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**Senate Committee Judiciary and Government Operations
Hearing Date: Thursday, February 26, 2009, 9:00 a.m., CR 016**

**Testimony in Opposition to SB 1350 SD1 – Relating to Kakaako
(Increased Reserved Housing Requirements)**

Dear Chair Brian T. Taniguchi, Vice-Chair Dwight Y. Takamine and
Members of the Committee on Senate Judiciary and Government Operations:

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions 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 development of housing projects in Kakaako which include affordable housing units, however, we are **opposed to SB 1350 SD1 in its current form and recommend that the bill be deferred until the Kakaako stakeholders and government officials can agree on a plan and incentives to increase affordable housing in Kakaako**. LURF's opposition is based on, among other things, the following: there is no legal nexus or proportionality to justify the affordable housing requirement of 15% of floor space of buildings, including common areas (elevator shafts, corridors and stairways), of residential, commercial, and resort buildings; the bill does not include adequate economic incentives to encourage the development of affordable housing; the proposed implementation procedures are fundamentally unfair; and it may not be consistent with the current visions, plans and processes of the Hawai'i Community Development Authority ("HCDA"), which has jurisdiction over the Kakaako area.

We would strongly recommend that the supporters of this bill work with HCDA, which has jurisdiction over Kakaako, the Hawai'i Housing Finance and Development Corporation ("HHFDC"), the major landowners and stakeholders in Kakaako and other government agencies to develop a consensus regarding the goals, incentives and implementation of housing projects in Kakaako which include affordable housing units.

Background. The history of this bill can be explained in the context of the 1982 Kakaako Community Development District Plan, which was a community and government-based plan, and the findings in the recent Standing Committee Report No. 720-08 of the House Committees on Water, Land, Ocean Resources and Hawaiian Affairs and Human Services & Housing. Based on those documents, it appears that the Kakaako Community Development District (“Kakaako district”) was envisioned as a mixed-use community, including residential, commercial, and industrial uses.

The residential development of the district is intended to encompass housing for families of various income levels. The State has invested at least \$200 million in public funds and the landowners have also contributed to the infrastructure of the Kakaako district to advance this goal. This investment in infrastructure has sparked increased private investment and development plans for the area. However, the Legislature believes that the development projects in recent years have eluded affordable housing and have focused primarily on luxury homes for high-income families and the inundation of retail and commercial developments. The Legislature believes that this bill is necessary to promote the development of affordable housing (for low and moderate income families) in the Kakaako district and to achieve the mixed-use community that was intended for the district.

SB 1350 SD1. The purpose of this Bill is to increase the requirement for reserved housing units within planned developments proposed on lots of greater than 80,000 square feet in the Kakaako community development district, mauka area. Specifically, this measure:

- (1) changes the current reserved housing requirement for a planned development on a lot of at least 80,000 square feet, from the currently required 20% of dwelling units to at least fifty per cent of the floor area to be constructed and made available as reserved housing units for low- and moderate-income families;
- (2) Requires, for a planned development with multi-family dwelling units on a lot of at least 20,000 square feet, but less than 80,000 square feet, at least twenty per cent of the multi-family dwelling units to be constructed and made available as reserved housing, a requirement currently authorized by administrative rule;
- (3) Requires the Hawaii Community Development Authority to adopt implementing rules without regard to the notice and public hearing requirements of chapter 91, Hawaii Revised Statutes; and
- (4) Prohibits the Authority from accepting applications until the rules take effect
- (5) Defines the countable floor area of a planned development for establishing the percentage for reserved housing units as the area of several floors of a building, including basement areas, including, but not limited to elevator shafts, corridors and stairways.

The Senate Committees on Education and Housing (EDH) and Water, Land, Agriculture and Hawaiian Affairs (WTL) made the following amendments to SB 1350, in the SD1:

- (1) Raised the minimum lot size from one acre to 80,000 square feet for the increased reserved housing requirement for a planned development in the Kaka’ako Community Development District, Mauka Area;
- (2) Deleted industrial use from the calculations of "countable floor area";
- (3) Amended the purpose section to reflect the changes; and

- (4) Amended the effective date to July 1, 2050, for the purpose of encouraging further discussion.

The Senate Committees noted that this measure is one of many under consideration by the Legislature in response to severe shortages of affordable housing in Hawaii, and that they were concerned that a long-term economic crisis will further worsen what is already a challenging housing market for Hawaii residents. The Committees also found that while the federal economic stimulus legislation will provide some relief, much more needs to be done at the state level, and while the Committees have heard and approved a wide range of proposed affordable housing initiatives, they wish to encourage further legislative discussions on the proposal in this measure.

Problems with the proposed SB 1350 SD1.

- The proposed bill, which determines the reserved housing requirement based on square footages of certain areas of the project, is unconstitutional, as it lacks a rational nexus to the development of common areas (including elevator shafts, corridors and stairways), residential, commercial and resort uses.
- The bill is also unconstitutional, because there is no study, statistics or legal policy to justify the fifty per cent reserved affordable housing proportional requirement on the common area, residential, commercial, or resort uses in Kakaako.
- The portions of the bill which allow HCDA to adopt rules without regard to the notice and public hearing requirements of Chapter 91, HRS are a violation of the State's administrative laws, and also may violate procedural due process rights;
- The "moratorium" requirement in the bill, which prohibits HCDA from accepting applications for planned developments until the rules take effect, is fundamentally unfair and may also violate procedural due process rights, as well as constitute an unconstitutional taking;
- HCDA should maintain flexibility and allow the possibility of in-lieu fee payment, in the event that funding is needed for certain improvements;
- We also understand that the proposed bill may be inconsistent with HCDA's plans, policies and processes for Kakaako-Mauka and the recent plans approved by HCDA. We understand that HCDA's Kakaako-Mauka plans were developed through a comprehensive planning process involving many stakeholders and issues. This proposed bill alters those plans, policies and processes without the necessary input and participation of the Kakaako stakeholders;
- Instead of using a punitive "stick" of mandating requirements on every Kakaako developer to provide affordable housing, the State should use "carrots" or incentives to encourage, entice, incentivize developers to build more housing products for a wide range of needs.

Conclusion. LURF appreciates the opportunity to express our views on this matter and while we understand the intent of this bill, we respectfully urge this Committee **not to pass this measure in its current form**, based on the reasons stated above. Instead of passing this bill, we would strongly recommend that the supporters of this bill work with HCDA, HHFDC, the major landowners and stakeholders in Kakaako and other government agencies to develop a consensus regarding incentives and the development of housing projects in Kakaako which include affordable housing units.

Thank you for the opportunity to express our views on this matter.