

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lieutenant Governor

LUIS P. SALAVERIA
Director

MARY ALICE EVANS
Deputy Director



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

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Executive Officer

Bert K. Saruwatari
Planner

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Statement of
Daniel E. Orodenker
Executive Officer
Land Use Commission
Before the
House Committee on Energy and Environmental Protection
Tuesday February 6, 2018
8:30 AM
State Capitol, Conference Room 325

In consideration of
HB 2665
RELATING TO SOLAR ENERGY

Chair Lee, Vice Chair Lowen, and members of the Committee on Energy and Environmental Protection:

The Land Use Commission supports HB 2665 that would require a State Special Permit for solar energy facilities larger than 15 kilowatts proposed on State Agricultural District lands on non-conforming residential subdivisions with Land Study Bureau ("LSB") ratings of D or E.

We have the following recommendations:

- 1) At the end of the new definition the words "...and has been identified by each county." This would provide the landowners, the public, and government agencies necessary information for permitting review and processing.
- 2) In the new subsection 205-2(d)(6)(C), add the words "...or multiple lots". This would ensure that a solar energy facility proposing to use multiple small lots for a single project would require a State Special Permit review and approval process.

Thank you for the opportunity to testify on this matter.

DAVID Y. IGE
Governor

DOUGLAS S. CHIN
Lt. Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

FEBRUARY 6, 2018
8:30 A.M.
CONFERENCE ROOM 325

HOUSE BILL NO. 2665
RELATING TO SOLAR ENERGY

Chairperson Lee and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2665 that amends Chapter 205 to require special permit approval for solar energy facilities in excess of 15 kilowatts and placed within a single lot on "D" and "E" agricultural lands within a "non-conforming residential subdivision" created prior to January 1, 1980. The Department of Agriculture has strong concerns about this measure.

This measure, as written, may result in unintended adverse consequences on the use of the special permit process and the Agricultural District. The proposed definition of "non-conforming residential subdivision" (page 3, lines 12-18) is arbitrary with respect to the January 1, 1980 date. Further, we believe "...a subdivision located in an agricultural district created prior to January 1, 1980 for primarily residential purposes which do not conform to current county codes" (emphasis added) is in violation of Chapter 205. Chapter 205 only permits residential uses in the Urban and Rural Districts and prohibits them in the Agricultural District. The Department of Agriculture requested an opinion from the Department of the Attorney General in August 1975 and received their response, wherein the following is stated:

(Department of the Attorney General, Opinion No. 75-8, dated September 3, 1975, pages 4-5)

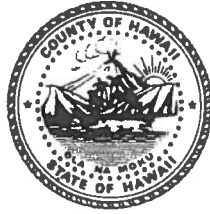


“If any owner of a lot located within an agricultural district uses his lot as a one- to three-acre residential estate and not as “a farm where agricultural activity provides income to the family occupying the dwelling” located on the lot, he would appear to be in violation of chapter 205 and the State Land Use District Regulations.”

This bill is requesting that the special permit process be required of solar energy facilities which is a permitted use of “D” and “E” agricultural land when solar energy facilities are proposed for “non-conforming residential subdivisions” that we believe to be in violation of Chapter 205. We believe the special permit process (which is reserved for “certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified” (Section 205-6(a)) should not be allowed to be used in the manner proposed in this bill to resolve a particular situation.

Thank you for the opportunity to submit our testimony.

Maile Medeiros David
Council District 6
Portion N. S. Kona/Ka'ū/Volcano



Phone: (808) 323-4277
Fax: (808) 329-4786
Email: maile.david@hawaiiicounty.gov

HAWAI'I COUNTY COUNCIL

County of Hawai'i
West Hawai'i Civic Center, Bldg. A
74-5044 Ane Keohokalole Hwy.
Kailua-Kona, Hawai'i 96740

February 1, 2018

Honorable Chris Lee, Chair
Honorable Nicole E. Lowen, Vice Chair
Committee on Energy & Environmental Protection
Hawai'i State Capitol, House Conference Room 3325
Honolulu, Hawai'i 96813

Re: H.B. No. 2665 – Relating to Solar Energy.

Honorable Chair Lee and Vice Chair Lowen:

Aloha and mahalo a nui loa for this opportunity to provide testimony in support of H.B. No. 2665. My name is Maile David, Councilmember representing Council District 6 (rural districts of South Kona, Ka'ū and Volcano Village). I am a strong supporter of requiring that proposed industrial scale solar facilities located within non-conforming residential subdivisions be required to obtain a special use permit and allow an opportunity for residents to provide input.

I, therefore, respectfully request that H.B. 2665 be favorably considered.

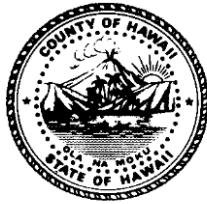
Mahalo a nui loa for your positive consideration.

Very truly yours,

Maile David

Maile David, Council Member
Council District 6, S. Kona, Ka'ū, and Volcano Village

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
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County of Hawai'i
PLANNING DEPARTMENT

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February 2, 2018

Testimony by
MICHAEL YEE
Director, County of Hawai'i Planning Department
before the
COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
Tuesday, February 6, 2018, 8:30 A.M.
State Capitol, Conference Room 325
in consideration of
HB 2665
Relating to Solar Energy

We would like to express our **STRONG CONCERNS** regarding HB2665, which seeks to prohibit large, industrial-scale solar facilities in subdivisions established prior to January 1, 1980 and situated on Agricultural-designated lands.

While we support the intent of this proposed legislation, its approach should be reconsidered as it will have severe implications upon the way we currently administer both State and County land use laws. More specifically,

1. "non-conforming subdivisions" as defined in the bill is inconsistent with a similar definition embodied within the County of Hawai'i Zoning Code and even in State Land Use Law where single family dwellings are permitted on agricultural lands for lots existing before June 4, 1976 (HRS205-4.5(b))
2. We believe it is unreasonable to require a Special Permit for solar energy facilities having a production capacity of more than 15 kilowatts when sited within a "non-conforming residential subdivision". There are tens of thousands of lots on Hawai'i Island that may fall into this category and requiring a Special Permit, involving a public hearing for each and every qualifying homeowner, is excessive. It will have the consequence of punishing many innocent homeowners to prevent industrial-scale solar energy facilities that was initially allowed by the Legislature in 2011.
3. Requiring possibly hundreds (maybe thousands) of homeowners to apply for a Special Permit will have a severe impact upon our Planning Commissions, comprised of volunteers, who have much more pressing matters before them than to consider a Special Permit for a 20kw solar energy system on the roof of a single family dwelling.

4. Solar energy facilities on Agricultural lands were first permitted in 2011 by the Legislature through the adoption of Act 217. Prior to this amendment to the State Land Use Law, Special Permits were required for industrial-scale solar energy facilities and homeowner-scale solar energy facilities were out rightly permitted as incidental and subordinate to a single family dwelling. This process generally worked well, until Act 217 was adopted.

Please consider our concerns and thank you for the opportunity to comment.

HB-2665

Submitted on: 2/4/2018 9:48:46 AM

Testimony for EEP on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Sandra Shelton	Hawaiian Ranchos Community Association	Support	No

Comments:

Aloha

thank you for the opportunity to voice the reasons I support HB 2665. A special permit is required for lesser operations businesses etc with far lesser impact on non conforming subdivisions. These solar operations would be placed among homes would be a safety hazard as well as unsightly and would take the place of homes with families that support jobs or buy services. Many of these subdivisions are on catchment and also underserved by fire suppression services and some in areas identified as a high fire risk. They would be surrounded by security fencing and lights would be attractive to thieves which is prevalent in some of these subdivisions and also a hazard to small children children

92-8651 Jasmine Drv.
Ocean View, HI 96737

February 2, 2018

The Honorable Chris Lee, Chair
The Honorable Nicole E. Lowen, Vice Chair
Members of the House Committee on Energy and Environmental Protection.

Dear Chair Lee, Vice Chair Lowen and Members:

SUBJECT: TESTIMONY IN SUPPORT OF H.B. 2665 RELATING TO INDUSTRIAL SOLAR
INSTALLATIONS IN RESIDENTIAL SUBDIVISIONS

Thank you for the opportunity to submit testimony in strong support of HB 2665. I very respectfully request you to pass this common sense bill that would require any future industrial-scale solar developments planned for residential subdivisions, to obtain a special use permit from the County.

I have been a RANCHO's property owner since 2011. My wife and I chose what we thought would be residential community. Now we are faced with a possible industrial invasion in a place without adequate fire suppression capabilities. This is a very dry place, a fire would be devastating. Residential subdivisions don't have the infrastructure to support industrial development.

This is a place blessed with scenic beauty. SPI Solar will put a significant scar on that beauty. A scar not isolated to a 60+ acer development but spread through out our community. Looking at SPI's lot location map, I will see and hear the construction of a number of properties. Pieces of the scar. Cuts in the nature of our community. Surely land more appropriate to this type of development is available.

H.B. 2665 will protect residential communities from industrialization. The future growth of solar installations is inevitable. County permitting will help prevent mismatches between infrastructure and solar development projects. It is a sensible bill.

Respectfully,
Philip Flanders

Ann Bosted
P. O. Box 6254, Ocean View, HI 96737

February 4, 2018

The Honorable Chris Lee, Chair
The Honorable Nicole E. Lowen, Vice Chair
Members of the House Committee on Energy and Environmental Protection.

Dear Chair Lee, Vice Chair Lowen and Members:

SUBJECT: TESTIMONY IN SUPPORT OF H.B. 2665 - RELATING TO INDUSTRIAL SOLAR
INSTALLATIONS IN RESIDENTIAL SUBDIVISIONS

Thank you for the opportunity to submit testimony in strong support of HB 2665. I very respectfully request you to pass this common sense bill that would require the developers of large solar developments planned for residential subdivisions in the future, to obtain a special use permit from the County.

One would think that a bill to stop solar developers from building a 6.5 megawatt, industrial scale facility in a residential neighborhood would be completely unnecessary, but, sadly, this is not so. In our town of Ocean View (population 7,000) a Chinese corporation, SPI Energy, plans to build 26 three-acre facilities among homes in our town. They can do this because, although we are first and foremost a residential area, "non-conforming subdivisions" are in the Agricultural District, and solar is a permitted use on ag. land. This is a loophole in the law which is being ruthlessly exploited to the detriment of our town.

My husband and I bought our four-bedroom home in Ocean View with the expectation that we would retire here and spend our golden years taking in the spectacular views from our lanai, enjoying the mild weather and being part of a community that, according to the census, doubles every decade. We are now threatened with industrialization. If it goes forward, we will have to pack up and move and sell our home at a considerable loss. We are not prepared to live among housing lots that have been stripped of 'ohi'a trees, bull-dozered edge to edge, covered with industrial components, and surrounded by an eight-foot fence adorned with signage reading "DANGER - KEEP OUT - HIGH VOLTAGE". I respectfully ask if you, a member of the House Committee on Energy and Environmental Protection, could live in that kind of environment? If not, you now know why this bill needs to be passed.

Ocean View is not an ideal place for solar development. It is far from the "load" - the population centers of Kona and Hilo. Huge areas of 'ohi'a trees will be destroyed. Meanwhile there are vast tracts of treeless, unproductive lava land close to the load which get far more sun. Some are owned by struggling farmers who need income, while others are owned by

Hawaiian organizations like Kamehameha Schools, which could use the income for the public good. About 50% of the land on the Big Island is in the Agricultural District.

This bill is not anti-solar. The Big Island currently has a surplus of daytime energy - the primary reason for ending the popular Net Energy Metering program. We need a cheap source of evening energy - ideally from a large, contiguous solar farm that also has large, cost-effective batteries to store the energy in the day, and use it at night. On other islands these kind of projects can produce night-time energy for as little as 11c per kWh. Small projects on three acre sites - while large enough to ruin the ambiance in a residential area - are quite unsuitable for batteries, which are installed "behind the meter". Since each site has its own meter, each site would need a small, expensive, less-efficient battery that would drive up the cost of power.

This bill is pro-residential. It is very fair. If a restaurant or a Bed-and-Breakfast or a similar business is required to get a special use permit from the County before operating on Ag. land, why not an industrial scale solar facility? We need more affordable housing and non-conforming subdivisions are an excellent resource of affordable land.

The limit of 15 kW is also fair. Our household has a three-kilowatt roof-top solar system, and it never fails to exceed our needs - the surplus goes into the grid. Any business or resident needing more than 15kW can apply for a permit. The permit process gives residents "due process" or fair treatment through the normal judicial system, to which every citizen is entitled. As the law stands now, residents of non-conforming subdivisions do not have the "due process" afforded to those in the urban, rural and conservation districts.

This bill will not stop SPI Energy's project - we have a formal complaint before the Public Utilities Commission, and the management of the project will be fully investigated in docket 2016-0224. The PUC has the power to stop the project, and we have every expectation that the Commission will put the interests of the public first and stop the boondoggle project.

Attached, please find a press cutting about the bill, and a map of our subdivision to show how invasive this project is.

I respectfully and earnestly entreat you to kindly act in the interests of all the hundreds of thousands of residents of non-conforming subdivisions on the Island of Hawai'i, and pass this bill to stop our future exploitation.

Yours truly,

A handwritten signature in cursive script that reads "Ann Bosted". The signature is written in dark ink and is positioned above the printed name.

Ann Bosted

Attachments: 2

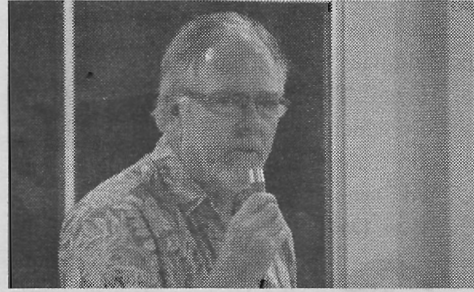
Bill Would Keep Big Solar Farms Out of Ag-Zone Neighborhoods

A bill that would keep utility-scale solar farms out of residential communities zoned Agriculture passed its first reading in the state House of Representatives in January.

The bill would modify law that allows solar installations on all Agriculture-zoned land (except land with the best soil) without a county permit. The bill is supported by Ka'ū's Rep. Richard Creagan, who has opposed the industrialization of residential communities that are zoned Agriculture in spite of the fact that the subdivisions were created for homes.

Also supporting the bill are Reps. Beth Fukumoto, Cedric Gates, Linda Ichiyama, Sam Kong, Matthew PoPresti, and Gregg Takama.

The town of Ocean View, the most populous in the Ka'ū District, is composed of seven subdivisions, all zoned Agriculture. An estimated 7,000 people live in Ocean View. There are also an estimated 14 non-conforming old subdivisions in the



Rep. Richard Creagan is lobbying for a bill to prevent industrialization of neighborhoods, like those in Ocean View where solar farms are planned.

Puna District, which are home to thousands of people. They are termed "non-conforming" because they do not conform to modern subdivision standards and rely on catchment systems for water, and often have substandard roads.

Most of the subdivisions were created in the 1960s and 1970s when the county and state did not require developers to cover

Solar Farms, pg. 6

Solar Farms, cont. from pg. 2

the cost of bringing roads, water and other services to the far-flung homes in sparsely-populated vast areas classified and zoned Agriculture.

When, in 2008, state legislators and officials embraced the Hawai'i Clean Energy Initiative to free the state from imported oil and coal for energy, they looked for ways to make it easier for photovoltaic developers to build solar installations. It was decided that removing the requirement for a permit to use agricultural land would be a good idea. After debate as to whether land should be used for food or energy, the law was modified to allow solar farms on ag land. The impact on neighborhoods located on ag-zoned land was not considered, nor mentioned in documents on file at the legislature for SB 2502 or SB 631 in 2011.

"This was an unintended consequence of a very well-meaning law," explained Creagan. "When legislators talk about ag land, they think of wide open spaces and swathes of unused land. They could not see the downside of removing the permit requirement, as none of them thought of the non-conforming subdivisions we have on the Big Island."

"It was not until SPI Solar, an international

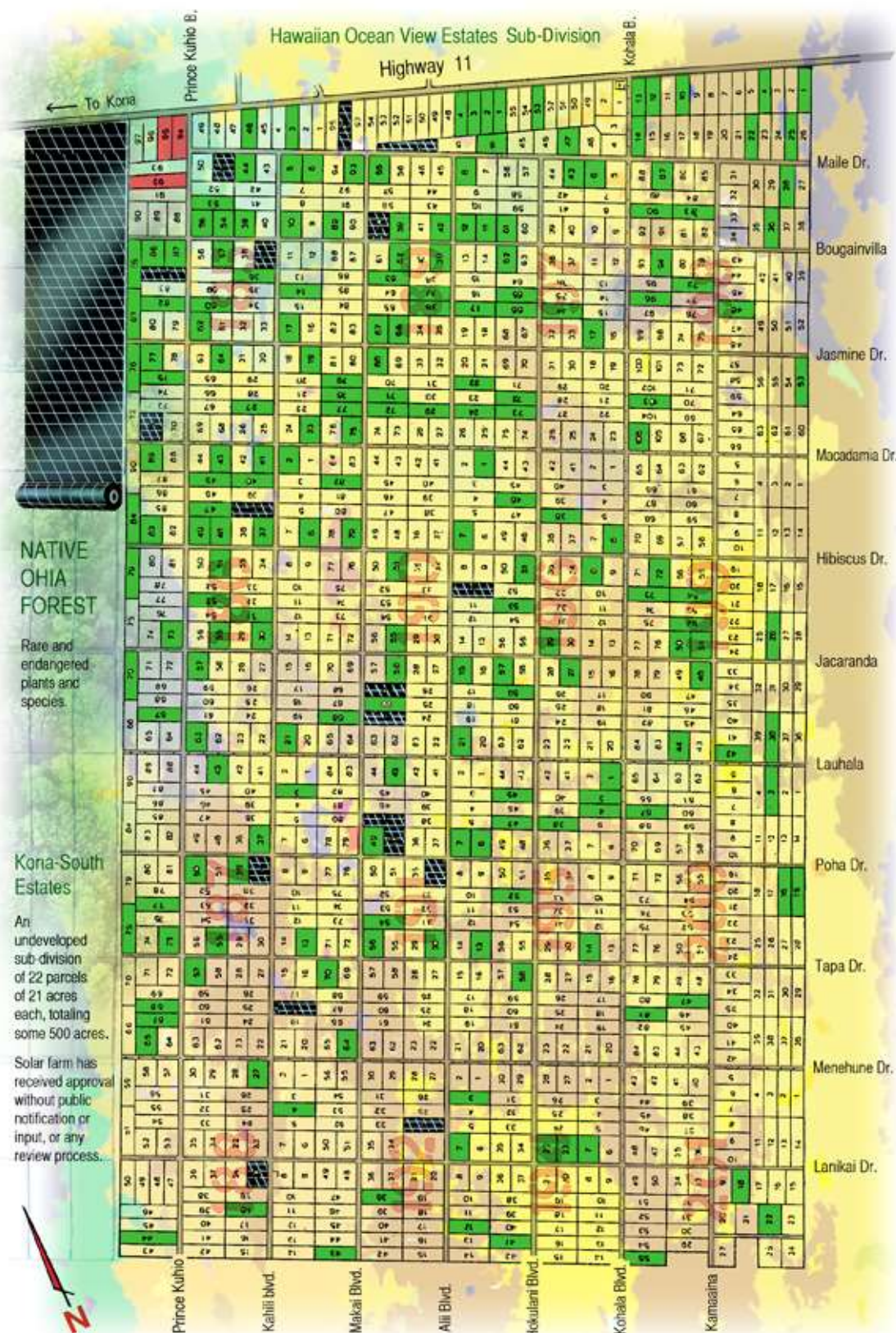
Solar Farms, cont. from pg. 6

based in Shanghai, bought up housing lots in Ocean View and were given 26 building and electrical permits to build two-acre solar installations among homes, because the state law allowed them on Ag land, that the unintended consequences became apparent," said Creagan.

Randy Iwase, Chairman of the PUC, was quoted by the *Honolulu Star Advertiser* as saying that the FIT program is obsolete because the cost is too high. "Nobody is going to move on the FIT project. We have suspended any

action on the application pending a review or an investigation or resolution of the complaint filed by (Ranchos residents) the Bosteds."

The Consumer Advocate at the time, Jeff Ono, is quoted by the *Honolulu Star Advertiser* as saying in a filing that he was concerned with the competitive bidding of the FIT projects in Ocean View. Ono wrote, "It is apparent that the solar project owners effectively 'gamed' the FIT process in order to avoid going through the more rigorous competitive bidding framework."



Hawaiian Ocean View Ranchos Sub-Division

-  Inappropriately approved sites for Solar Compounds. First phase of development.
-  3 acre parcels with homes and improvements.
-  3 Acre undeveloped lots
-  Existing commercial businesses on 3 acre parcels.

HB-2665

Submitted on: 2/4/2018 5:59:42 PM

Testimony for EEP on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Larry D. Shelton		Support	No

Comments:

A Big Aloha to ya. Due to an unfortunate oversight by your predecessors in the Hawaii Legislature, HB2665 needs to be passed to alleviate zoneing and permit requirements in the future pertaining to Agriculture Zoned Land. Thank You for your consideration in this matter.

Larry D. Shelton U.S. Army Veteran and Retired Fire Battalion Chief Full time resident and property owner in Kau, Big Island, Hawaii 92-979 Prince Kuhio blvd. Ocean View, Hi 96737 808-640-7374

HB-2665

Submitted on: 2/4/2018 9:16:24 PM

Testimony for EEP on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Stanley Troeller	Hawaiian Ranchos	Support	No

Comments:

Aloha from the Big Island

In regard to HB2665

Dear Sir

I am a business owner and resident in the Hawaiian Ranchos for 35 years. I own South Point U Cart Inc. To open our company in 1979, 80, we had to file for a special use permit. It was granted three years later by the County.. Hence, we have had a successful operation for the last 35 years. Our subdivision is small, and there is not space within our residential area for a proposed solar operation. If indeed these folks would have applied for the proper use permit at the start, we would not have the problem presented to the County today, as it would have been obvious, that this was not feasible at that time, and would have been not granted by the County. As in previous testimony, I am not in favor of this solar instalaton,

I am in favor of HB 2665

Sincerely

Stanley E Troeller

South Point U Cart Inc EST 1980

HB-2665

Submitted on: 2/4/2018 9:23:14 PM

Testimony for EEP on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Verna Loosli	M	Support	No

Comments:

The Honderable Chris Lee, Chair

The Honderable Nicole Owen, Vice Chair

Members of the House Committee on Energy and Enviornmental Protection

Subject: Testimony in Support of HB 2665

I am a retired Clinical Social Worker who moved to Ocean View, HI in 2013. My husband and I wanted to retire in peace in a rural area, known for its natural beauty, unobstructed ocean views, and affordable housing. Our town is incompatible with the proposed Industrial power generating project, proposed to take over 26 three acre lots in a RESIDENTIAL subdivision. There are many reasons this project is not suitable. Public Safety being number one. We do not have fire safety in place. Fire fighters aren't trained for electrical producing facilities. We have no public water or fire hydrants. Also the vast majority of residents are opposed to this project, or any future ones like this. We did not move to one of the most rural, quiet and remote settings in the United States to be bombarded by this industrial development which will bulldoze the three acre parcels to erect 8 foot chain link fences, erect solar collecting machinery and Danger signs, warning of high voltage. There are many parcels on our island that are not in residential subdivisions, that would be suitable for this type of development. This type of development would also not be of any long term economic benefit to our town. No permanant jobs would be provided. In fact the potential for vandalism in our rural town with very limited police protection would be greatly increased. While I know that the intent of this bill is not retroactive, I do believe it would signal the intent of the legislature to the PUC, which is considering a formal complaint against the project in Docket 2016-0224. I respectfully request your support in helping our town of Ocean View maintain the peaceful, rural and quiet way of life that drew me and so many of us to make our homes here. I ask you to pass this common sense bill that would require future industrial scale solar developments in residential subdivisions, to obtain special use permits from the county.

Thank you,

Verna Loosli

HB-2665

Submitted on: 2/5/2018 6:34:39 AM

Testimony for EEP on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joan Gannon	West Hawaii CHC	Support	No

Comments:

I Joan Gannon, chairperson of Protect Marine Life Committee for the Democratic Party of Hawaii Island, support HB2665

i ask the Committee on Energy and Environmental Protection to please pass this bill.

thank you

HB-2665

Submitted on: 2/5/2018 8:16:47 AM

Testimony for EEP on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Betsy Guyre-Allen		Support	No

Comments:

I strongly support HB 2665 to require special use permits for commercial solar energy enterprises in non-conforming residential/ag zoned subdivisions. As a resident of Hawaiian Ocean View Ranchos on Hawaii Island, we currently have such a project under review by the PUC. Although HB 2665 would not be retroactive, it would close this serious loophole for future solar large-scale developments, and could provide guidance for the PUC as it reviews the standing complaint.

I am a retired veterinarian and resident of Hawaii Island for 38 years. I acquired a special use permit for a veterinary clinic as required, despite the fact that veterinary clinics are specified as permissible in ag zoned/ residential neighborhoods. I greatly respect the special use permit process as a fair and balanced way for planning commission and residents alike to make appropriate decisions for commercial businesses operating in a neighborhood. It is a reasonable requirement for any corporate business operating within a residential community.

I moved to Ocean View 14 years ago to retire in a rural, affordable and pristine environment. There are many native, endangered plants such as a, sandalwood, a'alii, lama, mamane, and hundred year old Ohia, currently under severe threat from Rapid Ohia Death. Large scale destruction of such sensitive ecosystems should be given serious public scrutiny as provided by the special use permit process for all future projects.

Thank you for the opportunity to provide this testimony.

Sincerely,

Betsy Guyre-Allen

Linda Raquinio
PO Box 6338
Ocean View, HI 96737

2/5/18

SUBJECT:

Testimony in support of H>B> 2665 Relating to Industrial Solar in Residential Subdivisions.

To All Concerned in Committee RE Bill HB 2665

Thank you for this opportunity to submit testimony in support of HB 2665. As a resident of a subdivision that is dealing with a problem due to the lack of such a provision, I am very thankful that you are considering a solution for future installations for other residents in other subdivisions.

Since I am almost out of time to submit due to a variety of reasons, I will just say that I hope that this bill will pass and thank our Representative Creagan for working so hard for us in this matter.

Respectively submitted,

Linda Raquinio