

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 & HAWAIIAN AFFAIRS
AND
AGRICULTURE**

February 1, 2008
8:30 A.M.

**HOUSE BILL NO.2808
RELATING TO IMPORTANT AGRICULTURAL LANDS**

Chairpersons Ito and Tsuji and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 2808. The Department of Agriculture supports the intent of this measure provided that it does not adversely affect or displace the priorities in the Executive Biennium budget. We offer the following comments on Parts IV, V, VI, VII and IX.

**Part IV
Residential Housing**

The Department prefers that agricultural housing on IAL occupy minimal space on the lands in order to optimize the production capacity of the lands. We recommend replacing the proposed section on IAL residential housing with more specific language that provides for clustering thereby minimizing the dwelling footprint.

Part V
IAL Tax Credit

We note that this incentive as currently described has significant cost implications.

We offer the following recommendations:

- This should not be a refundable tax credit.
- There should be a recapture feature in the event that at the end of five years the individual or entity receiving the credit is no longer a qualified agricultural business.
- A sunset date for the credit should be established, we suggest a 10 year period from date of approval.
- In order to receive the tax credit for agricultural housing, we prefer that all of the housing units are occupied by farmers or employees for agricultural businesses and their immediate family members rather than a simple majority.

Part VI
Loan Guaranty

We defer to the department of budget and finance as to the language of Part VI, Section 14 and will work with budget and finance to determine an appropriate loan guaranty and reasonable reserve requirement for each loan.

We offer the following recommendation:

On page 22, delete lines 7-14:

~~(3) — After consultation with the director of finance, the State possesses sufficient funds to provide an appropriate reserve for the loan guaranty and which, in the director of finance's judgment, are in excess of the amounts necessary for meeting the immediate requirements of the State and will not impede or hamper the fulfillment of the financial obligations of the State.~~

Part VII

State Water Code and State Agricultural Water Use & Development Plan

The department defers to the department of land and natural resources, commission on water resource management (Commission) regarding portions of the bill that recommend changes to Chapter 205, HRS, and offers the following comments regarding changes to the Plan.

Section 3 of this bill amends the scope of the Plan which will increase the overall cost of the Plan. Currently, the Plan is in its third phase with at least two more phases already identified, depending on funding appropriations (no appropriations are identified in this bill). We offer the following comments on this portion of the bill: **1)** changes to §174C-31 (e)(1), HRS, are unnecessary as the original language is broad enough to cover both types of systems and the current plan's intent is to comprehensively identify both types of systems; **2)** we have no comment on the deletion of existing paragraphs (e)3 or (e)4; and **3)** the department and the Commission recognized early on that water planning could be seen from two different perspectives - land availability as the limiting factor, assuming there would be unlimited water to serve these lands; or water availability, as the limiting factor assuming that agricultural land growth would be limited by the available water resources. As the name of this plan is the "agricultural water use and development plan" and the legislative intent of this plan is to focus on existing irrigation systems, the decision was made to focus on water as the controlling factor. Therefore, the department respectfully **recommends** that the proposed language for §174C-31 (e)(3), HRS, be amended to read "Identify current and potential sources of water used by the irrigation systems." and the proposed language for §174C-31 (e)(4), HRS, be amended to read "Project current and future water needs for lands currently and potentially served by the irrigation systems, using water as the limiting factor."

The amended language contained in the bill changes the focus of the Plan from being an independent irrigation system water study to a subservient plan to justify

designation as important agricultural lands (IAL). In addition, it would overly broaden the scope to identify water sources or future needs for all agricultural lands in the state regardless of any affiliation with an existing irrigation system, changing the focus of the Plan from water as the controlling factor to land as the controlling factor. We believe this plan and the designation of IAL should complement each other by consciously preventing this plan's purpose to become a justification for designation as IAL. If lands are being considered for inclusion into IAL, this document can be reviewed to see if an existing irrigation system is available to serve the concerned lands.

Lastly, county water supplies provide a significant percentage of agricultural water and their water plans are required to include agricultural use as part of their planning process. Agricultural water planning for lands not served by an irrigation system should be included in county water plans.

Part IX Affordable Housing Requirements in the Rural District

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 IAL, but not in the manner described in the bill. There is no specified minimum or maximum acreage that the benefiting landowner has to petition for IAL designation. A landowner could petition for just one acre designated to IAL. On the other hand, the incentive of meeting affordable housing requirements in an automatically reclassified Rural District with potentially high dwelling density is too generous and is the kind of piecemeal legislation that will make the ongoing effort to redefine the Rural District more difficult to achieve.

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEES ON WATER, LAND, OCEAN RESOURCES &
HAWAIIAN AFFAIRS; AND AGRICULTURE
ON
HOUSE BILL NO. 2808

February 1, 2008

RELATING TO IMPORTANT AGRICULTURAL LANDS.

House Bill No. 2808 proposes to amend Chapter 155, Hawaii Revised Statutes, by adding a new section that would authorize the chairperson of the board of agriculture to guarantee loans relating to agricultural projects located on important agricultural lands.

The Department opposes the wording contained in the proposed section and recommends language in Part VI, Section 14 be amended as follows:

“§155- ... (3) The department of agriculture possesses sufficient funds to provide an appropriate reserve for the loan guaranty and which, in the chairperson of the board of agriculture’s judgment, are in excess of the amounts necessary for meeting the immediate requirements of the department of agriculture and will not impede or hamper the fulfillment of the financial obligations of the department of agriculture.”

In addition, we recommend that the Department of Agriculture establish a maximum loan guaranty cap as the amount guaranteed will count against the State’s debt limit.

Furthermore, the Department of Agriculture should also determine a reasonable reserve requirement for each loan guaranteed under this section.



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

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

OFFICE OF PLANNING

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

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

Statement of
MARY LOU KOBAYASHI
Planning Program Administrator, Office of Planning
Department of Business, Economic Development, and Tourism
before the
**HOUSE COMMITTEE ON WATER, LAND, OCEAN RESOURCES &
HAWAIIAN AFFAIRS**
AND
HOUSE COMMITTEE ON AGRICULTURE
Friday, February 1, 2008
8:30 AM
State Capitol, Conference Room 325

in consideration of
HB 2808
RELATING TO AGRICULTURAL LANDS.

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

The Office of Planning (OP) supports the intent of HB 2808, but does not support the bill in its current form. OP supports agricultural incentives that help to offset the cost of doing business for agricultural producers. Such incentives are critical to sustaining the viability of agriculture in Hawaii, which helps to ensure that the agricultural industry remains a significant contributor to a strong rural economy and promotes economic diversity and food and energy security in Hawaii. Our testimony is limited to Parts III, IV, and IX of the bill.

Part III would provide a refundable tax credit to entities with designated important agricultural lands (IAL) equal to real property tax payments. Part IV would allow agricultural workforce housing and farm dwellings for agricultural operations on important agricultural lands. Part IX would: (1) allow a landowner to locate a portion of

county affordable housing unit assessments on lands in the Rural District; (2) amend the Rural District uses to allow affordable housing and other uses as permissible uses; and (3) allow a petitioner to seek an automatic reclassification of land from the Agricultural District to the Rural District in conjunction with a petition to designate agricultural lands as important agricultural land under the voluntary designation process in Section 205-45, Hawaii Revised Statutes (HRS). Our comments and concerns on these proposals are as follows:

1. Part IV, Farmer and worker housing on important agricultural lands. State policy should discourage or restrict residential uses on important agricultural lands as much as possible to prevent the loss of productive lands due to improvements on the land. As this proposal would remove IAL lands from agricultural use and increase the value of the land, it is critical that the housing provided under this proposal removes the least amount of land and the lowest quality land from agricultural production. This section should be amended to set stronger parameters for the form and scale of the housing allowable under this proposal.

OP recommends:

- a. Amending lines 17-20 on page 10 to clarify the existing language, as follows:

“~~§205-~~ **Important agricultural land; [residential] agricultural housing. A landowner [~~qualifying under section 205-44~~] may develop, construct, and maintain [~~residential~~] dwelling units for farmers, agricultural employees, and their families on land designated as important agricultural land[;] pursuant to part III; provided that:”;**

- b. Requiring the housing to be in the form of a compact plantation community subdivision or otherwise clustered, sited away from the most productive agricultural land, and limiting infrastructure and site improvements to those appropriate for agricultural or rural areas; and

- c. Reducing the total land area that may be developed for agricultural housing on line 17, page 11 to five percent of the total land area under lease or cultivation.

- 2. Part IX, Section 20, Satisfaction of affordable housing requirements on Rural District lands. OP supports the concept of allowing affordable housing requirements to be met on lands other than the project site. However, it is critical that this delinking meets performance standards that will ensure consistency with County priorities regarding planned land use and preferred affordable housing, as well as compactness in project site design and long-term affordability of the proposed units. It is not in the public interest if the housing provided does not serve the population of need as determined by the County, or if the housing increases the price of rural lands and the cost of rural housing.

OP recommends that Section 20 be amended as follows:

- a. Clarify the language on lines 11-17, page 33, to read as follows:
“(a) A project landowner or developer may provide a portion of a project’s state or county affordable housing assessment on land in the rural district in lieu of providing all of the project’s assessed affordable housing units on the project site.”
- b. Add language to this section that:
 - i. Exempts the proposed affordable rural housing from a special permit;
 - ii. Encourages the project to be clustered on lots less than the minimum lot size (subject to individual wastewater system rules in effect), with the remainder of the rural affordable housing project site protected by a conservation or agricultural use easement; and
 - iii. The rural housing project and units shall be designed as much as possible in keeping with rural character and rural infrastructure standards. (See Admin. bill - HB 1269.)

The above performance standards could either be in addition to the additional affordable housing units to be provided or could be in lieu of the required additional units.

3. Part IX, Sections 21-22, Rural District Changes. OP believes that broad changes in Rural District policies and standards are needed to increase the utility of the Rural District in managing rural landscapes. Rather than piecemeal amendments, OP urges the Committees to consider legislation for a more comprehensive approach to redefining the Rural District, which 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, an Administration bill introduced last session, provides a framework for such improvements to State rural land use policy.
4. Part IX, Section 23, Automatic Rural Reclassification. OP opposes the provision for automatic reclassification as written. The proposal provides no assurances as to the public benefit to be derived in exchange for the reclassification, that is, there are no assurances as to how much land will be designated, the quality and location of those lands, and more importantly, how long they will remain designated as important agricultural lands and whether they would be available for agricultural use and for how long. Furthermore, as currently written (page 38, lines 18-32), it would appear that both the reclassification and the designation of the important agricultural lands would not be effective until the agricultural incentives legislation was passed, which would delay development of the lands reclassified to the Rural District until legislative enactment of the incentives.

Thank you for the opportunity to testify.



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

**TESTIMONY OF THE CHAIRPERSON
OF THE COMMISSION ON WATER RESOURCE MANAGEMENT
DEPARTMENT OF LAND AND NATURAL RESOURCES**

on House Bill 2808 – Relating to Important Agricultural Lands

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

February 1, 2008

The purpose of House Bill 2808 is to provide incentives and protections to establish and sustain viable agricultural operations on important agricultural lands (IAL). The Department of Land and Natural Resources (Department) limits its comments to Part VII of this measure, which amends the following sections of the State Water Code: (1) §174C-2, Hawaii Revised Statutes (HRS), to establish public trust purposes to include agricultural activity on IAL; (2) §174C-31(e), HRS, to require that the agricultural water use and development plan include an inventory of public and private sources of agricultural water and current and future water needs for IAL; and (3) §174C-31(f), HRS, to require county water use and development plans to include an inventory of existing water uses for IAL. The Department recognizes the desire to provide incentives and protections to establish and sustain agricultural operations on IAL. However, the Department opposes Part VII of this measure for the following reasons:

Proposed amendment to §174C-2, HRS, to establish public trust purposes to include agriculture activity on IAL.

The Department does not support this proposed amendment because it attempts to add agricultural activity on IAL to the public trust purposes established by the Hawaii Supreme Court (Supreme Court). In the Waiahole decision, the opinion of the Supreme Court clearly stated that the public trust protection did not apply to uses for private commercial use or gain. Such uses would include commercial agricultural activities.

The State Water Code section that the bill seeks to amend already recognizes “irrigation and other agricultural uses,” which includes important agricultural lands, as a beneficial use of the waters of the State. In the same section of the State Water Code, agriculture is listed as a public interest objective for which adequate provision to preserve and enhance, shall be made.

The Department also notes that there are existing instruments for the promotion and protection of irrigation water for agricultural operations on IAL. The Agricultural Water Use and Development Plan (AWUDP), a component of the Hawaii Water Plan (HWP), is intended to provide comprehensive long-range planning guidelines and policies for future agriculture activity served by existing irrigation systems. By identifying the availability of water that can be provided by these irrigation systems, the AWUDP would help with the identification and designation of IAL near or adjacent to these irrigation systems. Land with sufficient quantities of water is one criterion for identification of IAL.

Each county, via its respective County Water Use and Development Plan (CWUDP), another component of the HWP, should develop its own planning objectives including the goal of providing water for IAL. This will also help with identification and designation of IAL.

Proposed amendment to §174C-31(e), HRS, to require that the agricultural water use and development plan include an inventory of public and private irrigation systems and identify current and future water needs for IAL

The Department understands the Department of Agriculture (DOA) has some concerns regarding the proposed amendments to §174C-31(e), HRS, and we defer to them as the agency responsible for the development and implementation of the AWUDP. The Commission on Water Resource Management (Commission) believes that there is a critical need to identify existing and future agricultural water needs and water sources for both public and private water systems. This is stated in the Commission's Framework for Updating the HWP and is reflected in the latest draft update of the AWUDP. This information is necessary for the Counties' development of their respective CWUDPs, which sets forth the allocation of water to land in each county.

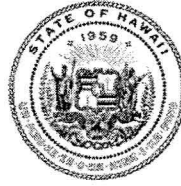
Proposed amendment to §174C-31(f), HRS, to require the county water use and development plans to include an inventory of existing water uses for IAL

The Department supports the intent of this proposed amendment because it is consistent with §205-47, HRS, that requires the Counties to identify and map potential IAL within its jurisdiction. However, §174C-31(f)(1), HRS, already requires the CWUDPs to include an inventory of existing agricultural water uses, which would include existing water uses for IAL. Therefore, the proposed amendment is unnecessary.

Thank you for the opportunity to testify on this measure.

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



KURT KAWAFUCHI
DIRECTOR OF TAXATION

SANDRA L. YAHIRO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1510
FAX NO: (808) 587-1560

**HOUSE COMMITTEE ON WATER, LAND & HAWAIIAN AFFAIRS AND
AGRICULTURE**

**TESTIMONY REGARDING HB 2808
RELATING TO IMPORTANT AGRICULTURAL LANDS**

TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)

DATE: FEBRUARY 1, 2008

TIME: 8:30AM

ROOM: 325

This bill provides an income tax and general excise tax exemption for rental proceeds of certain leases of important agricultural lands. This bill also provides income tax credits for real property taxes paid and for costs incurred

The Department of Taxation (Department) **has strong concerns with this legislation and comments accordingly.**

I. INCOME TAX & GENERAL EXCISE TAX EXCLUSION.

This bill seeks to amend Chapter 235 and 237, relating to the income and general excise taxes respectively, to exclude from taxation income earned and proceeds received from certain important agricultural land leases with the following terms:

- 20 years; or
- Any other lease length term, mutually agreed upon by the parties if the lease rent is set by an independent appraisal using the lower of comparable value or agricultural capitalization methodologies.

The Department's comments and concerns apply equally to both the income tax exclusion under Chapter 235 and the general excise tax exemption under Chapter 237 because these proposed amendments are nearly identical—

DETERMINATION OF LEASE TERM—The Department is concerned regarding the means for determining a qualified lease based upon an amount determined by an appraisal method

using the lower of comparable value or agricultural capitalization methodologies. The Department is not an expert in this form of arriving at value. Moreover, the Department is always skeptical about any method of arriving at a tax benefit based upon appraisals or fair market value because this value can vary widely from person-to-person. This could lead to collusion for lease rents based upon the most favorable opinion received by an appraiser. One solution would be to have the Department of Agriculture approve any such lease. The bill could be amended to read:

"(B) Any other lease term length mutually agreeable to lessor and lessee, if the amount of the lease rent is set by an independent appraisal using the lower of the comparable value or agricultural capitalization appraisal methodologies and the lease arrangement, including the amount of lease rent determined by an appraisal, is reviewed and approved by the department of agriculture."

The Department also points out that the distinction between twenty-year leases and leases for other terms appears to suggest that the 20-year leases do not have to be at acceptable market rates because these leases are not subject to appraisal. If the intent is to encourage leases to maintain important agricultural lands, is either term condition necessary?

LENGTH OF TAX BENEFIT—The Department has concerns over the current language of the length the tax benefit may be utilized. Currently, the measure allows for the taxpayer to be "eligible for the [exclusion/exemption (as the case may be)] initially for up to twenty years." However, the measure does not take into account the alternative measurement of a minimum lease term provided in the previous section, namely that the lease term may be for any term that has been agreed to at a rent determined by appraisal. The Department suggests that clarifying language be added that allows for an initial lease term to reflect the respective lease arrangement entered. Such language could read:

"The taxpayer shall be eligible for the exclusion/exemption initially for up to twenty years or for the agreed term, whichever the case may be, so long as the initial exclusion/exemption is not longer than the original required minimum lease term provided in subsection (a)(1); provided...."

The Department also points out that the twenty-year requirement operates as a sunset on a specific taxpayer. Exclusions and exemptions typically do not operate with expirations based upon the facts of specific taxpayers. If there is a sunset, it is typically for the entire section in the tax code and impacts all taxpayers equally. The twenty-year rule may be unnecessary. It may be simpler and clearer to allow the exclusion or exemption, no matter what the length, only to the extent a qualifying lease is operative and in effect on the land.

II. THE DEPARTMENT OPPOSES THE REAL PROPERTY TAX CREDIT.

This legislation was amended to provide a tax credit equal to 100% of the real property tax assessed on the important agricultural land. The Department opposes the inclusion of this tax credit for the following reasons:

THE REAL PROPERTY TAX CREDIT, IN EFFECT, MERELY SUPPORTS THE

COUNTIES—The Department believes that the 100% real property tax credit is ultimately a subsidy to the respective county assessing the tax. There are several unintended consequences from this legislation. First, a county would be in a position to consider increasing the tax on agricultural land because the State would be paying for the tax, regardless of the rate or amount. Second, no taxpayer would be interested in challenging any assessments because ultimately the State will pay the bill. The Department believes that this tax credit is poor tax policy because the counties enjoy the ultimate subsidy.

If the intent of this legislation is to provide relief for the real property taxes on important agricultural land, the Department suggests appropriating a set amount of revenue to the various counties and requiring the counties to adopt a direct real property tax credit.

DISTRIBUTION OF SHARE BY RULE—Subsection (b) of the proposed real property tax credit allows for distribution of credit by rule. As a conforming jurisdiction, Hawaii conforms to the substantial economic effect rules of IRC § 704(b), as well as other laws relating to distribution of income tax credits. The Department believes that following the well-settled federal tax laws is sufficient and that any provision relating to distribution by rule is unnecessary.

RECAPTURE—This legislation includes language regarding the redesignation of land. However, it does not include specific recapture provisions. The Department suggests that specific 100% recapture language be included to avoid an unintended windfall to taxpayers if the land is redesignated.

REFUNDABLE CREDIT—This tax credit is refundable. The Department questions whether a refundable tax credit is necessary.

III. IMPORTANT AGRICULTURAL LAND CREDIT FOR COSTS

DRAFTING FLAW; SAME TITLES—Importantly, the Department points out that the two income tax credits are both titled the same. For any future drafts of this legislation, the credits should be given respectively distinct titles.

CLARIFICATION OF CERTIFICATION PROCESS—The Department agrees that certain determinations should be made by an entity with more expertise in agriculture than the Department possesses. The Department also agrees that the Department of Agriculture, or a similar entity, should have primary responsibility for assessing and reporting on the effectiveness of this credit.

The current drafting of this bill suggest that a taxpayer "may" obtain a letter from the Department of Agriculture discussing the qualifying costs. This should be amended to require such a certification letter be issued.

TAXPAYER INFORMATION IS CONFIDENTIAL—It is important to keep in mind that taxpayer information is generally confidential and the Department cannot disclose that information to the Department of Agriculture (DOA); so the DOA must gather its own information. This can be

accomplished by requiring that the taxpayer have its status pre-approved by the DOA, requiring that the taxpayer provide the DOA with information regarding the costs being claimed, and requiring the taxpayer to get a certificate from the DOA in order to properly claim the credit on its tax return. There is no confidentiality problem with the DOA providing information to the Department.

IV. ADDITIONAL APPROPRIATIONS.

Many of the bills coming before the legislature regarding taxation incentives relating to important agricultural lands require the Department to consult or provide other support to agencies primarily responsible for assessing the effectiveness of the tax incentive. The Department requests that an appropriation be made to the Department so that it can devote the proper resources to this support without adversely affecting its other responsibilities and obligations.

V. REVENUE ESTIMATE.

This legislation will result in the following revenue impact to the general fund:

Total Revenue Loss:	
Year	Total (millions)
FY2009	\$ 27.8
FY2010	\$ 32.9
FY2011	\$ 35.4
FY2012	\$ 37.9
FY2013	\$ 40.4
Annually thereafter	\$ 40.4

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536 Queen Street, Suite 304

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Honolulu, Hawaii 96813 Tel.

- SUBJECT:** INCOME, GENERAL EXCISE, Exclusion for rental income, credit for real property taxes paid, and business tax credit on important agricultural lands
- BILL NUMBER:** SB 2646; HB 2808 (Similar)
- INTRODUCED BY:** SB by Tokuda, Gabbard and 2 Democrats; HB by Tsuji, Awana, Brower, Har, Herkes, Karamatsu, Mizuno, Sonson, Takai, Yamashita and 2 Democrats
- BRIEF SUMMARY:** Adds a new section to HRS chapter 235 to exclude from state income taxation the gross income, adjusted gross income, taxable income, the rental income, including lease rents, derived from agricultural leases on lands identified and designated as important agricultural lands received by a taxpayer. The exclusion shall not exceed \$ _____. Requires each taxpayer who claims the exclusion to annually provide information to the department of agriculture to enable an aggregated quantitative and qualitative assessment of the impact of the exclusion.
- Amends HRS section 237-24.75 to exempt from the general excise tax, rental income, including lease rents derived from agricultural leases on lands identified and designated as important agricultural lands. The exemption shall not exceed \$ _____.
- Specifies that the minimum term of the lease term for the income tax exclusion or the general excise tax exemption shall be 20 years or any other lease term mutually agreeable to the lessor and lessee as further delineated in the measure.
- Appropriates an unspecified amount of general funds for fiscal 2009 to permit the department of agriculture to collect and analyze data to make an aggregated quantitative and qualitative assessment of the impact of the exclusion of rental income from important agricultural lands from the income and general excise tax. Directs the department of agriculture to submit a report annually to the legislature on the quantitative and qualitative assessment of the impact of the exclusion of rental income from important agricultural lands from the income and general excise tax beginning with the 2010 regular session.
- Adds a new section to HRS chapter 235 to allow taxpayers to claim a refundable important agricultural lands real property tax credit equal to 100% of the county real property taxes paid by the taxpayer during the taxable year in which the real property tax was assessed on lands identified and designated as important agricultural lands pursuant to part III, of HRS chapter 205. Stipulates that the tax credit shall be allowed only for the entire amount of the real property tax. If the real property tax is part of the lease rent and not specified in the lease agreement, the lessor shall provide the lessee with the amount of the real property tax included as part of the lease rent upon request.
- Requires taxpayers claiming the credit to provide information to annually permit the department of agriculture

make a quantitative and qualitative assessment of the impact of the tax credit and make such assessment public.

SB 2646; HB 2808 - Continued

Directs the department of agriculture to determine on an annual basis if the important land subject to the credit is in productive agricultural use based on a ten-year farm plan submitted to and approved by the department. The credit shall be applicable to tax years beginning after December 31, 2008 and shall not be available for tax years beginning after December 31, 2028.

Appropriates an unspecified amount of general funds for fiscal 2009 to permit the department of agriculture to collect and analyze data to make an aggregate quantitative and qualitative assessment of the impact of the important agricultural lands tax credit.

Adds a new section to HRS chapter 235 to allow taxpayers to claim a refundable important agricultural lands tax credit of the qualified agricultural costs incurred by an agricultural business during the taxable year provided that the credit amount shall be reduced by the amount of funds received by an agricultural business from the irrigation repair and maintenance special fund. The credit shall be 50% of the qualified agricultural costs made up to a maximum of \$____; 20% in the following year up to a maximum of \$____; 10% in the next three years up to a maximum of \$____ for each year. No other income tax credit may be claimed for agricultural costs for which a credit is claimed under this section.

Requires the department of agriculture, in consultation with the department of taxation, to evaluate the effectiveness of the tax credit. SB 2646 further requires the department of agriculture, in consultation with the department of taxation, to determine the types of information that must be submitted annually to enable a quantitative and qualitative assessment of the credit to be determined. Requires the taxpayer, by the end of the taxable year following the close of the taxable year in which the qualified costs were expended, to submit a written statement to and certified by the department of agriculture to be eligible to receive the credit. Stipulates that this statement shall be a public document.

Appropriates an unspecified amount of general funds for fiscal 2009 to the department of taxation for the costs to administer the important agricultural lands agricultural business tax credit. Appropriates an unspecified amount of general funds for fiscal 2009 to the department of agriculture for the costs to administer the important agricultural lands agricultural business tax credit.

Makes further nontax appropriations and amendments to establish incentives and protections relating to important agricultural lands.

EFFECTIVE DATE: SB 2646 - July 1, 2008; HB 2808 - Tax years beginning after December 31, 2007

STAFF COMMENTS: These measures propose an incentive to encourage landowners to have their lands designated as important agricultural lands through the use of an income tax exclusion and a general excise tax exemption on rental income derived from such lands. They also propose additional tax relief to landowners by proposing a tax credit for the amount of real property taxes paid on such lands and an important agricultural lands agricultural tax credit for qualified agricultural costs.

While it appears that these measures are proposed as an incentive to encourage the agricultural use of lands

which qualify as important agricultural lands, it should be remembered that the tax system is not an efficient method to accomplish such goals. In addition, since the proposed measures would grant preferential treatment to a select group of taxpayers at the expense of other taxpayers who are ineligible for the exemption, its enactment cannot be justified. These proposals make the assumption that just because the lease rent from lands that are farmed as important agricultural lands would be exempt from

SB 2646; HB 2808 - Continued

taxation, the landowners will not convert those lands to some other use.

If, in fact, there is a much higher use for those lands where the return on investment will be greater than the return realized from leasing it out for agricultural use, the land owner will, in fact, convert the lands short of any obstacle placed in the way such as permitting and zoning hurdles. What the exemption does do is reward the landowners whose land has no other better use than farming. It is not the cost of the tax, both net and gross income, that determines whether or not a landowner keeps such a scarce commodity in a particular use. Indeed, if land use and zoning rules do not permit any other use, the landowner may have no other choice but to lease it for as agriculture and enjoy the exemptions as well. For the lessee who would be the farmer, the tax is not the key factor in determining whether or not to engage in farming as much as it is the amount of the rent to be paid. The supply and demand of lands for farming will determine the market as far as the rate charged for that rental.

If these tax exemptions and credits are adopted, why shouldn't small businesses also ask for a similar exemption on their lease rent as many do not own their own place of business. As with homeowners faced with rising valuations of their homes, everyone doesn't want to pay more or even their fair share. Granting classes of taxpayers exemptions without regard to their need for tax relief is poor tax policy, erodes the tax base and shifts the burden to other taxpayers, unless . . . lawmakers are willing to give up spending as much as they have been accustomed to doing with hard earned tax dollars.

Rather than merely handing a tax preference where there is no indicator of financial or economic need for that tax break, state government should explore ways to support farmers in not only making important agricultural lands available for rent at reasonable costs but also insure that the crops produced command a reasonable rate of return with such skills as marketing, packaging and distribution. Granting a tax break on the rent received from important agricultural lands does not insure that farmers will be successful and be able to continue farming those important agricultural lands.

These measures propose an income tax credit to assist agricultural businesses that own, hold, or use a majority of their lands as important agricultural lands. While the proposed measures would grant a tax credit of 50% of the qualified agricultural costs incurred by an agricultural business for the first year, 20% in the second year and 10% for the next three years, this would result in a partial subsidy of those costs by the state as it would pay for those improvements indirectly and through the back door called tax credits. While the proposed measures would grant tax credits regardless of a taxpayer's need for tax relief, the adoption of these measures would result in other taxpayers who do not qualify for the credit paying for those improvements that are owned by one taxpayer.

If the intent of lawmakers is to pay for such improvements out of the public treasury, then an appropriation of public funds is more appropriate. A specific appropriation would have to compete with all other demands on the public treasury and would have to undergo the scrutiny of lawmakers as they set priorities for the state's

limited resources.

Note well that in order to qualify for the credit, at least 50% of the land the agricultural business owns, leases, uses is declared important agricultural land pursuant to HRS chapter 205, part III. It has been nearly 30 years since the 1978 constitutional convention inserted the provision that important agricultural lands be preserved agricultural use. Although HRS chapter 205 was recently established and no findings or declarations have been made, there is no doubt that the problems that plagued the designation of important agricultural lands for the 30 years will continue to plague the implementation of chapter
SB 2646; HB 2808 - Continued

205. Further, lawmakers should question the implementation of this proposal. Will the credit apply if the parcels of lands are not contiguous or for that matter the qualifying improvements are made to that portion of the agricultural businesses' lands that are not declared important agricultural lands? Since a qualifying expenditure for the credit includes costs for agricultural processing facilities that process crops or livestock, will a processing or packaging plant located in an industrial area qualify for the credit? If indeed, declarations are made under HRS chapter 205 and claims are made for the credit, this proposal could prove to be a costly incentive. On the other hand, if the track record of declaring important agricultural lands is any indicator, this credit may never be used. In any case, a sunset date should be set so lawmakers can evaluate the success or failure of this credit.

The long and short of it is that the people of the state of Hawaii will be subsidizing all qualified costs of these businesses for years to come. Though it looks like a five-year credit, the credit is claimed over a period of five years after the costs are incurred up to 100% of those costs in year one. But do not overlook the fact that 100% of the costs incurred in year two will also qualify for the 100% return of the money expended albeit over the next five-year period. What other business in Hawaii can have their operating and capital costs paid for by the taxpayers except for perhaps high technology businesses. Meanwhile, the poor taxpayer continues to slay under the tax burden that is funding some private enterprise all in the name of designating important agricultural lands.

Not well that this proposal also provides for the tax credit equal to 100% of the county real property taxes paid by the taxpayer on lands identified and designated as important agricultural lands. This provision invited the counties to impose the highest rates they can as this tax credit amounts to nothing more than a grant in aid to counties in the form of the tax credit that reimburses the agricultural landowner for amounts paid to the county as real property taxes.

It should be noted that this tax proposal appears to be an incentive, if not a subsidy, to encourage agricultural activity in the state. If the ultimate goal is to perpetuate agricultural activity then the problem needs to be approached from the opposite end, that is, what can state government do to support and encourage agricultural activity so that farmers can earn a profitable living farming the land? To date, all state government has done to stand in the way of successful farming enterprises by burdening farmers with regulation upon regulation. The state has to be a part of the solution and not a part of the problem. Enacting tax incentives, as these measures propose, does not address the problems faced by farmers today and in the future.

Digested 1/31/08

HAWAII FARM BUREAU FEDERATION
2343 ROSE STREET
HONOLULU, HI 96819

JANUARY 30, 2008

TESTIMONY

HB 2808 RELATING TO IMPORTANT AGRICULTURAL LANDS

HEARING BEFORE THE
HOUSE COMMITTEE ON AGRICULTURE AND
COMMITTEE ON WATER, LAND & HAWAIIAN AFFAIRS

Chair Ito, Chair Tsuji 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 Federation **strongly supports HB2808, providing mechanisms to begin the IAL process.** Since enactment of the Constitutional Mandate, HFBF has consistently worked for passage of IAL legislation. Working with the landowners, we finally see that this vision can become a reality. But we need the support of the Legislature, the Administration and County Governments.

The incentives within this package were developed over time with many discussions. They cover a wide range of incentives covering the critical areas for long term agricultural expansion in Hawaii. We understand as these incentives are passed, a similar package must be passed by the Counties. We respectfully request that the Legislature lead the path. Please do not put us in a position of the State waiting for the Counties and the Counties waiting for the State to enact incentives first. The lead by the State will send a loud message to the Counties that the IAL process can happen if everyone cooperates in the process.

The price tag for this measure is often called to question. HFBF believes agriculture is key to increasing Hawaii's self sufficiency as well as an important component to fighting invasive species ...a key topic in discussion. So, the question should be, what is the price for self sufficiency?

We respectfully request your strong support in passing this Bill and getting the IAL process started. We must not forget, IAL only happens because there are farmers and ranchers. IAL is not a land use initiative. It is an agricultural viability initiative. Thank you.



Maui County Farm Bureau

*An Affiliate of the American Farm Bureau Federation and Hawaii Farm Bureau Federation
Serving Maui's Farmers and Ranchers*

TESTIMONY

HB 2808 RELATING TO IMPORTANT AGRICULTURAL LANDS

HEARING BEFORE THE HOUSE COMMITTEE ON AGRICULTURE AND COMMITTEE ON WATER, LAND & HAWAIIAN AFFAIRS

Chair Tsuji and Ito and Committee Members:

My name is Warren Watanabe, Executive Director of the Maui County Farm Bureau, a non-profit general agriculture organization and an affiliate of the Hawaii Farm Bureau Federation.

Maui County Farm Bureau, on behalf of its member farmers, ranchers and agricultural organizations **strongly SUPPORTS** HB 2808 an IAL Omnibus Bill providing incentives to begin the IAL process.

Important Agricultural Lands is a Agricultural Viability initiative. While there are examples of agricultural successes across the state we have more examples of agriculture struggling or failing. During the past year we have seen dairies close so now we only have dairies on the Big Island after next month. Egg farms now can be counted on one hand. I think both of these industries are agricultural commodities critical to self sufficiency, yet we are loosing them. What will be next? When will the people of Hawaii get excited that we may be loosing agriculture and do something about it?

This Initiative is the chance. It provides the incentives needed to have farmers and landowners commit to long term agricultural operations.

One of the incentives is working with the Counties for a package. On Maui I saw a project we were very excited about fall to the wayside because of delayed permitting. An expansion that originally was expected to cost \$600,000 and provide an opportunity for two of the siblings to return from college to work on the farm was lost. These farm youngsters were taking college classes to prepare them in business and marketing to take over this operation. Yet, delayed permitting made this vision just a dream. The \$600,000 price tag mushroomed to \$1.2 million ...beyond the reach of the farmers. We must not let these opportunities continue to pass us.

We respectfully request that this **Bill be passed and focus be placed on enacting incentives this year** so landowners will designate their lands as Important Agricultural Lands as soon as possible. Time is of the urgency. We cannot lose any more farmers or ranchers.

**Hawaii
Crop
Improvement
Association**

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

Testimony by: Sarah Styan
HB 2808, Relating to Important Agricultural Lands
House WLH/AGR Committees
Friday, Feb. 1, 2007
Room 325: 8:30 am

Position: Support

Chairs Ito and Tsuji, and Members of the House WLH/AGR Committee:

My name is Sarah Styan. I am a Kauai resident, President of HCIA and research scientist of Pioneer Hi-Bred International, Waimea Research Station. The HCIA represents seed production and research facilities operating in Hawaii for nearly 40 years. The HCIA is comprised of five member companies that farm an estimated 8,000 acres on four islands, valued at \$97.6 million in operating budget (2006/2007 HASS). We are proud members of Hawaii's diversified agriculture and life sciences industries.

HCIA expresses its support for the Legislature in its policy work for the designation of important agriculture lands. This measure addresses incentives and protections to establish and sustain agricultural operations on IAL. These incentives and protections range from water, tax exemptions and credits, loan programs, agricultural workforce housing, zoning recommendations for affordable housing on rural lands, and county incentives.

All aspects of incentives and protections are needed and supported. We ask for your support of this measure.

Thank you for the opportunity to present testimony.



TESTIMONY TO THE HOUSE COMMITTEES ON WATER, LAND, OCEAN RESOURCES
& HAWAIIAN AFFAIRS & AGRICULTURE
FRIDAY, FEBRUARY 1, 2008 AT 8:30 A.M.
ROOM 325, STATE CAPITOL

RE: H.B. 2808 Relating to Important Agricultural Lands

Chairs Ito and Tsuji, Vice Chairs Karamatsu and Brower, Members of the Committees:

The Chamber of Commerce of Hawaii supports HB 2808.

The Chamber is the largest business organization in Hawaii, representing 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. 2808 purposes to provide incentives and protections to establish and sustain viable agricultural operations on important agricultural lands.

Act 183, SLH 2005 established a process to identify important agricultural lands (IAL). The IAL designation was established during the 1978 Constitutional Convention. A significant amount of effort was invested by many different groups and individuals who participated in a legislative initiated process in developing Act 183.

Act 183 was based on promoting agricultural viability and simply identifying 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, efforts were made to have the Counties enact incentives to promote agricultural viability in their respective counties. So far, these incentives have not been put in place.

Therefore, The Chamber supports HB 2808 in its entirety. We believe that meaningful incentives are needed to promote 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 submit testimony.

**HB 2808
RELATING TO IMPORTANT AGRICULTURAL LANDS**

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

FEBRUARY 1, 2008

Chair Ito, Chair Tsuji, and Members of the House Committees on Water, Land,
Ocean Resources & Hawaiian Affairs and Agriculture:

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 2808, “A BILL FOR AN ACT RELATING TO IMPORTANT
AGRICULTURAL LANDS.” We support this bill.

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.

Rental Income On Agricultural Leases

This bill provides both an exclusion from gross income and an exemption from general excise taxes for rental income derived from agricultural leases on lands identified and designated as IAL. In addition to encouraging land owners to lease their IAL lands to active farming operations, these provisions should also result in a reduction in the amount of the rent charged to the farmer for the IAL parcel. We believe that this provision should assist in sustaining active agricultural operations on IAL designated lands.

Real Property Tax Credit

This bill also authorizes a tax credit for real property taxes paid on IAL. It is anticipated that this provision should encourage land owners to designate their lands as IAL and subsequently result in a reduction in land rents for IAL parcels that are leased to a farming operation. We believe that this provision should also assist in maintaining long term active agricultural operations on IAL designated lands.

Housing

Housing accommodations for farmers and their employees is an important component in the success of many agricultural operations. This provision will allow residential dwellings for farmers, their employees and their families on IAL subject to a list of conditions and criteria. With Hawaii's high housing costs and tight labor market,

the ability for the farmer to have housing accommodations on IAL in the immediate vicinity of their crops is anticipated to be of significant benefit to IAL farming operations.

Infrastructure Tax Credit

Major infrastructure requirements such as irrigation systems, roads and utilities, and agricultural processing facilities play a critical role in the survival of many agricultural businesses, and the infrastructure tax credit portion of this bill will provide important financial support for IAL related farming operations. In addition to assisting these agricultural operations in the repair and maintenance of their existing infrastructure, this tax credit will also serve as a stimulus to encourage these entities to expand their operations or to enhance their operating efficiencies through the installation of new agricultural infrastructure, equipment, and other related improvements to service their farming operations. Importantly, this bill also includes provisions to require the quantitative and qualitative assessment of this tax credit, so that the Legislature, and others, can have access to information on the effectiveness of this incentive program.

Loan Guaranty

The loan guarantee portion of this bill will authorize low cost loans for farmers to establish or expand their IAL related agricultural operations or to develop necessary IAL related infrastructure. These provisions will assist in providing farmers with a means of obtaining necessary financing to initiate, maintain, or to expand their agricultural businesses. We believe that this loan guarantee may especially be useful to the smaller farming operations that may experience difficulty in obtaining financing in the open financial market.

Water

One of the most important factors in determining the long term viability of an agricultural operation on IAL is the availability of water for irrigation purposes. Water is the basic natural resource that may directly determine the success or failure of agricultural operations on IAL. We believe that the establishment of a water policy that provides crops and livestock on IAL with a dependable source of affordable water will provide an opportunity for sustaining agricultural operations on IAL.

Expedited Permits

This bill will also establish and implement a procedure for the priority processing of permit applications and renewals for agricultural processing facilities that process crops or livestock from an IAL related agricultural business. It is anticipated that this bill will result in a total net time savings for an IAL related agricultural processing facility to obtain their necessary permits, which should result in an overall cost savings for the facility. We believe that this incentive may encourage agricultural processing facilities to process crops or livestock from IAL related agricultural businesses, thus increasing the availability of these services to IAL related agricultural businesses.

Land Use Commission Rural Re-Classification

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 an automatic reclassification of a proportionate amount of non-IAL lands from the agricultural district to the rural district. This bill also expands the permissible uses within rural districts and authorizes the LUC to adopt rules to effectuate the implementation of the above mentioned provisions. In addition to incenting land owners to designate lands into IAL,

these provisions will also provide an opportunity for enhanced uses that are appropriate for rural designated areas. We envision that this provision represents a significant incentive that will encourage landowners to voluntarily designate their lands into IAL.

Based on the aforementioned, we respectfully request your favorable consideration on this bill.

Thank you for the opportunity to testify.



MAUI LAND & PINEAPPLE COMPANY, INC.

January 31, 2008

The Honorable Representative Ken Ito, Chair
The Honorable Representative Jon Riki Karamatsu, Vice Chair
Committee on Water, Land, Ocean Resources & Hawaiian Affairs
Hawaii State House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

The Honorable Representative Clift Tsuji, Chair
The Honorable Representative Tom Brower, Vice Chair
Committee on Agriculture
Hawaii State House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Subject: HB 2808 – Relating to Important Agricultural Lands

Dear Honorable Chair Ito, Honorable Vice Chair Karamatsu, Honorable Chair Tsuji,
Honorable Vice Chair Brower and Committee Members:

Maui Land & Pineapple Company, Inc. strongly supports HB 2808 – Relating to Important
Agricultural Lands.

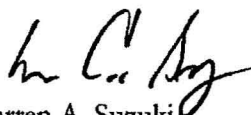
The designation of agricultural land as Important Agricultural Lands will not guarantee that a
viable agricultural activity will occur on the lands. To achieve a viable long-term agricultural
activity on the lands, a variety of incentives will have to be provided. The subject legislation
provides a broad list of incentives that landowners with lands designated as Important
Agricultural Lands will be able to benefit from.

Maui Land & Pineapple Company, Inc. respectfully requests your support of the subject
legislation.

The Honorable Representative Ken Ito, Chair
The Honorable Representative Jon Riki Karamatsu, Vice Chair
The Honorable Representative Clift Tsuji, Chair
The Honorable Representative Tom Brower, Vice Chair
January 31, 2008
Page - 2 -

We sincerely appreciate the opportunity to provide our testimony. If you have any questions or wish to discuss the testimony, please do not hesitate to contact me at (808) 877-3882.

Mahalo,

A handwritten signature in black ink, appearing to read "Warren A. Suzuki". The signature is fluid and cursive, with the first name "Warren" being the most prominent.

Warren A. Suzuki
Senior Vice President



EARTHJUSTICE
Because the earth needs a good lawyer

BOZEMAN, MONTANA DENVER, COLORADO HONOLULU, HAWAII
INTERNATIONAL JUNEAU, ALASKA OAKLAND, CALIFORNIA
SEATTLE, WASHINGTON TALLAHASSEE, FLORIDA WASHINGTON, D.C.
ENVIRONMENTAL LAW CLINIC AT STANFORD UNIVERSITY

**HOUSE COMMITTEES ON:
WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS
AGRICULTURE**

**ATTN: CHAIRS KEN ITO & CLIFT TSUJI,
VICE-CHAIRS KARAMATSU & BROWER**

**Testimony Opposing HB 2808: Relating to Important Agricultural Lands, and
Testimony Opposing HB 2820: Relating to Water for Important Agricultural Lands**

**February 1, 2008, 8:30 a.m.
Conference Room 325**

Aloha Chairs Ito and Tsuji and Members of the Committees:

Earthjustice strongly opposes House Bills 2808 and 2820. While we support protecting important agricultural lands (IAL) and bona fide, long-term agriculture, these bills are not about protecting agricultural lands or agriculture. Rather, HB 2808 and HB 2820 simply use IAL as a ruse to undermine the public trust in water resources and promote a plantation-era agenda of water as private domain. It eviscerates the State Water Code, HRS ch. 174C, to benefit a single special interest -- modern plantation agriculture, *i.e.*, corporate agribusiness on old plantation lands supported by old plantation stream diversions.

The Hawai`i Constitution (art. XI, §§ 1 & 7), the Code, and Hawai`i Supreme Court decisions all establish that water is a public trust resource that belongs to all the people, including present and future generations. Certain narrow special interests are not happy with this principle and would rather return us to the old plantation system, in which a few large landowners dominated water as their private property. HB 2808 and HB 2820 present a "wish list" for overhauling the Code for their benefit. It has nothing to do with IAL or agriculture. It has everything to do with restoring private domination over public water.

HB 2808 and HB 2820, in fact, are practically identical to other bills that were widely opposed and ultimately defeated in committee in previous years. We reiterate our testimony in opposition to those bills:

- First, HB 2808 and HB 2820 seek to distort the policy statement of the Code, HRS § 174C-2 for the benefit of commercial agriculture. These changes are unnecessary because the Code already amply protects

agricultural uses. The first part of § 174C-2(c) makes clear that “The [Code] shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as . . . irrigation and other agricultural uses” (Emphasis added.) The section completes the balance with the further mandate that “adequate provision shall be made” for various public uses such as Native Hawaiian rights and the preservation and enhancement of waters. *Id.* Thus, the first part of § 174C-2(c) already recognizes agricultural use as an important use to be promoted in the public interest. Adding a special provision for agricultural uses as a public trust purpose is unnecessary and would, in fact, give agricultural uses double protection under the Code, more than any other use.

In effect, HB 2808 and HB 2820 improperly attempt to make commercial agriculture a “public trust use.” The Hawai`i Supreme Court made clear in the Waiāhole case that “the public trust has never been understood to safeguard rights of exclusive use for private commercial gain.” In re Waiāhole Ditch Combined Contested Case Hearing, 94 Haw. 97, 138 (2000). Citing Haw. Const. art. XI, § 3, the Hawai`i Supreme Court held “the public has a definite interest in the development and use of water resources for various reasonable and beneficial public and private offstream purposes, including agriculture.” *Id.* at 141 (emphasis added). However, it maintained such uses are not one of the limited and long-established “public trust purposes” under the state constitutional public trust doctrine. *Id.* at 138. The Code follows these public trust principles in establishing its careful balance between uses under § 174C-2(c). HB 2808 and HB 2820, however, would destroy this balance, cast needless uncertainty and confusion into the Code’s complex regulatory scheme, impair the Water Commission’s regulatory function, and ultimately violate the constitutional public trust doctrine.

- Similarly, the Code’s provisions regarding the Hawai`i Water Plan already requires full consideration of agricultural uses, yet HB 2808 and HB 2820 propose amendments to require specific consideration of Important Agricultural Lands. *See, e.g.*, HB 2820 § 3 (amending HRS § 174C-31(e) and (f)). These amendments are unnecessary.

The rhetoric in support of HB 2808 and HB 2820 and similar measures has prominently featured the refrain that “agriculture needs water.” Simply stating the obvious does not justify overhauling the Code, as HB 2808 and HB 2820 propose. The Code already adequately protects agricultural interests. Notably, advocates of this bill cannot point to a single agricultural user that has been denied water under the Code. Instead, as seen in the Waiāhole case, offstream landowners received all the water they requested and are still abandoning agriculture for urban development (having conveniently banked the water).

In conclusion, we note this session marks the 21st anniversary of the Code. Over two decades ago, the legislature fulfilled its constitutional public trust mandate and established this comprehensive regulatory framework for the benefit of all the people of Hawai'i. HB 2808 and HB 2820 improperly attempt to undermine the Code's public trust principles and skew its overall balance in favor of the single special interest of modern plantation agriculture. We strongly urge you to kill this bill.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Isaac H. Moriwake', written in a cursive style.

Isaac H. Moriwake
Attorney
Earthjustice

Council Chair
G. Riki Hokama

Vice-Chair
Danny A. Mateo

Council Members
Michelle Anderson
Gladys C. Baisa
Jo Anne Johnson
Bill Kauakea Medeiros
Michael J. Molina
Joseph Pontanilla
Michael P. Victorino



Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

January 31, 2008

House Committees on: Water, Land, Ocean Resources & Hawaiian Affairs and Agriculture
Attn: Chairs Ken Ito & Clift Tsuji

Testimony Opposing HB 2808: Agriculture; Important Ag Lands
Testimony Opposing HB 2820: State Water Code; Important Ag Lands

February 1, 2008, 8:30 a.m.
Conference Room 325

Aloha Chairs Ito and Tsuji and Members of the Committees:

As the Maui County Council has not had opportunity to take a formal position on these measures, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I strongly oppose House Bill 2808 (HB2808) and House Bill 2820 (HB2820). HB2808 and HB2820 are NOT about conserving and protecting important agricultural lands (IAL) and activity. Instead, these bills are clear examples of "greenwashing", or the dissemination of misleading information to conceal their abuse of the State Water Code in order to present a positive public image. In reality, these bills are yet another attempt to use IAL to undermine the Hawai'i Constitution (art. XI, §§ 1 & 7) and the state Water Code's public trust principles for the sole benefit of specific private interests – large-scale corporate agribusiness.

HB2808 and HB2820, in fact, advance the same arguments used for essentially an identical bill that was fervently opposed and ultimately defeated in committee last year.

As in past years and previous bills, I strongly oppose HB2808 and HB2820 for the following reasons:

- First, the proposed amendments are absolutely unnecessary. The State Water Code already provides for the "maximum beneficial use of the water of the State for purposes such as . . . irrigation and other agricultural uses." HRS 174C-2(c) (emphasis added). The amendments proposed by HB2808 and HB2820, seeking to prioritizing water for IAL, would only disrupt the delicate balance between the protection and beneficial use of our water resources as created by our state constitution and Water Code, and cast needless uncertainty and confusion into the

To Honorable
January 31, 2008
Page 2

Code's already complex regulatory scheme, and ultimately, violate the constitutional public trust doctrine.

- Second, the Hawai'i Supreme Court, in the Waiahole case, has already determined that although the public has an interest in offstream uses such as agriculture, agricultural uses are not public trust purposes. HB2808 and HB2820 improperly attempt to make commercial agriculture a "public trust use."

The Hawai'i Supreme Court made clear in the Waiāhole case that "the public trust has never been understood to safeguard rights of exclusive use for private commercial gain." In re Waiāhole Ditch Combined Contested Case Hearing, 94 Haw. 97, 138 (2000). Citing Haw. Const. art. XI, § 3, the Hawai'i Supreme Court held "the public has a definite interest in the development and use of water resources for various reasonable and beneficial public and private offstream purposes, including agriculture." *Id.* at 141 (emphasis added). However, it maintained such uses are not one of the limited and long-established "public trust purposes" under the state constitutional public trust doctrine. *Id.* at 138.

While I strongly support protecting important agricultural lands and bona fide, long-term agriculture, HB2808 and HB2820 promote a plantation-era agenda of monopolizing water to benefit specific special interests while sacrificing all other public trust purposes.

For the foregoing reasons, I strongly urge you to put these bills to a final rest.

Sincerely,
Michelle Anderson,
Council Member

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

From: iwaxman@wesleyan.edu [mailto:iwaxman@wesleyan.edu]

Sent: Thursday, January 31, 2008 9:26 AM

To: WLHtestimony

Subject: Testimony Opposing HB 2808: Agriculture; Important Ag Lands +
Testimony Opposing HB 2820: State Water Code; Important Ag Lands

Committees on: Water, Land, Ocean Resources & Hawaiian Affairs AND
AGRICULTURE

Attn: Chairs Ken Ito & Clift Tsuji

Testimony Opposing HB 2808: Agriculture; Important Ag Lands

Testimony Opposing HB 2820: State Water Code; Important Ag Lands

February 1, 2008, 8:30 a.m.

Conference Room 325

Aloha Chairs Ito and Tsuji and Members of the Committees:

My name is Ilana Waxman and I am testifying in strong opposition to HB 2808 and HB 2820, which seek to amend our State Water Code. These measures are unnecessary and inappropriate, and must be killed.

In Hawai'i, water is a public trust resource in which all citizens have an interest. Therefore, our state constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources. HB 2808 and HB 2820 seek to upset this delicate balance by prioritizing water for important ag lands. Such amendments are unnecessary because the Water Code already provides for the "maximum beneficial use of the water of the State for purposes such as . . . irrigation and other agricultural uses." HRS 174C-2(c). In addition, the Hawai'i Supreme Court -- the body charged with interpreting our state constitution -- has already determined that although the public has an interest in offstream uses such as agriculture, agricultural uses are NOT public trust purposes. Please respect the Public Trust doctrine as articulated in our State constitution and interpreted by our Supreme Court and kill HB 2808 and HB 2820.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by HB 2808 and HB 2820, will only create confusion and lead to more litigation. I urge you to kill these terrible bills.

Thank you for this opportunity to testify.

Sincerely,

Ilana Waxman
3035 Kiele Ave
Honolulu, HI 96815
808-285-8699

From: Sunny Greer [mailto:sunnygreer@yahoo.com]
Sent: Thursday, January 31, 2008 10:24 AM
To: WLHtestimony
Subject: Testimony for HB 2808 & HB 2820 -- Strong Opposition

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

Attn: Rep. Ken Ito & Clift Tsuji, Chairs

Testimony Opposing HB 2808: Agriculture; Important Ag Lands
Testimony Opposing HB 2820: State Water Code; Important Ag Lands

February 1, 2008, 8:30 a.m.
Conference Room 325

Aloha Chairs Ito and Tsuji and Members of the Committees:

My name is E. Sunny Greer. I was born, raised, and living in the Ahupuaa of Kahana, which is the beginning of the Waiahole Ditch. My family is the last subsistence family in Kahana. I am also a 2nd year law student in pursuit of specialized certificates in both Environmental Law and Native Hawaiian Law.

I am testifying in **STRONG OPPOSITION** to HB 2808 and HB 2820, which seek to amend our State Water Code. These measures are unnecessary and inappropriate, and must be killed.

In Hawai'i, water is a public trust resource in which all citizens have an interest. Therefore, our state constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources.

HB 2808 and HB 2820 seek to upset this delicate balance by prioritizing water for important ag lands. Such amendments are unnecessary because the Water Code already provides for the "maximum beneficial use of the water of the State for purposes such as . . . irrigation and other agricultural uses." HRS 174C-2(c).

In addition, the Hawai'i Supreme Court -- the body charged with interpreting our state constitution -- has already determined that although the public has an interest in offstream uses such as agriculture, agricultural uses are NOT public trust purposes.

Please respect the Public Trust doctrine as articulated in our State constitution and interpreted by our Supreme Court and kill HB 2808 and HB 2820.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by HB 2808 and HB 2820, will only create confusion and lead to more litigation. I urge you to hold these terrible bills.

Thank you for this opportunity to submit testimony on these measures.

Sincerely,
E. Sunny Greer

Ahupuaa o Kahana
Koolauloa, Oahu
(389-1809)

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From: Kekahuna Keaweiwi [mailto:kekahunakeaweiwi@yahoo.com]

Sent: Thursday, January 31, 2008 11:03 AM

To: WLHtestimony

Cc: Myrna Ah Hee; Foster Ampong; Clayton Baybayan; Robert Brito; Charles Morales; Gordon Cockett; Daniel Garcia; Kenny Hoopai; Michele Hoopii; Greg Johnson; George Joy; Willie Kahaialii; Wilmont Kahaialii; Keeaumoku Kapu; Josephine Keliipio; Tony Kincannon; Clifford Naeole; Maria C. Ornellas; Lynette Ramos; Tony Vierra; alohaspiritt@aol.com; blb@maui.net; Shannan Chan; chandrika@savemakena.org; Karen Chun; damauionion@aol.com; daoust@hawaii.rr.com; Lucienne de Naie; djp@darrylpaul.com; Loral Douglas; glavenson@aol.com; helaine@maui.net; Lance Holter; jahinalan@aol.com; jreily99@gmail.com; kaluapoi@yahoo.com; kiheisharon@hotmail.com; kumuao@mauigateway.com; ramon lopez-reyes; losmon1@hawaiiantel.net; mauirhodes@aol.com; Dick Mayer; McCarty; Meleanna; moj@mauiappraisal.com; Theo Morrison; mrmahalo@yahoo.com; Iokepa Naeole; naokomaui@yahoo.com; norm@mauicommunicators.com; pat@makenastables.com; k Ralar; robparsons@earthlink.net; Nani Rogers; rosieh@eramaui.com; sharynmatin@savewestmaui.com; shawn@savehonolua.org; Cindy Sheehan; Stephanie Tabata; LeeannT Tashiro; teresainparadise@yahoo.com

Subject: Testimony Opposing HB 2808 & HB 2820

HOUSE OF REPRESENTATIVES TWENTY-FOURTH LEGISLATURE, 2008 STATE OF HAWAII

January 31, 2008

**House Committees on: Water, Land, Ocean Resources & Hawaiian Affairs AND
AGRICULTURE**

Attn: Chairs Ken Ito & Clift Tsuji

Testimony Opposing HB 2808: Agriculture; Important Ag Lands

Testimony Opposing HB 2820: State Water Code; Important Ag Lands

February 1, 2008, 8:30 a.m.

Conference Room 325

Aloha Chairs Ito and Tsuji and Members of the Committees:

My name is Foster Ampong and i am testifying in strong opposition to HB 2808 and HB 2820, which seek to amend our State Water Code. These measures are unnecessary and inappropriate, and must be killed.

In Hawai`i, water is a public trust resource in which all citizens have an interest. Therefore, our state constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources. HB 2808 and HB 2820 seek to upset this

delicate balance by prioritizing water for important ag lands. Such amendments are unnecessary because the Water Code already provides for the "maximum beneficial use of the water of the State for purposes such as . . . irrigation and other agricultural uses." HRS 174C-2(c). In addition, the Hawai'i Supreme Court -- the body charged with interpreting our state constitution -- has already determined that although the public has an interest in offstream uses such as agriculture, agricultural uses are NOT public trust purposes. Please respect the Public Trust doctrine as articulated in our State constitution and interpreted by our Supreme Court and kill HB 2808 and HB 2820.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by HB 2808 and HB 2820, will only create confusion and lead to more litigation. I urge you to kill these terrible bills.

Thank you for this opportunity to testify.

Sincerely,
Living Being in the HuMan function with the attached name
Foster Robin Ampong
Phone: (808) 281-3894
Email: kekahunakeaweiwi@yahoo.com

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From: Lynette Ramos [mailto:lynramos@sbcglobal.net]
Sent: Thursday, January 31, 2008 11:03 AM
To: WLHtestimony
Subject: Testimony Opposing HB 2808 & HB 2820

**HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2008
STATE OF HAWAII**

January 31, 2008

**House Committees on: Water, Land, Ocean Resources & Hawaiian Affairs AND
AGRICULTURE**

Attn: Chairs Ken Ito & Clift Tsuji

Testimony Opposing HB 2808: Agriculture; Important Ag Lands

Testimony Opposing HB 2820: State Water Code; Important Ag Lands

February 1, 2008, 8:30 a.m.

Conference Room 325

Aloha Chairs Ito and Tsuji and Members of the Committees:

My name is Lynette Ramos and i am testifying in strong opposition to HB 2808 and HB 2820, which seek to amend our State Water Code. These measures are unnecessary and inappropriate, and must be killed.

In Hawai'i, water is a public trust resource in which all citizens have an interest. Therefore, our state constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources. HB 2808 and HB 2820 seek to upset this delicate balance by prioritizing water for important ag lands. Such amendments are unnecessary because the Water Code already provides for the "maximum beneficial use of the water of the State for purposes such as . . . irrigation and other agricultural uses." HRS 174C-2(c). In addition, the Hawai'i Supreme Court -- the body charged with interpreting our state constitution -- has already determined that although the public has an interest in offstream uses such as agriculture, agricultural uses are NOT public trust purposes. Please respect the Public Trust doctrine as articulated in our State constitution and interpreted by our Supreme Court and kill HB 2808 and HB 2820.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by HB 2808 and HB 2820, will only create confusion and lead to more litigation. I urge you to kill these terrible bills.

Thank you for this opportunity to testify.

Sincerely,

Lynette Ramos

12567 Toulouse

Houston TX 77015

Phone: (713) 453-7691

Email: lynramos@sbcglobal.net

From: vivien lee [mailto:leereppun@hotmail.com]
Sent: Thursday, January 31, 2008 1:45 PM
To: WLHtestimony
Subject: FW: Testimony Opposing HB 2820 and HB 2808

**House Committees on: Water, Land, Ocean Resources & Hawaiian Affairs
AND AGRICULTURE**

Attn: Chairs Ken Ito & Clift Tsuji

**Testimony Opposing HB 2808: Relating to Important Agricultural Lands,
and**

HB 2820: Relating to Water for Important Agricultural Land

February 1, 2008, 8:30 a.m.

Conference Room 325

My name is Charlie Reppun. I have been a farmer in Windward O`ahu for thirty years. In 1978, I served on the Governor's Water Commission which drafted a model water code. Then, I was on the Legislative Commission that fine-tuned that code, and was a part of the Water Code Roundtable that successfully lobbied for the adoption of a Statewide Water Code in 1988, Hawaii Revised Statutes chapter 174C.

The primary purpose of the Water Code and Water Commission is to protect our water resources. Groundwater must be protected from saltwater intrusion caused by over-pumping and from contamination by chemicals and pesticides. Protection of surface water is much more complicated because it involves protection of stream ecosystems, including nearshore waters like Kaneohe Bay, where freshwater plays a key role in ocean ecosystems. Kaneohe once had 20+ fishponds because of streams flowing into the bay. Kona on the Big Island has good fishing because of the amount of freshwater flowing into the ocean under ground. Worldwide, over-fishing is the primary cause of declining fish stocks, but diversion of freshwater is also an important reason for that decline. Yet for many years in Hawaii, a common opinion was that water going into the ocean was "wasted". In fact, it was not until the Waiahole water case that the inter-relationship of streams and oceans was discussed in any kind of depth.

If watershed and water resource protection is critical for long-term sustainable living, then it is contradictory to give a particular use priority over protection, as is proposed by HB 2808 and HB 2820. In the ten years that it took to draft and pass the Water Code, many people across the State talked about all of these issues, which is why the Code is such a good document. The Water Commission has tough allocation decisions to make and this bill will only make that job more difficult. In addition, HB 2808 and HB 2820 is completely unnecessary: the leeward interests in the Waiahole case received all the water from the ditch that they they needed. The continuing water problem in the Waiahole case and on other islands, is that large land interests and the government continue to try and reserve ground water for for commercial residential developments. It is still common to hear that the "highest and best

use" of water is for urban development, as if residential development is a given and has nothing to do with the financial interests of development companies.

The Waiahole case established that the biggest problems facing farmers mostly don't have anything to do with water. In spite of land use planning efforts by government, the truth is that no development proposal in Central Oahu has ever ultimately been turned down. The farmers on those lands have clauses in their leases that require them to help the landowner if the landowner decides to urbanize the land. There is adequate, affordable water for agriculture and farmers don't need the amendments in HB 2808 and HB 2820.

The Code requires the Commission to use alternative sources of water, such as groundwater or wastewater, before allowing diversion of stream water. It does not forbid use of stream water, but prudent, precautionary principle planning means that the Commission, with public input, must be able to analyze alternatives. HB 2808 and HB 2820 would take that option away, resulting in irreparable harm to our planning process, and potential harm to the resource. Nothing is sustainable, not even agriculture, if we cannot protect our resources.

Please vote NO on HB 2808 and HB 2820. Thank you for this opportunity to testify.

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

From: Cameron B Black [mailto:cblack@hawaii.edu]
Sent: Thursday, January 31, 2008 2:10 PM
To: WLHtestimony
Subject: HB 2820 and HB 2808 Testimony

House Committees on: Water, Land, Ocean Resources & Hawaiian Affairs AND
AGRICULTURE
Attn: Chairs Ken Ito & Clift Tsuji

Testimony Opposing HB 2808: Agriculture; Important Ag Lands
Testimony Opposing HB 2820: State Water Code; Important Ag Lands

February 1, 2008, 8:30 a.m.
Conference Room 325

Aloha Chairs Ito and Tsuji and Members of the Committees:

My name is Cameron Black and I am testifying in strong opposition to HB 2808 and HB 2820, which seek to modify our State Water Code. The frightening amendments proposed by these bills attempt to provide corporate ag interests with an absolute priority to water -- greater even than public trust uses, such as environmental protection, traditional and customary Native Hawaiian rights and practices, and domestic water use. Ag interests have already been granted significant rights to our public waters. HB 2808 and HB 2820 are unnecessary and inappropriate, and must be killed.

In Hawai`i, water is a public trust resource in which all citizens have an interest. The existing Water Code reflects this commitment to our local people, customs, and resource needs. Our state constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources. HB 2808 and HB 2820 seek to upset this delicate balance by prioritizing water for important ag lands. Such amendments are unnecessary because the Water Code already provides for the "maximum beneficial use of the water of the State for purposes such as . . . irrigation and other agricultural uses." HRS 174C-2(c).

In addition, the Hawai`i Supreme Court -- the body charged with interpreting our state constitution -- has already determined that although the public has an interest in offstream uses such as agriculture, agricultural uses are NOT public trust purposes. Please respect the Public Trust doctrine as articulated in our State constitution and interpreted by our Supreme Court and kill HB 2808 and HB 2820. We cannot afford to distribute our precious resources in a manner that will jeopardize its availability to those who have relied on it for centuries.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by HB 2808 and HB 2820, will only create confusion, lead to more litigation, and potentially result in the inequitable distribution of our state water. I urge you to kill these bad bills.

I have submitted similar testimony to my representatives. Thank you for this opportunity to testify.

Sincerely,

Cameron Black
University of Hawai`i at Manoa
William S. Richardson School of Law
cblack@hawaii.edu
P: (808) 620-3379

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

From: Adam T. Kahualaulani Mick [mailto:kahualaulani2@yahoo.com]
Sent: Thursday, January 31, 2008 3:49 PM
To: WLHtestimony
Subject: Testimony Opposing HB 2808 and HB 2820

House Committees on: Water, Land, Ocean Resources &
Hawaiian Affairs AND AGRICULTURE
Attn: Chairs Ken Ito & Clift Tsuji

Testimony Opposing HB 2808: Agriculture; Important Ag
Lands
Testimony Opposing HB 2820: State Water Code;
Important Ag Lands

February 1, 2008, 8:30 a.m.
Conference Room 325

Aloha Chairs Ito and Tsuji and Members of the
Committees:

My name is Adam T. Kahualaulani Mick, and I come from Kailua O'ahu. I am sorry I cannot appear before you in person today; however, I hope you will accept this written email testimony, and give it equal weight. Though I cannot be there, my feelings on this matter are very strong.

I am testifying today in strong opposition to HB 2808 and HB 2820, which seek to amend our State Water Code. These measures are unnecessary and inappropriate, and should be swiftly killed.

In Hawai'i, water is a precious public trust resource in which all citizens have an interest. Therefore, our state constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources. HB 2808 and HB 2820 seek to upset this delicate balance by prioritizing water for "important agriculture lands."

Such amendments are unnecessary because the Water Code already provides for the "maximum beneficial use of the water of the State for purposes such as . . . irrigation and other agricultural uses" (HRS 174C-2(c)). Thus, carving out an absolute preference for agriculture uses is antithetical to the comprehensive planning and management principles underlying the Water Code's complex regulatory framework. Indeed, in every single case, including Waiahole, the Commission has given agriculture uses all the water needed and more.

In addition, the Hawai'i Supreme Court has already

determined that although the public has an interest in offstream uses such as agriculture, agricultural uses are NOT public trust purposes. Therefore, please respect the Public Trust doctrine as articulated in our State constitution and interpreted by our Supreme Court and kill HB 2808 and HB 2820.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by HB 2808 and HB 2820, will only create confusion and lead to more litigation. I urge you to kill these wholly unnecessary bills.

Thank you for allowing me this opportunity to testify and share my mana'o about this important issue.

Aloha no me ka mahalo nui loa,
Adam T. Kahualaulani Mick
1132 Ilikala Pl.
Kailua, HI 96734-1854
808-254-9257

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

From: randy ching [mailto:oahurandy@yahoo.com]
Sent: Thursday, January 31, 2008 4:23 PM
To: WLHtestimony
Subject: In strong opposition to HB2808 and HB2820

House Committees on: Water, Land, Ocean Resources &
Hawaiian Affairs AND AGRICULTURE
Attn: Chairs Ken Ito & Clift Tsuji

Testimony Opposing HB 2808: Agriculture; Important Ag
Lands

Testimony Opposing HB 2820: State Water Code;
Important Ag Lands

February 1, 2008, 8:30 a.m.
Conference Room 325

Aloha Chairs Ito and Tsuji and Members of the
Committees:

My name is Randy Ching and I am testifying in strong
opposition to HB 2808 and HB 2820, which seek to amend
our State Water Code. These measures are unnecessary
and inappropriate, and must be killed.

The law already recognizes the public interest in
maintaining agricultural water uses and provides ample
protection of existing uses, including agriculture. In
every single case, including Waiahole, the Commission
has given ag uses all the water they needed and more.
Even when these interests got that water (e.g., Del
Monte) they are still closing up shop; water is not
the issue.

Waiahole made clear that even public trust uses don't
enjoy an absolute preference. Yet these bills give
certain ag uses, which Waiahole made clear aren't
public trust uses, an absolute priority that even
public trust uses don't enjoy.

Carving out an absolute preference for ag uses is
antithetical to the comprehensive planning and
management principles underlying the Code's complex
regulatory framework. It effectively exempts these
uses from the Code's permitting scheme. Had such a
provision applied to Waiahole, none of the water would
have been required to be returned to the windward
streams.

Please kill these terrible bills.

Thank you for this opportunity to testify.

Sincerely,

Randy Ching
Sierra Club, Oahu Group chair
oahurandy@yahoo.com
942-0145

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

Attn : Chairs Ken Ito & Clift Tsuji

Testimony Opposing HB 2808 : Agriculture; Important Ag Lands

Testimony Opposing HB 2820 : State Water Code: Important Ag Lands

February 1, 2008, 8:30 a.m.

Conference Room 325

Aloha Kakou,

I strongly oppose HB2808 and HB2820 which seek to amend our State Water Code. These measures are unnecessary and inappropriate and must be killed.

In Hawai'i, water is a public trust resource in which all citizens have an interest. Therefore, our state constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources. HB 2808 and HB 2820 seek to upset this delicate balance by prioritizing water for important ag lands. Such amendments are unnecessary because the Water Code already provides for the "maximum beneficial use of the water of the State for purposes such as . . . irrigation and other agricultural uses." HRS 174C-2(c). In addition, the Hawai'i Supreme Court -- the body charged with interpreting our state constitution -- has already determined that although the public has an interest in offstream uses such as agriculture, agricultural uses are NOT public trust purposes. Please respect the Public Trust doctrine as articulated in our State constitution and interpreted by our Supreme Court and kill HB 2808 and HB 2820.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by HB 2808 and HB 2820, will only create confusion and lead to more litigation. I urge you to kill these terrible bills.

Mahalo,


Paulette K. Kalcikini

Phone : 668-5663

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

From: skywalker@ecomail.org [mailto:skywalker@ecomail.org]
Sent: Thursday, January 31, 2008 5:17 PM
To: WLHtestimony
Subject: Testimony in opposition to HB 2808 and HB 2820

Aloha Chairs Ito and Tsuji and Members of the Committees:

My name is Evan Silberstein. I am a second year student in the environmental law program at William S Richardson School of Law. My testimony is in strong opposition to HB 2808 and HB 2820, which seek to amend our State Water Code. These measures are unnecessary and inappropriate, and therefore must be terminated.

In Hawai`i, water is a public trust resource in which all citizens have an interest. Therefore, our state constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources. HB 2808 and HB 2820 seek to upset this delicate balance by prioritizing water for important ag lands. Such amendments are unnecessary because the Water Code already provides for the "maximum beneficial use of the

water of the State for purposes such as . . . irrigation and other agricultural uses." HRS 174C-2(c). In addition, the Hawai`i Supreme Court

--

the body charged with interpreting our state constitution -- has already determined that although the public has an interest in offstream uses such as

agriculture, agricultural uses are NOT public trust purposes. Please respect

the Public Trust doctrine as articulated in our State constitution and interpreted by our Supreme Court and kill HB 2808 and HB 2820.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by HB 2808 and HB 2820, will only create confusion and

lead to more litigation. I urge you to uphold the Public Trust and not to support these unnecessary bills.

Thank you for this opportunity to testify.

Sincerely,
Evan Silberstein
3315 East Manoa Rd.
Honolulu HI, 96822

<>< <>< <>< <>< <>< <>< <>< <>< <>< <>< <>< <>< <>< <><

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From: David H. Klipstein [mailto:dklipstein@reactiondesign.com]

Sent: Thursday, January 31, 2008 6:01 PM

To: WLHtestimony

Subject: Reject HB 2808 and HB2820

House Committees on: Water, Land, Ocean Resources & Hawaiian Affairs AND AGRICULTURE
Attn: Chairs Ken Ito & Clift Tsuji

Testimony Opposing HB 2808: Agriculture; Important Ag Lands

Testimony Opposing HB 2820: State Water Code; Important Ag Lands

February 1, 2008, 8:30 a.m.

Conference Room 325

Aloha Chairs Ito and Tsuji and Members of the Committees:

My name is David Klipstein and I am testifying in strong opposition to HB 2808 and HB 2820, which seek to amend our State Water Code. These measures are unnecessary and inappropriate, and must be rejected.

In Hawai'i, water is a public trust resource in which all citizens have an interest. Therefore, our state constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources. HB 2808 and HB 2820 seek to upset this delicate balance by prioritizing water for important ag-lands. Such amendments are unnecessary because the Water Code already provides for the "maximum beneficial use of the water of the State for purposes such as . . . irrigation and other agricultural uses." HRS 174C-2(c). In addition, the Hawai'i Supreme Court -- the body charged with interpreting our state constitution -- has already determined that although the public has an interest in offstream uses such as agriculture, agricultural uses are NOT public trust purposes. Please respect the Public Trust doctrine as articulated in our State constitution and interpreted by our Supreme Court and kill HB 2808 and HB 2820.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by HB 2808 and HB 2820, will only create confusion and lead to more litigation. I urge you to kill these terrible bills. To not do so will inevitably open our limited water resources to short term exploitation and ultimately to the collapse of our Island society as we know it

Thank you for this opportunity to testify.
Sincerely,

David H Klipstein
280 Akaula Way
Wailea
858-882-7692

From: David H. Klipstein [mailto:dklipstein@reactiondesign.com]
Sent: Thursday, January 31, 2008 6:07 PM
To: WLHtestimony
Subject: Reject HB 2808 and HB2820

House Committees on: Water, Land, Ocean Resources & Hawaiian Affairs AND AGRICULTURE
Attn: Chairs Ken Ito & Clift Tsuji

Testimony Opposing HB 2808: Agriculture; Important Ag Lands
Testimony Opposing HB 2820: State Water Code; Important Ag Lands

February 1, 2008, 8:30 a.m.
Conference Room 325

Aloha Chairs Ito and Tsuji and Members of the Committees:

My name is Donna Klipstein and I am testifying in strong opposition to HB 2808 and HB 2820, which seek to amend our State Water Code. These measures are unnecessary and inappropriate, and must be rejected.

In Hawai'i, water is a public trust resource in which all citizens have an interest. Therefore, our state constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources. HB 2808 and HB 2820 seek to upset this delicate balance by prioritizing water for important ag-lands. Such amendments are unnecessary because the Water Code already provides for the "maximum beneficial use of the water of the State for purposes such as . . . irrigation and other agricultural uses." HRS 174C-2(c). In addition, the Hawai'i Supreme Court -- the body charged with interpreting our state constitution -- has already determined that although the public has an interest in offstream uses such as agriculture, agricultural uses are NOT public trust purposes. Please respect the Public Trust doctrine as articulated in our State constitution and interpreted by our Supreme Court and kill HB 2808 and HB 2820.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by HB 2808 and HB 2820, will only create confusion and lead to more litigation. I urge you to kill these terrible bills. To not do so will inevitably open our limited water resources to short term exploitation and ultimately to the collapse of our Island society as we know it

Thank you for this opportunity to testify.
Sincerely,

Donna J. Klipstein
280 Akaula Way
Wailea
858-882-7692

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

From: Judy Mick [mailto:ppchawaii@yahoo.com]
Sent: Thursday, January 31, 2008 6:07 PM
To: WLHtestimony
Subject: Opposition to HB2808 and HB2820

TO House Commitees on:Water, Land, Ocean Resources and
Hawaiian Affairs and Agriculture

Attention: Chairs Ken Ito and Clift Tsuji

My name is Judith Mick and I am in opposition to HB
2808 and HB 2820. I do not think our well crafted State
Water Code should be amended by unnecessary and and
inapproopriate bills.

Water is a public trust resource in which every one of
us has an interest. It is the wealth of any society and
was always reflected by our Native Hawaiian culture
who referred to wai-wai (water) as the measure of a
person's wealth.

Our present Water Code delicately balances the
protection and use of water . Please respect the
Public Trust doctrine in our State Constitution and
interpreted by our Supreme Court. Please kill these
very bad bills for Hawaii. Thank you. Judith
Mick, Kailua, Oahu