

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**

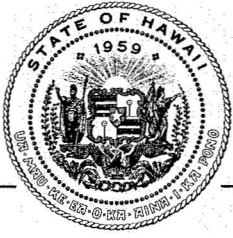
**BEFORE THE HOUSE COMMITTEES ON WATER, LAND, OCEAN RESOURCES
AND HAWAIIAN AFFAIRS; AND AGRICULTURE
WEDNESDAY, FEBRUARY 20, 2008
9:00 a.m.
Room 325**

**HOUSE BILL 2522
RELATING TO THE LAND USE COMMISSION**

Chairpersons Ito and Tsuji and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 2522. This measure seeks to amend Section 205-3.1, Hawaii Revised Statutes to increase the counties' authority to reclassify lands in the Rural and Urban District, and non-Important Agricultural Land in the Agricultural District from 15 to 50 acres and to allow consolidation of reclassification proceedings with that of counties' proceedings to amend land use maps contained in county general/community/development or other plans, and zoning changes. By doing so, this will promote smart growth and streamline its approval process. The Department of Agriculture supports this bill and the overall concept of smart growth that includes favoring compact development patterns and discouraging urban sprawl and leapfrog development. However, we encourage stronger policy guidance, standards, criteria, and conditions that define smart growth projects. Additionally, we would like to see clarification that county-level reclassifications of up to 50 acres of Agricultural District land will be limited to smart growth development. Furthermore, if a smart growth development project is proposed, we would like to see it contained within areas designated in the counties' plans for location of smart growth developments and fully avoid encroachment upon existing

farming areas and causing fragmentation of agricultural lands that have potential as candidate Important Agricultural Lands. We agree that smart growth should be done within the framework of county-level general, community, regional, and development plans.



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

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Statement of
ABBEY SETH MAYER
Interim Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
**HOUSE COMMITTEE ON WATER, LAND, OCEAN RESOURCES
AND HAWAIIAN AFFAIRS**
AND
HOUSE COMMITTEE ON AGRICULTURE
Wednesday, February 20, 2008
9:00 AM
State Capitol, Conference Room 325

in consideration of
HB 2522
RELATING TO THE LAND USE COMMISSION.

Chairs Ito and Tsuji, Vice Chairs Karamatsu and Brower, and Members of the House Committees on Water, Land, Ocean Resources, and Hawaiian Affairs and Agriculture.

HB 2522, Relating to the Land Use Commission, amends Chapter 205, Section 3.1, HRS, by increasing the amount of land in petitions for land use district boundary amendments that may be filed at the County level instead of the State from less than 15 to less than 50 acres, and allowing for consolidation with County proceedings to amend County land use maps.

The Office of Planning supports this bill because it would streamline the consideration of proposed Urban and Rural developments of less than 50 acres. The proposed changes would help implement Governor Linda Lingle's vision for the

transformation of the State planning system to support the community-based planning at the county level.

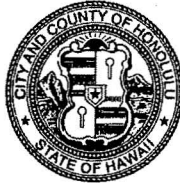
The combination of allowing larger parcels to be redistricted from the State Agricultural, Rural and Urban Districts at the County level and consolidating the County contested-case hearings with general plan and development plan map changes would substantially reduce the time required to receive all development permits so that affordable housing and job creation through new development can proceed on a timely basis.

We urge you to support this bill. Thank you for the opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



HENRY ENG, FAICP
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DAVID K. TANOUE
DEPUTY DIRECTOR

February 20, 2008

The Honorable Ken Ito, Chair
and Members of the Committee on Water, Land,
Ocean Resources and Hawaiian Affairs

The Honorable Cliff Tsuji, Chair
and Members of the Committee on Agriculture
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Ito, Tsuji and Members:

**Subject: House Bill No. 2522
Relating to Land Use Commission**

The Department of Planning and Permitting **supports** House Bill 2522, which allows the counties to process land use boundary amendments for requests involving not more than fifty acres. It also increases the opportunities for concurrent processing of state boundary amendments with related county approvals.

While we do not foresee many boundary amendment requests for fifty acres or less on Oahu, this is a welcome contribution to streamlining the overall land development process. By allowing the county councils to decide on these smaller requests at the same time they review the corollary county zone change, not only is overall processing time reduced, but redundant and overlapping conditions can be greatly minimized, if not eliminated.

We agree with the restriction that this threshold does not apply to conservation lands or lands designated as important agricultural lands.

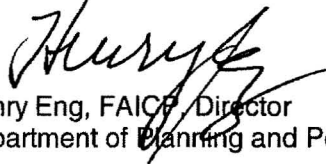
We thank the legislature for offering this streamlining incentive to developments and the counties. We would only ask that the same threshold of lands less than fifty acres be considered for special use permits as well.

The Honorable Ken Ito, Chair
and Members of the Committee on Water, Land,
Ocean Resources and Hawaiian Affairs

The Honorable Clift Tsuji, Chair
and Members of the Committee on Agriculture
House of Representatives
Re: HB2522
February 20, 2008
Page 2

Thank you for the opportunity to testify.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Henry Eng", written over a printed name and title.

Henry Eng, FAICP, Director
Department of Planning and Permitting

HE: jmf
hb2522-kh.doc



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February 20, 2008

The Honorable Ken Ito, Chair
House Committee on Water, Land,
Ocean Resources & Hawaiian Affairs

The Honorable Clift Tsuji, Chair
House Committee Agriculture
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 2522 Relating to the Land Use Commission
Hearing Date: February 20, 2008 @ 9:00 a.m., Room 325

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS® (HAR) **supports** H.B. 2522.

H.B. 2522 will streamline and consolidate the boundary amendment process with county proceedings. Additionally, the measure amends land use maps contained in county plans, which will provide for the variety of needs of the counties in Hawaii. The county departments and the State Land Use Commission will continue to serve in their capacity to insure that public review and oversight is given. Also, implied in the bill is the necessity for the counties to designate important agricultural lands prior to utilization of the mechanism of this bill.

Mahalo for the opportunity to testify.



Sierra Club

Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803

808.537.9019 hawaii.chapter@sierraclub.org

HOUSE COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS HOUSE COMMITTEE ON AGRICULTURE

February 20th, 2008, 9:00 A.M.

(Testimony is 3 pages long)

TESTIMONY IN OPPOSITION TO HB 2522

Chairs Ito and Tsuji and members of the committees:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, is opposed to HB 2522, eliminating Land Use Commission oversight for agricultural reclassifications up to 50 acres.

House Bill 2522, if passed, would erode the ability of Hawaii's land use law to protect our agricultural lands. Reducing the land use law's control over land classifications has the potential to induce more urban sprawl on Hawaii's remaining agricultural lands. Given the recent elevation of discussion regarding the need to protect agricultural land in Hawai'i, we feel that discussion of expansion of the existing "15-acre exemption" is premature.

The Land Use Commission (LUC) protects open space, agricultural, natural resources, native Hawaiian rights, taxpayers' money and the long-term health of our economy. As the Hawai'i Supreme Court noted:

In sum, the overarching purpose of the state land use law is to "protect and conserve" natural resources and foster "intelligent," "effective," and "orderly" land allocation and development. See 1961 Haw. Sess. L. Act 187 § 1 at 299 ("[I]n order to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited for the public welfare . . . , the power to zone should be exercised by the State.") See also Pearl Ridge Estates Community Ass'n v. Lear Siegler, Inc., 65 Haw. 133, 144 n.9, 648 P.2d 702, 709 n.9 (Nakamura, J., concurring) ("Thus, conservation lands must be reserved if practicable, agricultural lands should be protected, and urban lands should be developed in orderly fashion.") Curtis v. Board of Appeals, County of Hawai'i, 90 Haw. 384, 396 (1999).

The court has long observed that the emphasis of the Land Use Law is on controlling growth and protecting resources:

By enacting HRS ch. 205 in 1961, the legislature intended, inter alia, to "[s]tage the allocation of land for development in an orderly plan," H.Stand.Comm.Rep. No. 395, 1st Haw.Leg., 2d Sess., reprinted House Journal 855-56, and to redress the problem of "inadequate controls [which] have caused many of Hawaii's limited and valuable lands to be used for purposes that

may have a short-term gain to a few but result in long-term loss to the income and growth potential of our economy. Act 187, 1961 Haw.Sess. Laws 299.

In passing the Land Use Law, the Senate noted:

The purpose of this bill is to preserve and protect land best suited for cultivation, forestry and other agricultural purposes and to facilitate sound and economical urban development in order to promote the economy and general welfare of the state, and to insure the efficient expenditure of public funds. . . .

The state must protect its valuable land resources. There is a special need to protect agricultural land from urban encroachment, to prevent scattered and premature development, to limit land speculation of urban areas, and to protect the unique natural assets of the state.

The state's highly productive agricultural lands are jeopardized by normal economic laws which encourage land owners to place their own particular pieces of land to the most profitable current use for which they can find a market. Long term agricultural leases are expiring annually. Because of the pressure for urbanization the land owners are reluctant to continue long term renewals of such leases, and the lessee is therefore discouraged to develop the land to its maximum agricultural production. If exclusive agricultural zones are not established to preserve and protect prime agricultural lands from infringement by non-agricultural uses, the possibility of land speculation through inflated or artificial land prices may jeopardize the existence of major agricultural companies or activities. The most effective protection of prime agricultural lands, preservation of open space and direction of for urban growth, is through state zoning.

S. Stand.Comm.Rep. No.937, 1961 Senate Journal 883.

House Bill 2522 would increase the existing "15-acre" exemption rule to 50 acres, increasing the amount of land that can be developed without LUC oversight. Currently, developers often abuse the "15-acre" exemption to avoid oversight from the LUC. For example, the developer Pacific Star proposed to build a large gated community on agricultural land on the Big Island. The 125-residential lots and 18-hole private golf course and clubhouse were to be built on agricultural land. A 100-unit hotel was also planned as part of the development, but it is not allowed on agricultural land. Instead of seeking a change in zoning from the LUC (with the corresponding conditions and public involvement process), the developer decided to build the hotel on 14.9 acres of land and obtain a special use permit from the county. (The LUC later decided that the residential portion could not be considered an agricultural use.) By expanding the threshold to 50 acres, more agricultural lands will be lost in this manner, piece by piece.

County land use decision-makers do not consider impacts on issues of statewide concern. Major development projects have significant impacts on the need to build public schools, libraries and state highways—paid for by state taxpayers (not the county). The state also subsidizes sewage systems. Taxes may increase as the public is forced to subsidize developers for the cost of premature urbanization.

There are dozen of sites in the agricultural district that the LUC presently protects. Planning Commissions and County Councils do not have the biological or cultural expertise to protect these areas. Unlike the state, the counties are not staffed with multiple biologist positions dedicated to preserving natural resources. In fact, the counties have not demonstrated a commitment to protecting biological resources. How can the planning commission render

decisions on urbanizing natural resources if no one in the county has any expertise in protecting natural resources?

The recent court decisions regarding the Hokulia development in South Kona illustrate the value of the Land Use Commission. The Hokulia developers avoided LUC oversight—and polluted class AA ocean waters, destroyed a trail and desecrated Hawaiian burials.

A parcel by parcel LUC review of proposals to take land out of the agricultural district allows for natural and cultural resources to be protected and prevents scattered, premature development. It also ensures that the community's concerns will be heard. Unlike proceedings before county councils, proceedings before the LUC give community groups more than three minutes to testify. They have the right to question developers and their experts; the right to appeal decisions based on a complete record for violations of clear standards; the right to have decisions made based upon evidence presented instead of backroom deals and private negotiations; and the right to have a decision rendered by an objective party who has not received monetary contributions from a developer.

We urge you to hold HB 2522.

Thank you for the opportunity to testify.

From: Alan Murakami [mailto:almurak67@gmail.com]
Sent: Tuesday, February 19, 2008 2:55 PM
To: WLHtestimony
Subject: HB 2522

HOUSE OF REPRESENTATIVES
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN
AFFAIRS

Rep. Ken Ito, Chair
Rep. Jon Riki Karamatsu, Vice Chair

COMMITTEE ON AGRICULTURE

Rep. Clift Tsuji, Chair
Rep. Tom Brower, Vice Chair

HEARING DATE: Wednesday, February 20, 2008

TIME: 9:00 a.m.

PLACE: Conference Room 325

RE: HB 2522, RELATING TO THE LAND USE COMMISSION.

I OPPOSE HB 2522. HB 2522 would allow a county land use decision-making authority to reclassify lands not more than fifty acres. Current law allows the county this power under 15 acres. Furthermore, the bill allows for the consolidation of the boundary amendment process with county proceedings to amend land use maps contained in county plans.

It makes NO sense to give counties broader power in an area where they have chronically and systematically abused it. With 19,000 acres in the Agricultural District already subdivided by counties over the past 5 decades, most in violation of permissible uses in state designated agricultural land, why would the Legislature even consider allowing counties jurisdiction over greater amounts of Agricultural District land?

There is NO justification for allowing such broader powers to expedite the use of more Agricultural District land. Surely, this Legislature is not thinking that:

- the counties are better qualified than the State Dept of Agriculture to make land use plans that accommodate current and future agricultural activity.
- such county power is needed to foster systematic land use planning to protect agricultural activity;
- the grant of such power to the county would allow it to assure that activities will not systematically interfere with agriculture

Each of the above premises would be FALSE. The proof is in the sordid record of the counties where it has demonstrated widespread disregard for the protections intended for many acres of land in the Agricultural district that would have forestalled the spread of gentlemen "fake" farms that have driven the cost of farm land beyond the reach of most real farmers and diverted water from sources that are needed for agriculture. These decisions continue to plague farm advocates today, who are seeking to protect important agricultural land and water resources from the competition driven by lax county enforcement, or the lack of it, of land use laws designed to provide that protection.

If counties are allowed jurisdiction over more than 3 times the current acreage limit, the Legislature will be consciously promoting urban sprawl and the ultimate destruction of agriculture. This step is contrary to the identified priority that agriculture has had in our constitution and statute for over 45 years. It also runs contrary to the recent identification of the current priority for protecting agricultural lands by the 2050 Sustainability Task Force.

In short, the bill is ill-advised, has no justification historically, and is directly contrary to current priorities and legal protections for agricultural land, resources, and activity.

Remember that the Counties never implemented the legislative directive in Act 205 (SLH 2005) to convene community advisory groups to come up with recommendations on how to improve Rural District standards and permissible uses to reflect our rural community's vision for what our rural areas should look like, while not compromising agricultural activity. IF the counties as at least done that, we might have a set of Rural District permissible uses and land use standards that would reflect modern reality and curb the speculative fever over Hawai'i's land base for more luxury homes in Rural and Agricultural District areas. As it is, with petitions for over 3700 acres of Agricultural District lands to be reclassified to Rural, a developer can seek to legally demand 1/2-acre lots to build low density residences once these lands are reclassified to Rural. That would be a disaster. Giving counties the power to reclassify up to 50 acres at a time would be worse.

I also note that nothing in this bill prevents a developer to sequentially ask for reclassification of 50 acres at a time, leading to not only sprawl, but spot zoning, the worst nightmare of any legitimate planner.

I urge you to reject HB 2522, another in a line of horrible bills that have emerged in this committees this year.

Instead, I urge you to support a broader community-based (not just government driven) discussion on strategy to protect the long-term sustainability of agriculture in Hawai'i. Make that the focus, rather than what agency is empowered to reclassify Ag District lands. That is where the energy and priority in terms of time and resources should be placed.

From: Adam T. Kahualaulani Mick [mailto:kahualaulani2@yahoo.com]
Sent: Tuesday, February 19, 2008 3:20 PM
To: WLHtestimony
Subject: Testimony Opposing HB 2522

HOUSE OF REPRESENTATIVES
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN
AFFAIRS

Rep. Ken Ito, Chair
Rep. Jon Riki Karamatsu, Vice Chair

COMMITTEE ON AGRICULTURE

Rep. Clift Tsuji, Chair
Rep. Tom Brower, Vice Chair

HEARING DATE: Wednesday, February 20, 2008

TIME: 9:00 a.m.

PLACE: Conference Room 325

RE: HB 2522, RELATING TO THE LAND USE COMMISSION.

Aloha,

I completely OPPOSE HB 2522.

HB 2522 would allow a county land use decision-making authority to reclassify lands not more than fifty acres. Current law allows the county this power under 15 acres. Furthermore, the bill allows for the consolidation of the boundary amendment process with county proceedings to amend land use maps contained in county plans.

If counties are allowed jurisdiction over more than 3 times the current acreage limit, the Legislature will be consciously promoting urban sprawl and the ultimate destruction of agriculture. This step is contrary to the identified priority that agriculture has had in our constitution for years:

"AGRICULTURAL LANDS

Section 3. The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing

Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions

without meeting the standards and criteria established by the legislature and approved by a two-thirds vote of the body responsible for the reclassification or rezoning action. [Add Const Con 1978 and election Nov 7, 1978]"

In short, the bill is directly contrary to current priorities and legal protections for agricultural land, resources, and activity.

I urge you to reject HB 2522.

Mahalo,
Adam T. Kahualaulani Mick
1132 Ilikala Pl.
Kailua, HI 96734

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