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LATE TESTIMONY

HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES
HOUSE COMMITTEE ON AGRICULTURE

February 13, 2000, 9:00 A.M.

TESTIMONY IN STRONG OPPOSITION TO HB 251

Chair Ito, Chair Tsuji, and members of the Committees:

The Sierra Club, Hawai`i Chapter, with over 5500 dues paying members statewide, **strongly opposes** HB 251. In fact, we're baffled that it is even being considered. This measure would alter Hawaii's landscape forever by allowing housing to be built on subdivided agricultural lands regardless of its connection to any actual farming. To see for yourself, take a look at the map of proposed developable land at the bottom.

While we understood (but strenuously disagreed with) the motivation several years ago to propose this measure - that is, providing a legislative "fix" for the court-halted Hokulia development - we are surprised that this measure is still supported after the Hokulia case has settled. The Sierra Club is concerned about the misperception that a "fix" to the land use law is necessary after the Hokulia case because those living on decades-old agricultural subdivisions will somehow be forced out for not farming - a possibility that legal experts say is nearly impossible.

To allow development of homes on ag-zoned lands, these lands should be re-zoned on a case-by-case basis, allowing for ample community input and smart planning for where growth should occur - and where it should not. This is congruent with the overarching purpose of the state land use law, which is to "protect and conserve" natural resources and foster "intelligent," "effective," and "orderly" land allocation and development. By simply allowing the counties to decide what types of dwellings are acceptable on farmlands, we undermine the land use law and replace smart planning with careless expediency.

The premise of HB 1368 HD2 is flawed.

The trial court's decision in the Hokulia case is <u>not</u> a "new way" of interpreting chapter 205. It is the same interpretation provided by the Legislature itself in

1976. It is the same interpretation that the Land Use Commission articulated over a decade ago in 1994 and repeated 2000. It is the same interpretation that caused state agencies to warn Oceanside 1250 regarding the inappropriateness of its project. It is the same interpretation that Hokulia's lawyers provided to the developer prior to construction.

The trial court did not rule that a subdivision creating one-acre lots in the agricultural district had to go to the state land use commission for reclassification to urban. Rather, it ruled that a gated-luxury resort residential subdivision consisting of 730 residential lots surrounded by a golf course, club house, dining facilities, beach club, spa and a hotel (aka a "guest lodge") is not agricultural; and that such a project can only proceed in the urban district. Who in their right mind can argue with a straight face that such a development is agricultural?

HB 251 would undermine the land use law, jeopardize farmlands, and impact tens of thousands of acres statewide

Farming has evolved over the past few decades. By using soil classification as a proxy for "non-productive" or "marginal" agricultural lands, HB 1368 HD2 does great disservice to those farmers currently operating in the Kona coffee belt, Hamakua coast, and other areas that are generating income from soils that are poorly suited for large-scale sugarcane or pineapple. These productive lands are not A&B lands. Nevertheless, this bill would allow much of those lands to be developed without any agricultural component. Wealthy mainland speculators with no interest in agriculture would be free to transform these lands as exclusive gated-communities.

How much of land area might be transformed to housing under the HD2 of this measure? On the next page are maps of the Big Island and Maui showing lands which would potentially be developed under this bill (C, D, E, and U soils in the agricultural district are the lighter area).

HB 1368 HD2 is unnecessary.

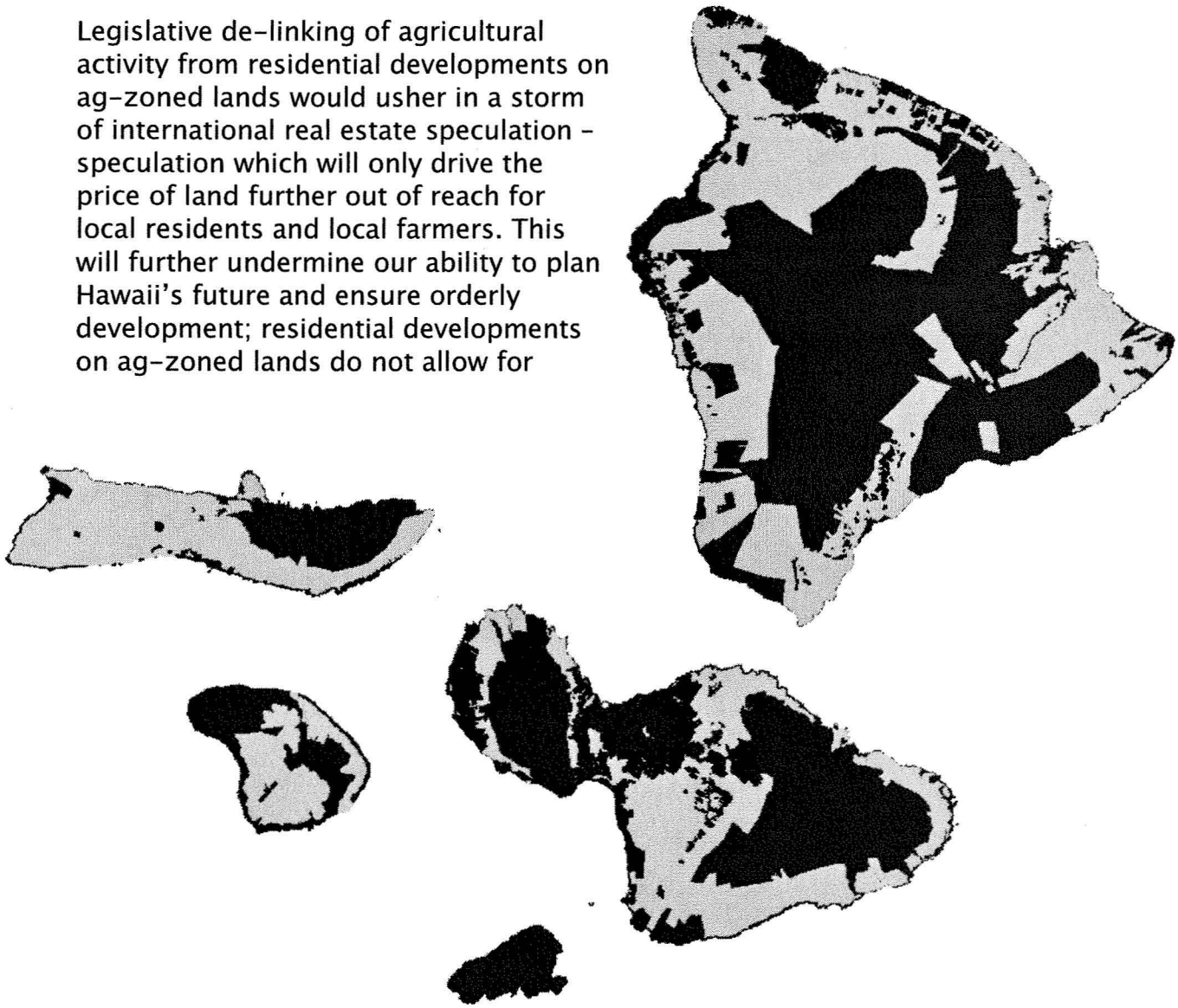
The Hokulia decision has no effect on other housing developments in the agricultural district developed years ago. A campaign has been orchestrated to scare many people into believing that. While it is true that the Hokulia order will have a significant effect on future development proposals, it has no effect on already existing houses in the agricultural district (e.g., Puna). No one could - or would - sue an individual homeowner over the fact that their house is not sufficiently agricultural. The unique facts relating to the knowledge of the Oceanside developers allowed the plaintiffs to circumvent the legal principle of laches. Consider just a few key differences:

- development in progress (Hokulia) vs. house built years ago;
- major developer of a private, luxury resort residential subdivision with a golf course, hotel, and spa (Hokulia) vs. an individual homeowner; and
- concrete evidence of ignoring the law, ignoring the advice of attorneys, and deliberate circumvention of the law (Hokulia) vs. innocent homeowner.

Moreover, it would not be difficult for a single family homeowner in the agricultural district (for a lot approved after 1976) to make an effort at engaging in agricultural activity.

HB 1368 HD2 opens up Hawaii's farmlands to further international speculation.

Legislative de-linking of agricultural activity from residential developments on ag-zoned lands would usher in a storm of international real estate speculation - speculation which will only drive the price of land further out of reach for local residents and local farmers. This will further undermine our ability to plan Hawaii's future and ensure orderly development; residential developments on ag-zoned lands do not allow for



adequate public input on the impact on our community.

We live in a very global economy. Hawai`i is subject to natural economic forces which encourage conversion of agricultural lands to non-farm uses such as luxury developments and gentlemen estates. Today, agricultural lots on Kauai can be bought and sold over the internet by individuals from Dubuque to Dubai. Fortunately, we have tools to produce the preferred outcomes we desire for a healthy, sustainable Hawai`i, with affordable housing for local people and a vibrant agricultural industry. We must keep those tools sharp - not dull them by simply succumbing to powerful market forces.

State oversight necessary to protect agricultural lands and objective planning.

The agricultural district was not created simply to protect agriculture. Much of the land in the agricultural district was placed there to "stage the allocation of land for development in an orderly plan to meet actual needs and minimize costs of providing utilities and other public services." Keeping nonagricultural uses out of the agricultural districts encouraged "completion of partially developed areas already supplied with public facilities before new lands and new public investments are demanded." The Senate Committee on Ways and Means report concluded that "areas may not be zoned for urban uses except in those districts designated as urban by the (Land Use) Commission."

Without state oversight of what is allowed and disallowed on farmlands, county decision makers are placed in an untenable situation where they must decide between smart planning and increased county revenues. Some developers smartly game the system by promising concessions or outright gifts ("community benefits") to the county in exchange for approval of their "agricultural" developments. Enabling county governments to define and permit agricultural dwellings and ag-zoned lands further deepens this problem. The state plays a necessary role in reducing these conflicts for the county and protecting the integrity of our land use plans.

We can take control of the future of land use in Hawai`i. Hokulia-type developments on ag-zoned lands should not be allowed without first gaining approval from the state land use commission. In the past two years of real estate sales on the neighbor islands, approximately 70% of purchases were made by mainland and foreign buyers. Hawaii residents get hurt by allowing homes to be built on ag-zoned lands without a real agricultural enterprise conducted on the property. This increases land prices beyond the reach of our people, pressures local farmers to sell or leave their land to allow construction of mansions, encourages land speculation, and leaves less land for affordable housing.

There is a better way.

The legislature could take the next step by further tightening the definition of what is allowed in the state agricultural district. Most importantly, we need the counties to do their job. Until the county acknowledges that it must not authorize non-agriculture subdivisions in the agricultural district, there can be no solution to the formerly permitted subdivisions.

Again, the Sierra Club is strongly opposed to grandfathering all housing that currently exists on agricultural lands with soils "C," "D," "E," and "U" for the following reasons:

- it rewards the counties and developers for violating the law;
- it fails to distinguish between those subdivisions that really should be in the agricultural district and those that should not be;
- it allows areas that are genuinely agricultural today to be automatically converted to non-ag; and
- it circumvents the recently implemented processes of identifying important agricultural lands and rural lands.

Simply put, you can open ag land for development. Or continue to preserve it for local farmers and local people.

Please hold HB 251. Thank you for the opportunity to testify.

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LATE TESTIMONY

February 12, 2009

The Honorable Ken Ito
House Committee on Water, Land, & Ocean Resources
The Honorable Clift Tsuji
House Committee on Agriculture
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 251 Relating to Land Use

HEARING: Friday, February 13, 2009 at 9:00 a.m.

On behalf of our 9,600 members in Hawai'i, the Hawai'i Association of REALTORS® (HAR) **supports H.B. 251**, which allows the redesignation of certain residential subdivisions in the agricultural district into the rural district, subject to certain terms and conditions.

H.B. 251 will reclassify certain marginal agricultural lands in the agricultural district into the rural district. For the long-term preservation of prime agricultural lands and balancing the reclassification from agricultural to rural, HAR believes that a mechanism for the process is essential. When a mechanism is established, many questionable titles in parts of Hawai'i will be lifted.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.

LATE TESTIMON

HOUSE OF REPRESENTATIVES
COMMITTEE ON WATER, LAND, AND OCEAN RESOURCES
COMMITTEE ON AGRICULTURE

RE: HB 251

February 13, 2009, 9:00 AM

State Capitol Room

I OPPOSE this bill.

This bill's premises are flawed and its effects potentially disastrous. First, it presumes that the Hokulia developers were innocent investors who suddenly discovered what HRS chapter 205 really meant when they were sued. Nothing could be more false. Court records conclusively show that the real estate specialists they hired specifically warned them to seek state approval and informed them of similar cases where the proper land use on agricultural land was problematic. These developers ignored the advice. Instead, they gambled they would not be held accountable, and lost.

First, this bill would allow for the most massive redistricting of land from Agriculture to Rural in history by legislation. Such a usurpation of executive power is unprecedented and unwise. You would be imposing the equivalent of a hatchet job on a process that needs a much finer degree of analysis and action. The Land Use Commission is designed for such a process, not this branch of government. Such a broad abuse of power is likely to be deemed unconstitutional.

Secondly, contrary to the unfounded assertions in the bill, there is no evidence that real estate investment has suffered in Hawai`i due to this decision. More important, even if it has, this industry lies at heart of our current economic woes, with poor loans being issued for speculative investments in real estate that has brought this country to the brink of a major depression. The real estate investment binge in which we have been engaged is unsustainable as current events make loud and clear. Why would this Legislature continue to buy into this false economy? Even our Republican Governor has foresworn future reliance on real estate development as a future industry on which she would bank Hawai`i's future. It would be odd for the party prevailing in this year's presidential election to perpetuate this mythical reliance on outside investor money which has caused huge social disruptions across this state.

Thirdly, the Legislature needs to first confront the needed changes to HRS chapter 205 that currently allow subdividing Rural land to half-acre lots. Does this Legislature want to allow a massive shift of land use in a single broad stroke without any thought as to the repercussions of subsequent subdivisions of current agricultural lots (minimum 1 acre; in many cases 2-20 acres each) to much smaller

half-acre lots? The reclassification will result in a minimum of a quadrupling of house lots in these new Rural areas, with all the resultant ills caused by increased traffic, water demand, increased electrical generation, environmental degradation, and crowding. The result of this effect alone could be disastrous. Act 205 [SLH 2005] envisioned a much more sane and rational transition to the identification of lands that might be reclassified from the Agricultural District with the implementation of the constitutional requirement to protect important agricultural land. Unfortunately, that process has neglected the necessary question that arises once IAL is designated, i.e., what becomes of the lands NOT designated IAL. This bill falls into the trap of moving with haste and without preparation or planning for the potential problems.

The resulting harms from the crowding that will occur in the areas we now consider Rural (but are Agricultural) will create a disconnect in intended consequences. With more house lots, there will be increased pressures on natural resources and cultural properties that are indirectly protected now by the restrictions on the uses of Agricultural land. Hawaiian communities in these areas will be especially hit hard. Moreover, without the normal processes to protect against the cultural and environmental effects (because the action is legislative), none of those affected will have a voice in any changes made. This resulting reclassification by fiat will set our land use laws, due process, historic preservation, and environmental protection back by several decades.

For all of the above reasons, I ask you to kill this bill.

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