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TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEES ON AGRICULTURE
AND
WATER, LAND, & OCEAN RESOURCES
WEDNESDAY, MARCH 25, 2009
9:00 a.m.
Room 312

SENATE BILL NO. 1152
RELATING TO AGRICULTURAL LANDS

Chairpersons Tsuji and Ito and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill No. 1152 which seeks to establish a 100-year moratorium on the construction of buildings or development projects on Agricultural District lands in the 22nd and 23rd Senate Districts for which State or City permit applications have not been submitted for processing and visible construction has not commenced. This bill will prevent special permits for non-agricultural uses.

This measure appears to prevent non-agricultural development on agricultural lands with Land Study Bureau "A" and "B" ratings. However, the moratorium does not stop or prohibit petitions to reclassify agricultural lands from being submitted to State and county agencies for processing.

Of serious concern to us are subdivisions of Agricultural District land into lots of a few acres with farm dwellings but with little if any agricultural use or activity. Agricultural subdivisions are permissible on all agricultural lands on Oahu but without enforcement of meaningful agricultural activity, they have the same negative effect as any other non-

agricultural development or activity on agricultural lands. We are particularly concerned about the enormously damaging effect non-agricultural development and activities can have on the identification and designation process for Important Agricultural Lands. Senate Bill No. 1152 will not correct this problem. As an amendment, the Committee may want to consider incorporating within this measure, the text of House Bill No. 1008 that will prevent future development of "fake farms" or "gentlemen estates" on Hawaii's best agricultural lands, whether or not they are designated as IAL. House Bill No. 1008 will provide the counties with clearer statutory guidance to ensure that farm dwellings are built and used in direct connection with specified agricultural uses and require applications for subdivisions of Hawaii's best agricultural lands to include demonstrable evidence that meaningful agriculture will be the primary activity undertaken on the land.



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

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Statement of
ABBEY SETH MAYER
Director
Office of Planning
Department of Business, Economic Development, and Tourism
before the
**HOUSE COMMITTEE ON AGRICULTURE
AND
HOUSE COMMITTEE ON WATER, LAND, AND OCEAN RESOURCES**
Wednesday, March 25, 2009
9:00 AM

State Capitol, Conference Room 312
in consideration of
SB 1152
RELATING TO AGRICULTURAL LANDS.

Chairs Tsuji and Ito, Vice Chairs Wooley and Har, and members of the House Committees on Agriculture and Water, Land, and Ocean Resources.

The Office of Planning opposes SB 1152, which would impose a one hundred year moratorium on the development of agricultural lands located in the area bounded by Wahiawa, Kaena Point, Kahuku, and Kaneohe on the north shore and windward coast of Oahu for which general planning has not commenced.

We understand the desire to provide an increased level of protection for the State's agricultural lands. While we recognize the urgency for preventing the unplanned conversion of agricultural lands to non-agricultural uses, we do not believe this is the appropriate mechanism for addressing this complex issue.

Rather, OP recommends comprehensive planning and market-driven solutions to the issue of non-agricultural uses in the State Agricultural District such as establishing agricultural tax incentives to promote agricultural investment and measures to offset the risks and costs of agricultural operations. Agricultural incentives are critical to the viability of the agricultural industry and farmers, and are key to initiating the process of designating important agricultural lands. Promoting agricultural businesses and protecting agricultural water systems are essential to maintaining the Wahiawa, Kaena Point, Kahuku and Kaneohe lands for agricultural production.

Also, revisions to the State Agricultural and Rural District allowable uses and densities would more effectively limit development pressure on agricultural lands, while encouraging for more effective planning processes so that rural areas will retain their rural character.

The Office of Planning notes that this moratorium on building or development projects on A and B lands in the agricultural district does not apply to permissible uses. The moratorium, therefore, would only prevent non-permissible uses allowed by special permit, such as landfills, quarries, and educational institutions. Permissible developments such as qualifying agricultural subdivisions would still be allowed. The bill also does not appear to prohibit the reclassification of agricultural lands to the urban district, which could provide another avenue for development. As such, the Office of Planning feels that this bill would not effectuate its intended purpose.

Thank you for the opportunity to testify.



KAMEHAMEHA SCHOOLS

March 25, 2009

TESTIMONY TO THE HOUSE COMMITTEE ON AGRICULTURE AND THE COMMITTEE ON WATER, LAND, & OCEAN RESOURCE

Hearing Date: Wednesday, March 25, 2009
9:00 a.m., Conference Room 325

Dear Chair Tsuji, Chair Ito and Committee Members:

Testimony in Opposition to Senate Bill No. 1152 - Relating to Agricultural Lands

I am Kapu C. Smith, Senior Land Asset Manager for Kamehameha Schools' Kawaioloa Plantation in Waialua, Oahu. While I am here to speak in opposition to SB 1152 SD1, it does not indicate that we have any intention to discontinue our efforts to stay in agriculture at Kawaioloa Plantation or elsewhere. However, SB 1152 does point out that despite the passage of IAL, something more needs to be done to preserve existing agricultural uses and encourage expansion. These include:

- Eliminating the Real Property Tax (RPT) on vacant lands – Despite dedicating our vacant land for the longest period provided by the City and County of Honolulu (CCH) our current annual cost for Kawaioloa Plantation is \$600,000 per annum. As a result, the \$8,000,000 paid to CCH over the last 10 years could have been better spent to support our farming efforts.
- Repairing and Maintaining Wahiawa Irrigation System (WSI) – Passage of HB 975 HD1 is the first step in the process to convey WSI to ADC but the process needs to be completed. Without a reliable irrigation source, expansion of farming is impossible.
- Addressing the Water Quality Issues of WSI – As it currently stands, no vegetables crops can be grown with WSI water. This eliminates most farming operations and prevents the utilization of over 6,000 plus acres from providing locally grown food.
- Establishing a Method of Appealing High Hazard Designation and Recognition of Storage Reservoirs – DLNR has not responded to our efforts to down grade our hazard ratings or consider an exemption. As a result, we are looking at a repair cost of over \$10 million for three reservoirs.

If agriculture is to thrive, these issues and others need to be addressed. Thank you for the opportunity to express our views.

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Founded and Endowed by the Legacy of Princess Bernice Pauahi Bishop



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TESTIMONY

RE: SB 1152: RELATING TO IMPORTANT AGRICULTURAL LANDS

Chair Tsuji, Chair Ito and Members of the Committees:

Hawaii Farm Bureau Federation on behalf of our member farm and ranch families and organizations provides the following comments to SB1152, imposing a one hundred year moratorium on development of certain agricultural lands located in state senate districts twenty-two and twenty-three.

First of all the Farm Bureau would like to extend our appreciation to the Legislature for the leadership and foresight it provided for the passage of the Important Agricultural Lands legislation and its related incentives. The measure represents the various aspects of support that must be provided to ensure that we have agriculture in Hawaii for future generations.

Successful commercial agriculture that provides for those that do not toil in the fields daily to grow food and fiber to meet their daily needs depends on large tracts of lands. We understand the intent of this legislation to plan what happens in these districts before parcels are fragmented reducing agricultural productivity. Yet, at the same time, Farm Bureau strongly believes that agricultural use of lands cannot be forced. It must be nurtured and fostered just as we see happening with the high tech industries or tourism. We do not just see lands set aside for industrial use but rather, the State invests significant resources to build these industries. Why isn't the same done for agriculture that provides the very sustenance on which everyone depends upon to live. Everyone takes it for granted. This is why the Important Agricultural Lands legislation was crafted in its' current form. It provided the support mechanisms for lands that were dedicated to agricultural use long into the future.

HFBF strongly requests that this measure be amended to encourage landowners in the area to dedicate their lands as Important Agricultural Lands during this voluntary phase and together with their tenant farmers and ranchers build an industry that will be the pride of the North Shore. Thank you.



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LATE
Testimony

Via Capitol Website

March 25, 2009

**House Committee on Agriculture and Water, Land and Ocean Resources
Hearing Date: Wednesday, March 25, 2009 at 9:00 a.m. in CR 312**

**Testimony in Opposition to SB1152. Relating to Agricultural Lands.
(100Year Moratorium on the development of agricultural lands)**

Honorable Chair Clift Tsuji, Vice-Chair Jessica Wooley and members of the House Committee on Agriculture; Chair Ken Ito, Vice-Chair Sharon E. Har and members of the House Committee on Water, Land and Ocean Resources:

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF supports the intent of preserving viable and important agricultural lands for agricultural production uses, however, we must **strongly oppose SB 1152**, which would establish a 100-year moratorium on the development of agricultural lands located in the area bounded by Wahiawa, Ka'ena Point, Kahuku, and Kane'ohe on the north shore and windward coast of O'ahu for which general planning has not commenced. LURF's opposition is based on, among other things, the following:

- Legally flawed taking of private property: it lacks a factual basis, it lacks a legal nexus; the 100-year prohibition is tantamount to a permanent prohibition; and it lacks a variance process.
- Ignores the existing comprehensive planning processes of the State Department of Agriculture, Office of Planning and City and County of Honolulu Department of Planning and Permitting, who unanimously oppose the bill.
- Fails to address or utilize the new Important Agricultural Lands (IAL) laws relating to the designation process to preserve agricultural lands;
- Fails to address or utilize IAL incentives to support viable agricultural operations.
- Fails to address infrastructure improvements necessary to support viable agricultural operations, particularly, the availability of water;
- May prohibit subdividing of agricultural lots for the use of farmers or other agricultural operations;

- May prohibit affordable housing for agricultural workers; and
- Fails to seek comprehensive changes to support the agricultural industry.

SB 1152. SB 1152 proposes to establish a 100-year moratorium on the development of agricultural lands with the following provisions:

(1) The moratorium on building or development projects on agricultural lands shall be limited to any building or development project for which general planning has not commenced;

(2) The building or development project is intended to affect parcels of agricultural land with an overall (master) productivity rating of class A or B, and designated as an agricultural district;

(3) The building or development project is intended to affect parcels of agricultural land located in the State of Hawaii, and designated as an agricultural district; and

(4) The building or development project is not a permissible use within an agricultural district under section 205-4.5, Hawaii Revised Statutes.

(b) The moratorium shall be lifted on June 30, 2109.

(c) For purposes of this section, "general planning" means projects for which a permit application has been submitted to the appropriate state or county agency for processing and visible construction has already commenced.

Background. Over the past few years, LURF has joined the Hawaii Farm Bureau Federation (Farm Bureau) in support of the appropriate use of agricultural lands for viable agricultural production, the process for designation and preservation of Important Agricultural Lands and the establishment of IAL incentives to encourage the designation of IAL. LURF worked with the Farm Bureau and a consensus-based coalition other agricultural stake holders toward the successful passage of Act 183 by the State legislature in 2005. In 2008, LURF again worked with the Farm Bureau and the same stakeholders to recommend that the legislature pass a bill implementing the IAL incentives at the state level through the passage of Act 245 (2008).

LURF's Position. LURF is writing in **strong opposition** to SB 1152 because it essentially attempts to control the use of private property, which will violate landowners' property rights. While LURF supports the intent of protecting agricultural properties, we are concerned about the language of this bill which puts a moratorium on the "building or development projects on agricultural lands." This could be interpreted to also include necessary farm dwellings for farmers, additional storage space for agricultural equipment and other buildings that may be deemed essential to operate a farm.

We also understand and sympathize with what appears to be the underlying basis for the resolutions – fears that housing projects will threaten agricultural lands in Mokule'ia and Kahuku. However, we strongly believe that the proposed moratorium bill is legally flawed, and the proposed moratorium is not the most effective way to address what appear to be the Senate's concerns. In fact, the proposed moratorium will have unintended consequences which may actually result in delays and increased costs for farmers and land owners who intend to subdivide their properties for agricultural uses. We strongly urge this Committee not to pass the proposed moratorium bill, however, we are willing to work with the Legislature, the Farm Bureau and other agricultural

stakeholders to revise the applicable ordinances and definitions to address the issue of non-agricultural uses on agricultural lands.

The proposed moratorium bill is legally flawed. LURF's primary objections to this proposal are that the Legislature does not have any statutory authority to impose the moratorium where there is no nexus; it is overbroad, no end in sight; . If the Legislature is concerned that certain permitted residential uses in the Agricultural District are unacceptable, or that the process for reclassification of agricultural lands to urban is too easy, the Legislature should seek to change the applicable laws and definitions of "agricultural use," or the permitting process and criteria, instead of imposing a moratorium on the development of agricultural lands. LURF believes that the proposed moratorium bill is legally flawed, based on, among other things, the following:

- **There is no factual basis for the moratorium - - the reduction of agricultural lands under cultivation was due to the failure of the sugar and pineapple industries from 1982 to 2005 – not solely due to housing projects.** The bill alleges problems caused by development of agricultural lands by the use of self-serving statements which are not supported by any data or studies which would show the main reason why land under cultivation decreased from 1982 to 2005 – the failure of the sugar and pineapple industries. Under certain circumstances, such as this one, where there is no factual basis - - a moratorium can be legally viewed as a "constitutional taking." In order to so severely restrict private property rights, the Legislature must show much more than mere allegations of harm.
- **No legal nexus for the moratorium.** The bill is legally flawed, because it does not establish any legal nexus for the 100-year moratorium.
 - What does the law seek to accomplish in the next 100 years?
 - After 100 years, can those agricultural lands become urban?
 - Is there any justification of its inherent inconsistency of prohibiting agricultural development agricultural lands with an overall (master) productivity rating of class A or B, yet allowing housing developments in the same areas on C, D or E lands?
- **The moratorium is legally flawed and unconstitutional, because a 100 year moratorium is tantamount to a permanent restriction and taking of the use of private land.** The 100year duration of the moratorium is unreasonable and is clearly meant to limit and restrict the use of private lands.
- **Lack of a Variance process.** The proposed moratorium bill is also legally flawed because it does not allow for a variance process which is similar to the process allowed for zoning or other variances.

Unintended consequences. As stated earlier, LURF supports the IAL and the preservation and use of viable and important agricultural lands, however, LURF's **strongly objects** to the proposed moratorium, based on, among other things, the following comments:

- **The moratorium ignores comprehensive planning and market-driven solutions, and is not the appropriate mechanism for addressing the complex issue of the conversion of agricultural land to non-agricultural uses.** As stated in the February 11, 2009 testimony of the State Office of Planning:
 - "...we do not believe this is the appropriate mechanism for addressing this complex issue...."

- “Rather, OP recommends comprehensive planning and market driven solutions.....such as establishing agricultural tax incentives to promote agricultural investment and measures to offset the risks and costs of agricultural operations. Agricultural incentives are critical to the viability of the agricultural industry and farmers, and are key to initiating the process of designating important agricultural lands. Promoting agricultural businesses and protecting agricultural water systems are essential to maintaining the Wahiawa, Kaena Point, Kahuku and Kaneohe lands for agricultural purposes.....
- “Also, revisions to the State Agricultural and rural District allowable uses and densities would more effectively limit development pressure on agricultural lands, while encouraging for more effective planning processes.....
- **The Agricultural landowners and farmers who wish to subdivide agricultural lands for lease or sale to other farmers or agricultural producers will also suffer unnecessary delays and increased costs.** If a moratorium is imposed, it will have the unintended consequence of harming those landowners and farmers who wish to subdivide in order to lease or sublease to a farmer or an agricultural producer who may want to build farm dwellings or employee housing on their lots.
- **The proposed process and requirements may prohibit providing critically needed Agricultural Workforce Housing.** The moratorium may have the unintended effect of prohibiting a landowner or farmer from subdividing or otherwise using their land to provide worker housing.
- **The Legislators should work with the stakeholders toward a comprehensive change in the jurisdiction over agricultural lands.** Instead of the “band-aid” solutions proposed in the moratorium, the Legislature should work on a comprehensive way to address the issues relating to agricultural subdivisions which may include luxury residential homes with little or no agricultural production. The Legislature should support the major changes in the system, which LURF has been suggesting to the various counties and Legislature for the past few years:
 - **Designation of IAL and Rural Lands.** The Agricultural District should be reassessed into IAL which are viable for agricultural production and also into all existing and potential “Rural” uses. Large open-space residential lots could be reclassified into the Rural District and put under the jurisdiction of the counties.
 - **Oversight of Agriculture and agricultural uses by one government agency.**
 - The Counties could transfer its jurisdiction over the uses and enforcement in the Agricultural Districts to the State and the Department of Agriculture (“DOA”), which has the agricultural and enforcement expertise. DOA, its staff and experts can then manage and enforce the regulations in the Agricultural Districts, similar to how DLNR manages lands and natural resources within the Conservation District, or
 - The State could transfer its DOA functions to the counties and county agencies could be created to manage and enforce the uses in the Agricultural Districts.

Based on the above, we respectfully request that **SB 1152 be held** in this Committee.

LURF appreciates the opportunity to express our **opposition to SB 1152.**