



STATE OF HAWAII
AGRIBUSINESS DEVELOPMENT CORPORATION
235 S. Beretania Street, Room 205
Honolulu, HI 96813
Phone: (808) 586-0186 Fax: (808) 586-0189

**TESTIMONY OF JAMES NAKATANI
EXECUTIVE DIRECTOR
AGRIBUSINESS DEVELOPMENT CORPORATION**

**BEFORE THE HOUSE COMMITTEE ON
WATER, LAND & OCEAN RESOURCES**

Friday, March 16, 2012
9:00 A.M.
Conference Room 325

**SENATE BILL NO. 2378, SD 1
RELATING TO LEGACY LANDS**

Chairperson Chang and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2378, SD 1. The purpose of this bill is to allow for the acquisition of lands through the legacy conservation fund for regulatory functions of the state, and restricts the application for and granting of legacy land funding to the Department of Land and Natural Resources, Department of Agriculture, Agribusiness Development Corporation (ADC), and Public Land Development Corporation.

ADC supports the intent of this bill and is supportive of any new funding for agricultural land development programs which support ADC's mission, however we defer to the Department of Agriculture as well as the Department of Land and Natural Resources.

THE
TRUST
for
PUBLIC
LAND



HAWAII

**THE TRUST FOR PUBLIC LAND'S COMMENTS ON
SB 2378 SD 1 RELATING TO LEGACY LANDS
House Committee on Water, Land and Ocean Resources
Friday, March 16, 2012, 9:00 a.m., Room 325**

At the request of Senator Donovan Dela Cruz, The Trust for Public Land's Hawaiian Islands Program and the State Division of Forestry and Wildlife collaborated on different versions of amendments to SB 2378, which were combined by Senator Donovan Dela Cruz's staff, resulting in SB 2378 SD 1.

SD 1 made the following changes: (a) the four public agencies identified in the original bill are no longer the only eligible applicants for Legacy funding (counties, other state agencies like the Office of Hawaiian Affairs, and non-profit land conservation organizations remain eligible to apply); and (b) language in the original bill allowing expenditures on undefined "regulatory functions" was deleted. These changes are appreciated.

The SD 1 now requires:

- That the State record a conservation easement against land acquired by county or state agencies using Legacy funds. We note that this requirement, while intended to protect the State's investment in Legacy lands, would require that State-owned lands be burdened with a conservation easement. This may not be what the State or the Department of Land and Natural Resources intended.
- That the State record a conservation easement against land acquired by a non-profit organizations using Legacy funds. We do not oppose this requirement, but note that Department of Land and Natural Resources staff will likely be burdened with the easement monitoring requirements. DLNR staff may lack training or sufficient staff to adequately implement an effective easement-monitoring

program. This requirement was also being worked through in administrative rule-making monitored by Senator Pohai Ryan.

- That the Board retain the authority to grant an exemption to these easement requirements. This provision was added because every project is different, with different matching funding sources. Certain sources of federal or other funding may prohibit the type of conservation easement envisioned by the State, but may provide sufficient safeguards to protect the State's investment in keeping land in agriculture or conservation. In those types of cases, the State's relative contribution may be so small that monitoring the conservation easement may be more expensive than the State's financial contribution to the land or easement acquisition. The Board should have the flexibility to grant exemptions where there is good cause.
- That applicants for Legacy funding articulate the public benefits of the project, and specifically, whether public access will be required, and if not, why not. The Legacy applications already require applicants to articulate public benefits, however, this clearly states that requirement and emphasizes public access. This provision was added to address Senator Dela Cruz's concerns regarding maximizing public benefits like public access in all Legacy projects.
- That applicants for Legacy funding consult with the Department of Land and Natural Resources, the Department of Agriculture, the Agribusiness Development Corporation, and the Public Land Development Corporation to maximize public benefits. This was added to address Senator Dela Cruz's concern that there seemed to be little coordination between applicants for Legacy funding and related agencies that could help to maximize public benefits on the land.

Mahalo for this opportunity to testify -



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

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GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committee on
COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

Friday, March 16, 2012
9:00 A.M.
State Capitol, Conference Room 325

In consideration of:
SENATE BILL 2378, SENATE DRAFT 1
RELATING TO LEGACY LANDS

Senate Bill 2378, Senate Draft 1, proposes that: 1) The Board of Land and Natural Resources ("Board") require agencies or non-profit land conservation organizations receiving funds under Chapter 173A, Hawaii Revised Statutes, to provide a conservation easement or agricultural easement, and a deed restriction or covenant to an appropriate land conservation organization or county, state, or federal natural resource conservation agency, and that the Board be a full or partial owner of the easement; 2) The Board be given the authority to grant exemptions from the aforementioned requirement.; and 3) The Board require applicants for Legacy Land funds to submit the project's public benefit and to consult with the staff of the Department of Land and Natural Resources (Department), Department of Agriculture, Agribusiness Development Corporation, and Public Land Development Corporation. The Department **supports this measure**, as it will increase coordination between state departments and will allow the State to continue benefitting from the community support, landowner commitment, and matching federal, county, and private funding that nonprofit land conservation organizations bring to Legacy Land acquisitions for protection of the State's natural, cultural, and agricultural resources.



SB2378 SD1
RELATING TO LEGACY LANDS
House Committee on Water, Land, & Ocean Resources

March 16, 2012

9:00 a.m.

Room 325

The Office of Hawaiian Affairs (OHA) offers the following comments on SB 2378 SD1, which requires a conservation easement or deed restriction for lands purchased with State Legacy Land Conservation Funds.

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

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

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

Mahalo for the opportunity to testify on this important measure.

Testimony of The Nature Conservancy of Hawai'i
Commenting on S.B. 2378 SD1 Relating to Legacy Lands
House Committee on Water, Land and Ocean Resources
Friday, March 16, 2012, 9:00AM, Room 325

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

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

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

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

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

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

Thank you for this opportunity to provide testimony.

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