

**LINDA LINGLE**  
Governor



State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
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**SANDRA LEE KUNIMOTO**  
Chairperson, Board of Agriculture

**DUANE K. OKAMOTO**  
Deputy to the Chairperson

**TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEES ON  
WATER, LAND, OCEAN RESOURCES, AND HAWAIIAN AFFAIRS  
AND  
AGRICULTURE  
FRIDAY, FEBRUARY 1, 2008  
8:30 a.m.  
Room 325**

**HOUSE BILL 2355  
RELATING TO AGRICULTURE**

Chairs Ito and Tsuji and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 2355 that places a moratorium on the issuance of well permits by the Commission on Water Resource Management intended to serve agricultural lots that are likely to be “fake farms” or “gentlemen’s estates.” Well permits are not to be issued if the intent is to provide water for domestic use to an agricultural lot of five acres or less and has or will have a dwelling built on the parcel. The moratorium terminates upon the first designation of Important Agricultural Lands (IAL) by the State Land Use Commission pursuant to Part III of Chapter 205, HRS. The Department of Agriculture shares the intent to prevent erosion of the agricultural land base prior to the designation of Important Agricultural Lands pursuant to Part III of Chapter 205, Hawaii Revised Statutes, but cannot support the method proposed in the bill. We strongly believe that House Bill No. 3032, the Administration’s measure addressing “fake farms” provides a more comprehensive, defensible, and enforceable means to ensure substantial agricultural use occurs on subdivisions of the best agricultural lands and for agricultural lots where building permits for farm dwellings are sought.



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
**COMMISSION ON WATER RESOURCE MANAGEMENT**  
P.O. BOX 621  
HONOLULU, HAWAII 96809

**TESTIMONY OF THE CHAIRPERSON  
OF THE COMMISSION ON WATER RESOURCE MANAGEMENT  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

**on House Bill 2355 – Relating to Wells**

**BEFORE THE HOUSE COMMITTEES ON  
WATER, LAND, OCEAN RESOURCES AND HAWAIIAN AFFAIRS  
AND  
AGRICULTURE**

**February 1, 2008**

The purpose of this bill is to place a moratorium on the issuance of permits for the construction of wells intended to serve agricultural land parcels that are likely to be "fake farms" or "gentleman estates".

Though the Department of Land and Natural Resources (Department) supports the intent of this bill that seeks to prevent "fake farms" or "gentleman estates" land use on agricultural lands, the Department believes this is clearly a land use issue that should not be addressed through the Commission on Water Resource Management (Commission) and the State Water Code 174C, HRS. It would be more appropriate to achieve the intentions of the bill by defining such restrictions through the appropriate state and county land use planning processes with input from the Department of Agriculture (DOA). As such, the Department does not support the bill in its present form and defers support on the intention of this bill to the appropriate state and county land use agencies including DOA.

Further, the Department foresees some unintended consequences should H.B. 2355 pass in its present form:

- 1) From a water resource perspective, it is generally good resource management to spread out pumping in an aquifer area to avoid creating concentrated points of high pumpage. Such concentrated pumpage are susceptible to salt-water intrusion that can limit the sustainability of the resource. This bill would run counter to this basic ground-water development principle by preventing possible spreading out of pumpage.
- 2) Wells are expensive construction projects and the bill would prevent private landowners who are willing to participate in the goal of spreading out pumpage over an aquifer through their own investment in well construction costs.

- 3) Under the common law in the State of Hawaii, in areas that have not been designated ground-water management areas under §174C-41, Hawaii Revised Statutes (HRS), landowners have an established correlative right to drill a well and take some water underlying their lands. This is provided that there are insignificant impacts to other nearby existing wells and ground- and surface-water resources. It is unclear how this bill would affect such correlative rights.
- 4) Only in designated ground water management areas does the Commission have the authority to deny well construction activities based on proposed end uses. However, this issue is further complicated by the fact that the Supreme Court has confirmed that individual household domestic use is a public trust use.

The Commission staff is willing to work with the Legislature and other appropriate agencies to help refine the Legislature's desire to prohibit "fake farms" and "gentleman estates" on agricultural lands statewide and further the intent this bill.

Thank you for the opportunity to testify on this measure.



OFFICE OF HAWAIIAN AFFAIRS

Legislative Testimony

**HB 2355, RELATING TO WELLS**

House Committees on Agriculture and  
Water, Land, Ocean & Hawaiian Affairs

February 1, 2008

8:30 a.m.

Room: 325

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The Office of Hawaiian Affairs SUPPORTS, with Amendments, HB 2355, which would place a moratorium on the issuance of permits for the construction of wells intended to serve agricultural land parcels that are likely to be "fake farms" or "gentleman estates".

OHA is concerned about the uses of our agricultural lands, and we see this bill as accomplishing two things. First, it will add an important layer of protection towards regulating questionable uses of our valuable and scarce agricultural lands. Second, it will only do so for five years or until the first designation of "important agricultural land" is made by the Land Use Commission pursuant to sections 205-41 to 205-52, Hawaii Revised Statutes (HRS). This is important because it may be the catalyst required to have this designation made, and yet will prevent further damage from being done to these important lands in the meantime.

Our concerns are echoed by the myriad of laws and legislation supporting a strong agricultural economic base and retention of lands in primarily agricultural pursuits. Article XI, section 3, of the Hawai'i State Constitution, HRS Section 205, and even county ordinances all address the need to protect our agricultural lands. This bill will help to fulfill all of these mandates while creating a protective shield in the meantime.

OHA's only recommendation is to consider that the moratorium not globally end upon the "first" designation of important agricultural land in any location. For example, a designation of important agricultural land on O'ahu should only lift the moratorium on O'ahu, because that designation would have little meaning for lands and farmers on other islands, and this should be taken into consideration. A more localized approach may be more

beneficial in achieving the important objectives that this bill strives for.

Therefore, OHA urges the Committees to PASS HB 2355 with the above recommendation for amendment. Thank you for the opportunity to testify.



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February 1, 2008

**The Honorable Ken Ito, Chair**

House Committee on Water, Land, Ocean Resources & Hawaii Affairs

**The Honorable Clift Tsuji, Chair**

House Committee on Agriculture

State Capitol, Room 325

Honolulu, Hawaii 96813

**RE: H.B. 2355 Relating to Wells**

**Hearing Date: February 1, 2008 @ 8:30 a.m., Room 325**

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS® (HAR) **opposes** H.B. 2355.

H.B. 2355 will leave thousands of land owners without the right to serve their property with water. Such a drastic action of a moratorium would have significant impacts on the lives and livelihood of citizens.

HAR believes that the state and its lands would be better served by focusing efforts and resources on identifying important agricultural lands, rather than placing a moratorium on the construction of wells.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.