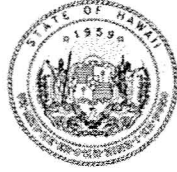


**LINDA LINGLE**  
Governor



**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 COMMITTEE ON  
WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS  
FRIDAY, APRIL 4, 2008  
11:00 a.m.  
Room 312**

**HOUSE CONCURRENT RESOLUTION NO. 348, PROPOSED HOUSE DRAFT 1  
REQUESTING THE LAND USE COMMISSION AND THE COUNTY COUNCILS AND  
THE PLANNING COMMISSIONS OF MAUI AND KAUAI COUNTIES TO RECOGNIZE  
THAT VACATION RENTAL UNITS IN SINGLE-FAMILY DWELLINGS AND FARM  
DWELLINGS IN STATE AGRICULTURAL DISTRICTS ARE NOT PROHIBITED  
UNDER CHAPTER 205, HAWAII REVISED STATUTES**

Chair Ito and Members of the Committee:

Thank you for the opportunity to testify on House Concurrent Resolution No. 348, Proposed House Draft 1. The Department of Agriculture opposes this resolution as it has the effect of encouraging an activity within the Agricultural District that has no relationship to the principal permissible use which is the cultivation of crops. This Committee, in the 2007 Session, championed legislation to prevent the spread of "fake farms" by limiting the uses in future subdivisions of agricultural land to agricultural businesses and activities. Transient vacation rentals in the State Agricultural District, if left unregulated, may encourage the spread of "fake farms" and result in higher agricultural land prices, making the establishment of new farms less likely, and create the possibility of nuisance complaints from owners and renters of transient vacation rentals about bona fide agricultural production in the vicinity. Therefore, we support the counties efforts to regulate the establishment of transient vacation rentals on Agricultural District lands, and that the special permit (Section 205-6, HRS) remain the vehicle by which these uses may be approved.

**MAUI VACATION RENTAL ASSOCIATION  
c/- PO Box 790117, Paia, HI 96779**

April 3, 2008

**MVRA Testimony Supporting HCR 348 HD1**

Honorable Chair Ito and WLH Committee Members:

Thank you for considering this proposed resolution.

The preamble to the Resolution (“Whereas” statements) demonstrates that its authors understand the need to correct the County’s misunderstanding in thinking TVRs are prohibited on Agricultural land by HRS 205. We appreciate the opportunity to submit testimony corroborating – in particular -- the statements in paragraphs 5 & 6 of the Resolution, wishing to help members of the WLH Committee recognize the validity of the concern, along with the benefit of adopting the Resolution.

Paragraph 5 of the Resolution reads:

“Whereas, the counties have taken the position that Chapter 205, Hawaii Revised Statutes, per se prohibits single-family and farm dwelling transient vacation rental uses within state agricultural districts without a special use permit;”

Here are six examples illustrating the widespread prevalence of this unfortunate misunderstanding...

- a) Maui Council Chair Riki Hokama has opposed every Conditional Permit application for TVR use on Agricultural land. For instance, during a permit hearing at the Council’s Land-Use Committee on Oct. 31, 2007, Chair Hokama opposed issuance of a Conditional Permit (after a State Special Permit had already been approved), based on his misunderstanding of

State law:

**“I will not be supporting the motion. I -- it is my belief, Mr. Chairman, with all respect to you and -- and -- and my colleagues of this Committee, that I view HRS 205 to be very clear regarding overnight accommodations. And while I can see how the administrative components of Office of State Planning and the Land Use Commission can reach a conclusion that the statute did not specifically disallow the use of a State Special Use Permit for a consideration, nonetheless, I believe the Legislature was very precise and clear in its policy statement regarding overnight accommodations as written in the statute. ... This is about consideration of a nonpermitted use in a specific land use category request for a special -- specific activity that is not permitted by Code or law to come through, through a permit process. ... It's about the consideration of a nonpermitted use in a specific land use category, and that is what I am making a decision on.”**

- b) During a Maui County Land Use Committee meeting on Aug. 30, 2006, Council Member Anderson opposed a Conditional Permit application for a TVR on Agricultural land, expressing a misunderstanding of State law:

**“If it’s going to be determined that we’re going to allow vacation rentals in the Agricultural District, then we better have some backup of State law that allows us to do that, and, and I don’t see it. And I asked for it from, from Corporation Counsel and basically he’s telling me as long as nobody challenges it we’re okay. I, I don’t think that that’s sufficient legal substantiation for what we’re doing.”**

- c) Members of the public have expressed confusion about TVRs being prohibited on agricultural land. In a letter to the Maui News dated Oct. 24, 2007, Maui Farm Bureau President Watanabe mistakenly stated:

**“Thus TVRs may be appropriate for rural areas, but not lands designated for agriculture. Permitting nonfarming operations on agricultural lands would...be illegal under current laws.”**

- d) In a Report dated June 20, 2006 the Maui County Planning Department advised the County Planning Commission to recommend against adoption of a proposed zoning ordinance which would have provided a simplified permit process for TVRs on agricultural land. This recommendation was based, in part, on a misunderstanding of State Statute:

**“The proposed amendments in the transmitted resolution would be Contrary to the**

**State Agricultural law.”**

- e) In correspondence dated Sept. 5, 2007 the State Dept. of Business, Economic Development and Tourism, Office of Planning, mistakenly advised the Maui County Planning Department that

**“overnight accommodations are outright prohibited in the State Agricultural District even *with* a State Special Use Permit.”** (emphasis added).

- f) Also in September, 2007, the State Land Use Commission Executive Director issued a letter to the Maui County Planning Department, misinterpreting HRS 205-5(b)(13) to

**"clearly exclude overnight accommodations" in the State Agricultural District.**

Paragraph 6 of the Resolution reads:

“WHEREAS, single-family and farm dwelling transient vacation rentals and income therefrom may support agricultural activities and thus can be compatible with agricultural uses;”

During public testimony before the Maui County Planning Commission and the Maui County Council’s Planning Committee, there was strong support from owners of small farms for permitting of TVRs on agricultural land. The gist of the testimony was that supplemental income from a TVR allows families to continue to afford farming their land, whereas the cost of farming their small parcel would otherwise be prohibitive.

For the above reasons, the Maui Vacation Rental Association respectfully urges adoption of this Resolution. Mahalo for your consideration.

**Signed by the following MEMBERS of the Maui Vacation Rental Association:**

Stephen Hersh 438 Kaupakalua Rd. Haiku 96708 [stephenhersh@cox.net](mailto:stephenhersh@cox.net)

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Netra Halperin, Kahului, Maui 579 6431

Margit Tolman, Ho'okipa Haven, Paia, Maui 264 0814

Tom & Michele Sewell, Haiku, Maui 573 3554

Ray & Barbara Bane, Keokea, Maui 878 6730

Tomas & Joan Heartfield, Huelo, Maui 572 1250

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Timothy Fitzgerald, Kahului, Maui, 808 244 6700

John & Candace Croteau, 770 Pakanu St, Haiku 96708 572 9219

Carol Brock, 1057 Makawao Ave B303, Makawao HI 96768 808 572 8736

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Anna Jackson [hulagypsy@gmail.com](mailto:hulagypsy@gmail.com)

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John & Betsy McKinney, part time residents and property owners on Molokai, 630 Kam V Hwy, Kaunakakai, HI

Kathy Webster Haiku, Maui [sod@gate.net](mailto:sod@gate.net)

Lemoine & Foster Radford, 2128 Ili Ili Rd, Kihei, HI 96753 874 8228

Susan, David, Sarah & Norman Ritzk, Molokai, HI [nritzk@stanford.edu](mailto:nritzk@stanford.edu)

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Max & Tracey Ludwig, 266 N. Holokai Rd, Haiku 96708

Carol, Jim & Ryan Carolan [carol@carolann.com](mailto:carol@carolann.com)

Bob Sternthall [mauibob@hawaiiintel.net](mailto:mauibob@hawaiiintel.net)

Mary Kress, PO Box 1739, Kaulua, HI 96734 808 853 0787

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Cathy Clarke, PO Box 1359 Haiku HI 96708 808 575 9228

Jody Dole, Haiku, Hawaii

Frances & James Feeter, Molokai, Hawaii

Zelie K. Duvauchelle, 8714 Kamehameha V Hwy, Kaunakakai HI 96748

Patricia Guay, Molokai

Dayne Harris, Molokai

Susan Savage, Molokai



House of Representatives, 24th Legislature, 2008  
State of Hawaii  
Date 4/4/08 - Time 11:00 AM  
Conference Room 312, State Capitol, 415 South Beretania Street.

Attention: The Honorable Ken Ito, Chair, and Committee Members.  
COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

**Speaking in Support of Bill HCR 348:**

REQUESTING THE LAND USE COMMISSION AND THE COUNTY COUNCILS AND THE PLANNING COMMISSIONS OF MAUI AND KAUAI COUNTIES TO RECOGNIZE THAT VACATION RENTAL USES IN SINGLE-FAMILY DWELLINGS AND FARM DWELLINGS IN STATE AGRICULTURAL DISTRICTS ARE NOT PROHIBITED UNDER CHAPTER 205, HAWAII REVISED STATUTES.

All #00001 0440 Oloheana Road  
Kapaa, HI 00740  
Phone # 808-822-6381

Email 1 of 8

Dear Committee Members

I speak in support of HCR 348 and submit as testimony the 1500 petitions emailed to KAVA by local residents (680) and visitors (820) in opposition to the strict regulations in the Kauai Bill 2204 that made Vacation Rentals on Ag land illegal. That bill is now law and has created a storm of opposition some of which is determined to overthrow this in State or Federal Court. We implore you to clarify the situation on Ag land by approving HCR 348 to stop the certain madness that will ensue. As you know, the State has ordered a review of Ag land on all islands over the next three years, to determine Prime Ag land. This should be completed first to ensure that existing properties which have operated businesses giving alternative accommodation to our much needed tourists who seek a different experience to a Hotel are protected. In many situations, this alternative accommodation income is the difference between a viable small farm and bankruptcy. We understand the desire to regulate and control growth, but to make the law retroactive to apply to existing small businesses is wrong. From the beginning of the bills passage there was opposition and in March 2007 we started our first petition Web Site called WeThePeopleOfKauai.com and in just a few days collected these 1500 petitions which were submitted to the County Council. I now re-submit them as attachments to 8 emails.

Sincerely

Michael John Hough, President

Kauai Alternate Vacation Association

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

From: aliicleaning@hawaii.rr.com [mailto:aliicleaning@hawaii.rr.com]  
Sent: Monday, March 19, 2007 9:59 AM  
To: mike@adagencyinabox.com; martina@adagencyinabox.com  
Subject: Petition to Kauai County Council - Kauai Residents

The following information was submitted on March 19, 2007 @ 11:58 am:

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Petition: "We, the people of Kauai, individually and jointly in the form of this notice, petition the Kauai County Council to carefully reevaluate and reconsider their currently proposed Bill No. 2204 regarding the regulation of a variety of kinds of vacation rental properties in Kauai. We specifically ask the county to clearly include in the bill and therefore reiterate the current Hawaii Revised Statutes ("HRS") Section 46-4, which expressly states:

Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any trade, industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses.

We further ask that the county provides an Amnesty program, during which an appointed individual or group be sanctioned by the county as an Ombudsman designed to assist TVR's in their transition to compliance with the final bill when passed. The Ombudsman would be responsible for discussions with existing B&B, and vacation rental business owners on a one by one basis, by phone, email or with a personal appointment to answer pertinent questions about location, zoning, permitted use, and how to ensure their business continues to exist (grandfathering-in). This individual or group should clearly state to all parties that any information it gathers in an attempt to aid small businesses on Kauai will not be used to their detriment, by any other department.

To support this request, we hold the following statements to be true. Many Kauai residents depend on vacation rental businesses to either provide or supplement their monthly income to support their families. The vacation rental industry on Kauai, especially the many small Inns, cottages, vacation rentals, and B&B's support a variety of other small business and individuals working in the services industries for those properties. Most of the revenues earned from these vacation rental operations stays on Kauai and enriches everyone in our community.

To render, either intentionally or indirectly, any existing vacation rentals or B&B on Kauai illegal would put many of Kauai's families' livelihoods at stake and weaken our local economy. There is a fine balance between success and failure on Kauai. There is no industrial base to support the jobs and



livelihoods that the mainland enjoys. Most people here have two or three jobs just to keep ahead of the mounting bills, many of which are amongst the highest in the nation. This fine balance creates a tipping point and a sudden rift in the economic fabric of Kauai could cause severe repercussions, the extent of which is hard to calculate. As multiple businesses, dependant upon vacation rentals, suddenly fold and homes must be sold, a local recession may be triggered with shock waves reverberating through Kauai, affecting Individuals, Real Estate companies, Stores, Banks, Small Support Businesses, and finally the tax base for the county and state. No-one wants that to happen, esp!

pecially the individuals elected by we, the people of this island, to serve us.

As we have heard voiced in the recent legal position from Jonathon Chun, "while nonconforming use of a property may be deemed to be undesirable by a small portion of the community, it nonetheless constitutes a legitimate, vested property right and clearly enjoys broad constitutional protection...Vested property rights are not easily lost or voided".

It seems that one of America's greatest human rights and life treasures is at stake here: the right of an individual, to make his or her own fortune, to use his or her own land for whatever legal purposes he or she deems fitting and appropriate to suffice his or her family financially. To Be their own boss.

Isn't that the American Dream that "We The People" all aspire to finding?

Besides, who are we to restrict the accommodation choices to the over 1 million tourist visitors we share the island with each year. Vacation Rentals and the industry provide that simple, unique experience to those vacationers who by their own personal choice seek to stay at a vacation rental or B&B, live among the community, share the local experience, and live aloha for that short period of time they are with us. What is so wrong with working collaboratively in an attempt to partner with other industry stakeholders to resolve issues we are faced with today and get on with consensus building. As the people of Kauai, isn't our vision for a sustainable island the same?"

I Am A: Kauai RESIDENT

Name: Andre Zina (Ali'i Cleaning Service, Owner)

City, State: Lihue

Email: aliicleaning@hawaii.rr.com

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**From:** Tony Lydgate [mailto:tony@steelgrass.org]  
**Sent:** Thursday, April 03, 2008 8:32 AM  
**To:** WLHtestimony  
**Cc:** Emily Lydgate; Will Lydgate  
**Subject:** Speaking in Support of Bill HCR 348

**STEELGRASS FARM**  
P.O. Box 68, Kapaa, HI 96746  
(808)821-1857 [info@steelgrass.org](mailto:info@steelgrass.org)

April 3, 2008

Attention: The Honorable Ken Ito, Chair, and Committee Members.  
COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

Speaking in Support of Bill HCR 348:  
REQUESTING THE LAND USE COMMISSION AND THE COUNTY COUNCILS  
AND THE PLANNING COMMISSIONS OF MAUI AND KAUAI COUNTIES TO  
RECOGNIZE THAT VACATION RENTAL USES IN SINGLE-FAMILY  
DWELLINGS AND FARM DWELLINGS IN STATE AGRICULTURAL DISTRICTS  
ARE NOT PROHIBITED UNDER CHAPTER 205, HAWAII REVISED STATUTES.

Dear Committee Members,

We speak in support of HCR 348 in opposition to the regulations in the Kauai Bill 2204 that made Vacation Rentals on Ag land illegal. That bill is now law and has created a storm of opposition, some of which is determined to overthrow this in State or Federal Court. We implore you to clarify the situation on Ag land by approving HCR 348.

As you know, the State has ordered a review of Ag land on all islands over the next three years, to determine Prime Ag land. This should be completed first to ensure protection for existing properties which have operated businesses that give alternative accommodation to our much needed tourists, many of whom seek alternative lodging experiences. In many situations, including our Farm, the income from this alternative accommodation income is the difference that allows us to continue as a viable small Farm.

We understand the desire to regulate and control growth, but to make the law retroactive to apply to existing small businesses is wrong.

Sincerely,

Emily Lydgate and Will Lydgate  
Steelgrass Farm, Kauai

**CASE LOMBARDI & PETTIT**

A LAW CORPORATION

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Bruce C. Bigelow (1946-2001)

April 3, 2008

The Honorable Ken Ito, Chair  
and Members of the Committee on Water, Land,  
Ocean Resources & Hawaiian Affairs  
House of Representatives  
State Capitol  
Honolulu, HI 96813

Re: House Concurrent Resolution 348 HD1

Dear Chair Ito and Members of the Committee:

We write to you on behalf of several of landowners who operate single-family and farm dwelling vacation rentals in the Agricultural district on the North Shore of Kauai.

We appreciate the opportunity to testify in strong support of House Concurrent Resolution 348 HD1 and offer comments.

The County of Kauai recently enacted Bill No. 2204 prohibiting transient vacation rentals outside of the Visitor Destination Areas on Kauai. Bill No. 2204 effectively prohibits the grandfathering of transient vacation rentals on lands in the State Land Use Agricultural district outside of the Visitor Destination Areas on Kauai. Existing vacation rentals on other lands were grandfathered in pursuant to Hawaii Revised Statutes ("HRS") 46-4. The Kauai County Council discussed grandfathering of single-family transient vacation rentals (TVRs) on Agricultural lands, however, no grandfathering provision was passed because certain Kauai County Council members believed single-family TVRs on Agricultural lands were prohibited under HRS Chapter 205, unless a special use permit previously had been obtained,<sup>1</sup> or unless they existed prior to the enactment of HRS Chapter 205.

Additionally, in response to an informal inquiry by one of the Kauai County Council members, the former Land Use Commission ("LUC") Executive Officer, referring to 205-5(b),

<sup>1</sup> We understand that Kauai County has never required or issued a special use permit for TVRs, so this effectively prohibits any grandfathering of TVRs.

The Honorable Ken Ito, Chair  
and Members of the Committee on Water, Land,  
Ocean Resources & Hawaiian Affairs  
April 3, 2008  
Page 2

stated in an email that "Chapter 205 HRS clearly prohibits overnight accommodations (such as offered by vacation rentals) in the SLU Agricultural District". In his email, the Executive Officer, who does not express the opinion of the LUC and who is not a voting member of the LUC, did not rely upon any LUC rulings or case law, but instead relied upon 205-5(b). However, this email makes no mention that HRS, Sec. 205-5(b) was only enacted in the 2006 Haw. Sess. Laws, Act 250, effective June 29, 2006, and therefore does not affect uses existing prior to that date, or that 205-5(b) relates to the regulation of agricultural tourism activities (not single-family TVRs). Furthermore, Section 205-5(b) only applies to agricultural tourism activities where counties have specifically adopted ordinances to regulate agricultural tourism, and the County of Kauai has not done so.

Based on the foregoing, H.C.R. 348 HD1 is needed to clarify that HRS Ch. 205 does not *per se* prohibit single-family TVRs on Agricultural lands.

Nothing in Chapter 205, which sets forth the permissible uses in the Agricultural district, expressly prohibits vacation rental uses in the Agricultural district. HRS § 205(a) sets forth the permissible uses on lands rated A/B. Among the permitted uses is a "farm dwelling", which is defined as "(4) . . . a single-family dwelling located on and used in connection with the farm, including clusters of single-family farm dwelling as permitted within agricultural parks developed by the State, or where agricultural activities provides income to the family occupying the dwelling." This provision does not require that the farm dwelling unit be exclusively used for farm purposes, nor does it state that occasional rental of such a building is prohibited.

Furthermore, with respect to lands that are not rated A/B, which comprise approximately 75% of the agricultural lands in Hawaii<sup>2</sup>, HRS Section 205-5(b)(2) applies. HRS § 205-5(b)(2) provides that "uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted." (Emphasis added) HRS § 205-2 contains eleven enumerated uses, including cultivation of crops, farming activities related to animal husbandry, aquaculture and wind generated energy. Vacation rental uses in structures that otherwise comply with Chapter 205 can easily be seen as "compatible" with the uses listed in HRS§ 205-2. There does not appear to be any case law, declaratory or authoritative order or ruling prohibiting single-family TVRs on Agricultural lands.

Vacation rentals in the Agricultural district provide much-needed income to families who are struggling to maintain agricultural activities on their properties. This supports the long-term goals of achieving sustainability and agricultural use of their land. Without income from TVRs, owners with agricultural activities may be forced to substantially reduce agricultural activities or

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<sup>2</sup> See Adrienne Iwamoto Suarez, *Avoiding the Next Hokuli'a: The Debate over Hawaii's Agricultural Subdivisions*, 27 Hawaii L. Rev 441, 444 (2005).

The Honorable Ken Ito, Chair  
and Members of the Committee on Water, Land,  
Ocean Resources & Hawaiian Affairs  
April 3, 2008  
Page 3

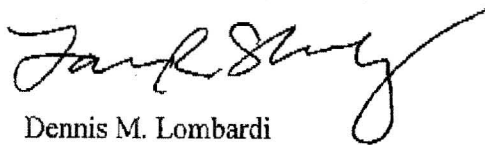
possibly forced off their land and required to sell their properties to purchasers with no interest in maintaining agricultural uses. Whether lands comply with Chapter 205 should be determined based upon the totality of the facts and circumstances of the specific use of an owner's property, which is consistent with how the LUC has addressed compliance with Chapter 205 in other circumstances,<sup>3</sup> and not based on an assumption that TVRs are *per se* prohibited on agricultural lands.

In addition, Act 186, Session Laws of Hawaii 1980, which authorized the counties to restrict timeshares and transient vacation rentals, defined "transient vacation rentals" as "rentals in a multi-unit building to visitors over the course of one or more years, with the duration of occupancy less than thirty days for the transient occupant." Therefore, Act 186 did not authorize restrictions on single-family TVRs. Similarly, prior to Bill No. 2204, the Kauai County Code defined TVRs as those in multi-unit buildings and did not impose restrictions on single-family TVRs. Relying on this, many agricultural land owners have been operating single-family TVRs for years, paying state and county taxes, and this use has never been expressly prohibited by the Kauai County Code or HRS Chapter 205. Accordingly, pursuant to HRS section 46-4, grandfathering of lawfully existing TVRs is required, with respect to any ordinances prohibiting single-family and farm dwelling transient vacation rental uses in state agricultural districts. Failing to provide grandfathering as required under HRS, Sec. 46-4, also raises questions as to constitutional issues, such as violations of landowners' "vested rights" and violations of a person's due process and equal protection rights.

We urge you to pass House Concurrent Resolution 348 HD1 to provide a much-needed clarification to the Maui and Kauai County Councils and Planning Commissions, and the LUC that such vacation rental uses in the Agricultural district are not prohibited under State law.

Very truly yours,

CASE LOMBARDI & PETTIT



Dennis M. Lombardi  
Lauren R. Sharkey

DML:lrs:kkq  
28492/1/810104.2

<sup>3</sup> See generally, In the matter of the Petition of Kuleana Ku'ikahi, LLC, DR04-30 (April 10, 2006).

---

**From:** Nicoleta Neagoy [mailto:nicoletaneagoy@gmail.com]

**Sent:** Thursday, April 03, 2008 9:04 AM

**To:** WLHtestimony

**Subject:** Ag land on Pulehu Rd in Kula, Maui

To Whom It May Concern,

This letter should read like a prayer because we live in the most beautiful place on earth; we begin with a sense of gratefulness for the aina.

Our two and a half acres had been neglected by previous owners and we have toiled every inch with new septic tanks, irrigation and plantation of all that is possible to grow in its steeply inclined, rocky terrain.

In our roadside produce stand we offer bananas, avocados, papayas, lemons and starfruit as they mature and ripen. We also offer some plants and have considered some of the keike palm trees that routinely grow from seeds of mature trees on our property. We have a book for people to sign and record what they bought for however much they think it's worth. We have a suggested price list. Some folks are generous.

We applied for our VR permit four years ago and have paid taxes to the state. Since we were warned about the \$1000 fine per day, we shut ourselves down despite neighbors and friends who sent us their families and friends. We frequently had guests in our home for just one night because they came from Lahaina to drive to Haleakale for the sunrise. We often give far more than expected.

Our income has been minimal, but did help with mortgage payments a few times.

We have two local self employed workers whom we have known for many years, and even they were excited by us having visitors.

Our Mayor Tavares came as a guest of a mutual friend for High Tea in our home. She was impressed and said not all vacation rentals should be shut down. Regulations are needed and we agree.

I have written numerous letters to the paper and attended meetings and spoken at least twice in favor of our little business. I have been an advocate of tax money going for affordable housing. Since we do live in a million dollar property, and we have four sons, family and friends who occupy our cottage and guest room at least three months a year, long term rental is not an option. If rented long term, the rate would not be considered affordable.

Up the road from our home a trucking base yard has continuously grown since we've moved at 1198 Pulehu Rd. over four years ago; the sound of silence has been disrupted, but certainly never by our guests. I personally tell them to keep it no louder than lovely. With all due respect, we would like to continue to offer our services. My husband is in the process of once again reapplying for a permit. We have never hidden. We are upset by being viewed as law breakers.

This is honest, hard earned income. Our place is the full embodiment of Aloha. Our guests walk the labyrinth I built with existing rocks from our land, eat fruits from the trees, admire the lavender, bromeliads, roses, birds of paradise, heather, and more, much more.

Upcountry is off the beaten path. Our strawberry farmer neighbor loves the business we create by buying for our guests as well since we provide a fruit platter along with

chocolates and macademia nuts. We even have a lei maker in the neighborhood. Why on earth would we be denied the right to do our best in our land?

We are not at all a serious competitor to any hotel. Our work has been a labor of love.

I have made soup for our sick guests, prepared birthday cakes, and even let a family of five from Canada stay a month for free because their business deal fell through. We also helped out a local family in the same way.

Vacation Rental for us has been a service of hospitality. We honor the land. Please hear our plea.

Mahalo,

Nicoleta I Neagoy

1198 Pulehu Rd

Kula, Hi, 96790

808-878-8883



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**From:** james bray [mailto:jamesebray@mac.com]  
**Sent:** Thursday, April 03, 2008 12:23 AM  
**To:** WLHtestimony  
**Cc:** repmorita@hotmail.com  
**Subject:** Fwd: HCR 348 HD1 Testimony

Begin forwarded message:

**From:** james bray <jamesebray@mac.com>  
**Date:** April 3, 2008 12:02:07 AM HST  
**To:** [WLHtestimony@Capitol.hawaii.gov?subject=Testimony](mailto:WLHtestimony@Capitol.hawaii.gov?subject=Testimony)  
**Cc:** [repmorita@hotmail.com](mailto:repmorita@hotmail.com)  
**Subject:** HCR 348 HD1 Testimony

COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS

Rep. Ken Ito, Chair  
Rep. Jon Riki Karamatsu, Vice Chair

Rep. Mele Carroll, Rep. Roland D. Sagum, III, Rep. Michael Y. Magaoay, Rep. Scott K. Saiki, Rep. Hermina M. Morita, Rep. Cynthia Thielen

Hearing Date: HCR 348 HD1, April 04 2008

James E. Bray  
Secretary, Kalihiwai Ridge Community Association  
Director, Kauai Alternative Vacation Association

Committee Members,

I am a member of the Kalihiwai Ridge Community Association, as Secretary, I believe I should represent the 180 members right, as recorded in each of their deeds, to short term or long term rent their Agricultural properties. I will enclose the deed language from paragraph 14 page 5 in my deed.

14. The restriction that the units shall be occupied and used only for permitted agricultural uses and as private residential dwellings by the respective owners thereof, their tenants, families domestic servants and social guests, and for no other purposes. The unite shall not be rented for hotel purposes, which are defined as (a) rental for any period less than (7) days, in which the occupants of the residential apartments are provided customary hotel services such as room service for food and beverage, maid service, laundry and linen or bellboy service. Short-term and long-term vacation rentals without the characteristics of hotel use are permitted. Similarly, the residential apartments shall

not be used, leased, rented or any undivided interest therein be transferred for any time-sharing plan, agreement or arrangement as the same is defined under Chapter 514E, Hawaii revised Statutes, as amended. Except for hotel purposes and time-sharing, the owners of the respective residential apartments shall have the absolute right to sell, lease, rent or otherwise transfer such units subject to all provisions of the Declaration and the Bylaws recorded immediately following the Declaration.

Our subdivision was originally approved by the County of Kauai in 1977. The sample deed and the final deed for our properties, were approved by the Real Estate Commission, The Kauai Planning Department, Kauai department of Finance and The Department of Housing.

I support the clarification of Chapter 205 Hawaii Revised Statutes for Kauai County.

Respectfully Submitted,  
James E. Bray

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**From:** Arabella Ark [mailto:arabella@arkceramics.net]

**Sent:** Wednesday, April 02, 2008 6:50 PM

**To:** WLHtestimony

**Subject:** testimony in favor of existing Bed and Breakfast accommodations on Ag zoned land

*Dear Chairperson and Representative Ken Ito,*

*This letter is in regards to the use of ag zoned properties for non-ag purposes and specifically in regards to the proposed Maui county ordinance prohibiting Bed and Breakfast accommodations.*

*Thank you as representatives of the people for the time and attention you are giving to this important topic. I also applaud your efforts to clarify land use rules with common sense and concern for residents' welfare.*

*I would like to ask that this letter be submitted into your records as public testimony and duly considered, as I cannot personally attend the April meeting at the state capitol.*

*I am writing about a concern for the usage of ag land in Hana which is not addressed. I am also writing to request that existing, even if not legally permitted, bed and breakfast operations be awarded permits on a "grandfathered" basis.*

*There are many properties in ag zoning in Hana which are less than two acres. They are classified as "Non-conforming ag lots". They also have single-family homes built on them. These "non conforming ag lots", as anything under two acres is designated, have never been active farms nor is their land suitable to farming.*

*My home is a prime example. It was built specifically as a vacation home and guest house for the Ben Dillingham family prior to statehood in 1947. In my home's sixty year history, it has been primarily used as a vacation home and/or bed and breakfast for visitors. The home was built on a 0.925 vertical acre and cannot be used as a farm.*

*It is important that these non-producing, "non-conforming" ag*

*land single family properties be considered fairly.*

*Why? Here are a few of my reasons:*

- 1. The ag classifications already recognize those parcels of less than two acres as not viable for realistic income from farming due to size and contour.*
- 2. Many parcels in Hana of less than two acres already have single family dwellings built on them.*
- 3. These smaller parcels are generally in a recognized ag setting where the owner acts appropriately as a steward of the land (not as a farmer) and a conservator of the land, in the passive sense by allowing for growth of taro, native forest plants, and other native plants and tropical botanicals. No income is generated from such stewardship. (In fact, as I have found, it is a costly endeavor to maintain such parcels. I spend an average of \$22,000 a year on garden maintenance.)*
- 4. Special use permits for these smaller parcels should "grandfathered in" if any bed and breakfast operation is already established but not officially permitted.*
- 5. The impact on the majority of residents of Hana if vacation rentals and bed and breakfast operations are curtailed would be devastating economically and personally.*

*How? Here is my example: I reside full time on my property. I have a tax id number on file with the State of Hawaii and pay regular GET and TAT taxes.*

*I EMPLOY A HOUSE-KEEPER AND TWO GARDENERS. Last year I paid \$12,000 for housekeeping wages and \$22,000 for gardening wages. I have paid similar sums since 2000. The money was paid to HANA RESIDENTS. One housekeeper was born and raised in Hana and has worked on this property for twenty years as have several of her family members.*

*I ALSO PURCHASE FRESH FRUIT AND PRODUCE FROM HANA FARMERS. I SHOP FOR SUNDRIES AT HASEGAWA STORE AND THE HANA RANCH STORE. I RENT VIDEOS FOR MY GUESTS TO VIEW FROM THOSE STORES.*

*MY GUESTS PURCHASE LUNCH AND DINNER FROM THE HOTEL HANA MAUI AND THE HANA RANCH RESTAURANT AS WELL AS GROCERIES FROM THE HANA RANCH STORE AND HASEGAWA'S.*

*THEY FREQUENT THE LOCAL SPAS AND HIRE MASSEURS TO COME TO THEIR ACCOMMODATION.*

*THEY TAKE THE KA'ELEKU CAVE TOUR, THE KIPAHULU OHANA CULTURAL HIKE, THE HANA BAY KAYAK TOUR, THE HORSE RIDES AT MAUI STABLES OR THE HOTEL HANA MAUI, AND VISIT THE HANA CULTURAL CENTER, AMONG HANA'S MANY OFFERINGS.*

*If there are no overnight accommodations in Hana other than the Hotel Hana Maui, the Hana Kai condominiums, and the park campgrounds, Hana would become the land of the day-trippers. No money would be spent by the tour bus patrons on local food, crafts, accommodations, and gifts. Many residents will lose valuable income and work; shops and restaurants will lose business.*

*In a time of national belt-tightening and worries of a recession, it would be unwise discourage tourism and to deliberately hurt so many of Maui's own people by taking away their income!*

*Here are some very personal potential consequences:*

- I WOULD NO LONGER AFFORD TO EMPLOY HANA WORKERS ON MY PROPERTY.*
- MY INCOME WOULD FALL WELL BELOW THE NATIONAL POVERTY LINE.*

- *THE GUESTS WHO COME TO MY BED AND BREAKFAST BRING VITALITY AND CONNECTION TO THE REST OF THE WORLD BEYOND HANA AND THE HAWAIIAN ISLANDS. I ENJOY SHARING HAWAIIAN HISTORY, hospitality, AND CULTURE WITH MY GUESTS. I LOVE FILLING THEIR ROOMS WITH FLOWERS AND FRUITS FROM MY GARDENS. They would be denied this personal experience of Aloha.*
- *Residents' personal gatherings, be they weddings, graduations, birthdays, funerals and the like would not be able to accommodate overnight stays.*

*HANA SHOULD BE TREATED AS A UNIQUE DESTINATION and allowed to have its already operating UNIQUE OVERNIGHT ACCOMMODATIONS.*

*CURRENT BED AND BREAKFAST AND VACATION RENTAL OPERATORS WHO HAVE EXCISE TAX LICENSES AND ARE CURRENT WITH TAX PAYMENTS SHOULD BE GRANTED PERMITS IMMEDIATELY WHETHER THEY HAVE APPLIED FOR A PERMIT YET OR NOT (MANY VALID AND VARYING FACTORS HAVE KEPT MANY OPERATORS FROM APPLYING).*

*NEW Bed and Breakfast operations SHOULD GO THROUGH THE NEW PERMIT PROCESS, WHATEVER that is determined to be.*

*Thank you so much for helping us and for your attention in this matter. As you can see, it is of concern to many residents in the Hana area.*

*Malama Maui, Na'au Pono, e Aloha,*

*Arabella Ark  
PO Box 667  
Hana, HI 96713  
tel. 808 248 4890*

**FAX TRANSMISSION**

Dated: April 3, 2008 ..... One (1) page total

Re: Testimony in Support of Proposed House Concurrent Resolution HCR 348

From: Bruce and Cynthia Fehring, 20+ year Kauai residents, farmers, and alternative visitor accommodation owners/operators Fax 808-828-0894 E-mail: fehring@aloha.net

To: Committee on Water, Land, Ocean Resources, & Hawaiian Affairs  
Attention: The Honorable Ken Ito, Chair, and Committee Members  
Transmitted To Fax # 1-800-535-3859  
Hearing Date/Time: 4/4/08, 11:00 AM  
Location: Conference Room 312, State Capitol, 415 South Beretania Street.

Thank you for hearing this important proposed resolution.

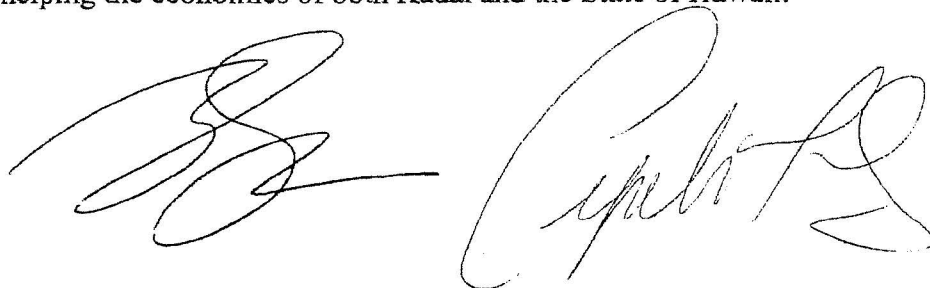
As members of an important class of residents involved in diversified, sustainable agriculture (tropical fruits, CSA/market gardens/Hardwoods), we are distraught with recent actions on the part of the Kauai County Council (by way of Bill # 2204, resulting in Ordinance #864) which states that "Pursuant to HRS 205, no non-conforming use certificate shall be issued for any single family transient vacation rental located on land designated "Agricultural" by State Law, unless (1) it was built prior to June 4, 1976 or (2) the applicant has a special use permit under HRS 205.6 which specifically permits a vacation rental and the permit was secured prior to the enactment of this ordinance."

Our concern is based on the following:

- ▶ Our 2 legally built cottages were constructed prior to the date when the State Law was revised to prohibit overnight accommodations. We have paid both GE and TA taxes since Day One.
- ▶ We rely on the income from these rentals to pay the lion's share of the carrying cost of our property (mortgages, taxes, insurance, etc) so that we are able to farm our acreage, instead of having to leave the farm to obtain outside employment to cover our day-to-day expenses.
- ▶ Providing guests with accommodations on a working farm is revered the world over as agricultural tourism, for both enabling small farmers to stay in operation and providing guests with a unique and beneficial experience, as well as providing employment for support staff and services..
- ▶ Those travelers who seek out alternative accommodations such as our own are not likely, in the event they can no longer be accommodated, to switch to a hotel/resort setting. They will simply find another destination where agricultural tourism and affordable alternative accommodations are encouraged. The net loss to our tourism industry will be incalculable, both in terms of trickle down, stay-on-Kauai dollars but on the diversity of our visitors themselves. Our guests are more likely to support local agriculture, to recycle, and to be more earth-friendly in general.
- ▶ Long term rental of our cottages, the legality of which on land zoned agricultural is questionable itself, would not cover our costs sufficiently to allow us to continue to farm. Also, we like to be able to keep dates available for visits from our families and friends.

Please do whatever you can to support passage of this resolution. In doing so, you will be supporting small farmers like ourselves and helping the economies of both Kauai and the State of Hawaii.

Mahalo nui,  
Bruce and Cyndee Fehring



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**From:** Gary Smith [mailto:garykali2@yahoo.com]  
**Sent:** Thursday, April 03, 2008 11:46 AM  
**To:** WLHtestimony  
**Subject:** Re: Non-conforming permit

To: The Committee On Water, Land, Ocean Resources & Hawaiian Affairs  
Attention: Rep. Ken Ito, Chair

My name is Gary Smith, I am a life long resident of Hawaii, former 6 yr member of the Kaua'i Board of Water Supply, Kaua'i Open Space Preservation Commission, founding member of Kaua'i Public Land Trust, original board member of the Kilauea Neighborhood Association, past member of the Kilauea Area Northshore Advisory Committee for the Kaua'i County 1980 Planning Update, member of the County of Kaua'i Planning Department's Vacation Rental Stakeholders Forum in 2007, member of Kilauea Point Natural History Assn, Fundraising Co-chair of the Kilauea Lighthouse restoration project, Vice-president of the Puhi Industrial Park Owner's Assn., original and current member of the Hawaii State Pest Control Assn. and founder and owner of Mokihana Pest Control, Inc. My wife, Beatrice and I own a house at Anini, Kaua'i. It is on a 15,250 sq. ft. ag zoned lot which is unusually small for agriculture. This is because it happens to be one of 11 similarly sized lots that were kuleana lots formerly owned and relocated in the 1980's by Princeville Development Corp. We purchased our house in 1997. Our dream was to retire there, however, we were far away from retirement and prices in the area were escalating...we knew that someday the price would be out of our range so we took a leap of faith and bought it when there was a slight slump in real estate values in the area. The house as we were told was used mostly as a vacation rental since it was built. In order to afford the high mortgage, property taxes and flood insurance, we had to keep it as a vacation rental. The management and maintenance of renting the house as a vacation rental has been very time consuming and represents a great deal of effort and hard work on our part. The reward has been that our guests over the 10 years have thoroughly enjoyed the accommodations and we in return have been able to meet our financial obligations. We paid all our transient accommodation taxes, excise taxes and State and Federal income taxes on this revenue for all these years, NO State or County Authority ever suggested that what we were doing was illegal. We even had a sign saying it was a vacation rental posted on the mail box! We never expected that one day we would be declared illegal and shut down by our County. Kaua'i County's new Vacation Rental Law blindsided us. Our County used a State Law as a basis to shut us down...the very State that collected all our taxes all those years! We humbly ask that you review this State law in Chapter 205 and discuss the far reaching implications of the interpreting and enforcing the law as interpreted by our County officials. Our County of Kaua'i has now seen fit to make their own interpretation, imposition of fines and enforcement. This interpretation has only one target, Vacation Rentals, and unfairly discriminates against those of us that have chosen to do this. There are many other forms of rentals that occur on agricultural land that may possibly be interpreted by our current



law as illegal. We ask that you strongly consider our request to tackle this difficult situation and recognize our use of the property as a short term rental, a legal one.

Mahalo nui loa,  
Gary E. Smith, PO Box 419 Kilauea  
reply to: gary@mokihana.com

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