CONSERVATION POLICIES

Statement for the Senate Committee on
Ecology, Environment and Recreation
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Introduction

The basic conservation policy of the State is established by Article X of the State Constitution. Section 1 of that Article makes the following requirement:

The legislature shall promote the conservation, development and utilization of agricultural resources, and fish, mineral, forest, water, land, game, and other natural resources.

The activities whose promotion is required by the language of this article comprise a spectrum:

Preservation for the sake of preservation;
Preservation for future use;
Use not degrading a resource (such as distant viewing);
Use not significantly degrading a resource (such as most scientific uses);
Use of renewable resource that does not change its continuing availability but may change its character;
Use of semi-renewable resource that may introduce changes not reversible except over a long period or great expense; and
Use of a non-renewable resource that inescapable degrades its future availability.
However, wanton degradation of a resource is excluded from what is to be promoted.

The term conservation is used by most conservationists as including both preservation and use of natural resources, even degrading use if it is wise, hence as referring to the entire spectrum. However, the spectrum, and hence the term conservation, include mutually incompatible activities which are easiest identified by referring to the end members of the spectrum as preservation and degrading use. The incompatibility should have been obvious for millennia, but many natural resources are so large or so resilient, and many of the degrading effects have been so subtle, that the extent of incompatibility was not widely recognized until less than a decade ago and indeed is still not clear.

By the quoted constitutional provision it is the legislature that is charged with the promoting the preservation and use (even degrading use) of natural resources. Section 2 of Article X, which deals with implementation, is restricted to institutional arrangements. No article of the Constitution indicates explicitly whether preservation or use is to be favored in the promotion where these are incompatible, or how tradeoffs are to be made. The choice is left to be made by the Legislature itself in law or by delegation to the boards or commissions to be established in accordance with Section 2. We should say that the choices (plural) are thus left, because it is clear that the appropriate balance must vary with the nature of the resource, its location, and the circumstances of the time.

With the increasing awareness of the extent of resource degradation that has occurred with use, and of the importance of avoiding degradation and hence promoting preservation, a consensus as to the proper balance between preservation and degrading use, if one could be determined, would certainly be found to have shifted. The agenda for this hearing indicates concerns whether the policies of the state have shifted accordingly. Do the conservation policies of the Board and Department of Land and Natural Resources still seem adequate and appropriate? Does Land Management Regulation 4 of the Department still reflect wise policies as to uses within those lands specifically designated for conservation? Should some of the choices of lands within which uses are restricted to what we call conservation uses actually be made, not by the legislature, but by the electorate of the State through constitutional amendment?

Members of the Senate Committee on Environment, Ecology, and Recreation may have anticipated that the University of Hawaii Environmental Center, with its ability to draw on all of the related concerns and competence of the University community, should be able to provide not only definitive answers to these questions to advise in some detail how the conservation policies generally and Regulation 4 should be changed and what conservation areas should be constitutionally designated as conservation lands. Such advice ought, however, to be based on much more thorough consideration than has been possible in the time since the agenda of this hearing was announced. The best we can do is to indicate how important the issues are, how significant the concern of the committee is, what great ramifications may follow from not only the general decisions but specific ones, and how limited our knowledge is even as to ramifications of potential major significance.

This statement, though prepared and reviewed by some members of the University community with considerable concern and competence in conservation matters, cannot be considered to reflect an institutional position of the
Our comments relate to three broad conservation topics, but to only one or two aspects of each of these three:

1. Within the general topic of the assignment of certain lands to restricted conservation uses, the aspect of a proposal for constitutional designation;

2. Within the general topic of the restricted conservation uses permissible in such lands, the aspect of the designation of such uses in Regulation 4 of the Department of Land and Natural Resources; and

3. Within the general topic of policies whose applicability is not restricted to the specially designated conservation lands, the related aspects of the protection of endangered species and the preservation of natural areas.

The aspects discussed are merely examples of many that warrant extensive discussion.

Constitutional designation of Conservation Lands

The proposal as we understand it is to amend the Constitution to designate certain lands as Conservation Lands. The purpose clearly implied is to make the redesignation of those lands for other purposes require further constitutional amendment.

The present Conservation Land Use District was established in accordance with a legislative mandate, which also made certain requirements as to the lands to be included. Additions to or deletions of land from the Conservation District by alterations of its boundary are however, delegated by the law to the Land Use Commission. There is widespread feeling that, although the Commission has added some lands to the Conservation District, it is too freely able to delete lands from this District, especially in transferring them to the Urban Land Use District. Constitutional designation of certain lands for conservation purposes would, of course, remove from the land Use Commission the power to redesignate them for any other use.

With respect to the proposal, we merely raise some questions that should be addressed in its discussion.

A first set relates of course to the extent of the designation and the identification of the lands to be designated. Should the lands designated in the Constitution be all of the lands now in the Conservation Land Use District, only a part of those lands, all of those lands plus some other lands, or a part of those lands plus some other lands? What criteria should be used in selecting the lands for designation? Who should perform the selection? And finally, of course, what particular lands should be selected?

A second set relates to the nature of the designation in relation to the uses to be permitted. The lands constitutionally designated will, of course, be especially distinguished by the designation itself. Should they be considered in other respects as part of the Conservation Land Use District so that the uses to be permitted in them will be those allowed within the District by pertinent legislation and regulations, or should special limitations as to use be incorporated in the Constitution in addition to the designation?
A third set relates to alternatives. Recognizing that curbs on the reassign-
ment of conservation lands to other land-use districts is a purpose of the pro-
posal, might the curbs be adequate if they were more stringent than the present
curbs but less stringent than Constitutional protection? For example, might
adequate protection be provided by requiring that legislative approval for any
reassignment of Conservation Lands (as was proposed for all land-use changes in
a bill considered at the last Legislature)? Might adequate protection be pro-
vided even by legislative designation of certain conservation lands, in which
case legislative designation would be required for those lands if they were to
be put to other uses?

The Environmental Center will, of course, be interested in the discussion of
the proposal.

Regulation 4

The Conservation Land Use District was established under Act 205 (1963)
[HRS 205-2]. That act provided only general guidance as to uses permissible in
the Conservation District in the form of useability characteristics to serve as
criteria for the selection of lands to be included in the District. Although
the power to designate lands to be included in the District was provided to the
Land Use Commission, a part of the Department of Planning and Economic Develop-
ment, the power to determine permissible uses was given to the Department of
Land and Natural Resources in accordance with provisions predating Act 205 (1963)
that related to Forest and Water Reserve Zones [HRS 205-5a; HRS 183-41]. Land
Management Regulation 4 of the Department of Land and Natural Resources represents
the expression of this power.

Regulation 4, was adopted in 1964 and slightly amended in 1968. In addition
to three special subzones set aside for particular educational, cemetary, and
nursing-home uses, respectively, it recognizes two broad subzones. Within the
"RW" (Restricted Watershed) conservation subzone, permissible uses are restricted
to "water and forestry resources development, installation and maintenance of
transmission facilities, and any government program or activity." Within the
"GU" (General Use) conservation subzone, 10 general types of use are permissible.
Application for permits for actual uses must be made to the Board of Land and
Natural Resources. In the period since the adoption of Regulation 4 and its
amendment, significant changes have occurred in the criteria for evaluation of
land use and land-use decision making. Increasing weight is being given to social
or public values beyond the monetary values identified with financial analyses.
Increasing concerns are being expressed for quality of life, environmental impact,
endangered species, coastal zone, open space, etc. and the meeting of these
public needs and desires, also for encouraging increasing public awareness (sunshine)
and participation in the identification and fulfillment of these needs. Yet,
no recognition of these changes has been incorporated into the regulation which
establishes the guidelines for the administration and management of that portion
(45 percent) of Hawaii's lands which should most accommodate these public concerns
and needs. Review and possible revision of Regulation 4 would seem appropriate
in light of this change in value judgments. Proposed revisions have been
developed but their public review and their final adoption remain in limbo. These
conditions discourage specific comments.

Public knowledge about and understanding of Regulation 4 is imperative, not
only so Hawaii's people will understand how the Conservation District lands are
managed but also how they can participate in the decision-making process concern-
ing these lands. Comments made by Eckbo, Dean, Austin and Williams in their
review in 1969 remain as appropriate today (in content) as when made.
Two quotations will illustrate this:

... more confusion and friction [exist] throughout the State over the purposes and administration of the Conservation Districts than any other single element of the Land Use Law.

Clearly where there is so much misunderstanding and friction, changes of some kind are in order. These seem to be in the direction of educating the public in the meaning of conservation and the Conservation District and in improving the administration of these districts.

So far as we are aware, the last revision proposed for Regulation 4 was that drafted in October 1973. A brief Environmental Center review of that draft, prepared in January 1974, can be made available to the Committee.

It seems probable that considerable revision will be appropriate and that it would be well to provide for extensive informal public participation in the revision prior to submission of a new proposal for a formal public hearing. The Environmental Center will contribute to the revision process to whatever extent it finds possible. The Center might, for example, undertake to review the original Regulation 4 and the proposed revision of 1973-74 and summarize the issues presented in them if this would be of value.

Endangered species and natural areas

Conservation policies are expressed in many of the laws of the state, in many County ordinances, and in many regulations of state and county ordinances. Some of these policies relate exclusively to resources or resource use rights owned by the state or counties. Others extend to natural resources or resource use rights privately owned. Many deserve reconsideration in the light of recent changes in values, and of these several are currently controversial. Among the latter are the policies relating to endangered species.

Among the Hawaii laws related to the conservation of animals are some relating to wild birds dating from 1909. Act 49 (1972) established a program of protection of indigenous birds and mammals relating particularly to endangered species, referring to a federal list of endangered fish and wildlife. Act 65 (1975) enlarged the particular concern to endangered wildlife and plants with reference again to federal listings, those produced under the federal endangered species act of 1973.

The responsibilities under the state law are placed in the Department of Land and Natural Resources, which is instructed to coordinate its research with the Natural Area Reserve Commission and the Animal Species Advisory Commission.

The jeopardy of species is relative, not absolute. Some sources of jeopardy may be reduceable at little cost, economic or social. Other sources may be reduceable only at considerable cost. No means may be known for reducing still other sources of jeopardy. Some jeopardized species may be harvested with direct economic benefit to man. With others our concern may be primarily ethical. Some may be valuable because they uniquely fill a niche in a web of ecological relationships involving other species that are valuable. Others represent gene plasms of actual or potential value. Still others may be of value in elucidating evolutionary or ecological principles. No endemic species pose such direct or indirect threats to man that their endangerment would be considered beneficial.
Yet federal law requires the listing of species with a breakdown only between endangered and threatened species, and makes no provision for differentiating as to the nature of the threat, the amenability of the threat to reduction, or the nature and extent of the value of the species. The U.S. Bureau of Sport Fishereis and Wildlife has appointed six "recovery teams" to study these variables with respect to birds and mammals, but the status with respect to plants is not so satisfactory.

A list of plant species endangered in Hawaii, compiled by the Smithsonian Institution and promulgated by the Interior Department, has been challenged by the State on the basis that it is too comprehensive, including some species not provably endangered. Foresters in the State have proposed a shorter list. Botanists in the state tend to back the Smithsonian and Interior Department, State administrators to back the foresters. The Smithsonian list of endangered plants refers to species and varieties, using conventional botanical terminology. This has been objected to because it does not conform to the original terminology in the Act that refers to species and subspecies as is conventional in zoology. So long as the arguments continue at a semantic level with their present political reinforcement it is unlikely that we will arrive at a reasonable working consensus as to the listing of those kinds of plants and animals that are in some jeopardy and their differentiation as to the nature and extent of jeopardy and the nature of the value of the species.

Yet this differentiated listing is only the first step to designing and implementing a management program to control the jeopardy to whatever degree control is appropriate. The identification and differentiation ought to be considered primarily scientific matters. Politics should be minimized and confined to the questions as to which scientific disciplines and which specialists should be consulted. Broader politics must be involved when it comes to the establishment of a management plan, because it is here that the relative values must be assigned to species and costs of their salvation.

The following statements of position may be helpful:

1. The number of species of both plants and animals that are in jeopardy may be expected to be far larger in Hawaii than in any comparable continental area because significant parts of a unique flora and fauna, developed in isolation over many millennia, still remain here extant in spite of a loss of isolation beginning about eleven centuries ago and accelerating rapidly during the last two centuries.

2. The listing of jeopardized types of plants and animals can begin with "off-the-shelf" information, and should begin with such information even if it is quite incomplete and in some respects uncertain. However, for use in an effective management plan extension of information on jeopardized species determination of the sources and extent and reduceability of jeopardy and the nature of values of species will be necessary.

3. With some possible exceptions, jeopardized species cannot be protected independently but only through the protection of the ecosystems of which they are parts.
4. The listing of jeopardized types of plants and animals and the determination of the sources and extent of jeopardy are best approached by combinations of specialists in botany, zoology, and ecology that will differ somewhat from group to group.

5. No single agency or institution has, or can be expect to have, internal capabilities appropriate to the task. The DLNR for example, which under the state law has the responsibility for the needed research, lacks adequate botanical capabilities.

6. The most expedient remedy to the inadequacy will probably involve both increasing the staff of DLNR and opening the procedures for listing to involve persons or staffs of other agencies and institutions.

7. The costs of the increases in staff and such consulting arrangements as may be necessary are justified by the minimization of loss of valuable endangered species that can be achieved only by early agreement as to the identification and differentiation.

8. The specialists should be charged with the identification and differentiation responsibilities. They should be encouraged to clarify the tradeoffs that will have to be made in a management plan, but no special weight should be given to their subjective value judgments on the tradeoffs.

9. Federal funds are available to support the listing efforts and the implementation and possibly the development of management plans for the protection of selected endangered species in selected locales, but such funds can be allocated and effectively used only if there is close federal-state coordination.

Some notes on the preservation of natural areas may be of interest considering the need to save at least portions of ecosystems if endangered components in them are to be saved and the requirement that the Natural Area Reserve System Commission be consulted on policies relating to endangered species.

Since the establishment of the Commission in 1970, only two areas have been designated as Reserves, Ahihi Kinau on Maui, and the 1942 lava flow on Hawaii. The scientists on the Commission consider that about 100 Reserves should be established to represent major variations in the 9 zonal and 9 azonal systems of Hawaii. So far 57 areas have been nominated for inclusion in the System. These have been located on small-scale maps. Proposals have been drafted for only 18, and for only 8 of these have the proposals been revised to include necessary regulations.

The slowness in development of proposals reflects disagreements in the Commission. Some members are expectably concerned that the System established be ecologically balanced. Others are concerned that no forest with a potential for commercial production be reserved. There are also disagreements as to what constitutes a nature ecosystem. Some would exclude from the Resources any area into which exotics have moved, others consider some encroachment of exotics inescapable.

It is suggested that the process could be speeded if it were agreed that a sample of each present forest reserve were recognized as a Natural Area Reserve. Designation could begin with the Natural Areas in the 68 forest
reserves now owned by the State.

The slowness of development of appropriate regulations reflects the lack of staff competent in legal and administrative matters. The DLNR wishes to make a civil service appointment to handle these matters -- members of the Commission would like to start using a specialist under contract.

The process of designation, overall, involves many steps. Division review in the DLNR and the needs for surveys are particularly time consuming. It would seem that in many instances precise surveys should not be necessary, and plotting on standard 1/24,000 topographic maps would suffice.

The Environmental Center is, of course, concerned with policies relating to endangered species and natural areas and would be pleased if it could contribute to the establishment sensible and wise state policies and their early implementation.

Concluding remarks

Many of the questions raised and conflicts noted respecting the assignment of lands to conservation district, permissible uses of conservation lands, and conservation policies generally reflect uncertainty as to appropriate balances between preservation and degrading use of natural resources. As pointed out in the introduction to this statement, the ultimate responsibility for determining what balances are appropriate between these incompatible objections of natural resources management rests with the legislature. It is the intent of this frank presentation by the Environmental Center of the questions and conflicts to clarify the issues. The decisions as to balances remain with the legislature and those agencies to which it has delegated the decision-making powers.