

# SB 2341

# SD 1

**Measure Title:** RELATING TO LAND USE

**Report Title:** Zoning; Agricultural Tourism

**Description:** Repeals the prohibition on agricultural tourism activities in the absence of a bona fide farming operation. Repeals the prohibition on ordinances that allow overnight accommodations in agricultural districts. Authorizes short-term rentals of thirty-one days or less, for any one stay within a county; provided that the appropriate county has adopted an ordinance that specifically authorizes such use in agricultural districts. (SD1)

NEIL ABERGROMBIE  
Governor



RUSSELL S. KOKUBUN  
Chairperson, Board of Agriculture

SCOTT E. ENRIGHT  
Deputy to the Chairperson

State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF RUSSELL KOKUBUN  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON TOURISM  
Thursday, March 1, 2012  
Room 224  
1:20 p.m.

SENATE BILL NO. 2341, SENATE DRAFT 2 (PROPOSED)  
RELATING TO LAND USE

Chairperson Mercado Kim and Members of the Committee:

Thank you for this opportunity to provide comments and recommendations on Senate Bill No. 2341, Senate Draft 2 (Proposed) that you shared with us in your letter dated February 27, 2012.

Let me begin by saying that the Department supports agricultural tourism as defined in Chapter 205 which includes the provision that the counties adopt ordinances to implement this program as per each county's situation. Similarly, we would strongly support allowing agricultural tourism operations and overnight accommodations on agricultural land **only if** there is bona fide farming activities taking place on the property.

The statutory guidance for county ordinances regulating agricultural tourism uses and activities was enacted in 2006 (Act 250, SLH 2006). A key requirement of this statutory guidance is that the agricultural tourism activities are to be "...accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations..." (Section 205-2(d)(11) and Section 205-4.5(a)(13)). The connection of the overnight accommodations to agricultural tourism and the reduction of the length of stay to 21 days in Senate Draft 2 is a marked improvement over Senate Draft 1 which

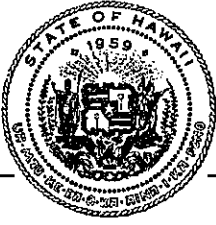


allowed for short-term rentals of up to 31 days and no requirement for the rentals to be related to agricultural activities.

However, we note that Senate Draft 2 retains the amendment found in Senate Draft 1 which deletes the provision in Section 205-5 (page 15, lines 7-9) that "...agricultural tourism activities shall not be permissible in the absence of a bona fide farming operation." This deletion will have the effect of gutting the key requirement for agricultural tourism activities that they be an accessory use on a working farm or farming operation (page 15, lines 2-7). **We recommend** that the proposed deletion in Senate Draft 2 (page 15, lines 7-9) be withdrawn and the original language left as is.

Finally, in the proposed amendments to Sections 205-2 and -4.5, there is no definition of "overnight accommodations". **We recommend** the State provide guidance to the counties by defining what constitutes acceptable overnight accommodations.

We thank you for this opportunity to present our comments and recommendations on this important measure.



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

NEIL ABERCROMBIE  
GOVERNOR  
RICHARD C. LIM  
DIRECTOR  
MARY ALICE EVANS  
DEPUTY DIRECTOR  
JESSE K. SOUKI  
DIRECTOR  
OFFICE OF PLANNING

**OFFICE OF PLANNING**

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846  
Fax: (808) 587-2824

Statement of  
**JESSE K. SOUKI**  
Director, Office of Planning  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEE ON TOURISM**  
Thursday, March 1, 2012  
1:20 PM  
State Capitol, Conference Room 224

in consideration of  
**SB 2341, SD 1**  
**RELATING TO LAND USE.**

Chair Mercado Kim, Vice Chair Kouchi, and Members of the Senate Committee on  
Tourism.

The Office of Planning (OP) does not support SB 2341, SD 1, in its current form. We support the intent of the proposed amendment to allow overnight accommodations in association with agricultural tourism on a working farm; however, we oppose the proposed amendments to allow short-term rentals of not more than thirty days duration as a permissible use in the State Agricultural District.

**Short-term rentals.** The provisions that would establish short-term rentals as a permissible use in the Agricultural District conflict with State agricultural policy pursuant to Article XI, Section 3 of the Hawai'i Constitution, Hawai'i Revised Statutes (HRS) Chapter 205, the State Land Use Law, and HRS Chapter 226, the Hawai'i State Plan. In addition, the provision to permit short-term rentals that are not associated with a working farm conflicts with

the Administration's New Day Plan priorities to increase production and consumption of locally produced foods and increase food and energy security for the islands.

HRS Chapter 205 specifically limits the permissible uses in the Agricultural District to discourage the use of agricultural land by higher value, non-agricultural land uses. The only dwellings defined as permissible uses in the Agricultural District are farm dwellings that are located on and used in connection with a farm or a dwelling occupied by persons or families deriving income from agriculture, as defined in HRS Section 205-4.5(a)(4).

Allowing short-term or vacation rentals as a permissible use in the State Agricultural District would increase land values in the Agricultural District and make land less affordable for farmers. This would contribute significantly to the loss of agricultural lands to higher-value non-farm uses, and could adversely impact the viability of diversified agriculture in Hawai'i as well as food and energy security for Hawaii's people.

We recommend these specific amendments be deferred or deleted from the bill.

**Overnight accommodations on a working farm.** OP wholeheartedly supports the concept of allowing bona fide farming operations to provide overnight accommodations to supplement their farm revenues and/or labor needs by providing accommodations for farm tour participants or working farm stays. This is good for the farmer, and is consistent with State policies and efforts to promote agriculture, increase agricultural viability and markets for farmers, and maintain agricultural use of agricultural lands.

However, we have concerns that if enacted the proposed amendments could create further problems in regulating transient vacation rentals in the Agricultural District. The prohibition of overnight accommodations as set forth in HRS § 205-5(b) was originally intended to safeguard against widespread permitting of non-agricultural transient vacation rentals in the Agricultural

District. However, non-farm applicants are able to establish transient vacation rentals in the Agricultural District by obtaining a special permit pursuant to HRS § 205-6.

As currently written in HRS § 205-5(b) and as proposed for amendment in this bill, the provisions for overnight accommodations on a working farm do not provide any extra benefit to legitimate farmers, nor certainty or a level playing field for farmers statewide as to their ability to conduct agricultural tourism activities or have overnight accommodations on their farms.

OP recommends that this bill be deferred until such time that the existing provisions in HRS Chapter 205 can be reevaluated and clearer language developed that would establish overnight accommodations and agricultural tourism activities outright as a permissible use accessory to a bona fide farming operation, with additional safeguards to ensure that applicants for overnight accommodations are indeed bona fide farming operations and that overnight accommodations are incidental and secondary to a working farm and shall cease when farming operations cease.

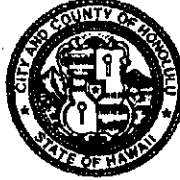
OP would be willing to work with the Department of Agriculture on language to accomplish this intent.

Thank you for the opportunity to provide these comments.

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

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 768-8000 • FAX: (808) 768-6041  
DEPT. WEB SITE: [www.honolulu.dpp.org](http://www.honolulu.dpp.org) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

PETER B. CARLISLE  
MAYOR



DAVID K. TANOUE  
DIRECTOR

JIRO A. SUMADA  
DEPUTY DIRECTOR

March 1, 2012

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

Dear Chair Kim and Members:

**Subject: Senate Bill No. 2341, SD No. 1  
Relating to Land Use**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 2341, SD 1. This bill would allow short-term overnight accommodations (agricultural tourism) as a principal use in State Agricultural Districts, provided that the respective county adopts an ordinance that specifically authorizes such use in agricultural districts. The amended bill remains unchanged in not requiring the presence of agricultural uses on the property.

Provisions are already in place to allow agricultural tourism as an accessory use in State agricultural districts with an approved State Special Use Permit. The allowance of overnight accommodations without it being accessory to a principal agricultural use would be contrary to the purpose and intent of retaining agricultural lands to support agricultural activities and services. The Department has no intention of supporting any zoning ordinance to establish provisions for short-term rentals on agricultural lands.

Please file Senate Bill No. 2341, SD1. Thank you for the opportunity to testify.

Very truly yours,

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

David K. Tanoue, Director  
Department of Planning and Permitting

DKT:jmf

sb2341sd1-LandUse-ks.doc

**COUNTY COUNCIL**

Jay Furfaro, Chair  
JoAnn A. Yukimura, Vice Chair  
Tim Bynum  
Dickie Chang  
KipuKai Kualifi  
Nadine K. Nakamura  
Mel Rapozo



**OFFICE OF THE COUNTY CLERK**

Ricky Watanabe, County Clerk  
Jade K. Fountain-Tanigawa, Deputy County Clerk

Telephone (808) 241-4188  
Fax (808) 241-6349  
Email [cokcouncil@kauai.gov](mailto:cokcouncil@kauai.gov)

Council Services Division  
4396 Rice Street, Suite 209  
Lihu'e, Kaua'i, Hawai'i 96766

**COMMENTS OF MEL RAPOZO  
KAUAI COUNTY COUNCIL  
ON**

**S.B. 2341, S.D. 1, Relating to Land Use  
Committee on Tourism  
March 1, 2012  
1:20 p.m.  
Conference Room 224**

Dear Chair Mercado Kim and Committee Members:

Thank you for the opportunity to submit comments in opposition to S.B. 2341, S.D. 1, relating to Land Use. I am providing these comments in my individual capacity as a member of the Kaua'i County Council.

Until the important agricultural lands have been identified, it is premature to allow the development of vacation rentals that are, in fact, "mini-resorts" on agriculturally districted and zoned land. The proposed bill would permit resort development/vacation rentals on agricultural land and is contrary to Article XI, Section 3 of the State constitution. Section 3 requires that:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

S.B. 2341, S.D. 1, is contrary to the provisions of the Hawai'i Constitution that require the State to protect agricultural land and assure the availability of agriculturally suitable land for future generations. The State is still going through the process of identifying important agricultural lands. Until that is done, it is premature to open up agricultural land to resort development.

For the foregoing reasons, I oppose S.B. 2341, S.D. 1, and I ask that the bill not pass out of your committee.

Sincerely,

*Mel Rapozo* <sup>pm</sup>

MEL RAPOZO  
Councilmember  
Kaua'i County Council

PM/wa



FEB 29 2012



# WINDWARD AHUPUA'A ALLIANCE

From the Peaks of Na Ko'olau to the Outer Reefs

*Community-Based Planning  
Sustainable Economic Development  
Restoration, Preservation, Protection & Public Access  
Educational & Cultural Programs*

TO: Senator Donna Mercado Kim  
*Chair, Tourism Committee*

FROM: Shannon Wood, *President*  
*Windward Ahupua'a Alliance*

## SB 2341 SD1 - RELATING TO LAND USE

The *Windward Ahupua'a Alliance*, a 501c3 Hawai'i non-profit corporation, founded in July, 2002, now works to educate & inform residents, visitors, businesses, policymakers at all levels of government, and the media about using SMART GROWTH principles which promote economic and environmental sustainability.

During the 2007 Session, I took an active part in the legislative discussions about agricultural tourism because I know first-hand how important it can be to help stabilize family incomes when Stuff Happens like the forty-two consecutive days of rain happened in the winter of 2006.

People testified about losing their crops and being forced to take jobs in town that would help pay their mortgages until the next planting season rolled around.

At that time, the issue of farmhouse bed & breakfast operations created a lot of controversy because the broader alternative accommodations issues were being discussed before the *Honolulu City Council*. The other three counties were also trying to deal with the issues of visitor accommodations outside resort areas.

Granted, there was a lot of strong support for allowing B&Bs and small country inns and maybe even a dude ranch in Windward O'ahu; however, there was also a lot of opposition from people who felt that it was extremely important to restrict or even bar people from staying in visitor accommodations other than ones located Waikiki, downtown, around the airport, or in fenced-in country resort areas such as *Turtle Bay* or *Ko Olina*.

**NOTE:** The last legal application for alternative accommodations on the island of O'ahu was issued on December 28, 1989. Over the past decade, three attempts to open up the process have failed. Because no new operator can become legal, they are forced to

P.O. Box 6366  
Kane'ohe, HI 96744  
E-Mail: [info@waa-hawaii.org](mailto:info@waa-hawaii.org)

Voicemail: 808/247-6366  
Cellular: 808/223-4481  
Website: <http://www.waa-hawaii.org>

become illegal which is considered a reason to make sure that the violators are shut down and that opening the process must not happen because most of the applicants have broken the law.

The people who oppose the concept are broken down into two different groups. The first is comprised of environmentalists such as Robert Harris of the *Sierra Club* and Donna Wong from *Hawai'i's Thousand Friends*. They believe that allowing visitor accommodations on ag land will lead to major development well beyond agricultural-related businesses. You might want to speak with them about their concerns

The second group is made up of mostly people living in Windward O`ahu who want to reduce Hawai'i's visitor industry numbers shutting down retail businesses and by blocking off access to all non-resort areas on the grounds that visitors take away local folks' access to recreational and cultural areas

Back in 2007, because the issue might have a major negative impact on the overall concept of ag tourism, I was willing to let the B&B language go at the time, but now it's back again. Now I am much more willing to take on the opponents even though the people who oppose alternative visitor accommodations have not gone away. They feel that allowing people to stay outside of resort areas will eventually wind up having huge visitor complexes being built in their back yards - even though that will not happen because of state and county laws.


However, rural or ag tourism needs to allow overnight accommodations - and we're not talking about building forty-story high-rise hotels but allowing visitors to stay on the property with the owners who will not only provide them with a place to sleep but will also educate & inform them about a wide range of issues - growing coffee or organic vegetables or biofuels or food security matters or protecting watersheds - in a family-friendly environment. The idea of having to travel from a hotel in Waikiki or at the airport out to the country to learn about Hawai'i's agricultural economy has a profound negative impact on both the environment and the economy.

There are thousands of rural towns across the United States which allow people to stay in alternative accommodations such as privately-owned campgrounds, bed & breakfasts, and small-footprint inns out in the country.

Hawai'i needs to do the same. It will increase the amount of the *TAT* and the *GET*, bring in additional revenues to the county for permits and licenses, raise awareness of the importance of Hawai'i's agricultural economy, help stabilize farming family income, and support locally-owned nearby businesses.

We urge that you pass out SB 2341 SD1 - RELATING TO LAND USE

*Mahalo* for addressing the issues.

  
Shannon Wood, President  
*Windward Ahupua`a Alliance*



# Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803  
808.538.6616 hawaii.chapter@sierraclub.org

## SENATE COMMITTEE ON TOURISM

March 1, 2012, 1:20 P.M.  
(Testimony is 2 pages long)

### TESTIMONY IN OPPOSITION TO SB 2341 (SD1)

Aloha Chair Kim and Committee Members -

The Sierra Club, Hawai'i Chapter, with over 10,000 members and supporters, *opposes* SB 2341 (SD1). This bill would allow vacation rentals, bed & breakfasts, and other similar activity in the agricultural district.

The Hawai'i State Constitution Article 11, Section 3 mandates:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.

Haw. Rev. Stat. Chapter 205, serves to protect agricultural lands. In passing this law, the Senate noted:

The purpose of this bill is to preserve and protect land best suited for cultivation, forestry and other agricultural purposes and to facilitate sound and economical urban development in order to promote the economy and general welfare of the state, and to insure the efficient expenditure of public funds. . . .

*The state's highly productive agricultural lands are jeopardized by normal economic laws which encourage land owners to place their own particular pieces of land to the most profitable current use for which they can find a market. Long term agricultural leases are expiring annually. Because of the pressure for urbanization the land owners are reluctant to continue long term renewals of such leases, and the lessee is therefore discouraged to develop the land to its maximum agricultural production. If exclusive agricultural zones are not established to preserve and protect prime agricultural lands from infringement by non-agricultural uses, the possibility of land speculation through inflated or artificial land prices may jeopardize the existence of major agricultural companies or activities.* The most effective protection



Recycled Content

Robert D. Harris, Director

of prime agricultural lands, preservation of open space and direction of for urban growth, is through state zoning.

S. Stand.Comm.Rep. No.937, 1961 Senate Journal 883 (emphases added).

SB 2341 flouts this reasoning. It would encourage high-revenue producing vacation rentals as an authorized use, which in turn would raise the price of agricultural land for true agricultural activities. Lessees, for example, may have to pay more as new and more expensive "highest and best uses" (the normal phrase used to determine lease rents) are established on agricultural land. Farmers may have to stop producing food and switch to vacation rentals simply to stay in business.

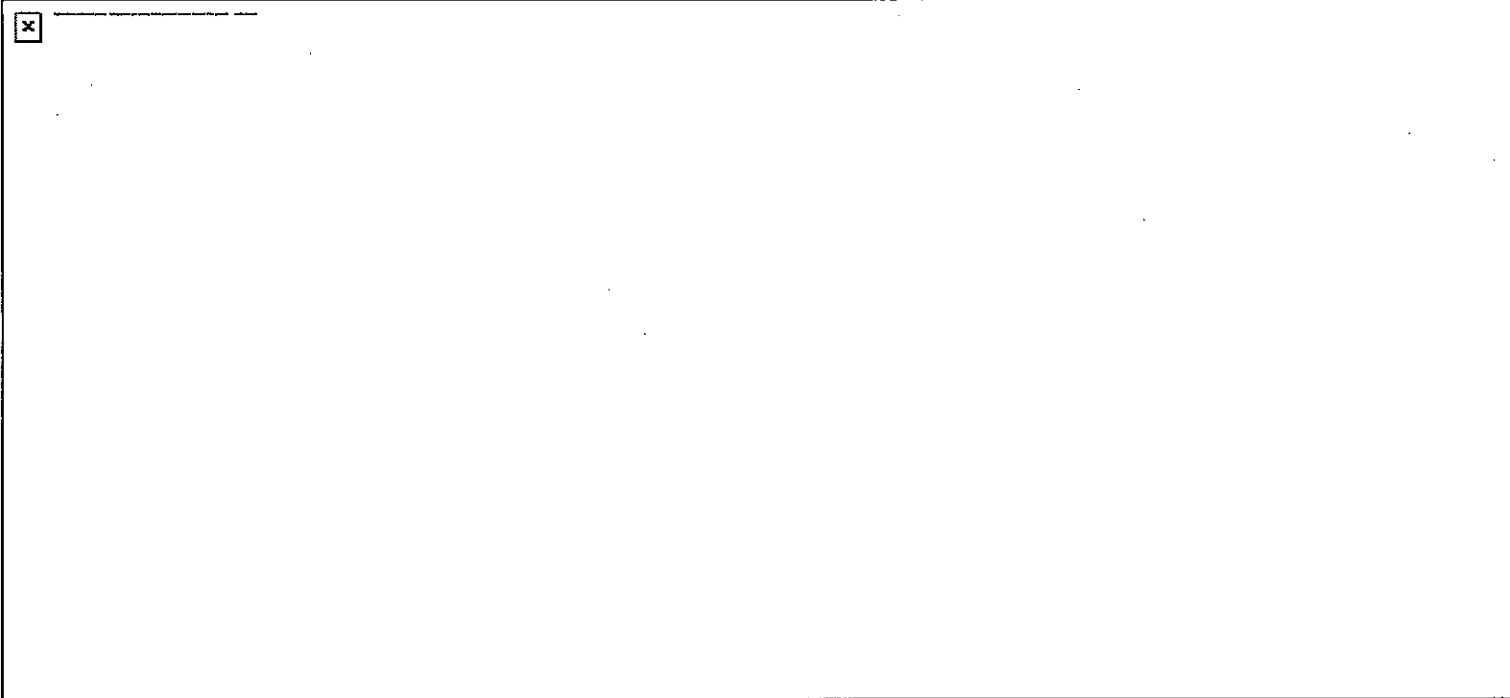
Competing uses also takes valuable and finite farmland out of food production. Longterm leasing may also become more difficult to obtain as more agricultural land is taken out of existing inventory. This puts Hawai'i further down the hole in establishing a reasonable level of food self-sufficiency.

Finally, this bill further erodes orderly planning. Tourism activities would be shifted from planned urban centers (like Waikiki) to open agricultural areas. This would have corresponding impacts on the ability for other agricultural activity to continue, as well as associated infrastructure impacts.

In short, this bill would substantially and detrimentally impact agriculture in Hawai'i. Please hold this bill.

Mahalo for the opportunity to testify.

**From:** Keep it Kailua [keepitkailua@hotmail.com]  
**Sent:** Wednesday, February 29, 2012 8:58 AM  
**To:** TSM Testimony  
**Subject:** Oppose SB2341



Thank you for this opportunity to provide testimony on SB 2341. *Keep it Kailua* opposes this measure that amends Sections 205-2, to allow unspecified activities and uses for short term rentals of less than 30 days duration as permissible uses within the Agricultural District, amends Section 205-4.5 to allow short-term rentals of not more than 30 days duration, and Section 205-5 an 30-days duration, and amends Section 205-5 that would allow agricultural tourism and overnight accommodations without a related bona fide farming operation. If passed, this measure will cause the proliferation of vacation rentals and related uses and activities that are presently not permissible within the Agricultural District.

Even through it is illegal to open new vacation rentals in residential neighborhoods on Oahu, a significant number of scofflaw investors do so every month. These investors, primarily from the mainland, are attracted by the lucrative revenue vacation rentals can generate (In some cases, over \$1000 per day). They have no concern for the communities they purchase properties in and snub their noses at our laws. In Kailua, illegal vacation rentals have notably reduced the housing supply for residents and has contributed to higher long-term rental rates and home values. Furthermore, these businesses negatively alter the character of their communities.

If this amendment is passed, an ominous number of investors will build “gentleman farms” on agriculture land and operate vacation rentals. This would increase land values in the Agricultural District and make land less affordable for real farmers.

*Keep It Kailua is a grassroots community group founded in 2004 whose purpose is to retain Kailua’s family-oriented residential character and quality of life.*

**Keep It Kailua's goals are to:**

- *Protect residential zoning and promote permanent residency in our neighborhoods*
- *Preserve and enhance scenic, civic, recreational and cultural features that define Kailua's sense of place*
- *Protect water resources essential to the health of the environment*
- *Preserve trees and maintain open green space*
- *Promote walking and the use of non-motorized bicycles as alternatives to automobile transportation within and around the town*
- *Promote businesses that serve the residential community*
- *Support other community groups with similar goals*

**Visit our website - [www.keepitkailua.com](http://www.keepitkailua.com)**

**kim3 - Nancy**

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 27, 2012 8:23 PM  
**To:** TSM Testimony  
**Cc:** inunyabus@gmail.com  
**Subject:** Testimony for SB2341 on 3/1/2012 1:20:00 PM

Testimony for TSM 3/1/2012 1:20:00 PM SB2341

Conference room: 224  
Testifier position: Oppose  
Testifier will be present: No  
Submitted by: E. Dunbar  
Organization: Individual  
E-mail: [inunyabus@gmail.com](mailto:inunyabus@gmail.com)  
Submitted on: 2/27/2012

Comments:

SB2341

Vacation rentals on Ag land are illegal and need to remain that way.

People on Oahu do not appreciate the fact that some day their food may be coming from outer islands. It is very short sighted not to acknowledge this fact and allowing agritourism (or whatever it's called) to take hold opens the door to even more proliferation of VRs.

Why farm? Where's the incentive anymore if this passes?

Regardless of any prohibitions in place against this practice on Kauai, the State law will eventually supersede the county laws because that is how it works.

Anyone who says, " Even if the Senate bill passes, current county law would prohibit vacation rentals on Kaua'i's Ag lands,.. " is wrong and misinformed.

The unique environment and natural resources of Hawaii are threatened by over-development, fast tracking and harmful legislation such as this.