

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

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

**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

**WEDNESDAY, FEBRUARY 23, 2022
2:00 P.M.
VIA VIDEOCONFERENCE**

**HOUSE BILL NO. 2084, HD 2
RELATING TO IMPORTANT AGRICULTURAL LANDS**

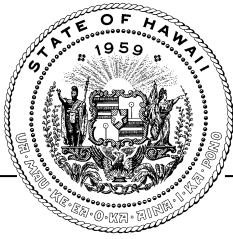
Chairperson Nakashima and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2084, HD2 that allows landowners and lessees of Important Agricultural Lands to apply to the counties to develop, construct, and maintain farm cluster housing on the lands for rent to farmers and farm employees who actively and currently farm on the land but also exempts counties with existing farm cluster housing ordinances that imposes less restrictive requirements. The bill also removes restrictions on farm dwellings on Important Agricultural Lands that are stricter than that for farm dwellings as provided in Chapter 205. This measure provides for critically-needed bona fide farm dwellings for farmers and farm employees on designated Important Agricultural Lands.

The Department of Agriculture (“Department”) supports this measure but defers to the Office of Planning and Sustainable Development regarding the county exemption provision on page 7, lines 15-20.

Thank you for the opportunity to provide our testimony on this important measure.





**STATE OF HAWAII
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

DAVID Y. IGE
GOVERNOR

MARY ALICE EVANS
DIRECTOR

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

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <https://planning.hawaii.gov/>

Statement of
MARY ALICE EVANS
Director, Office of Planning and Sustainable Development
before the
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Wednesday, February 23, 2022
2:00 PM
State Capitol, Conference Room 325
Via Videoconference

in consideration of
HB 2084, HD2
RELATING TO IMPORTANT AGRICULTURAL LANDS.

Chair Nakashima, Vice Chair Matayoshi, and Members of the House Committee on Judiciary and Hawaiian Affairs.

The Office of Planning and Sustainable Development (OPSD) **supports HB 2084, HD2, but opposes the provision to exempt pre-existing cluster subdivision ordinances** from the new incentive. This measure repeals an existing incentive in Hawai'i Revised Statutes (HRS) Chapter 205, for multiple farm dwellings on lands designated as important agricultural lands (IAL) by the State Land Use Commission (LUC) and replaces it with a new incentive that facilitates farm cluster housing development to meet the need for bona fide farmer and farm worker housing.

As currently written, HRS § 205-45.5 appears to impose a requirement that all residents of farm dwellings on IAL lands, including family members, must be farming the land. This provision had a chilling effect on the City and County of Honolulu's IAL petition, which was remanded by the LUC to the City for further action. Furthermore, the existing incentive does not provide any relief from county land use, subdivision, and development standards and processes for the construction of farm housing on lands designated as IAL. Thus, it is of little value to farmers or landowners seeking to build affordable farmer housing on lands designated as IAL.

This Administration bill was drafted and introduced to remedy these issues and to remove a potential barrier to future county efforts to carry out the State constitutional provision for the designation of Important Agricultural Lands.

OPSD supports the amendments contained in HD2 but opposes the inclusion of proposed subsection (f) on page 7, lines 15-20. OPSD offers the following comments and

recommendations regarding its opposition to subsection (f) and further amendments to accommodate concerns raised in testimony on this bill.

1. Page 7, lines 15-20. Remove subsection (f), county exemption from the bill. OPSD opposes the new subsection and recommends deletion of the subsection. The intent of the bill is to ensure that counties adopt clear and effective safeguards for housing developed on IAL while providing a streamlined development option for farmer housing for IAL that doesn't further fragment agricultural land.

It is unclear that existing cluster ordinances really accomplish all three of these objectives. This bill is well within the State authority to set standards for county regulation of land uses within the State land use districts, especially with respect to matters of compelling State interest as is set forth in the State constitutional provision for Important Agricultural Lands.

In December 2020, OPSD submitted its report, *Act 278 Study of Subdivision and CPR on Agricultural Lands on Oahu*, to the State Legislature that highlighted State, City, and stakeholder concerns about the difficulties in regulating residential use on lands in the State Agricultural District, as well as concerns about the cost of meeting urban subdivision standards when providing farm worker housing.

This bill does not bar continued use of existing cluster ordinances on non-IAL lands or the permitting of individual farm dwellings on IAL land. It is intended to make it more difficult to create gentleman farms on IAL lands while providing a permitting process that is streamlined to produce affordable farmer housing without the urban infrastructure that accompanies subdivision of land, which irreparably fragments productive agricultural land and increases the cost of access to farm land. We don't anticipate that all farmers or landowners will take advantage of this incentive, but it provides those with a long-term interest in agricultural production, and not housing, with the opportunity to provide farmer and farm employee housing in support of their agricultural operations.

2. Page 4, subsection (b). OPSD recommends amending HD2, page 4, proposed subsection (b), to insert language restricting the primary agricultural use of a lot of record to the primary agricultural uses set out in HRS § 2054.5(a)(1) through (a)(3): cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber; game and fish propagation; and raising of livestock, including poultry, bees, fish, or other animal or aquatic life. This is to ensure that the use of the land benefiting from this incentive is restricted to agricultural production rather than used for a wide range of non-agricultural uses currently allowed in the State Agricultural District.
3. Page 5, lines 2-10. OPSD suggests this proviso be amended to ensure that the ordinance requires that applications be sent to the Department of Agriculture

(DOA) for review, without requiring DOA comment on every application. The suggested amendment would read as follows:

“...provided further that the ordinance shall require the agricultural plan and verification of the real property tax agricultural dedication to first be reviewed and commented upon by the appropriate county agency, and then submitted to the department of agriculture to allow the department to review and comment on an application prior to county action on the application.”

OPSD acknowledges that the counties may have adopted similar measures for cluster housing. We have full confidence in the counties’ ability to determine how to streamline existing permitting processes and set reduced infrastructure standards in adopting either a new ordinance for farm cluster housing for IAL, or in setting out a new set of standards in an existing cluster ordinance for farm cluster housing on IAL.

In closing, the bill offers the counties the opportunity to adopt a county IAL incentive that provides real relief from permitting and infrastructure improvements that is not needed for working farm lands, while ensuring the counties have the regulatory tools to effectively manage farm cluster housing and avoid leisure farms on IAL. The bill attempts to strike a balance between providing the counties with flexibility while ensuring incorporation of necessary safeguards to protect the State’s productive agricultural lands from non-farm residential use, fragmentation, and sprawl.

Thank you for the opportunity to testify on this measure.



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

DAVID Y. IGE
GOVERNOR

MIKE MCCARTNEY
DIRECTOR

CHUNG I. CHANG
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: dbedt.hawaii.gov

Telephone: (808) 586-2355
Fax: (808) 586-2377

Statement of
MIKE MCCARTNEY
Director

Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Wednesday, February 23, 2022
2:00 PM

State Capitol, Conference Room 325
VIA VIDEOCONFERENCE

In consideration of
HB2084, HD2
RELATING TO IMPORTANT AGRICULTURAL LANDS.

Chair Nakashima, Vice Chair Matayoshi and members of the Committee. The Department of Business, Economic Development and Tourism (DBEDT) **supports HB 2084, HD2, but has serious concerns for the exemption in HD2.** This measure repeals an existing incentive in Hawaii Revised Statutes (HRS) § 204-45.5 and adopts an improved incentive for the construction of farmer and farm employee housing on lands designated as Important Agricultural Land (IAL) by the State Land Use Commission.

The new incentive makes it easier to provide needed agricultural housing for farmers of IAL lands, but under conditions that guard against the creation of gentleman estates and non-farm residential use that encroaches on the State's limited productive agricultural lands. It is our understanding that the Office of Planning and Sustainable Development (OPSD) supports the amendments in HD2 except for the exemption in subsection (f) on page 7 of HD2. We defer to OPSD for specific comments on HD2.

Thank you for the opportunity to testify.

HB-2084-HD-2

Submitted on: 2/22/2022 2:20:35 PM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
earl yamamoto	dept. of agriculture	Support	Yes

Comments:

I will be available to answer questions from the Committee

LATE

HB-2084-HD-2

Submitted on: 2/23/2022 10:17:05 AM

Testimony for JHA on 2/23/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Morris Atta	Hawaii Department of Agriculture	Comments	Yes

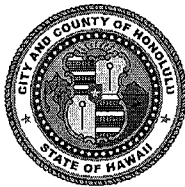
Comments:

I am available to answer questions of behalf of the Department of Agriculture.

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

RICK BLANGIARDI
MAYOR



DEAN UCHIDA
DIRECTOR

DAWN TAKEUCHI APUNA
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI
DEPUTY DIRECTOR

February 23, 2022

The Honorable Mark M. Nakashima, Chair
and Members of the Committee on Judiciary & Hawaiian Affairs
Hawaii State House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

**Subject: House Bill No. 2084, HD 2
Relating to Important Agricultural Lands**

Dear Chair Nakashima and Committee Members:

The Department of Planning and Permitting (DPP) is in **strong support** of House Bill No. 2084, HD 2, which repeals Section 205-45.5, Hawaii Revised Statutes (HRS), and establishes a new section that aims to facilitate the development of cluster housing for farmers and farm employees on Important Agricultural Lands (IAL).

The Bill's current draft was amended to address the DPP's prior testimony by adding language exempting counties that have already enacted a farm cluster or similar housing law from the farm cluster housing provisions mandated by the Bill. The exemption applies if the existing law is less restrictive than the language of the Bill.

The DPP continues to be in strong support of repealing Section 205-45.5, HRS. Section 205-45.5, HRS, was intended to be beneficial for IAL landowners by making it easier to provide farmer and farmworker housing on IAL. However, evident from the hundreds of landowners who provided written and oral testimony to DPP and the State Land Use Commission (LUC) in opposition of the City's recommendation for IAL designation, Section 205-45.5, HRS, has been misinterpreted as being a disincentive that applies greater restrictions than what is currently permitted in the State Agricultural District. Repealing Section 205-45.5, HRS, would alleviate those concerns and could be the first step towards moving ahead with the IAL efforts of the State of Hawaii. If Section 205-45.5, HRS, is not repealed, it is probable there will be no movement from the counties regarding recommending IAL designations to the LUC due to the public perception that IAL infringes on property rights.

Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dean Uchida", is written over a white background.

Dean Uchida
Director



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

February 23, 2022

HEARING BEFORE THE
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

TESTIMONY ON HB 2084, HD2
RELATING TO IMPORTANT AGRICULTURAL LANDS

Conference Room 325 & Videoconference
2:00 PM

Aloha Chair Nakashima, Vice-Chair Matayoshi, and Members of the Committee:

I am Brian Miyamoto, Executive Director of the Hawai'i Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,800 farm family members statewide and serves as Hawai'i's voice of agriculture to protect, advocate and advance the social, economic, and educational interests of our diverse agricultural community.

The Hawai'i Farm Bureau supports HB 2084, HD2, which allows landowners and lessees of important agricultural lands to apply to the counties to develop, construct, and maintain farm cluster housing on the lands for rent to farmers and farm employees who actively and currently farm on the land but also exempts certain counties from this process and removes restrictions on farm dwellings on important agricultural lands that are stricter than that for farm dwellings under the agricultural land use district

The identification and designation of Important Agricultural Lands (IAL) was first proposed at the 1978 Constitutional Convention and subsequently approved by voters in the same year. Enacted as Article XI, Section 3, of the Constitution of the State of Hawai'i, the State is required to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.

Several attempts to establish IAL in statute were attempted over the years, but it was only in 2005 that Act 183 was enacted. In 2008, Act 233 was enacted to establish incentives, such as tax credits, loan guarantees, and expedited regulatory processing to encourage landowners to designate their lands as IAL.

Another incentive allows landowners to develop farm dwellings and employee housing for their immediate family members and their employees. It limits the farm dwelling to 5%

of the total IAL or 50 acres, whichever is less. It also requires that plans for farm dwellings and employee housing be supported by agricultural plans approved by HDOA.

Many small landowners are unaware of how IAL designation will impact their land use and rights. Agricultural landowners are justifiably concerned about the occupancy limits on farm dwellings, especially those who plan to retire on their farm, as they believe IAL law restricts occupation to those who are actively farming. They worry that they may be forced to leave their homes once they are no longer physically able to do the work required to farm. Additionally, some of the long-time small farmers had intended to pass on their property to each of their adult children through subdividing. Because of the limitations and uncertainty associated with approvals of that process under an IAL designation, they are understandably uneasy about their future and their succession planning. Unfortunately, they have not been able to get clarification about this and other issues associated with IAL designation.

HB 2084, HD2 seeks to clarify the Legislative Intent of Act 233 SLH regarding the Farm Dwellings and Employee Housing Incentive for lands designated as IAL.

Thank you for the opportunity to testify on this measure.



MAUI
CHAMBER OF COMMERCE
VOICE OF BUSINESS

LATE

**HEARING BEFORE THE HOUSE COMMITTEE ON
JUDICIARY & HAWAIIAN AFFAIRS
HAWAII STATE CAPITOL, HOUSE CONFERENCE ROOM 325
WEDNESDAY, FEBRUARY 23, 2022 AT 2:00 P.M.**

To The Honorable Mark M. Nakashima, Chair
The Honorable Scot Z. Matayoshi, Vice Chair
Members of the committee on Judiciary & Hawaiian Affairs

SUPPORT HB2084 HD1 RELATING TO IMPORTANT AGRICULTURAL LANDS

The Maui Chamber of Commerce **supports HB2084 HD1 (with comments)** which adopts a new provision for farm cluster housing as an incentive for the designation of lands as Important Agricultural Lands. We strongly support options that provide more housing alternatives for farm workers.

When it comes to farm dwellings and farm worker housing, the Chamber supports increasing flexibility and not removal of existing options. We support as much land as possible to be designated as Important Agricultural Land.

We noticed that there appears to be ambiguous language regarding the size of the unit allowed in the cluster: *"Each farm cluster housing unit shall not exceed eight hundred feet."* We are assuming that the size limit is 800 square feet. If this is the case, we would suggest that the 800 be amended to 1,200. Suppose a farmworker has a spouse and two children, 800 sq. ft. is pretty tiny for 4 people.

For these reasons, we support the passage of HB2084 HD1 to the next committee.

Sincerely,

Pamela Tumpap
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

LATE

HOUSE OF REPRESENTATIVES

BILL OF RESOLUTION H.B N.O 2084

Wednesday, February 23, 2022

2:00 PM VIA VIDEOCONFERENCE

Conference Room 325
State Capitol
415 South Beretania Street

My name is Lohelani Furtado-Gaspar and I am testifying on behalf of bill 2084 in relation to important agricultural lands. I am in complete support of this bill and everything that it stands for.

I believe making housing for farmers easily accessible and affordable is something that Hawai'i needs. As we are small islands with little space I feel that it is important to allow farmers to dwell on their farmlands at a rate that is affordable to them. This would increase food productivity here in Hawai'i and decrease the amount of food that we need to have imported here. I agree with bill 2084s statement in "Removing a restriction on farm dwellings on important agricultural lands that is stricter than what is allowed under the definition of "farm dwelling" in section 205—4.5(a) (4), Hawaii Revised Statutes.". By broadening the definition of "Farm Dwellings" it would make it easier for a farmer to get approved to build on their property no matter the size of the farm.

I also agree with bill 2084s statement on making permit processing a priority for farmers and ranchers to get approved to build their dwelling in a timely manner. The permit process can be a long one which would leave the farmer without housing for a while until their housing gets approved. If this bill is passed and the permit process becomes easier for farmers then I believe we as a community could benefit greatly from this process. More people will not shy away from pursuing farming as a practical business would help increase food productivity here in Hawai'i for all of us to enjoy.

Thank you for taking the time to read my letter in support of bill 2084 in relation to agricultural important agricultural lands.

Lohelani Furtado-Gaspar

(808)898-7667

