

HB 2807 HD2

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 COMMITTEES ON
AGRICULTURE AND HAWAIIAN AFFAIRS;
WATER AND LAND
AND
INTERGOVERNMENTAL AND MILITARY AFFAIRS
TUESDAY, MARCH 18, 2008
2:45 p.m.
Room 224

HOUSE BILL 2807, HOUSE DRAFT 2
RELATING TO LAND USE

Chairs Tokuda, Hee, and Inouye and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 2807, House Draft 2. The Department of Agriculture supports the concept of providing an "incentive" for owners of agricultural lands to voluntarily seek designation of their qualified lands as Important Agricultural Lands (IAL), however, we are very concerned that the designation and qualification of IAL in the manner described in the bill will be an afterthought to the pursuit of developing affordable housing in the Rural District and reclassifying Agricultural District lands to the Urban District via the declaratory order process of the State Land Use Commission (LUC). We offer some amendments that would increase our level of comfort with this measure, however, we defer to the Office of Planning and the Land Use Commission on the impacts of this bill on the broader land use planning and district reclassification issues.

This measure allows the permanent designation of IAL, not subject to future reclassification or rezoning, in exchange for allowing landowners who are voluntarily petitioning the LUC to reclassify lands to the Urban District and seeking subsequent rezoning by the counties, to meet a portion of the State and/or county affordable housing conditions and assessments by allowing development of this housing in newly created Rural Districts to be reclassified by the LUC via declaratory order. The Department strongly supports permanent

designation of IAL, if all the standards and criteria in Section 205-44 are used to evaluate potential IAL. The minimum amount of qualified agricultural land to be designated as IAL in exchange for this privilege is specified as 80 percent of the total acreage meant for IAL and reclassification to the Rural or Urban District. The Department prefers a ratio of at least 10 acres of IAL designated for every acre reclassified. The bill makes affordable housing a permissible use in Rural Districts that are created by a declaratory order that also designates IAL. Farm worker housing is also made a permissible use in the Rural District. The allowable density of affordable housing in Rural Districts is to be established by the counties. The existing minimum lot size in the Rural District is one-half acre.

Section 205-45 (petition by farmer or landowner) is amended to provide for a concurrent designation of IAL and reclassification of land in the Agricultural District to the Rural and/or Urban District by declaratory order of the LUC, provided all the lands involved are in the same county, the reclassifications are consistent with county plans, and 80 percent of the total acreage considered is to be designated IAL (page 7, line 19 to page 8, line 21). The rationale for adding the Urban District is not discussed in the standing committee report of the Water, Land, Ocean Resources and Hawaiian Affairs, and Agriculture Committees (dated February 15, 2008). The Department has serious reservations about allowing reclassifications to the Urban District via declaratory order as this will reduce the State's responsibility and thoroughness of evaluating petitions for reclassification of Agricultural District land into the Urban District as is currently practiced under Section 205-4 and the LUC Administrative Rules.

Section 205-44 (standards and criteria for the identification of important agricultural lands) is amended to allow IAL designation for lands that are part of a declaratory order if they meet the following standards and criteria (page 6, line 13 to page 7, line 12):

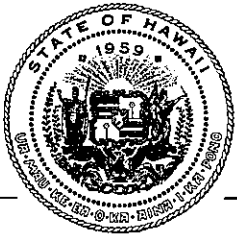
- (new text) Land with Land Study Bureau overall productivity ratings of "A" and "B" and "C" or "D" if currently in agricultural production or could be put into production with new technology or development of irrigation water;
- (existing text) Land with sufficient quantities of water to support viable agricultural production; and
- (existing text) Land that contributes to maintaining a critical land mass important to agricultural operating productivity:

The Department recommends that the LUC use all existing standards and criteria to evaluate potential IAL for designation, regardless of the manner of designation (page 6, line 4 to page 7, line 15).

Also added is a new standard that unfavorably sloped land will be designated as IAL if it is part of a parcel that meets at least one of the other standards and criteria (page 7, lines 16-22). The Department does not support this addition as it will cause the land base designated as IAL to contain lands that would not qualify under the existing standards and criteria.

Finally, Section 205-52 (periodic review and amendment of important agricultural lands maps) is amended to delete the condition of non-availability of irrigation water as a reason to allow the rescinding of IAL designations, with the exception of designations established under declaratory order.

In summary, the Department of Agriculture supports creative and responsible means to identify and designate potential IAL in advance of the county process defined in Chapter 205. This bill is creative in that it proposes to have IAL voluntarily identified and designated in perpetuity via the LUC declaratory order in exchange for the ability to create new Rural Districts to meet State and county affordable housing requirements and to expedite requests to reclassify lands to the Urban District. Our proposed amendments are meant to ensure that the IAL designated in perpetuity does not result in unintended consequences that would diminish their value.



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

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
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Statement of
ABBEY SETH MAYER
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
AND
SENATE COMMITTEE ON INTERGOVERNMENTAL
AND MILITARY AFFAIRS
Tuesday, March 18, 2008
2:45 PM
State Capitol, Conference Room 224

in consideration of
HB 2807, HD 2
RELATING TO LAND USE.

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

The Office of Planning (OP) opposes HB 2807, HD 2.

This bill proposes amendments to Chapter 205, Hawaii Revised Statutes (HRS),
to: (1) allow landowners or developers who have designated important agricultural lands
(IAL) to meet proposed projects' affordable housing requirements in the State Rural Land
Use District; (2) allow a joint petition for the voluntary designation of IAL and the
reclassification of agricultural lands to the State Rural or Urban Districts; and (3) change
the permissible uses for the Rural District.

While OP supports the intent of increasing affordable housing stock and the designation of important agricultural lands in perpetuity, this bill does not ensure that the public benefit to be derived from the measures is commensurate with the private benefits obtained. Our concerns are as follows.

Concerns and Objections to the Bill

1. Section 1, Affordable housing requirements in rural.

OP opposes the current proposal because it lacks provisions to manage the impact of housing development on rural areas. As written, it would result in a rural subdivision that would result in rural sprawl, locate workers away from job centers, and potentially require the same level of infrastructure and services as is needed for urban growth. This proposal needs provisions that: (1) cap the portion or number of affordable units that can be located in the Rural District; (2) require compact project site design through mandatory clustering and the location of housing in or adjoining an existing rural center; (3) require use of rural design and infrastructure standards; and (4) promote the long-term affordability of the rural units. This proposal should be available only to developers who provide permanent agricultural easements on designated IAL.

2. Section 5, Joint designation/reclassification procedure.

OP opposes the proposal as written because the procedure does not provide for: (1) consideration of and mitigation of the impacts of the proposed reclassification/development on areas of State concern, including constitutionally-required public trust responsibilities; and (2) Department of Agriculture

concurrence that the lands to be designated IAL are lands that DOA considers a priority for IAL designation. Automatic reclassification to the Rural or Urban District without regard to State-provided infrastructure and services, such as roads and schools, is also troublesome, particularly for urban reclassifications, which typically require the commitment of substantial State and county resources over the long-term.

3. Sections 6-7, Provisions for designation in perpetuity.

The amendments in these sections are inadequate to ensure IAL designation in perpetuity. These amendments should be supplemented or replaced with a new section that clearly sets out what is meant by a designation in perpetuity, such as follows:

“§205- Lands designated as important agricultural lands in perpetuity. For any land designated as important agricultural lands in perpetuity under this part, the landowner shall execute a perpetual conservation easement that restricts use of the land to bona fide agricultural activities permissible on important agricultural lands. The agricultural conservation easement shall be recorded with the bureau of conveyances and shall run with the land. Notwithstanding any other law to the contrary, the terms and conditions of the agricultural conservation easement shall apply regardless of the district classification or county zoning of the land.”

4. Section 4, page 7, line 16, New standard/criteria for IAL.

OP opposes the new criteria requiring that the entire parcel be designated IAL even if the parcel contains lands that would otherwise not qualify as IAL, since a significant portion of a tax map parcel may be unsuitable for agricultural use due to topography or other conditions. These unusable IAL lands should be

barred from counting toward the 50% cap on the amount of land held by a landowner that may be designated as IAL.

5. Section 2, Amendments to the Rural District.

OP opposes the Rural District amendments as written because the changes will do nothing to avert rural sprawl or the continued loss and destruction of Hawaii's rural landscapes and their rural character. These amendments will not improve the planning and management of rural lands: retaining the existing Rural District density and minimum lot size does not allow for effective clustering, and reliance solely on zoning to protect rural lands will only replicate in the Rural District what is happening in the Agricultural District. This form of rural development is not sustainable in terms of maintaining open space or agricultural and rural industry viability, or containing the public costs for servicing rural subdivisions, etc.

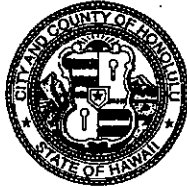
We urge you to consider more comprehensive Rural District reforms that would establish strong rural policy guidance for the counties, yet provide flexibility in their formulation of rural codes and tools for Rural District lands and rural areas. HB 1269 introduced in the last session offers such a framework for change.

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
DIRECTOR

DAVID K. TANOUE
DEPUTY DIRECTOR

March 18, 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 Honorable Lorraine R. Inouye, Chair
and Members of the Committee on Intergovernmental
and Military Affairs
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Tokuda, Hee, Inouye and Members:

**Subject: House Bill 2807 HD2
Relating to Land Use**

The Department of Planning and Permitting **opposes** House Bill 2807 HD2, which attempts to address both affordable housing obligations and designation of Important Agricultural Lands (IAL).

We support affordable housing and IAL preservation. However, on the basis of "home rule", we are opposed to state determination of where affordable housing obligations are met, especially for new communities. We seek to have these new communities reflect a diversity of housing types and households, which is why we ask that affordable housing be part of these communities. We would strongly object to a project in new Ewa being able to satisfy its affordable housing responsibility on the North Shore. This does not create "complete communities".

We are aware of the assumption that land in the rural district may cost less, and therefore, could assist in the development of lower cost housing. However, the project will still likely need county zoning, so whether the "receiving site" is agricultural, rural or urban does not really create an incentive; it does not create any shortcut to county processing. Further, rural areas are less likely to have adequate infrastructure, and therefore, the project's infrastructure costs may be higher than if built as part of the new urban community. Encouraging affordable housing in rural areas would promote urban sprawl, and locate housing away from jobs, exacerbating traffic congestion, and increasing overall household costs.

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 Honorable Lorraine R. Inouye, Chair
and Members of the Committee on Intergovernmental
and Military Affairs

The Senate

Re: House Bill 2807 HD2

March 18, 2008

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Although there is no state rural district on Oahu, and we do not support its introduction, we find the proposals to amend the permitted uses in the state rural district perplexing. Under Chapter 205, residential use is already permitted in the district, subject to further provisions under county zoning. We see no reason to add a new provision to line-item farm-worker housing.

More perplexing is that the land that may be added to an IAL declaratory order for a change to urban, rural or some combination of the two, need not be used for affordable housing. Thus, as we understand the bill, the land that changes from agriculture to urban, rural or combination could be used for market housing, a golf course, or a theme park. House Bill 2807 HD2 only stipulates that if affordable housing is built in the rural district without a special permit, it must be land that was involved in a declaratory order reclassifying it to agriculture; it does not require that all the lands reclassified to rural be used only for affordable housing.

We applaud the proposal of the bill to move away from the contested case hearing process for redistricting of agricultural lands to rural or urban districts. This bill would allow for this new process if the subject boundary amendment was part of a request for IAL designation of other lands. Both requests—boundary amendment and IAL designation--would be decided by a single declaratory order. The action would be determined with consideration for relevant county general, development and community plans. While this is a step in the right direction, we are not convinced it will yield a faster, more predictable process, based on our understanding of the current land use commission rules and actual practices on declaratory rulings. Perhaps a quasi-legislative process would be more appropriate.

We do share the concerns of others regarding the declaratory order designating lands as IAL will be set in perpetuity. We know of no other land use action that has such a permanent restriction.

Finally, Section 5 of the bill is silent regarding whether in granting an IAL declaratory order, the land use commission may approve with conditions, or whether it may give partial approval of the geographic area in question.

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 Honorable Lorraine R. Inouye, Chair
and Members of the Committee on Intergovernmental
and Military Affairs

The Senate

Re: House Bill 2807 HD2

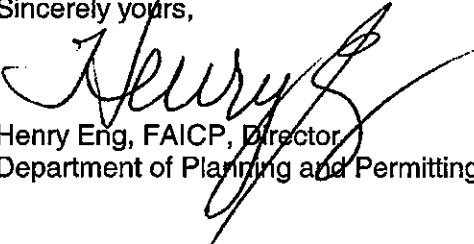
March 18, 2008

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To sum, stringing two public policy issues together —saving IAL and increasing affordable housing—may yield more complications and unintended consequences that make the concept not workable. House Bill 2512 HD1 should be further discussed and modified before adoption. Otherwise, it should be filed.

Thank you for the opportunity to testify.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Henry Eng", with a large, sweeping flourish extending to the right.

Henry Eng, FAICP, Director
Department of Planning and Permitting

HE: jmf
hb2807hd2-kh.doc

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

MARCH 18, 2008

HEARING BEFORE THE
SENATE COMMITTEE ON AGRICULTURE & HAWAIIAN AFFAIRS/
SENATE COMMITTEE ON WATER AND LAND/
SENATE COMMITTEE ON INTERGOVERNMENTAL AND MILITARY AFFAIRS

TESTIMONY ON

**HB 2807, HD 2
RELATING TO LAND USE**

Chair Tokuda, Hee, Inouye and Members of the Committees:

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 supports the intent of **HB 2807, HD 2**. This measure provides incentives to landowners who designate their land as IAL by allowing a landowner to satisfy state or county imposed affordable housing assessments in the rural district and to expedite the reclassification of agricultural land that are currently in the county plans to the rural or urban district by allowing the landowner to petition the LUC by declaratory order.

We agree that our land use system and regulatory system for both agricultural and development projects should be expedited, especially for those landowners who designate their lands into IAL. This incentive will reduce the landowner's legal and administrative cost that we all can appreciate. We also see this as a benefit for keeping the other portion of the agricultural lands for IAL and hope that this bill ensures that the usable lands and unusable lands will be accounted for in the determination of percentage of those lands being upzoned. If this measure means to increase the lands designated as IAL, we support the measure. However, it is with the understanding that this Bill, as a stand lone measure, does not represent the total IAL incentive package as described in SB 2646 / HB 2357 (companion). We would also note that the perpetuity measure may apply to the entire IAL incentives versus only to the provisions and intent of SB 2807 of reclassification of ag to rural/urban.

We respectfully urge your support and passage of this measure. Thank you.

**HB 2807 HD2
RELATING TO LAND USE**

**PAUL T. OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.**

MARCH 18, 2008

Chair Tokuda, Chair Hee, Chair Inouye, and Members of the Senate Committees on Agriculture & Hawaiian Affairs, Water & Land, and Intergovernmental & Military Affairs:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) and its agricultural companies Hawaiian Commercial & Sugar Company and Kauai Coffee Company, Inc. on HB 2807 HD2, "A BILL FOR AN ACT RELATING TO LAND USE." We support this bill with amendments.

After over twenty five years of debate, negotiation, and compromise, the IAL Law was finally passed in the 2005 Legislative Session. After years of pursuing a land-use approach to this constitutional mandate, the IAL law that was successfully passed was one premised on the principle that the best way to preserve agricultural lands is to preserve agricultural businesses and agricultural viability. As such, Act 183 (2005) not only provides the standards, criteria, and processes to identify and designate important agricultural lands (IAL) to fulfill the intent and purpose of Article XI, Section 3 of the Hawaii State Constitution, it also provides for the passage of a package of incentives designated to support and encourage sustained, viable agricultural activity on IAL—prior to the designation of IAL. Once the package of incentives is passed, IAL may be

designated in one of two ways --- by voluntary petition by the farmer/landowner to the State Land Use Commission (LUC); or subsequently by the Counties filing a petition to designate lands as IAL pursuant to a County identification and mapping process. In either case, the LUC must find that the lands qualify for IAL designation pursuant to the standards, criteria, objectives, and policies set forth in the IAL Law prior to designation.

This bill includes provisions to provide a farmer or a landowner who voluntarily files a petition with the LUC to designate their lands as IAL with a reclassification of a proportionate amount of non-IAL lands from the agricultural district to the urban or rural district. We agree with the general intent of this bill and believe that with appropriate amendments, will represent an incentive that will encourage landowners to voluntarily designate their lands into IAL. We respectfully request your consideration to incorporate amendments to address the following two issues relating to this bill.

First, in authorizing farmers or landowners that petition the LUC to both designate lands as IAL and to seek a reclassification of a proportionate amount of lands from the agricultural district to the rural or urban districts, this bill requires that the designation of IAL be done in perpetuity. This perpetuity provision as presently drafted in this bill amends the present IAL Law to also require farmer or landowner petitions for IAL designations that **do not include** a reclassification of lands to the rural or urban districts to also designate the IAL in perpetuity. While we support the recommendation from LURF to delete this perpetuity requirement from this bill, should your Committee decide to retain this, or any other related requirement on IAL designations in this bill, we respectfully request that amendments be incorporated to ensure that the requirements imposed upon the duration of time for an IAL designation made under this bill does not

affect the duration of time for IAL land designations made under the present IAL Law that are independent of this bill. We have attached amendments that may be used as a template for your consideration.

Secondly, in that farmers or landowners may not have lands in the agricultural district for reclassification into the rural or urban district that are consistent with the relevant County General, Development, and Community Plans at the time that IAL designations are made, consideration to authorize the Land Use Commission to utilize qualified IAL designations as a credit to reclassify agricultural lands to the urban or rural districts in subsequent years will be appreciated.

Thank you for the opportunity to testify.

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

"§205- Satisfaction of state or county affordable housing requirements in the rural district. (a) In lieu of satisfying a state or county affordable housing assessment in the urban district, a project landowner subject to subsection (b) may fulfill the assessment by providing affordable housing in the rural district in accordance with section 205-2(c)(7).

(b) This section shall apply only to a project landowner who has been granted a declaratory order from the land use commission to both designate all or some of the landowner's land as important agricultural land and to reclassify land in the agricultural district to the rural district pursuant to section 205-45(b)."

SECTION 2. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Rural districts shall include [activities]:

(1) Activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where

"city-like" concentration of people, structures, streets, and urban level of services are absent~~[, and where small]~~;

(2) Small farms ~~[are]~~ intermixed with low density residential lots, except that within a subdivision, as defined in section 484-1, the commission, for good cause and on petition for a special permit, may allow one lot of less than one-half acre, but not less than ~~[18,500]~~ eighteen thousand five hundred square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot~~[,]~~ provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or ~~[21,780]~~ twenty-one thousand seven hundred eighty square feet~~[. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous]~~;

(3) Contiguous areas ~~[which]~~ that are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics~~[. Rural districts shall also include golf]~~;

(4) Golf courses, golf driving ranges, and golf-related facilities~~[,]~~;

- (5) Agribusiness activities, including horticulture, apiculture, aquaculture, plant nurseries, and the raising and keeping of livestock;
- (6) Farm worker housing; and
- (7) Affordable housing, without a special permit; provided that the housing is:
 - (A) Affordable to households with incomes at or below one hundred forty per cent of the median family income as determined by the United States Department of Housing and Urban Development; and
 - (B) Situated on land reclassified to the rural district under a declaratory order issued pursuant to section 205-45 that also designates important agricultural land."

SECTION 3. Section 205-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Unless authorized by special permit issued pursuant to this chapter, only the following uses shall be permitted within rural districts:

- (1) Low density residential uses[+], with a minimum lot size of one-half acre and one dwelling unit per lot, except as provided in section 205-2(c);
- (2) Agricultural uses;

- (3) Golf courses, golf driving ranges, and golf-related facilities; ~~and~~
- (4) Public, quasi-public, and public utility facilities~~[-]~~;
- (5) Agribusiness activities, as provided in section 205-2(c);
- (6) Farm worker housing; and
- (7) Affordable housing meeting the requirements of section 205-2(c)(7), with density established by county zoning.

~~[In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre, except as provided for in section 205-2.] "~~

SECTION 4. Section 205-44, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]§205-44[+]~~ **Standards and criteria for the identification of important agricultural lands.** (a) The standards and criteria in this section shall be used to identify important agricultural lands. Lands identified as important agricultural lands need not meet every standard and criteria listed below. Rather, lands meeting any of the criteria below shall be given initial consideration; provided that the designation of important agricultural lands shall be made by weighing the standards and criteria with each other to meet the constitutionally mandated purposes in article XI, section 3, of

the [~~state constitution~~] Hawaii Constitution and the objectives and policies for important agricultural lands in sections 205-42 and 205-43.

(b) In a petition for a declaratory order submitted under section 205-45 that seeks to both designate lands as important agricultural lands and reclassify lands in the agricultural district to the rural or urban district, the lands shall be deemed qualified for designation as important agricultural land if the commission reasonably finds that the lands meet at least the criteria of subsection (c) (4), (6), and (8) of this section.

If a petition seeks to only designate land as important agricultural lands, then the commission shall evaluate the lands in accordance with subsection (a).

(c) The standards and criteria shall be as follows:

- (1) Land currently used for agricultural production;
- (2) Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops;
- (3) Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the board of agriculture on January 28, 1977;

(4) Land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating:

(A) Class A or B; or

(B) Class C or D if the land is currently in agricultural production or could be put into productive agricultural use with the implementation of new technology or development of irrigation water;

~~[(4)]~~ (5) Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production;

~~[(5)]~~ (6) Land with sufficient quantities of water to support viable agricultural production;

~~[(6)]~~ (7) Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county;

~~[(7)]~~ (8) Land that contributes to maintaining a critical land mass important to agricultural operating productivity; ~~[and]~~

~~[(8)]~~ (9) Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power~~[-]~~; and

(10) Land that, although unsuited for agricultural use because of topography, is part of a tax map key parcel, most of which is comprised of land meeting at least one of the standards and criteria listed in this subsection. Land under this paragraph shall be designated as important agricultural land only if the entire tax map key parcel is so designated."

SECTION 5. Section 205-45, Hawaii Revised Statutes, is amended to read as follows:

"~~[§]205-45[§]~~ **Petition by farmer or landowner.** (a) A farmer or landowner with lands qualifying under section 205-44 may file with the commission a petition for declaratory ~~[ruling with the commission]~~ order to designate the lands as important agricultural lands ~~[in perpetuity]~~. The petition may be filed at any time in the designation process.

(b) Any law to the contrary notwithstanding, within the same petition for declaratory order as described in subsection (a), the petitioner may seek a reclassification of land in the agricultural district to the rural district, urban district, or a combination of both; provided that the:

(1) Land sought to be reclassified to the rural or urban district is within the same county as the land sought to be designated as important agricultural lands;

- (2) Land sought to be designated as important agricultural land is designated in perpetuity.
- (3) Reclassification of the land to the rural or urban district is consistent with the relevant county general, development, and community plans; and
- (4) Total acreage of the land sought to be designated or reclassified in the petition complies with the following proportions:
 - (A) At least eighty per cent of the total acreage is sought to be designated as important agricultural land; and
 - (B) The remainder of the acreage is sought to be reclassified to the rural or urban district.

~~(b)~~ (c) The petition for declaratory ~~ruling~~ order shall be submitted in accordance with subchapter 14 of the commission's rules and shall include:

- (1) Tax map keys of the land to be designated as important agricultural lands and, if applicable, the land to be reclassified from the agricultural district to the rural or urban district, along with verification and authorization from the applicable landowners;
- (2) Proof of qualification for designation as important agricultural lands under section 205-44, respecting a regional perspective; ~~and~~

- (3) The current or planned agricultural use of the area sought to be designated[-] as important agricultural lands; and
- (4) If applicable, the current or planned use of the area sought to be reclassified to the rural or urban district.

~~[(e)]~~ (d) The commission shall review the petition and the accompanying submissions to evaluate the qualifications of the land for designation as important agricultural lands in accordance with section 205-44.

If the petition also seeks the reclassification of land to the rural or urban district, the commission shall review the petition and accompanying submissions to evaluate the suitability of the land for the reclassification in accordance with section 205-2; consistency of the reclassification with the relevant county general, development, and community plans; and compliance with the other provisions of subsection (b).

If the commission, after its review ~~[and evaluation]~~, finds that the ~~[lands qualify for] designation [as important agricultural lands under this part,]~~ and, if applicable, reclassification sought in the petition should be approved, the commission shall vote, by a two-thirds majority of the members of the commission, to issue a declaratory order designating the petitioner's identified lands as important agricultural lands~~[-]~~

and, if applicable, reclassifying the petitioner's identified land from the agricultural district to the rural or urban district.

With respect to a petition that seeks to both designate important agricultural lands and reclassify agricultural lands to the rural or urban district, if the commission finds that either the designation or reclassification as proposed by the petitioner should not be approved, the commission shall deny the petition in its entirety.

~~[(d) Designating important agricultural lands by the commission]~~ (e) The designation or reclassification of land pursuant to subsection (a) or (b) shall not be [considered as an amendment to district boundaries under] subject to the district boundary amendment procedures of sections 205-3.1 and 205-4 or become effective prior to legislative enactment of protection and incentive measures for important agricultural land and agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.

~~[(e)]~~ (f) Farmers or landowners with lands qualifying under section 205-44 may file petitions for a declaratory [ruling] order to designate lands as important agricultural lands following the legislative enactment of protection and incentive measures for important agricultural lands and

agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.

(g) After a declaratory order ~~that both~~ designates any land as important agricultural land ~~and reclassifies land in the agricultural district to the rural district, urban district, or a combination of both~~ pursuant to ~~[this]~~ section 205-45(b), the commission shall not remove that ~~important agricultural land~~ designation from any land so designated in ~~[the] that~~ order.

(h) The commission may adopt rules pursuant to chapter 91 to effectuate this section."

SECTION 6. Section 205-50, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (c) and (d) to read:

"(c) Any decision by the land use commission or county pursuant to this section shall specifically consider the following standards and criteria:

- (1) The relative importance of the land for agriculture based on the stock of similarly suited lands in the area and the State as a whole;
- (2) The proposed district boundary amendment or zone change will not harm the productivity or viability of existing agricultural activity in the area, or adversely affect the viability of other agricultural activities or operations that share infrastructure,

processing, marketing, or other production-related costs or facilities with the agricultural activities on the land in question;

- (3) The district boundary amendment or zone change will not cause the fragmentation of or intrusion of nonagricultural uses into largely intact areas of lands identified by the State as important agricultural lands that create residual parcels of a size that would preclude viable agricultural use;
- (4) The public benefit to be derived from the proposed action is justified by a need for additional lands for nonagricultural purposes; [and]
- (5) The impact of the proposed district boundary amendment or zone change on the necessity and capacity of state and county agencies to provide and support additional agricultural infrastructure or services in the area[.];
and
- (6) Whether the important agricultural land was designated as such in perpetuity by a declaratory order that both designates land as important agricultural land and reclassifies land in the agricultural district to the rural district, urban district, or a combination of both [issued under section 205-45] pursuant to section 205-45(b).

(d) Any decision pursuant to this section shall be based upon a determination that:

(1) On balance, the public benefit from the proposed district boundary amendment or zone change outweighs the benefits of retaining the land for agricultural purposes; [and]

(2) The proposed action will have no significant impact upon the viability of agricultural operations on adjacent agricultural lands[.]; and

(3) The district boundary amendment does not remove the important agricultural land designation from land so designated in perpetuity by a declaratory order that both designates land as important agricultural land and reclassifies land in the agricultural district to the rural district, urban district, or a combination of both [issued under section 205-45] pursuant to section 205-45(b)."

2. By amending subsection (g) to read:

"(g) A farmer or landowner with qualifying lands may also petition the land use commission to remove the "important agricultural lands" designation from lands that were not designated by a declaratory order that both designates land as important agricultural land and reclassifies land in the agricultural district to the rural district, urban district or a

~~combination of both [issued under section 205-45] pursuant to section 205-45(b)~~ if a sufficient supply of water is no longer available to allow profitable farming of the land due to governmental actions, acts of God, or other causes beyond the farmer's or landowner's reasonable control."

SECTION 7. Section 205-52, Hawaii Revised Statutes, is amended to read as follows:

"[+]§205-52[+] **Periodic review and amendment of important agricultural lands maps.** The maps delineating important agricultural lands shall be reviewed in conjunction with the county general plan and community and development plan revision process, or at least once every ten years following the adoption of the maps by the land use commission; provided that the maps shall not be reviewed more than once every five years. Any review and amendment of the maps of important agricultural lands shall be conducted in accordance with this part. ~~[In these periodic reviews [or petitions by the farmers or landowners for declaratory rulings], the "important agricultural lands" designation [shall] may be removed from those [important agricultural lands where the commission has issued a declaratory order that a sufficient supply of water is no longer available to allow profitable farming of these lands due to governmental actions, acts of God, or other causes beyond the farmer's or landowner's reasonable control.] lands that were so designated~~

by district boundary amendment and not a declaratory order issued under section 205-45.1 In these periodic reviews or petitions by the farmers or landowners for declaratory rulings, the "important agricultural lands" designation shall be removed from those important agricultural lands where the commission has issued a declaratory order that a sufficient supply of water is no longer available to allow profitable farming of these lands due to governmental actions, acts of God, or other causes beyond the farmer's or landowner's reasonable control; provided that the "important agricultural lands" designation shall not be removed for lands designated by a declaratory order that both designates lands as important agricultural lands and reclassifies lands in the agricultural district to the rural district, urban district, or a combination of both pursuant to section 205-45(b)."

SECTION 8. The legislature declares that this Act establishes incentives for the designation of important agricultural land in satisfaction of section 205-46, Hawaii Revised Statutes, and section 9 of Act 183, Session Laws of Hawaii 2005.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.



Food Company Hawaii

1116 Whitmore Avenue Wahiawa, Hawaii 96786

March 18, 2008

Honorable Jill N. Tokuda, Chair, Committee on Agriculture and Hawaiian Affairs
Honorable Clayton Hee, Chair, Committee on Water and Land
Honorable Lorraine R. Inouye, Chair, Intergovernmental and Military Affairs
Hawai'i State Capitol, Conference Room 224
415 South Beretania Street
Honolulu, HI 96813

RE: **HB 2807, HD2 Relating to Land Use – Support with Amendments**
Senate Committees on Agriculture and Hawaiian Affairs, Water and Land and Intergovernmental
and Military Affairs, March 18, 2008, 2:45 PM - Room 224

Chairs Tokuda, Hee, Inouye and Members of the Committees:

I am Dan Nellis, Operations Director of Dole Food Company Hawaii ("Dole"). We appreciate the opportunity to express our views on HB 2807, HD2, relating to land use.

As taken directly from Act 183 (2005), the intent "is not only to set policies for important agricultural lands and to identify important agricultural lands but also to **provide for the development of incentives for agricultural viability in Hawaii, particularly for agricultural enterprises that farm important agricultural lands and for landowners of important agricultural lands.** These incentives are intended to promote the retention of important agricultural lands for viable agricultural use over the long term."

Dole supports the establishment of meaningful incentives for all impacted landowners who voluntarily designate their valuable agricultural lands as a condition to implementing the Important Agricultural Lands (IAL) Act. Any comprehensive package of incentives must include meaningful and adequate options for all landowners in different situations, not just independent farmers and small landowners.

We believe it is imperative that we work toward providing a comprehensive set of incentives to entice large and small operations and large and small landowners to voluntarily designate their properties as IALs. This proposal would allow for concurrent designation of IAL and the reclassification of agricultural lands to Rural or Urban District so long as the reclassification is consistent with the relevant county general plan. It is our intent to work toward meaningful changes that help both agricultural enterprises that farm important agricultural lands and for landowners of important agricultural lands.

We feel that for IAL dedication to occur, we need meaningful farm operator and landowner incentives to be established. To this end, we respectfully request that the following changes be made to HB2807, HD2:

1. Elimination of option for the affordable housing in the rural district (delete Sections 1-3);
2. Elimination of perpetuity language (delete language in Sections 4, 5, 6);
3. Change in ratio to 70-30, (Amend language in Section 5);
4. Elimination of LSB land rating system (delete language in Section 4); and
5. Addition credits for future use. (Add language in Section 5)

For these reasons we ask for your support of this bill with the aforementioned changes.

As always, we are grateful for the opportunity to share our views with you.

Sincerely,

Dan Nellis
Operations Manager, Dole Food Company Hawaii



**Hawaii
Association of
REALTORS®**
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March 18, 2008

The Honorable Jill N. Tokuda, Chair
Senate Committee on Agriculture and Hawaiian Affairs

The Honorable Clayton Hee, Chair
Senate Committee on Water and Land

The Honorable Lorraine R. Inouye, Chair
Senate Committee on Intergovernmental and Military Affairs
State Capitol, Room 224
Honolulu, Hawaii 96813

RE: H.B. 2807, H.D. 2 Relating to Land Use
Hearing Date: Tuesday, March 18, 2008 @ 2:45 p.m., Room 224

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS® (HAR) **supports the intent of H.B. 2807, HD2** to allow a landowner, who has been granted a declaratory order from the Land Use Commission to designate all or some of the landowner's land as Important Agriculture Land (IAL), to fulfill a state or county affordable housing assessment by providing affordable housing in lands zoned as rural in lieu of satisfying the assessment in the urban district.

Hawaii is in dire need of affordable housing inventory and HAR supports mechanisms to help increase the supply of low and moderate income affordable housing. The incentives contained in this measure to create affordable and workforce housing in conjunction with incentivizing the designation of IALs are needed to ensure that Hawaii's workforce has a place to call home.

Mahalo for the opportunity to testify.



**The Chamber of
Commerce of Hawaii**
Since 1850

Testimony to the Senate Committees on Agriculture and Hawaiian Affairs, Water and Land,
and Intergovernmental and Military Affairs
Tuesday, March 18, 2008
Room 224, State Capitol

RE: H.B. 2807, HD2 Relating to Land Use

Chairs Tokuda, Hee, and Inouye, Vice Chairs English, Kokubun, and Tsutsui, Members of the Committees:

My name is Christine Camp, Chair of The Chamber of Commerce of Hawaii, Land Use and Transportation Committee. The Chamber of Commerce of Hawaii supports the intent of H.B. No. 2807 HD 2 with specific amendments.

The Chamber is the largest business organization in Hawaii, representing over 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. The organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

H.B. No. 2807 HD 2 provides two incentives to landowners who designate their land as important agricultural lands by allowing a landowner:

1. Who has designated important agricultural lands to satisfy state- or county-imposed affordable housing assessments in the rural district; and,
2. To submit a petition for a declaratory order from the land use commission to combine the designation of important agricultural lands with the reclassification of agricultural land to the rural or urban district.

Section 5 of the bill requires that 80% of the lands in the petition must be designated IAL in perpetuity and the remaining 20% maybe reclassified by the LUC as urban or rural as long as it is consistent with the county land use plans. If perpetual designation is required, we strongly recommend that the state acquire the IAL designated lands through a GET tax credit and allow the State Department of Agriculture to own and manage these IAL lands in perpetuity.

We strongly supported the original comprehensive IAL Incentive Bill (HB 2808, now HB 2357 HD 1) in its entirety. We believe that meaningful incentives are needed to promote and the growth of agribusinesses in the State. It is through this growth that we will be able to preserve and protect viable agricultural operations in Hawaii.

Page 2

The Chamber of Commerce of Hawaii Testimony on HB 2807, HD2
March 18, 2008

Act 183 was based on the promoting agricultural viability and simply identification of agricultural lands believed to be important. Act 183 provides for incentives to be enacted that would assist in making agribusinesses viable and thus, allow for designation of IAL based on "growing" agribusiness.

Over the past two sessions, legislation has been introduced to create incentives to promote agricultural viability in Hawaii. In addition, attempts were also made to have the Counties enact incentives to promote agricultural viability in their respective counties. Neither of these efforts has resulted in meaning incentives being put in place to stimulate interest in designating lands IAL.

The proposed HD 2 allows for a 4:1 ratio or 80%/20% meaning that for every 4 acres of agricultural lands designed by the LUC as IAL, the LUC may reclassify 1 acre of agricultural lands to urban or rural, as long as the reclassified lands fall within areas identified for urban expansion by the Counties. We strongly support this as an incentive for IAL designation and suggest that while further discussions are occurring on the specific ratios.

Passage of this bill without the suggested amendment should not constitute fulfilling the spirit and intent of Act 183 when it was drafted.

We strongly support HB 2807 HD 2 with our proposed amendment. We believe that meaningful incentives are needed to promote and the growth of agribusinesses in the State. It is through this growth that we will be able to preserve and protect viable agricultural operations in Hawaii.

Thank you for this opportunity to express our views.



KAMEHAMEHA SCHOOLS

March 18, 2008

The Honorable Jill N. Tokuda, Chair and Members
Committee on Agriculture and Hawaiian Affairs
The Honorable Clayton Hee, Chair and Members
Committee on Water and Land
The Honorable Lorraine R. Inouye, Chair and Members
The Senate
Hawaii State Capitol
415 South Beretania Street, Room 224
Honolulu, Hawaii 96813

Dear Chair Tokuda, Hee, Inouye and Members:

Testimony in Support of House Bill No 2807 HD2 Relating to Land Use

I am Kapu C. Smith, Senior Land Asset Manager for Kamehameha Schools' Kawailoa Plantation in Waialua, Oahu. I am here to testify in support of HB2807 HD2 because it recognizes that an effective voluntary designation process which includes the ability to reclassify land which are not "important agricultural land" (IAL) is a landowner incentive. In our case, this is an essential requirement to our decision to pursue voluntary designation. Although the proposed HD2 has addressed our concerns regarding a need for clearer standards and criteria in Section 205-44, Hawaii Revised Statutes we also suggest the following changes:

1. Utilization of the proposed standards and criteria in Section 205-44 for non-voluntary designation.
2. Removal of the perpetuity requirement for IAL designation and reestablishment of the removal option if water is no longer available.
3. Inclusion of reclassification of conservation as part of the combined designation process proposed in Section 205-45 (b) and the resulting changes to the other sections of HD1 which would be required.
4. A requirement for the establishment of rules and regulations to specifically govern Declaratory Orders for designation of IAL or use of a quasi-legislative process as an alternative.

Thank you for the opportunity to express our views on this matter.



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.537.9019 hawaii.chapter@sierraclub.org

**SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS
SENATE COMMITTEE ON WATER AND LAND
SENATE COMMITTEE ON INTERGOVERNMENTAL AND MILITARY AFFAIRS**
March 18th, 2008, 2:45 P.M.

(Testimony is 1 page long)

TESTIMONY IN OPPOSITION TO HB 2807 HD2

Chair Tokuda, Hee, and Inouye, and members of the committees:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, opposes HB 2807 HD2, allowing for a rural or urban reclassification process that would bypass the existing public process. We believe this measure is unnecessary, fosters poor planning, and may have unintended consequences.

The Sierra Club strongly opposes amendments to our land use law which facilitate the reclassification of lands out of agriculture without proper public process. Section 5 of HB 2807 HD2 allows developers to petition for "declaratory order" to reclassify of their land to the rural or urban districts—bypassing the existing deliberative Land Use Commission (LUC) process (HRS 205-4). **The existing process is essential for thorough decision making and public involvement.** Nothing prevents landowners with ostensibly "rural" lands currently from petitioning to reclassify those lands through the existing public process before the LUC.

Given the incredible speculative real estate pressures on Hawaii's limit lands, there is no good reason to expedite the conversion of farmland to developable land—particularly if such a process reduces public input. This measure will only foster greater speculative investment in Hawaii's undeveloped lands and could further drive up the price of land for farming and local housing.

Finally, what this measure seems to overlook is the sprawl-preventing aspects of our state Land Use Law and the processes it provides. The founders of Hawaii's Land Use Law were the first in the nation to establish de facto "urban growth boundaries" and use comprehensive zoning as a way to keep unbridled development in check statewide. Our current law helps to prevent costly urbanization of lands far from existing urban areas where additional development is more efficient. In other words, when agriculturally designated lands restrict urban uses outside of the urban core (i.e., by prohibiting "residential" uses), they serve their purpose even if they are not actively farmed. Agricultural designation is a critical tool to contain urban growth and focus development where it makes the most sense.

We urge this committee to hold HB 2807 HD2.

Thank you for the opportunity to testify.



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 18, 2008

Testimony via email

COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS

Senator Jill Tokuda, Chair
Senator J. Kalani English, Vice Chair

COMMITTEE ON WATER AND LAND

Senator Clayton Hee, Chair
Senator Russell Kokubun, Vice Chair

COMMITTEE ON INTERGOVERNMENTAL AND MILITARY AFFAIRS

HB 2807 HD2
RELATING TO LAND USE

Committee Chairs and Members,

Hawaii's Thousand Friends, a statewide non-profit land use organization, opposes HB 2807, HD2 that:

Allows landowner's to skip the Land Use Commission public involvement process by automatically designating land to rural or urban.

- Disguised as an incentive this bill accomplishes something that has been a goal of large landowners and developers for years: the elimination of the public's right to a contested case. Under the current Land Use Commission process citizen's have the right to question developers and their "expert" witnesses; appeal decisions based on a complete record for violations of clear standards; have decisions made based upon evidence presented and have a decision rendered by an objective party.
- Under the automatic reclassification scheme citizens would loose these opportunities.

Ignores county planning by dictating where affordable housing will be located.

- Allowing a landowner or developer to dictate where affordable housing will be located ignores County-planning processes.
- Locating affordable housing in the rural district perpetuates urban sprawl, will require the same level of infrastructure as for the urban district,

would locate workers away from job centers and will not be sustainable as a rural district for small farms and open space if used as receiving district for affordable housing.

- Citizens statewide spend countless hours participating in the county general and development plans process that identifies where development will occur and where it will not. Should HB 2807 HD2 pass their efforts to guide growth in their community will be thwarted by the dictate of state law.

Allows land to be designated IAL even if "unsuited for agriculture use because of topography."

- Currently, §205-49 allows the LUC to only designate half of an owner's land that qualifies as IAL for IAL. Thus, only half of the most important of agricultural land could be so designated while under this bill unsuitable land could be designated as IAL.
- Where is the rational in allowing unsuitable land to be identified as Important Agriculture Land?

Farm worker housing. §205 (c) Rural districts shall include #6, should not be included as a permitted use in the rural district. Determining where **any type** of housing should be located must be left to the county planning departments and their various publicly involved planning processes.

The key word in Important Agricultural Land is Important. At this crucial time when one of our first priorities in the state has been defined and acknowledged as the need for island sustainability shouldn't we strive to protect our valuable farm land instead of bending to offers that exclude the public, thwart planning processes and just do not make sense?

The integrity of Hawaii's farmlands must be preserved for the immediate and long- term viability of the people of Hawaii.



100 Kahalu Avenue
Mililani, Hawaii 96789-3997
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Mililani, Hawaii 96789-8900
(808) 548-4811 Fax (808) 548-6670

March 18, 2008

Honorable Jill N. Tokuda, Chair, Committee on Agriculture and Hawaiian Affairs
Honorable Clayton Hee, Chair, Committee on Water and Land
Honorable Lorraine R. Inouye, Chair, Committee on Intergovernmental and Military Affairs
Hawai'i State Capitol, Conference Room 224
415 South Beretania Street
Honolulu, HI 96813

**RE: HB 2807, HD2 Relating to Land Use – Support with Amendments
Senate Committees on Agriculture and Hawaiian Affairs, Water and Land and
Intergovernmental and Military Affairs, March 18, 2008, 2:45 PM - Room 224**

Chairs Tokuda, Hee, Inouye and Members of the Committees:

I am Harry Saunders, President of Castle & Cooke Hawai'i. We appreciate the opportunity to express our support for HB 2807, HD2, relating to land use.

The intent of Act 183 (2005) "is not only to set policies for important agricultural lands and to identify important agricultural lands but also to **provide for the development of incentives for agricultural viability in Hawaii, particularly for agricultural enterprises that farm important agricultural lands and for landowners of important agricultural lands.** These incentives would be designed to promote the retention of important agricultural lands for viable agricultural use over the long term."

We support landowner incentives proposed in HB 2807, HD2 that allow for concurrent designation of IAL and the reclassification of agricultural lands to Rural or Urban District so long as the reclassification is consistent with the relevant county general plan. In other words, only lands already designated by the county as appropriate for urban growth. This proposed process, while not automatic, has the potential to save land entitlement processing time, which is a cost savings. This would be an incentive to encourage us to commit lands to IAL because it provides an opportunity to sustain our businesses in Hawaii while we address two of the State's many priorities, agriculture and affordable housing. Among the multitude of challenges that face the agriculture industry, the commitment of LAND is a key essential element to providing the base structure and land tenure needed to promote agriculture.

However, our agriculture operations do not provide the economic returns to sustain us. Our housing development business provides the economic base to help us survive and to continue our presence in Hawaii. This incentive gives us an opportunity to pursue housing development where counties have already targeted urban growth areas through their respective county development plans and does not result in un-controlled urban expansion. Furthermore, the proposed process is not "automatic" as it requires a LUC declaratory ruling and the full county re-zoning and permitting process.

Castle & Cooke Hawai'i consists of the Hawai'i subsidiaries of Castle & Cooke, Inc. which include Castle & Cooke Homes Hawai'i, Inc., Castle & Cooke Properties, Inc., Castle & Cooke Resorts, LLC and other subsidiaries

Therefore, we respectfully request that the following changes be made to HB2807, HD2:

1. Elimination of option for the affordable housing in the rural district (delete Sections 1-3), since it may have been objectionable to allow affordable housing in Rural districts;
2. Elimination of perpetuity language (delete language in Sections 4, 5, 6) because the IAL process already allows for a review period and required super majority to remove lands from IAL;
3. Change in ratio to 70-30, (Amend language in Section 5) to allow for housing within urban growth areas as designated by respective county development plans;
4. Elimination of LSB land rating system (delete language in Section 4) to avoid conflict with present IAL land rating system; and
5. Additional credits for future use for landowners who do not presently have lands within urban growth areas as designated by respective county development plans. (Add language in Section 5)

We also support farm operator incentives as contained in HB 2357 that provide a number of provisions targeted to aid agricultural production. We strongly feel that a comprehensive incentive program for both farmers and landowners is essential to move IAL forward. We believe that for IAL dedication to occur, meaningful incentives must be established for both farm operators and landowners. We therefore support the efforts of the Hawaii Farm Bureau and the Land Use Research Foundation as they seek a comprehensive incentive package.

For these reasons we ask your Committees to allow continued discussion on this bill and allow time for further refinements to HB 2807, HD2, relating to land use.

Mahalo for your interest in hearing our position. Should you have any questions, feel free to contact Carleton Ching, Vice President of Government and Community Relations, at 548-3793, or Mark Takemoto, Natural Resources Administrator at 548-6656.

Sincerely,

Harry A. Saunders
President

testimony

From: Alan Murakami [almurak67@gmail.com]
Sent: Monday, March 17, 2008 6:20 PM
To: testimony
Subject: AHW/WTL/IGM Hearing on HB 2807, HD 2

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

COMMITTEE ON INTERGOVERNMENTAL AND MILITARY AFFAIRS
 Senator Lorraine R. Inouye, Chair
 Senator Shan S. Tsutsui, Vice Chair

HEARING DATE: Tuesday, March 18, 2008
 TIME: 2:45 P.M.
 PLACE: State Capitol Conference Room 224

I **oppose** the concept behind HB 2807 and urge you to HOLD this bill.

The concept of packaging a designation of important agricultural lands (80%) with a reclassification of other lands (20%) of the same landowner to urban or rural district is a distorted way to promote either rationale land use planning or protection of agriculture.

Lack of Need. While the packaging is supposed to be consistent with land use plans, there is a basic flaw in presuming that affordable housing belongs on land currently classified for the Ag District. This notion completely ignores the fact that the State Office of Planning recently found that there are tens of thousands of acres of lands already classified Urban that are available for housing development. According to that 2007 report projections, over the next 22 years, there is, and will continue to be, an excess of land which is already classified Urban and is developable (more than 5 acres and under 20% slope), except for Maui County:

TABLE 5

**STATEWIDE SUMMARY TABLE
 COMPARISON OF SUPPLY AND REQUIREMENTS OF URBAN LAND 2030**

	Developable Urban Lands 1/	Urban Land Requirements 2030 2/	Surplus/(Deficit)
CITY & COUNTY OF HONOLULU	19,378	15,971	3,407

COUNTY OF KAUAI	2,457	772	1,685
COUNTY OF MAUI	6,151	9,770	(3,619)
COUNTY OF HAWAII	20,213	8,432	11,781
<hr/>			
TOTAL	48,199	34,945	13,254

1. Report on Urban Land in the State of Hawaii, Part I; Supply of Urban Lands, Office of Planning, May 2006.

Lands in the State Urban District that are urban and five (5) acres or more in size and represent slopes of less than 20 percent.

Translation: from a sound land use planning perspective, there is little need for a broad scale reclassification of lands to accommodate housing needs.

Consequences of "Coupling". The coupling of 20% of one's land for reclassification to Urban or Rural with the designation of important agricultural land is no more than a gift to speculative investments in what will likely be luxury residential housing and urban or suburban sprawl across this state. It will literally open up the floodgates for more of the same kind of agricultural subdivisions proliferating across the state already, but this time without violating permissible uses in the Ag District. The Rural District unfortunately already allows subdivisions to 1/2 acre per lot. Moreover, under the HRS chapter 201H affordable housing statute, a developer can already expedite land use reclassification and rezoning to build affordable housing.

At the very least, HB 2807, HD 2 is a transparent attempt to transform an important exercise (identify IAL) with unlocking the door under current law that is supposed to put a cap on urban sprawl and land speculation that ultimately kills off agriculture if left unchecked by the counties.

Disguising attempts to expedite land development for luxury residential subdivisions by coupling it with the designation of IAL is neither logical nor wise. It would disregard and undermine real attempts at sustaining small farms by ignoring externalities of allowing reclassification of agricultural land with no serious thought of the consequences. Amending the standards and permissible uses in the Rural District without greater community input is also an invitation to greater social conflicts and expensive litigation in the future.

Lack of Process. Furthermore, by exempting this process from the provisions of HRS sec. 205-4, this process will bypass any procedural protections available to communities opposed to this kind of bad development by stripping interested parties of the right to a contested case hearing under HRS chapter 91. This procedure has been the only obstacle to unmitigated devastation of rural communities throughout the state, where money and power will override any rational land use planning or protection of agricultural activities and land. This is one reason alone to kill this bill. As it is, this bill may be procedurally defective for this reason.

The Better Alternative. The only rational approach is to:

- defer all the ad hoc legislation being thrown at the public under the disguise of identifying important ag lands, and
- invest in a facilitated community-based discussion amongst all important stakeholders in the agricultural and rural sectors to come up with a consensus approach to amending the standards and

permissible uses in the Rural District, which will be the key buffer between incompatible Urban land uses and true farming on Ag District lands.

This investment of time and money will reap more harmony and less conflict in future deliberations over land use in Hawai'i and promote more rational use of our lands for future generations of local residents. The failure of the counties to perform this function under Act 205 (SLH 2005) signaled the start of the confusion and *ad hoc* proposals now being made 3 years later. The time to stop the madness is now.

Kill this bill and instead support the grant-in-aid request being supported by a broad coalition of advocates for the protection of a sustainable agricultural economy in Hawai'i. I would be pleased to elaborate on this proposed format should you need more information.

Alan T. Murakami
721-3070

testimony

From: 96795 news [96795.news@gmail.com]
Sent: Monday, March 17, 2008 4:42 PM
To: testimony
Subject: HB 2807
Attachments: HB2807 Testimony.doc

Attached please find my testimony for HB 2807.

Mahalo Nui Loa,
Kehaulani Padilla
Empower Waimanalo
Phone: 259-7135
Address: 41-041 Ehukai St. Waimanalo, HI 96795

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

COMMITTEE ON INTERGOVERNMENTAL AND MILITARY AFFAIRS

Senator Lorraine R. Inouye, Chair
Senator Shan S. Tsutsui, Vice Chair

HEARING DATE: Tuesday, March 18, 2008

TIME: 2:45 P.M.

PLACE: Conference Room 224

I OPPOSE this arbitrary "incentive" for a landowner to designate Important Ag Land (IAL). HB 2807, HD 2 provides two incentives to landowners who designate their land as important agricultural lands by allowing a landowner:

- (1) who has designated important agricultural lands to satisfy state- or county-imposed affordable housing assessments in the rural district;
- (2) to submit a petition for a declaratory order from the land use commission to combine the designation of important agricultural lands with the reclassification of agricultural land to the rural or urban district based on an allocation where if 80% is designated IAL, another 20% of the landowner's property anywhere in the same county may be reclassified Urban or Rural.

This incentive package is a BAD idea and unwise because:

- Counties have no staff dedicated to preserving or protecting ag and are not equipped to analyze effects on agriculture.
- This incentive is too generous. There is no rational relationship between the 80-20 split. Why not 90:10, 95:5, 99:1?
- There is no analysis tying this increase in potential development with competition for land and water used by the future developments. Designation should NOT be based on a landowner's economic objectives.
- There is no logic to locating the IAL or the 20% subject to reclassification to Rural or Urban – totally arbitrary and can lead to more sprawl.
- There has been no consultation with community groups who may be affected, who will be denied any contested case hearing.
- The Office of Planning, C&C of Honolulu, and to a lesser degree, Department of Ag all oppose this bill. The OP testified (emphasis added):

Rather than piecemeal amendments to the Rural District, OP urges House members to consider legislation for a more comprehensive approach to redefining the Rural District. This bill will not improve the planning and management of rural lands: retaining the existing Rural District density and minimum lot size does not allow for effective clustering, and reliance solely on

zoning to protect rural lands will only replicate in the Rural District what is happening in the Agricultural District. This form of rural development is not sustainable in terms of maintaining open space, agricultural and rural industry viability, public costs for servicing rural subdivisions, etc.