



State of Hawaii
DEPARTMENT OF AGRICULTURE
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TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE
MONDAY, MARCH 17, 2014
9:00 A.M.
Room 312

SENATE BILL NO. 2775, SENATE DRAFT 1
RELATING TO RENEWABLE ENERGY

Chairperson Wooley and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 2775, Senate Draft 1 that allows solar energy facilities on "A" rated agricultural land but limits them to existing roadways and must allow for vehicular traffic. The Department of Agriculture supports the intent of this measure and its specific application to the Hawaii Agricultural Research Center. We offer an amendment that we believe will insure agricultural activity on "A" rated agricultural lands for which solar energy facilities are sought.

Only 3.1 percent of the Agricultural District is rated as "A" and has very good productive potential for most crops. Furthermore, "A" rated lands are more likely to be considered and designated as Important Agricultural Lands.

The Department proposes the following amendment:

(page 9, lines 4 to 13, see double-underscored text)

"(20) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser; provided that this use shall not be



permitted on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A[+] unless the solar energy facilities are located on a paved or unpaved road in existence as of December 31, 2013, and the parcel of land with paved or unpaved roads has a valid county tax dedication status or a valid agricultural conservation easement, and the solar energy facilities are placed in a manner that still allows vehicular traffic to use the road; or"

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



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

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON AGRICULTURE
Monday, March 17, 2014
9:00 AM
State Capitol, Conference Room 312
in consideration of
SB 2775, SD 1
RELATING TO RENEWABLE ENERGY.

Chair Wooley, Vice Chair Onishi, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) offers comments on SB 2775, SD 1, which seeks to make solar energy facilities a permissible use within the State Agricultural District on lands classified by the Land Study Bureau (LSB) as class A, provided that the solar energy facilities are on an established roadway.

Our state Energy Policy seeks to make the best use of Hawaii's land and resources by balancing technical, economic, environmental, and cultural considerations. If it is the intent of the Legislature to adopt this measure, DBEDT respectfully requests that you include the Land Use Commission's suggested amendment to require that solar facilities proposed for LSB Class A lands go through the State Special Use Permit process. The community will be afforded an opportunity to comment and conditions can be made a part of an SUP to achieve the appropriate long-term balance between food and energy security.

Thank you for the opportunity to provide these comments.

NEIL ABERCROMBIE
Governor

SHAN S. TSUTSUI
Lieutenant Governor

RICHARD LIM
Director

MARY ALICE EVANS
Deputy Director



LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

DANIEL ORODENKER
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RILEY K. HAKODA
Chief Clerk/Planner

FRED A. TALON
Drafting Technician

Statement of
Daniel E. Orodener
Executive Officer
Land Use Commission

Before the
House Committee on Agriculture

Monday March 17, 2014
9:00 AM
State Capitol, Conference Room 312

In consideration of
SB 2775 SD1
RELATING TO RENEWABLE ENERGY

Chair Wooley, Vice Chair Onishi, and members of the Committee on Agriculture:

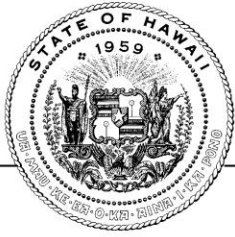
The Land Use Commission takes no position with regard to the policy considerations raised by this measure. We do, however, offer the following comments regarding SB 2775 SD1 that seeks to make solar energy facilities a permissible use within the State Agricultural District on lands classified by the Land Study Bureau (LSB) as class A.

We would recommend that the measure be modified to require that solar energy facilities proposed for LSB class A, B, or C lands go through the State Special Permit process. In particular, facilities proposed for our most important LSB class A lands, regardless of acreage, should require approval by the State Land Use Commission. This process, along with any specific limitations on parcel percentage (%) or acreage the Legislature may require, can insure that an open public forum is used to balance competing uses on our best agricultural lands and identify the parties responsible for implementing and enforcing any conditions of approval. We offer the following language changes to that end (strikethrough to be removed; double-underline to be added):

“(20) Solar energy facilities that do not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser; provided that this use shall not be permitted on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A[;] unless the solar energy

facilities are located on a paved or unpaved road in existence as of December 31, 2013, and are placed in a manner that still allows vehicular traffic to use the road, and a special use permit has been granted by the land use commission pursuant to section 205-6; or

Thank you for the opportunity to testify on this matter.



**OFFICE OF PLANNING
STATE OF HAWAII**

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Statement of the
OFFICE OF PLANNING
before the
HOUSE COMMITTEE ON AGRICULTURE

Monday, March 17, 2014
9:00 AM
State Capitol, Conference Room 312

in consideration of
SB 2775 SD1
RELATING TO RENEWABLE ENERGY.

Chair Wooley, Vice Chair Onishi, and Members of the House Committee on Agriculture.

Senate Bill (SB) 2775, SD1 amends the State Land Use Law at Hawaii Revised Statutes (HRS) §§ 205-2 and 205-4.5, to allow “solar energy facilities” within the State Agricultural Land Use District¹ on soils rated by the Land Study Bureau's Overall Productivity Rating (LSB) as “A.”²

Currently, these statutory provisions allow solar energy facilities within the State Agricultural District on LSB “B” and “C” lands so long as the facilities do not cover more than 10 percent or 20 acres (whichever is lesser). However, the amendment to HRS §§ 205-2 and

¹ See HRS § 205-2 (“There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation.” As of November 12, 2013, approximately 49% of lands in the state are in the Conservation District and 46% is in the Agricultural District.)

² See *Land Study Bureau (LSB) Detailed Land Classification*, Office of Planning, at <http://files.hawaii.gov/dbedt/op/gis/data/lsb.pdf> (The Land Study Bureau of the University of Hawaii prepared an inventory and evaluation of the State's land resources during the 1960's and 1970's. The Bureau grouped all lands in the State, except those in the urban district, into homogeneous units of land types; described their condition and environment; rated the land on its over-all quality in terms of agricultural productivity; appraised its performance for selected alternative crops; and delineated the various land types and groupings based on soil properties and productive capabilities. A five-class productivity rating system was developed with “A” representing the class of highest productivity and “E” the lowest. Ratings were developed for both over-all productivity, and for specific crops. HRS Chapter 205 uses over-all productivity ratings.)

205-4.5 would extend the land coverage of solar energy facilities to LSB “A” lands so long as it does not cover more than 5 percent of the land or 5 acres (whichever is lesser) and the facilities are on an established roadway³

The Hawaii State Plan, passed by the legislature in 1978 and subsequently amended, promotes both agriculture and the promotion and development of renewable energy for current and future generations.⁴ As the Committee balances these complex, often competing policy objectives, we provide the following comments for your consideration:

- Statewide, LSB soil productivity ratings of lands within the State Agricultural District are distributed as follows:
 - 3.1%, LSB “A”
 - 6.2%, LSB “B”
 - 14.9%, LSB “C”
 - 24.9%, LSB “D”
 - 50.9%, LSB “E”
- The counties and the State have not completed the process of identifying important agricultural lands (IAL) to the State of Hawaii. The intent of the IAL law is to “conser[ve] the State's agricultural land resource base and assur[e] the long-term availability of agricultural lands for agricultural use[.]”⁵ The IAL law, passed in 2005, implements Article XI, Section 3, of the Hawaii State Constitution, which directs the State to “conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.”
- Allowing non-agricultural uses in the State Agricultural District may contribute to the impermanence syndrome, whereby agricultural use declines due to farmers’ disinvestment in their farm operations in anticipation of development. This has been

³ Under the Hawaii land use framework, counties would be responsible for making these determinations during permitting and/or plan approval.

⁴ See HRS §§ 226-7 and 226-18 (relating to the State’s “Objectives and policies for the economy—agriculture” and “Objectives and policies for facility systems—energy,” respectively).

⁵ HRS § 205-41.

observed to occur where competing uses are allowed in areas designed for agricultural uses.⁶

- The list of non-agricultural uses on LSB “B” and “C” lands has grown over time. Currently, HRS § 205-2 allows the following non-agricultural uses: wind generated energy production; biofuel production; limited solar energy facilities; wind machines and wind farms; small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities; open area recreational facilities; and geothermal resources exploration and geothermal resources development. The list of non-food related uses is longer still.
- The State Special Permit under HRS § 205-6 grants counties the authority to allow “certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified[.]” In other words, the Special Permit process allows uses in the State Agricultural District that are not agricultural uses or related to agricultural uses on a case-by-case basis. Although we do not advocate for allowing non-agricultural uses within the State Agricultural District, this established process allows counties to review non-agricultural uses to mitigate impacts on the State Agricultural District.

Thank you for the opportunity to testify on this measure.

⁶ *Impermanence Syndrome – Have you got it?*, Rutgers, at <http://njsustainingfarms.rutgers.edu/farmlandissues.html> (last visited, Feb. 3, 2014).

onishi2-Micah-Seth

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 16, 2014 9:02 AM
To: AGRtestimony
Cc: cmanfredi@kaufarmandranch.com
Subject: *Submitted testimony for SB2775 on Mar 17, 2014 09:00AM*

SB2775

Submitted on: 3/16/2014

Testimony for AGR on Mar 17, 2014 09:00AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Manfredi	Hawaii Farm Bureau	Support	Yes

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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TESTIMONY BEFORE THE HOUSE COMMITTEE ON AGRICULTURE

SENATE BILL 2775, SD1

RELATING TO RENEWABLE ENERGY

Monday, March 17, 2014

9:00am

Chair Jessica Wooley, Vice Chair Richard Onishi and Members of the Committee:

My name is Dave Kula, the controller of the Hawaii Agriculture Research Center (HARC). I am testifying today in **support of SB 2775 SD1 Relating to Renewable Energy**, on behalf of the center and our research and support staff.

SB2775 SD1 would currently allow solar energy facilities on Land Study Bureau (LSB) land with the classification "A" - the State's most productive land. This language was chosen to allow a solar energy facility only on land under the classification "A" that has a paved or unpaved road in existence as of December 31, 2013, and are placed in a manner that still allows vehicular traffic to use the road.

As an example of a current predicament, let me describe an area where PV is ideal because a) of the parcel's location (see attachment) in an area of high solar radiation, b) there being a pre-existing agricultural field road needed to access areas of the farm (over which there is also a utility easement), and c) the use of the road would have been preserved because the PV was to be elevated; but because the road was technically on LSB "A" land, DPP Director George Atta, ". . . regretfully recommends denial of the Applicant's request to establish a solar energy facility on lands rated class "A" by the Land Study Bureau." However, he went on to write, "This Project is a good project reflecting innovative thinking and flexible development concepts. It would support the agricultural activity of HARC on the site and produce a much needed expansion of renewable energy sources for Hawaii; both major goals of the State of Hawaii and the City and County of Honolulu."

We know of other farmers, with field roads who could also derive much needed income from passage of this bill **without** sacrificing land for crop production **and** advancing the State's self-sustainability efforts from the standpoint of both food and energy.

We also understand that there is a concern over opening "A" land to non-agricultural activities which HARC certainly shares. HARC is an agricultural organization that has supported the

development of agriculture in the state for over 100 years. It certainly has fought to keep agricultural land in agriculture over the decades and would not want to be the organization that opened the door to abusive use on any agricultural land.

It has placed the limited land it owns into an agricultural conservation easement protecting the agricultural use of the land into perpetuity. Both the state and federal government hold this easement and HARC has a 3rd party confirm its adherence to the easement restrictions annually. Both the federal and state holders of this easement support the use of the paved road on HARC's parcel for a solar facility. They recognize it supports the sustainability of HARC's operation by reducing its electrical costs.

HARC believes that the restrictive language is sufficient to avoid any abuse of this law should it pass. It also believes that the restriction of 'existing' puts the burden on any applicant to prove that the road was existing and not on the public agency hearing a request to put a solar facility on "A" land.

We also understand that there is a desire to have a sunset added to this proposed bill and are not in opposition to this idea as long as it would not create any conflicts or delay.

HARC respectfully asks for your support of SB2775 SD1. Thank you for your attention and I would be happy to answer any questions.

Attachment (*picture of Cane Haul Road*)



Exhibit 1

Cane Haul Road marked in red.



onishi2-Micah-Seth

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 14, 2014 5:21 PM
To: AGRtestimony
Cc: gottlieb@hawaii.rr.com
Subject: *Submitted testimony for SB2775 on Mar 17, 2014 09:00AM*

SB2775

Submitted on: 3/14/2014

Testimony for AGR on Mar 17, 2014 09:00AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Gottlieb	Hawaii Cattlemen's Council	Support	No

Comments:

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To: AGRtestimony
Cc: okamotod003@hawaii.rr.com
Subject: Submitted testimony for SB2775 on Mar 17, 2014 09:00AM

SB2775

Submitted on: 3/15/2014

Testimony for AGR on Mar 17, 2014 09:00AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Duane K. Okamoto	Individual	Support	No

Comments: SB 2775 will be of great benefit to agricultural enterprises that are incorporating solar energy to reduce operating costs and adopting new technologies. This law is necessary in order for county agencies to permit this use of technology on "A" lands.

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