

HB 2450 HD1

LINDA LINGLE
Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

LATE

TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON AGRICULTURE AND HAWAIIAN
AFFAIRS, AND WATER AND LAND

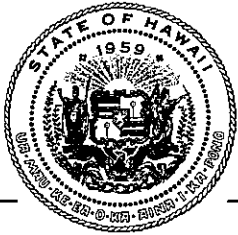
THURSDAY, MARCH 13, 2008
2:45 p.m.
Room 224

HOUSE BILL 2450, HOUSE DRAFT 1
RELATING TO LAND USE

Chairs Tokuda and Hee and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 2450, House Draft 1 that seeks to establish a buffer zone separating Agricultural District land that has been reclassified to the Urban or Rural District from adjacent Agricultural District lands that have existing farming operations. Within the buffer zone, no residential, commercial or industrial uses or the development of infrastructure intended to service the same are allowed. The Department of Agriculture supports the protection of existing agricultural operations in the Agricultural District from nuisance complaints as presently afforded under the Right to Farm Act.

HB2450HD1_AGR_03-13-08_AHW-WTL



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR
ABBEY SETH MEYER
INTERIM DIRECTOR
OFFICE OF PLANNING

OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
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Statement of
ABBEY SETH MEYER
Interim Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
**SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
AND
SENATE COMMITTEE ON WATER AND LAND**
Thursday, March 13, 2008
State Capitol, Conference Room 224
2:45 PM

in consideration of
**HB 2450, HD1
RELATING TO LAND USE.**

Chairs Tokuda and Hee, Vice Chairs English and Kokubun, and Members of the Senate Committees on Agriculture and Hawaiian Affairs and Water and Land.

HB 2450, HD1 amends Chapter 205, Hawaii Revised Statutes (HRS), by adding a new section to require any reclassification of land, contiguous to the State Agricultural District, into the Urban or Rural Districts, to contain a condition banning non-agricultural development within an unspecified distance from the property line of any parcel in the Agricultural District on which farming operations are being conducted.

In effect, this new provision would create a set-back, or buffer zone, within the reclassified parcel that could not be used for the permitted uses of the Urban district and the non-agricultural permitted uses in the Rural district. Buffer zones are occasionally included in reclassifications. Historically these conditions have been intended to protect

the health and safety of the residents of the newly reclassified lands. Examples include a non-residential buffer for new development next to an old landfill or height and people aggregation restrictions for parcels next to airport runway zones. Other instances include buffer zones with height restrictions to protect a unique view plane from being lost to new development.

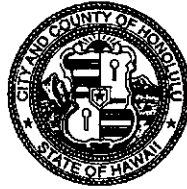
The proposed buffer zone would protect new residents from agricultural activities, or the reverse, protect agricultural activities from the complaints of new residents or businesses. Hawai'i law already provides remedies which support the State Constitution's protection of agriculture. Chapter 165, HRS, the Hawai'i Right-to-Farm Act, limits the circumstances under which new residents or businesses can seek to enjoin existing agricultural activities as a nuisance.

We support the over-all concept of this bill, inasmuch as its intent is supportive of our goal to protect commercial agriculture. However, we believe the State Land Use Commission already has the authority to strengthen the existing protections on a case-by-case basis where warranted through the imposition of conditions. Further, farming operations in the State Agricultural District can start or stop without official action, which could result in an uneven imposition of the buffer zone that over time would not necessarily bear a relation to the presence or absence of agricultural activities.

Thank you for the opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8000 • FAX: (808) 527-6743
INTERNET: www.honolulu.gov • DEPT. WEB SITE: www.honoluludpp.org



MUFI HANNEMANN
MAYOR

HENRY ENG, FAICP
DIRECTOR

DAVID K. TANOUE
DEPUTY DIRECTOR

March 13, 2008

The Honorable Jill N. Tokuda, Chair
and Members of the Committee on Agriculture and
Hawaiian Affairs

The Honorable Clayton Hee, Chair
and Members of the Committee on Water and Land
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Tokuda, Hee, and Members:

**Subject: House Bill 2450 HD1
Relating to Land Use**

The Department of Planning and Permitting **opposes** House Bill 2450 HD1, which would prohibit "nonagricultural development" within an unspecified distance from adjoining land in farming operation.

This bill makes no allowances if the farming operation is illegal. Further, it makes no allowances for differences in topography. What if the adjoining property is on the top of a ridge, with farming in the valley below?

This bill may have an effect on the city's rapid transit program, as the bill's definition of "development" includes "infrastructure intended to serve residential, commercial, or industrial development." There are currently farming operations close to our transit alignment in Ewa, and portions of our transit alignment is located on lands still within the state agricultural district. This bill could not only delay transit until the land use boundary amendment is obtained and farming ceases, but also significantly increase the construction cost for transit caused by delay.

The bill may make government liable for a "partial takings", allowing adversely affected properties eligible for government compensation. The yet-to-be-defined buffer could eliminate a significant amount of housing, increase the cost of housing that can be built, and make it that much more difficult to provide affordable housing. With the earlier-proposed 300-foot buffer, about two rows of house lots and the street between could be lost, given that a typical residential lot of 5,000 square feet has dimensions of 50 feet by 100 feet. As another example, a small

The Honorable Jill N. Tokuda, Chair
and Members of the Committee on Agriculture and
Hawaiian Affairs

The Honorable Clayton Hee, Chair
and Members of the Committee on Water and Land
The Senate
Re: House Bill 2450
March 13, 2008
Page 2

farm of 200 feet by 200 feet (less than an acre) would freeze use of all land within 300 feet of that farm, covering an area in excess of 30 acres.

While the intent is to create a protective buffer around farming, it is ironic that the bill prohibits uses in the buffer that are permitted outright within the state agricultural district, such as utility lines, roadways and waste transfer stations, and cell phone antennas.

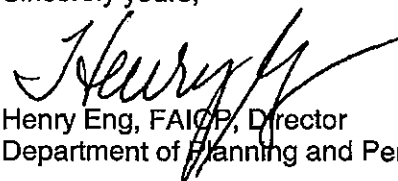
Lastly, a single buffer size cannot address all situations. For example, for upwind poultry farms, a 300-foot buffer may not be sufficient, but for hot house nurseries, it is over-reaching.

We support agriculture, and the Right to Farm Act. However, House Bill 2450 HD1 goes beyond protecting the right of farmers to use their land for agriculture. Zoning controls are available to address incompatible siting of uses on a case-by-case basis. A single buffer standard is inadequate to deal with potentially conflicting land uses, and would give the public an unfair expectation that the problem has been solved.

Please file this bill.

Thank you for the opportunity to testify.

Sincerely yours,



Henry Eng, FAICP, Director
Department of Planning and Permitting

HE: jmf
hb2450hd1-kh.doc

**HAWAII FARM BUREAU FEDERATION
2343 ROSE STREET
HONOLULU, HI 96819**

LATE

MARCH 13, 2008

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
AND
SENATE COMMITTEE ON WATER AND LAND

TESTIMONY ON HB 2450
RELATING TO LAND USE

Chair Tokuda and Chair Hee and committee members:

My name is Alan Takemoto, Executive Director, of the Hawaii Farm Bureau Federation, which is the largest non-profit general agriculture organization representing approximately 1,600 farm and ranch family members statewide.

The Hawaii Farm Bureau Federation supports HB 2450. The intent of this measure is to address the ever increasing threat of urban encroachment to active farming operations by establishing a buffer area.

New housing developments and roadways near or abutting active agricultural areas have placed substantial pressure on farmers in that it forces them to change their normal farming practices. Although farmers are covered by the Hawaii Right to Farm Act, it does not stop neighbors from unwarranted complaints of noise, dust, odors that are associated with a normal farming operation.

This required buffer zone will provide some distance to hopefully protect existing farm operations from potential complaints from urban encroachment.

Thank you.



Maui County Farm Bureau

*An Affiliate of the American Farm Bureau Federation and Hawaii Farm Bureau Federation
Serving Maui's Farmers and Ranchers*

LATE

TESTIMONY

HB 2450 HD1 RELATING TO LAND USE

HEARING BEFORE THE COMMITTEE ON AGRICULTURE & HAWAIIAN AFFAIRS AND COMMITTEE ON WATER & LAND

Chair Tokuda, Chair Hee and Committee Members:

My name is Warren Watanabe, Executive Director of the Maui County Farm Bureau, a non-profit general agriculture organization and an affiliate of the Hawaii Farm Bureau Federation.

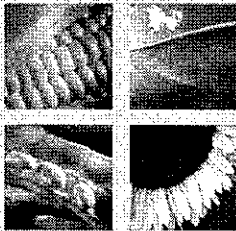
MCFB on behalf of our member farmers, ranchers and agricultural organizations, **supports with comments, HB2450**, providing for buffer zones around agricultural districts

Despite the Right to Farm statute, our farmers regularly face instances in which they need to defend their right to farm as urban encroachment occurs. We find not only residential and urban development but schools to be a challenge for us. Opponents of this bill speak to a taking. Farmers often must modify their practices, increasing costs that are not recoverable or must limit their farming activity on their land due to urban encroachment. Isn't this a taking?

Guidance on footprint design as urban development is contemplated could alleviate many of the problems that currently are happening. We understand that the 300' setback may not be the best option. However, some recognition of a buffer area, determined on a case by case basis should be reasonable. This decision should be made between the developer and the agricultural operator. Currently such discussion does not happen so agriculture is always left on the defense position. If agriculture is important to Hawaii this must change.

We respectfully request your support towards the passage of this measure with amendments addressing the protection of agricultural activities on agricultural lands.

Thank you for this opportunity to comment on this measure.



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Hawaii Crop Improvement Association

Growing the Future of Worldwide Agriculture In Hawaii

Testimony by: Sarah Styan
HB 2450hd1, Land Use
Senate AHW/WTL Committees
Thursday, March 13, 2008
Room 224: 2:45 pm

Position: Support

Chairs Tokuda and Hee, and Members of the Senate AWH /WTL Committees:

My name is Sarah Styan. I am a Kauai resident, President of HCIA and research scientist of Pioneer Hi-Bred International, Waimea Research Station. The HCIA represents seed production and research facilities operating in Hawaii for nearly 40 years. The HCIA is comprised of five member companies that farm an estimated 8,000 acres on four islands, valued at \$97.6 million in operating budget (2006/2007 HASS). We are proud members of Hawaii's diversified agriculture and life sciences industries.

We appreciate this measure that would create buffer zones between farms and nonagricultural development. As the pressure for housing increases, it becomes more and more difficult to farm in Hawaii. Nonagricultural neighbors who are in close proximity to farms complain about noise, dust and smells associated with farming. This leads to problems and sometimes lawsuits.

We urge your support of this measure. I can be reached at 808-338-8300 ext. 113 if there are any questions.

Thank you for the opportunity to provide testimony.



Hawaii's Thousand Friends

25 Malunui Ave., Suite 102., PMB 282 • Kailua, HI 96734 • Phone/Fax: (808) 262-0682 E-mail: htf@lava.net

March 13, 2008 – Testimony Submittal

To: COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
Senator Jill N. Tokuda, Chair
Senator J. Kalani English, Vice Chair

COMMITTEE ON WATER AND LAND
Senator Clayton Hee, Chair
Senator Russell S. Kokubun, Vice Chair

Thursday, March 13, 2008
2:45 P.M.
Conference Room 224
State Capitol

Re: **HB 2450, HD1**
(HSCR748-08)

RELATING TO LAND USE.

Requires any reclassification of land contiguous to the agricultural district to the urban or rural district to contain a condition prohibiting nonagricultural development within an unspecified distance from the property line bordering any agricultural parcel used for farming operations. (HB2450 HD1)

Committee Chairs and members:

Hawaii's Thousand Friends, a statewide non-profit land use organization is concerned that a very important element of this bill, which is putting into statute a minimum buffer zone of at least 300 ft between agricultural and non agricultural land has been eliminated.

Mandating a minimum buffer of at least 300 feet will help ensure that farmers who are contributing to the sustainability of our state, are protected from nuisance lawsuits from adjacent homeowners and will put a mechanism in place to ensure that homeowners will not be directly impacted by essential farming activities.

The counties can have the freedom to make exceptions for natural buffer zones or contiguous developments that will not adversely affect each other, but a statute mandating a minimum buffer zone will go a long way to offering a solution to what is a well defined challenge for good neighbor coexistence in our state.



HAWAIIAN MARINE ENTERPRISES

P.O. Box 301 • Kahuku, Hawaii 96731 • Phone: 293-1230

March 11, 2008

Commercial Aquaculture

Senator Jill Tokuda, Chair
Senate Committee on Agriculture and Hawaiian Affairs, and
Senator Carol Fukunaga, Chair
Senate Committee on Economic Development and Taxation, and
Senator Russell Kokubun, Chair
Senate Committee on Commerce, Consumer Protection, and Affordable Housing, and
Senator Clayton Hee, Chair
Senate Committee on Water and Land
State Capitol Building
415 S. Beretania St.
Honolulu, Hawaii 96813

Dear Chairs Tokuda, Fukunaga, Kokubun, and Hee and Members of the Committees:

I am sending this testimony to express my support for HB 2450 HD1, "Relating to Land Use." Urban areas are encroaching more and more upon areas that until now have been primarily rural and agricultural. In the Windward and North Shore areas of Oahu near my farm, much agricultural land has been sold recently and several residential developments are planned. Farmers need to be able to farm without complaints about dust, noise, and odors that commonly occur in agricultural operations, but which may disturb urban dwellers. Establishing buffer zones around new developments will help limit these complaints.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in cursive script that reads "Frederick M. Mencher". The signature is written in black ink and is positioned above the printed name.

Frederick M. Mencher
General Partner



Hawaii Reserves, Inc.
A LAND MANAGEMENT COMPANY

March 12, 2008

LATE

Via Facsimile (808) 586-6659

Senate Committees on: Agriculture & Hawaiian Affairs, Water & Land

LATE

Re: H.B. 2450, H.D. 1 (Relating To Land Use)

Testimony In Opposition

Hearing: Friday, March 13, 2008, 2:45 p.m., Conf. Rm. 224

Senate Committees on: Agriculture & Hawaiian Affairs, and Water & Land

Honorable Chair Tokuda, Chair Hee, and Committee Members:

Thank you for allowing me the opportunity to testify in opposition to House Bill 2450, H.D. 1 on behalf of Hawaii Reserves, Inc., a land management company that currently leases to farmers, and in the past has operated its own in-house farm division. While this bill is undoubtedly well intentioned to protect agriculture, we believe it is unnecessarily broad and will result in unintended consequences.

First, this bill would work a "taking" of the full use of an unspecified amount of property (in the previous draft 300 feet, or the approximate length of a football field) without compensation, and thereby create a breeding ground for litigation.

Second, this buffer zone would extend along the length "of the property line bordering any parcel...on which farming operations are being conducted". As a result, even if just a small part of a parcel is being used for farming operations on the makai end of a property, the zone would extend to the mauka end as well – even though actual farming activity may be many thousands of feet away. The acreage affected could be very large and completely unnecessary, intensifying the takings claim. This is particularly true in the ag district where parcels are often hundreds of acres in size.

Third, the bill could result in a net loss of ag properties farmed. Because the bill proposes placing the buffer zone on urban zoned land, in some cases developers will undoubtedly terminate farm leases adjoining up-zoned property in order to retain the full use of urban land.

Fourth, we understand the State Land Use Commission (LUC) already has the authority to impose conditions on a case-by-case basis that serve to protect commercial agricultural interests.

For these reasons and others we respectfully request that you hold H.B. 2450, H.D. 1.

In the alternative, we propose that the bill be revised to adopt the language of H.B. 408, H.D. 2, S.D. 1 (24th legislature, 2007) (attached) that would strengthen the LUC's current ability to protect commercial ag interests and reinforce the Hawaii Right To Farm Act (H.R.S. 165), without the above mentioned adverse impacts.

Kind regards,

Steve Keali'iwahamana Hoag, Esq.
Director of Human Resources & Government Relations
and Assistant to the President

Report Title:

Land Use; Agricultural Districts; Right to Farm

Description:

Requires the land use commission to include the Right to Farm Act under chapter 165, Hawaii Revised Statutes, as a condition to any reclassification of land to an urban or rural district designation that is contiguous to an agricultural district. (SD1)

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

H.B. NO. 408
H.D. 2
S.D. 1

A BILL FOR AN ACT

RELATING TO AGRICULTURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§205- Reclassification of land contiguous to an agricultural district; conditions. (a) If the commission receives a request to reclassify a land district to an urban or rural district designation that is contiguous to an existing designated agricultural district, the commission shall inform the applicant requesting the reclassification of the presence of the existing and contiguous agricultural district. As one of the conditions for the land district reclassification, the applicant shall:

(1) Permit the continued operation of any existing farming operation on the contiguous agricultural district;

(2) Not declare any farming operation a nuisance for any reason, in accordance to section 165-4; and

(3) Comply with chapter 165.

(b) For purposes of this section:

"Farming operations" shall have the same meaning as provided in section 165-2."

SECTION 2. This Act does not affect rights and duties that

matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect upon approval.