

LATE

**SB 6**

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

**LATE**

BEFORE THE SENATE COMMITTEE ON AGRICULTURE  
THURSDAY, JANUARY 27, 2011  
2:45 p.m.  
Room 229

SENATE BILL NO. 6  
RELATING TO AGRICULTURAL LANDS

Chair Nishihara and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 6. The Department of Agriculture agrees with the intent of the measure but prefers that the process to identify and designate Important Agricultural Lands as defined in Part III of Chapter 205, Hawaii Revised Statutes.

The purpose of this bill is to carry out Article XI, Section 3 of the Hawaii Constitution to conserve and protect agricultural lands.

The bill amends Sections 205-3.1 and 205-4.

1. Section 205-3.1 in its current form provides the counties the decision-making authority on boundary amendment petitions for agricultural parcels less than 15 acres. The proposed amendment is to exclude from the counties' authority, those petitions containing "A" and "B" rated soils and transfer this authority to the Land Use Commission (LUC).

2. Section 205-4 is amended to not allow the LUC to approve petitions containing agricultural lands with "A" and "B" soil ratings if the petitioned area meets all of four criteria meant to protect largely contiguous agricultural lands with existing or historic agricultural uses and activities and resources from urbanization.



We do not believe it was the intention of the Legislature to carry out the constitutional mandate by enactment of land use regulations such as provided for in SB 6. Instead the Legislature, after considering the recommendations of the Agriculture Working Group, chose to take a more supportive role for agricultural development by passing the IAL Law (2005) that broadly identifies and designates Important Agricultural Lands (IAL) and the IAL Incentives Act (2008) that promotes agricultural viability, sustain the growth of the agricultural industry, and provide for the long-term use and protection of IAL lands for agricultural use.

To date, over 30,000 acres have been designated as IAL by the LUC on the islands of Kauai and Maui by the "voluntary" method of identifying potential IAL. County identification of potential IAL is fundamental to protecting agricultural land as intended in the IAL Law. To date, Kauai County has begun to identify potential IAL in accordance with the IAL Law. We understand that legislation has been introduced to appropriate funds to be made available to the counties to undertake the development of reports and mapping that identify potential IAL in accordance with Section 205-47. We believe the ongoing progress to carry out the constitutional mandate should be allowed to continue.

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

**nishihara1 - Dale**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, January 26, 2011 5:22 PM  
**To:** AGL Testimony  
**Cc:** sterlingw@oha.org  
**Subject:** Testimony for SB6 on 1/27/2011 2:45:00 PM  
**Attachments:** SB6 Class A & B Agr Lands.pdf

**LATE**

Testimony for AGL 1/27/2011 2:45:00 PM SB6

Conference room: 229  
Testifier position: comments only  
Testifier will be present: No  
Submitted by: Sterling Wong  
Organization: Office of Hawaiian Affairs  
Address: 711 Kapiolani Blvd Ste 500 Honolulu, HI  
Phone: 594-1834  
E-mail: [sterlingw@oha.org](mailto:sterlingw@oha.org)  
Submitted on: 1/26/2011

Comments:  
Please note that we will not be at the hearing. Mahalo



**SB 6**  
**RELATING TO AGRICULTURAL LANDS**  
Senate Committee on Agriculture

January 27, 2011

2:45 p.m.

Room 229

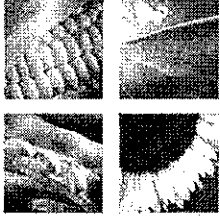
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The Office of Hawaiian Affairs (OHA) offers the following comments on **SB6**, which would require district boundary amendments involving agricultural lands with soil classifications of A or B, to be processed by the land use commission.

The OHA Administration will recommend that the OHA Board of Trustees support SB6. Currently the Land Use Commission processes petitions for district boundary amendments for lands in the conservation district, land areas greater than fifteen acres, and important agricultural lands. SB6 would give the Land Use Commission increased oversight over agricultural lands, providing additional protections for agriculturally suitable lands. It would also provide more opportunities for input by the Native Hawaiian and larger community in the boundary amendment process.

OHA generally opposes reclassifications which result in the loss of agricultural lands that have the potential to be productive. One of the fundamental objectives of the State Agricultural Function Plan (1991) is to encourage and develop diversified agriculture throughout Hawai'i which will support our local economy and contribute to reducing our dependence on imported products. This objective would be supported by SB6, which further protects agricultural lands with the potential for productivity.

The OHA Administration will make this recommendation to our Board of Trustees at its meeting on February 3, 2011. Mahalo nui for the opportunity to testify.



# Hawaii Crop Improvement Association

*Growing the Future of Worldwide Agriculture in Hawaii*

Testimony By: Alicia Maluafiti  
SB 6 - Relating to Agricultural Lands  
The Senate Committee on Agriculture  
Thursday, January 27, 2011  
Room 229, 2:45 p.m.

**LATE**

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**Executive Director**  
Alicia Maluafiti

## **Position: Strongly Oppose**

Aloha Chair Nishihara, Vice Chair Kahele and members of the Committee:

My name is Alicia Maluafiti, Executive Director of the Hawaii Crop Improvement Association, a nonprofit trade association representing the seed industry in Hawaii. HCIA strongly opposes Senate Bill 6.

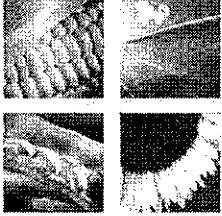
While we recognize and sincerely appreciate the many efforts of our elected officials to preserve our important agricultural lands and support Hawaii's farmers, the ultimate goal is to ensure the viability of agriculture. Although ag lands are a necessary aspect to achieving that goal, this bill is simply missing the most critical element to justify its passage: the nexus with the farmer.

### **SB 6 circumvents the IAL process.**

The agricultural community worked for years with other allies and stakeholders to pass landmark legislation in 2005 – Act 183, the Important Agricultural Lands (“IAL”) law. This law fulfills a long-standing constitutional mandate - not because it says agriculture is a priority in this state, but because it actually begins the process of protecting Hawaii's important agricultural lands and identifying lands most appropriate for agricultural preservation. ACT 183 provides the framework for farmers to receive incentives and support in order to keep them farming and to ensure the preservation of Hawaii's agriculture industry. So the nexus is not just agricultural lands, but agricultural businesses as well. The nexus is the farmer. SB 6 circumvents the IAL process and does little to actually help our farmers.

### **SB 6 infringes upon existing community and county plans.**

Using Oahu as an example - we have more than 40,000 acres of A and B rated lands on the island – nearly 95% which is outside the county-designated Urban Growth Boundaries. We recognize that the 30-year old Ewa Community plan will remove agricultural lands from production and provide our growing population on Oahu with sorely-needed affordable housing within the urban corridor. With the proposed West Oahu campus, expansion of Hawaiian Homelands, Transit Oriented Development along the new rail line within Ho'opili, we have had to not only compromise, but make sacrifices which we believe are in the best long term interests of not only the agricultural community, but the people of this island. If



# Hawaii Crop Improvement Association

*Growing the Future of Worldwide Agriculture in Hawaii*

we are truly committed to minimizing urban sprawl and its encroachment upon important agricultural lands, then we must honor the IAL process and support the county plans that address future growth on Oahu.

SB 6 has less to do with helping farmers and more to do with stopping development. Unfortunately, those people purporting to support agriculture seem to be missing in action when it comes to addressing other policy issues facing farmers including access to water, infrastructure, irrigation, transportation and labor.

## Honor the IAL process

The more comprehensive IAL process is a better solution for farmers because designation takes into consideration criteria that are critical to ensuring the viability of agriculture:

- Land currently used for agricultural production.
- Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops.
- Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the Board of Agriculture on January 28, 1977.
- Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production.
- **Land with sufficient quantities of water to support viable agricultural production.**
- **Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county.**
- Land that contributes to maintaining a critical land mass important to agricultural operating productivity.
- Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power.

Please honor the IAL process and hold SB 6 in committee. Mahalo for the opportunity to comment.

### **HCIA 2010-2012 Board of Directors**

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Alicia Maluafiti

**nishihara1 - Dale**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, January 26, 2011 5:52 PM  
**To:** AGL Testimony  
**Cc:** cnekota@drhorton.com  
**Subject:** Testimony for SB6 on 1/27/2011 2:45:00 PM  
**Attachments:** Senate Bill 6 Testimony (AGR Committee January 27, 2011).pdf

**LATE**

Testimony for AGL 1/27/2011 2:45:00 PM SB6

Conference room: 229  
Testifier position: oppose  
Testifier will be present: Yes  
Submitted by: Cameron Nekota  
Organization:  
Address: 650 Iwilei Road Honolulu, Hawaii  
Phone: 528-9074  
E-mail: [cnekota@drhorton.com](mailto:cnekota@drhorton.com)  
Submitted on: 1/26/2011

Comments:





CAMERON W. NEKOTA  
Vice President

January 27, 2011

VIA EMAIL

The Honorable Senator Clarence Nishihara  
Chair, Hawaii Senate Committee on Agriculture  
State Senate  
The State Capitol  
Honolulu, HI 96813

RE: **Opposition** to Senate Bill 6, Relating to Agricultural

Dear Chair and Respected Committee Members,

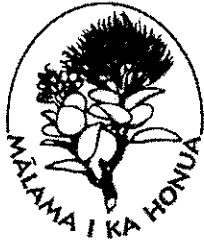
I am Cameron Nekota, vice president for D.R. Horton-Schuler Homes. Schuler has a long history as a kama'aina company, and we are proud of our accomplishments as one of Hawaii's leading residential developers. We feel that throughout our 40-year journey of operating in Hawaii, we have strived to be thoughtful land stewards and welcome neighbors. I would like to thank you for the opportunity to provide written testimony in **opposition** to Senate Bill 6 ("SB 6").

As many of you know, the Important Agricultural Lands ("IAL") law was passed after six years of work by hundreds of stakeholders, to establish a rational process to identify which lands are most appropriate to be preserved in agriculture. The IAL legislation was the culmination of years of discussion to establish a framework within which important agriculture lands would be identified. Rather than circumvent existing IAL law, let's provide an opportunity for it to take root before instituting new legislation. In addition, GIS confirms that there is over 40,000 acres of A&B rated lands on Oahu, nearly 95% of which are outside the county-designated Urban Growth Boundaries and its adopted Development Plan areas. In essence, they are not at risk at all.

Lastly, over twenty years ago, the State and City and County of Honolulu designated Kapolei as the Secondary Urban Center for the island of Oahu and the Ewa Plain as the area where growth

would be centered. It is precisely for this reason that the City and County of Honolulu will soon break ground on its Honolulu High Capacity Transit Corridor Project, the University of Hawaii West Oahu recently broke ground on their new campus, and the State Judiciary constructed the Ronald T. Moon Family Court Complex in the City of Kapolei. All of these projects contribute to creating a true "second city" in West Oahu, but the work is not done. There are other projects and land areas in the Kapolei Region that will be detrimentally affected by SB 6. Rather than slowing progress, let's allow existing legislation to do its job and let's allow the plan for Kapolei to continue.

Thank you for the opportunity to submit our testimony.



# Sierra Club Hawai'i Chapter

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

LATE

## SENATE COMMITTEE ON AGRICULTURE January 27, 2011

(Testimony is 2 pages long)

### TESTIMONY IN SUPPORT OF SB 6, WITH PROPOSED AMENDMENTS

Aloha Chair Nishihara and Members of the Committee:

The Sierra Club of Hawai'i, with nearly 8,000 members and supporters, supports SB 6. This bill would place all A & B soil reclassification decisions before the Land Use Commission regardless of the size of the parcel. To further the intent of this bill, however, *we suggest amending SB 6 to ensure the Commission mitigates any future loss of prime agricultural land.*

As development pressure continues to increase, and lands needed to provide our people with food and energy are being lost to speculation, we need to start taking stronger steps -- like this measure -- to protect our remaining agricultural land. We have to stop giving away the farm.

Agricultural lands currently in use or with excellent potential for agricultural productions are a finite and irreplaceable resource in Hawai'i. There has been a steady decline in the number of acres in Agricultural District statewide and on O`ahu. Since 1991, approximately 3,297 acres of "A" and "B" rated lands have been lost on O`ahu alone. Approximately 10,900 acres of farm land of this quality are estimated to remain on O`ahu.<sup>1</sup> Two large development proposals are currently planning to develop large portions of this remaining agricultural land (Koa Ridge would be equivalent to 5% of the remaining land alone).

As you may be aware, Hawai'i imports close to 85% or 90% of its food supply. As the cost of oil increases, we must prepare for the day when it may no longer be economical to ship in our food. That type of tragedy would dwarf the small economic potential of developing parking spots and urban sprawl on this land today.

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<sup>1</sup> Castle & Cooke/Koa Ridge Final Environmental Impact Statement, page 4-21.

This being said, we believe SB 6 could be amended to ensure -- if a reclassification is approved -- that the Land Use Commission actively mitigates the loss of agricultural land and other related burdens on the taxpayer base, such as increased electrical, transportation, and utility costs. In the recent Koa Ridge case, several commissioners expressed concern about the potential loss of agricultural land and the increased cost of electricity production on the ratepayer base, but said it was for the legislature to resolve. This is a misguided view. To ensure this doesn't happen again, we suggest the following amendment (new language in bold and underlined):

**Proposed Amendment:**

"(h) No amendment of a land use district boundary shall be approved unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, not violative of section 205-2 and part III of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17, and all reasonable impacts of the proposed boundary amendment, such as without limit loss of agricultural land, increased carbon dioxide production, and increased electrical, transportation and utility costs, are mitigated[-]; provided that for a boundary amendment for agricultural lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B, no amendment of a land use district boundary shall be approved where:

- (1) A farming operation as defined in section 165-2 is being conducted on the land or has been conducted on the land previously;
- (2) The land is important for agriculture based on the stock of similarly suited lands in the area;
- (3) The district boundary amendment will harm the productivity or viability of existing agricultural activity in the area; and
- (4) The district boundary amendment will cause fragmentation of or intrusion of nonagricultural uses into largely intact areas of agricultural lands with soil classification by the land study bureau's detailed land classification as overall (master) productivity rating class A or B.

Thank you for this opportunity to provide testimony.

**nishihara1 - Dale**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, January 26, 2011 11:46 PM  
**To:** AGL Testimony  
**Cc:** abaalto@gmail.com  
**Subject:** Testimony for SB6 on 1/27/2011 2:45:00 PM  
**Attachments:** 01-26 SB6 Testimony.pdf

Testimony for AGL 1/27/2011 2:45:00 PM SB6

**LATE**

Conference room: 229  
Testifier position: support  
Testifier will be present: No  
Submitted by: anthony aalto  
Organization: Individual  
Address: honolulu  
Phone: 234-9779  
E-mail: [abaalto@gmail.com](mailto:abaalto@gmail.com)  
Submitted on: 1/26/2011

Comments:  
SENATE COMMITTEE ON AGRICULTURE - January 27, 2011

TESTIMONY IN SUPPORT OF SB 6

Aloha Chair Nishihara and Members of the Committee

As a concerned citizen I urge you to support this bill.

There are many reasons to adopt this legislation, the first of which is that it meets a constitutional obligation. Article XI Section 3 of the Constitution 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."

This bill would be the start of a long overdue regulatory process to conserve and protect farmlands. This is an urgent priority for the following reasons:

1) Our food supply is vulnerable

We currently grow less than 15% of our own food and have stockpiles to last less than a week: hurricane, tsunami, longshoremen's strike bird flu pandemic and we're stuck. We can live a week without oil, but without food...? Local production is the only protection.

2) Food is becoming more expensive

As oil prices rise, so will the costs of fertilizers and transportation. We will be hostage to the global market.

3) Jobs, Jobs, Jobs

A recent study by the State Department of Agriculture says that if we boost our food production by just 10% we'd stimulate nearly \$200 million in new sales, \$50 million in profits, \$6 million in state tax revenues, and create more than 2,300 jobs. If we grew all our own food the impact would be more than \$1 billion and 15,000 new jobs.

#### 4) Nutrition

Locally grown food is more nutritious. Fruits and vegetables shipped from overseas are picked before they ripen. They have less time to develop a complete spectrum of vitamins and minerals. The heat and light they are exposed to during transportation degrade fragile nutrients like vitamin C and thiamin. Frozen produce suffers similar problems. An emphasis on local produce, grown by local people, will inevitably promote nutritional awareness and consumption which will help counter the growing epidemic of diabetes, obesity and other diet related illness.

#### 5) Global Warming

Our climate is warming, sea levels are rising and Hawaii will be badly affected. We have an obligation to contribute to efforts to mitigate this looming disaster. The United Nations Environmental Program says organic agriculture can sequester 7,000 pounds of carbon dioxide per acre per year, one of the cheapest methods available to tackle carbon dioxide build-up and climate change.

#### 6) Protect Native Species

Farmland helps preserve native habitats and species, streams and watersheds. Reducing the amount of imported food lessens the risk of importing invasive species.

#### 7) Open Space

Farmland preserves view corridors and the beauty of our islands. This is not an elitist aesthetic concern: tourists increasingly complain about over-development and sprawling subdivisions, especially on Oahu.

#### 8) Quality of Life

We've paved 50% of Oahu's farmland already. It's led to ugly suburban sprawl and the second most congested freeway in the nation.

9) It's a moral and spiritual obligation Farmland is a finite resource. Once paved it is lost forever. It is our duty to the next generation to malama the aina.

I thank you for permitting me this chance to testify.

**SENATE COMMITTEE ON AGRICULTURE - January 27, 2011**

**TESTIMONY IN SUPPORT OF SB 6 - (2 pages)**

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The Senate  
Committee on Agriculture  
Thursday, January 27, 2011  
2:45 p.m., Conference Room 229

LATE

Statement of the Hawaii Carpenters Union on SB 6 Relating to Agricultural Lands

The Hawaii Carpenters Union opposes SB 6, which prohibits reclassification of land from agriculture to urban, where the land is rated A or B, and is being cultivated, has been cultivated, or affects other agricultural activity.

While a viable agricultural sector is desirable, this Bill will not produce it. It will stop a wide range of planned development while overriding standing Development Plans and General Plans. While the Bill may be ultimately found to be a "taking" of value from land owners, current planned developments will be stopped until that point, resulting in financing and jobs being lost for years.

Among the wide range of development that will be halted are healthcare, affordable housing, educational and job producing facilities, including Oahu "Transit Oriented Development". Consider the existing facilities and services that would not have been built if such a law had been in effect over past years. Neighbor island economic diversification and viability will be threatened.

Ironically, landowners that have farmed the land will suffer. Large operators that have subsidized agricultural operations by development of portions of their land will lose that support system. Lifetime family farmers fortunate enough to own their land will lose an option should they retire with no family members willing to farm.

Support for viable agriculture has many facets: Research and training. Financing. Infrastructure. Transport. Market development and logistics. Farmers - people to farm. Incentives.

SB 6 has an overly broad negative impact, without producing a viable agricultural sector in Hawaii.

Thank you for considering the testimony of the Hawaii Carpenters Union in opposition to SB 6.

**SB 6  
RELATING TO AGRICULTURAL LANDS**

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

**LATE**

**JANUARY 27, 2011**

Chair Nishihara and Members of the Senate Committee on Agriculture:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on SB 6, "A BILL FOR AN ACT RELATING TO AGRICULTURAL LANDS." We respectfully oppose this bill. We believe it is unnecessary in light of the Important Agricultural Lands laws (IAL Law) that were passed in 2005 and 2008 and the other Chapter 205 provisions that are on the books, and that its passage could unintentionally hurt the continued viability of agricultural operations in this State.

After over twenty five years of debate, negotiation, and compromise, an IAL Law and process was finally enacted in July 2008. After years of pursuing a land-use approach to this constitutional mandate, the IAL law that was successfully passed (Act 183 (2005) and Act 233 (2008)) was premised on the principle that the best way to preserve agricultural lands is to preserve agricultural businesses and agricultural viability. As such, the IAL Law not only provides the standards, criteria, and processes to identify and designate important agricultural lands to fulfill the intent and purpose of Article XI, Section 3 of the Hawaii State Constitution, it also provides for a package of incentives designated to support and encourage sustained, viable agricultural activity on

IAL. With the enactment of this comprehensive package of IAL incentives, the long awaited IAL identification and designation process was finally started in July 2008.

The IAL Law authorizes the identification and designation of IAL in one of two ways --- by voluntary petition to the State Land Use Commission by the landowner or farmer (process started in July 2008); or subsequently by the Counties filing a petition to designate lands as IAL pursuant to a County identification and mapping process (process targeted to start in July 2011). The IAL Law further provides incentives to the landowner and/or farmer to conduct agricultural activities on IAL lands. The IAL Law provides an exclusive three-year window for landowners/farmers to volunteer lands for IAL designation before the County petitions can be considered. In either case, the LUC determines whether the petitioned lands qualify for IAL designation pursuant to the standards, criteria, objectives, and policies set forth in the IAL Law. To date, the IAL Law has resulted in the designation by the LUC of over 30,000 acres of agricultural lands as IAL from voluntary petitions by Alexander & Baldwin for its lands on Maui and Kauai, and we believe significantly more acreage will be designated through the voluntary landowner and County petition process. Two voluntary petitions have recently been announced and are pending LUC action.

Section 1 of SB 6 indicates that the purpose of this bill is to carry out the mandate of Article XI, Section 3, of the Hawaii State Constitution to conserve and protect agricultural lands and to ensure the availability of agriculturally suitable lands. The passage of the aforementioned IAL Law has already fulfilled the intent and purpose of Article XI, Section 3 of the Hawaii State Constitution. The IAL Law is presently in the midst of its first phase of implementation, with the LUC designating IAL via voluntary

petitions from landowners and farmers, and the second phase of the County identification and mapping process is targeted to start in July 2011. This law is on schedule and should be given a chance to be fully implemented; SB 6 should be held in Committee.

We note that this bill would prohibit the LUC from approving any land use district boundary amendment for agricultural lands with A and B ratings if the lands meet the four criteria listed in Section 3 of this bill. Chapter 205 authorizes the LUC to conduct a comprehensive review and assessment of all land use district boundary amendments along with the authority to incorporate mitigation and other requirements when rendering its decisions. We believe that the LUC presently has the authority, when it is deemed warranted, to not approve a land use district boundary amendment pursuant to the four criteria listed in Section 3. We believe that the LUC should be left with its present authority to approve or disapprove land use district boundary amendments, after thorough review and deliberation, instead of limiting their purview and authority in statute as envisioned by this bill.

Lastly, this bill may have a negative impact on the future sustainability of agriculture in this State. Farming is a difficult business and for many farmers—large and small—farming may not be their only source of income. For A&B, our other lines of businesses have helped to enable us to keep our agricultural entities in operation despite years of limited profits and—at times—large financial losses. A recent example would be A&B's ability to keep HC&S' doors open in 2008 and 2009 despite losses totaling some \$45 MM. If a farmer were prohibited from utilizing some of his lands for other purposes, he may not have the resource he needs to derive revenue or secure the

financing needed to keep his agricultural operation in business. Thus, this bill, with the apparent intent of helping agriculture, may result instead in significant harm to farmers, including the future sustainability of A&B's agricultural operations, along with the many local residents that our agricultural operations employ.

Based on the aforementioned, we respectfully request that this bill be held in Committee. Thank you for the opportunity to testify.



LATE

LAND USE RESEARCH  
FOUNDATION OF HAWAII

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Honolulu, Hawaii 96813  
(808) 521-4717  
[www.lurf.org](http://www.lurf.org)



Via E-mail: [AGLTestimony@capitol.hawaii.gov](mailto:AGLTestimony@capitol.hawaii.gov)

January 27, 2011

Senate Committee on Agriculture  
Thursday, January 27 at 2:45 p.m. in CR 229

**Opposition to SB 6**  
**Relating to Agricultural Lands**  
**(Alteration of agricultural leases and boundary amendment prohibition)**

The Honorable Chair Clarence Nishihara, Vice Chair Gilbert Kahele and Members of the Senate Committee on Agriculture,

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

**LURF strongly opposes the current SB 6.** This bill would: 1) restrict the State Land Use Commission's (LUC's) ability to amend or approve a land use district boundary for agricultural lands greater than 15 acres which are classified by the Land Study Bureau (LSB) as class A or class B lands; and 2) prohibit any State or county department or agency from approving a boundary amendment of a district involving agricultural lands less than 15 acres which are classified by the LSB as class A or B lands.

In short, the bill attempts to further restrict or prohibit landowners from amending the land use district boundaries of agricultural lands, despite there being valid, applicable, existing law effectively addressing and regulating the reclassification of such land.

LURF respectfully **opposes** SB 6 based on, among other things, the following:

- **The bill is inconsistent with the spirit, intent and principles of the existing Important Agricultural Lands (IAL) laws, and would subject landowners who have been complying with the IAL laws to an illegal, unconstitutional taking of their property.**

The IAL laws were enacted to fulfill the mandate in Article XI, Section 3 of the Hawaii State Constitution, "to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." The IAL laws established a "new paradigm" which avoids requirements and mandates, and instead focuses on promoting agricultural viability by providing incentives for farmers and landowners to designate lands as IAL, and to build necessary infrastructure. The IAL laws have in fact afforded landowners an initial 3-year period for voluntary IAL designation, and have encouraged landowners to designate 50% of their lands as IAL in order to become eligible for various incentives, including the opportunity to reclassify their non-IAL lands (including A and B rated agricultural lands) to conservation, rural or urban State land use designations.

SB 6 would now subject these landowners who have already designated lands as IAL to a further "taking" by retroactively revoking or restricting their right to reclassify their non-IAL, A and B rated lands. Such a taking directly contradicts HRS Section 205-49(3), which expressly provides that if the majority of landowners' landholdings is already designated as IAL, any additional lands of that landowner **shall not be taken**.

The IAL laws and processes which already exist and ensure the designation and protection of agricultural lands now **allow reclassification of agricultural lands rated A and B**. SB 6 is therefore not only superfluous, but **inconsistent** with the existing laws, which are **not based on A and B soil classifications**, and **do not prohibit boundary amendments of lands rated A and B**.

The IAL laws were based on input by, and consensus amongst LURF, and other agricultural and government stakeholders over the past several years. It is the position of LURF and these stakeholders that the designation of agricultural lands and the creation of standards relating to such lands are already encompassed in the IAL laws, and should not be affected, superseded, or contradicted by changes to the existing land use laws as proposed by SB 6.

- **The bill ignores County General Plans and the detailed and lengthy approval processes in place for County plans, LUC boundary amendments and County zoning.**

The land uses shown on existing County General Plans and other County community plans are a result of various staff and administrative reviews, involving numerous public hearings, and Council and Planning Commission approval processes. Having gone through the County General Plan and other planning processes, some landowners may elect to amend their State land use boundaries and change their zoning to be consistent with the County General Plan and other County plans. SB 6, however, would prohibit or restrict such boundary amendments, thereby overruling the County General Plans and the various land use approval processes. To change land uses to comply with the General Plan, a landowner must also go through further lengthy and costly land use approval processes imposed by the LUC and County zoning, which involve public hearings and input, and the introduction of evidence.

These approval processes may also be subject to contested case hearings and judicial appeals.

By prohibiting and/or restricting boundary amendments which are otherwise consistent with General Plans, SB 6 is **inconsistent** with Act 28 (2008) (which amended the Land Use Commission (LUC) decision-making criteria **to require that the LUC specifically consider the County General Plan**), as well as with all community, development, or community development plans adopted pursuant to the County General Plans, as they relate to lands subject to boundary amendments.

- **The true intent of the bill is questionable as it completely disregards and fails to address the need for water for the land which would be restricted to agricultural use.**

Restricting land for use as agriculture would be pointless if water is not available, or is not made available to support such mandated designation and use. If SB 6 was truly intended to preserve agricultural land and to make such land viable, then issues relating to water, which is critically required to support such restriction and sustain the viability of such land, must be addressed by, and included in this bill.

The failure of SB 6 to consider and address water-related issues also directly contradicts the existing IAL laws. One of the critical standards/criteria for IAL designation is that the lands have sufficient quantities of water to support viable agricultural production (See, HRS 205-44).

- **Unintended negative consequences for farmers – Limitation of active farming operations.**

Although LURF supports the conservation and protection of important agricultural lands, supports land use laws including the IAL laws, and encourages active farming operations on IAL, it believes that SB 6 is unconstitutional, unfair, and in addition to contradicting existing laws, will likely cause other, unintended negative consequences for farmers. As an example, in order to retain the flexibility to file future district boundary amendments, some landowners may cease active farming operations on much of their A and B classified agricultural lands.

**CONCLUSION.** The intent and application of SB 6 are unconstitutional, profoundly anti-business, and constitute bad public policy. The State and county land use laws and processes (including IAL laws and processes) already in place effectively regulate the designation and reclassification of agricultural lands, making SB 6 confusing, redundant, and inconsistent with existing laws. We therefore respectfully request that this bill be **held** in Committee.

Thank you for the opportunity to express our **opposition** to SB 6.





LATE

January 27, 2011

**Via E-Mail: AGLTestimony@Capitol.hawaii.gov**

Senate Committee on Agriculture  
Sen. Clarence K. Nishihara, Chair  
Sen. Gilbert Kahele, Vice Chair

**Re: S.B. 6 (Re: Agricultural Lands)  
Testimony In Opposition  
Hearing: Thursday, January 27, 2011, 2:45 p.m., Conf. Rm. 229**

Honorable Chair Nishihara, Vice Chair Kahele and Committee Members:

Aloha, and thank you for the opportunity to testify in opposition to Senate Bill 6 on behalf of Hawaii Reserves, Inc., a land management company located in Laie, Oahu. We manage and own approximately 7,000 acres currently in agricultural, residential and commercial uses.

While this bill may be well-intentioned, it could threaten worthy projects that would provide much needed affordable housing, is inconsistent with existing IAL laws and may subject landowners to an unconstitutional taking of property, and ignores current processes already in place.

First, this bill will threaten worthy projects that would provide much needed affordable housing and economic development. For example, our company has been exploring ways to facilitate an affordable housing project in a “sustainable affordable development” on land that is currently classified as agricultural (the land would first need to be reclassified for residential use). Sustainable affordable development projects require that 30% of the units must be affordable to persons in the county’s median income range, and the sales price of at least 51% of the residential lots must be no higher than 80% of the fair market value of the lots in fee (HRS 516-1). If passed this bill could stop the creation of much needed affordable housing and economic development in our community and others.

Second, this bill is inconsistent with the intent and principles of the existing Important Agricultural Lands (IAL) laws and may subject landowners who have been complying with the such laws to an illegal, unconstitutional taking of their property. The IAL laws and processes which already exist and ensure the designation and protection of agricultural lands now allow reclassification of agricultural lands rated A and B. This bill is therefore not only unnecessary, but inconsistent with the existing laws, which are not based on A and B soil classifications, and do not prohibit boundary amendments of lands rated A and B.

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January 27, 2011  
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Third, this bill ignores the current, comprehensive planning processes already in place. The process to rezone land in our state is lengthy, involves a number of public hearings, and requires approval by both the State Land Use Commission and the applicable City/County Council. A well-devised system of checks and balances is already in place to ensure that agricultural land is not "upzoned" without much needed public input and adequate time for careful deliberation. This bill is therefore unnecessary.

At a time when farmers and landowners need incentives to compete in a global agricultural market, this bill does not address the real problem. Our county and state enjoy an overabundance of unused agricultural lands subsequent to the decline in the pineapple and sugar cane industries, but our farmers are struggling financially. What we've observed is not farmers in search of more ag land to farm, but rather an excess of vacant ag land waiting to be farmed. Based on our experience with our own farm business that ultimately folded – and as a landowner currently leasing to farmers – the real issue is how to help farmers and landowners make productive use of already existing, abundant agricultural lands.

For these reasons and others we respectfully request that you hold S.B. 6.

Kind regards,

/S/

Steve Keali'iwahamana Hoag, Esq.  
Vice President  
Communications & Administration

LATE

TESTIMONY BEFORE THE SENATE COMMITTEE  
ON AGRICULTURE

RE: SB 6 – RELATING TO AGRICULTURAL LANDS

THURSDAY, JANUARY 27, 2011

CONFERENCE ROOM 229

2:45 P.M.

MAURICE T. MORITA, ASSISTANT DIRECTOR

HAWAII LABORERS-EMPLOYERS COOPERATION & EDUCATION TRUST

Chair Nishihara & Members of the Committee:

My name is Maurice Morita of the Hawaii Laborers-Employers Cooperation & Education Trust (Hawaii LECET), and we have a concern about SB 6 – Relating to Agricultural Lands.

Our concern is what SB 6 states in Section 1, "On Oahu, there is a particular concern regarding housing projects projected to be built on prime agricultural lands in Mokuleia, Kahuku, and the Ewa plain."

For example, the housing projects planned in the Ewa plain are not by chance, but for many years of collaborative efforts of government, developers, and a very involved community. Kapolei, for example, has been designated as our "2<sup>nd</sup> City". We are currently on the right path to making positive changes in the community of Kapolei. The Honolulu Rapid Transit project fits into the community plans along with a newly built UH West Oahu Campus, DHHL's East Kapolei development, HHFCC's MHAH affordable housing project, and D.R. Horton Ho'opili community are all part of the master plan to make the "New City of Kapolei" a reality.

Can you imagine this setting.....you have just built West Oahu University, you have developed two trans-oriented rail stations, and you will have land growing corn and various vegetables in the middle of all of this.

Thank you for the opportunity to testify.