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Statement of
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Department of Business, Economic Development, and Tourism

before the

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS

Friday, February 27, 2009

9:30 AM

State Capitol, Conference Room 016

in consideration of

SB 1152

RELATING TO AGRICULTURAL LANDS.

Chair Taniguchi and Vice Chair Takamine, and members of the Senate Committee on Judiciary and Government Operations.

The Office of Planning opposes SB 1152, which would impose a one hundred year moratorium on the development of agricultural lands located in the area bounded by Wahiawa, Kaena Point, Kahuku, and Kaneohe on the north shore and windward coast of Oahu for which general planning has not commenced.

We understand the desire to provide an increased level of protection for the State's agricultural lands. While we recognize the urgency for preventing the unplanned conversion of agricultural lands to non-agricultural uses, we do not believe this is the appropriate mechanism for addressing this complex issue.

Rather, OP recommends comprehensive planning and market-driven solutions to the issue of non-agricultural uses in the State Agricultural District such as establishing agricultural tax incentives to promote agricultural investment and measures to offset the risks and costs of agricultural operations. Agricultural incentives are critical to the viability of the agricultural industry and farmers, and are key to initiating the process of designating important agricultural lands. Promoting agricultural businesses and protecting agricultural water systems are essential to maintaining the Wahiawa, Kaena Point, Kahuku and Kaneohe lands for agricultural production.

Also, revisions to the State Agricultural and Rural District allowable uses and densities would more effectively limit development pressure on agricultural lands, while encouraging for more effective planning processes so that rural areas will retain their rural character. SB 866, for example, recommends changes to the State Rural District, for the aforementioned reasons.

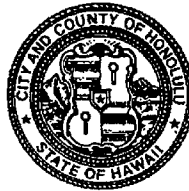
The Office of Planning notes that this moratorium on building or development projects on A and B lands in the agricultural district does not apply to permissible uses. The moratorium, therefore, would only prevent non-permissible uses allowed by special permit, such as landfills, quarries, and educational institutions. Permissible developments such as qualifying agricultural subdivisions would still be allowed. The bill also does not appear to prohibit the reclassification of agricultural lands to the urban district, which could provide another avenue for development. As such, the Office of Planning feels that this bill would not effectuate its intended purpose.

Thank you for the opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING
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DAVID K. TANOUE
DIRECTOR
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DEPUTY DIRECTOR

February 27, 2009

The Honorable Brian T. Yamaguchi, Chair
and Members of the Committee on Judiciary
and Government Operations
State Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

**Subject: Senate Bill No. 1152
Relating to Agricultural Lands,**

The Department of Planning and Permitting **opposes** Senate Bill No. 1152, which would set a one hundred (100) year moratorium on any building or development on agricultural lands for which general planning has not commenced. The bill is overly vague and could result in significant litigation.

The stated concern appears to be the reduction in cultivated land and concerns over housing in the state agricultural district. If the bill is supposed to stop development in general, we do not see how this addresses the concerns. On the other hand, under criteria (4), the bill stipulates that the moratorium only affects projects not permissible within the agricultural district. Since we do not approve projects that are in conflict with Section 205-4.5, HRS, we do not see how this bill has any effect on projects. Some of our other concerns are as follows:

- There is no justification for application to 2 senatorial districts only. Based on the concern, should the moratorium apply to all agricultural lands?
- Subsection (1) states that the bill does not apply to any project "for which general planning has not commenced." A definition of "general planning" is needed. Is it when the landowner or developer decides to start planning a project?
- Section 205-4.5, HRS, makes reference to special use permits. We assume that applications for special use permits can still be processed and approved and building permits issued for them, provided the proposal is in compliance with the other cited criteria.
- Generally, a moratorium is established to provide only sufficient time to resolve a public problem, and no more. Senate Bill 1152 makes no such provision, but essentially creates a permanent restriction. It becomes effectively, an amendment to Chapter 205. We question whether a moratorium is the

The Honorable Brian T. Taniguchi, Chair
and Members of the Committee on Judiciary
and Government Operations

Re: Senate Bill No. 1152

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appropriate means to change regulations, rather than a direct amendment to the problematic regulation.

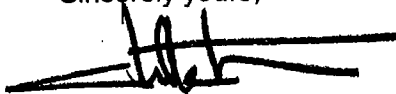
- Finally, Section 2(a)(3) of the bill: Agricultural land "located in the State of Hawaii" should be changed to "in senate districts twenty-two and twenty-three" for consistency

The department strongly supports the preservation and strengthening of our agricultural industry. We are aware of the concern over "gentlemen's estates" in agricultural areas. You may be interested to know that we already have a lot coverage limit on housing in agricultural districts, and have an affidavit requirement at the time of building permit issuance that all housing in the agricultural district is "farm dwellings." We are also considering additional zoning measures to further discourage "gentlemen estates". They include a limitation on the size of the dwelling, and a minimum "wait time" between when a lot is created and a building permit for a dwelling on the lot can be issued. These requirements may accomplish the same intent, but without the concerns over Senate Bill 1152.

In sum, please file this bill.

Thank you for the opportunity to testify.

Sincerely yours,



David K. Tanoue, Director
Department of Planning and Permitting

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