

NEIL ABERCROMBIE  
Governor



RUSSELL S. KOKUBUN  
Chairperson, Board of Agriculture

JAMES J. NAKATANI  
Deputy to the Chairperson

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

TESTIMONY OF RUSSELL S. KOKUBUN  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON WATER, LAND, AND HOUSING AND  
AGRICULTURE

SATURDAY, FEBRUARY 12, 2011  
2:45 P.M.

CONFERENCE ROOM 225

SENATE BILL NO. 1180  
RELATING TO LAND USE

Chair Dela Cruz and Nishihara and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill 1180. The Department of Agriculture offers comments. We understand that transfer of development rights (TDR) is a tool that can extinguish the development potential of agricultural land, resulting in a permanent conservation of agricultural land. This is accomplished by transferring development rights to another party who then takes these rights to an area identified by the county which allows more intensive development than what is otherwise allowed. The agricultural lands remain under the same owner, and the prohibition on developing the affected agricultural land runs with the land. In comparison, agricultural conservation easements involve a purchase rather than transfer of development rights and has the same effect of extinguishing the development potential of agricultural land. We note that both TDR and agricultural conservation easements are found in the Hawaii Revised Statutes, Sections 46-161 through -165, and Chapter 198, respectively.

We defer to the counties which have, according to this measure, the responsibility to develop and administer the measure.

Thank you for the opportunity to testify on this measure.





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

NEIL ABERCROMBIE  
GOVERNOR  
RICHARD C. LIM  
INTERIM DIRECTOR  
MARY LOU KOBAYASHI  
PLANNING PROGRAM ADMINISTRATOR  
OFFICE OF PLANNING

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Statement of  
**MARY LOU KOBAYASHI**  
Planning Program Administrator, Office of Planning  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEE ON WATER, LAND, AND HOUSING  
AND  
SENATE COMMITTEE ON AGRICULTURE**  
Saturday, February 12, 2011  
2:45 PM  
State Capitol, Conference Room 225

in consideration of  
**SB 1180**  
**RELATING TO LAND USE.**

Chairs Dela Cruz and Nishihara, Vice Chairs Solomon and Kahele, and Members of the Senate Committees on Water, Land, and Housing and Agriculture.

The Office of Planning (OP) supports the concept of transfer of development rights and the intent of SB 1180, but we do not support the bill in its current form. SB 1180 would amend Chapters 205, 501, and 502, Hawai'i Revised Statutes (HRS), to establish a transfer of development rights (TDR) system, with all land in the State Agricultural District comprising the sending district, and the receiving district defined as land in the State Urban District where multi-family, commercial, industrial, business, or mixed use are allowed as permitted by the applicable zoning authority. The Counties' zoning authority would establish procedures for TDR and administer the TDR system using density formulas and instruments defined in SB 1180.

OP wholeheartedly supports the establishment of TDR programs to protect rural lands, in particular, lands designated as important agricultural lands (IAL) under Part III of Chapter 205.

We believe that TDR is a very important tool in providing long-term protection to high-value agricultural and rural lands, and relieving the development pressures on rural areas and communities. TDR provides a valuable market mechanism by which the public interest in maintaining agricultural viability and rural character can be balanced with landowner interest in realizing equity in their lands.

OP has the following concerns regarding SB 1180.

1. Sections 46-161 through 46-165 of Chapter 46, HRS, contain provisions for County TDR systems. The bill should amend those provisions rather than establish a new part in Chapter 205, since the system prescribed in the bill is to be administered by the Counties.
2. SB 1180 does not allow either the Counties or the State to identify sending and receiving areas or identify priority sending lands, such as IAL, that are of highest priority for long-term protection through mechanisms like TDR. This means that receiving district density—a limited commodity—could be used to protect lands that are of marginal agricultural quality or of lesser priority for protection.
3. SB 1180 also limits the valuation of TDR credits to density. OP questions whether this should be the sole ‘currency’ for using or purchasing TDR credits. Other forms of credit valuation should be considered. An example is waiver of other development requirements such as on-site parking. Another would be facilitated permitting.

Further discussion of the specifics of a TDR system is needed prior to the establishment of a statewide TDR system as is specified in SB 1180. OP would be willing to participate in such discussions between County and State agencies and other stakeholders as to a suitable system for TDR in Hawai‘i.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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PETER B. CARLISLE  
MAYOR



DAVID K. TANOUE  
DIRECTOR

JIRO A. SUMADA  
DEPUTY DIRECTOR

February 12, 2011

The Honorable Donovan M. Dela Cruz, Chair  
and Members of the Committee on Water, Land,  
and Housing  
The Honorable Clarence K. Nishihara, Chair  
and Members of the Committee on Agriculture  
State Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chairs Dela Cruz, Nishihara, and Members:

**Subject: Senate Bill No. 1180  
Relating to Land Use**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 1180. It authorizes certain development rights to be conveyed from owners in agricultural districts to certain owners of land in urban districts, subject to conditions.

Our position is based on the following concerns:

1. Since 1998, the City's Land Use Ordinance (LUO) allows transfer of development rights (TDR) for historic sites and to date, no landowner has used these provisions. The proposed establishment and administration of Transferable Development Rights (TDR) for agricultural land will result in an much larger administrative cost of a TDR program that we feel may be rarely used, if at all. We request the budgeting of state funds to support the program.
2. Please note that we are supportive of urban infill. However, the incentive to do so is not higher density limits. On commercial lands, the maximum permitted base density is a Floor Area Ratio of 2.5. The average built density is far less than 1.0. The limiting factors include relatively small lot size and financing constraints, but most importantly, infrastructure capacity.
3. We support using multiple strategies to maintain a healthy agricultural industry. We question whether SB 1180 reflects a meaningful strategy. It may have the unintended consequence of breaking up large parcels. The LUO allows a maximum of two farm dwellings on agriculturally zoned lands, if the lot size is at least twice the minimum lot size. Therefore, to optimize the greatest return, large

The Honorable Donovan M. Dela Cruz, Chair  
and Members of the Committee on Water, Land,  
and Housing

The Honorable Clarence K. Nishihara, Chair  
and Members of the Committee on Agriculture  
State Senate

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lots may be subdivided down to minimum lot sizes, to gain the most number of theoretical dwelling units. This would reduce the amount of land for agricultural enterprises that depend on lots larger than 2 or 5 acres, the minimum lot sizes under the LUO.

4. The proposal lacks provisions for infrastructure capacity criteria in determining receiving areas. Without any county discretion over the transfer, three actions may take place: 1) a receiving site may take up infrastructure capacity planned for other projects; 2) at the time of building permit or other permit application, a project using transferred density may find there is insufficient capacity for the project; or 3) at the time of building permit or other permit application, the project will be held responsible for significant off-site infrastructure improvements. Thus, we are concerned that this Bill will have unintended impacts on county infrastructure planning.
5. While the formal adoption of the mandated "overlay district" maps to identify the receiving areas will include public participation, we are deeply concerned that the Bill makes no provision for public input on specific projects using the transferred density. We strongly believe that both the public and counties should have input on projects that deviate from current zoning standards.
6. We have many concerns over the details of the program, including:
  - a. The "density" formula, as defined, relies on a minimum square footage for dwellings. We do not have such a standard.
  - b. Sec 205-E: we have no zoning district which only allows single-family dwellings. Further, this Bill would allow dwellings in commercial and industrial districts, where principal dwellings are not permitted by the LUO.
  - c. 205 E: As a set of long range, broad policy statements, our General Plan is not the appropriate place to map receiving districts. Moreover, we question the value of it duplicating the mandated zoning map "overlay districts."
  - d. 205-G: Because we don't regulate dwellings with a minimum size, we cannot determine what is the maximum number of units permitted on a lot now – depends on the size of the units.
  - e. 205-H: We are **strongly opposed** to the ability to transfer density across counties.
  - f. 205-I: this provision is unclear. Does it allow use of the sending site for renewable energy purposes only if density is transferred? Or is it intended

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that once density is transferred, the sending site can only be used for renewable energy purposes?

- g. There are no provisions for lands under the jurisdiction of the Hawaii Community Development Authority. Therefore, Kalaheo and Kakaako would not be part of this program.

In short, we do not believe this bill is necessary, as the counties may enact TDR programs under general zoning powers. Details of this particular TDR are problematic. The bill infringes on county home rule. For these reasons, we request the bill be filed. Thank you for the opportunity to testify.

Very truly yours,



David K. Tanoue, Director  
Department of Planning and Permitting

DKT: jmf  
sb1180-TDR-mh.doc



**Testimony to the Senate Committees on Water, Land, and Housing &  
Agriculture  
Saturday, February 12, 2011 at 2:45 p.m.  
Conference Room 225, State Capitol**

**RE: SENATE BILL NO. 1180 RELATING TO LAND USE**

Chairs Dela Cruz and Nishihara, Vice Chairs Solomon and Kahele, and Members of the Committees:

The Chamber of Commerce of Hawaii provides the below comments on S.B. No. 1180.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The purpose of this Act is to authorize certain development rights to be conveyed from owners in agricultural districts to certain owners of land in urban districts, subject to conditions.

While the Chamber supports the overall intent of the legislation to preserve and protect our agricultural zoned lands and focus development in urban areas, we believe that the law as presently drafted may not provide sufficient incentives to encourage wide participation by owners of agricultural zoned lands.

Perhaps one incentive to consider is to include a waiver of payment of real property taxes on the agricultural lands from which development rights are transferred. This would be a logical incentive when you consider that active agricultural lands should have little or no municipal services which are funded through real property taxes. Furthermore, insofar as the receiving "urban" lands will increase in value with the transferred development rights, the County should realize a net benefit in real property taxes as the urban lands would be taxed at a higher rate.

Thank you for this opportunity to express our views.



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**SB 1180  
RELATING TO LAND USE**

**PAUL OSHIRO  
MANAGER – GOVERNMENT RELATIONS  
ALEXANDER & BALDWIN, INC.**

**FEBRUARY 12, 2011**

Chair Dela Cruz, Chair Nishihara and Members of the Senate Committees on Water,  
Land & Housing and Agriculture:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on SB  
1180, "A BILL FOR AN ACT RELATING TO LAND USE." We support this bill.

The purpose of this bill is to authorize the transfer of development rights from  
lands in the agricultural district to certain lands in the urban district. We believe that the  
authorization of transfer of development rights from the agricultural to the urban districts  
represents a valuable tool to encourage enhanced development in urban areas that will  
increase the efficient development and optimum use of public and private infrastructure.  
This bill will also result in incentivizing land owners to retain more of their lands in the  
agricultural district and focus upon increasing development densities in the urban area.

Based on the aforementioned, we respectfully request your favorable  
consideration on this bill. Thank you for the opportunity to testify.





**Hawaii Farm Bureau**  
F E D E R A T I O N

2343 Rose Street, Honolulu, HI 96819  
Phone: (808) 848-2074; Neighbor Islands: 1-800-482-1272  
Fax: (808) 848-1921; e-mail: [info@hfbf.org](mailto:info@hfbf.org)

February 11, 2011

**TESTIMONY**

**RE: SB1180 RELATING TO LAND USE**

Chair Dela Cruz, Chair Nishihara and Members of the Committees:

Hawaii Farm Bureau Federation on behalf of commercial farm and ranch families and organizations across the state supports SB1180 providing TDR opportunities for the protection of agricultural lands.

Transfer of Development Rights, to reduce risk of development on agricultural lands and increase densities in urban areas is a long standing land use planning tool used across the country. Acceptance in Hawaii has been limited due to lack of receiving areas – those areas in the urban district where densities can be increased. We believe as older urban areas undergo redevelopment there is opportunity to implement this measure.

We agree the need is there and respectfully request a review of this measure of how it complements HRS §46-163 that currently authorizes counties to transfer development rights including for protection of lands for agricultural uses. Implemented, it can be an important incentive to designate Important Agricultural Lands.

We respectfully request your support in moving this measure forward to continue discussion. Thank you for this opportunity to provide our opinion on this measure. If there are questions, please contact Warren Watanabe at 2819718.