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SENATE COMMITTEE ON WATER AND LAND
The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice Chair

LATE

H.B. 839, H.D. 1, Relating to the Department of Land and Natural Resources

Hearing: Wednesday, March 15, 2017, 2:45 P.M.

The Office of the Auditor has **no position** regarding the performance audit of the Department of Land and Natural Resources' Management and Administration Division, Division of Forestry and Wildlife, and Special Land Development Fund that H.B. No. 839, H.D. 1, requires us to perform. **We, however, support the funding provision within the bill that will allow us to hire additional analysts to perform the requested audit in the required time.**

In Stand. Com. Rep. No. 563, the House Committee on Water and Land recommended an appropriation of $300,000 that will allow us to hire additional analysts and a consultant, as necessary, in support of the requested audit. We currently have 13 line staff, all of whom are assigned to audits and are concerned about our ability to perform the requested audit without additional staff.

Last year, the legislature tasked us with reviewing about 120 tax exemptions, exclusions, credits, and deductions to determine, among other things, the amount of the particular tax incentive and to recommend whether it should be continued, modified or repealed. See Acts 245 and 261, Session Laws of Hawaiʻi 2016 (codified as sections 23-71 through 23-81 and 23-91 through 23-96, Hawaiʻi Revised Statutes). Although we are currently uncertain of our staffing needs to properly perform the tax incentive reviews, we expect that a number of staff will be dedicated to that project. The Joint Legislative Audit and Review Committee (JLARC), which is the State of Washington's functional equivalent of our office, has been conducting a similar review of its state's tax incentives, with four full-time analysts dedicated to the tax incentive reviews as well as one-half of both the director and deputy director's time.

Given the number of ongoing audits, statutorily required audits, and the additional examinations the legislature likely will request us to perform, we have concerns about our ability to commit sufficient resources to undertake what likely will be a relatively large, complex audit of the Department of Land and Natural Resources' Management and Administration Division, Division of Forestry and Wildlife, and Special Land Development Fund. For that reason, we feel that the additional appropriation is necessary for us to do the work required by the bill.

Thank you for considering our testimony related to H.B. No. 839, H.D. 1.

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 15, 2017 6:34 AM
To: WTL Testimony
Cc: fishingready@gmail.com
Subject: *Submitted testimony for HB839 on Mar 15, 2017 14:45PM*

HB839
Submitted on: 3/15/2017
Testimony for WTL on Mar 15, 2017 14:45PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Ronald Tam	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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March 14, 2017

LATE

The Honorable Karl Rhoads
Chairperson
Senate Committee on Water and Land
State Capitol
Honolulu, Hawaii 96813

Dear Chair Rhoads and Committee Members:

SUBJECT: Testimony on House Bill 839, HD1, Relating to the Department of Land and Natural Resources

I am a former employee of the Department of Land and Natural Resources (Department) and was recently involved in a project as a private citizen. I would like to share my experience and encourage the Committee to include an examination of the Legacy Land Conservation Program (Legacy Land) as part of an audit.

I had been working with my neighbors in opposing the proposed acquisition of one of the residential properties on our lagoon in East Honolulu, the former Ronald Rewald property (also referred to as the Kanewai Spring property) by the Maunalua Fishpond Heritage Center (MFHC) and The Trust for Public Land (TPL) using State Legacy Land and City Clean Water funds.

During my research, I found that the Department conducted little if any vetting of MFHC's qualifications or capacity to ensure the viability and legitimacy of the organization and their ability to implement the project over the long term. In its Legacy Land application: 1) MFHC stated it has no paid staff, 2) Its only evidence of any past grants is mentioned as "Several NOAA grants totaling $35,000," 3) MFHC stated that any rebuilding of the house, as proposed in the application, will require a "well-developed fundraising plan and campaign." The Department did not require any financial statements, whether audited or not, and none were included with MFHC's application. MFHC's only existing projects include maintenance and small educational events involving volunteers at the former Rewald property and a State-owned property via a right-of-entry.

Also, my further research showed that MFHC has been filing 990-N forms to the Internal Revenue Service (IRS) which means MFHC's annual gross receipts were less than $25,000 up to 2010 and then less than $50,000 since then. It also appears MFHC neglected to file 990s for the years 2011, 2012 and 2013 which resulted in its 501(c)(3) status being revoked. By letter dated February 13, 2015, the IRS reinstated MFHC's 501(c)(3) status, seven months before they applied for Legacy Land funds.

Furthermore, MFHC testified in a court proceeding on this issue as follows:

"Section H of the LLCP Application form asks applicants to describe, among other things, the proposed use of the acquired property including any short and long term goals, resource

management plan, sources of start-up funding, operation and maintenance funding. Given the broad range of information elicited by this question, MFHC and the Trust [TPL] provided an exhaustive description of **potential uses** of the Kanewai Spring Property on the LLCP Application, including those that are **merely aspirational in nature due to the lack of present funding.**" And "MFHC currently has **no funding** for capital improvement projects at the Kanewai Springs Property, nor does MFHC have any **concrete plans** for capital improvement projects." (Bolding added.)

From these statements, it appears that MFHC was only proposing "potential" uses in its Legacy Land application, has no clear management or business plan for the property and has no funding to carry out the potential uses. Despite MFHC's lack of qualifications, track record, financial and organizational capacity, and solid plans, the Department's Legacy Land Program granted $1.3 million to MFHC (along with the City's grant of $1 million) to purchase – in full and in perpetuity – a $2.3 million residential property in East Honolulu.

Another issue that should be examined is the Department's compliance with Chapter 343, HRS. The use of State funds through the Legacy Land Program triggers the requirement of an environmental assessment (EA). The staff submittal and Land Board's approval exempted MFHC and TPL from completion of an EA despite the fact that the proposed project changes the use from single-family residential to community and educational use and, in my opinion, did not meet any of the exempt EA classes which are intended only for minor changes. It appears no analysis was conducted into the appropriateness of the EA exemption. The Legacy Land application process did not include any analysis of EA compliance. Furthermore, the staff submittal did not include the Department's standard "Exemption Notification" form and, as such, no analysis or justification of the exemption was provided to the Land Board. In fact, the staff submittal referenced an EA Exemption List that was no longer valid.

I also noticed that the staff submittal oddly exempted the project from an EA but then made it subject to compliance with Chapter 343, HRS, in the approval section. If the Board is declaring this action exempt from an EA, then why would the project be subject to compliance with Chapter 343, HRS? Furthermore, the Department's Legacy Land Program guide only raises EA compliance **after** the Board has approved a grant.

In researching this issue, I discovered that the Legacy Land Program administrative rules (Chapter 13-140, HAR) appear to violate Chapter 343 in that EA compliance is addressed **after** the Board makes a decision on the award of State funds. Section 13-140-24, HAR, entitled "Awardee forms and requirements," states that "Prior to disbursing funds for land acquisition grants, the department may require awardees to . . . (8) Meet any requirements of chapter 343, HRS." Awardee is defined as "a grant applicant that has been awarded grant funding pursuant to section 173A-9, HRS."

Pursuant to the EA law, "Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of the proposed action." (HRS §343-5(e)) So compliance must be met before the Board decision on an award can be made, whether through an

exemption or completion of an EA/EIS. Such timing is only logical since the purpose of Chapter 343 is to provide the decision maker, as well as the public, with the impacts of the proposed action so that a more informed decision can be made. This apparent error in the rules reflects a basic misunderstanding of the purpose and requirements of Chapter 343 and suggests staff did no analysis of whether an EA was required by MFHC prior to the Land Board's decision.

Because no EA was prepared, we do not know what the proposed project entails or what the potential environmental impacts are. Also, through the EA process, we would have had the opportunity to correct any potential mistruths and exaggerations made by MFHC and TPL. Most notably, MFHC and TPL portrayed that the Kanewai Spring was threatened if the property was not acquired. We who live on the lagoon that the Kanewai Spring feeds believe this to be a gross exaggeration at best.

Lastly, there are issues with the appraisal process used by the Legacy Land Program to determine the amount of State funding that was granted. The Department used the appraisal conducted by MFHC and TPL and paid for by MFHC, TPL and the owner of the property to be acquired.[1] An appraisal is the process of developing an **opinion** of the market value of a property. The appraiser identifies comparable sales and makes adjustments to account for differences between the subject property and the comparables. Because it is a subjective process, who contracts and pays for the appraisal is very important since there are competing interests: the landowner typically wants a higher price while the State wants to ensure the price is more reasonable. Because the State did not contract with the appraiser, there is a potential conflict of interest for the landowner to pay for the appraisal as was done in this case.

Furthermore, as has been its practice and as stated in its application, TPL will ask the landowner for a donation which represents another possible conflict of interest since a higher price would typically make a landowner more amenable to giving a donation. While I am not alleging any misconduct regarding this appraisal, I am merely pointing out that there may be conflicts of interest which can work against the State's best interests. At the very least, the Department should be scrutinizing a third party appraisal but it is my understanding the Department no longer employs licensed staff appraisers (as was the practice at my time at the Land Division) so there are no qualified persons to conduct such a review on the State's behalf.

Thank you for this opportunity to testify.

Sincerely,

Dierdre Mamiya

[1] Section 173A-4.5, HRS, of the Legacy Land law allows the Department to use appraisals conducted by a non-profit. The public land law (Section 171-17, HRS), on the other hand, requires that appraisals be conducted only by a State employee or an outside appraiser contracted by the State. This ensures the best interests of the State are represented in appraisals since the appraiser is clear that the State is his/her client.