From: Alan Murakami [almurak67@gmail.com]

Sent: Friday, February 01, 2008 1:54 PM

To: WLHtestimony

Subject: Fwd: Testimony on HB 2833 and 2946

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS
Rep. Ken Ito, Chair
Rep. Jon Riki Karamatsu, Vice Chair

HOUSE COMMITTEE ON AGRICULTURE
Rep. Clift Tsuji, Chair
Rep. Tom Brower, Vice Chair

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

RE: HB 2946, HB 2833

From: Alan T. Murakami

I OPPOSE both of these bills. The attempt to retroactively sanction improper uses of agricultural land by arbitrarily reclassifying them to Rural is ill-advised. At best, you're guessing that no harm will come to sanctioning these land uses without causing some other unintended consequence, like promoting more land speculation by those investors who have gambled that the land use permitting agencies in Hawai`i will not follow the law and allow residences on Agricultural land, which they bought cheap to make a large windfall. Instead, the Legislature should approve the GIA request of the Hawai`i Rural Development Council to engage in a preliminary but crucial round of community dialogue to discuss the important criteria, strategies, and requirements needed to protect agriculture and the standards necessary in the Rural District that would be harmonious with that protection. Without this discussion, the processes envisioned in these bills are illogical, likely to be futile and a waste of taxpayer money and staff time. Instead of wasting time and money on these bills, I urge you to redirect your resources to approving the GIA request the HRDC has submitted.

You envisioned this very process by passing Act 205 in 2005, calling for the LUC and counties to lead coordinated discussion statewide on the proposals for revising the standards and restrictions for permissible uses in the Rural District. As you recall, that measure was supposed to complement the decision to enact legislation to launch the eventual identifcation and protection of important agricultural lands (IAL), as required by the Constitution. The IAL process was initiated under Act 187 that year. However, Act 20r floundered in its implementation. The only part of Act 205 that resulted in a product of any kind was the report the Hawai`i Rural Development Council (HRDC, which I chair) did to record the preliminary objectives and vision of rural residents for the Rural District. The counties never implemented its part to take that input and facilitate a discussion on recommendations for statutory amendments to HRS chapter 205 governing the Rural District. Neverhteless, as the HRDC discovered widespread support for retaining the beneicial aspects of rural living and widely crtiicized the ability of a landowner in the Rural District to subdivide land down to 1/2 acre, as the current law allows. Without further discussion and consensus on how to manage the Rural District, the Legislature is now plunging into a difficult realm that is not preceded by desirable civic consensus about how to protect agriculture while regulating the uses in the Rural District. To do so without that analysis, debate, and discussion is asking for chaos.

Already, I am aware that applicants have petitioned for 3737 acres of agricultural land to be reclassified to Rural by the Land Use Commission. These two bills will compoud that situation further without adequate planning, discussion, or community analysis.

HB 2833 is especially onerous. It is filled with erroneous premises, presumptions and mistakes of fact to justify its

passage. For example:

It bases quality of ag lands on soil classified by the land study bureau's detailed land classification. It presupposes that class D and E are marginal and better suited for non-agricultural purposes (like luxury sudivisions?). FALSE. Is Kona coffee lands, rated largely D and E marginal? Is land without irrigation water (for now) forever marginal? NO.

It presumes that just because the agricultural district is 47 per cent of all lands, there is justification to increase the "only 196,215 acres of urban land (five per cent) and 10,108 acres of rural land (two-tenths of one per cent)." The vast amounts of land classified as agricultural in part helps keep the best agricultural land viable by isolating them from incusions by suburbs, luxury subdivisions, and city structures.
It presumes that because the acres used for crops declined in the past 5 years means Hawaii has decreasing dependence on agriculture as an industry. This incredibly false statement ignores possible strikes, global warming, $100+ per barrel prices for oil, and a host of other factors that make Hawai`i extremely variable to forces beyond our control, which invites the opposite conclusion: we should be striving for self sufficiency and sustainability.

It justifies the long-established practice of permitting residential communities on land classified for agricultural use as being acceptable because it has happened illegally. The justification that ag lands should be used for residences because it is "relatively inexpensive, available, and not suited for agricultural uses" is both false and incredibly short-sighted. In the very next breath, it concedes that agricultural land values have risen beyond their value for agricultural purposes. The bill appears to sanction past county abuses of the land use law, while pretending it supports agriculture.

It is impressed by the sales volume of illiegal residential lots and glorifies the financial contribution as an apparent justification for breaking the law. In exchange for zoning and other
It erroneously presumes that the Hokulia developer had vested rights that Judge Ibarra ignored.

It presupposes that the Hokulia decision negatively impacted "people in business, finance, development, and the community at large" because of its so-called "tremendous damage and a debilitating uncertainty to the entire state" and the "chilling effect on investment. Nothing could be further from the truth in light of the pace rural communities are witnessing in the wake of that decision - i.e., much more of the same. The is no chill in the investment world and certainly none of the "adverse economic effects because the uncertainties caused by such decisions." Jobs, for example have never been in short supply even if such illegal projects were stopped.

The bill's perception that "Hawaii is highly dependent on outside investment and capital to ensure that its economic engine operates smoothly" is a concession that counties continue to violate chapter 205 because of economic pressures that only indicate that our reliance on land development is so far out of whack that we extoll the virtures of foreign capital over which we otherwise would have no control, despite its devastating effects of luxury subdivisions on rural communities andsmall farmers. Have we truly gone so far are to be slaves to "investment in real estate [as] a highly important component to a healthy state economy?" Despite our own Governor's objective of departing from this reliance on land development, this bill would enshrine it as the epitomy of a desired future for this state, the law notwithstanding, just because the financial and development communities have succeeded in pretending it never understood the law in the first place. In the case of Hokulia, the record reflects clearly that its experts knew exactly what the law meant. That developer simply rolled the dice and hoped it wouldn't be caught.

In a concession to the true reality, the bill admits that "Counties will be deprived of much-needed property tax revenue" if it was required to abide by the state land use laws. The web of deceit counties, developers, banks, and others within that industry has spun has nothing to do about the "reliability of permits and the requirement of administrative exhaustion that places the security of existing home loans at risk." The resulting "price increases" have nothing to do about enforcing the law or increasing uncertainty. Now the law is clear, everyone can act accordingly. As it is, there has been no demonstration of the shackling of expectations or investments being made in land in Hawai`i because of that decision. Just look around you, especially on the neighbor islands. Local residents are hurting every time these arguments are made. The decision did nothting to "reduce the volume of real estate transactions and further reduce the affordable housing supply." These luxury homes have NOTHING to do with promoting affordable housing.

In short, there is NO "unacceptable situation."

The bill now tries to mask this false alarm into a crisis that doesn't exist. There is NO NEED to "remove the uncertainty over past entitlement of certain subdivisions by reclassifying certain marginal agricultural lands in the agricultural district into the rural district, subject to certain terms and conditions."

Under this smokescreen, existing ag subdivisions approved by the County upon the effective date of the bill get a FREE PASS. What an incentive to break the law NOW, before this bill passes. Forget about planning, forget about state law. Let counties who rely on increase property values continue to make decisions that increase their revenue base? This bill is the worst form of land use planning - arbitrary, retrospective, and a concession to greed and lawlessness.

IT SHOULD DIE.

HB 2946 establishes a one-time process for the mass reclassification of land from the ag to rural land use districts, based on a report filed by 2010 compiled by the State Department of Agriculture, upon consultation with the counties, with recommendations for amended rural district boundaries to the land use commission. The DOA recommendations would be made based on unspecified criteria, using an unspecified process, and an unspecified list of stakeholders. The Department has never done anything like this process. As it is, it has not even completed its Water Plan as required by statute since 1998. It would be hard to imagine the DOA following the process outlined in this bill in 2 years.

The bill also attempts to impose a superghighway to overrun constitutional procedural rights by requiring a decision by the LUC within 90 days of the filing of the report. First, there is no realistic way for the LUC to make such a mass decision in 90 days with the degree of clarity and detail demanded in the bill, which lists undefined factors like whether "rural land use and settlement pattern", "...rural community's character and heritage," and accommodating "rural, non-farm development in a land-efficient manner." Without greater clarity that should come through a more community-based dialogue about these terms and their interrelationship with supporting agriculture surrounding it, the exercise would appear futile in that time frame. This missing part, the input of the larger rural community, will doom this effort from the start.

Second, there are grave consequences in erecting such an expedited procedure without any necessity or emergency affecting the public welfare. It is simply a concession to special development interests of the worst kind and would sink this Legislature to the depth of historic infamy. This fault is fatal. It ignores a line of important decisions that respect the constitution and the interests it protects.

It justifies this expedited reclassification procedure on the false notion that rural resident had no need to venture outside of the community, and a trip to the city was usually reserved for special occasions. Even if true, there is no connection between that perception and need to expedite reclassifications of ag subdivisions into the largely unused Rural District. In fact, under current Rural District standards, nothing would prevent such reclassifications from turning into free for all developments that could impact existing agricultural enterprises. Nothing justifies the proposed procedure. If anything, such wholesale reclassifications can have huge unintended consequences when there is so little discussion or debate about taking such drastic steps during a 90-day period for action.

Finally, It specifically exempts reclassifications under this process from sections 6E-3, -8, and -42, although it requires any permit approvals subsequent to the reclassification to conform to ss. 6E -8 and -42. Although the LUC is to consider "[t]he impact of the reclassification on conservation, historic, archaeological, or cultural resources," QUERY whether this abbreviated process fulfills the constitutional duty of land use regulatory agencies to take all steps "feasible" to protect traditional and cultural rights, or to perform the fact-finding with regard to such uses on the affected land that the Hawaii Supreme Court required to address constitutionally protected Hawaiian traditions and customs in the *Ka Pa'akai* case.

This bill, like HB 2833 creates huge legal problems that dwarf the miniscule degree of harm it purports to address.

Thank you for this opportunity to testify.

2/1/2008