

HB 1436

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 COMMITTEE ON EDUCATION AND HOUSING
FRIDAY, MARCH 20, 2009
1:30 p.m.
Room 225

HOUSE BILL NO. 1436, HOUSE DRAFT 1
RELATING TO AGRICULTURE

Chairperson Sakamoto and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 1436, House Draft 1 that amends Section 205-4.5(a)(5) by adding educational facilities as a permissible use on agricultural lands with Land Study Bureau "A" and "B" ratings, and redefines "...buildings that are necessary for agricultural practices."

The Department of Agriculture recommends the existing language found in Section 205-4.5(a)(5) be retained in its entirety. We oppose adding "educational facilities," regardless of size, as a permissible use on agricultural lands with Land Study Bureau "A" and "B" ratings. We are very concerned that permitting uses not directly related to agricultural production on the best agricultural lands may adversely affect the ongoing process of identifying and designating Important Agricultural Lands. The appropriate mechanism to review requests for educational facilities in the Agricultural District is the Special Permit (Section 205-6).

We find the redefinition of "buildings that are necessary for agricultural practices" to be confusing. Page 2 of House Standing Committee Report No. 428, dated February 19, 2009, states that "...educational facilities" should be defined to clarify that larger schools are still subject to the special permit process, and that **the provision applies**

only to those educational facilities that are appurtenant to agricultural operations“ (emphasis added). We believe that as found in House Draft 1, educational facilities are not intended to be appurtenant to agricultural operations, as the definition of appurtenances is "...operational infrastructure of the appropriate type and scale for the commercial storage and distribution, and other similar handling of crops, game, fish, or livestock, including equipment and agricultural products;" (page 2 lines 11-15).

We do, however, support adding as a permissible use, agricultural education programs that are accessory and secondary to farming operations. We provide for your consideration, an amendment defining and establishing agricultural education programs.

From page 6, line 8:

"(16) Agricultural-energy facilities, including appurtenances necessary for an agricultural-energy enterprise; provided that the primary activity of the agricultural-energy enterprise is agricultural activity. To be considered the primary activity of an agricultural-energy enterprise, the total acreage devoted to agricultural activity shall be not less than ninety per cent of the total acreage of the agricultural-energy enterprise. The agricultural-energy facility shall be limited to lands owned, leased, licensed, or operated by the entity conducting the agricultural activity.

As used in this paragraph:

"Agricultural activity" means any activity described in paragraphs (1) to (3) of this subsection.

"Agricultural-energy enterprise" means an enterprise that integrally incorporates an agricultural activity with an agricultural-energy facility.

"Agricultural-energy facility" means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

"Appurtenances" means operational infrastructure of the appropriate type and scale for the economic commercial generation, storage, distribution, and other similar handling of energy, including equipment, feedstock, fuels, and other products of agricultural-energy facilities; [~~or~~]

- (17) Construction and operation of wireless communication antennas; provided that, for the purposes of this paragraph, "wireless communication antenna" means communications equipment that is either freestanding

or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection[-] ; or

(18) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere with surrounding farm operations. For the purposes of this section, "agricultural education programs" means activities or events designed to promote knowledge and understanding of agricultural activities and practices conducted on a farming operation as defined in section 165-2."



DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
ABBEY SETH MEYER
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON EDUCATION AND HOUSING
Friday, March 20, 2009
1:30 PM
State Capitol, Conference Room 225

in consideration of
HB 1436, HD 1
RELATING TO AGRICULTURE.

Chair Sakamoto and Vice Chair Kidani and Members of the Senate Committee on Education and Housing.

House Bill 1436, HD 1 amends Section 205-4.5, Hawaii Revised Statutes to allow within the State Agricultural District, educational facilities, as well as buildings that are appurtenances of operations for the cultivation of crops, game and fish propagation, and raising livestock. Our Office opposes educational facilities within the Agricultural District without a Special Permit, but we support the revisions to allow buildings necessary for the operations of farming, game and fish propagation and raising livestock.

Under the current statute, schools require a Special Permit in the State Agricultural District. The Special Permit process allows consideration of “unusual and reasonable” uses proposed in either the State Agricultural or Rural District. The Special Permit is the most appropriate mechanism where a proposed use that might directly conflict with existing or potential agricultural activity can be allowed through a public process. The allowance of educational facilities, such as schools, within the Agricultural District is better undertaken via a Special Permit, because the impacts to the neighborhood can be very significant. For example, the Kamehameha School in Keaau, on the Big Island was the result of a Special Permit. This project has been complete for many years, but its effects on traffic and drainage are still being resolved.

The Special Permit process allows decision-makers and the public the opportunity to scrutinize proposed activities and would minimize the adverse impacts to the State Agricultural District.

OP and the Department of Agriculture are proposing the following language to accommodate educational pursuits in Section 205-4.5.

1. Retain existing language of Section 205-4.5(a)(5):

“(5) Public institutions and buildings that are necessary for agricultural practices;”

2. Insert new sub-paragraph (6):

“(6) Agricultural education programs conducted on a farming operation as defined in section 165-2, for the education and participation of the general public; provided that the agricultural education programs are accessory and secondary to the principal agricultural use of the parcels or lots on which the agricultural education programs are to occur and do not interfere with surrounding farm operations. For the purposes of this section, “agricultural education programs” means activities or events designed to promote knowledge and understanding of agricultural activities and practices conducted on a farming operation as defined in section 165-2.”

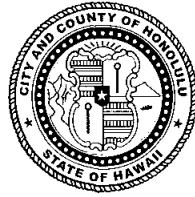
3. Renumber subsections thereafter.

Thank you for the opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



DAVID K. TANOUE
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ROBERT M. SUMITOMO
DEPUTY DIRECTOR

March 20, 2009

The Honorable Norman Sakamoto, Chair
and Members of the Committee on Education
and Housing
State Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Sakamoto and Members:

**Subject: House Bill 1436, HD1
Relating to Agriculture**

The Department of Planning and Permitting (DPP) has **comments** on House Bill No. 1436, HD1 which would permit educational facilities and buildings that are agricultural appurtenances on lands within the state agricultural district, with soils classified by the land study bureau as overall (master) productivity rating A or B.

We believe that the proposed addition of the definition of "appurtenances" is helpful and is consistent with the definitions provided in subsections 205-4.5(a)(15) and (16) for biofuel processing facilities and agricultural-energy facilities.

However, we have serious reservations about allowing educational facilities, even educational facilities that are appurtenant to agricultural operations, as a permitted use in the agricultural district, especially on Class A and B rated lands. They should be allowed as a use through the approval of a special permit (Section 205-6, HRS). Through such a public review before the Planning Commission, impacts on surrounding property, public infrastructure, such as water, wastewater, drainage, traffic and public services such as fire and ambulance, can be thoroughly evaluated and addressed.

Thank you for the opportunity to testify.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David K. Tanoue", is written over a horizontal line.

David K. Tanoue, Director
Department of Planning and Permitting

DKT: jmf
hb1436hd1-kst.doc



KAMEHAMEHA SCHOOLS

TESTIMONY TO THE SENATE COMMITTEE ON EDUCATION AND HOUSING

By

Kapu C. Smith, Senior Land Asset Manager
Endowment/ Land Assets Division

Hearing Date: Friday, March 20, 2009
1:30 p.m., Conference Room 225

Dear Chair Sakamoto, Vice Chair Kidani and Committee Members:

RE: Testimony in Support of House Bill No. 1436 HD1 Relating to Agriculture

I am Kapu C. Smith, Senior Land Asset Manager for Kamehameha Schools' Kawaihoa Plantation in Waialua, Oahu. I am here to testify in **support** of HB 1436 HD1 because it will clearly give farmer's the ability to provide educational programs on farming as a permitted use within the State agricultural district. As it currently stands, there is no clear authorization for a farmer to do so. This means that the farmer's only option is to pursue a special use permit at either the county level and or state level.

We became aware of this problem when both current and new farmers asked to include planned educational facilities as part of their agricultural lease terms. Our review of the statutory language indicates that while there are potential arguments in favor of educational classes on farming as an activity or use related to farming, it can also be argued that the current language of the statute means only activities or uses associated with active farming. As such, until this clarification is made we are unable to allow our lessees to undertake planned educational facilities for farming without the completion of a special use permit.

In reality, a special use permit for most farmers is not an option because of the cost and time involved. As such, educational programs for farming on farms will not happen. We believe that HB 1436 HD1 will remedy this restraint and provide a valuable tool to increase Hawaii's food self sufficiency by supporting on farm educational programs which encourage career paths in agriculture, raise public awareness and increase demand. Providing an on farm experience is the best method of connecting people to farming and farmers and teaching them where there food comes from and what it takes to grow it.

I should also note that the Department of Agriculture and Office of State Planning had concerns regarding the language of this bill and proposed an amendment which was used in the Senate companion bill (SB 1153 SD1). We concur with the proposed amendment because it addresses their concerns while meeting the purpose.

Thank you for the opportunity to testify in support of HB 1436 HD1.



Hawaii Agriculture Research Center

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TESTIMONY BEFORE THE SENATE COMMITTEE ON EDUCATION AND HOUSING

HOUSE BILL 1436HD1

Relating to Agriculture

March 20, 2009

Chairman Sakamoto and Members of the Committee:

My name is Stephanie Whalen. I am Executive Director of the Hawaii Agriculture Research Center (HARC). I am testifying today on behalf of the center and our research and support staff.

HARC strongly supports House Bill 1436 HD1.

This measure would allow educational facilities and buildings appurtenant to farming on lands within the agricultural districts. This will provide support to Hawaii agriculture and is in keeping with the intent of keeping agricultural areas for farming. HARC believes in the importance of educating school children about where their food comes from and fostering an appreciation for agriculture and the science involved in modern farming. We ourselves are looking forward to providing these types of educational opportunities at our Kunia facility.

While we do not favor the current practice which allows major public schools on agricultural land because of the incompatibilities of production agricultural operations and the presence of children, we do support allowing specialized facilities where the purpose and sole intent is for agricultural educational experiences for school children.

We agree the language needs to be carefully worded to prevent unintended operations from taking advantage of this proposal.

Thank you for the opportunity to testify in support of Hawaii's agricultural needs.