



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

LATE TESTIMONY

ON THE FOLLOWING MEASURE:
S.B. NO. 2350, S.D. 1, RELATING TO AGRICULTURAL LANDS.

BEFORE THE:
HOUSE COMMITTEE ON AGRICULTURE

DATE: Wednesday, March 14, 2012 **TIME:** 10:00 a.m.
LOCATION: State Capitol, Room 312
TESTIFIER(S): David M. Louie, Attorney General, or
Bryan C. Yee, Deputy Attorney General

Chair Tsuji and Members of the Committee:

The Department of the Attorney General offers the following comments on this bill.

Section 205-2(d), Hawaii Revised Statutes (HRS), sets forth the permissible uses on agricultural lands. Section 1 of this bill proposes to amend section 205-2(d), HRS, to allow for ohana dwellings within the agricultural district. It provides in relevant part as follows:

Ohana dwellings in any county with a population of 500,000 or less, as permitted under section 205-6;

(Emphasis added).

Section 205-6, HRS, sets forth the process by which a county may issue a special permit to allow "unusual and reasonable uses within agricultural and rural districts other than those [uses] for which the district is classified." Accordingly, section 205-2(d), HRS, sets forth the permissible uses within the agricultural district, and section 205-6, HRS, sets forth the method by which other uses may be allowed within the agricultural district.

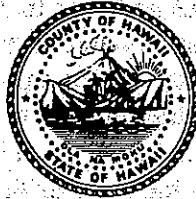
By requiring that an ohana dwelling obtain a special permit in order to be a permissible use, this bill conflates the two concepts of "permissible uses" and "special permits." If a use is a permissible use, it does not require a special permit. A special permit is only needed if the use is not already a permissible use. Because the counties may currently allow ohana dwellings through the special permit process, this bill does not appear to provide for any greater ability to construct ohana units within the agricultural district.

There are a variety of changes that could be made to the bill, depending on the committee's intent. First, one might delete the phrase "as permitted under section 205-6" on page 3, lines 2-3. This would resolve the legal issue, although it would also allow ohana

dwellings in all agricultural districts, possibly without any discretionary approvals by the county. Second, one might simply hold the bill in committee because existing law allows the counties to issue special permits for ohana dwellings. This would also resolve the legal issue, although it would not provide for any greater ability to construct ohana dwellings than currently exists. Third, one might substitute the phrase "if approved by the county planning commission" in place of "as permitted under section 205-6" on page 3, lines 2-3, in order to require an additional discretionary approval by the county without specifically requiring a special permit that is only applicable if the use is not already a permissible use. This would also resolve the legal issue, although county approvals are not generally required for any of the other permitted uses in 205-2(d), HRS. The permitted use that most closely incorporates a county approval process is section 205-2(d)(11), HRS, which allows agricultural tourism only if the county has adopted ordinances regulating agricultural tourism. Perhaps the committee may have other suggestions, and we would be happy to review those suggestions.

We respectfully submit these comments to the committee for its information.

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HAWAII COUNTY COUNCIL

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LATE TESTIMONY

March 14, 2012

TESTIMONY OF DENNIS "FRESH" ONISHI
HAWAII COUNTY COUNCIL MEMBER
ON

SB 2350, SD1, RELATING TO AGRICULTURAL LANDS
House Committee on Agriculture
March 14, 2012 10:00 a.m.
Conference Room 312

Dear Chair Tsuji, Vice Chair Hashem and Members of the House Committee on Agriculture:

Thank you for the opportunity to provide testimony in support of Senate Bill No. 2350, SD1. I apologize for the tardiness of my testimony.

This Bill simply allows the building of ohana dwellings on lands within the agricultural district without having to apply for a special permit. As amended, this bill prohibits these ohana dwellings from being rented as a single unit separate from the primary dwelling and also ensures the ohana dwelling be used in connection with a farm or located where agricultural activity provides income to the occupants of the farm dwelling.

Ohana dwellings allows families, multi-generational and otherwise extended, to live in close proximity and provide the necessary support and stability that families should be allowed to enjoy. They allow family members to have privacy, yet be close at hand, a necessity as our population ages.

As families in urban areas are allowed to build an ohana dwelling on their property, so should families on agricultural lands be allowed to do the same. However, there is a clear distinction between farm dwellings and ohana dwellings. By definition, farm dwellings must be used in connection with a farm. An ohana dwelling would allow family to live close by without being compelled to farm.

I would like to suggest the following amendment to SB 2350, SD1, which adds the words "ohana dwelling" to the list of allowable buildings. The amendment to section (7) is illustrated in ramseyer format and bold for illustrative purposes only.

“(7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), obana dwellings, employee housing, farm buildings, mills, storage facilities, processing facilities, agricultural-energy facilities as defined in section 205-4.5(a)(16), vehicle and equipment storage areas, roadside stands for the sale of products grown on the premises, and plantation community subdivisions as defined in section 205-4.5(a) (12)...”

Once again, thank you for the opportunity to submit testimony on this matter.



LATE TESTIMONY

SB2350 SD1

STRONG SUPPORT

In short the average farm in Hawaii is under two acres and has limited income potential. Often having family or a partner is critical to making a go of it. Yet, often you do not want this partner to share your bathroom or kitchen. You want privacy and so do they.

This measure speaks to that.

Suggestion.....for get the Special Use permit. The County will invoke the requirement to get an EA and the project stops there.

If we want to keep the land in farming, you need to keep the farmer on the land.

This Ohana Housing will help.

Thank you,

Glenn Martinez
President

NEIL ABERCROMBIE
Governor



RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

SCOTT E. ENRIGHT
Deputy to the Chairperson

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TESTIMONY OF RUSSELL KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE
Wednesday, March 14, 2012
Room 312
10:00 A.M.

SENATE BILL NO. 2350, SENATE DRAFT 1
RELATING TO AGRICULTURAL LANDS

Chairperson Tsuji and Members of the Committee:

Thank you for this opportunity to provide testimony on Senate Bill No. 2350, Senate Draft 1 that amends Section 205-2 to add as a permissible use 'ohana dwellings' that are accessory to farm dwellings in the Agricultural District. The Department of Agriculture believes this measure lacks clarity in describing the relationship ohana dwellings must have to agricultural activity. The requirement that a dwelling be accessory to agricultural activity is one of the most important elements in Chapter 205. We note that the counties already provide for accessory dwellings in their respective zoning ordinances.

If passed as is, this measure may cause proliferation of residential uses throughout the Agricultural District. This will exacerbate the existing problem of agricultural subdivisions with "farm dwellings" being accessory to little, if any, agricultural activity. ~~This will cause agricultural land values to rise, not because of their agricultural utility but because of their value for residential use.~~ Inflated land prices in turn will make entry into farming and continuation of existing farms difficult and less attractive. Nuisance complaints about agricultural activities (noise, dust, odors) by non-agricultural owners of ohana dwellings will increase.



Thank you, again, for the opportunity to testify on this measure.