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February 8, 2010
Opposition to HB 2846 re KAKAAKO
(Reserved Housing Increase)

The Honorable Representative Ken Ito, Chair, Vice-Chair Sharon Har
 and Members of the House Committee on Water, Land & Ocean Resources,
 The Honorable Representative Rida Cabanilla, Vice Chair Pono Chong,
 And members of the House Housing Committee,

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 and rational land use planning, legislation and regulations affecting common problems in Hawaii.

LURF supports the development of housing projects in Kaka`ako which include affordable housing units, however, we are **opposed to SB 2846 in its current form and recommend that the bill be deferred until the Kaka`ako stakeholders and government officials can agree on a plan and incentives to increase affordable housing in Kaka`ako.**

LURF's opposition is based on, among other things, the following:

- **No rational nexus for square footage requirement.** The proposed bill, which determines the reserved housing requirement based on square footage of a project, is unconstitutional, because there is no legal nexus or proportionality justification or the reserved housing requirement of twenty-five percent (25%) of countable floor area of every building of a major development project (except community or special facility uses areas), and it lacks a rational nexus to include the square footage of parking lots, elevator shafts, corridors and stairways, etc.
- **No legal justification based on studies, statistics, etc.** The bill is also unconstitutional, because there is no study, statistics or legal policy to justify the twenty five per cent (25%) of total square footage reserved affordable housing.
- **No adequate economic incentives.** The bill does not include adequate economic incentives to encourage the development of affordable housing;
- **Inconsistent with HCDA's Kakaako plans.** The requirements of this bill are not consistent with the current visions, plans and processes of the Hawai'i Community Development Authority ("HCDA"), which has jurisdiction over the Kaka`ako area; and

- **Unfair implementation procedures.** The following proposed implementation procedures, are fundamentally unfair: the requirement that HCDA to adopt implementing rules without regard to the notice and public hearing requirements of Chapter 91, Hawaii Revised Statutes (HRS), and also the provisions prohibiting HCDA from accepting applications until the rules take effect.

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

Background. The history of this bill can be explained in the context of the 1982 Kaka`ako 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 Kaka`ako Community Development District ("Kaka`ako 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 Kaka`ako 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 Kaka`ako district and to achieve the mixed-use community that was intended for the district.

HB 2846. This bill proposes to increase the reserved housing requirement for a major development on a lot of at least 1 acre in the Kakaako Community Development District, Mauka Area (Kakaako Mauka). Requires HCDA to adopt or amend rules, and includes the following:

- New Reserved Housing Requirement for Major Developments: 25% of Total Floor Area. For such a major development, at least twenty-five per cent of the floor area shall be constructed and made available as reserved housing units for low- and moderate-income families. The floor area countable for establishing the percentage for reserved housing units is the total floor area of every building of the major development, except the floor area developed for community or special facility uses.
- HCDA to determine number, types & sizes of Reserved Housing units. The developer is required to divide the reserved housing floor area into the number, types, and sizes of reserved housing units set by the Hawaii community development authority.
- New Reserved Housing Requirement for Planned Development multi-family dwelling units: 20% of Total Unit. This bill also proposes a reserved housing requirement for a planned development with multi-family dwelling units on a lot of at least twenty thousand square feet, but less than one acre, of at least twenty per cent of the multi-family dwelling units to be constructed are required to be set aside for reserved housing. This requirement is the same for a planned development with multi-family dwelling units

on a lot of at least twenty thousand square feet. This requirement is intended to apply only to a planned development and not any other type of major development.

- No public input or transparency for HCDA rules. This bill also requires the HCDA to adopt implementing rules without regard to the notice and public hearing requirements of Chapter 91, Hawaii Revised Statutes.
- HCDA prohibited from accepting permit applications. To prevent a flurry of permit applications for major developments, this bill prohibits HCDA from accepting applications until the rules take effect.
- Reserved housing eligibility requirements remain unchanged. With respect to the eligibility requirements for a low- or moderate-income family to purchase or rent a reserved housing unit, the legislature does not intend that this Act cause any change from the requirements under existing statute or rule. The legislature intends that the present eligibility requirements remain the same until amended by statute or rule.

LURF's Position. LURF appreciates the opportunity to express our views on this matter and while we understand the intent of this bill, we respectfully urge the Committees **not to pass this measure in its current form,** because it unconstitutionally imposes affordable housing requirements without the required legal nexus, it lacks legal justification for the square footage requirements, does not include adequate economic incentives, the proposed implementation procedures are fundamentally unfair, and it is inconsistent with the current visions, plans and processes of the HCDA. 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 Kaka`ako and other government agencies to develop a consensus regarding incentives and the development of housing projects in Kaka`ako which include affordable housing units.

Based on the above, we respectfully request that HB 2846 **be held** by this Conference Committee

Thank you for the opportunity to express our **opposition** to HB 2846.