

LINDA LINGLE  
Governor



State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
1428 South King Street  
Honolulu, Hawaii 96814-2512

**SANDRA LEE KUNIMOTO**  
Chairperson, Board of Agriculture

**DUANE K. OKAMOTO**  
Deputy to the Chairperson

WRITTEN TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS  
THURSDAY, FEBRUARY 18, 2010  
9:30 a.m.  
Room 211

SENATE BILL NO. 2780, SENATE DRAFT 1  
RELATING TO AGRICULTURAL LANDS

Chair Kim, Vice Chair Tsutsui, and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2780, Senate Draft 1. The Department of Agriculture offers comments.

The purpose of this bill is to carry out Article XI, Section 3 of the Hawaii Constitution but limits the effect of the amendments to Oahu. As the constitutional mandate is statewide, so should be the effect of any proposed amendments.

The bill amends Chapter 519 (real property leases) by mandating an extension of leases of private agricultural land entered into after July 1, 2010, if these leases provide for renegotiation and the lessees have made or plan to make substantial improvements to the leased lands. The extension of the existing lease in this situation is to be no less than 75 percent of the original lease term; however the lessor may agree to a shorter term if offered by the lessee; and any additional terms and conditions agreed upon by the parties shall be "reasonable".

The amendments proposed in Senate Draft 1 appear to address the concern that the mandatory lease extension as originally proposed was an unconstitutional impairment of existing contracts. However, we have two other concerns that are not fully addressed in Senate Draft 1:

1. It appears this bill would not apply to those leasehold farms such as truck farms that have no “substantial improvements” other than irrigated and planted fields (what is substantial?)
2. This amendment may have the adverse unintended consequence of causing owners of agricultural lands with “A” and “B” soils to hesitate offering leases with provision for renegotiation, or not allow “substantial improvements” to the leased lands.

Further, this bill amends Section 205-3.1 by repealing the counties authority to approve boundary amendment petitions for agricultural parcels less than 15 acres and containing “A” and “B” rated soils. The amendment to Section 205-4 prevents the Land Use Commission (LUC) from reclassifying agricultural lands with “A” and “B” ratings if they meet four criteria to protect agricultural activities and resources from urbanization. We will defer to the counties and the LUC on the effect of these proposed changes and note that the proposed amendments to statutes appear to be in response to concern that prime agricultural lands and bona fide farming activities are being inadequately protected, and that the counties are not fulfilling their role as described in Act 183. County identification of potential IAL is fundamental to protecting agricultural land as intended in the IAL Act. To date, only Kauai County has begun a process to identify potential IAL in consonance with the process described in the IAL Act.

LINDA LINGLE  
Governor

JAMES R. AIONA, JR.  
Lieutenant Governor

THEODORE E. LIU  
Director

MARK K. ANDERSON  
Deputy Director



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

FEB 17 2010

ORLANDO "DAN" DAVIDSON  
Executive Officer

BERT K. SARUWATARI  
Planner

SCOTT A.K. DERRICKSON, AICP  
Planner

FRED A. TALON  
Drafting Technician

Statement of  
**ORLANDO "DAN" DAVIDSON**  
Executive Officer, State Land Use Commission  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEE ON WAYS AND MEANS**

Thursday, February 18, 2010  
9:30 AM  
State Capitol, Conference Room 211  
in consideration of  
**SB 2780, SD1**  
**RELATING TO AGRICULTURAL LANDS**

Chair Kim, Vice Chair Tsutsui and Members of the Senate Committee on Ways and Means.

The Land Use Commission has not yet taken a position on SB 2780, SD1. Speaking as the Executive Officer of the Land Use Commission, however, I concur with the testimony submitted by the Office of Planning (OP), the Department of Agriculture, and The City Department of Planning and Permitting regarding Senate Bill 2780.

It is the State Administration's and the Land Use Commission's policy to allow the counties the ability to reclassify lands less than fifteen acres in the agricultural district. This important home-rule provision in Chapter 205 should remain for all petitions.

Section 4 of SB2780, SD1 bans reclassification of agricultural lands with a productivity rating of A or B on O'ahu if four criteria are met: (1) a farming operation is being conducted; (2) the land is important to agriculture based on the stock of similarly suited lands in the area; (3) the

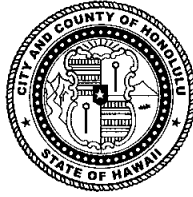
reclassification will harm the productivity or viability of existing agriculture in the areas; and (4) the reclassification will cause fragmentation or intrusion of non-agricultural uses into largely intact areas of A and B lands. Chapter 205 already gives the Land Use Commission the necessary authority to protect agricultural lands from fragmentation or intrusion of non-agricultural uses on O`ahu.

In addition, a virtual ban on reclassification of A and B lands on O`ahu is not warranted. In 2008, the Legislature adopted incentives for designating Important Agricultural Lands (IAL). Together with the 2005 IAL legislation, this system should be allowed a period of time to be implemented. In fact, the Land Use Commission designated 30,875 acres of land on Kaua`i and Maui as the State`s first IAL land during 2009.

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  
DIRECTOR  
ROBERT M. SUMITOMO  
DEPUTY DIRECTOR

February 18, 2010

The Honorable Donna Mercado Kim, Chair  
and Members of the Committee on Ways and Means  
State Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Kim and Members:

**Subject: Senate Bill No. 2780, SD1  
Relating to Agricultural Lands**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 2780, SD1, which seeks to add new criteria for boundary amendments on Oahu, which involve lands rated A or B under the Land Study Bureau classification system. The bill also adds regulations to lease renegotiations, but our department takes no position on this proposal.

We especially object to Sections 3 and 4 of the bill because it is unclear as to the exact quantity of A or B rated land that would be affected. If this bill passes as written, even a small sliver of A or B rated land would have to go through the lengthier boundary amendment process in accordance with Section 205-4 as opposed to the shorter process for lands under 15 acres currently handled by counties. Additionally, Chapter 205 has an established and deliberate process for amending land use boundaries that works well. This bill, as written would only add redundant language to Chapter 205. The DPP does not believe that the legislature should involve itself in thwarting that process in reaction to a single project on Oahu, which has not even gone through the land use district boundary amendment process. Furthermore, we oppose this bill because there is no clear rationale for the proposed criteria to apply only to Oahu when the proposed criteria should apply equally to the neighbor islands.

In short, please file Senate Bill No. 2780, SD1.

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



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

**LINDA LINGLE**  
GOVERNOR  
**THEODORE E. LIU**  
DIRECTOR  
**PEARL IMADA IBOSHI**  
DEPUTY DIRECTOR  
**ABBEY SETH MAYER**  
DIRECTOR  
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**OFFICE OF PLANNING**

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Statement of  
**ABBEY S. MAYER**  
Director, Office of Planning  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEE ON WAYS AND MEANS**  
Thursday, February 18, 2010  
9:30 AM  
State Capitol, Conference Room 211

in consideration of  
**SB 2780, SD1**  
**RELATING TO AGRICULTURAL LANDS**

Chairs Kim, Vice Chair Tsutsui and Members of the Senate Committee on Ways and Means.

The Office of Planning respectfully opposes SB 2780, SD1 Relating to Agricultural Lands. This measure prevents agriculturally suitable lands on Oahu (lands with productivity ratings of A or B) from being reclassified; requires the Land Use Commission to hear all petitions for reclassification of lands with Land Study Bureau (LSB) productivity ratings of A or B; and provides for mandatory extension of agricultural leases.

On amended Section 2, the agricultural lease extension provision, the Office of Planning defers to the Department of Agriculture.

Section 3 takes away the counties' ability to reclassify lands less than fifteen acres in the agricultural district, if the subject property has soil with a productivity rating of A or B and lands designated or sought to be designated as IAL. The Office of Planning believes the current law which allows the counties to reclassify lands in the Agricultural District if the area is less than fifteen acres is reasonable and practical.

Section 4 bans reclassification of agricultural lands with a productivity rating of A or B on Oahu if four criteria are met: (1) a farming operation is being conducted; (2) the land is

important to agriculture based on the stock of similarly suited lands in the area; (3) the reclassification will harm the productivity or viability of existing agriculture in the areas; and (4) the reclassification will cause fragmentation or intrusion of non-agricultural uses into largely intact areas of A and B lands. The Office of Planning believes Chapter 205 already gives the Land Use Commission the necessary authority to protect agricultural lands from fragmentation or intrusion of non-agricultural uses on Oahu.

We understand the concern that agricultural lands on Oahu may be under greater urbanization pressure than on the Neighbor Islands and that with a larger market for fresh food on Oahu there is a valuable opportunity for cost efficiency in getting food to market. However, we believe an outright ban on reclassification of A and B lands on Oahu is not warranted. In 2008 the Legislature adopted a process for designating Important Agricultural Lands. The Office of Planning believes that the current law should be given a chance to demonstrate its effectiveness. Other mitigation measures can be imposed on LUC dockets seeking to reclassify A and B lands, such as the mandatory dedication of proportional acreage of permanent agricultural easements.

Additionally, the LSB system rated lands with similar soils A or B if they had irrigation and C or D if they were not irrigated. Thus, the proposed bill may motivate landowners to remove irrigation from A and B lands in order to change the LSB classification to C or D, causing the cumulative detriment of other neighboring agricultural operations.

Thank you for the opportunity to testify.



ROBERT Q. BRUHL  
Vice President, Development

February 17, 2010

**VIA EMAIL**

The Honorable Donna Mercado Kim  
Chairwoman, Senate Ways and Means Committee  
Hawaii State Capitol  
415 South Beretania Street  
Conference Room 211  
Honolulu, HI 96813

RE: Opposition to Senate Bill 2780, Relating to Agriculture (Meeting date: February 18, 2010, 9:30a.m.)

Dear Chair and Respected Committee Members,

I am Bob Bruhl, vice president of D.R. Horton - Schuler Homes. Schuler has a long history as a kama'āina company, and we are proud of our accomplishments as one of Hawai'i's leading residential developers. Throughout our 40-year journey of operating in Hawai'i, we have strived to be thoughtful land stewards and welcome neighbors. Indeed, we believe that the strength of our relationships throughout the State and amongst your colleagues who know us well would confirm this. It is from that perspective from which this letter is written, and we appreciate the opportunity to submit our testimony in **strong opposition** to this Bill.

We would like to share our perspective on Senate Bill 2780, as a landowner and agricultural lessor. This Bill has significant flaws and unintended consequences. In its essence, it is seeking a method by which lands now under agricultural production can be preserved. We do not disagree with such a noble and erstwhile objective, however we would like to offer:

- **We view Bill 2780 as an impediment to reasonable Lessor-Lessee terms and conditions.** If law in blanket fashion were to preset a term as important as lease extensions, which is usually negotiated as part of the full give-and-take package customary to any such deal (and perhaps based on their relationship and historical performance under a lease), it is plausible that either party, the lessor and/or lessee, would not want to agree to such a "lease."
- **Bill 2780 is bad for agriculture.** We agree with the Farm Bureau's position on this Bill and similar measures. If farmers cannot secure leases and perhaps instead are given "licenses" or "entry rights" to farm, they will have significant challenges securing financing since they cannot evidence control over the land for adequate periods of time over which to amortize their



investments. Without the financing, their ability to invest dwindles, as their capital dries up, their businesses will undoubtedly be adversely affected.

- **Bill 2780 is redundant, and is a loophole to another more important law.** The Important Agricultural Lands (“IAL”) law was passed last year, after many, many years of work by hundreds of stakeholders, to establish a rational process to identify lands most appropriate for agricultural preservation. Why side-step it with a law that is so general, and one that doesn’t consider important county directed growth policies and the conditions surrounding each property (as IAL can)?
- **Bill 2780 is limited in scope (today).** This Bill is limited to O’ahu and appears to target our Ho’opili project as identified in the Committee Report. We believe this Bill could become a vehicle in the future to impose unfair, lopsided conditions in favor of lessees in other lease agreements, such as commercial, industrial and residential properties throughout the state. It would become a dangerous precedent.
- **This Bill has relied upon incorrect facts.** Regardless of what has been claimed in testimony by others to date, GIS confirms that there is over 40,000 acres of A&B rated lands on O’ahu, nearly 95% of which are outside O’ahu’s county-designated Urban Growth Boundaries and its adopted Development Plan areas. In essence, they are not at risk at all. The amount of remaining developable land is limited. This is a debate that many groups – from the North Shore to the central corridor to Windward to East O’ahu -- would need to weigh in on. These communities may not be aware of the potential adverse impacts this Bill could have on land planning in their areas.
- **The Legislature should not depend on the ALISH rating as its only source on important agricultural lands** The ALISH Report was prepared nearly 30 years ago for purposes mostly related to the wind-down of pineapple production. There are other criteria that may be more pertinent to agricultural land classification today.
- **Ho’opili.** The Ho’opili property is within the County’s Urban Growth Boundary and a part of the ‘Ewa Development Plans. It is the final piece of the master plan for the new city of Kapolei. These plans have been in place for over three decades. This property has been identified for future development, including residential, commercial and public facility use. Our company entered into a very long and detailed (and on-going) discussion with area community leaders to plan future uses for the property to address and provide for community needs. Passage of the bill aims to potentially overwrite home rule and preclude the community based planning process which has already been completed for the property.

Thank you for the opportunity to submit our comments and express our concerns and opposition to this measure.

Sincerely,



**Testimony on SB2780, Relating to Agricultural Lands**

SENATE COMMITTEE ON WAYS AND MEANS

Thursday, February 18, 2010

9:30 p.m.

Conference Room 211

**Chair Kim, Vice Chair Tsutsui, and Members of the Committee,**

**Hawaii Farmers Union supports SB2780**, which would protect agriculturally suitable lands on Oahu and provide for mandatory extension of agricultural leases.

**All efforts to secure our access to locally grown food on Oahu and throughout the State are critical at this time.** Smart planning for our island means making a commitment to the protection of our agricultural lands, which are *irreplaceable*.

This important bill also brings security to the profession of farming by addressing the pressing need for long-term access to farmland.

Thank you for your attention to this most pressing issue for our state.

Sincerely,

Lydi Morgan  
Hawaii Farmers Union Vice President  
[HFUOahu@gmail.com](mailto:HFUOahu@gmail.com)  
[www.hawaiifarmersunion.org](http://www.hawaiifarmersunion.org)  
[www.nfu.org](http://www.nfu.org)

Hawaii Farmers Union is a branch of the National Farmers Union, America's oldest and most distinguished farming organization, representing over 200,000 members nationwide and advocating for family farmers, ranchers, fishers and rural communities since 1902.

National Farmers Union's focus on the viability and prosperity of family farmers extends to a concern for healthy communities, stewardship of natural resources and a just distribution of economic resources – beyond borders and for urban as well as rural people everywhere.

Established as a subdivision of the California Farmers Union in 2008, Hawaii Farmers Union advances the rights of farmer to create vibrant and prosperous agricultural communities for the benefit of all through cooperation, legislation and education.



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## Waimanalo Agricultural Association

February 16, 2010

Senate Committee on Ways and Means  
Conference Room 211,  
Thursday, Feb.18, 2010 (9:30 AM)  
State Capitol  
415 South Beretania Street  
Honolulu, HI 96814

Dear Senators:

RE: Support for:

- SB 2236, SD1 (SSCR2241) Relating to invasive species.
- SB 2523, SD1 (SSCR2182) Relating to agricultural inspections.
- SB 2780, SD1 (SSCR 2171) Relating to agricultural lands.
- SB 2951, SD1 (SSCR2172) Relating to agriculture.

Waimanalo Agricultural Association is in support of all of these bills. Currently, Waimanalo has a problem with Coqui frogs. Because of the necessary cost cutting measures in effect this year, a lot of indispensable agricultural inspectors are being laid off. Our farmers are stepping up to the challenge of trying to control the spread of the frogs. Requiring fines assessed to the people who fail to live up to their responsibility would help to make the right people accountable for the removal and elimination of invasive species (**SB 2236, SD1**). We support **SB 2523, SD1** which clarifies that low risk bulk material was not meant to be included in the original intent.

Hawaii is very vulnerable to invasive species taking hold and by the time we have the necessary lines of defense set up, it will be too late. By eliminating funding, we are in danger of losing all control of our environment. The Coqui frog alone would seriously affect our tourism industry.

We are in agreement with the process to protect ag lands (**SB 2780, SD1**). We also agree on fair compensation for leased lands (**SB 2951, SD1**) when agricultural use is withdrawn, condemned or taken for public purposes.

Mahalo,

Clifford Migita  
President WAA

**From:** [Georgette Stevens](#)  
**To:** [WAM Testimony](#)  
**Subject:** SB 2780  
**Date:** Wednesday, February 17, 2010 8:53:29 AM

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The Honorable Donna Mercado Kim  
Chairwoman, Senate Ways and Means Committee  
Hawaii State Capitol  
15 South Beretania Street  
Conference Room 211  
Honolulu, HI 96813

RE: Opposition to Senate Bill 2780, Relating to Agriculture (Meeting date: February 18, 2010, 9:30a.m.)

Aloha Chair and Committee Members,

Thank you for this opportunity to comment on SB2780. I oppose SB2780 for the following reasons:

1. This Bill is an impediment to reasonable Lessor-Lessee terms and conditions. If law in blanket fashion were to preset a term as important as lease extensions, which is usually negotiated as part of the full give-and-take package customary to any such deal (and perhaps based on their relationship and historical performance under a lease), who in their right mind would ever enter into such a "lease" in the first place?
2. This Bill is bad for agriculture. The Farm Bureau is dead-on in its testimony. If farmers cannot secure leases and perhaps instead are given "licenses" or "entry rights" to farm, they will have significant challenges securing financing since they cannot evidence control over the land for adequate periods of time over which to amortize their investments – without the financing, their ability to invest dwindles, as their capital dries up, their businesses will undoubtedly be adversely affected.

Mahalo for your time and consideration.

Georgette Stevens  
P O Box 75414  
Kapolei, HI 96707  
306-7992

February 17, 2010

The Honorable Donna Mercado Kim  
Chairwoman, Senate Ways and Means Committee  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

**RE: Opposition to Senate Bill 2780, Relating to Agriculture (Meeting date: February 18, 2010, 9:30a.m.)**

Aloha Chair and Committee Members,

I have lived in Makakilo for over 38 years. Throughout the years, I have witnessed immense growth in the greater Kapolei area. What was once land for sugar is now a vibrant and truly New City - full of opportunities for our young, local families. We have waited a long time for so many good things to come our way, and they are finally happening.

I would like to offer my comments on Senate Bill 2780, a bill which I strongly oppose. This Bill does not recognize County development plans. We have worked so hard for so many years to see our New City of Kapolei to fruition. We are just now getting the North-South Road, Kapolei Parkway, the new University of Hawai'i West O'ahu Campus, and the Salvation Army Kroc Center. This Bill will erase the strategic planning and long-term vision for our community. Someone isn't thinking, or this bill isn't drafted narrowly enough. Please put an end to this.

Furthermore, why is the Legislature working to save Aloun Farms? Clearly there is no excuse for slavery - here in Hawai'i, or anywhere for that matter.

We must move forward with our County's Ewa Development Plan to make the New City of Kapolei a reality.

Mahalo for your time and consideration.

Maeda Timson  
92-684 Nohona St.  
Kapolei, Hi. 96707  
672-9414

**From:** [Young, Linda Y CIV PHNSY & IMF, 900/C903](#)  
**To:** [WAM Testimony](#)  
**Subject:** OPPOSITION to SB 2780  
**Date:** Wednesday, February 17, 2010 10:28:32 AM

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The Honorable Donna Mercado Kim  
Chairwoman, Senate Ways and Means Committee  
Hawaii State Capitol  
415 South Beretania Street  
Conference Room 211  
Honolulu, HI 96813

RE: OPPOSITION to Senate Bill 2780, Relating to Agriculture (Meeting date: February 18, 2010, 9:30a.m.)

Dear Chair and Respected Committee Members,

I have lived in the Villages of Kapolei for nearly 15 years. The land my home sits on was agriculture land at one time. In fact, our entire Kapolei community was fields of sugar cane. It does not make sense that Ho'opili is being singled out to be preserved as "prime ag lands." What about the existing homes and development in the area? Why was it OK to build there but not at Ho'opili, especially when Ho'opili is going to bring jobs and create opportunities for our working families?

The roadway connections in and around Kapolei and the 'Ewa Plain are finally coming to fruition. If we do not see the 'Ewa Development Plan - which includes Ho'opili - through to full completion, these roads, and the millions of dollars spent to build them will be wasted and ineffectual. We must immediately move forward as planned.

Thank you for allowing me to comment in opposition of Senate Bill 2780.

Thank you,

Linda Young

**From:** [Charles Zahn](#)  
**To:** [WAM Testimony](#)  
**Subject:** Senate Bill 2780, Relating to Agriculture. Hearing date and time -- February 18, 2010 at 9:30 a.m.  
**Date:** Wednesday, February 17, 2010 8:22:31 AM

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Measure: Senate Bill 2780, Relating to Agriculture  
Hearing date: February 18, 2010 at 9:30 a.m.

The Honorable Donna Mercado Kim  
Chairwoman, Senate Ways and Means Committee  
Hawaii State Capitol  
415 South Beretania Street  
Conference Room 211  
Honolulu, HI 96813

RE: Opposition to Senate Bill 2780, Relating to Agriculture

Dear Chair Kim and Respected Committee Members,

As a longtime Makakilo resident and active member of the community, I strongly oppose Senate Bill 2780. This Bill has been supported by incorrect facts. Consider that regardless of what has been claimed in testimony by others to date, GIS confirms that there is over 40,000 acres of A&B rated lands on Oahu, nearly 95% of which are outside the county-designated Urban Growth Boundaries and its adopted Development Plan areas. In essence, they are not at risk at all. The amount of remaining developable is, and this is a debate that many groups – from the North Shore to the central corridor to Windward to East Oahu -- would need to weigh in on. Are they all aware of the potential adverse impacts this Bill could have on land planning? If we want to “keep the country country” – as these communities have declared – we need to allow for responsible and careful growth, which is the immediate plan for the ‘Ewa plain.

Thank you,

Charles Zahn

92-970 Puanihi St.  
Kapolei, HI 96707

672-9655