

TESTIMONY
GM 338

Duane Kanuha
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March 16, 2010

Honorable Senator Clayton Hee, Chairperson
and Senate Committee Members
Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs
State Capital
Honolulu, Hawaii 96813

Dear Senator Hee and Committee Members,

As a Gubernatorial reappointee to the State Land use Commission, you have asked me in a communication dated March 9, 2010 (attached herewith) to respond and/or comment on two concerns expressed by former Governor George Ariyoshi in a recently published booklet; one relating to the public interest and participation in Land Use Commission (LUC) quasi-judicial proceedings, and the second, dealing with the development of prime agricultural land.

I am abundantly familiar with these two issues, having served as Planning Director for Hawaii County; Assistant Land Agent for the Land Management Division of DLNR, Land Director for the former Hamakua Sugar Company, and the owner of a 3-acre farm lot in Panaewa in Hilo where I reside and upon which I have 50 macadamia nut trees along with various citrus, avocado, ulu and other agricultural plantings.

The first concern you are soliciting my comment on is how the public interest is represented or not represented under the LUC's legislatively mandated quasi-judicial proceedings.

Having come full circle in working with and now under the LUC's quasi-judicial proceedings, my observation is that the public interest is adequately represented both within and outside of the LUC's proceedings in several ways. First, the commission's operating procedure allows for public testimony on all petitions before the commission. Second, in more recent times, public interest groups or individual have successfully been granted intervener and party standing to participate in the proceedings, and the public interest intervention, be it through legal counsel or self representation, has provided, in my opinion, a refreshing additional viewpoint that the commission has seriously taken into consideration. Third, over time, the LUC has had several of its decisions reversed or remanded

after judicial review, primarily due to challenges brought by citizens groups or public interest groups.

On the other hand, I do feel that it is timely to re-visit not only the quasi-judicial proceedings which the LUC is mandated to operate under, but the role of the LUC in hearing each and every petition which exceeds 15 acres. The LUC's initial role was to define and determine which of the four land use classifications – urban, rural, agriculture, and conservation – each and every parcel of land in the State was to be designated. That task was implemented over 35 years ago and has continued to be refined over time. Also during that time, there has been more comprehensive public and private master planning resulting in infilling and defining of urban growth patterns. With the adoption of statewide plans, County General Plans, and specific regional and/or development plans, does the LUC actually need to be involved in petitions that comport to these levels of comprehensive planning? I think not. The LUC role would be more effective and meaningful if it was to shift to that of dispute resolution and final decision making in state land use reclassifications where there is disagreement among the various parties, including parties representing the public interest, or where major conflicts of land use (i.e. affordable housing or preserving prime agricultural land) that may impact Statewide interests necessitate a higher level of land use oversight.

The second question that you are requesting my comment or response on is the issue of protection of prime agricultural lands given the absence of agreement over definition, identification, and management implementation.

Although there is much discussion as to what constitutes prime agricultural land, the original language of the State Land Use Law in Chapter 205, HRS, provided, in my opinion, clear guidance.

As we all know, there are millions of acres throughout the State that were classified as “agriculture”. Within this broad classification, however, classification of lands with the agricultural districts were further separated into those lands within the land study bureau overall productivity rating of class A or B (highest) and other classifications (C, D, E, or U). The uses of lands with A or B classifications were, and continue to be, much more restrictive, and therefore, these lands would clearly constitute the foundation for “prime agricultural” lands.

Over time, however, demand for urban expansion commensurate with Hawaii's ever increasing population placed more and more pressure for the conversion of agricultural lands into urban uses for housing and other supportive services. Concurrently, the demise of the sugar industry resulted in multiple economic rippling impacts from the loss of many, many agricultural related jobs to the availability of extensive acres of former sugar plantation land for agricultural or other uses.

It is thus unfortunate, in my opinion, that legislative and judicial intervention in the land use decision making process has hindered rather than enhanced good decision making. A legislative bill in 1991, for example, perhaps inadvertently resulted in combining the permitted uses for all the land study bureau classifications together which essentially resulted in the more restrictive uses reserved for class A or B lands being applicable to the lower classes (C, D, E, and U) as well. "Farm dwellings" which were the only kinds of dwellings permitted in class A and B now became the only kinds of dwellings permitted in the lower land study bureau classifications, resulting in major shifts in housing options since single family dwellings were now no longer permitted uses in all classes, and movements to legitimize the uses of single family dwellings as "farm dwellings" and spawning the proliferation of "fake farms".

The courts used this legislative shift in the land use law to form the basis of agricultural related case law such as in *Hokulia* and the Land Use Commission also had no choice but to issue similar declaratory orders to the same effect.

Additionally, each County had been administering the State Land Use Law in the agricultural district in slightly different ways depending on how their respective zoning and subdivision laws were structured. Even today, most counties are loath to defend why their constituents cannot construct a single family home on lands whose soils, if any, are clearly agriculturally fair to poor.

Clearly, applying uniform classification and use standard to fit the geological, hydrological, and climatology of each County and specific districts within that County would tend to create such disparity in administrative application.

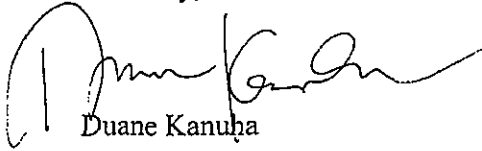
With that background and in response to the question of protection of prime agricultural lands, from a land use planners standpoint, the past 15 years or so have presented a classical application of planning theory, and that is that good planning does not, nor is supposed to, provide conclusions to land use decision making; good planning merely narrows the choices for decision making.

A colleague and former Planning Director once illustrated the foundation of the planning dynamic to me as being like a metronome...planning is keeping the metronome from wildly swinging from side to side, with the objective of keeping the swing and rhythm moving but in a moderate and manageable fashion.

We are at that juncture right now on the LUC for the counties of Maui and Oahu, where choices are being considered to either retain prime agricultural land or provide more lands for housing and other urban services...convert Conservation designated lands to higher or better uses...or revert Urban designated lands acquired or condemned for public purposes back into the Conservation district.

Senator Hee and members of this committee, these are challenging and serious decision making times for our state. Having worked with, around and now within the State Land Use Commission, has been a tremendous opportunity from a professional perspective. I have greatly enjoyed my past term with the Land Use Commission; I feel I have been a productive Commissioner; and I look forward to serving for another term.

Sincerely,



Duane Kanuha

Cc Senator Jill Tokuda (sentokuda@capital.hawaii.gov)
 Senator Robert Bunda (senbunda@capital.hawaii.gov)
 Senator Carol Fukunaga (senfukunaga@capital.hawaii.gov)
 Senator Russell Kokubun (senkokubun@capital.hawaii.gov)
 Senator Dwight Takamine (sentakamine@capital.hawaii.gov)
 Senator Fred Hemmings (senhemmings@capital.hawaii.gov)



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

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THEODORE E. LIU
DIRECTOR
PEARL IMADA IBOSHI
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Statement of
THEODORE E. LIU
Director
Department of Business, Economic Development & Tourism
before the
COMMITTEE ON WATER, LAND, AGRICULTURE & HAWAIIAN AFFAIRS
March 24, 2010
2:45 p.m.
State Capitol, Conference Room 229

in consideration of
GM 338
SUBMITTING FOR CONSIDERATION AND CONFIRMATION
TO THE LAND USE COMMISSION,
GUBERNATORIAL NOMINEE, DUANE KANUHA
FOR A TERM TO EXPIRE 6-30-2013.

Chair Hee, Vice-Chair Tokuda, and Members of the Senate Committee on Water, Land, Agriculture and Hawaiian Affairs.

As the Director of the Department of Business, Economic Development and Tourism, to which the Land Use Commission is administratively attached, I offer my strong support for the reappointment of Duane Kanuha to the Land Use Commission ("Commission").

By way of background, Duane Kanuha is the Executive Manager for the Surety Kohala Corporation, a company that holds and manages over 5,000 acres of land in North Kohala on the Big Island, among its many national and international interests. Mr. Kanuha also is responsible for coordinating the investment opportunities for Surety Kohala's portfolio throughout Hawaii, the continental U.S., the Far East, and Europe.

Locally, Mr. Kanuha is one of the managers of the Kohala Conservation Trust Project, a conservation oriented project encompassing over 7,000 acres of land in North Kohala, and is the Executive Vice President of the Kohala Ditch Company. The latter provides irrigation water for agricultural uses in North Kohala.

Prior to his employment with Surety Kohala and its predecessors, Duane Kanuha served as Planning Director for Hawaii County, among other public positions. He also is a founding member of the Hawaii Island Native Hawaiian Chamber of Commerce and served on the Na Ala Hele Hawaii Advisory Council among his community and cultural work.

Mr. Kanuha was previously confirmed by the Senate for a term on the Commission. On behalf of the Department of Business, Economic Development and Tourism, I thank you for the opportunity to testify in strong support of Mr. Kanuha's confirmation to the Land Use Commission.

LINDA LINGLE
Governor

JAMES R. AIONA, JR.
Lieutenant Governor

THEODORE E. LIU
Director

PEARL IMADA IBOSHI
Deputy Director



ORLANDO "DAN" DAVIDSON
Executive Officer

LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

March 24,, 2010

Statement of
Orlando (Dan) Davidson
Executive Officer, Land Use Commission
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON WATER, LAND, AGRICULTURE, & HAWAIIAN AFFAIRS
Wednesday, March 24 2010
2:45 p.m.
State Capitol, Conference Room 229

in consideration of
GM 338
SUBMITTING FOR CONSIDERATION AND CONFIRMATION
TO THE LAND USE COMMISSION, GUBERNATORIAL NOMINEE
DUANE KANUHA

To the Honorable Clayton Hee, Chair, and the Honorable Jill Tokuda, Vice Chair,
and Members of the Senate Committee on Water, Land, Agriculture & Hawaiian Affairs.

My name is Dan Davidson, and I am the Executive Officer of the Land Use Commission ("LUC"), and on behalf of the LUC, I am here to respectfully request that this Committee favorably consider the nomination of Duane Kanuha to serve as Commissioner for an additional term ending on June 30, 2013.

Mr. Kanuha has a combined private sector/public sector background that is valuable to the entire Commission. In addition to his business responsibilities as outlined in his resume, Mr. Kanuha is one of the managers of the Kohala Conservation Trust Project, a conservation oriented project encompassing over 7,000 acres of land in North Kohala., He also is the Executive Vice President of the Kohala Ditch Company. The latter provides irrigation water for agricultural uses in North Kohala.

Prior to his employment with Surety Kohala and its predecessors, Duane Kanuha served as Planning Director for Hawaii County, among other public positions. This experience allows him to understand on a direct basis the county planning perspective on matters before the Commission.

Mr. Kanuha also is a founding member of the Hawaii Island Native Hawaiian Chamber of Commerce and served on the Na Ala Hele Hawaii Advisory Council among his community and cultural work.

Serving on the LUC requires a tremendous commitment in terms of time and priorities, more so than most other boards and commissions, and Mr. Kanuha has already demonstrated commitment to fulfilling his responsibilities as a Commissioner.

Mr. Kanuha is highly respected by his fellow Commissioners, and we are confident given the opportunity, that he will continue to serve on the LUC with distinction.

For these reasons, we respectfully ask for your favorable consideration of Mr. Kanuha's nomination to serve on the Land Use Commission.

Thank you for this opportunity to testify before this Committee.

Testimony Presented Before the
Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs Committee

March 24, 2010 at 2:45, Capitol Rm 229

From: Kevin Kelly
Kahuku, Hawaii 96731

GM338: Submitting for consideration and confirmation to the Land Use Commission (LUC),
Gubernatorial Nominee, DUANE KANUHA, for a term to expire 6-30-2013.

Chair Hee, Vice Chair Okuda and Members of the Senate Committee on Water, Land, Agriculture, and
Hawaiian Affairs Committee

This testimony is in opposition to the reappointment of Duane Kanuha as a member of the LUC. Over
the past few years he, along with the rest of the LUC members, have failed on numerous occasions to
fulfill their obligation to citizens of the state and by their inaction have encouraged continued land
development and speculation at the Turtle Bay Resort property on the North Shore of Oahu.

This is the same property that in 2008 your SB2423 "Direct(ed) the governor, or the governor's designee,
to acquire lands owned by Kuilima Resort Company, Oaktree Capital, LLC, and their successors in
interest, commonly known as Turtle Bay Hotel and Resort located in Kahuku, Oahu." and that this WTL
committee passed unanimously. Today Act 140 remains unfulfilled.

In April 2008 a citizen watchdog group filed a motion with the LUC that seeks to revert 236 acres of
resort property back to its original agricultural zoning. The motion specifically requests the issuance of a
show cause order to the owner of Turtle Bay, to explain why, after twenty five years of inaction, various
speculators and would-be developers have not met the conditions of the land use permit that allowed
for resort development and why the LUC should not revert the property to its original classification.

Meanwhile, without fear of regulation or oversight from the state, the owners, working under
foreclosure, were seeking final subdivision approval from the City and County of Honolulu's Department
of Permitting and Planning (DPP) that may increase the intrinsic value of the property for future
speculators. In September 2009, the developer was granted an unprecedented fifth, discretionary
subdivision permit extension from the DPP and in February 2010, the consortia of investors who had
foreclosed on Oaktree Capital, acquired the property through a deed in lieu of foreclosure transaction.
The new out-of-state speculators, Credit Suisse, Wells Fargo, and other investors, have stated that they
would "hold the property for at least five years" and that "There are no immediate plans to build any
additional hotels or condominiums at the resort." (PBN 2/23/10). This is exactly the speculative, land-
squatting behavior the LUC is supposed to prevent.

The reason Mr Kanuha should not be reconfirmed as a member of the LUC is that the LUC is not acting in
the interests of the people of the state. In eight (8) meetings over almost two years, the LUC has been
unable to decide to issue an order to show cause in this case, much less proceed with those hearings.
For two years Mr Kanuha has failed to act and his behavior on this commission should not be rewarded
with approval of his re-nomination. New membership on the LUC is warranted.

Thank you for this opportunity to testify.

From: JOHN MICHAEL WHITE [JMW@HawaiiLand.com]
Sent: Monday, March 22, 2010 12:16 PM
To: WTLTestimony
Subject: COMMITTEE ON WATER, LAND, AGRICULTURE AND HAWAIIAN AFFAIRS HEARING
MARCH 24, 2010 RE CONSIDERATION/CONFIRMATION OF MR. DUANE KANUHA FOR
HAWAII LAND USE COMMISSION

March 22, 2010

To: The Committee on Water, Land, Agriculture and Hawaiian Affairs

Attention: Honorable Senator Clayton Hee, Chair, Honorable Jill N. Tokuda, Vice Chair

Re: Consideration/confirmation of Mr. Duane Kanuha for Hawaii Land Use Commission

Aloha Honorable senators Hee, Tokuda and committee members,

I strongly recommend your consideration and confirmation of Mr. Duane Kanuha to the State of Hawaii Land Use Commission. Mr Kanuha is highly qualified for this position, due to his many years as a staff planner for the County of Hawaii, where he eventually became the director of planning for the county and particularly considering his years of dedication to the state of Hawaii as a member of Hawaii's Land Use Commission. Mr. Kanuha's service to the community, over many years, has been exemplary. Please consider and confirm him.

Mahalo,

John Michael White
JMW:m

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Sender ID for reply:

HAWAII LAND COMPANY

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Phone: Oahu island 808-523-1000
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Phone: Hawaii island 808-880-1010
E-Mail: JMW@HawaiiLand.com

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From: Richard Ha [richard@hamakuasprings.com]
Sent: Tuesday, March 23, 2010 9:29 AM
To: WTLTestimony
Subject: Re-appointment of Duane Kanuha to the Land Use Commission

Mar 23, 2010

The Honorable Senator Clayton Hee
Chairperson
Committee on Water, Land, Agriculture and Hawaiian Affairs

Re-appointment of Duane Kanuha to the Land Use Commission

Aloha Chairperson Hee
and Members of the Committee on Water, Land, Agriculture and Hawaiian Affairs

I am submitting this testimony in support of the re-appointment of Duane Kanuha to the Hawaii State Land Use Commission. I know that you all are aware of Duane's professional credentials.

I have known Duane Kanuha for more than 20 years. He is a person I can do business with on a handshake. It is not generally known that he was one of the founders of the adopt-a-class project at Keaukaha Elementary School. That is the community project where the kids get to go on excursion sponsored by community members.

I asked him to help us put together a community framework to allocate the \$1 million annual contribution of the Thirty Meter Telescope for keiki education.

Please re-appoint Duane Kanuha. He is solid. I always seek his opinion about things.

Aloha

Richard Ha
President
Hamakua Springs Country Farms

NORMAND R. LEZY
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March 23, 2010

Via Email: wlttestimony@capitol.hawaii.gov

Senator Clayton Hee and Committee Members
Committee on Water, Land, Agriculture, and Hawaiian Affairs
Hawaii State Capitol
417 South Beretania Street, Room 228
Honolulu, Hawaii 96813

Re: GM338; Confirmation of Duane Kanuha as a State LUC Member

Dear Senator Hee and Committee Members:

I support the confirmation of Duane Kanuha for reappointment as a State Land Use Commission member.

Mr. Kanuha brings a unique combination of skill and perspective to his work as Commission member. He combines skill in the substantive areas of land use planning and development with perspective on cultural and community concerns as a Native Hawaiian. I can say, without reservation, that what Mr. Kanuha brings to the Commission and the service that it provides could not be easily replaced.

I hope you will agree with me, as I believe my fellow commissioners would support, that Mr. Kanuha is an asset to the Commission and confirm his reappointment. Thank you for your consideration of my written testimony.

Aloha,

//S// Normand Lezy

Normand Lezy

NRL:ara

TESTIMONY
GM 338
(END)