

DAVID Y. IGE
Governor
SHAN S. TSUTSUI
Lt. Governor



SCOTT E. ENRIGHT
Chairperson, Board of Agriculture
PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-961a

TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEES ON CONSUMER PROTECTION AND COMMERCE, AND
JUDICIARY

March 2, 2015
2:15 P.M.
CONFERENCE ROOM 325

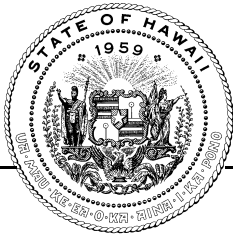
HOUSE BILL NO. 1194
RELATING TO AGRICULTURAL COMMERCE

Chairperson McKelvey and Rhoads and Members of the Committees:

Thank you for the opportunity to testify on House Bill 1194. This measure amends Chapter 205 by changing "agricultural tourism" to "agricultural commerce" and deletes the counties responsibility to adopt appropriate ordinances before permitting agricultural tourism activities in the Agricultural District. The Department of Agriculture has strong reservations about this bill.

The bill as written would remove regulatory authority from the counties which could lead to abuse. The Department prefers language that is in House Bill 904, an Administration bill, that allows agricultural tourism with overnight accommodations as a permissible use limited to bona fide farming operations in the Agricultural District. HB 904 clearly defines what farms qualify as a bona fide farming operation.

Thank you for the opportunity to comment on this bill.



**OFFICE OF PLANNING
STATE OF HAWAII**

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
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DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
ACTING DIRECTOR
OFFICE OF PLANNING

Statement of
LEO R. ASUNCION
Acting Director, Office of Planning
before the
**HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
AND
COMMITTEE ON JUDICIARY**
Monday, March 2, 2015
2:15 pm
State Capitol, Conference Room 325

in consideration of
**HB 1194 Proposed HD2
RELATING TO AGRICULTURAL COMMERCE.**

Chairs McKelvey and Rhodes, Vice Chairs Woodson and San Buenaventura, and Members of the House Committees on Consumer Protection & Commerce and Judiciary.

The Office of Planning (OP) respectfully offers comments on the proposed HB 1194, HD2 which seeks to allow agricultural-based commercial operations without undue limitations or restrictions by the land use commission or by county ordinance, rule or regulation.

In the agricultural tourism paragraph of HRS § 205-2(d)(11), the proposed HB1194, HD2 adds reference to "bona fide" farming operation defined in section 165-2. A "bona fide" farming operation, however, is not well defined in HRS § 165-2. OP prefers a bill with a similar intent -- HB 904, an Administration bill, which seeks to allow agricultural tourism activities, including overnight accommodations, as a permissible use for bona fide farming operations in the State Agricultural District. HB 904 also sets uniform standards for defining a bona fide farming operation for the purposes of regulating agricultural tourism activities statewide. We note that HB 904 was referred to, but not heard by, the House Committees on Agriculture and Tourism.

The proposed HB 1194, HD2 further provides that agricultural-based commercial operations in HRS § 205-2(d)(15) "shall not be further limited with undue restrictions by the land use commission or by country ordinance, rule, or regulation". Similar reference to "without undue limitations or restrictions" is also added to HRS § 205-5(b). We believe these provisions should be deleted, as they are not defined and could create problems and inconsistencies for State agencies and among counties in how this is interpreted and regulated.

Thank you for this opportunity to testify.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.dpp.org • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



GEORGE I. ATTA, FAICP
DIRECTOR

ARTHUR D. CHALLACOMBE
DEPUTY DIRECTOR

March 2, 2015

The Honorable Angus L.K. McKelvey, Chair
and Members of the Committee on Consumer
Protection & Commerce
The Honorable Karl Rhoads, Chair
and Members of the Committee on Judiciary
Hawaii House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs McKelvey, Rhoads and Members:

Subject: House Bill No. 1194, Proposed HD 2
Relating to Agricultural Commerce

The Department of Planning and Permitting (DPP) **opposes** House Bill No. 1194, proposed HD 2, which would relax requirements for non-agricultural uses in the State Agricultural District.

We do agree with the intent of the Bill, which is to support agricultural commerce for bona fide farmers. However, this Bill would have the effect of promoting more non-agricultural development in the agricultural district. The Bill violates home rule and disregards county plans and programs to promote the use of agricultural lands for agriculture. It appears to view agricultural lands as a tourist destination, rather than a self-sufficient, economic resource.

The Bill is too vague and broadly worded, and somewhat contradictory. What would constitute "undue limitations or restriction?" Would a public hearing be unacceptable? Existing law already allows the counties to regulate agricultural tourism on the basis of roadways, parking, accessory facilities, activities, hours of operation, and automatic termination. The law makes reference to enforcement and permitting, and even allows counties to require an environmental assessment. Therefore, what would be considered "undue?"

The existing provisions under Chapter 205, Hawaii Revised Statutes, and the Bill's amendments for commercial operation, while helpful, are woefully inadequate – is a big box outlet selling local produce allowed? What about a hotel or four-star restaurant that serves herbs grown onsite? We have many years of experience in

The Honorable Angus L.K. McKelvey, Chair
and Members of the Committee on Consumer
Protection & Commerce

The Honorable Karl Rhoads, Chair
and Members of the Committee on Judiciary

Hawaii House of Representatives

Hawaii State Capitol

RE: House Bill No. 1194

March 2, 2015

Page 2

developing a balance between accessory commercial uses, and keeping farm land as farmed land. It is a big challenge. Incremental "creep" often sets in, and over time, it can be difficult to discern or maintain active farming as the principal use. Rather than being supplemental income, commercial operations become the predominant activity. Also, supplemental activities make it harder for adjacent farmers to maintain farming, when their delivery trucks compete with tour buses, their wholesaling business plan competes with on-site retailing, and livestock impacts are confronted by visitors.

We did not take a position on the original version of House Bill No. 1194, as it did not affect the City and County of Honolulu. However, we are opposed to both amendments, HD 1 and proposed HD 2, which would make the provisions apply statewide. Thus, we ask that you file House Bill No. 1194 in its amended form.

Thank you for this opportunity to testify on House Bill No. 1194.

Very truly yours,



George I. Atta, FAICP
Director

GIA:
HB441Infrastructure Fund-ks

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 01, 2015 8:46 AM
To: CPCtestimony
Cc: darakawa@lurf.org
Subject: Submitted testimony for HB1194 on Mar 2, 2015 14:15PM

HB1194

Submitted on: 3/1/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
David Z. Arakawa	Land Use Research Foundation of Hawaii	Support	No

Comments: The Land Use SUPPORTS THE INTENT of HB 1194, HD1, relating to Agricultural Commerce, which repeals the provision requiring counties to adopt ordinances regulating agricultural tourism as a precondition for allowing agricultural tourism activities in an agricultural district; and allows agricultural commerce, rather than agricultural tourism, in an agricultural district. (HB1194 HD1) LURF respectfully urges the proponents of this measure to work with the counties to address any county concerns.

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**LARRY JEFTS FARMS, LLC
PO BOX 27
KUNIA, HAWAII 96759
(808) 688-2892**

HB 1194 Proposed HD2, Relating to Agricultural Commerce
House CPC/JUD Committee
Monday, March 2, 2015
2:15 pm
Conference Room 325

Testimony by: Larry Jeffs
Position: Support

Chairs McKelvey and Rhoads, and Members of the House CPC/JUD
Committees:

I am Larry Jeffs, owner and operator of Larry Jeffs Farms, LLC, which is part of our family-run business of farms on Oahu and Molokai, under the administrative umbrella of Sugarland Growers, Inc. We have more than 35 years of Hawaii farm experience on Molokai and Oahu.

It is my understanding that some agricultural producers are not able to supplement their bona fide agricultural operations with defined agricultural-based commercial operations, HRS Section 205-2 (15). The proposed HD2 makes very clear the legislative intent that agricultural-based commercial operations of bona-fide agricultural operations shall be allowed without undue limitations or restrictions by the LUC rules or by County ordinance.

Please support this measure which will assist interested agriculture producers.

Thank you for the opportunity to present testimony.

woodson2-Rachel

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 01, 2015 1:40 PM
To: CPCtestimony
Cc: emma@bellosmillwork.com
Subject: Submitted testimony for HB1194 on Mar 2, 2015 14:15PM

HB1194

Submitted on: 3/1/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Emma Bello	Poohala Farms, LLC	Support	No

Comments: I AM A FARMER!!!!

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Sent: Sunday, March 01, 2015 1:29 PM
To: CPCtestimony
Cc: eric@bellosmillwork.com
Subject: Submitted testimony for HB1194 on Mar 2, 2015 14:15PM

HB1194

Submitted on: 3/1/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Eric Bello	Poohala Farms, LLC	Support	No

Comments: I support this bill to help minimize the complications of operating agotourism related business in conjunction with a bona fide farm.

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Sent: Sunday, March 01, 2015 1:37 PM
To: CPCtestimony
Cc: mary@bellosmillwork.com
Subject: Submitted testimony for HB1194 on Mar 2, 2015 14:15PM

HB1194

Submitted on: 3/1/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Bello	Poohala Farms, LLC	Support	No

Comments: My family and I are starting a dairy goat farm in central Oahu. Our specialty will be FARMSTEAD cheese, which means making cheese from the animals on our farm. We would like to sell our products off of the farm. We want to educate the public by having them experience the animals, plants, forage and cheese process and goat milk products. Without this bill we would not be able to educate and sell our products to the public on our farm.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 01, 2015 11:00 AM
To: CPCtestimony
Cc: aeryn.ralha@gmail.com
Subject: *Submitted testimony for HB1194 on Mar 2, 2015 14:15PM*

HB1194

Submitted on: 3/1/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Aeryn Ralha	Individual	Oppose	No

Comments:

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woodson2-Rachel

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 01, 2015 9:55 AM
To: CPCtestimony
Cc: Janine@blackdogkauai.com
Subject: *Submitted testimony for HB1194 on Mar 2, 2015 14:15PM*

HB1194

Submitted on: 3/1/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Janine Lynne	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 28, 2015 11:19 AM
To: CPCtestimony
Cc: jgelert@yahoo.com
Subject: *Submitted testimony for HB1194 on Mar 2, 2015 14:15PM*

HB1194

Submitted on: 2/28/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
John Gelert	Individual	Oppose	No

Comments:

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To CPC/JUD Members
From Karen Chun
Re HB1194 – latest draft

Dear Committee members,

I am **not** opposing the original bill. But the latest draft adds pre-emption of the counties and the LUC and removes county and LUC ability to enforce their ordinances/rules. These are the two troubling parts:

The new draft removes county and LUC regulation here: “...*does not interfere with surrounding farm operations; [~~and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;~~]*”

And the new draft puts in state pre-emption by adding "*Agricultural-based commercial operations as identified in this paragraph shall not be further limited with undue restrictions by the land use commission or by county ordinance, rule, or regulation.*”

Please take these two sections back out of the bill.

Thank you
Karen Chun
Maui

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 28, 2015 9:07 AM
To: CPCtestimony
Cc: mblazak@gmail.com
Subject: *Submitted testimony for HB1194 on Mar 2, 2015 14:15PM*

HB1194

Submitted on: 2/28/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Megan Blazak	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 28, 2015 12:39 PM
To: CPCtestimony
Cc: drmlsukyo@yahoo.com
Subject: Submitted testimony for HB1194 on Mar 2, 2015 14:15PM

HB1194

Submitted on: 2/28/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
dr melissa yee	Individual	Oppose	No

Comments: I strongly oppose this bill to take away county rights. If one understands the U.S. Constitution, before there was a federal government, counties and local governments existed to assist people carry out their daily duties. Then states were created and the Constitution made it clear that states determined their own affairs unless the federal government was given the powers to legislate. The counties may decide their own needs and wants and carry out their own enforcement unless the states have made it clear that they have the power to legislate over particular matters. The only reason the state is attempting to co opt the powers of the counties in this bill is because the corporations are threatened by the show of solidarity that the counties have expressed regarding GMOs and pesticides. It is in no way to protect the needs and rights of the people or the counties. Because we are closely monitoring the activities of the state legislature now, it is obvious what strategies the state is using to circumvent the protection of home rule and the people of the counties and state. Please stop this bill by voting in opposition, as we are very concerned that certain house members are making unilateral decisions which are injuring the people of this state. Sincerely, Dr. Melissa Yee Seeds of Truth Phone 292-1179

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 28, 2015 1:47 PM
To: CPCtestimony
Cc: psgegen@hotmail.com
Subject: Submitted testimony for HB1194 on Mar 2, 2015 14:15PM

HB1194

Submitted on: 2/28/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
pat gegen	Individual	Oppose	No

Comments: Agree with the original intent of this bill but have found it to be UNACCEPTABLE given the insertion of the COUNTY PRE-EMPTION clauses. Agricultural Tourism / commerce are good activities that will allow our farmers (who actually grow food and provide sustenance to the people of Hawaii) to have some "companion" methods of making a living. Please delete the 2 new lines inserted in HB1194HD2 that are much too broad to muddy the waters of the original intent of this bill.

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 28, 2015 2:40 PM
To: CPCtestimony
Cc: mmcardle19@aol.com
Subject: Submitted testimony for HB1194 on Mar 2, 2015 14:15PM

HB1194

Submitted on: 2/28/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Peggy McArdle	Individual	Oppose	No

Comments: Aloha. Stop the usurping of County Home Rule. I strongly OPPOSE this bill -HB1194 HD2 Proposed. Please start working for the people of Hawaii and NOT corporate interests. Mahalo.

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woodson2-Rachel

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 28, 2015 1:38 PM
To: CPCtestimony
Cc: svickery@hawaii.rr.com
Subject: *Submitted testimony for HB1194 on Mar 2, 2015 14:15PM*

HB1194

Submitted on: 2/28/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Vickery	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 28, 2015 8:47 AM
To: CPCtestimony
Cc: iliwai34@hawaii.rr.com
Subject: Submitted testimony for HB1194 on Mar 2, 2015 14:15PM

HB1194

Submitted on: 2/28/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
MJ Duberstein	Individual	Oppose	No

Comments: I strongly oppose HB1194 as long as February 20 amendments are included.

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**House Committees on Consumer Protection and Judiciary
Hearing on HB 1194 HD 2
March 2, 2015 2:15 PM
House Conference Room 325**

Center for Food Safety Strongly Opposes HB 1194 HD 2 Relating to Agricultural Commerce

Dear Chair McKelvey, Chair Rhoads, Vice Chair Woodson, Vice Chair San Buenaventura and Members of the Committees:

My name is Ashley Lukens and I am the Program Director for the Hawai'i Center for Food Safety. Center for Food Safety is a nationwide consumer and sustainable agriculture organization whose mission includes furthering the public's right to know how their food is produced, through labeling and other means. We have nearly 600,000 farmer and consumer members across the country, including 7,000+ in Hawai'i.

The Center for Food Safety **strongly opposes** HB1194 HD 2. This bill, in stating that "Agricultural-based commercial operations as identified in this paragraph shall not be further limited with undue restrictions by the land use commission or by county ordinance, rule, or regulation," takes away the rights of all Hawai'i counties to regulate their local agriculture. If this bill becomes law, all local control of agricultural would be removed – replaced by a "one size fits all" policy dictated by the state.

HB1194 HD2 will have far-reaching consequences as it strips away the rights of communities to make locally appropriate decisions about food and agriculture. Counties, for example, regulate grading and grubbing that impacts agriculture, storm run-off into streams, as well as property taxes and zoning that affect agriculture.

Further, local oversight, such as county ordinances, has been instrumental in protecting human health and the environment from the impacts of industrial agriculture. These protections have proven enormously popular in our state. Three of Hawai'i's four counties joined numerous counties and cities in California, Washington, Oregon and Maine that have adopted local ordinances to regulate agriculture because states and the federal government have failed to adequately regulate pesticide use and GE crops. These industrial inputs and technologies have significant impacts on our community's human health and the environment. HB1194 HD 2 would give exclusive power over agriculture to the state, and preempt local authority. This would make it impossible to establish local restrictions or prohibitions on GE crops grown in Hawai'i, or the spraying of pesticides.

Hawai‘i has a rich history of protecting the community and island interests. By preserving the autonomy of the county, you protect public health, the public’s right to know, agricultural economy, environmental health, and native ecosystems. In the state of Hawai‘i, we understand that each island has a different eco-system, different history, and a different fabric of stakeholders. By removing power from our counties to regulate food and agriculture we are saying that a one size fits all approach works in our state.

For all the reasons stated above, I encourage you to oppose this bill. Thank you for the opportunity to testify. I am happy to answer any follow up questions or provide additional analysis.

Respectfully,

A handwritten signature in black ink, appearing to read 'Ashley Lukens', written over a light gray rectangular background.

Ashley Lukens, PhD
Program Director,
Hawai‘i Center for Food Safety

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 01, 2015 9:31 PM
To: CPCtestimony
Cc: murry@hawaii.edu
Subject: Submitted testimony for HB1194 on Mar 2, 2015 14:15PM



HB1194

Submitted on: 3/1/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Carol Murry	Individual	Oppose	No

Comments: I am strongly opposed to HB1194 HD2 proposed. Counties must retain the right to legislate in relation to protecting their citizens. Big business should not usurp this right.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 01, 2015 8:08 PM
To: CPCtestimony
Cc: derekbyou@gmail.com
Subject: Submitted testimony for HB1194 on Mar 2, 2015 14:15PM



HB1194

Submitted on: 3/1/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Derek You	Individual	Oppose	No

Comments: The EPA and FDA are not protecting the health and safety of Hawaii's citizens, therefore the county rights to regulate agricultural matters must be protected, please oppose this bill.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 01, 2015 6:56 PM
To: CPCtestimony
Cc: ofstone@aol.com
Subject: Submitted testimony for HB1194 on Mar 2, 2015 14:15PM



HB1194

Submitted on: 3/1/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jeri Di Pietro	Individual	Oppose	No

Comments: I live on Kaua`i where we have over 13,000 acres of our ag land leased to chemical corporations for herbicide tolerant and insecticide producing field experimentation. I strongly oppose HB 1194 HD2. We cannot afford to again entertain the adoption of any legislation that we jeopardize or remove our ability as a county to exercise home rule and self determination of what is compatible or incompatible agricultural practices. Since open air field tests are still considered "agriculture" even though a more accurate designation would be "research" or "transgenic experimentation", I strongly oppose this draft bill. Many of our residents would testify that chemical laden, fugitive dust is far beyond any type of agricultural "nuisance" of conventional or traditional farming. With mahalo and aloha, Jeri Di Pietro PO Box 338 Koloa, HI 96756 808 651 1332

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 01, 2015 8:04 PM
To: CPCtestimony
Cc: lucialyou@gmail.com
Subject: Submitted testimony for HB1194 on Mar 2, 2015 14:15PM



HB1194

Submitted on: 3/1/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lucia You	Individual	Oppose	No

Comments: The EPA and FDA are not protecting the health and safety of Hawaii's citizens, therefore the county rights to regulate agricultural matters must be protected, please oppose this bill.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 01, 2015 9:18 PM
To: CPCtestimony
Cc: mamaupin@hotmail.com
Subject: *Submitted testimony for HB1194 on Mar 2, 2015 14:15PM*



HB1194

Submitted on: 3/1/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Margaret Maupin	Individual	Oppose	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 01, 2015 8:01 PM
To: CPCtestimony
Cc: hokuokekai50@msn.com
Subject: *Submitted testimony for HB1194 on Mar 2, 2015 14:15PM*



HB1194

Submitted on: 3/1/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Lacques	Individual	Oppose	No

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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Sent: Sunday, March 01, 2015 5:17 PM
To: CPCtestimony
Cc: shannonkona@gmail.com
Subject: Submitted testimony for HB1194 on Mar 2, 2015 14:15PM



HB1194

Submitted on: 3/1/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Oppose	No

Comments: Oppose. It's not broke, don't fix it. Counties are much closer to what's happening on this home rule issue.

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Cc: tulsi@mauiishome.com
Subject: Submitted testimony for HB1194 on Mar 2, 2015 14:15PM



HB1194

Submitted on: 3/2/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Tulsi	Individual	Oppose	No

Comments: Please oppose this bill

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 01, 2015 8:17 PM
To: CPCtestimony
Cc: anthuriumz@hotmail.com
Subject: Submitted testimony for HB1194 on Mar 2, 2015 14:15PM



HB1194

Submitted on: 3/1/2015

Testimony for CPC/JUD on Mar 2, 2015 14:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
wynnie hee	Individual	Oppose	No

Comments: NO, please,DON'T take away counties rights to HOMERULE.

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LATE TESTIMONY

Testimony of
Howard R. Green, Owner
GreenWorld Coffee Farm
Re: House Bill 1194 H.D 2

In 2012 the legislature passed Senate Bill 2375 which became Act 113, and ultimately became Sections 205-2(d)(15) and 205-4.5(a)(9) Hawaii Revised Statutes. Act 113 was intended to permit farmers to retail farm products and sell farm products as prepared foods and related logo items from their farms. But Act 113 did not actually take effect for reasons explained below. Because Act 113 did not take effect, Senate Bill 2777 was passed by the Senate last year to give Act 113 effect, and sent to the House, but the House did not take action on it last year. This year House Bill 1194 in as it has been redrafted in House Draft 2, copy attached, is identical in its operative provisions to Senate Bill 2777. The sole purpose of the bill is to give Act 113 the effect of law.

I. The Purpose of Act 113 (2012).

The legislature which passed Act 113 understood an economic reality facing Hawaii's farmers, especially small farmers: When selling product through traditional channels, farms on the average receive 10% or less of the retail dollars being paid for their products. To be economic, small farms must recover a larger percentage of the retail dollar. This requires development of more direct channels for marketing products to ultimate consumers, including direct farm retail sales, farmers' markets, and the like. State Legislative Committees have been acutely aware of the economic reality farmers face.

Nevertheless a patchwork of county zoning ordinances throughout the state has by various means, limited or restricted direct sales operations from farms to the point that they were so restricted as to be uneconomic. Act 113 sought to bypass county restrictions by permitting such sales directly by State Law. Rather than restate the reasons for the adoption of Act 113 in 2012, I am attaching to my testimony, a copy of all of the testimony provided by farmers in support of Act 113 as Exhibit A. All of the reasons are as relevant now as they were in 2012.

II. Why Act 113 did not take effect.

Act 113 did not in practice have any effect, because it is nullified by a Land Use Commission Rule. Act 113 became the present Section 205-2-(d)(15) HRS which includes the described commercial activity as a permitted use in ag zones. Section 205-5 HRS modifies the zoning power of the counties to define uses as described in that section as permitted uses in an Ag zone. Section 205-5 reads as follows:

“(a) Except as herein provided, the powers granted to counties under section 46-4 HRS shall govern the zoning districts, other than conservation districts.

“(b) Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted (emphasis added); provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance....”

It is important to understand the role of Section 205-5 HRS. Under the State Constitution, the power to zone land resides in the State Legislature. Generally speaking, the power to zone agricultural lands is delegated to the Counties under Chapter 46 HRS, but the State legislature did reserve to itself the power to specify particular uses which would be permitted within agricultural and conservation districts. Chapter 205 sets forth a listing of activities that the legislature has determined from time to time, will be permitted on Ag lands. Thus, under Land Use Commission Rules above, the uses in Sections 205-2 and 205-4.5 became permitted uses in Ag districts, and uses “compatible to the activities” described in those sections could also be permitted by Land Use Commission Rule.

So how did the Land Use Commission deal with this question: Land Use Commission Rule 15-15-25 provides as follows:

“Permissible uses within the “A” agricultural district.

“(a) Permissible uses within agricultural district land classified by the land study bureau’s detailed land classification as overall master productivity rating class A or B shall be those uses set forth in section 205-4.5, HRS.

“(b) Permissible uses within the agricultural district land classified by the land study bureau’s detailed land classification as overall(master) productivity rating class of C, D, E, and U, shall be those uses permitted in A and B lands as

set forth in section 205-4.5, HRS, and also those uses set forth in section 205-2(d), HRS.”

Section 205-4.5(a)(9) separately identifies “Agricultural based commercial operations as described in Section 205-2(d)(15). So under these Land Use Commission Rules commercial activities as set forth in Act 113 would have been permitted. So by this rule the Land Use Commission essentially adopts a rule which enacts the provisions of Sections 205-2HRS and 205-4.5 HRS as permissible activities without any change or addition of other uses compatible with those set forth in the Statutes. So far, so good.

However, Land Use Commission regulation section 15-15-23 provides as follows:

“Except as otherwise provided in this chapter, the following land and building uses are compatible and permitted within the following land use districts, ***except when applicable county ordinances or regulations are more restrictive.***

(Emphasis added). Except as otherwise provided in this chapter, uses not expressly permitted are prohibited.”

By this rule, the Land Use Commission has reversed the action of the legislature by giving back to the Counties, the powers to reverse Act 113.

So County regulations that Act 113 was intended to supercede, were not superceded. On Oahu, the County has pointedly ignored Act 113. Following its passage when we wrote a letter to the County to confirm its operation, the County pointedly refused to give it any consideration. A copy of the Honolulu Department of Planning and Permitting letter to GreenWorld Farms, written after passage of Act 113, is attached as Exhibit B.

III. Intent of House Bill 1194 House Draft 2.

I have attached a copy of House Bill 1194, House Draft 2, to my testimony. House Draft 2 addresses this issue narrowly with respect to Ag based Commercial operations, by simply providing that the operations as permitted in the State Law shall not be unreasonably restricted by the Land Use Commission or the counties. The bill is intended to make it clear that the counties and Land Use Commission, cannot simply adopt restrictions and limitations which effectively gut the enactments of the legislature.

House Bill 1194 adopts the same operative language contained in Senate Bill 2777 passed by the Senate and sent to the House in 2014, to deal with the same issue.

As a historical note: An earlier draft of Senate Bill 2777 in 2014 inadvertently could have had an impact on issues related to Genetically Modified Organisms. Senate Bill 2777 as passed by the Senate had been redrafted to eliminate that potential issue, prior to passage by the Senate.

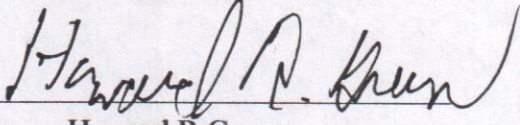
IV. Impact on Farmers and Farms.

In this testimony I do not want to reiterate all of the reasons why Act 113 was passed in the first place. But just to give a short version, in Honolulu, by way of example, a whole series of provisions of the Land Use Ordinance place completely unreasonable burdens and restrictions on farm based commercial operations. By way of example only, a commercial agricultural operation can only be conducted if a discretionary conditional use permit is obtained. The permit application requirements require a written application of roughly 45 pages prepared by a design professional at a cost of roughly \$35,000. A farm product retail shop is limited to 500 square feet of retail area which must be in a separate building. This limitation alone severely hampers the economics of such a store. Furthermore, for no apparent reason, farm products sold cannot come from any other Island except Oahu. Regardless of the size of a parcel, 50% of the floor area of a retail shop must display products grown only on that specific parcel, and cannot include products from the remainder of a farm which may include multiple parcels. Moreover, 50% of the land in the zoning lot on which the shop is located must be in agricultural production, without regard to any of the other agricultural areas of the farm involved.

Have you wondered why with the advent of farmers markets, none of them are located on agricultural land on Oahu? It's because such markets must be located in buildings on which the sides are 60% open to the elements, which in present day rural areas, means, wind, rain, vandalism and theft. A farmer's market on ag land must be on a site of 5 acres or more even though a farmer's market can operate on urban zoned property of half an acre or less. Thus cleaning, refrigeration and storage equipment cannot be used because of lack of ability to provide storage. There are limited hours of operation, though no such limitation exists for farmers markets on urban land.

Act 113 established what are now Section 205-4.5(a)(9) and 205-2(d)(15) HRS which provide sensible functional limitations on farmed based retail activity. These requirements assure that the law will not be misused to simply create tourist shopping unrelated to agriculture. Items sold must be Hawaii farm products or products derived from Hawaii farm products, food products, and logo items. The activity must be undertaken in conjunction with and be owned and operated by a good faith Hawaii farming operation. The revenue from such operations are critical to helping small farms become sustainable.

For GreenWorld Farms


By Howard R Green 3/2/2015

Farmer's testimony
for Act 113.

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 ventures 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 Paaui, Hamakua Mushrooms in Laupahoehoe, honey from Volcano Island 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 Mokuia. 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.



KAMEHAMEHA SCHOOLS*

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 B. 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
Kylie Matauda
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, Kaula, 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 Kawaihoa 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.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

850 SOUTH KING STREET, 7TH FLOOR • HONOLULU HAWAII 96813
PHONE: (808) 769-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.gov • CITY WEB SITE: www.honolulu.gov

*Honolulu Dept of Planning
response to
Act 113*

PETER B. CARLISLE
MAYOR



DAVID K. TANQUE
DIRECTOR

JIRO A. SUMADA
DEPUTY DIRECTOR

2012/ELOG-1335(AA)

July 19, 2012

Mr. Reynaldo Rios
Architect
Architect Design Associates
822 Ahuwale Street
Honolulu, Hawaii 96821

Dear Mr. Rios:

Subject: Retailing of Coffee Products
71-101 Kamehameha Highway - Wahiawa
Tax Map Key 7-1-1: 32

This responds to your letter dated July 5, 2012, in which you requested clarification of zoning regulations relating to the sale of coffee (both in bean and beverage form) on the above 3.632-acre lot, which is in the AG-1 Restricted Agricultural District and State Land Use Agricultural District. You stated that GreenWorld Farm has no interest in or intention of selling "general tourist items." Further, it is your understanding that: "GreenWorld Farms can without any further permit, sell its coffee from this parcel . . . as an accessory use to its farm operation" pursuant to Land Use Ordinance (LUO) Section 21-5.530. Your second statement is not correct. LUO Section 21-5.530 ("Retail, accessory") relates only to the Industrial, and not the Agricultural Districts. Accessory sales of coffee grown on the same agricultural zoning lot are only permitted pursuant to LUO regulations for the following uses: (1) agribusiness activities; (2) plant nurseries; and (3) accessory roadside stands.

LUO Table 21-3 permits agribusiness activities in the AG-1 District, subject to an approved Conditional Use Permit, Minor (CUP, Minor). LUO Section 21-10.1 defines "agribusiness activities" as "accessory uses conducted on the same site where agricultural products are cultivated or raised." [Emphasis added.] LUO Section 21-5.10A ("Agribusiness activities") states, mainly, that retail activities in an enclosed structure shall be limited to a structure not exceeding 500 square feet of floor area. Further, all products for sale therein shall be: (1) agricultural products grown on the parcel; (2) agricultural products grown in the City and County of Honolulu; or (3) jams, jellies, candies and pickled or dried produce made from those products. A single farmer's market, subject to certain conditions, for growers and producers of agricultural products to display and sell agricultural products grown in the City may also be permitted on the zoning lot. Finally, as a condition of approval, dedication of a 50 percent or more of the project site, as the Director determines is necessary to preserve the purpose and intent of the agricultural districts, for a minimum of 10 years to active agricultural use, is required by way of an agricultural easement or comparable mechanism acceptable to the Director. You may access the LUO on the internet at <http://www1.honolulu.gov/council/ocs/roh/index.htm>.

Mr. Reynaldo Rios
July 18, 2012
Page 2

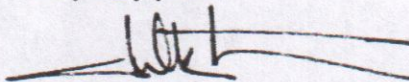
Plant nurseries are also permitted in the AG-1 District as a permitted use, subject to standards in LUO Article 5. LUO Section 21-10.1 defines "plant nurseries" as "land, greenhouses, or other similar type of agricultural structures used to raise flowers, shrubs, and other plants primarily for wholesale sales." The term includes establishments where retail sales of agricultural products, which are raised or grown on-site in containers or directly in the ground, occur. [Emphasis added.] It does not include "retail establishments that are typically categorized as garden shops, which sell to retail customers items other than plants, such as pots and planters; gardening supplies, implements and tools; mulch, potting soil, and fertilizers; decorations, books, and cards." LUO Section 21-5.500A applies the following standards for plant nurseries in the AG-1 District: (1) Retail sales shall be limited to plants sold directly from the greenhouse or open field where the products has been grown or cultivated, and only sales of the products in their primary form shall be allowed; (2) there shall be no retail sales of secondary products such as jams, candies, juices, and baked goods; and (3) except for an accessory roadside stand (see below) or an enclosed structure approved by a CUP for accessory agribusiness activities, there shall be no separate structures used primarily for retail sales.

Finally, accessory roadside stands, as a special accessory use in the AG-1 District subject to standards enumerated in LUO Article 5, are also permitted. Although LUO Section 21-10.1 does not contain a definition of "roadside stands," it does define "accessory use" as one that meets the following conditions: (1) A use that is conducted on the same zoning lot as the principal use to which it is related, whether located in the same building or an accessory building or structure, or as an accessory use of land; (2) a use that is clearly incidental to and customarily found in connection with the principal use; and (3) a use that is operated and maintained substantially for the benefit or convenience of the owners, occupants, employees, customers or visitors of the zoning lot with the principal use. [Emphasis added.] LUO Section 21-5.540 ("roadside stand, accessory") provides that "no more than one roadside stand as an accessory to agricultural production on the same premises shall be permitted, provided that no stand shall exceed 500 square feet of floor area."

We confirm that once coffee production becomes viable on the adjacent Parcels 7 and 29, a CUP, Minor for the joint development of Parcels 7, 29, and 32 will be required in order for the accessory sale of coffee grown on Parcels 7 and 29 to continue on Parcel 32, pursuant to one of the above-outlined alternatives.

We hope this clarifies the matter. If you have any questions, please do not hesitate to contact Ann Asaumi of our staff at 768-8020.

Very truly yours,



David K. Tanoue, Director
Department of Planning and Permitting

DKT:hd

Mr. Reynaldo Rios
July 18, 2012
Page 3

bcc: LUO Interp Manual
ZPRB (Ann Lau)