LINDA LINGLE
Governor

SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

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

TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON JUDICIARY AND LABOR
TUESDAY, APRIL 1, 2008
10:00 a.m.
Room 016

HOUSE BILL 2450, HOUSE DRAFT 1, SENATE DRAFT 1
RELATING TO LAND USE

Chairperson Taniguchi, Vice-Chair Hee and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2450, House Draft 1, Senate Draft 1 that seeks to require the State Land Use Commission (LUC) to include Chapter 165, the Hawaii Right-to-Farm Act, as a condition to any reclassification of land to an Urban or Rural District designation that is contiguous to the Agricultural District. The Department of Agriculture supports this measure with an amendment.

Chapter 205 allows as permissible uses, agricultural activities on Agricultural District lands. Chapter 165, the Hawaii Right-to-Farm Act, protects all farming operations from nuisance complaints from "non-agricultural areas extending into agricultural areas." House Bill 2450, Senate Draft 1 requires the LUC to place a condition on petitions that seek to reclassify Agricultural District lands to the Urban or Rural District that the petitioners "permit" the continued operation of an existing farm. This language appears to suggest that new agricultural uses locating on the agricultural lands adjacent to the encroaching Urban or Rural District may not be protected in the same manner as existing farm operations. The Department strongly believes that the right to conduct agricultural activities, whether existing or not, within the Agricultural District pursuant to Chapter 205 should be expanded and not diminished by limiting the

protection from encroaching non-agricultural areas adjacent to the Agricultural District to only existing farm operations. Therefore, we propose the following amendment:

Page 1, lines 10-17

"As one of the conditions for the land district reclassification, the applicant shall:

(1) Permit the establishment, expansion, and continued operation of any new or 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."

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
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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 JUDICIARY AND LABOR

Tuesday, April 1, 2008
State Capitol, Conference Room 415
10:00 AM

in consideration of
HB 2450, HD1 SD1
RELATING TO LAND USE.

Chair Taniguchi, Vice Chair Hee, and Members of the Senate Committee on Judiciary and Labor.

HB 2450, HD1 SD1 replaces the original language of the bill with the content of HB 408 SD1 (2007). The proposed language amends Chapter 205, Hawaii Revised Statutes (HRS), by adding a new section to require any State Land Use Commission (LUC) reclassification of land into the Urban or Rural Districts which is contiguous to an agricultural parcel, to include a condition that the applicant shall permit the continued operation of any existing farming operation, not declare any farming operation a nuisance for any reason, in accordance with Section 165-4, HRS, and comply with Chapter 165, HRS.

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. Individual landowners neither permit nor prohibit agricultural operations and do not have the authority to declare farming operations a

nuisance on adjacent lands. That is the responsibility of the courts. However, we believe the State LUC already has the authority to strengthen the existing protections on a case-by case basis where warranted through the imposition of conditions.

We support the over-all concept of this bill, inasmuch as its intent is supportive of our goal to protect commercial agriculture. We offer the following proposed language that could serve to more closely align with the stated intent of the bill:

"**§205- Reclassification of land contiguous to an agricultural district; condition.** (a) Any decision approving a petition for a boundary amendment pursuant to this chapter where lands in the petition area are contiguous or adjacent to lands in the agricultural district, shall include the following conditions in the decision granting approval:

(1) A prohibition on any action that would interfere with or restrain farming operations that are conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the agricultural district; and

(2) Notification to all prospective developers or purchasers of land or interest in land in the petition area and subsequent notification to lessees or tenants of such land, that farming operations and practices on adjacent or contiguous land in the agricultural district are protected under chapter 165, the Hawaii right to farm act; and that such notice shall be included in any disclosure required for the sale or transfer of real property or the interest in real property.

(b) For purposes of this section:

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

Thank you for the opportunity to testify.

LATE

HAWAII FARM BUREAU FEDERATION
2343 ROSE STREET
HONOLULU, HI 96819

APRIL 1, 2008

HEARING BEFORE THE
SENATE COMMITTEE ON JUDICIARY AND LABOR

TESTIMONY ON HB 2450
RELATING TO LAND USE

Chair Taniguchi 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.

HFBF on behalf of our member farmers, ranchers and agricultural organizations, **supports with comments, HB2450**.

As much as the developer wants to maximize their land, the farming operation also needs to maximize their land for production. Urban pressures and development often forces the farmer to add a self imposed buffer to conduct their normal farming practices. Where is the equity?

We appreciate attempts to address our concerns while considering the issues of "takings" raised during the prior hearings. The suggested language appears to consider existing agricultural activities during reclassification of lands to non-agricultural uses. We suggested the language for consideration to keep the discussion alive. However, after consultation with our legal counsel, it appears that the proposed Bill falls short of our needs. Under current conditions, when non-agricultural uses move next to our fields, the farmer must establish buffers to mitigate drift or other nuisance impacts on the non-ag entity, especially if there is a home constructed immediately adjacent to the field. We are asking that the new use recognize that there is an active agricultural operation adjacent and design of the lot take that into consideration. This can only occur if there is discussion between the new user and the farming operation. Just as developers and landowners have been speaking against our proposed measure with concerns about it being a "taking", farmers and ranchers have long lived with a "taking" when they need to change their practices or leave significant buffers due to new neighbors. Very often such occurrences adversely affect the viability of the farms and ranches.

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.

In respect to fairness, we strongly believe that this decision must be done on a case by case basis. As such, we request language requiring the new land user to consult with their farming neighbor to establish what would comprise a fair decision on activities occurring in the boundary area. Insert language adding a new provision on page 1, line 13, "the applicant shall:

(1) Consult with the abutting farming operation regarding design parameters for the non-agricultural use and agricultural practices in the boundary interfacing the existing designated agricultural district. The applicant shall provide the findings, recommendations and agreements of such discussion to the LUC."

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 HB 2450.

LATE

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

April 1, 2008

Testimony via email

COMMITTEE ON JUDICIARY AND LABOR
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

SB 2450 HD1, SD1
RELATING TO LAND USE

Committee chair and members;

Hawaii's Thousand Friends supports the intent of the original HB 2450 but not the current form of the bill which completely ignores the need for a buffer between farming activities and adjacent commercial and housing.

The original bill creates at least a 300 feet buffer between farming activities and adjacent non-farming uses. Without the requirement for a 300 feet buffer the current bill provides no additional protection for farmers and non-farming uses that are not already provided in the Right To Farm Act.

Notifying an applicant that the land to be designated is adjacent to agricultural land does nothing to protect farmers and non-farming uses.

It is presumptuous in (1) to state that the applicant shall permit continued farming activities on contiguous agricultural land when an applicant may not own or have control over the adjacent land.

Without an imposed buffer of at least 300 feet Hawaii's farmers and adjacent home owners will always be at odds with one another and as farming history has shown Hawaii's farmers usually loose.

LATE

LALAMILO FARM LOTS ASSOCIATION

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TESTIMONY

HB 2450
AGRICULTURAL BUFFER ZONE
HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

Chair Tokuda and Committee Members:

We, the members of the Lalamilo Farm Lots Association, support with comments, HB2450, providing for buffer zones around agricultural districts

Our agricultural enterprises are rapidly coming under expanded and very aggressive regulations imposed by the United States Departments of Food and Drug Administration, Environmental Protection Agency as well as the Department of Agriculture. Their primary combined efforts are to establish sound policies and practices on the farms so as to ultimately assure manageable tolerance levels that will guarantee food safety and protection of the consumers. These are admirable goals and their successful implementations will require commitment and potential sacrifices on the farms.

Buffer-zones to surround the farms are already elements of the new Food Safety requirements that will be implemented and ultimately enforced. They are primarily designed to eliminate contamination of our farms from surrounding development and encroachment. The ability to retain these buffer-zones will require the "ongoing" combined efforts of the farmers, government agencies of the State and County of Hawaii as well as the communities adjacent to these intensive agricultural entities. If this vigilance is not maintained, our independent farms will rapidly be lost to intrusive and short-sighted development.

The issue of agricultural buffer zones, specifically the impact of buffers for food safety regulations, need to be considered in an effort to prevent short-sighted and careless development that will ultimately endanger our farm enterprises. Your support is most sincerely appreciated.

Respectfully,

Roger Hirako, Co-Chairman Lalamilo Farm Lots Association

Earl Yamamoto, Co-Chairman Lalamilo Farm Lots Association

Submitted on behalf of the members of the Lalamilo Farm Lots Association

Dr. Billy Bergin
Pat Bergin
John Edney
Sheila Goo
David Greenwell
Howard Hall
John Hall
Leslie Hall
Pat Hall
Deborah Hirako
Roger Hirako
Charlene Hirayama
Cheryl Hirayama
Nate Hirayama
Royce Hirayama
Raymond Kawamata
Lorraine Kawano
Marvin Kawano
Wendell Kawano
Doug Macilroy
Donna Mah
Joey Mah
Jan Marrack
Karen McCullough
Tim McCullough
Flavio Michie
Alan Nakagawa
Charlene Nakagawa
Bobby Nakamoto
Larry Nakamoto
Richard Nakano
David Oshiro
Alex Penovaroff
Karoll Penovaroff
Louis Rincon
Sharon Rincon
Chris Robb
Earl T. Yamamoto
Sharon Yamamoto

LATE

LAND USE RESEARCH
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Via E-Mail

April 1, 2008

The Honorable Senator Brian T. Taniguchi, Chair and Members
Senate Committee on Judiciary
Hawaii State Capitol, Room 016
Honolulu, HI 96813

RE: Comments to HB 2450, HD1, SD1
Relating to Agriculture (Right to Farm)

Dear Chair Taniguchi and Committee Members,

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 appreciates the opportunity to provide our testimony supporting the intent and **providing comments to H.B. No. 2450, HD1, SD1.**

, based on, among other things, it

HB 2450, HD1, SD1. The original and HD1 version of this bill constituted a very severe and far-reaching prohibition and "unconstitutional taking" of private property rights, based merely on allegations of "harassment and unwarranted lawsuits." The SD1 version, however, requires the State Land Use Commission ("SLUC") 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; and to impose a condition which prohibits the reclassification applicant from declaring the neighboring farm operation a nuisance under the Right to Farm Act. This current SD1 version appears more reasonable, however, LURF still has concerns if .

Issues relating to HB 2450, HD1, SD1. While LURF supports the intent of protecting the right to farm on agricultural properties, we are concerned about prior

versions of this bill and provisions in the current version of this bill which may prohibit lawful activities on the adjacent properties, exercise of legal rights and raise major legal issues:

- **A "buffer' of an "unspecified distance" preventing lawful uses on private property would be an unconstitutional taking of private property rights.** We remain opposed to any mandatory or imposed buffer zones.
- **Any standardized "buffer" width of an "unspecified distance" is unreasonable.** The width of the buffer zone doe not take into account topographical features of the lands that might accomplish the same purposes within a lesser distance.
- **The Right to Farm Act, Chapter 165, Hawaii Revised Statutes ("HRS"), already protects agricultural landowners from frivolous nuisance actions by contiguous landowners.** The current SD1 version of the bill, which prohibits declaring the farm operation as a nuisance and requires compliance with the Right to Farm Act, should not prevent a landowner from making legitimate complaints regarding health, safety or the violation of laws.
- **There is no factual evidence to determine whether the allegations of "harassment" and "unwarranted lawsuits" justifies such a drastic measure.** ." If the Judiciary Committee is considering amending SD1 to impose a "buffer zone," we would want the opportunity to review all of this evidence. We are not aware of any hard facts or evidence which has been presented regarding the alleged 'harassment" and "unwarranted lawsuits. If the Judiciary Committee is considering imposing a "buffer zone," the major factual questions which must be answered, include, but are not limited to, the following: Were the complaints and lawsuits related to -
  - Legitimate complaints relating to violations of the clean air act or clean water acts?
  - Legitimate complaints regarding violations of dust control regulations? Legitimate complaints regarding the failure to use best practices in spraying or spreading dangerous chemicals or fertilizers?
  - Legitimate complaints regarding noisy operations during the nighttime or early morning hours when people are normally sleeping?
  - What evidence justifies the prohibition on infrastructure and industrial uses? It is very puzzling to see "the development of infrastructure" and "industrial uses" listed as one of the prohibited uses. What infrastructure or industrial use "harassed" or filed "unwarranted lawsuits" against innocent farmers?
- **The definition in prior versions of this bill relating to "any parcel in the agricultural district on which farming operations are being conducted," is too broad, vague and ambiguous.** This definition in a prior version of this legislation was very troublesome – what if the agricultural parcel is huge, and the farming operations are only being conducted a great distance away – such that there would be no possibility of complaints?

Protecting the right to farm could be done in a more reasonable fashion. LURF sympathizes with any hardships which may be suffered by agricultural land owners as a result of the reclassification of contiguous lands, and we have met and discussed this legislation with the Hawaii Farm Bureau Federation ("Farm Bureau"), and we agree with the spirit and intent of the recommendations made by the Farm Bureau in its prior and anticipated testimony:

- **Disclosure and acknowledgement by the non-agricultural land owner is important.** Perhaps the SLUC should include conditions of reclassification requiring that: the deeds for all properties adjoining agricultural lands include a disclosure that the neighboring properties are in active agricultural use and may have dust, noise chemicals, lights and odors, as well a notice of the rights of farmers and agricultural operators under the Right to Farm Act; and all covenants and restrictions, real estate marketing and sales materials relating to properties adjoining agricultural lands should include an identical disclosure.
- **Communication is important.** Perhaps the SLUC could also include a condition requiring the neighboring non-agricultural and agricultural land owners to form a task force to work out the issues and problems which are alleged to be the basis of this legislation, as well as issues relating to the use of environmental best practices by agricultural operators.
- **Case–by-Case Reviews.** We believe that it would be reasonable to require a new land owner adjacent to an agricultural district to consult with their farming neighbor regarding the location of uses on the non- agricultural property, as well as the use of "agricultural best practices" along the boundary of the properties. The applicant landowner could provide the findings and agreements of such discussions to the SLUC as part of the boundary reclassification process.

LURF is willing to continue to work with the Hawaii Farm Bureau and any other stakeholders to address the issues relating to this bill. Thank you for the opportunity to express our views on this matter.