



**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  
AND HAWAIIAN AFFAIRS**  
**AND**  
**HOUSE COMMITTEE ON AGRICULTURE**

Friday, February 1, 2008  
8:30 AM  
State Capitol, Conference Room 325

in consideration of  
**HB 2833**  
**RELATING TO LAND USE.**

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.

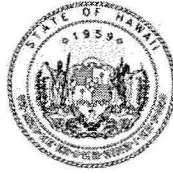
The Office of Planning (OP) opposes HB 2833, which proposes to allow developers of projects in the State Agricultural Land Use District meeting certain criteria to request the reclassification of these lands to the State Rural District, without the need for any proceedings before the State Land Use Commission.

OP believes that shifting higher-valued, non-conforming, non-farm uses from the Agricultural District to the Rural District is key to protecting the State's agricultural lands and ensuring the affordability of agricultural lands. However, we do not support measures that do not offer a more comprehensive and lasting solution to the problem of

residential subdivisions in the Agricultural District. Such a solution must deal not only with identifying those developed subdivisions that should be removed from the Agricultural District and those lands that should be protected for long-term agricultural use, but also the adoption of legislation to prevent the same problems from occurring in the future. This would include tightening the standards for the Agricultural District and redefining the Rural District to accommodate non-agricultural uses while retaining rural character and landscape. Furthermore, we oppose any provision that would freeze the collection of appropriately-assessed County real property tax payments. For these reasons, we recommend this bill be held.

Thank you for the opportunity to testify.

LINDA LINGLE  
Governor



State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512

SANDRA LEE KUNIMOTO  
Chairperson, Board of Agriculture

DUANE K. OKAMOTO  
Deputy to the Chairperson

TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE

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

HOUSE BILL 2833  
RELATING TO LAND USE

Chairpersons Ito and Tsuji and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 2833. This measure seeks to establish what appears to be a quasi-legislative State Land Use Commission (LUC) reclassification from the Agricultural to the Rural District for county-approved subdivisions of land within the Agricultural District with specific characteristics, residential housing, and no agricultural use. The specific characteristics to qualify certain subdivisions include the following criteria:

1. Approved by the county,
2. Within the Agricultural District,
3. With 200+ lots averaging less than 3 acres each, and
4. with Land Study Bureau overall productivity ratings of "D" and "E".

The owner/owners of these lots **shall** be granted a reclassification of the above lands to the Rural District by the LUC without the need for any proceedings. Future subdivisions of existing lots cannot occur for 10 years and an increase in property taxes in excess of the average rate paid by the affected subdivision lot owners in the past 10 years shall not occur for 5 years after the effective date of the Act.

The Department of Agriculture does not support this measure. This is piecemeal legislation affecting the State Land Use Law (Chapter 205, HRS) that seeks to establish a limited-use and expedited process to reclassify Agricultural District land that is not part of a comprehensive planning effort. The immediate effect of the bill may be physically limited to a single subdivision of agricultural land but it has potential to establish an enormous negative precedent by exposing the entire Agricultural District to similar piecemeal reclassifications for equally narrow reasons. In turn, this could affect efforts to identify potential Important Agricultural Lands for designation by the State Land Use Commission.



Legislative Testimony  
**HB 2833, RELATING TO LAND USE**  
House Committees on Water, Land, Ocean Resources & Hawaiian Affairs  
and Agriculture

February 1, 2008

8:30 a.m.

Room: 312

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The Office of Hawaiian Affairs (OHA) **OPPOSES** HB 2833, which would allow for the automatic reclassification into the rural district of all previously approved agricultural subdivisions less than three acres in lot size in the agricultural district, without the participation of the State Land Use Commission and the input of the community.

Thus, this bill seeks to bypass the State land use laws and environmental and cultural review processes, which the Legislature saw fit to create and the Hawai'i State Courts have seen fit to uphold. The bill would give credence to counties that have already acted illegally by subdividing property that the LUC did not have the appropriate opportunity to examine. This bill, therefore, seeks to pardon not only counties that have acted outside of their jurisdictions, but also developers who have sought to use backdoor tactics to get their developments approved on a fast-track. The Legislature cannot be fooled by this bill's methods or intentions. The community has consistently spoken out on the development of "gentlemen estates" in the agricultural districts, which are intended for the rich and often non-resident buyers.

This bill would allow for a mass acceptance of illegal land uses without the required benefit of adequate public hearing or review. No public hearing is provided for by this bill, and no challenges are allowed. This is a direct violation of the Public Trust.

The Hawaii Revised Statutes (HRS) mandate OHA to ensure the betterment of Native Hawaiians, in part by examining other agencies' actions. Public review of important land use decisions such as these allows OHA to fulfill our mandate by providing us with adequate opportunity to ensure the protection of traditional and cultural access rights and uses, Native Hawaiian archaeological and burial sites, and natural and cultural resources. This bill would eliminate

any and all responses by the public and public agencies like OHA.

The bill also violates a Hawai'i Supreme Court order by completely avoiding the LUC. The LUC must, per the Hawai'i Supreme Court decision of Ka Paʻāakai O Ka ʻĀina v. Land Use Comm'n, 94 Haw. 31, 45 (2000), "preserve and protect customary and traditional practices of Native Hawaiians," which neither it nor any county or State agency would be allowed or able to do under the direction of this proposed legislation.

The State Land Use Law, HRS Chapter 205, has provided the State with the necessary guidance to growth since Statehood. The first land use law in the United States, HRS Chapter 205 is clear on the intent of permissible uses in the agricultural district.

All land use decisions must come before the State Land Use Commission after the necessary environmental review, per HRS Chapter 343, is completed. This process allows for the necessary level of public input. The inclusion of the community is a necessary part of the environmental review process. Assessment of the environmental, cultural, human health and aesthetic impacts of the redistricting of the developments would not occur at all if this legislation passes.

A balanced approach toward the environmental review process, with ample public participation, provides government agencies with enough information to make informed decisions on the redistricting of previously approved developments. OHA, the sole public agency responsible to assess the policies and practices of other agencies impacting on Native Hawaiians, opposes this bill because it would effectively indemnify prior illegal subdivision and permitting actions, violate the Public Trust, and not allow for any public participation during the redistricting process from agriculture to rural land use.

For all of the above reasons, OHA urges the Committees to HOLD HB 2833. Thank you for the opportunity to testify.



**Hawaii  
Association of  
REALTORS®**  
www.hawaiiirealtors.com

The REALTOR® Building  
1136 12<sup>th</sup> Avenue, Suite 220  
Honolulu, Hawaii 96816

Phone: (808) 733-7060  
Fax: (808) 737-4977  
Neighbor Islands: (888) 737-9070  
Email: har@hawaiiirealtors.com

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February 1, 2008

**The Honorable Ken Ito, Chair**

House Committee on Water, Land, Ocean Resources & Hawaii Affairs

**The Honorable Clift Tsuji, Chair**

House Committee on Agriculture

State Capitol, Room 325

Honolulu, Hawaii 96813

**RE: H.B. 2833 Relating to Land Use**

**Hearing Date: February 1, 2008 @ 8:30 a.m., Room 325**

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS® (HAR) **supports the intent** of H.B. 2833.

H.B. 2833 will reclassify certain marginal agricultural lands in the agricultural district into the rural district. For the long-term preservation of prime agricultural lands and balancing the reclassification from agricultural to rural, HAR believes that a mechanism for the process is essential. When a mechanism is established, many questionable titles in parts of Hawaii will be lifted.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.

Sincerely,

Rick Vidgen, Member  
Subcommittee on Land Use & Environment  
HAR Government Affairs Committee



# AIA Hawaii State Council

A Council of The American Institute of Architects

WLH/AGR

8:30 am

February 1, 2008

Honorable Clift Tsuji, Chair  
House Committee on Agriculture  
Honorable Ken Ito, Chair  
House Committee on Water, Land, Ocean Resources & Hawaiian Affairs

Re: **House Bill 2833**  
**Relating to Land Use**

Dear Chair Tsuji, Chair Ito and Members of the Committees,

My name is Daniel Chun, Government Affairs Chair of The American Institute of Architects (AIA). **AIA SUPPORTS THE INTENT** of HB 2833 that is one of several bills attempting to recognize the changing circumstances that have occurred since the early days of Hawaii statehood.

Hawaii's state land use classification law is landmark legislation that was intended to balance environmental protection with economic needs. Our understanding was that the very large percentage of agriculturally zoned land was intended to support large-scale mechanized agriculture. The Rural zone was essentially recognition of the few plantation communities that were in existence; yet isolated from urban areas of the state. HB 2833, and others with similar text, attempts to recognize that these areas have become a preferred focal point for small communities oriented toward open spaces with some low-scale agriculture.

Architects are now planning and designing small-scale communities that foster human relationships, while still being in balance with natural resources and open spaces. Sometimes a more sustainable community design is one that has enough physical space to generate electricity without using fossil fuels, collect its own domestic water, and recycle human pollutants within its own space. Smaller scale communities may also minimize some of the social pathology associated with more dense development.

We will even venture and say that more current planning concepts are a stronger justification for taking a new and fresh look at the Rural Zone within the state land use classification. Thank you for this opportunity to **SUPPORT THE INTENT** of HB 2833.