

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES**

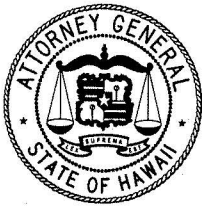
On House Bill 2606 – Relating to Land Use

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

February 1, 2008

House Bill 2606 directs the Department of Land and Natural Resources (Department) to petition the County of Hawaii to restrict the use of certain lands along the North Kohala coastline. These lands are identified by Tax Map Keys: 5-6-01: 01, 11, 35, and 73; 5-7-01: 04, 09, 10, and 15; 5-7-02: 18 and 34; 5-8-01: 02, 05, and 06; 5-9-01: 04; 5-9-03: 02 and 04; and 5-9-04: 01 and 08. The Department does not support this measure.

Most of the properties identified in this bill are owned by the State who regulates land uses through land dispositions approved by the Department and the Board of Land and Natural Resources. Restrictions on the uses of lands having historic and cultural resources of significant value are imposed by conditions written into leases, revocable permits, executive orders, and public and private management agreements.



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

H.B. NO. 2606, RELATING TO LAND USE.

BEFORE THE:

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

DATE: Friday, February 1, 2008 **TIME:** 8:30 AM

LOCATION: Conference Room 325

Deliver to: Committee Clerk, Room 427, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General or
Vince Kanemoto, Deputy Attorney General *VK*

Chairs Ito and Tsuji and Members of the Committee:

The Department of the Attorney General takes no position on this bill except to point out that section 2(c) appears to be in conflict with article XI, section 5 of the Hawaii State Constitution.

Article XI, section 5 requires that, except for transfers of land to or for the State or county, the "legislative power over lands owned or under the control of the State...be exercised only by general laws. General laws are "laws which apply uniformly throughout all political subdivisions of the State . . . [or] uniformly to a class of political subdivisions." Bulgo v. Maui County, 50 Haw. 51, 58, 430 P.2d 321, 326 (1967). A law is a "special law" and not a general law if it operates upon and affects only a fraction of persons or a portion of the property encompassed by a classification, granting privileges to some and not others. Haman v. Marsh, 237 Neb. 699, 467 N.W.2d 836 (1991). A statute relating to particular persons, places, or things is a special law, not a general law.

Section 2(c) of this bill prohibits the County of Hawaii from issuing any permit that would enable the development of certain specified Tax Map Key (TMK) parcels along the North Kohala coastline. The parcels are owned by either the federal government

or the State of Hawaii. Because the provision is applicable to specifically named TMK parcels owned by the State of Hawaii, it is not a general law and conflicts with article XI, section 5 of the Hawaii State Constitution.

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

**HOUSE BILL 2606
RELATING TO LAND USE**

Chairpersons Ito and Tsuji and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 2606 which intends to prevent development of lands along North Kohala's western coast (Kawaihae to Pololu Valley) by having the Department of Land and Natural Resources petition Hawaii County to restrict the use of 18, State-owned parcels within the Agricultural District by changing the zoning of these parcels to a minimum of 100 acres per lot. Upon approval by Hawaii County, the county shall not issue any Special Permit or other land use, subdivision, building, or other permit for the affected parcels. The Department of Agriculture defers to the Department of Land and Natural Resources on the status and management of the affected parcels and we offer comments.

From our information, all the parcels are leased to cattle ranches such as Parker, Kahua, and Ponoholo. Some parcels are adjacent to existing subdivisions of agricultural land. We are unclear as to how a ban on subdivision, building, and other permits on State-owned agricultural land would contain expansion of these existing subdivisions or discourage new subdivisions. Should this measure move forward, an amendment is needed to exempt its provisions from permits needed by the ranch lessees in direct support of their livestock operations.



HB 2606, RELATING TO LAND USE

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

February 1, 2008

8:30 a.m.

Room: 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB 2606, which would direct the Department of Land and Natural Resources to petition Hawai'i County to restrict the use of certain lands along the North Kohala coastline that are within the agriculture district to prevent low-density residential or any other development.

Community efforts for the protection of the North Kohala coastline have been ongoing for many years now, and yet development via the subdivision of large tax map key (TMK) parcels has continued, with additional development planned in the future.

Upon initial viewing of this distinctive coastline, one is immediately impressed by the scenic natural beauty of the area from the valleys of Polulu, Honokane and Awini along the rugged coastline around Upolu Point and into the lee of the island, with the bordering 'Alenuihaha Channel constantly demonstrating the awesome power of nature.

These lands also hold an immeasurable significance to the culture and heritage of the generations who have called it home. The preservation of the numerous Native Hawaiian cultural sites found along this coastline is critical in ensuring that the history, traditions and practices of the area are passed down to future generations and perpetuated. In modern times, paniolo have worked cattle along this coastline, and it is here that laborers from around the world first landed to toil in the fields during the plantation era. It is also important to note that these lands continue to provide resources for those in the North Kohala community who hunt, fish and gather for subsistence.

OHA urges the Committee to PASS HB 2606. Thank you for the opportunity to provide testimony.

HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO
Gentry Pacific Design Center, Suite 215A
560 N. Nimitz Highway, #50
Honolulu, Hawaii 96817
(808) 524-2249 - FAX (808) 524-6893

January 31, 2008

Honorable Representative Ken Ito, Chair
Honorable Representative Jon Riki Karamatsu, Vice Chair
Members of the House Committee on Water, Land, Ocean Resources & Hawaiian
Affairs
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

RE: IN OPPOSITION OF HB 2606
RELATING TO LAND USE
Hearing: Friday, February 1, 2008, 8:30 a.m.

Dear Chair Ito, Vice Chair Karamatsu and the House Committee on Water, Land,
Ocean Resources & Hawaiian Affairs:

For the Record my name is Buzz Hong the Executive Director for the Hawaii
Building & Construction Trades Council, AFL-CIO. Our Council is comprised
of 16-construction unions and a membership of 26,000 statewide.

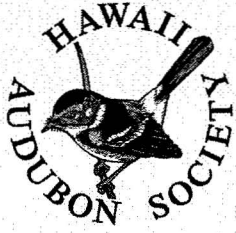
The Council OPPOSES the passage of HB 2606, which directs the department
of land and natural resources to petition Hawaii county to restrict the use of
certain lands along the North Kohala coastline in Hawaii county within the
agricultural district to prevent low density residential or any other
development.

Thank you for the opportunity to submit this testimony in opposition of
HB2606.

Sincerely,

William "Buzz" Hong

WBH/dg



For the Protection of Hawaii's Native Wildlife
HAWAII AUDUBON SOCIETY

850 Richards Street, Suite 505, Honolulu, HI 96813-4709

Phone/Fax: (808) 528-1432; hiaudsoc@pixi.com

www.hawaiiadubon.com

Date: February 1, 2008

To: COMMITTEE ON WATER, OCEAN RESOURCES & HAWAIIAN AFFAIRS
WLHtestimony@Capitol.hawaii.gov

Representative Ken Ito, Chair, and Representative Jon Riki Karamatsu, Vice Chair

COMMITTEE ON AGRICULTURE

Representative Clift Tsuji, Chair, and Representative Tom Brower, Vice Chair

Heating Date: February 1, 2008, Time: 8:30 A.M. Room 325

Bill No. HB2606 TESTIMONY IS SUPPORT

Chairs Ito and Tsuji and Vice Chairs Karamatsu and Brower, and members of the Committee on Water, Ocean Resources & Hawaiian Affairs and the Committee on Agriculture. My name is George Massengale and I am a member of the Hawaii Audubon Society, during session I serve as their Legislative Analyst. Thank you for the opportunity to submit our testimony, **in support of HB2606, Relating to Land Use.**

The Hawai'i Audubon Society (HAS) was founded in 1939, and has over 1,500 members statewide who actively support the Society's primary mission of protecting of Hawaii's wildlife and habitats. The Society supports measures that promote land conservation efforts, especially those that will protect habitat not only for our native birds, but various species of endemic animals and plants as well.

It is well known that our ecosystems are under attack. Hawaii has the highest number of listed threatened and endangered species in the nation. **There are 394 threatened and endangered species in the State of Hawaii, of which 294 are plants.** This measure if passed, and enacted, should protect critical habitats on the Big Island's North Kohala Coast, offering endangered flora and fauna new opportunities to survive and thrive.

The flora and fauna present in North Kohala are quite diverse, inhabiting the surrounding ocean, mountain forests, and vast open lowlands. However, due to the numerous years of growing sugar and raising cattle, not many native plants and animals have a substantial presence, except in the windward

ahupua'a. Over 200 native plants are known from windward Kohala Mountain, including seven threatened or endangered species, eight candidate species and numerous species of concern (USFWS). The most endangered is the Acacia Koai'a a rare tree which is found in low elevations in drier, open woodland habitats. The USFWS estimates that less than 1,000 survive today.

The major bird populations of North Kohala are the 'akepa, 'akialoa, 'amakihi, 'apapane, and the 'i'iwi; all of which are various species of honey creepers. Additionally, there are 'io, also referred to as the Hawaiian hawk. These critical bird habitats are located on the windward side of the district.

North Kohala is surrounded by the ocean on three sides, which explains the community's close relationship with the coastline. Both historically and today, the Kohala Coast is known as one of the best fishing areas in the state. The leeward coast of Hawai'i County from Upolu Point down to Keahole airport is both a coastal management area as well as a Humpback whale sanctuary. Finally, there are over 600 acres of coral reefs dotting the coastline of North Kohala. Most are clustered along the leeward and windward coasts, with very few if any located along the northern tip. Coral reefs are a delicate and fragile ecosystem that can be greatly impacted by changes such as climate, erosion, human presences, and pollution. Due to their size and location, gathering data on reef size, flora, fauna, and quality is a difficult task.

Although this legislation is limited in protecting the North Kohala coastline, we believe that it will also have the unintended consequence of improving habitats on lands adjacent to coastline areas. Hopefully HB2606 will jump start stalled efforts to provide various protections to this critical ecological area. We would urge both committees to vote for passage of this measure.

Respectfully,

A handwritten signature in black ink, appearing to read 'George Massengale', written in a cursive style.

George Massengale, JD
Legislative Analyst

-----Original Message-----

From: kanoa [mailto:kanoa@cfht.hawaii.edu]
Sent: Thursday, January 31, 2008 4:30 PM
To: AGRtestimony; WLHtestimony
Subject: Support for HB-2607 and HB-2606

Kamakani 'O Kohala 'Ohana, Inc dba: KAKO'O
P.O. Box 76, Hawi, HI 96719 Phone/Fax (808) 937-8226

January 27, 2008
Subject: Support for HB-2607 and HB-2606

Aloha, Kamakani 'O Kohala 'Ohana, Inc has a membership of over 300 families in North Kohala. We strongly urge you to support and pass HB-2607 and HB-2606.

North Kohala's coast has the most numerous, intact, pre-contact archeological sites in the State. HB-2607 will ensure better protection for this incredible area, while HB-2606 supports North Kohala's long history of agriculture, including grazing.

Both of these bills are direct result of a two-year community planning process. North Kohala has had the highest participation (12.3%) rate amongst all the Island's districts during this community planning process. These bills are what the community wants.

We urge you to pass HB-2606 and HB-2607.

Sincerely,

Kanoa Withington
Vice-President, Kako'o

From: FredCachola@aol.com [mailto:FredCachola@aol.com]
Sent: Thursday, January 31, 2008 3:57 PM
To: AGRtestimony; WLHtestimony
Cc: gailbyrne@hawaii.rr.com; kanoa@cfht.hawaii.edu; Adscam@aol.com; NAIHE@msn.com; sundownertoni@yahoo.com; dafrank@nhlchi.org
Subject: HB 2607 and HB 2606

Malama Na Wahi Pana O Kohala
January 31, 2008

Rep. Clift Tsuji, Chair
Committee on Agriculture
Hawaii State Capitol

Rep. Ken Ito, Chair
Committee on Water, Land, Ocean and
Hawaiian Affairs
Hawaii State Capitol

RE: Supporting Testimony for HB 2607 and HB 2606

Aloha Rep. Tsuji and Rep. Ito:

Mahalo for introducing HB 2606 and HB 2607 and scheduling a hearing for tomorrow, February 1. The Malama Na Wahi Pana O Kohala (Caring for the Historic Places Of Kohala) is a community based project in Kohala that is part of a coalition of about 40 projects sponsored by the North Kohala Community Resource Center. . .which collectively seek to improve the quality of life for the entire Kohala community.

We agree that the coastline of North Kohala provides cultural, historic and scenic benefits to the people of Hawaii and that this area is very significant because of the important role it had in the history of the ancient Hawaiians, the early missionaries, the paniolo and the plantation eras. The people of Kohala have a well documented 30+ years of community expressions to preserve the coastline makai of Akoni Pule Hwy as a pristine area of open space.

These two bills are primarily due to the past 2 years of serious community planning efforts that identified the preservation of Kohala's coastline and support of agricultural activities as very high priorities. HB 2606 assures that the primary activities on State land mauka of Akoni Pule Hwy will continue to be agriculture. HB 2607 will down zone State Lands along the coast from Agriculture to Conservation. These bills are a direct result of strong recommendations in the 2008 North Kohala Community Development Plan.

I have fished, hiked, camped and enjoyed this coastal area since I was a child growing up in Kohala. My children have done the same and now my grandchildren are also enjoying the area. . just as many other generations from Kohala, the State and visitors throughout the world.

Your positive actions will be consistent with previous legislative actions taken in 1988, Senate Concurrent Resolution no. 179, H.D.1 and in 2001, Senate Concurrent Resolution no. 146, S.D.1. . .to protect the openness of the Kohala coast, preserve its valuable historic sites, and provide greater awareness and appreciation of the historic and cultural significance of the area. We urge you to pass these two bills.

Mahalo,

Fred Cachola
Kohala Historian

-----Original Message-----

From: Shawn A James-Leavey [mailto:leavey@hawaii.edu]
Sent: Monday, January 28, 2008 7:41 PM
To: WLHtestimony
Cc: leavey@hawaii.edu
Subject: HB2606 in support

Honorable Chair Tsuji & members of the Committee on Agriculture
Honorable Chair Ito & members of the Water, Land, Ocean Resources and
Hawaiian Affairs Committee

WLH/AGR, Friday, 02-01-08 at 8:30 am

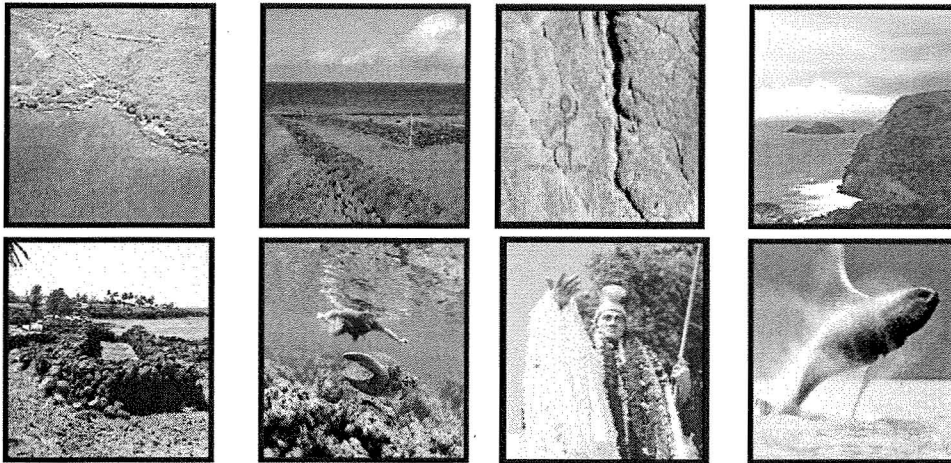
IN SUPPORT OF HB2606,
relating to land use on the North Kohala Coastline

Not only is the heritage and beauty of this coastline threatened by low density luxury development, as this bill states, the homes and resorts already built along this coastline are threatened by wildfire. Though a "living firebreak" pilot project is underway for communities in S. Kohala, it will be sometime until those homes and resorts are fully protected. If development on N. Kohala Coast is not checked, these homes will be in danger of wildfire, as well.

Please act to preserve the open coastline of Kohala. Please act to keep residents out of harm's way. Please petition Hawai'i County to restrict the use of lands along the North Kohala Coastline.

Mahalo nui loa,
Shawn James Leavey
46-3767 Old Mamalahoa Hwy
Honoka'a, HI 96727

Preserving the Kohala Coast



Malama Kohala Kahakai

Clift Tsuji, Chair
Committee on Agriculture
Hawaii State Capitol, Room 403
Honolulu, HI 96813

January 30, 2008

Re: **Please Pass HB 2607 and 2606 and Amend HB-2606 to direct a rezoning to AG 1,000 acre**

Aloha, Mr. Tsuji:

The community of North Kohala has a well-documented, 30+ years of history to preserve its coastline makai of Akoni Pule Hwy in open space. Please see the attached document summarizing the various plans, petitions, and resolutions that support conserving the coast. Rezoning State lands *makai* of Akoni Pule Highway is a recommendation of the draft North Kohala Community Development Plan. Also, this area along the North Kohala coastline has the most numerous, intact, pre-contact cultural and archeological sites in the State.

Preserving agriculture and rezoning the State lands *mauka* of Akoni Pule Highway to AG 1,000 acres is also a high priority of the draft North Kohala Community Development Plan. The rancher who is the primary lease holder of State lands in this area suggested the AG 1,000 acre zoning. Agriculture has historically been the economic foundation of North Kohala and the extensive field systems in the area supported King Kamehameha's armies.

It is our understanding that an accidental error occurred when Representative Cindy Evans sent HB-2606 to LRB for drafting. A zero (0) was dropped from the rezoning request. The bill currently reads AG 100 acres. HB-2606 needs to be amended to read AG 1,000 acres to be aligned with the community's request. Also the intent of the bill is to preserve agriculture and we would like to see that statement in HB-2606.

Please pass HB-2607 AND HB-2606.

Thank you and Aloha,

Gail Byrne