

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

TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON JUDICIARY
FRIDAY, FEBRUARY 15, 2008
2:00 p.m.
Room 302

HOUSE BILL 2450
RELATING TO LAND USE

Chairperson Waters, Vice Chair Oshiro and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2450 that seeks to establish a buffer zone of at least 300 feet 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; however, we suggest that any reclassifying of lands next to the agricultural district carry with it full acknowledgement, the existence of agricultural activities on adjacent agricultural district lands and abidance of the Right to Farm Act.

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

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR
MARY LOU KOBAYASHI
PLANNING PROGRAM ADMINISTRATOR
OFFICE OF PLANNING

OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824

Statement of
MARY LOU KOBAYASHI
Planning Program Administrator, Office of Planning
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEES ON JUDICIARY
Friday, February 15, 2008
State Capitol, Conference Room 325
2:00 PM

in consideration of
HB 2450
RELATING TO LAND USE.

Chair Waters, Vice Chair Oshiro, and Members of the House Committee on
Judiciary.

HB 2450 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 300 feet 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 300 foot 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

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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. Hawaii law already provides remedies which support the State Constitution's protection of agriculture. Chapter 165, HRS, the Hawaii Right-to-Farm Act, limits the circumstances under which new residents or businesses can seek to enjoin existing agricultural activities as a nuisance.

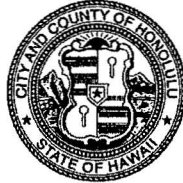
We support the over-all concept of this bill, inasmuch as its intent is supportive of our goal to protect commercial agriculture. However, we believe the State Land Use Commission already has the authority to strengthen the existing protections on a case-by case basis where warranted through the imposition 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 on the bill.

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. TANOUÉ
DEPUTY DIRECTOR

February 15, 2008

The Honorable Tommy Waters, Chair
and Members of the Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Waters and Members:

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

The Department of Planning and Permitting **strongly opposes** House Bill 2450, which would prohibit "nonagricultural development" within three hundred feet of 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 the transit alignment is located on lands still within the state agricultural district. This bill could delay transit until the land use boundary amendment is obtained and farming ceases. Or, the bill could kill transit, by effectively prohibiting it outright, or forcing a new alignment away from planned growth and ridership areas.

The bill may make government liable for a "partial takings", allowing adversely affected properties eligible for compensation. The 300-foot buffer could eliminate two rows of house lots and the street between, given that a typical residential lot of 5,000 square feet has dimensions of 50 feet by 100 feet. As another example, a small 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 either permitted outright within the state agricultural district, such as utility lines, roadways and waste transfer stations, and cell phone antennas.

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The Honorable Tommy Waters, Chair
and Members of the Committee on Judiciary
House of Representatives
Re: House Bill 2450
February 15, 2008
Page 2

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 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
hb2450-kh.doc

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Hawaii Agriculture Research Center

99-193 Aiea Heights Drive, Suite 300

Aiea, Hawaii 96701

Ph: 808-487-5561/Fax: 808-486-5020

TESTIMONY BEFORE THE SENATE COMMITTEE ON JUDICIARY

SENATE BILL 2450

RELATING TO LAND USE

February 15, 2008

Chair Waters and Members of the Committee:

My name is Stephanie Whalen. I am President and Research Director of the Hawaii Agriculture Research Center (HARC). I am testifying today on behalf of the center, our research and support staff, and our members and clients.

HARC strongly supports Senate Bill 2450, Relating to Land Use.

Agricultural operations continue to be driven out as urbanization encroaches upon their farms. Even though there maybe no legal option for the surrounding neighbors, their continual complaints and harassment ultimately drives out the farmer. This is not just a phenomenon in Hawaii but nationally.

Developers (developments) must bear the cost of providing a buffer between the farms and the houses they are placing next to the farm. If planned well these can be green recreational open spaces enjoyed by all but most importantly putting distance between residences and farms.

Please give this concept your most careful consideration and stop the creeping erosion of farmland. Either the policy makers get serious about the erosion of agricultural lands or there will not be any. How can there continue to be discussions regarding sustainability without some **action to protect** what **good farm land** that is left?

Thank you for this opportunity to provide input.

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**Hawaii
Crop
Improvement
Association**

Sarah Styan, President
P.O. Box 609
Waimea, Hawaii 96796
Phone: 808- 338-8300 ext 113

HB2450, Land Use
House JUD Committee
Friday, February 15, 2008
Room 325: 2:00 pm

Position: Support

Chair Waters, and Members of the Hse JUD Committee:

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.

Your support of this measure is appreciated. Thank you for the opportunity to testify.

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HAWAII FARM BUREAU FEDERATION
2343 ROSE STREET
HONOLULU, HI 96819

FEBRUARY 15, 2008

HEARING BEFORE THE
HOUSE COMMITTEE ON JUDICIARY

TESTIMONY ON HB 2450
RELATING TO LAND USE

Chairs Waters 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.

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Hawaii Reserves, Inc.
A LAND MANAGEMENT COMPANY

February 14, 2008

Via Facsimile (808) 586-9450

House Committee on Judiciary
Rep. Tommy Waters, Chair
Rep. Blake K. Oshiro, Vice Chair

Re: H.B. 2450 (Relating To Land Use)
Testimony In Opposition
Hearing: Friday, February 15, 2008, 2:00 p.m., Conf. Rm. 325
Copies Required: 5

Honorable Chair Waters, Vice Chair Oshiro and Committee Members:

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

First, this bill would work a "taking" of the full use of 300 feet of property – the approximate length of a football field – without compensation, and thereby create a breeding ground for litigation.

Second, the 300 foot 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 thousands of feet away. The acreage affected could be very large and completely unnecessary, intensifying the takings claim.

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 already has the authority to impose conditions on a case-by-case basis that could serve to protect commercial agricultural interests.

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

Kind regards,

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

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Hawaii's Thousand Friends

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

February 15, 2008

Submitted via email

To: COMMITTEE ON JUDICIARY
Rep. Tommy Waters, Chair
Rep. Blake K. Oshiro, Vice Chair

Hearing: Friday, February 15th, 2008
2:00 pm
Conference Room 302

Measure Number: HB2450 RELATING TO LAND USE.

Requires any reclassification of land contiguous to the agricultural district to the urban district or rural district to contain condition prohibiting nonagricultural development within 300 feet of the property line bordering any agricultural parcel used for farming operations.

Committee Chair and members:

Hawaii's Thousand Friends, a statewide non-profit land use organization, supports prohibiting non-agricultural development within 300 feet of the property line bordering any agricultural parcel used for farming operations with the following amendment:

We recommend changing the language to read within a **minimum** of 300 feet from the property line. This gives the counties greater flexibility, allowing them to adopt larger buffer zones should they wish to do so.

Mandating a minimum buffer of 300 feet will help ensure that farmers are protected from nuisance lawsuits from adjacent homeowners and puts a mechanism in place to ensure that homeowners will not be directly impacted by essential farming activities.

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JUDtestimony

From: David Goode [david@ksdhawaii.com]
Sent: Thursday, February 14, 2008 9:17 AM
To: JUDtestimony
Subject: Testimony - HB2450 - Hearing Friday, February 15, 2008 at 2:00 pm
Follow Up Flag: Follow up
Flag Status: Purple

Aloha Committee Chair and Members of the Committee:

I am writing today in opposition to HB2450 relating to Land Use.

Land use amendments, whether by the Land Use Commission or the local County Council, take in a wealth of information in which to make informed decisions. To put a blanket 300' buffer on reclassified lands adjacent to existing Ag lands is a "one size fits all" approach to land use that will have unintended consequences such as:

- Small parcels will not seek land use reclassifications if the 300' buffer effectively "takes" the entire parcel.
- It will devalue properties that can or should be reclassified.
- It will discourage good roadway, sewer, waterline master planning by creating 300' areas that are essentially unusable.

Finally, the right-to-farm legislation of a few years ago makes it very clear that agriculture pursuits are protected under State law in the face of complaints from urban or rural neighbors.

If the legislature feels a buffer area should be looked into during reclassifications, it would be preferable to have this be a criteria to be examined during land use reclassifications rather than a one-size-fits-all approach.

Mahalo for the opportunity to comment.

David Goode
President
KSD Hawaii
8 Kiopa'a Street, Suite 201
Pukalani, Hawaii 96768
Phone: (808) 572-3011, ext. 206
Fax: (808) 572-8378

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