

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

February 8, 2008

Testimony on SB 2646 "Relating to Important Agricultural Lands"
Committees on Agriculture and Hawaiian Affairs and Water and Land

2:45 P.M.

Conference Room 414

The Honorable Senators Jill Tokuda and Clayton Hee, Chairs, and Members
Committee on Water and Land
Committee on Agriculture and Hawaiian Affairs
State Senate, Room 414
Honolulu, Hawaii 96813

Dear Chairs Tokuda and Hee, and Members:

Subject: Senate Bill No. SB 2646 Relating to Important Agricultural Lands

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

S.B. No. 2646 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. 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 agricultural viability in their respective counties. Neither of these efforts have resulted in meaning incentives being put in place to stimulate interest in designating lands IAL.

We strongly support SB 2646 in its entirety. We believe that meaningful incentives are needed to promote and 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 express our views.

Karen I. Nakamura

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

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 entity incurring the actual cost 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 to make a quantitative and qualitative assessment of the impact of the tax credit and make such assessment public.

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

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 rent 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 those 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, than 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, or 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 for 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 last 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 slave 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 the 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 is 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

February 8, 2008

TESTIMONY

**SB 2646
RELATING TO IMPORTANT AGRICULTURAL LANDS**

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

Chair Tokuda and Chair Hee 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 SB 2646, 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.

testimony

From: Judy Mick [ppchawaii@yahoo.com]
Sent: Wednesday, February 06, 2008 8:46 PM
To: testimony
Subject: Senate Committee on Agriculture & Hawaiian Affairs AND Water and Land- Attention Jill Tokuda and Clayton Hee

Testimony opposing SB 2646 Relating to Important Agricultural Lands;Incentives:

I am writing to ask you both to vote NO on SB 2646 which will serve to undermine the excellent water code we presently have. This proposed legislation gives priority to water to corporate agriculture at the expense of our small farmers. I feel the bill is unnecessary and shows favoritism to the wrong group.This bill would be a bad water policy for Hawaii.

I appreciate your considering my view on this bill.

Mahalo, Judith Mick

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**Senate Committees on: Agriculture & Hawaiian Affairs AND water and land
Attn: Chairs Jill Tokuda & Clayton Hee**

Testimony Opposing SB 2646: Relating to Important Ag Lands; Incentives

**February 8, 2008, 2:45 p.m.
Conference Room 414**

Aloha Chairs Tokuda and Hee and Members of the Committees:

My name is Edward Gomes and I am testifying in strong opposition to SB 2646, which seeks to amend our State Water Code. This bill is unnecessary and inappropriate, and must be killed.

In Hawai`i, water is a public trust resource in which all citizens have an interest. Our State Constitution and Water Code were carefully crafted to strike a balance between the protection and beneficial use of our water resources. SB 2646 seeks to upset this delicate balance by prioritizing water for important agricultural 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 SB 2646.

Carving out an absolute preference for agricultural uses is antithetical to the comprehensive planning and management principles underlying the Code's complex regulatory framework. SB 2646 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.

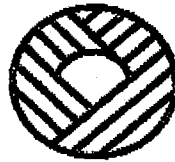
The legislature should let the existing law run its course and support community efforts -- such as those in Na Wai `Eha, Maui -- to restore water to streams for public trust uses, instead of making things more difficult for those communities. Almost all of the sugar and pineapple plantations have closed, yet water from our streams continues to be taken and dumped. Instead of changing the law to allow these former plantation interests to do whatever they please with public trust resources (including continuing to use public trust resources for their private commercial gain, i.e. development), the legislature should provide the Water Commission with the staff and funding necessary to do their jobs, e.g, establish instream flow standards.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by SB 2646, will only create confusion and lead to more litigation. I urge you to kill SB 2646.

Thank you for this opportunity to testify.

Sincerely,
Edward J. Gomes Jr.
(808) 295 1483

Egomes01@gmail.com



MAUI LAND & PINEAPPLE COMPANY, INC.

February 6, 2008

The Honorable Senator Jill N. Tokuda, Chair
The Honorable Senator J. Kalani English, Vice Chair
Committee on Agriculture and Hawaiian Affairs
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street, Room 414
Honolulu, Hawaii 96813

The Honorable Senator Clayton Hee, Chair
The Honorable Senator Russell S. Kokubun, Vice Chair
Committee on Water and Land
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street, Room 414
Honolulu, Hawaii 96813

Subject: SB 2646 – Relating to Important Agricultural Lands

Dear Honorable Chair Tokuda, Honorable Vice Chair English, Honorable Chair Hee,
Honorable Vice Chair Kokubun and Committee Members:

Maui Land & Pineapple Company, Inc. strongly supports HB 2646 – 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 Senator Jill N. Tokuda, Chair
The Honorable Senator J. Kalani English, Vice Chair
The Honorable Senator Clayton Hee, Chair
The Honorable Senator Russell S. Kokubun, Vice Chair
February 6, 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,



Warren A. Suzuki
Senior Vice President

testimony

From: iwaxman@wesleyan.edu
Sent: Thursday, February 07, 2008 9:29 AM
To: testimony
Subject: Testimony Opposing SB 2646: Relating to Important Ag Lands; Incentives

Senate Committees on: Agriculture & Hawaiian Affairs AND water and land
Attn: Chairs Jill Tokuda & clayton hee

Testimony Opposing SB 2646: Relating to Important Ag Lands; Incentives

February 8, 2008, 2:45 p.m.
Conference Room 414

Aloha Chairs Tokuda and Hee and Members of the Committees:

My name is Ilana Waxman and I am testifying in strong opposition to SB 2646, which seeks to amend our State Water Code. This bill is 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. SB 2646 seeks 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 SB 2646.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by SB 2646, will only create confusion and lead to more litigation. I urge you to kill this terrible bill.

Thank you for this opportunity to testify.

Sincerely,

Ilana Waxman
3035 Kiele Ave
Honolulu, HI 96815

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEES ON AGRICULTURE AND HAWAIIAN AFFAIRS
AND WATER AND LAND
ON
SENATE BILL NO. 2646

February 8, 2008

RELATING TO IMPORTANT AGRICULTURAL LANDS.

Senate Bill No. 2646 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.

testimony

From: Lynette Ramos [lynramos@sbcglobal.net]
Sent: Thursday, February 07, 2008 2:56 AM
To: testimony
Subject: Testimony Opposing SB 2646

**Senate Committees on: Agriculture & Hawaiian Affairs AND Water and Land
Attn: Chairs Jill Tokuda & Clayton Hee**

**Testimony Opposing SB 2646: Relating to Important Ag Lands; Incentives
February 8, 2008, 2:45 p.m.
Conference Room 414**

Aloha Chairs Tokuda and Hee and Members of the Committees:

My name is Lynette Ramos and I am testifying in strong opposition to SB 2646, which seeks to amend our State Water Code. This bill is 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. SB 2646 seeks 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 off stream 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 SB 2646.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by SB 2646, will only create confusion and lead to more litigation. I urge you to kill this terrible bill.

Thank you for this opportunity to testify.

Sincerely,

Lynette Ramos
12567 Toulouse
Houston TX 77015
Phone: (713)453-7691
Email: lynramos@sbcglobal.net

2/7/2008

testimony

From: randy ching [oahurandy@yahoo.com]
Sent: Thursday, February 07, 2008 8:16 AM
To: testimony
Subject: AHA/WTL: in opposition to SB 2646 - relating to Important Ag Lands; Incentives

Senate Committees on: Agriculture & Hawaiian Affairs AND Water and Land
Attn: Chairs Jill Tokuda & Clayton Hee

Testimony Opposing SB 2646: Relating to Important Ag Lands; Incentives **February 8, 2008, 2:45 p.m.** **Conference Room 414**

Aloha Chairs Tokuda and Hee and Members of the Committees:

My name is Randy Ching and I am testifying in strong opposition to SB 2646, which seeks to amend our State Water Code. This bill is 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. SB 2646 seeks 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 SB 2646.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by SB 2646, will only create confusion and lead to more litigation. I urge you to kill this terrible bill.

Thank you for this opportunity to testify.

Sincerely,
Randy Ching
oahurandy@yahoo.com
942-0145

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**SENATE COMMITTEES ON:
AGRICULTURE & HAWAIIAN AFFAIRS
WATER & LAND**

**ATTN: CHAIRS JILL N. TOKUDA & CLAYTON HEE
VICE-CHAIRS J. KALANI ENGLISH & RUSSELL S. KOKUBUN**

Testimony Opposing SB 2646: Relating to Important Agricultural Lands

**February 8, 2008, 2:45 p.m.
Conference Room 414**

Aloha Chairs Tokuda and Hee, Vice Chairs English and Kokbun, and Members of the Committees:

Earthjustice strongly opposes SB 2646, particularly Part VII, which seeks to undermine the public trust principles in the State Water Code in favor of private commercial interests. We also object to the inclusion of these Code amendments in an important agricultural lands (IAL) "incentives" bill. While we support protecting IAL and bona fide, long-term agriculture, these amendments are not about that goal. Rather, SB 2646 simply uses IAL incentives as a ruse to eviscerate the protections of the public trust doctrine in the management of our most precious resource.

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 private interests are not pleased with this principle and would rather return to the plantation-era system (still persisting in many places), in which a few large landowners monopolize water as their private property. SB 2646 is their vehicle. It has nothing to do with IAL or agriculture. It has everything to do with undermining the public trust doctrine in favor of private dominion over public water.

SB 2646 is essentially 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:

- SB 2646 seeks to distort the policy statement of the Code, HRS § 174C-2 for the benefit of commercial agriculture. In effect, SB 2646 improperly attempts 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). SB 2646, 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 SB 2646 proposes amendments to require specific consideration of IAL. These amendments are unnecessary.

The rhetoric in support of SB 2646 and similar measures has prominently featured the refrain that “agriculture needs water.” Simply stating the obvious does not justify overhauling the public trust principles in the Code, as SB 2646 proposes. 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. SB 2646 improperly attempts to eviscerate the Code’s public trust principles in favor of select private interests. We strongly urge you to kill this bill.

Very truly yours,



Isaac H. Moriwake
Attorney
Earthjustice



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 Senate Bill 2646 – Relating To Important Agricultural Lands

**BEFORE THE SENATE COMMITTEES ON
AGRICULTURE AND HAWAIIAN AFFAIRS
AND
WATER AND LAND**

February 8, 2008

The purpose of Senate Bill 2646 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 face of that court's prior rejection of this position. In the first Waiahole ruling, the Supreme Court clearly stated that the public trust did not include uses for private commercial use or gain. Such non-public trust uses were found in the first Waiahole case to include commercial agricultural activities.

The Department notes that the section of the State Water Code 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 the existing criteria for the identification of IAL include the availability of water. 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.

**Hawaii
Crop
Improvement
Association**

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

Testimony by: Sarah Styan
SB2646, Important Agricultural Lands
Senate AHW/EDU Committees
Friday, Feb. 8, 2008
Room 414: 2:45 pm

Position: Support

Chairs Tokuda and Sakamoto, and Members of the Senate AHW/EDU
Committees:

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.

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

February 7, 2008

**Senate Committees on: Senate Agriculture and Hawaiian Affairs Committee & Senate
Water and Land Committee**
Attn: Chairs Jill Tokuda & Clayton Hee

Testimony Opposing SB 2646: Relating to Important Ag Lands; Incentives

February 8, 2008, 2:45 p.m.
Conference Room 414

Aloha Chairs Tokuda and Hee 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 Senate Bill 2646 (SB 2646). SB 2646 is NOT about conserving and protecting important agricultural lands (IAL) and activity. Instead, this bill is a clear example 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, this bill is 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.

SB 2646, in fact, advances 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 SB 2646 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 SB 2646, 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 Code's already complex regulatory scheme, and ultimately, violate the constitutional public trust doctrine.

To Honorable
February 7, 2008
Page 2

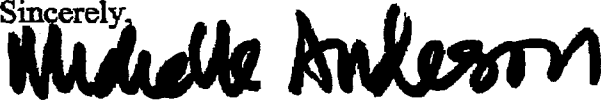
- Second, the Hawai`i Supreme Court, in the Waiāhole case, has already determined that although the public has an interest in offstream uses such as agriculture, agricultural uses are not public trust purposes. SB 2646 improperly attempts to make commercial agriculture a “public trust use.”

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, SB 2646 promotes a plantation-era agenda of monopolizing water to benefit specific special interests while sacrificing all other public trust purposes.

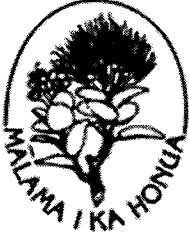
For the foregoing reasons, I strongly urge you to put this bill to a final rest.

Sincerely,



Michelle Anderson,
Council Member





Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803

808.537.9019 hawaii.chapter@sierraclub.org

SENATE COMMITTEE ON AGRICULTURE AND HAWAIIAN AFFAIRS SENATE COMMITTEE ON WATER AND LAND

February 8th, 2008, 2:45 P.M.

(Testimony is 3 pages long)

TESTIMONY IN OPPOSITION TO SB 2646

Chairs Tokuda and Hee and members of the committees:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, opposes SB 2646, an omnibus agricultural measure which contains many elements that are contrary to Hawaii's and the legislature's "sustainability" stance. While we fully support efforts to increase the attractiveness and viability of farming in Hawai'i, we must balance those interests against other critical environmental and societal goals while minimizing the opportunity for commercial interests to exploit resources at the public's and future generations' expense. The most troubling aspects of this measure are the invitation to allow housing on some 20% of "important" agricultural lands, the inclusion of commercial activity as a "public trust" protected use of stream water, and the allowance of reclassification of lands to the rural district without proper public participation processes. Our testimony will review each section of SB 2646.

Part I – Part III

We have no comments on these sections of SB 2646. Part II does offer a useful approach to encourage long-term leases for farmers, but it should require a minimum lease term to qualify for the tax relief.

Part IV

We are concerned about this amendment that would allow more development on lands that are identified as the best ("important") agricultural lands—particularly occupying up to 20% of the important agricultural land (IAL).

First, the counties historically have been lax in defending the land use law and preventing rural sprawl on agricultural lands. Due to weak enforcement of agricultural land protection, farmland has been subject to the type of real estate speculation that drives up the price of land further out of reach for local residents and local farmers. It has made it difficult to effectively plan Hawaii's future and ensure orderly development. Further, residential developments on ag-zoned lands do not allow for adequate public input on the impact on our community. Although this measure contains controls on what type of housing may be built, it still may open the door to further abuse unless additional protection is put into place. This committee has considered measures in the past that would effectively close some of the loopholes exploited by developers to create "ag housing." Those measures should be reexamined this session.

Second, while we understand that housing for farm workers is important to support farm activities, why does the residential housing need to be built on lands designated as "important?" Such housing should be put on adjacent rural lands or, if absolutely necessary, on agricultural lands that are not designated as "important."

Finally, allowing up to 20% of the important agricultural lands to be covered with development is antithetical to the constitutional charge to protect agricultural lands. If this committee is unwilling to delete this part of HB 2808, this acreage allowance should at least be reduced to a more appropriate percentage, perhaps 2 – 4% of the total acreage.

Part V

No comment on this part. Again, we have concerns about the worker housing allowance, and this part would contribute to that issue by providing a tax credit for such housing.

Part VI

No comment on this part.

Part VII

We strongly oppose this part of SB 2646. This is a perennial issue, where commercial interests attempt to amend our state water code under the innocuous guise of "water for farming." What appears to be a simple change in the interest of "important agricultural lands" fundamentally changes the meaning of the State Water Code and jeopardizes constitutionally protected public trust rights.

Two decades ago, when the legislature established the Water Code to fulfill the constitutional mandate, it was carefully worded to balance the various competing needs and uses for Hawaii's water. That balance has been successful. While riparian and other instream uses are being identified and protected, not a single agricultural water user has been denied water under the code.

Senate Bill 2646, however, seeks to change that careful balance for the benefit of private water users. It does so by elevating commercial agricultural water uses above all other uses by placing it on both sides of the balance equation and attempting to identify it as a "public trust use." The Hawai'i Supreme Court has made it clear that the public trust does not include "exclusive use for private commercial gain." The rhetoric in support of SB 2646 has prominently featured the refrain that "agriculture needs water." Simply stating the obvious does not justify overhauling the Water Code. The Code already adequately protects agricultural interests and places all forms of agriculture (large plantation, taro, diversified ag) on a level playing field.

The Sierra Club fully supports true agricultural enterprises and balancing adequate water for farming activities as the Water Code currently provides. But SB 2646 throws the baby out with the ag water. The Water Code Review Commission, made up of a balanced group of stakeholder interests, made comprehensive recommendations to the Water Code several years ago. The Legislature has yet to address them. Before considering *any* revisions to the Code, the Legislature should first take a comprehensive look at the recommendations of the Review Commission.

Part VIII

We have no comments on this section.

Part IX

The Sierra Club strongly opposes amendments to our land use law which facilitate the reclassification of lands out of agriculture without proper public process. Part IX of SB 2646 allows developers to petition for “automatic reclassification” of their land to the rural district—bypassing the existing deliberative Land Use Commission process (HRS 205-4). This process is essential for thorough decision making and public involvement.

Given the incredible speculative real estate pressures on Hawaii’s limit lands, there is no good reason to expedite the conversion of farmland to developable land—particularly if such a process reduces public input. This measure will only foster greater speculative investment in Hawaii’s undeveloped lands and could further drive up the price of land for farming and local housing.

Finally, what this measure seems to overlook is the sprawl-preventing aspects of our state Land Use Law and the processes it provides. The founders of Hawaii’s Land Use Law were the first in the nation to establish de facto “urban growth boundaries” and use comprehensive zoning as a way to keep unbridled development in check statewide. Our current law helps to prevent costly urbanization of lands far from existing urban areas where additional development is more efficient. In other words, when agriculturally designated lands restrict urban uses outside of the urban core (i.e., by prohibiting “residential” uses), they serve their purpose even if they are not actively farmed. Agricultural designation is a critical tool to contain urban growth and focus development where it makes the most sense.

We urge these committees to hold this measure.

Thank you for the opportunity to testify.



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

**Testimony to the Senate Committees on Agriculture and Hawaiian Affairs and
Water and Land
Friday, February 8, 2008 at 2:45 p.m.
Conference Room 414, State Capitol**

RE: SENATE BILL NO. 2646 IMPORTANT AGRICULTURE LANDS

Chairs Tokuda and Hee, Vice Chairs English and Kokubun, and Members of the Committees:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber strongly supports SB 2646.

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.

S.B. No. 2646 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. 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 agricultural viability in their respective counties. Neither of these efforts have resulted in meaning incentives being put in place to stimulate interest in designating lands IAL.

We strongly support SB 2646 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 express our views.

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 SENATE COMMITTEES ON AGRICULTURE AND HAWAIIAN AFFAIRS
AND
WATER AND LAND

February 8, 2008
2:45 P.M.

SENATE BILL NO. 2646
RELATING TO IMPORTANT AGRICULTURAL LANDS

Chairpersons Tokuda and Hee and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill No. 2646. 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, and VII.

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 13 and will work with budget and finance to determine an appropriate loan guaranty cap and reasonable reserve requirement for each loan.

We offer the following recommendation:

On page 23, delete lines 21-22; on page 24, delete lines 1-6.

~~(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 (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 17 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.

testimony

From: Adam T. Kahualaulani Mick [kahualaulani2@yahoo.com]
Sent: Thursday, February 07, 2008 1:53 PM
To: testimony
Subject: Testimony Opposing SB 2646: Relating to Important Ag Lands; Incentives

Senate Committees on: Agriculture & Hawaiian Affairs AND water and land
Attn: Chairs Jill Tokuda & Clayton Hee

Testimony Opposing SB 2646: Relating to Important Ag Lands; Incentives
February 8, 2008, 2:45 p.m.
Conference Room 414

Aloha Chairs Tokuda and Hee 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 SB 2646, which seeks to amend our State Water Code. This measure is 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. SB 2646 seeks 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 SB 2646.

Our State Water Code is not broken and does not need fixing. Tinkering with the Code, as requested by SB 2646, 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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2/7/2008

testimony

From: KHS, Inc. & Kauai Kunana [kunana@juno.com]
Sent: Thursday, February 07, 2008 2:33 PM
To: testimony
Cc: sentokuda@hawaii.gov; senhee@hawaii.gov
Subject: SB2646 Important Agricultural Lands

**Louisa Wooton
Kauai Kunana Dairy
4552 Kapuna Road
Kilauea, HI 96754**

Re: SB2646, Important Agricultural Lands
Hearing Date: Friday, Feb. 8, 2008

Position: **Support**

Chairs Jill Tokuda and Clayton Hee
Hawaii State Senate
Committees on Agriculture and Hawaiian Affairs, and Water and Land

Chairs Tokuda and Hee, and Members of the Committees on AHW/WTL:

Our family operates the only dairy on the island of Kauai and we are additionally a certified organic producer of various market crops.

We support this measure because the State and private landowners must take action on what was passed in 2005 to identify and designate important agricultural lands. This bill provides incentives and protections to establish and sustain viable agricultural operations on such lands.

While the bill proposes many significant incentives which are appreciated, we would like to focus on **the establishment of provisions for workforce housing**. One of the major problems we face on our farm is the high cost of housing on Kauai for our workers. If we could provide housing on our property, it would offer a very desirable incentive to the (few) people we are able to attract to farm work as a vocation.

Please support this measure. Thank you for the opportunity to present testimony.

Mahalo nui loa,

Robert Wooton
Louisa Wooton
Ryan Wooton
Sarah Wooton
Troy Wooton