

# OFFICE OF PLANNING STATE OF HAWAII

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DAVID Y. IGE  
GOVERNOR

LEO R. ASUNCION  
DIRECTOR  
OFFICE OF PLANNING

Statement of  
**LEO R. ASUNCION**  
Director, Office of Planning  
before the  
**HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE**  
Monday, February 22, 2016  
2:30 PM  
State Capitol, Conference Room 325

in consideration of  
**HB 2636 HD 1**  
**RELATING TO SOLAR ENERGY FACILITIES.**

Chair McKelvey, Vice Chair Woodson, and Members of the House Committee on  
Consumer Protection and Commerce.

The Office of Planning (OP) respectfully opposes HB 2636 HD 1, which would allow a county that meets certain conditions to require solar energy facilities in farm dwellings in agricultural districts with a capacity of more than twenty-five kilowatts to obtain a special permit.

OP recognizes that HB 2636 HD 1 seeks to clarify the intent of HB 2636, but we remain concerned about the potential impacts of this bill. While we appreciate that HB 2636 HD 1 attempts to restrict the proliferation of non-agricultural uses in the Agricultural District, we do not support the narrow and targeted application of this bill which appears to be in response to a proposed solar facility installation in a subdivision in the County of Hawaii.

Furthermore, as written, it is not clear when the county "may" require special permit approval (page 3, line 11), or whether the twenty-five kilowatt maximum applies to a single

parcel or to a cluster of parcels. Also, the term "solar energy production" on page 3, line 13 is not defined.

Thank you for the opportunity to testify on this matter.

DAVID Y. IGE  
Governor

SHAN S. TSUTSUI  
Lt. Governor



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

SCOTT E. ENRIGHT  
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER  
Deputy to the Chairperson

**TESTIMONY OF SCOTT E. ENRIGHT  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND  
COMMERCE**

February 22, 2016  
2:30 P.M.  
CONFERENCE ROOM 325

**HOUSE BILL NO. 2636 HD 1  
RELATING TO SOLAR ENERGY FACILITIES**

Chairperson McKelvey and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2636 HD 1 that amends Section 205-2 to allow within the Agricultural District on the county of Hawaii, solar energy production equipment placed on single or multiple lots possessing specific characteristics or situations, including being non-conforming subdivisions, prior to January 1, 2016. The Department of Agriculture offers comments on this measure.

Chapter 205 already allows solar energy facilities on all Agricultural District land as follows:

Allowed on all Land Study Bureau "D" and "E" rated land;  
With conditions and restrictions on "B" and "C" rated lands; and  
Under very narrowly-defined circumstances on "A" rated agricultural lands.

Furthermore, Section 205-2(d)(7) permits "...photovoltaic, biogas, and other small-scale renewable energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property." The special permit



(Section 205-6) process provides for consideration of “unusual and reasonable” uses within the Agricultural District other than those for which the district is classified.

The Department believes that further amendment to Chapter 205 to allow solar energy facilities on Agricultural District lands to meet the needs of a particular project or situation may set an unintended precedent. The principal permitted use and activity on Agricultural District lands is agricultural production.

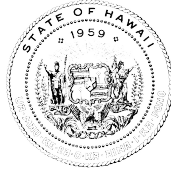
Thank you for the opportunity to submit our testimony.

**DAVID Y. IGE**  
Governor

**SHAN S. TSUTSUI**  
Lieutenant Governor

**LUIS P. SALAVERIA**  
Director

**MARY ALICE EVANS**  
Deputy Director



**LAND USE COMMISSION**  
Department of Business, Economic Development & Tourism  
State of Hawai'i

**DANIEL ORODENKER**  
Executive Officer

**Bert K. Saruwatari**  
Planner

**SCOTT A.K. DERRICKSON AICP**  
Planner

**RILEY K. HAKODA**  
Chief Clerk/Planner

**FRED A. TALON**  
Drafting Technician

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Statement of  
**Daniel E. Orodener**  
**Executive Officer**  
Land Use Commission  
Before the  
**House Committee on Consumer Protection & Commerce**  
Monday February 22, 2016  
2:30 PM  
State Capitol, Conference Room 325

In consideration of  
**HB 2636 HD1**  
**RELATING TO SOLAR ENERGY FACILITIES**

Chair McKelvey, Vice Chair Woodson, and members of the Committee on Consumer Protection & Commerce:

The Land Use Commission takes no position on HB2636 HD1. The intent of this measure, based on past testimony, appears to be aimed at addressing a specific proposed project in a primarily residential subdivision within the State Agricultural district on the island of Hawai'i. While well intentioned, attempting to address specific projects with amendments to statutory language meant to apply Statewide may result in unintended consequences. However, if the committee feels that this would address potential problems that may arise in the future, then we would suggest that the word "may" (p. 5, line 11) be changed to "shall." This would require a county to process a State Special Permit where impacts can be addressed, mitigation measures identified, public involvement assured, and appropriate conditions be applied..

Thank you for the opportunity to testify on this matter.

**CHRISTOPHER J. YUEN**  
**ATTORNEY AT LAW**

P.O. Box 5  
Ninole, HI 96773  
Telephone: (808)963-6966  
e-mail: chrisyuenz@hotmail.com

Feb. 19, 2016

**TESTIMONY IN OPPOSITION TO HB2636HD1**

Rep. McKelvey and Members of the House Committee on Consumer Protection and Commerce:

The Legislature should reject HB2636HD1, which would hurt Hawaii's efforts toward energy self-sufficiency. The State and its Legislature have made many noble pronouncements and set noble goals about switching to solar and other forms of renewable energy. So why is the Legislature seriously considering a bill that sets major obstacles in the way of solar PV power and is clearly an attempt to stop a solar power project?

Global warming is the world's most serious environmental problem, and we have to do our part to cut down our use of fossil fuels. All renewable energy sources can have some negative effects, but solar PV is probably the most benign. A PV array doesn't make noise, cause smells, or emit pollutants. Its visual impact is much less, and confined to a smaller radius, than wind turbines. It just sits there pumping out electricity.

This bill is probably inspired by the opposition to a project planned for the Hawaiian Ranchos area in Ka'u which would consist of solar PV arrays covering about 26 scattered 2 acre lots, and generating about 250 kilowatts per lot. I can understand why a neighbor of a project like this might rather see a vacant lot next door rather than a solar array protected by a fence. It is not visually appealing. But it is not significantly less attractive than many other uses that can be made of that same lot in the ag district. For example, the lot could be covered in shade cloth structures. And I don't see why the Legislature, in balancing the various interests involved, would change the laws allowing a solar development like this, which would, on each lot, generate enough electricity for 50-100 homes. Surely the public benefit greatly outweighs the perceived harm.

Sometimes we focus so much on potential negatives that we ignore the positives. For this project, a reasonable estimate is that it will prevent about 8,000 tons per year of carbon dioxide that would otherwise go into the atmosphere if the power was generated by burning fossil fuels.

HB2636HD1 requires a special permit for these projects in certain ill-defined areas, apparently only in Maui and Hawai'i Counties, whereas HB2636 was a ban. A special permit can be a major hurdle for a project like this. It can trigger a contested case hearing, which can take years to resolve in the courts. In the meantime, even if the permit has been approved by the County Planning Commission, the solar developer takes a risk if it starts construction. The permit could be reversed on procedural grounds that have nothing to do with the merits.

And isn't the fact that this bill is now confined to Maui and Hawai'i counties a sign that it is meant to placate certain interests, and not something good for the state as a whole?

The bill has many technical defects and other unintended consequences, which I will not comment upon, because it should simply be rejected.

I don't have any personal involvement in this Ka'u project, and I hope the developers, like anybody, try to be good neighbors and accommodate the reasonable concerns of their community. But the Legislature should not put obstacles in the way of PV projects like this and others that can help reduce global warming.

I'm writing as an individual and not in any official capacity, but I was planning director of Hawai'i County for eight years and I'm very familiar with the special permit process and the problems that can arise.

From: mailinglist@capitol.hawaii.gov  
Sent: Saturday, February 20, 2016 6:17 AM  
To: CPCtestimony  
Cc: dylanarm@hawaii.edu  
Subject: \*Submitted testimony for HB2636 on Feb 22, 2016 14:30PM\*

**HB2636**

Submitted on: 2/20/2016

Testimony for CPC on Feb 22, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Armstrong	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

20 February, 2016

Representative Angus L. K. McKelvey.  
Chairman,  
Committee on Consumer Protection and Commerce,  
Hawai'i State Capitol.

Aloha Chair McKelvey, Vice Chair Woodson, and Committee Members,

### **REQUEST FOR SUPPORT FOR HB 2636**

We are writing to request that you support HB 2636 that amends HRS 205-2.

On Monday afternoon our State Representative, Dr. Richard Creagan, will be presenting an amendment to legislation that allows solar installations to be built on land zoned agricultural. While HRS 205-2 appears to be a good law (especially to those of us who appreciate the many benefits of solar energy) in that it allows solar installations on poor agricultural land, it threatens all non-conforming (old) subdivisions that are zoned ag. even though they are clearly used for homes.

For example, a large overseas corporation, SPI Solar, wants to build 25 solar installations, each with a capacity of 250kW, on 25 three-acre lots, among homes, in three subdivisions in Ocean View on the Big Island. 30,000 panels will be installed, with a combined output of 6.75 megawatts. Each lot will be bulldozed flat edge-to-edge. Each array will cover more than two acres and will be surrounded by six-foot wire fences with cameras and security lights added. This corporation is able to industrialize our rural neighborhood by taking advantage of a loophole in this law. **HRS 205-2 does not make allowances for housing subdivisions that are zoned agricultural.**

When testifying before the House Committee on Energy and Environmental Protection on Feb 4, concerning Dr. Creagan's bill, Daniel E. Orodnenker, Executive Officer of the Land Use Commission stated:

"Residential subdivisions are not allowed in the State Agricultural District under Chapter 205, HRS."

We live in a residential neighborhood that is zoned "agriculture". It is called a non-conforming subdivision, which simply means that it predates modern subdivisions that "conform" to modern standards. Our town of Ocean View is made up of seven such subdivisions. There are scores of these subdivisions on the Big Island of Hawai'i – all zoned "ag.". Yet, Ocean View is a fast-growing town. Our population doubled between 1990 and 2000, and then doubled again between 2000 and 2010.

In June of 2015 Hawai'i Electric Light Company (HELCO) informed residents of Ocean View that a new sub station would be built to serve 25 solar farms planned for the town. The audience was angered and dismayed. Since then

- . Over 600 residents have signed a petition against the installations
- . Over 300 residents of the largest subdivision, Ranchos, wrote comments and voted against the farms
- . The Ranchos CC&R's have been amended to stop more than 25 kW being generated on any lot
- . *West Hawai'i Today* has published eight articles, many quoting notable energy and conservation professionals who condemn this boondoggle project as being bad for the island.

We have many concerns about this project, but the ones that support the unsuitability of housing land for solar installations include:

1. **BAD FOR BUSINESS.** The Feed In Tariff (FIT) program was originally conceived as a way to get existing owners of agricultural land, such as ranchers and farmers, to earn money from their poor land by building solar installations that would feed power into the grid. In this way the consumers would benefit from renewable energy and the land owners would benefit from additional income. Many hurdles and restrictions were taken away in order to make it easier for these small businessmen, and the limit for each permit was set at 250kW. However, the noble intentions of this program were confounded when an international corporation came into our neighborhood and "bought" three-acre lots that were zoned agriculture, in order to qualify for the "ownership" part of the program. The company secured 42 permits when it was still in Escrow and had no control over the land, in spite of FIT rules to the contrary. (The developer was in Escrow for an average of 349 days on 20 of the lots, and leased 22). Clearly Hawaiian ranchers and farmers were the losers, as they were not able to secure any of the 32 permits that were given on a first come, first served basis.

Five years later, the goals of the FIT program remain severely compromised. The developer's poor business decision in choosing a housing community is becoming very obvious. The infrastructure required a lot of work by our power company, Helco, and it is still incomplete. Helco must build a new substation, but the site chosen is already in use and there is a cloud over Helco's supposed easement. In addition, the developer has no legal access to the leased sites. In other words, this project is still not "shovel ready" and may never be so. Recently, the PUC held a hearing about the construction of a high-voltage line through a residential neighborhood. If the PUC upholds the concerns of the residents, as we believe it should, and the line is not approved, then the project is dead.

If the goals of the FIT program had not been compromised by a vain attempt to put solar in a residential neighborhood, perhaps 32 bona fide land owners would have quickly built solar farms of a manageable size, promptly produced renewable energy and less fossil fuels would have been burned on the Big Island over the last four years, or so. This would have benefitted consumers.

However, if, five years ago, the developer had been required to get a Special Use Permit, the community's concerns would have been voiced then, and the developer would not have wasted time and money on permits for land that is not workable. Thus, in addition to the farmers and ranchers and owners of bona fide agricultural land, and in addition to the families that live on residential land that is zoned "agricultural", the developer who selects housing land for a solar project is also a "loser". This situation is a loose-loose-loose one.

Rep. Dr. Creagan's bill seeks to stop this waste and end poor business decisions that may adhere to the letter of the law, (but are definitely not in the spirit of the law) by essentially banning big

utility-scale solar developments in residential neighborhoods and limiting PV systems to 25kW – a generous size for residential family needs.

This bill should appeal to those who are pro-solar, pro-business, pro-consumer and pro-agriculture.

2. PUBLIC SAFETY. A 2006 study commissioned by Hawai'i Volcanoes National Park rated Ocean View as an EXTREME fire hazard, due to the terrain, strong winds, desert climate and lack of preparedness. Ocean View lacks necessary infrastructure. We have TWO fire fighters who have to respond to a wide variety of emergencies over a very large area. Our station is the busiest on the island. It would require significant additional manpower, training and equipment to be prepared for this kind of fire. There have been notable fires originating on solar farms in California and Texas, but as the installations there were in the uninhabited desert, the consequences were not disastrous. Industry does not mix with residential.

3. AESTHETICS. Solar farms are industrial installations in terms of appearance and function and are completely incompatible with homes in a residential neighborhood. We take enormous pride in our homes and ranch-like environment. We enjoy uninterrupted ocean views, extensive 'Ohi'a forests, nature and the clear night sky. These industrial installations will cover over two acres on each three-acre lot, which means each lot will be stripped of trees and bulldozed flat from edge to edge. Each lot will then be surrounded by a six-foot chain link fence and cameras, alarms, and security lights will be installed. This is the opposite of how our neighborhood is currently developed. At present the homes are typically tucked away among trees or blend in with their surroundings.

How would you like to have a two-acre solar farm built next door to you?

**We ask you to support HB 2636 when it is presented on Monday.**

Respectfully,

*Peter Bosted*  
*Ann Bosted*

Peter and Ann Bosted  
(808) 315-2196

## Hawaiian Ocean View Estates Sub-Division

Highway 11

Kohala B.

Prince Kuhio B.

To Kona

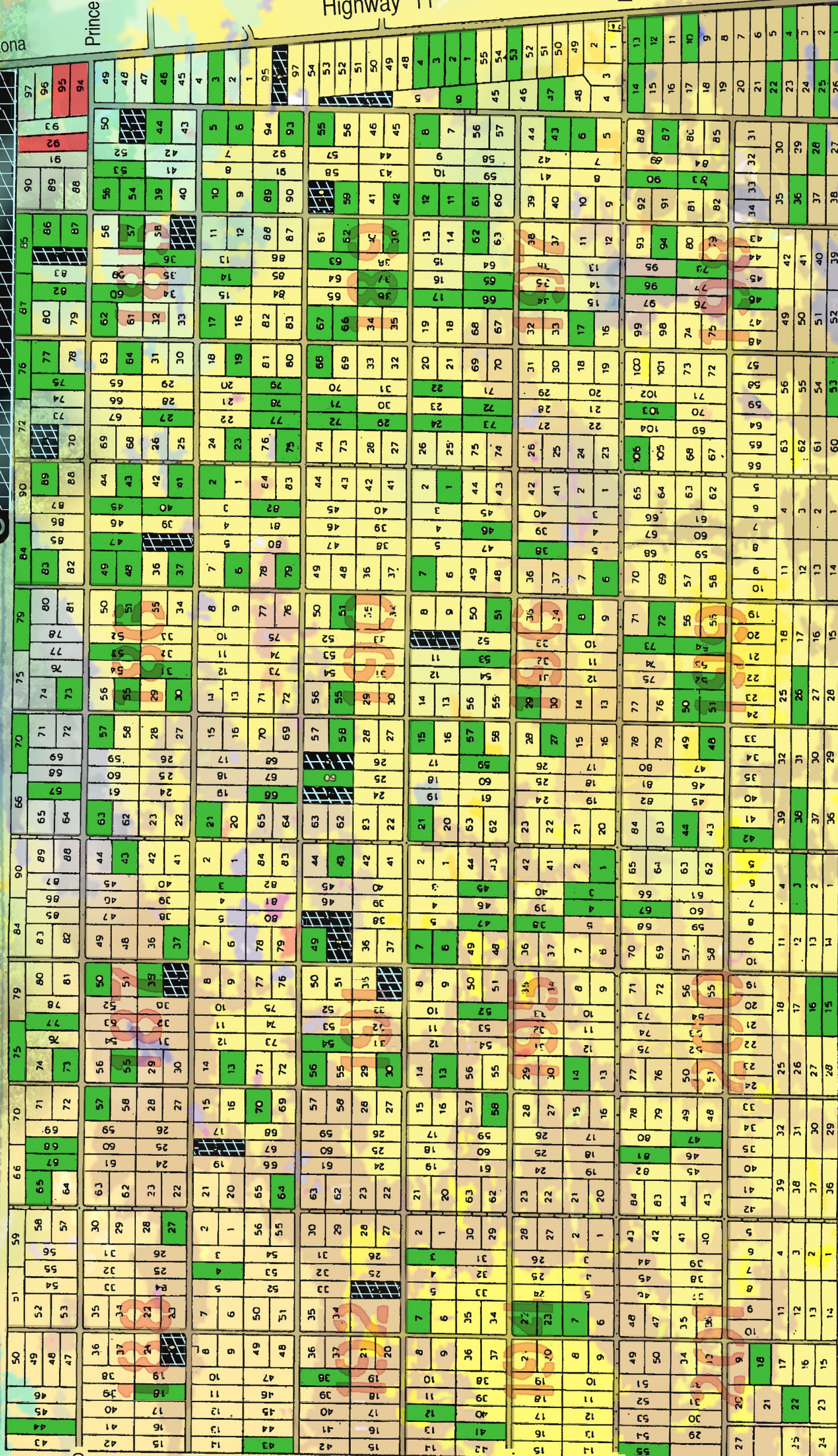
### NATIVE OHIA FOREST

Rare and endangered plants and species.

### Kona-South Estates

An undeveloped sub-division of 22 parcels of 21 acres each, totaling some 500 acres.

Solar farm has received approval without public notification or input, or any review process.



Prince Kuhio

Kahili Blvd.

Makai Blvd.

Alii Blvd.

Hokulani Blvd.

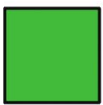
Kohala Blvd.

Kamaaina

## Hawaiian Ocean View Ranchos Sub-Division



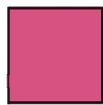
Inappropriately approved sites for Solar Compounds.  
First phase of development.



3 acre parcels with homes and improvements.



3 Acre undeveloped lots



Existing commercial businesses on 3 acre parcels.

From: mailinglist@capitol.hawaii.gov  
Sent: Sunday, February 21, 2016 10:06 AM  
To: CPCtestimony  
Cc: rnblw@aol.com  
Subject: Submitted testimony for HB2636 on Feb 22, 2016 14:30PM

**HB2636**

Submitted on: 2/21/2016

Testimony for CPC on Feb 22, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Winch	Individual	Comments Only	No

Comments: There was a loop hole in the law to allow an individual into a residential area for industrial solar installations . Our area in Hawaii County was declared an extremely high fire hazardous area due to the dry conditions. We are required as homeowners to keep a 4000 gallon tank on our property This is a safety issue for the homeowners here. In our Ohia trees is where the Hoary bat(an endangered species) nests. It has already affected property values, which in turn will affect the revenue the state receives.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov  
Sent: Sunday, February 21, 2016 10:09 AM  
To: CPCtestimony  
Cc: gcline\_46@msn.com  
Subject: Submitted testimony for HB2636 on Feb 22, 2016 14:30PM

**HB2636**

Submitted on: 2/21/2016

Testimony for CPC on Feb 22, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
George Cline	Individual	Comments Only	No

Comments: Why am I against this solar project when I have installed solar on my roof and a solar hot water system? I was paying HELCO \$350 t\$400 per month and now I pay \$20 to \$30 . I am spending what I am saving in my community to better my life. Where will the money go if this solar project is built? HELCO will still charge the same, the solar company will take their share back to California / out off Hawaii, how is this going to help our state or the "PEOPLE of HAWAII"? This needs to be stopped now! Go green with the people you were elected to protect and serve. George Cline Ocean View Hawaii

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However, if, five years ago, the developer had been required to get a Special Use Permit, the community's concerns would have been voiced then, and the developer would not have wasted time and money on permits for land that is not workable. Thus, in addition to the farmers and ranchers and owners of bona fide agricultural land, and in addition to the families that live on residential land that is zoned “agricultural”, the developer who selects housing land for a solar project is also a “loser”. This situation is a lose-lose-lose one.

Dr. Creagan's bill seeks to stop this waste and end poor business decisions that may adhere to the letter of the law, (*but are definitely not in the spirit of the law*) by essentially banning big utility-scale solar developments in residential neighborhoods and limiting PV systems to 25kW – a generous size for residential family needs.

2. PUBLIC SAFETY. A 2006 study commissioned by Hawai'i Volcanoes National Park rated Ocean View as an EXTREME fire hazard, due to the terrain, strong winds, desert climate and lack of preparedness. Ocean View lacks necessary infrastructure. We have TWO fire fighters who have to respond to a wide variety of emergencies over a very large area. Our station is the busiest on the island. It would require significant additional manpower, training and equipment to be prepared for this kind of fire. There have been notable fires originating on solar farms in California and Texas, but as the installations there were in the uninhabited desert, the consequences were not disastrous.

3. LIABILITY. The State of Hawaii will share the bulk of the costs if HRS 205 is not amended and property owners are forced to sue the state when their homes loose value because of the provisions of the law. We estimate that there are about 350 homes in Ranchos, and we conservatively estimate each is worth an average of \$200,000. Thus the home-owning community has about \$70 million invested. If the homes loose half their value due to solar installations making the neighborhood undesirable, there would be a loss of \$35 million on homes alone. Approving this bill may avoid a law suit. This law, though well-intentioned, has had unforeseen consequences, including

- a. No public hearings/comment
- b. No fire mitigation plan
- c. No EIS or archeological study
- d. No consideration of diminished property values

4. AESTHETICS. Solar farms are industrial installations in terms of appearance and function and are completely incompatible with homes in a residential neighborhood. We take enormous pride in our homes and ranch-like environment. We enjoy uninterrupted ocean views, extensive 'Ohi'a forests, nature and the clear night sky. These industrial installations will cover over two acres on each three-acre lot, which means each lot will be stripped of trees and bulldozed flat from edge to edge. Each lot will then be surrounded by a six-foot chain link fence and cameras, alarms, and security lights will be installed. This is the opposite of how our neighborhood is currently developed. At present the homes are typically tucked away among trees or blend in with their surroundings. How would you like to have a two-acre solar farm built next door to you?

**We ask you to support HB 2636 when it is presented on Monday.**

Respectfully,

Ray and Linda Raquinio  
(808) 929-9202

From: mailinglist@capitol.hawaii.gov  
Sent: Sunday, February 21, 2016 8:03 PM  
To: CPCtestimony  
Cc: valuator1956@yahoo.com  
Subject: Submitted testimony for HB2636 on Feb 22, 2016 14:30PM

**HB2636**

Submitted on: 2/21/2016

Testimony for CPC on Feb 22, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Bob Werner	Individual	Support	No

Comments: This bill is designed to prevent the construction of commercial solar facilities in existing non conforming residential areas within the Agricultural District. Loopholes in existing statute allow for large scale commercial solar development in Agricultural District lands even in areas that are fundamentally residential, an unintended consequence of existing legislation. The only opposition to this bill stems from the concern that it would limit legitimate solar development in Agricultural District lands, provide a "quasi-authority" for the future development of nonconforming residential use in existing Agricultural District lands, or set a maximum of 25 KW for any affiliated group of parcels including residential roof top solar installations. While these are valid concerns, I would encourage you to amend the bill to address these concerns (as has been done, at least in part) while still prohibiting the development of commercial large scale solar installations in existing non conforming residential developments within the agricultural District. As presented in other testimony, this is a grave concern for those of us living in Hawaiian Ocean View Ranchos as there are currently approved plans to install a 8.75 MW solar installation in our subdivision. Clearly an installation of this size would not be consistent with residential development. Thank you for your consideration.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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