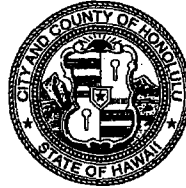


TESTIMONY
SB 2641, SD1
LATE

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8000 • FAX: (808) 527-6743
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MUFI HANNEMANN
MAYOR



HENRY ENG, FAICP
DIRECTOR

DAVID K. TANOUE
DEPUTY DIRECTOR

February 25, 2008

LATE TESTIMONY

The Honorable Clayton Hee, Chair
and Members of the Committee on Water & Land
Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Hee and Members:

**Subject: SENATE BILL 2641 SD1
Relating to Important Agricultural Lands**

The Department of Planning and Permitting **opposes** Senate Bill No. 2641, which would set a moratorium on all development on agricultural lands for which general planning has not commenced.

This bill is so vague as to render it impossible to administer. Specifically,

- It would apply to "agricultural lands located in the state." Is this a reference to any lands in the state agricultural district? Zoned agriculture by the counties? Presently under agriculture use?
- The moratorium would apply only to projects for which "general planning" has not commenced. "General planning" is defined to cover projects "for which planning, design or construction has already commenced". For your information, the city does not track the dates of when planning or design work on private sector projects commences. Therefore, the city would not know which projects would be affected. Any project could arguably "back-date" commencement of planning and design, rendering it unaffected by the moratorium.
- The bill appears to be "self-administered" in that it does not restrict the issuance of government permits or other approvals and actions. It appears to suggest that development would stop on its own accord.
- The bill would apply to any building or development not permitted under Chapter 205-4.5, HRS. If the project is not permitted, it would not receive government approvals, which means that construction could not start, regardless of this bill.

Finally, we believe that to withstand judicial review, the moratorium must serve a public interest, and this bill does not adequately make this determination. Section 1 of the bill mentions Act 183 (2005), but there is no link made between the identification of Important Agricultural Lands (IAL) and the moratorium. Moreover, the sunset date of five years for the moratorium

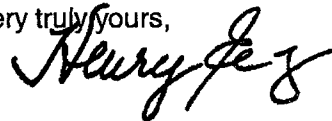
The Honorable Clayton Hee, Chair
and Members of the Committee on Water & Land
Senate
Re: Senate Bill 2641SD1
February 25, 2008
Page 2

appears to be arbitrary as the bill offers no linkage between it and any schedule for decision-making on IAL designation.

In short, this bill should be filed based on profound confusion and unclear purpose.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "Henry Eng", written in a cursive style.

Henry Eng, FAICP Director
Department of Planning and Permitting

HE: jmf
sb2641sd1-kh.doc

LATE TESTIMONY



25 Malunui Ave., Suite 102., PMB 282 • Kailua, HI 96734 • Phone/Fax: (808) 262-0682 E-mail: htf@lava.net

February 24, 2008,

Testimony via email

COMMITTEE ON WATER AND LAND
Senator Clayton Hee, Chair
Senator Russell Kokubun, Vice Chair

SB 2641 SD1
RELATING TO IMPORTANT AGRICULTURAL LANDS

Committee Chair and members:

Hawaii's Thousand Friends, a statewide non-profit land use organization, supports the establishment of a five-year moratorium on the development of agricultural lands located in the State for which general planning has not commenced.

Issues that were identified by the legislative mandated Agriculture Working Group, that met in 2003 for one year, as potential roadblocks to comprehensive planning for agricultural and rural lands and identification of IAL still remain largely unresolved. Such as; length of procurement and contracting for a consultant to assist in mapping IAL, obtaining adequate funding from the State to carry out Act 183 mandates, competing for a small pool of consultants, need for a better understanding of rural, non-IAL ag lands and IAL interface, finding better ways to regulate what is farming and not-farming, and adoption of county plans.

It is impossible to pass legislation that encompasses all the outstanding issues related to IAL, rural and non-IAL land use during the short legislative session. We support a breather from case by case development on agriculturally designated or zoned land that will provide the counties, county planning departments, Office of Planning, Department of Agriculture and Department of Land and Natural Resources time to understand each entities role and what is needed to ensure that Act 183 is viable in all counties.



LATE TESTIMONY

LAND USE RESEARCH
FOUNDATION OF HAWAII
700 Bishop Street, Ste. 1928
Honolulu, Hawaii 96813
Phone 521-4717
Fax 536-0132



February 25, 2008

By E-MAIL

The Honorable Senator Clayton Hee, Chair, and Members
Committee on Water and Land
State Senate, Room 414
Honolulu, Hawaii 96813

**Re: Testimony in Opposition to Senate Bill No. S.B. 2641, SD1
Relating to Important Agricultural Lands (5-year moratorium)**

Dear Chair Hee and Members:

My name is David Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable and rational land use planning, legislation and regulations affecting common problems in Hawaii.

We appreciate the opportunity to provide our testimony **in opposition to S.B. No. 2641, SD1 and with comments.** LURF's position is as follows:

- The proposed five-year moratorium is not supported by any legal justification or nexus, and could constitute an unconstitutional taking;
- The unintended consequences of this bill will harm, among others, legitimate farmers, ranchers and agricultural land owners and affordable housing projects;
- The bill is inconsistent with Act 183, Session Laws of Hawaii, 2005, relating to Important Agricultural Lands ("IAL"), would frustrate the purposes of Act 183 and would substantially undermine the policies and procedures of Act 183;
- The proposed bill has been proposed without the input and consensus of agricultural stakeholders;
- **S.B. No. 2641 should be rejected**, so that the purpose, policies, procedures outlined in Act 183 can be followed and given a chance to work; and
- If the legislature desires to follow and support Act 183, it should **instead approve S.B. No. 2646**, which follows the Act 183 process, provides incentives and protections to establish and sustain viable agricultural operations on IAL and is a result of a consensus among agricultural stakeholders.

S.B. No. 2641. This proposed bill would establish a five-year moratorium on any building or development project on agricultural lands located in the State; provided that:

1. The moratorium on building or development projects on agricultural lands shall be limited to any building or development project for which general planning has not commenced ("general planning" means projects for which planning, design,

- or construction has already commenced);
2. The building or development project is intended to effect parcels of agricultural land with an overall (master) productivity rating of class A or B, and designated as an agricultural district;
 3. The building or development project is intended to effect parcels of agricultural land located in the State, and designated as an agricultural district;
 4. The building or development project is not a permissible use within an agricultural district under section 205-4.5, Hawaii Revised Statutes (“HRS”);
 5. The moratorium shall be lifted on June 30, 2013; and
 6. The Senate Committee on Agriculture amended the effective date of this bill to June 1, 2050, for purposes of facilitating further legislative consideration.

LURF’s Position.

- **The proposed bill could constitute an unconstitutional taking of private property rights, as there is no legal nexus or justification to support the proposed five-year moratorium.** No public purpose, rationale or justification is stated in the bill to provide legal justification for the proposed moratorium. Also there is no explanation or justification for the “five-year” length of the proposed moratorium. Such a lengthy moratorium, which lacks any public purpose, legal nexus or connection to furthering the IAL purposes or process, could be found to be an illegal taking under the United States Constitution.
- **It is unconstitutionally vague, ambiguous and would be difficult to administer and enforce.** The term “agricultural lands located in the state” is vague and ambiguous (Des it refer to agricultural land use districts? Agricultural zoned properties? Lands in other land use classifications or zoning, which are presently under current agricultural uses?). Also, it will be almost impossible for counties to determine “projects for which planning, design, or construction has already commenced,”
- **The unintended consequences of this bill will harm legitimate farmers and ranchers.** The five-year moratorium could have the unintended consequence of stopping legitimate projects which are caught in the moratorium, including, among pother things, affordable housing. It may also have a major negative impact on land values. Farmers, ranchers and agricultural land owners already have a difficult time qualifying for loans which will allow them to expand their agricultural operations. They have argued that the five-year moratorium could be viewed by lenders as reducing the value of the agricultural lands as collateral for loans, thereby reducing the borrowing ability of farmers, ranchers and agricultural landowners. Others experienced in real estate business have predicted that the moratorium could also artificially inflate the values of lots currently on the market or parcels of land on which general planning has already commenced,” thereby exacerbating the affordable housing crisis. The moratorium’s five-year restriction on the use of lands would limit the supply of lands available for affordable housing, rents would increase, starter home prices will increase, and available housing alternatives would become increasingly scarce. In addition, this moratorium could cause an inflationary effect on property taxes.

- **The proposed bill would frustrate the purposes of Act 183 and undermine it's the policies and procedures.** The legislature is fully aware of the significance in the successful passage, just two years ago, of Act 183. In 2005, the legislature enacted Act 183, in an effort to implement Article XI, Section 3, of the State Constitution regarding IAL. Act 183 established policies and procedures for the identification of important agricultural lands and provides for a process to develop protection and incentive measures for IAL and agricultural viability. Act 183 also established certain “milestones” for performance on the part of the legislature, administration, private landowners/farmers, and the Counties.
- **The proposed bill is not supported by the consensus of agricultural stakeholders.** Act 183 was a direct result of building consensus on areas of agreement as opposed to focusing on areas of disagreement and it represents a collaboration of a variety of different interests groups, community representatives and agricultural stakeholders. The proposed five-year moratorium significantly alters the agreements reached in building the consensus on Act 183. We believe that changes of the type proposed in this bill will undermine the past efforts and significantly set back the IAL designation process.
- **The counties should be given the opportunity to address the agricultural issues within their jurisdiction - some counties already have procedures in place to approve developments on agricultural lands.** The City and County of Honolulu (“City”) requires an agricultural plan to be submitted with subdivision applications and also submits subdivision applications to the Department of Agriculture for review and comment.
- **Instead of passing a moratorium bill, the Senate should approve S.B. No. 2646 (with amendments recommended by LURF), which would provide for IAL incentives for farmers and landowners.** Instead of a five-year moratorium on agricultural lands, the Senate should also pass IAL incentive legislation to encourage landowners to identify and designate their lands as IAL. The Senate should pass pending S.B. No. 2646 (with the amendments suggested by LURF, which proposes a number of agricultural incentives to promote agricultural investment and offset the risks and costs of agricultural operations.

Conclusion. LURF **opposes S.B. No. 2641**, based on the grounds stated above. It is LURF’s position that **S.B. No. 2641 should be rejected**, and that the purpose, policies, procedures outlined in Act 183 should be followed and given a chance to work. If the legislature desires to follow and support Act 183 and the IAL identification and designation process, it should **instead approve S.B. No. 2646 (with the amendments proposed by LURF)**, provides incentives and protections to establish and sustain viable agricultural operations on IAL, and which is a result of a consensus among the major agricultural stakeholders.

LURF appreciates the opportunity to express our views on this matter.



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

LATE TESTIMONY

TESTIMONY TO THE SENATE COMMITTEE ON WATER AND LAND
MONDAY, FEBRUARY 25, 2008, AT 2:45 P.M.
ROOM 414, STATE CAPITOL

RE: S.B. 2641, SD1 Relating to Important Agricultural Lands

Chair Hee, Vice Chair Kokubun, and Members of the Committee:

My name is Christine H. Camp, Chair of The Chamber of Commerce of Hawaii, Land Use and Transportation Committee. The Chamber of Commerce of Hawaii is in opposition to SB No. 2641.

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

S.B. No. 2641 establishes a five-year moratorium on any building or development project on agricultural lands located in the State; provided that:

1. The moratorium on building or development projects on agricultural lands shall be limited to any building or development project for which general planning has not commenced ("general planning" means projects for which planning, design, or construction has already commenced);
2. The building or development project is intended to effect parcels of agricultural land with an overall (master) productivity rating of class A or B, and designated as an agricultural district;
3. The building or development project is intended to effect parcels of agricultural land located in the State, and designated as an agricultural district; and
4. The building or development project is not a permissible use within an agricultural district under section 205-4.5, Hawaii Revised Statutes.

Act 183, SLH 2005 established a process to identify important agricultural lands (IAL). The IAL designation was established during the 1978 Constitutional Convention. 27 years passed before Act 183 was passed.

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

Over the past two sessions, legislation has been introduced to create incentives to promote agricultural viability in Hawaii. In addition, attempts were also made to have the Counties enact incentives to promote

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The Chamber of Commerce of Hawaii Testimony on SB 2641 SD1
February 25, 2008

agricultural viability in their respective counties. Neither of these efforts have resulted in meaningful incentives being put in place to stimulate interest in designating lands IAL.

The bill before you stops any development of agricultural lands for five years. No rationale is provided for why the moratorium is needed nor is there any attempt to provide the needed incentives required in Act 183. It seems unreasonable and punitive to penalize the landowners of agricultural lands for governments' inability to develop meaningful incentives to promote agricultural viability.

We would prefer that the legislature focus on developing a meaningful incentive package to assist agribusiness grow rather than penalize existing owners of agricultural lands.

For these reasons, we cannot support SB 2641 as drafted. Thank you for this opportunity to express our views.

TESTIMONY
SB 2641, SD1
LATE
(END)