

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
MAYOR



DAVID K. TANOUÉ
DIRECTOR

JIRO A. SUMADA
DEPUTY DIRECTOR

March 16, 2012

The Honorable Clift Tsuji, Chair
and Members of the Committee on Agriculture
The Honorable Angus L.K. McKelvey, Chair
and Members of the Committee on Economic
Revitalization & Business
House of Representatives
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Chairs Tsuji, McKelvey and Committee Members:

**Subject: Senate Bill No. 2341, SD2
Relating to Land Use**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill No. 2341, SD2. 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 hold Senate Bill No. 2341, SD2. Thank you for the opportunity to testify.

Very truly 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

DKT:jmf
sb2341sd2-LandUseAgTour-ks.doc

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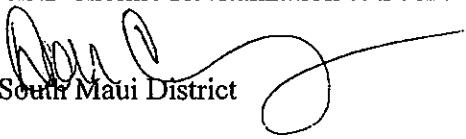


Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

TO: The Honorable Clift Tsuji, Chair
House Committee on Agriculture

The Honorable Angus L.K. McKelvey, Chair
House Committee on Economic Revitalization & Business

FROM: Don Couch 
Council Member, South Maui District

DATE: Thursday, March 15, 2012

SUBJECT: **SUPPORT OF SB 2341, SD 2, RELATING TO LAND USE**

Thank you for the opportunity to testify in support of SB 2341, SD 2. I provide this testimony as an individual member of the Maui County Council.

I support SB 2341, SD2 and urge you to support this measure.



Sierra Club Hawai'i Chapter

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

HOUSE COMMITTEE ON AGRICULTURE HOUSE COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS

March 16, 2012, 10:00 A.M.
(Testimony is 2 pages long)

TESTIMONY IN OPPOSITION TO SB 2341 (SD2)

Aloha Chairs Tsuji, McKelvey, and Committee Members -

The Sierra Club, Hawai'i Chapter, with over 10,000 members and supporters, *strongly opposes* SB 2341 (SD2). This measure would mean that vacation rentals, bed & breakfasts, and other similar activity could be permitted 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

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.



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March 16, 2012

The Honorable Cliff Tsuji, Chair
House Committee on Agriculture

The Honorable Angus L.K. McKelvey, Chair
House Committee on Economic Revitalization & Business
State Capitol, Room 312
Honolulu, Hawaii 96813

RE: S.B. 2341, S.D.2, Relating to Land Use

HEARING: Friday, March 16, 2012, at 10:00 a.m.

Aloha Chair Tsuji, Chair McKelvey, and Members of the Joint Committees:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR **supports** S.B. 2341, S.D.2, which repeals the prohibition on agricultural tourism activities in the absence of a bona fide farming operation and the prohibition on ordinances that allow overnight accommodations in agricultural districts. It further authorizes agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that a county has adopted ordinances regulating agricultural tourism.

HAR supports the concept of home rule, allowing Counties to make decisions on day-to-day land use decisions that affect their communities' future, way of life, and local economies. Counties are closely tied to local situations, and as a result, have the ability to best determine what communities need and want, within the context set by the State Legislature. HAR believes that S.B. 2341, S.D.2 helps to define that line of authority by giving Counties the resources to better control vacation rentals.

It is our understanding that this measure was requested by Maui County in order to allow that county to better manage its vacation rentals. Currently, Maui County has an ordinance that regulates and permits Bed & Breakfast operation, even in the agricultural district. That permission is based on a State Land Use Commission Special Use Permits, issued by the County Planning Commissions, to bona fide farmers. This is an example of a constructive approach to regulating vacation rentals, while benefitting the bona fide farming industry. Thus, S.B. 2341, S.D.2 will give all counties the ability to allow this business activity while also protecting the primary agricultural function.

Mahalo for the opportunity to testify.

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March 16, 2012

COMMITTEE ON AGRICULTURE

Rep. Clift Tsuji, Chair

Rep. Mark Hashem, Vice Chair

COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS

Rep. Angus McKelvey, Chair

Rep. Isaac Choy, Vice Chair

SB 2341 SD2
RELATING TO LAND USE

SB 2375 SD3
RELATING TO AGRICULTURAL-BASED COMMERCIAL OPERATIONS

Committee Chairs and Members:

Hawaii's Thousand Friends, a statewide non-profit water and land use planning organization, opposes *SB 2341 SD2* that repeals the prohibition on agricultural tourism with no connection to farming and that repeals prohibition on short-term less than 21-days overnight accommodations on agricultural land and *SB 2375 SD2* that eliminates roadside stands and farm based farmers markets in favor of agricultural-based commercial operations.

Allowing tourism to proliferate on agricultural land beyond any connection to agriculture including vacation rentals, retail and restaurants with no direct connection to farming increases the number of non-ag related activities on agricultural land and decreases land available and affordable for farming.

Both bills usurp Hawaii's State Land Use Law planning process and any public input or involvement. By making tourism, vacation rentals, retail establishments and restaurants permitted uses on agricultural land the public is shut out of the process to determine if these uses are appropriate for agricultural land in their community.

Hawaii's Land Use Law, the first in the nation, was established because the first state legislature determined that the lack of adequate controls had caused the development of Hawaii's limited and valuable land for short-term gain for a few while resulting in long-term loss to the income and growth potential of our State's economy. Conversion of agricultural land to residential use was a key reason for establishing the law.

If SB 2342 SD2 and SB 2375 SD3 pass then tourism, short-term vacation rentals, retail businesses and restaurants will be added to the growing list of non-farming related activities permitted on land designated agriculture.

HRS 205-2 identifies 12 permitted uses on agriculture land with 7 permitted uses unrelated to farming. They are...

- 1) wind generated energy production for public, private and commercial use
- 2) biofuel production for public, private and commercial use
- 3) solar energy facilities on soil productivity rated B, C, D or E
- 4) wind machines and wind farms
- 5) 5) small-scale meteorological, air quality, noise and other scientific and environmental data collection and monitoring facilities
- 6) agricultural tourism conducted on a working farm
- 7) open area recreational facilities

Permitting 4 more non-farming activities on agriculturally designated land tilts the scale in favor of commercializing agricultural land and against farming and the constitutional mandate to *conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.*

To protect agricultural land and Hawaii's farmers SB 2342 SD2 and SB 2375 SD3 must be held in committee.



REALTORS®
*Association of
Maui, Inc.*

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TESTIMONY

March 15, 2012

Testimony in support of SB 2341 SD2

Before a joint hearing of the House Agricultural and Economic Recovery and Business Committees, submitted by David DeLeon, Government Affairs Director, REALTORS® Association of Maui

Honorable Chairmen and Members of the Committees

The REALTORS® Association of Maui wishes to go on the record in support of the intent of SB 2341 SD2. That intent would allow the counties to create their own rules related to vacation rental uses in the agricultural districts and would give additional support to our challenged agricultural industry. RAM believes that it is best to allow the governments closest to the situation to make the decisions affecting their collective communities. While the State Legislature works hard to reflect the wishes of the people, the Counties are better positioned to grasp and react to the goals and needs of their own individual communities.

Maui County has made major strives to regulate the vacation rental element of its tourism industry. Property owners are now able to obtain permits for Bed & Breakfast operations and a new ordinance would also allow for Short-Term Rental regulation. These localized efforts show that this business can be managed and that the economic benefits provided by tourism can be spread throughout the community. We believe bona fide farmers and the rural communities they live in should also benefit from this economic opportunity.

RAM would also like to note a concern with the Senate Draft 2 version of this bill. That draft would limit vacation stays in the agricultural district to 21 days. The apparent purpose of that proposed limitation was to address the concern that vacationers staying 30 days or longer would not pay Transient Accommodation Taxes. If they only stay 21 days, then they will pay the tax. We would like to point out that the definition of "Transient Accommodations" in HRS 237D-1 states that this tax applies to accommodations "less than 180 consecutive days." Based on that fact, the 21-day limitation would appear to be an unnecessary restriction.

Our association would like to emphasize that this measure would be an improvement to our land use regulatory environment and would put the responsibility for this regulatory function where it should be, with the County Council.

Mahalo:

hashem3 - Casey

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 14, 2012 7:51 PM
To: AGRtestimony
Cc: stuart.h.scott@gmail.com
Subject: Testimony for SB2341 on 3/16/2012 10:00:00 AM

Testimony for AGR/ERB 3/16/2012 10:00:00 AM SB2341

Conference room: 312
Testifier position: Oppose
Testifier will be present: No
Submitted by: Stuart Scott
Organization: TransitionOahu.org
E-mail: stuart.h.scott@gmail.com
Submitted on: 3/14/2012

Comments:

I urge you to oppose SB2341. It is a thinly veiled attempt to strip protections from ag lands by allowing commercial uses only nominally related to agriculture.

It is a back door attempt to go around the state Land Use Law which requires a land owner to apply to the Land Use Commission to change the ag land designation to urban to allow non-ag related activities.

Without the LUC process the public has no involvement in what uses of agricultural land are appropriate.

It is unconscionable that our elected leaders would take away food security from our children by allowing more forms of commercial development on ag land than are already permitted. Who are you folks working for anyway? The people or business interests?

Sorry if that sounds insulting, but a whole LOT of people are asking that question, just not to your faces.

Stuart Scott
Farmer & Co-Director or TransitionOahu.org

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 15, 2012 2:04 PM
To: AGRtestimony
Cc: kimokelii@aol.com
Subject: Testimony for SB2341 on 3/16/2012 10:00:00 AM

Testimony for AGR/ERB 3/16/2012 10:00:00 AM SB2341

Conference room: 312
Testifier position: Support
Testifier will be present: No
Submitted by: Kimo Kelii
Organization: Nanakuli Neighborhood Board
E-mail: kimokelii@aol.com
Submitted on: 3/15/2012

Comments:
Aloha Kakou,

House Committee on Agriculture: Chair, Rep C. Tsuji; Vice Chair, Rep M. Hashem; and committee members

House Committee on Economic Revitalization & Business: Chair, Rep A. McKelvey; Vice Chair, Rep I. Choy; and committee members

PLEASE SUPPORT THE PASSAGE OF SB 2341 SD2!

As a farmer on the Waianae Coast, the economic downturn since 2009 has really impacted our Family's Pikake Farm operations and business in that our leis and flowers demand have dwindled significantly in that we are now looking at other ways of financially sustaining our farm and business. Since the opening of the Aulani Resort Hotel, it was recommended that perhaps our Farm could consider doing an Agri-tourism type of opportunity whereby tourist could come to our Pikake farm and sew their own leis or make flower arrangements with the various tropical flowers (bird of paradise, torch gingers, heliconias, etc.) that we have, too.

Please support this bill as it will bring the type of financial relief that we need to diversify our farming approach with surviving in this tough economic times here in Hawaii.

Mahalo, Kimo Kelii (Waianae Coast Community Leader)

hashem3 - Casey

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 15, 2012 2:28 PM
To: AGRtestimony
Cc: windsurf@maui.net
Subject: Testimony for SB2341 on 3/16/2012 10:00:00 AM

Testimony for AGR/ERB 3/16/2012 10:00:00 AM SB2341

Conference room: 312
Testifier position: Support
Testifier will be present: No
Submitted by: Catherine Clark
Organization: Individual
E-mail: windsurf@maui.net
Submitted on: 3/15/2012

Comments:

Aloha from Maui. I urge you to SUPPORT SB2341.

Short term vacation rentals have existed in Maui County for more than 30 years, and Maui is currently in the process of enacting an ordinance to permit them, with adequate provisions to protect the character of our communities. Maui has many small agricultural parcels, and a short term rental blends into these areas with no impact on surrounding neighbors. The supplemental income from a short term rental has multiple benefits:

1. a small farmer can continue to work on his land supplemented by income from the rental
2. small business owners are employed to service the rental, creating jobs close to home for the residents of rural communities
3. small shops and restaurants in the rural areas benefit from the increased business that these rentals can bring to them.

This ordinance takes an important step in moving the decision to have or not have these types of rentals to the County level.

Please vote YES to SB2341

Kathleen M. Pahinui
67-237 Kauai St
Waiialua, HI 96791

Rep. Clift Tsuji, Chair and Members of the Committee on Agriculture
Rep. Angus L.K. McKelvey, Chair and Members of the Committee on Economic
Revitalization and Business

Subject: Senate Bill No. 2341, SD2

Relating to Land Use: Repeals the prohibition on overnight accommodations at accessory facilities that are connected with a farming operation. Authorizes short-term rentals in agricultural districts.

Dear Chair Tsuji and Chair McKelvey and Members of both Committees:

I am writing in strong opposition to SB 2341. This will further degrade agriculture on Oahu and open the door to further abuse of the permitting and zoning system in relation to short-term rentals.

There is already great abuse of ag land on Oahu especially on the North Shore where it is sold and the owners make a token nod to ag by pretending to either grow a small group of fruit trees or allow a few horses to board. In return they get to build McMansions and pay well below what they should be paying in property taxes. This is just wrong.

By allowing short-term rentals on ag land, provides more reason for those who buy ag land to not use it for the purposes it was zoned for – why farm when easy money can be made with vacation rentals. Farming requires commitment and hard work – why bother when a cheap ad on the internet could reap thousands in one month. This is a huge disincentive to farm and will directly impact our food security and the long-term viability of our farm land.

Please do not pass this bill.

Malama aina,

Kathleen M. Pahinui
Waiialua resident

From: randy ching [oahurandy@yahoo.com]
Sent: Wednesday, March 14, 2012 3:34 PM
To: AGRtestimony; ERBtestimony
Subject: in opposition to SB2341, SD2 - relating to land use

SB2341, SD2 (opposed)
House Committees on Agriculture, Economic Revitalization and Business
Hearing on Friday, March 16 at 10:00 a.m. in room 312

Chair Tsuji, Vice Chair Hashem, Chair McKelvey, Vice Chair Choy, and members of the committees,

I oppose SB2341, SD2. Ag land should be used for growing food, not for tourism.

Please hold this bill. Mahalo.

Sincerely,

Randy Ching
Honolulu
oahurandy@yahoo.com