3.15	3.50	
2001	3.15	3.66	
2002	3.15	3.66	
2003	3.45	3.66	
2004	3.45	3.82	
2005	3.45	3.82	
2006	3.45	3.82	
2007	3.45	3.82	
2008	3.95	4.70	
2009	3.95	4.70	7.50
2010	3.95	4.70	7.80
2011	3.95	4.70	8.11
2012	3.95	4.70	8.44
2013		5.20	8.77
2014		5.20	9.12
2015		5.20	9.49
2016		5.20	9.87
2017		5.20	10.26
2018			10.67
2019			
2020			
2021			
2022			

Testimony of Robert Creps - HB 1593 - House Committee on Judiciary, February 26, 2009

Comparison of Damon rents set in 1997 for Sand Island and Mapunapuna with HRPT 2008 Re-opening Offer



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February 26, 2009

Rep. Jon Karamatsu, Chair
Rep. Ken Ito, Vice-Chair
House Committee on Judiciary

RE: TESTIMONY IN SUPPORT OF HB 1593 RE REAL PROPERTY
Hearing: Thursday, February 26, 2009, 2 p.m. Conf. Rm. #325

Chair Karamatsu, Vice-Chair Ito and Members of the Committee:

This firm is general counsel to Citizens for Fair Valuation ("CFV").

House Bill 1593 is intended to level the playing field between the industrial lessees at Mapunpuna/Sand Island/Kalihi Kai (former Damon Estate lessees) and their new landlord HRPT, a mainland real estate investment trust that bought the land from Damon Estate in 2003. The lessees are involved in rent renegotiations under their 50-year ground leases and the new landlord is trying to change the way those negotiations occurred for some 30 years while the Estate was the landlord.

Some of those changes include take-it-or leave-it offers that do not allow the lessees to negotiate and confidentiality agreements that condition the landlord's willingness to mediate or arbitrate the rent adjustment on the lessee's agreement not to disclose information (comparables) to other lessees (i.e., relevant comparables are only available to the landlord and not to the lessees, which was not the way it was done while the Estate was the landlord).

Appraisal literature provides that "market value" is composed of the aggregate of market transactions involving the actions of multiple buyers and multiple sellers and also includes the concept of "both parties being fully informed". "market rent" is composed of the aggregate of market lease transactions involving the actions of multiple lessors and multiple lessees also fully informed. HRPT's confidentiality requirement is inconsistent with the concept of a "market" and steps need to be taken to remove that impediment as it affects these lease negotiations.

In order to fully implement the transparency requirement that is currently being denied to CFV members by HRPT, we suggest a minor amendment to the bill to read as follows (i.e., new subparagraph "(C)" which is underscored and bolded):

"§519- Leases of commercial and industrial property.

[a) Notwithstanding any other law to the contrary and unless expressly stated to the contrary in the lease, any lease of commercial or industrial leasehold property shall be subject to the following terms and conditions:

(1) Whenever a lease existing on July 1, 2009, or entered into thereafter, provides for the renegotiation of rent during the term of the lease and the renegotiated rent is based, according to the terms of the lease, on fair and reasonable annual rent as of the commencement of the term, that provision shall:

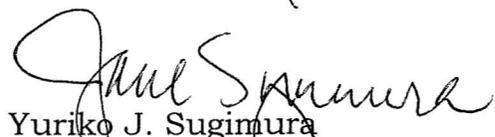
(A) Be construed to require that the rent shall be fair and reasonable to both the lessor and the lessee to the lease; and

[B] Take into account the uses and intensity of use approved by the lessor, and the surface and subsurface characteristics of the site and the neighborhood on the renegotiation date; and

[C] **Promote transparency in negotiations by allowing lessees to obtain, disclose and share with other lessees information relating to rental negotiations in their neighborhoods."**

Thank you for allowing me to testify on this bill.

Very truly yours,



Yuriko J. Sugimura
Of BENDET, FIDELL, SAKAI & LEE

YJS:ss