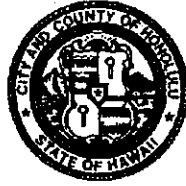


DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU
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PETER B. CARLISLE
MAYOR



DAVID K. TANOUE
DIRECTOR

JIRO A. SUMADA
DEPUTY DIRECTOR

March 16, 2012

The Honorable Clift Tsuji, Chair
and Members of the Committee on Agriculture
The Honorable Angus L.K. McKelvey, Chair
and Members of the Committee on Economic
Revitalization & Business
House of Representatives
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Chairs Tsuji, McKelvey and Committee Members:

Subject: Senate Bill No. 2375, SD3
Relating to Agricultural-Based Commercial Operations

The Department of Planning and Permitting **opposes** Senate Bill No. 2375, SD3, which would allow agricultural-based commercial operations within the State Agricultural District. The SD3 version of the bill restricts sales to Hawaii-grown agricultural products and value added products made primarily with raw Hawaii agricultural materials.

We support the agricultural industry and have made changes to our zoning and building codes specifically to support the industry. However, our opposition to this Bill remains. The provisions are virtually unenforceable and may result in unintended consequences. How many operations can be located together on the same property? The proposal to essentially self-certify compliance with this bill is problematic. A better enforcement program would be to require annual reports filed with the State, with an auditor or accountant certifying that all products sold were primarily produced in Hawaii with raw agricultural materials.

The provisions of this measure could have unintended consequences in that the "producer-operators" could be out-of-state entities that compete with local farmers for quality agricultural lands which are intended for food production. The effect of this could be land speculation, driving up the general price of all agricultural lands. Moreover, as out-of-state companies, their revenues may not stay within the local economy. Although this measure may improve and diversify the farmers' economic opportunities – by changing them from farmer to retailer, the rural character of an area could change from cultivated ag lands to paved parking lots and retail outlets.

The Honorable Clift Tsuji, Chair
and Members of the Committee on Agriculture
The Honorable Angus L.K. McKelvey, Chair
and Members of the Committee on Economic
Revitalization and Business
House of Representatives
RE: Senate Bill No. 2375, SD3
March 16, 2012
Page 2

If the intent of the measure is to support local farmers as farmers, existing provisions of Chapter 205, HRS, already allows agricultural-based commercial operations as accessory to a working farm. If commercial operations are desired as principal uses, Section 205-6, HRS, allows agricultural producers to explore creative ways to market their products on a case-by-case basis through the special use permit. Not only will this allow for the review of proposals against the intent of the State Agricultural District, but also allow infrastructure agencies and the public to comment on the proposal.

Given the above, please hold this bill. Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Tanoue', with a horizontal line extending to the left.

David K. Tanoue, Director
Department of Planning and Permitting

DKT:jmf
Sb2375sd3-AgBasedCommOps-re.doc

Testimony of
Kylie Matsuda
Managing Director
Kahuku Farms
on
S.B. 2375, S.D. 3
Relating to Agricultural-based Commercial Operations

House Committee on Agriculture
House Committee on Economic Revitalization & Business
Friday, March 16, 2012
10:00 a.m.
Conference Room 312

Kahuku Farms, Matsuda-Fukuyama Farms, and Kahuku Farmers strongly supports S.B. 2375, which will allow agricultural-based commercial operations on agricultural lands. These entities are owned and managed by the Matsuda and Fukuyama families.

Together, our farms operate on more than 300 acres located in Kahuku, Kawaihoa, and Haleiwa. We employ about 40 people from the community and specialize in growing long eggplant, luau leaf, papayas, apple bananas, and have recently ventured into growing vanilla, cacao, lilikoi, mangos, and many other tropical fruit crops. We are food safety certified and have also invested in a certified commercial kitchen at our farm in Kahuku.

Our produce is sold at farmer's markets, super market chains and to wholesalers here in Hawaii. We also produce value added products in our farm commercial kitchen such as Lilikoi Jelly, Mango Tea, Pineapple Papaya Jam, and promote them at the Farmers' Markets at Kapiolani Community College, Waialua, and the Royal Hawaiian Shopping Center.

However, our primary retail market for our value added products are sold at our farm Country Store in Kahuku. People from all around the community have come to enjoy our fresh produce, long eggplant panini sandwiches, papaya and banana smoothies, lilikoi sorbet, vanilla ice cream, and grilled banana bread all created from fresh ingredients grown on the farm.

My dad, Melvin, myself, and over a hundred other leaders in agriculture have had an amazing opportunity to be a part of The Agricultural Leadership Program Of Hawaii. This program has enlightened and engaged us to other ways of farming in Hawaii and abroad. Marketing, land, water, labor, housing, energy, natural resources, strategic planning, and agri-tourism are some of the topics that we explored. It is through this leadership program that we have learned to think out of the box and we are encouraged to protect, support, and promote all of Hawaii's agriculture.

In 2005, Kahuku Farms was born because we felt the desire to open our farm to the public to educate all who were interested in learning about what it is we do as farmers and where their food comes from.

S.B. 2375, will help to make it easier for agricultural operators to start commercial operations providing another direct sales outlet for their agricultural products. The current law allows roadside stands to sell products only grown on their premises and is limited to 500 square feet. With this regulation, we are prohibited to sell products from our other farm sites in Haleiwa and Kawaihoa because it is not grown at our farm in Kahuku. My grandfather is a second generation cattle rancher from Mokuleia. It would be great to promote my families grass fed beef at our country store.

We have invested heavily in our retail store in Kahuku and have experienced that current regulations make it extremely difficult to turn a profit. Our agri-tourism venture which started over 6 years ago has suffered extreme financial challenges and costs because of the permitting process and regulations delayed our opening for a very long time. We have exhausted our financial budget and are asking you to help us through this new and exciting agricultural evolution.

S.B. 2375 will allow agricultural operators to expand the market for their products, increase their profits and sustain their agricultural operations.

Thank you very much for allowing me to present this testimony.

Kylie Matsuda
Managing Director, Kahuku Farms.



KAMEHAMEHA SCHOOLS®

March 15, 2012

Testimony to the House Committee on Agriculture and
the House Committee on Economic Revitalization & Business
Hearing Date: Friday, March 16, 2012
10 a.m., Conference Room 312

Representative Clift Tsuji, Chair
Representative Angus L.K. McKelvey, Chair
Members of the House Committees on Agriculture and Economic Development & Business

RE: Support of Senate Bill No. 2375 SD3 – Relating to Agricultural Based Commercial Operations

I am Kapu C. Smith, Senior Land Asset Manager for Kamehameha Schools' Kawaihoa Plantation in Waialua, Oahu. I am here to testify in support of SB 2375 SD3 because it will have an immediate impact on the farmers' ability to improve their economic feasibility and thus continue to farm. Under the current land use, agricultural based commercial operations are not described as one of the permissible uses. As a result, this has increased permitting, limited the farmers' economic opportunities and placed them at a disadvantage with neighboring landowners. This means that their products can be sold across the street by others but not by the farmer on their own farm lot.

Thank you for the opportunity to testify in support of SB 2375 SD3.

hashem3 - Casey

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 14, 2012 7:52 PM
To: AGRtestimony
Cc: stuart.h.scott@gmail.com
Subject: Testimony for SB2375 on 3/16/2012 10:00:00 AM

Testimony for AGR/ERB 3/16/2012 10:00:00 AM SB2375

Conference room: 312
Testifier position: Oppose
Testifier will be present: No
Submitted by: Stuart Scott
Organization: TransitionOahu.org
E-mail: stuart.h.scott@gmail.com
Submitted on: 3/14/2012

Comments:

I urge you to oppose SB2341. It is a thinly veiled attempt to strip protections from ag lands by allowing commercial uses only nominally related to agriculture.

It is a back door attempt to go around the state Land Use Law which requires a land owner to apply to the Land Use Commission to change the ag land designation to urban to allow non-ag related activities.

Without the LUC process the public has no involvement in what uses of agricultural land are appropriate.

It is unconscionable that our elected leaders would take away food security from our children by allowing more forms of commercial development on ag land than are already permitted. Who are you folks working for anyway? The people or business interests?

Sorry if that sounds insulting, but a whole LOT of people are asking that question, just not to your faces.

Stuart Scott
Farmer & Co-Director of TransitionOahu.org

hashem3 - Casey

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 15, 2012 2:30 PM
To: AGRtestimony
Cc: kimokelii@aol.com
Subject: Testimony for SB2375 on 3/16/2012 10:00:00 AM

Testimony for AGR/ERB 3/16/2012 10:00:00 AM SB2375

Conference room: 312
Testifier position: Support
Testifier will be present: No
Submitted by: Kimo Kelii
Organization: Education, Agriculture, Hawaiian Advocate
E-mail: kimokelii@aol.com
Submitted on: 3/15/2012

Comments:
Aloha Kakou,

House Committee on Agriculture: Chair, Rep C. Tsuji; Vice Chair, Rep M. Hashem; and committee members

House Committee on Economic Revitalization & Business: Chair, Rep A. McKelvey; Vice Chair, Rep I. Choy; and committee members

PLEASE SUPPORT THE PASSAGE OF SB 2375 SD3!

As a flower farmer from the Waianae Coast, this bill will include agricultural-based commercial operations under the definition of "farming operation" in chapter 165, HRS. This definition will allow and authorize the legitimacy of having our agricultural-based commercial business operate within the agricultural districts which will be a tremendous boost for farmers like myself who are struggling financially to stay a float in these tough economic times.

Unlike Ma'o Farms who receives a lot of federal, state and private funds that subsidize many of their farm operations, maintenance and personnel staff hiring, my farm's livelihood as well as several other farmers in my agricultural district and neighborhood are barely making ends-meet and we all may have to consider filing for bankruptcy if the economy does not improve significantly within these next two years; whereby, the opportunity to diversify our farm operations by considering perhaps having a commercial component located onsite of our farm lands and crop production area or entertaining the possibility of agritourism opportunities are about the only reliable means or ways of becoming a sustainable farmer in Hawaii for in the 21st Century.

Again, please support the passage of SB 2375!

Mahalo, Kimo Kelii (Waianae Coast Community Leader)

Testimony of
Jon Okudara
on

S.B. 2375, S.D. 3
Relating to Agricultural-based Commercial Operations
House Committee on Agriculture
House Committee on Economic Revitalization & Business
Friday, March 16, 2012
10:00 a.m.
Conference Room 312

Thank you for the opportunity to present testimony in strong support of S.B. 2375.

The objective of S.B. 2375, as originally introduced, was to provide more profit-making opportunities for agricultural producers, to promote synergies among Hawaii's agricultural producers, and to preserve agriculture by making it profitable.

Current Law

Under the Land Use Law, Chapter 205, HRS, the only agribusiness activity that provides for direct sales to consumers on agricultural lands are "roadside stands for the sale of products grown on the premises." Other law, however, describe, but do not define certain retail activities as an agricultural use:

- Section 165-2, HRS, the Hawaii Right to Farm Act, describes a "farming operation" as including but not limited to "[m]arketed produce at roadside stands or *farm markets*." "Farm market" is not defined and is not listed as a permissible use on agricultural lands in the Land Use Law.
- The Land Use Ordinance of the City and County of Honolulu, allows "*agribusiness activities*" in an agriculture zone, including "*retail activities in an enclosed structure ... limited to a structure not exceeding 500 square feet*". "Agribusiness activities" is not defined in the Land Use Ordinance," and is not listed as a permissible use on agricultural lands in the Land Use Law.
- Under section 166-3.5, HRS, the Agricultural Parks law, the Department of Agriculture allows "*agricultural-based commercial venture operations*" on lots leased and operated by an agricultural park lessee. "Agricultural-based commercial venture operations" is not defined in Chapter 166 or in the rules of the Department, and "agricultural-based commercial venture operations" is not listed as a permissible use on agricultural lands in the Land Use Law.

These uses, however, have been allowed with a special permit from the county planning commission on agricultural lands. Obtaining a special permit, however, is a very expensive for an applicant.

Hawaiian Vanilla Company

The Hawaiian Vanilla Company started growing and processing vanilla in the Hamakua district on the island of Hawaii. As part of its operation, the company started educating people about vanilla and incorporating the vanilla into value-added products produced in their commercial kitchen. The operation evolved into a vanilla experience luncheon that included an educational component about growing and processing vanilla. The operation served organic greens grown at the farm topped with a vanilla raspberry balsamic dressing, goat cheese from a dairy in Ahualoa, tomatoes and bananas from Hamakua Springs Country Farms, beef from the Andrade slaughterhouse in Paauilo, Hamakua Mushrooms in Laupahoehoe, honey from Volcano Ishald Honey in Ahualoa, and Ahualoa Goat Dairy.

Because of a complaint filed with the Planning Department that Hawaiian Vanilla Company was operating a restaurant and retail establishment, the ceased the food and retail operations and applied for a special permit. Hawaiian Vanilla spent over \$30,000 to get a special permit to operate a retail establishment and retail food establishment for sale and tasting of its vanilla products. (Board of Appeals, County of Hawaii, Hearing transcript, February 8, 2008).

Kahuku Farms

Kahuku Farms operates a "country store" under a special permit from the City and County of Honolulu. Section 21-5.10A of the Land Use Ordinance allows retail "agribusiness activities" in an enclosed structure not exceeding 500 square feet, and where all products offered for sale shall be:

- Agricultural products grown on the parcel;
- Agricultural products grown in the City and County of Honolulu; or
- Jams, jellies, candies, and pickled or dried produce made from those products.

Kahuku Farms incurred significant costs in obtaining the special permit for the 500 square foot store.

The Land Use Ordinance requires that at least 50 percent of the floor area be used for display of the products grown on the premises or made from products grown on the premises, with the remainder of the area used for display of agricultural products grown in the City and County of Honolulu.

In addition to its operations in Kahuku, Kahuku Farms grows its products on parcels in Haleiwa and Kawaihoa. It also has a family cattle operation in Mokuleia. The current law prohibits the products from these operations from being sold at the Kahuku store.

S.B. 2375 will allow Kahuku Farms to sell the products from all of its farm parcels at its store. In addition, it could sell the products or use the products from other agricultural producers in its food products, such as Hawaiian vanilla, flavored butters from naked Cow Dairy, Hamakua Mushrooms, and others.

S.B. 2375, S.D. 3 – Proposed H.D. 1

The Senate amended S.B. 2375 on the floor because of concerns that it will allow commercial franchise operations, such as Jamba Juice or commercial restaurants, claiming to use Hawaii agricultural products, on agricultural lands. To address those concerns, the bill should incorporate the following amendments.

Proposed Amendments

Amend the sub-paragraphs to require that the agricultural-based commercial facilities be *owned and operated by a producer*. This will prevent franchise operations or non-owner operated businesses.

“Franchisee” ... person or company that is granted a *license* from the owner of a trademark or trade name permitting the person to sell a product or service under that name or mark.”

“Franchise agreement” ... an agreement between a supplier of a product or service or an owner of a desired trademark or copyright (franchisor), and a reseller (franchisee) under which the franchisee agrees to sell the franchisor’s product or service or to do business under the franchisor’s name. (Black’s Law Dictionary).

Amend sub-paragraph (A) of proposed paragraph (13) to read:

- (A) A ~~producer-operated~~ roadside stand *owned and operated by a producer*, which is not an enclosed structure, for displaying and selling of agricultural products *grown on the premises or grown in Hawaii*, and value-added products produced using raw Hawaii agricultural materials;

Require that the roadside stand be owned and operated by the producer for display and sale of agricultural products grown on the premises or grown in Hawaii and value-added products produced from raw Hawaii agricultural products. This will allow the sale of agricultural products from lots without a roadside exposure as well as products from other parcels the producer grows products on.

Amend sub-paragraph (B) of the proposed paragraph (13) to read:

- (B) Retail activities in ~~a producer-operated~~ an enclosed structure *owned and operated by a producer* where fresh agricultural products *grown on the premises or grown in Hawaii*, value-added products produced using raw Hawaii agricultural materials, logo items related to the producer’s agricultural operations, and other food items *prepared with agricultural products grown on the premises or grown in Hawaii* are offered for sale directly to consumers;

Require that the retail operation be owned and operated by a producer, and that “other food items” offered for sale directly to consumers be prepared with agricultural products grown on the

premises or grown in Hawaii. This will restrict products to direct or retail sale and where the products are offered for sale "directly to consumers."

Add sub-paragraph (C) to the proposed paragraph (13) to read:

(C) A retail food establishment **owned and** operated by a producer and permitted under chapter 12 of the rules of the department of health that prepares and serves food at retail using products grown on the premises, raw Hawaii agricultural products, and value-added products produced using raw Hawaii agricultural materials.

Require that a retail food establishment be owned and operated by a producer and is permitted under Chapter 12 of the rules of the Department of Health for a food establishment. This will allow the producer to prepare and serve food using his agricultural products and other raw Hawaii agricultural products and value-added products, such as dressings, sauces, etc. Requiring that the establishment be owned and operated by a producer will prevent the operation under a franchise, which is an operation that is licensed by a franchisor, not owned by the operator.

Amend paragraph (13) to read:

The ~~operator~~ **owner** of an agricultural-based commercial operation, shall certify, upon request of an officer or agent charged with enforcement of this chapter under section 205-12, that the agricultural products used in the operation meet the requirements of this paragraph.

The Land Use Law, which S.B. 2375 proposes to amend, is enforced by the officer or agency charged with administering the county zoning laws (section 205-12, HRS). This amendment provides for certification by the owner that the operation meets the requirements of this law, when requested by the enforcing agency.

Amend SECTION 4 to change the effective date to "upon approval."

From: randy ching [oahurandy@yahoo.com]
Sent: Wednesday, March 14, 2012 3:40 PM
To: AGRtestimony; ERBtestimony
Subject: in opposition to SB2375, SD3 - relating to agricultural-based commercial operations

SB2375, SD3 (opposed)
House Committees on Agriculture, Economic Revitalization and Business
Hearing on Friday, March 16 at 10:00 a.m. in room 312

Chair Tsuji, Vice Chair Hashem, Chair McKelvey, Vice Chair Choy, and members of the committees,

I oppose SB2375, SD3. Ag land should be used for growing food, not restaurants.

Please hold this bill. Mahalo.

Sincerely,

Randy Ching
Honolulu
oahurandy@yahoo.com