LINDA LINGLE
Governor

SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
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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 COMMITTEES ON
WATER, LAND, OCEAN RESOURCES, AND HAWAIIAN AFFAIRS
AND
AGRICULTURE
MONDAY, MARCH 24, 2008
11:00 a.m.
Room 312

SENATE BILL 546, SENATE DRAFT 2
RELATING TO LAND USE

Chairs Ito and Tsuji and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill No. 546, Senate Draft 2. This bill has two parts. Part I (page 1, line 1 to page 13, line 12) is intended to address Article XI, Section 3 of the State Constitution that mandates the protection of the State's agricultural lands by requiring that agricultural land be only used for the purposes of agricultural activities, agribusiness, or subsistence farming. Part I amends Section 205-4.5 to include the definitions of agricultural activities, agribusiness, and subsistence farming and makes these uses required in subdivisions of A and B agricultural land. The language is similar to a portion of SB1236, HD1 of the 2007 Legislature which died in conference. Part I also amends Section 205-5 (county zoning) to increase the minimum lot size in the Agricultural District from one to five acres, and amends Section 205-6 (special permits) to prevent the counties from issuing special permits for uses prohibited in Sections 205-2 and -4.5.

For Part I, the Department of Agriculture respectfully recommends deleting the contents of sections 2 and 3 (page 2, line 6 to page 12, line 7) and inserting the

contents of HB3032, the Administration's "Truth in Farming" bill, which we strongly believe will comprehensively and effectively accomplish what SB546 SD2 intends.

HB3032 has the following features:

(1) It requires that subdivisions of class A and B agricultural lands need to demonstrate to the counties the feasibility of agribusiness or subsistence farming as the primary activity. Specific evidence is required and includes: irrigation water in sufficient quantities, storage, and distribution to each lot; other subdivision infrastructure such as internal roadways, utilities, and lots for common use; proposed agribusiness or subsistence farming uses and their agronomic suitability for the area including cost of production, potential income, and market outlook; and how the lot owners will be organized to optimize agribusiness or subsistence farming. Upon approval of the subdivision by the counties, restrictive covenants have to be recorded with the Bureau of Conveyances, that run with the land and are enforced by the counties, and require the lot owners to use their lots primarily for agribusiness or subsistence farming for as long as the lots are in the Agricultural District.

(2) Applications for building permits for farm dwellings need to demonstrate an established and substantial agribusiness or subsistence farming activity. Specific evidence is required, including: annual income, capital expenditures, household income, household size, and agricultural products grown and consumed by the household, and a farm plan demonstrating substantial progress in achieving a successful agribusiness or subsistence farming activity. If the building permit is for an agricultural parcel that was not subdivided, then the owner must record restrictive covenants running with the land and enforced by the counties, requiring the lot owner to use the lot primarily for agribusiness or subsistence farming for as long as the lot is in the Agricultural District.

(3) Family subdivisions are provided for and are not subject to the provisions for subdivisions and building permits provided the lot was not subdivided prior to the

effective date of the Act and the lot is not resold for no less than 25 years, except as may be required by law or court order.

(4) Ensuring legal existing uses are not made nonconforming is accomplished by establishing as permissible uses those legal existing lots and farm dwellings, therefore making them exempt from the provisions of this Act.

(5) Ensuring the exclusion from the provisions of this Act, those landowners seeking subdivision and lot owners seeking building permit who have applications that have been received by the counties.

We recommend leaving in place section 4 (page 12, line 8 to page 13, line 12) that prevents the counties from issuing special permits for uses prohibited in Sections 205-2 and -4.5.

Part II (page 13, line 13 to page 19, line 4) amends Sections 205-2 and -5 as they pertain to the Rural District. The amendments are meant to expand the use and utility of the Rural District to, among other things, accommodate uses not suited to the Agricultural District and to serve as a buffer to productive agricultural lands. The language in SB546 SD2 strongly resembles some of the language that the Office of Planning had in their Rural redefinition bills in recent years.

Sections 8 through 11 (page 19, line 9 to 20) will need to be amended to accommodate the requirements found in HB3032.

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Statement of
ABBEY SETH MAYER
Interim Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON WATER, LAND, OCEAN RESOURCES AND HAWAIIAN AFFAIRS
AND
HOUSE COMMITTEE ON AGRICULTURE
Monday, March 24, 2008
11:00 AM
State Capitol, Conference Room 312

in consideration of
SB 546, SD 2
RELATING TO LAND USE.

Chairs Ito and Tsuji, Vice Chairs Karamatsu and Brower, and Members of the House Committees on Water, Land, Ocean Resources, and Hawaiian Affairs and Agriculture.

The Office of Planning (OP) supports the intent of SB 546, SD 2, and would support the bill with further amendments to clarify and strengthen the framework of policies and standards for the rural district. We defer to the Department of Agriculture as to the standards for the agricultural district.

Bill Intent

SB 546, SD 2 would amend Chapter 205, Hawaii Revised Statutes, to: (1) strengthen the use standards and increase the minimum lot size from one to five acres for the State Agricultural Land Use District; and (2) broaden the description and uses and increase the minimum lot size from one-half acre to one acre for the Rural District.

The Office supports the bill's two-pronged approach of tightening up Agricultural District policy and broadening Rural District policy to direct higher-value, non-agricultural uses away from agricultural lands in the Agricultural District and to accommodate non-urban, non-agricultural activities and uses on rural lands that are not classified or planned for agricultural use. Without this two-pronged approach, State efforts to implement the State constitutional mandate to promote agricultural development and protect agricultural lands from encroachment and increasing land values will be severely compromised.

We also support reducing the allowable density for the Agricultural District, as this is critical to moderating the cost of agricultural land for farmers. It is also very important that the density threshold adopted for the Rural District performs a similar function, but that it also enables effective clustering of rural residential uses and preservation of rural open space in keeping with rural character—too low a density threshold will result in an overall rural land use pattern and land values that resemble suburban development.

Concerns about the Bill

We are, however, concerned that the bill as written does not constitute a compelling or strong enough policy shift to produce the results desired. It is also critical that any policy change does not just transfer the prevalent practice of large-lot residential development from the Agricultural District to the Rural District, as this will just as surely threaten the character of existing rural villages and communities, the protection of open and natural landscapes, and the viability of rural economic activities and the affordability of our rural lands. Our specific concerns with SB 546, SD 2 are summarized below.

(1) The proposed amendments related to the Agricultural District are a step in the right direction, but are weak and lack additional criteria to curb the subdivision and development of lands for residential purposes.

(2) The proposed amendments to the Rural District provide greater flexibility and reduce allowable density, but as written, the bill fails to provide the counties with the flexibility they need to plan and manage rural lands. In particular, we recommend that permissible uses not be defined in State law, but rather State policy should define what is intended by the Rural District and define what is acceptable in terms of rural character and land use patterns, which the counties would use in defining uses at the county level.

(3) The bill needs clearer language as to the grandfathering of existing, non-conforming lot sizes and uses.

(4) Finally, while the bill seeks to "create a more viable Rural District that can absorb development pressures currently directed at the Agricultural District," it lacks the means to create an expanded Rural District and leaves unresolved the issue of existing non-farm residential uses located in the Agricultural District.

The Office believes with further amendment this bill could establish a stronger, more effective policy framework to guide rural and agricultural land use statewide. We would be happy to provide assistance to the committee in draft amendments to address these concerns.

Thank you for the opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR

HENRY ENG, FAICP
DIRECTOR

DAVID K. TANOUE
DEPUTY DIRECTOR

March 24, 2008

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

The Honorable Clift Tsuji, Chair
And Members of the Committee on Agriculture
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Ito, Tsuji and Members:

Subject: SENATE BILL 546 SD2
Relating to Land Use

The Department of Planning and Permitting **opposes** Senate Bill 546 SD2, which involves a number of significant changes to the state rural and agricultural districts. It changes the minimum lot size for lands in the state agricultural district from one acre to five acres, and increases the minimum lot size for the rural district. It introduces "subsistence farming", and expands the uses allowed in the rural district to include "rural towns and service centers."

We are concerned that this bill will create hundreds of nonconforming agricultural lots on Oahu because they are smaller than the proposed 5-acre minimum lot size.

However, we are more concerned that the proposed changes are premature given that designation of Important Agricultural Lands (IAL) has not occurred. Many of the proposals contained in Senate Bill 546 SD2 will affect both lands designated IAL and those that are not. We believe the determination of re-districting lands into the state rural district should be done after IAL designations have been made. As such the regulations for the rural district, such as those proposed in this Bill, should not be amended until we are at that crossroads.

Moreover, at the practical level, we see difficulty in enforcing the proposed provisions for "subsistence farming". While we do not oppose subsistence farming, our enforcement program does not include expertise in distinguishing between "only enough food to feed the family working on it" versus "de minimus agriculture." This proposal extends the difficulties we already have in enforcing the existing "farm dwelling" provision. We would graciously relinquish enforcement responsibility for this regulation to the state department of agriculture.

In addition, proposed section 205-4.5(h) is unclear. It apparently applies to the entire section dealing with permitted uses in the agricultural district. It states that this section does not apply to any development that has not been approved by the county as of July 1, 2007. What constitutes prior approval? Subdivision approval? Issuance of a building permit?

In short, this bill is premature, unclear, and will create enforcement problems for the counties. Please file Senate Bill 546 SD2.

Thank you for this opportunity to comment.

Very truly yours,

Henry Eng, FAICP Director
Department of Planning and Permitting

HE: jmf
sb546sd2-kh

HAWAII FARM BUREAU FEDERATION
2343 ROSE STREET
HONOLULU, HAWAII 96819

TESTIMONY ON
SB 546, SD2

HEARING BEFORE THE
COMMITTEE ON WATER, LAND, OCEAN RESOURCES AND HAWAIIAN AFFAIRS &
COMMITTEE ON AGRICULTURE

Chair Ito, Chair Tsuji and Members of the Committees

My name is Alan Takemoto, Executive Director of the Hawaii Farm Bureau Federation, a non-profit general agriculture organization that represents approximately 1,600 farm family members statewide.

We support the intent of SB 546, SD 2, with amendments, as we have serious concerns that seek to amend the definition of lands with the agricultural and rural districts.

We support the proposed change in minimum lot size for lands within the agricultural and rural districts as well as the clarification of agricultural activities and agribusinesses to be associated with farm dwellings.

However, we do not agree with the change of definition of the permissible uses in the agricultural district. We believe the original intent of the language in Section 205-4.5

> ".....propagated for economic or personal use."

was to recognize the use for personal purposes of crops a farmer grew, in addition to selling it in the marketplace. The "or" was not meant to imply that the use of the land would be solely for the farmer's benefit. Such use is a garden.

We therefore, object strongly to the proposed change of personal to "subsistence" and the addition of the definition of subsistence farming to be applied within the agricultural district in Section 205-4.5.
For futher clarification we suggest that the "or" replaced with "and" thereby setting a clear policy statement that lands within the agricultural district is for commercial agriculture. Personal use must be accessory to this use and cannot exist without an associated economic use. Therefore, suggested language in Section 205-4.5(a)(3) is:

> "Raising of livestock, including but not limited to poultry, bees, fish or other animal or aquatic life that are propagated for economic ~~or~~ **and** personal use."

Subsistence farming language is a recognized use within the rural district. Existing language in 205-2(c) includes "where small farms are intermixed with low density residential lots". We believe this language to include subsistence farming operations.

We believe the discussions about "Important Agricultural Lands" issue and efforts to promote and expand production agriculture are not about "subsistence farming" but farming that will provide for society so each individual can pursue a career of their choice without worrying about growing their own food. If this language is passed, all homeowners who grow a garden for their own use can fall in this category. Is it the policy of the State to provide benefits such as reduced property taxes and water rates for these individuals who grow food just for themselves and not the rest of society?

The issues Hawaii faces about what uses are agriculture and rural is not unique. The face of rural America is changing. On the mainland rural traditional meant farmland. This is no longer the case. The attached editorial from Hoosier Ag Today in Indiana last week speaks clearly to this.

In summary:

- all proposed reference to "subsistence farming" in the agricultural district should be removed.
- Substitute "<u>and</u> personal use" for "*or* personal use" in Section 205-4.5(3)

We respectfully request your support of this Bill with the proposed changes above. Thank you for this opportunity to provide our comments on this matter.

Sierra Club
Hawai'i Chapter
PO Box 2577, Honolulu, HI 96803
808.537.9019 hawaii.chapter@sierraclub.org

HOUSE COMMITTEE ON WATER, LAND,
OCEAN RESOURCES & HAWAIIAN AFFAIRS
HOUSE COMMITTEE ON AGRICULTURE
March 24th, 2008, 11:00 A.M.

(Testimony is 1 page long)

TESTIMONY OFFERING COMMENTS ON SB 546 SD2

Chairs Ito and Tsuji and members of the committees:

The Sierra Club, Hawai`i Chapter, with 5500 dues paying members statewide, offers the following comments on SB 546 SD2. Our overarching concern, however, is the possibility that this measure would be amended to include language that reduces Land Use Commission oversight of agricultural lands or otherwise weakens the deliberative decision making process now required for land use reclassifications.

First, the proposed amendment on page 9, lines 17 – 19 (proposed 205-4.5(h)) makes no sense and renders this section of our land use law meaningless:

> *(h) This section shall not apply to development of any land within the agricultural district which has not been approved by the respective counties as of July 1, 2007.*

Nearly all of the land in the agricultural district lacks "development…which has not been approved by the respective counties", so the section of law pertaining to "permissible uses within the agricultural district" no longer applies. This amendment should be deleted.

Second, we are concerned about the provision to allow clustering of houses, however. Some of the counties have been poor in enforcing the land use law, and this amendment may enable further abuse. Our concern is a landowner may simply "cluster" houses and keep large tracts of other "non-IAL" land fallow, creating a de facto village in the agricultural district. Similarly with the rural district, where a landowner could reclassify more agricultural land than necessary to the rural classification and then cluster the homes in an urban manner, leaving much of the rural untouched. If such high densities are desired, the landowner can use the existing public process and have the land reclassified to urban either before the Land Use Commission or by the county for areas under 15 acres.

Finally, we do appreciate that this measure offers some language to tighten the allowable uses on agricultural lands and increases the minimum lot size for the rural and agricultural districts. That makes good sense from a smart planning perspective. These districts are focused on non-residential activities, so a decreased density of housing is appropriate.

Thank you for the opportunity to testify.

From: Alan Murakami [mailto:almurak67@gmail.com]
Sent: Monday, March 24, 2008 12:03 AM
To: WLHtestimony
Subject: Testimony on SB 546, SD 2 - Hearing before WLH/AGR

HOUSE OF REPRESENTATIVES

THE TWENTY-FOURTH LEGISLATURE

REGULAR SESSION OF 2008

COMMITTEE ON WATER, LAND AND HAWAIIAN AFFAIRS

Rep. Ken Ito

Rep. Jon Riki Karamatsu

COMMITTEE ON AGRICULTURE

Rep. Clift Tsuji

Rep. Tom Brower, Vice Chair

DATE: Monday, March 24, 2008
TIME: 11:00 a.m.
PLACE: Conference Room 312

Testimony of Alan T. Murakami
Ph: 721-3070

I reluctantly **OPPOSE** SB 546, SD 2, although the concept of protecting agriculture from the worse consequences of allowing development like luxury residential subdivisions and supporting infrastructure to occur near true agricultural activity struggling to survive the competition for land and water these developments generate. This bill is supposed to protect viable agriculture, but falls short. The major problem is that it will make changes to the land use law without much consultation with Rural communities which will be most impacted by these changes. Although it raises the minimum lot size

- in the Rural District to 1 acre (instead of the current 1/2 acre), and
- in the Ag District to 5 acres (instead of the current 1 acre),

and requires supposed protections for actual agricultural activity nearby, it also permits a range of uses that may or may NOT be helpful to protecting adjacent agriculture, such as:

(A) Agricultural support services and processing;

(B) Cottage or craft industries;

(C) **Commercial, businesses, and establishments providing goods and services compatible with rural character and scale;**

(D) **Outdoor recreational uses;**

(E) Forestry;

(F) Passive open space; and

(G) Conservation areas.

A rural village or service center shall be physically compact with a well-defined edge, characterized by a core area having a mix of residential uses, public and commercial services, and economic activities. Physical development within a rural village or service center shall be compatible with the scale, historic character, and physical form of existing rural centers.

(the last two sentences are not UNDERLINED in the bill). The consequences of locating such activity near agriculture could be detrimental to such activity because of the potential for competition for the land and water resources such activity will generate.

This bill is a MIXED bag, and leaves one to guess what some of these vague terms will mean in terms of consequences on true agricultural activity.

Given the uncertainty left by the Legislature's incomplete consultations with the affected communities, the only real protection at this point is to ask for a moratorium on reclassifying any ag land, while the proper standards are worked out. Unfortunately, even the weak moratorium provisions of SB 2641 which did NOT pass this year, but is probably the best step to take, in view of the failure of the counties to implement the provisions of Act 205 (SLH 2005) which envisioned community advisory group meetings statewide to achieve consensus on how to amend Rural District standards as are proposed in this bill.

Without that consultation, this bill is premature in the absence of a moratorium.

The Better Alternative. The only rational approach is to:

- defer all the ad hoc legislation being thrown at the public under the disguise of identifying important ag lands, and
- invest in a facilitated community-based discussion amongst all important stakeholders in the agricultural and rural sectors to come up with a consensus approach to amending the standards and permissible uses in the Rural District,

which will be the key buffer between incompatible Urban land uses and true farming on Ag District lands.

This investment of time and money will reap more harmony and less conflict in future deliberations over land use in Hawai`i and promote more rational use of our lands for future generations of local residents. The failure of the counties to perform this function under Act 205 (SLH 2005) signaled the start of the confusion and *ad hoc* proposals now being made 3 years later. The time to stop the madness is now.

Hold this bill and *instead support the grant-in-aid request being supported by a broad coalition of advocates for the protection of a sustainable agricultural economy in Hawai`i.* That proposal is embodied in the GIA proposal submitted by the Hawai`i Rural Development Council, in partnership with the Hawai`i Ag Roundtable and the Hawai`i Agricultural Alliance. It proposes to convene a set of facilitated community discussion on the critical issues and challenges facing a sustainable agricultural sector in Hawai`i. I would be pleased to elaborate on this proposed format should you need more information.