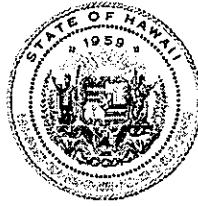
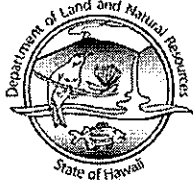


HB 2450, HD1

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the Senate Committees on
ENERGY AND ENVIRONMENT;
TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS;
and
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**

**Thursday, March 25, 2010
2:45 PM
State Capitol, Conference Room 225**

**In consideration of
HOUSE BILL 2450, HOUSE DRAFT 1, Proposed SENATE DRAFT 1
RELATING TO RENEWABLE ENERGY FACILITIES**

House Bill 2450, House Draft 1, Proposed Senate Draft 1 clarifies that the exemption from subdivision requirements for leases and easements for renewable energy facilities applies to renewable energy facilities on urban, rural, or agricultural land approved by the Land Use Commission and renewable energy facilities on conservation land permitted by the Board of Land and Natural Resources (Board). The Department of Land and Natural Resources (Department) offers the following comments.

The proposed measure amends Section 201N-14, Hawaii Revised Statutes (HRS), related to the renewable energy facility siting process. The purpose of the amendment is to extend the exemption from subdivision requirements to:

1. Any renewable energy facility approved by the Land Use Commission or county planning commissions under Chapter 205, HRS, on Agricultural District lands, and
2. Any renewable energy facility approved by the Board under Chapter 183C, HRS.

As the Department noted on a related bill last year (House Bill 589), the Department as manager of approximately 1.3 million acres of public lands, has a fiduciary duty to manage these lands for the benefit of the trust beneficiaries. As such, while the bill exempting renewable energy project lands from subdivision requirements, the Department must also ensure the bill does not adversely impact the remainder of the public lands that will not be used for renewable energy since the

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

State may seek to utilize those remaining lands for other important policy purposes (e.g., offer leases for agricultural use).

In order to use both halves of such land effectively, the portion of the parcel not dedicated to renewable energy purposes must also be considered a lot of legal record. The Department wishes to clarify and confirm that under the bill, the remaining lands (i.e., the portion of the original legal lot of record less the renewable energy lands) will also receive the same legal lot status as the renewable energy parcel and be recognized as a legal lot of record by the counties, thus allowing for those remaining lands to be put to independent use and receive its own mortgage financing and title insurance.

The Department has no other concerns regarding this measures and notes that it will not reduce or retract from our mandate to protect and preserve the cultural and natural resources of the State for the benefit of present and future generations.

LINDA LINGLE
Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

**WRITTEN TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE SENATE COMMITTEES ON
ENERGY AND ENVIRONMENT
TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS
THURSDAY, MARCH 25, 2010
2:45 p.m.
Room 225**

**HOUSE BILL NO. 2450, HOUSE DRAFT 1, PROPOSED SENATE DRAFT 1
RELATING TO RENEWABLE ENERGY FACILITIES**

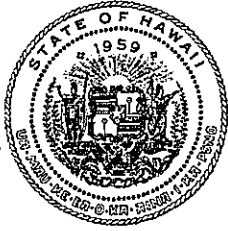
Chairs Gabbard, English, Hee and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 2450, House Draft 1, Proposed Senate Draft 1. The Department of Agriculture supports this bill and offers comments. This measure amends Section 201N-14 (renewable energy facility siting process) to confer legal lot status to exclusive and non-exclusive possessory interests to aid a renewable energy facility in acquiring facility funding, and to extend the exemption from subdivision requirements to include:

1. renewable energy facilities approved by the Land Use Commission or county planning commissions under Chapter 205 on Agricultural District lands, and
2. renewable energy facilities approved by the Board of Land and Natural Resources under Chapter 183C.

In prior legislative sessions, we have supported measures proposing to reduce or exempt the subdivision of agricultural lands from county subdivision requirements as we believe it would reduce the cost of providing subdivided lots to farmers. For example, Section 205-4.5 (f) pertaining to leasehold agricultural subdivisions, and Section 205-51, pertaining to subdivision of Important Agricultural Lands exempt the subdivision of agricultural lands from county subdivision requirements. Hawaii County currently allows leasehold agricultural

subdivisions with reduced infrastructure standards, provided no houses or other habitable structures are constructed (Section 23-112, Hawaii County Code). Agricultural production is the primary use of these exempted subdivided lands, and few, if any, improvements are allowed on the subdivided lots. We favorably note that this bill references Section 205-4.5 which states that "agricultural uses and activities shall not be restricted on agricultural land."



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

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LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR

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Statement of
THEODORE E. LIU
Director
Department of Business, Economic Development, and Tourism
before the
**SENATE COMMITTEE ON ENERGY AND ENVIRONMENT;
COMMITTEE ON TRANSPORTATION, INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS, AND;
COMMITTEE ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS**
Thursday, March 25, 2010
2:45 PM
State Capitol, Conference Room 225

in consideration of
**HB 2450, Proposed SD1
RELATING TO RENEWABLE ENERGY FACILITIES.**

Chair Gabbard, Chair English, Chair Hee, and Members of the Committees.

The Department of Business, Economic Development, and Tourism (DBEDT) supports the proposed SD 1 for HB 2450. This measure supports the goals and objectives set out in the Hawaii Clean Energy Initiative and H.R.S Chapter 201N in facilitating the development and financing of renewable energy facilities.

For many potential renewable energy developers, the subdivision process that they are required to complete prior to acceptance and approval of certain permits effectually prevents the proposed development from ever moving forward. In most cases this is due to the financing and investments supporting the project development. By granting certain explicit exemptions from subdivision requirements, this obstacle may be removed for some developers.

This measure would also facilitate the expedient processing of permits for renewable energy facilities. DBEDT supports this effort as well. In order to reach our ambitious goal of

40% renewable energy generation by 2030, every effort must be made to create a more streamlined permitting process, so that renewable energy facilities may begin producing clean energy for the people and businesses of Hawaii, while still protecting public health and safety. The provisions in this measure promote this objective.

For the reasons stated above, DBEDT supports this measure. Thank you for the opportunity to offer these comments.

PACIFIC WEST ENERGY LLC
1212 NUUANU #1704
HONOLULU, HI 96817
Tel. 808-927-0619

March 24, 2010

Senator Mike Gabbard, Chair
Senator J. Kalani English, Vice-Chair
Committee on Energy and Environment

Senator Clayton Hee, Chair
Senator Jill N. Tokuda, Vice-Chair
Committee on Water, Land, Agriculture and Hawaiian Affairs

Senator J. Kalani English, Chair
Senator Mike Gabbard, Vice-Chair
Committee on Transportation, International and Intergovernmental Affairs

Hawaii State Capital
415 S. Beretania
Honolulu, HI 96813

Re: HB 2450, HD1 Proposed SD1 - Relating to Renewable Energy Facilities

Dear Chairs Gabbard, Hee, and English, and Vice-Chairs English, Tokuda and Gabbard, and Members of the Committees,

My name is William Maloney and I am the President and Chief Executive Officer of Pacific West Energy LLC, the developers of the integrated sugarcane and biomass renewable energy project on Kauai. I testify today in support of HB 2450 HD1, Proposed SD1, which clarifies the exemptions from certain subdivision requirements for renewable energy facilities. The proposed legislation is important to the success of our Kauai project, as it importantly clarifies that a biomass/biofuel project like ours is eligible for the exemption and attempts to deal with the fact that our site location is actually on a small urban zoned parcel within a larger agricultural district.

Pacific West Energy LLC intends to construct a renewable energy facility at the former Gay & Robinson sugar mill on Kauai. The facility has as its base a green energy cogeneration facility. The total project cost is \$150 million, with phase one, the biomass power facility representing a \$100 million investment. Our project entails the expansion of sugar cane cultivation and other biomass crops on Kauai. In addition to producing biofuels we will produce and export 150 million kWh's per year of green electricity to Kauai Island Utility Cooperative ("KIUC"), one-third of the island's electricity requirement. Our technology is proven and would involve a process that will yield an energy conversion ratio in excess of 9:1, including cogenerated electricity. Our project has endured many challenges, including the recent turmoil in the financial sector, volatility in energy markets, and securing lands suitable for sugar cane and biomass against competing uses. However, we have now overcome many of these obstacles and expect to be in a position to move forward at an accelerating pace. Our project is a model for an integrated bio-energy refinery. It is the cornerstone of Kauai's sustainable energy plan and will displace more than 500,000 barrels per annum of imported petroleum and create over 300 jobs. It is the embodiment of the legislature's and State's goals of energy self-sufficiency.

We are now in the process of concluding final debt and equity requirements for the project and as part of this process it was related to us by legal counsel and the prospective lenders, Cooperative Finance Corporation and USDA Rural Utility Services that our site could not be leased under Kauai ordinances because it is an un-subdivided parcel, and could thus only be licensed, and this creates issues regarding the security interests of the lenders, and thus problems for the project to secure debt financing. Section 201N-14 of the Hawaii Revised Statutes, that this bill amends, addresses situations like ours for renewable energy projects, however, as currently written is vague, and our lenders indicated that without the proposed clarifying amendments, specifically regarding the consistent use of "renewable energy facility or facilities", the inclusion of "biomass and biofuels", and some language to cover the fact that we are actually on an urban lot within a fully enclosed agricultural district are the changes they specifically requested we try to obtain.

The proposed Senate amendments contained in HB2450 HD1, Proposed SD1 are designed to do the following principal things in HRS 201N-14:

1. Clarify 201N-14 to eliminate any uncertainty that biomass and biofuel renewable energy facilities are also entitled to the subdivision requirements exemption provided by Section 201N-14. This allows the land on which a renewable energy facility is located to be leased, and mortgaged, etc. to facilitate financing of the renewable energy facilities, consistent with Hawaii's renewable energy goals.
2. Correct HRS 201N-14 to use terminology consistently within HRS 201N-14 (*e.g.*, "lease, easement, or other possessory interest") and in other sections of HRS (*e.g.*, "project" replaced with the term "facility," defined in HRS 201N-1)
3. Eliminate any ambiguity that the same treatment will be allowed to land within urban, rural, agricultural, or mixed, land use districts, since renewable energy facilities consistent with Hawaii's goals may located in any such district, addressing the specific situation where the sugar mill is zoned urban, but is wholly enclosed within an agricultural district, and is an agricultural enterprise.

Background

In 2009, the Legislature adopted HRS 201N-14 (H.B. 589; L. 2009, c. 173, §2) and related provisions to provide limited exemption (the "exemption") from state and county subdivision requirements.

The purpose of the exemption from the subdivision requirements was, among other things, to further the State's goals for sustainable renewable energy sources for Hawaii.

The legislature also recognized that, to develop and finance renewable energy facilities, a site for the facilities and access to the site must often be leased, granted as an easement, or mortgaged to provide financing for the facility. Renewable energy facilities may require site acreage or configurations that do not coincide with existing, already subdivided lot boundaries. For instance, land required for a facility may constitute only a portion of a large legal lot, and it may be impractical or undesirable to lease or convey the entire legal lot for the renewable energy facility, or to encumber the entire legal lot with a mortgage that provides financing for the facility. Currently, however, subdivision laws and county ordinances generally prohibit the transfer of an interest in land that is not an entire subdivided lot or easement that has been approved by the applicable county. With respect to land in the land court system, the additional step of obtaining land court approval is required.

Reported Hawaii Supreme Court cases, including *Whitlow v. Jennings*, 40 Haw. 523 (1954), have recognized that transactions involving lots that have not been approved by the county pursuant to subdivision laws or county ordinances may be unenforceable. Unfortunately, the process of obtaining county, state, and land court approval of subdivision and easement maps is relatively time-consuming and often requires more than one year to complete.

As recognized by the court in the *Whitlow v. Jennings* case, the purpose of laws and ordinances requiring county subdivision approval is to protect the public by ensuring adequate light, air, fire protection, traffic safety, proper sanitation, and drainage in the proposed subdivision and the protection of innocent purchasers from buying lots upon which they could not build because of the provisions of the various health and sanitary statutes and regulations. However, these laws, ordinances, and court rulings have placed in question the validity of leases of parcels that are less than an entire legal lot, and easements without subdivision approval. This prevents or discourages the use or financing of leases and easements for renewable energy facilities.

In adopting HRS 201N-14, the legislature recognized specifically that a subdivision consisting of a renewable energy facility does not call for the same infrastructure requirements as a housing subdivision. At the same time, these renewable energy facilities further Hawaii's goals of energy self-sufficiency by decreasing Hawaii's dependence on fossil fuel with renewable energy.

Accordingly, the purpose in adopting HRS 201N-14 was to facilitate the financing and development of renewable energy facilities by allowing leases, licenses and easements pertaining to renewable energy facilities, together with mortgages and other conveyances as security for finance, to be created, enforced, and recorded, without requiring the landowner to obtain formal subdivision approval, and instead requiring approval for exemption from subdivision requirements, from the applicable county or other approving agency. HRS 201N-14, adopted in 2009, was also designed to assist renewable energy facilities in Hawaii to be eligible for funding under the Federal Stimulus Package.

The Need for Correcting Amendments

Although the policy considerations and analysis of the legislature in adopting HRS 201N-14 applied equally to solar and wind renewable energy production facilities, as well as biomass and biofuel renewable energy production facilities that Hawaii trying to promote, the language the legislature had before it in 2009 was not explicit to its inclusions and, as such, only included by its limitation solar and wind energy facilities. The present amendments address this unintended exclusion and limitation by correcting HRS 201N-14 to include renewable energy facilities that utilize or produce biomass or biofuels.

The present amendments provide a limitation to the exemption from the subdivision requirements by facilitating only those renewable energy facilities and facilities that support continued productive use of agricultural lands because biomass and biofuels renewable energy facilities also require agricultural feedstocks.

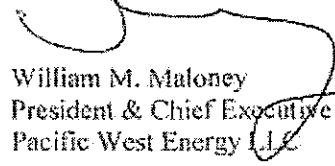
The proposed amendments to HRS 201N-14 also eliminate any ambiguity that the same treatment will be allowed to land within urban, rural, and agricultural, or mixed, land use districts, since renewable energy facilities consistent with Hawaii's goals may be located in any such district. The amendments make clear that the exemption from subdivision requirements is to facilitate these renewable energy uses, to the extent they are otherwise permitted, in each land use district.

In addition, the proposed amendments make some technical corrections to HRS 201N-14 so that the section consistently utilizes terms, including defined terms provided for in HRS 201N-1 to -14 and related sections of the Hawaii Revised Statutes. An example of this is replacing the use of the term "renewable energy project" with the defined term "renewable energy facility," a term defined in HRS 201N-1.

We urge the Committee to approve the Proposed HB 2450, HD1, Proposed SD1 as it will play a large part in making available the debt financing for our Kauai project, enabling the State to realize its energy and economic policy goals as expeditiously as possible.

Thank you for your consideration.

Sincerely,



William M. Maloney
President & Chief Executive Officer
Pacific West Energy LLC