Congress of the United States
House of Representatives
Washington, DC 20515

April 17, 2008

The Honorable Linda Lingle
Governor
Executive Chambers
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Governor Lingle:

Thank you for your letter dated March 31, 2008 in which you asked for specific steps our offices can take to assist you in your proposal for the state to purchase Turtle Bay Resort. We have done extensive research on federal funding possibilities and hope this information is useful to you.

The House Appropriations Committee has a long-standing prohibition against earmarking funds for state land acquisition projects. As a result, it is not possible for us to obtain an earmark for the Turtle Bay purchase. There are several grant programs that the State of Hawaii could apply for, and we support full funding for many of them throughout the appropriations process. You mentioned two of them in your letter, the Land and Water Conservation Fund and the Cooperative Endangered Species Conservation Fund, which we discuss more fully below.

<u>Land and Water Conservation Fund</u>

The Land and Water Conservation Fund (LWCF) Act of 1965 was enacted to help preserve, develop, and assure access to outdoor recreation facilities to strengthen the health of U.S. citizens. LWCF has been the principal source of monies for land acquisition for outdoor recreation by the four federal agencies, the National Park Service, Bureau of Land Management, Fish and Wildlife Service, and Forest Service. For these federal acquisitions, Congress typically identifies which areas are to be acquired with the funds it provides. Since your proposed acquisition is not by one of the named federal entities, this is not a viable funding stream.

LWCF also funds a matching grant program to assist states in recreational planning, acquiring recreational lands and waters, and developing outdoor recreational facilities. The allocation for each state is determined by formula based on law and subsequent approval of the "certificate of apportionment" by the Secretary of the Interior. Since FY 2003, the State of Hawaii has received less than $ 1 million each year. In FY 2006 and 2007, Hawaii received just under $300,000. As you are aware, states award their grant money through a competitive selection process based on statewide recreation plans. Based on your criteria for administering this grant program, you may be able to utilize these funds for the Turtle Bay proposal.

President Bush zeroed out the LWCF program in his FY 2009 budget. However, we have contacted the House Appropriations Committee with our support for continued funding for LWCF to at least meet FY 2008 levels. Should it be funded, this will ensure Hawaii will continue to receive funding through the stateside assistance program.

Cooperative Endangered Species Conservation Fund

This grant program was established in section 6 of the Endangered Species Act and is used to fund U.S. Fish and Wildlife Service (FWS) participation in a wide array of voluntary conservation projects for candidate, proposed and listed species. **The House does not earmark this fund under any circumstance.** It is purely a grant program and funds are obtained through an application process through the U.S. Fish and Wildlife Service.

This Fund consists of three programs, the Habitat Conservation Planning Assistance Grants Program, the Habitat Conservation Plan Land Acquisition Grants Program and the Recovery Land Acquisition Grants Program. The Habitat Conservation Plan (HCP) Assistance Program provides grants to states and territories to support the development of HCPs. HCPs are agreements between a landowner and the FWS, allowing a landowner to undertake otherwise lawful activities on their property that may result in the death, injury or harassment of a threatened or endangered species.

The other two grants are land acquisition programs more suitable to your purpose. The HCP Land Acquisition Program provides grants to states or territories for land acquisition associated with approved HCPs. The grants are targeted to help landowners who volunteer to conserve imperiled species on their lands. In FY 2008, the FWS dispersed $35.3 million through this program with grants ranging from $1.7 million to S6.5 million. The Recovery Land Acquisition Grants Program funds state acquisition of habitat for endangered and threatened species with approved recovery plans. In FY 2008, the FWS dispersed $14 million through this program with grants ranging from S88,000 to $1.5 million.

Grant awards for FY 2008 were announced on March 20, 2008. Hawaii received three grants, all awarded through the Recovery Land Acquisition Grants Program. Two of the three grants were obtained by the Department of Land and Natural Resources. The first grant was $360,000 toward the purchase of the 3,582 acre Honouliuli property, permanently protecting over 90 rare species. The second was $740,000 to acquire 65 acres of wetlands to add to the Hamakua Marsh Wildlife Sanctuary. Although FY 2008 funding has been expended, it is our understanding proposals for FY 2009 funding will be accepted this summer or fall.

Other Grant Programs

The **Army Compatible Use Buffer Program** (ACUB) funding has been utilized in land conservation purchases on Oahu over the last few years. In 2002, Congress authorized the Department of Defense to form partnerships with state and local governments and non-profit conservation groups, to create buffers in the vicinity of military bases to prevent incompatible development and preserve habitat. Funding decisions are made by the Office of the Secretary of Defense based on input on project priorities from the military services. In Hawaii, ACUB funding was used for the purchase of Pupukea-Paumalu ($3.34 million in 2008), Moanalua Valley ($900,000 in 2007), and Waimea Valley ($3.5 million in 2006). The first step would be to add the Turtle Bay purchase proposal to the local project priority list which already includes four other land acquisitions.

The Farm Bill is not an appropriate vehicle from which to seek funding for state or local government acquisition of agricultural land. The bill governs federal farm and food policy and covers a wide range of programs including commodity price and income support, farm credit, agricultural conservation, research, rural development, and foreign and domestic food programs, among others. Although the bill does allocate mandatory funds among programs under the jurisdiction of the Committee, there would be no opportunity to earmark a land acquisition project such as this.

In addition, there are three more grant programs you may want to consider. The first is the **National Coastal Wetlands Conservation Grant Program** administered by the FWS. The program provides matching grants to States for acquisition, restoration, management or enhancement of coastal wetlands. Typically, between $13 million and $17 million in grants are awarded annually through a nationwide competitive process. Grants awarded under the National Coastal Wetlands Conservation Grant Program cannot exceed $1 million for an individual project. Applications for FY 2008 are due to the FWS regional office by May 23, 2008.

Second, you could also consider the **Coastal and Estuarine Land Conservation Program** administered through the National Oceanic and Atmospheric Administration (NOAA). This program was recently utilized to help purchase the Pupukea-Paumalu coastal bluff (a $2 million contribution). There is a $3 million project limit on this program. This program is now strictly a competitive grant program and funds can not be earmarked. It is our understanding that NOAA plans to issue a funding announcement for FY 2009 in late May or early June of this year.

Third, the **Farm and Ranch Land Conservation Program** might be an option for the state as the program provides some funding for purchase of easements to keep land in agriculture. Hawaii has been allocated approximately $1.8 million per year under this program in recent years. However, the ability of the USDA Natural Resource Conservation Service (NRCS) to release the funds, which have been obligated to Hawaii agricultural land protection projects, has been stymied by provisions in state law reserving all mineral rights to the state. USDA cannot approve purchasing an easement if the state retains the right to mineral rights. We understand that NRCS has been working with DLNR to resolve this matter via a Memorandum of

Agreement. Failure to resolve this matter could result in Hawaii receiving smaller allocations from the national program in the future.

Conclusion

Should the Legislature opt to explore the possibility of buying all or part of the land in question at Turtle Bay, federal participation is extremely limited by the prohibition on funding state land acquisitions. However, we support overall funding for all of the grant programs listed in this letter and will continue to do so as the appropriations process for FY 2009 proceeds. In addition, we would encourage you to explore the option of a public/private partnership with land conservation foundations which have a record of success both in the Islands and on the mainland.

If you would like us to continue looking for grant programs that may be applicable to this proposal, we would need more information regarding your proposal. At a minimum:

- How much land are you considering purchasing?
- How much federal funding are you seeking?
- What percentage would the federal funding be of the proposal's total cost?
- How much funding would other partners be able to contribute to the purchase?

The federal government often views the number of partners and how much they are contributing as an indicator of public support for the project. A map and description of the qualities/attributes of each of the parcels would also be helpful.

In your letter, you mention meeting with Interior Secretary Dirk Kempthorne in February and his support for your initiative. We would appreciate your providing us with details on the support/ assistance that will be provided by the Department of Interior through the administration.

We too have heard the concerns of the North Shore community and other residents of Hawaii who are troubled by the threat of overdevelopment of this area. We share the community's concern about the impact that the proposed mega-development would have on the environment, infrastructure, and quality of life. However, not knowing how much the land/resort will cost or what arrangements you are planning for its purchase, we are concerned about the opportunity costs of this acquisition and how it might affect prospects for acquiring/protecting other special properties throughout the state. As you know, development pressures have been increasing, especially on the neighbor islands, and funds spent on Turtle Bay cannot be spent on other priority acquisitions. Looking for creative partnerships to achieve the goals of preserving open space and coastal protection that we all share is critical in view of these concerns.

Last, the Turtle Bay situation is further complicated by the ongoing mortgage foreclosure lawsuit. The effect of these as yet unsettled claims on any potential purchase of the existing resort portion, as well as the valuation of the undeveloped land portion, is not known at this time. This lawsuit and the resulting uncertainty could raise concerns about using federal taxpayer dollars in a public bailout of a failed corporation.

As you monitor the ongoing situation and provide us with appropriate information, we will certainly explore seeking federal dollars, however limited, in furtherance of protecting the area for future generations.

Aloha
Sincerely,

Neil
Neil Abercrombie
Member of Congress

Mazie K. Hirono
Mazie K. Hirono
Member of Congress

cc: The Honorable Daniel K. Inouye
The Honorable Daniel K. Akaka
The Hawaii State Legislature
Turtle Bay Advisory Working Group

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

March 31, 2008

The Honorable Neil Abercrombie
U. S. House of Representatives
Room 4-104, Prince Kuhio Federal Building
Honolulu, Hawaii 96850

Dear Representative Abercrombie:

In my State of the State message I announced my Administration's intention to purchase the Turtle Bay Resort and surrounding lands currently slated for resort development. This announcement has been received with overwhelming community support. I have been encouraged by the outpouring of help that has been offered to ensure this effort is successful.

As a member of our Congressional delegation, you can play an important role in this project by providing federal financial resources for the acquisition. Based on informal conversations, we understand funding could be made available through the Department of Defense Buffer Lands Program. The Department of the Interior Land Water Conservation Fund and the Cooperative Endangered Species Conservation Fund also would be possible places where Congress could appropriate moneys that could be applied to this project. Additionally, the pending Farm Bill provides an opportunity to include funds for the acquisition of approximately 400 acres of agricultural lands that reside mauka of Kamehameha Highway and are an integral part of Oaktree Capital Management, LLC's land holdings.

In February I met with Department of the Interior Secretary Dirk Kempthorne who supports my initiative and has already provided suggestions for assistance from his department. The addition of funds by Congress into key departments such as the Department of the Interior would provide resources that could be identified to help preserve and protect Turtle Bay.

Given that the impending foreclosure action gives us a small window of time in which to act on the acquisition, I would appreciate learning by mid-April of the specific steps your office can take to assist the State of Hawaii.

Sincerely,

LINDA LINGLE