

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**  
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March 30, 2012

The Honorable Jerry L. Chang, Chair  
and Members of the Committee on Water,  
Land & Ocean Resources  
House of Representatives  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Dear Chair Chang and Committee Members:

Subject: Senate Bill No. 2375, SD3, HD1  
Relating to Agricultural-Based Commercial Operations

The Department of Planning and Permitting **opposes** Senate Bill No. 2375, SD3, HD1, which would allow agricultural-based commercial operations within the State Agricultural District. The bill restricts sales to Hawaii-grown agricultural products and value-added products made primarily with raw Hawaii agricultural materials.

We support the agricultural industry as reflected in our zoning and building codes. For example, our zoning code exempts agricultural structures from lot coverage and height limits. We will shortly introduce a bill for an ordinance to exempt certain agricultural structures from building permits.

However, we oppose this bill, as its provisions are virtually unenforceable and may result in unintended consequences. The proposal essentially depends on self-certification to demonstrate compliance with bill provisions. The City is not equipped to determine whether products were grown in the State or even grown on the premises. A better enforcement program would be to require annual reports filed with the State, with an auditor or accountant certifying that all products sold were primarily produced in Hawaii with raw agricultural materials.

The provisions of this measure could have unintended consequences in that the "producer-operators" could be out-of-state entities that compete with local farmers for quality agricultural lands which are intended for food production. The effect of this could be land speculation, driving up the general price of all agricultural lands. Moreover, as out-of-state companies, their revenues will likely not stay within the local economy. Although this measure

The Honorable Jerry L. Chang, Chair  
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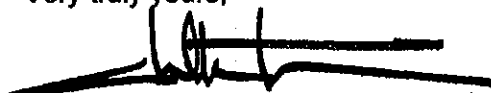
may improve and diversify the farmers' economic opportunities -- by changing from farmer to retailer, the rural character of an area could change from cultivated agricultural lands to paved parking lots and retail outlets. The bill places no limit on the number of operations that can be located on the same property. Essentially, a shopping mall can be established on prime agricultural land with no public hearing or input.

Lastly, allowing retailing in agricultural districts seems inconsistent with prohibiting golf courses, as the law now dictates. The former essentially precludes any future use of the land for agriculture, changes the character of the region from rural to urban, increases traffic and demands on infrastructure. The latter would retain an open space character and largely imposes minimal demands on roads, sewers, and potable water.

If the intent of the measure is to support local farmers as farmers, existing provisions of Chapter 205, HRS, already allows agricultural-based commercial operations as accessory to a working farm. If commercial operations are desired as principal uses, Section 205-6, HRS, allows agricultural producers to explore creative ways to market their products on a case-by-case basis through the Special Use Permit. Not only will this allow for the review of proposals against the intent of the State Agricultural District, but also allow infrastructure agencies and the public to comment on the proposal.

Given the above, please hold this bill. Thank you for this opportunity to testify.

Very truly yours,



David K. Tanoue, Director  
Department of Planning and Permitting

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Testimony of  
**Kylie Matsuda**  
Managing Director  
Kahuku Farms  
on  
**S.B. 2375, SD 3, HD 1**  
**Relating to Agricultural-based Commercial Operations**

House Committee on Water, Land, & Ocean Resources  
Friday, March 30, 2012  
11:00 am  
Conference Room 325

Kahuku Farms, Matsuda-Fukuyama Farms, and Kahuku Farmers strongly supports S.B. 2375, which will allow agricultural-based commercial operations on agricultural lands. These entities are owned and managed by the Matsuda and Fukuyama families.

Together, our farms operate on more than 300 acres located in Kahuku, Kawaihoa, and Haleiwa. We employ about 40 people from the community and specialize in growing long eggplant, luau leaf, papayas, apple bananas, and have recently ventured into growing vanilla, cacao, lilikoi, and many other tropical fruit crops. We are food safety certified and have also invested in a certified commercial kitchen at our farm in Kahuku.

Our produce is sold at farmer's markets, super market chains and to wholesalers here in Hawaii. We also produce value added products in our farm commercial kitchen such as Lilikoi Jelly, Mango Tea, Pineapple Papaya Jam, and promote them at Farmers' Markets.

However, our primary retail market for our value added products are sold at our farm Country Store in Kahuku. People from all around the community have come to enjoy our fresh produce, long eggplant panini sandwich, papaya and banana smoothies, lilikoi sorbet, vanilla ice cream, and grilled banana bread all created from fresh ingredients grown on the farm.

My dad, Melvin, myself, and over a hundred other leaders in agriculture have had an amazing opportunity to be a part of The Agricultural Leadership Program of Hawaii. This program has enlightened and engaged us to other ways of farming in Hawaii and abroad. Marketing, land, water, labor, strategic planning, and agri-tourism are some of the topics that we explored. It is through this leadership program that we have learned to think out of the box and we are encouraged to protect, support, and promote all of Hawaii's agriculture.

In 2005, Kahuku Farms was born because we felt the desire to open our farm to the public to educate all who were interested in learning about what it is we do as farmers and where their food comes from.

S.B. 2375, will help to make it easier for agricultural operators to start commercial operations providing another direct sales outlet for their agricultural products. The current law allows roadside stands to sell products only grown on their premises and is limited to 500 square feet. With this regulation, we are prohibited to sell products from our other farm sites in Haleiwa and Kawailoa because it is not grown at our farm in Kahuku. My grandfather is a second generation cattle rancher from Mokuleia. It would be great to promote my families grass fed beef at our country store.

We have invested over \$200,000 into our retail store in Kahuku because we believe in its' purpose of educating, promoting local agriculture and providing farmers with opportunities of direct sales. We have experienced that current regulations make it extremely difficult to turn a profit. Our agri-tourism venture which started over 6 years ago has suffered extreme financial challenges and the permitting process and regulations had delayed our opening for a very long time. We have exhausted our financial budget and are asking you to help us through this new and exciting agricultural evolution.

S.B. 2375 will allow agricultural operators to expand the market for their products, increase their profits and sustain their agricultural operations.

Thank you very much for allowing me to present this testimony.

Kylie Matsuda  
Managing Director, Kahuku Farms.



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March 28, 2012

Testimony to the House Committee on Water, Land & Ocean  
Resources

Hearing Date: Friday, March 30, 2012  
11 a.m., Conference Room 325

Rep. Jerry L. Chang, Chair

Rep. Sharon E. Har, Vice Chair

Members of the Committee on Water, Land & Ocean Resources

**RE: Support of Senate Bill No. 2375 SD3 HD1 - Relating to  
Agricultural Based Commercial Operations**

I am Kapu C. Smith, Senior Land Asset Manager for Kamehameha Schools' Kawaihoa Plantation in Waialua, Oahu. I am here to testify in support of SB 2375 SD3 HD1 because it will have an immediate impact on the farmers' ability to improve their economic feasibility and thus continue to farm. Under the current land use, agricultural based commercial operations are not described as one of the permissible uses. As a result, this has increased permitting, limited the farmers' economic opportunities and placed them at a disadvantage with neighboring landowners. This means that their products can be sold across the street by others but not by the farmer on their own farm lot.

Thank you for the opportunity to testify in support of SB 2375 SD3 HD1.

**Testimony of  
Jon Okudara  
on**

**S.B. 2375, S.D. 3, H.D. 1  
Relating to Agricultural-based Commercial Operations  
House Committee on Water, Land, and Ocean Resources  
Friday, March 30, 2012  
11:00 a.m.  
Conference Room 325**

Thank you for the opportunity to present testimony in strong support of S.B. 2375.

The Land Use Law describes as primary permissible uses on class A and B agricultural lands: open area recreational uses, transformer stations, communications equipment buildings, solid waste transfer stations, wind energy facilities, biofuel processing facilities, plantation community subdivisions, and wireless communication antennas. The only direct sales of agricultural products that is allowed on agricultural lands are through “roadside stands for the sale of products grown on the premises.”

Because the best way to preserve agriculture is to make it profitable, the objective of S.B. 2375, as originally introduced, was to provide other profit-making opportunities for agricultural producers. It describes as permissible uses on agricultural lands, “agricultural-based commercial operations,” which are already allowed on agricultural lands by other law with a special permit or conditional use permit.

Current Law

Under the Land Use Law, Chapter 205, HRS, the only agribusiness activity that provides for direct sales to consumers on agricultural lands are “roadside stands for the sale of products grown on the premises.” Under other law, however, certain retail activities are described as an agricultural use:

- Section 165-2, HRS, the Hawaii Right to Farm Act, describes a “farming operation” as including but not limited to “[m]arketed produce at roadside stands or *farm markets*.” “Farm market” is not defined and is not listed as a permissible use on agricultural lands in the Land Use Law.
- The Land Use Ordinance of the City and County of Honolulu, allows “*agribusiness activities*” in an agriculture zone, including “*retail activities in an enclosed structure ...limited to a structure not exceeding 500 square feet*”. “Agribusiness activities” is not defined in the Land Use Ordinance,” and is not listed as a permissible use on agricultural lands in the Land Use Law.
- Under section 166-3.5, HRS, the Agricultural Parks Law, the Department of Agriculture allows “*agricultural-based commercial venture operations*” on lots leased and operated by an agricultural park lessee. “Agricultural-based commercial venture operations” is not defined in Chapter 166 or in the rules of

the Department, and “agricultural-based commercial venture operations” is not listed as a permissible use on agricultural lands in the Land Use Law.

These uses, however, have been allowed with a special permit or conditional use permit from the county planning commission on agricultural lands. Obtaining these permits, however, is a very expensive for an applicant.

### Hawaiian Vanilla Company

The Hawaiian Vanilla Company started growing and processing vanilla in the Hamakua district on the island of Hawaii. As part of its operation, the company started educating people about vanilla and incorporating the vanilla into value-added products produced in their commercial kitchen. The operation evolved into a vanilla experience luncheon that included an educational component about growing and processing vanilla. The operation served organic greens grown at the farm topped with a vanilla raspberry balsamic dressing, goat cheese from a dairy in Ahualoa, tomatoes and bananas from Hamakua Springs Country Farms, beef from the Andrade slaughterhouse in Paauilo, Hamakua Mushrooms in Laupahoehoe, honey from Volcano Ishald Honey in Ahualoa, and Ahualoa Goat Dairy.

Because of a complaint filed with the Planning Department that Hawaiian Vanilla Company was operating a restaurant and retail establishment, they ceased the food and retail operations and applied for a special permit. Hawaiian Vanilla spent over \$30,000 to get a special permit to operate a retail establishment and retail food establishment for sale and tasting of its vanilla products. (Board of Appeals, County of Hawaii, Hearing transcript, February 8, 2008).

### Kahuku Farms

Kahuku Farms operates a “country store” under a conditional use permit from the City and County of Honolulu. Section 21-5.10A of the Land Use Ordinance allows retail “agribusiness activities” in an enclosed structure not exceeding 500 square feet, and where all products offered for sale shall be:

- Agricultural products grown on the parcel;
- Agricultural products grown in the City and County of Honolulu; or
- Jams, jellies, candies, and pickled or dried produce made from those products.

Kahuku Farms incurred significant costs in obtaining the special permit for the 500 square foot store.

The Land Use Ordinance requires that at least 50 percent of the floor area be used for display of the products grown on the premises or made from products grown on the premises, with the remainder of the area used for display of agricultural products grown in the City and County of Honolulu.

In addition to its operations in Kahuku, Kahuku Farms grows its products on parcels in Haleiwa and Kawaihoa. It also has a family cattle operation in Mokuleia. The current law prohibits the products from these operations from being sold at the Kahuku store.

S.B. 2375 will allow Kahuku Farms to sell the products from all of its farm parcels at its store. In addition, it could sell the products or use the products from other agricultural producers in its food products, such as Hawaiian vanilla, flavored butters from naked Cow Dairy, Hamakua Mushrooms, and others.

Because of concerns raised in the Senate that this bill that it will allow commercial franchise operations, such as Jamba Juice or commercial restaurants, claiming to use Hawaii agricultural products, on agricultural lands, S.B. 2375 was amended to require that the agricultural-based commercial facilities be *owned and operated by a producer*. This will prevent franchise operations or non-owner operated businesses.

“Franchisee”... person or company that is granted a *license* from the owner of a trademark or trade name permitting the person to sell a product or service under that name or mark.”

“Franchise agreement” ...an agreement between a supplier of a product or service or an owner of a desired trademark or copyright (franchisor), and a reseller (franchisee) under which the franchisee agrees to sell the franchisor’s product or service or to do business under the franchisor’s name. (Black’s Law Dictionary)

S.B. 2375 will create an opportunity for agricultural producers to establish direct sales opportunities for their products and promote synergies among Hawaii’s agricultural producers.

S.B. 2375 should be amended to change the effective date to “upon its approval.”

Thank you for the opportunity to offer these comments.