LARRY JEFTS FARMS, LLC
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HCR 187/HR 112, Requesting the DOA to Convene a Task Force To Clarify and Coordinate Agricultural-Based Commerce Support of Bonafide Farming Operations Across the State
House AGR/EDB Committee
Friday, March 20, 2015
9:30 am
Conference Room 312

Testimony by: Larry Jefts
Position: Support

Chairs Tsuji and Kawakami, and Members of the House AGR/EDB Committees:

I am Larry Jefts, owner and operator of Larry Jefts Farms, LLC, which is part of our family-run business of farms on Oahu and Molokai, under the administrative umbrella of Sugarland Growers, Inc. We have more than 35 years of Hawaii farm experience on Molokai and Oahu.

It is my understanding that some agricultural producers are not able to supplement their bona fide agricultural operations with defined agricultural-based commercial operations, HRS Section 205-2 (15). The proposed Task Force will help identify specific barriers to these legitimate agricultural-commerce activities. More importantly, such discussions may lead to practical solutions to help farmers with their respective county approval process for agricultural commerce activities.

Please support this measure which will assist interested agriculture producers.

Thank you for the opportunity to present testimony.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 19, 2015 6:11 AM
To: AGRtestimony
Cc: lydibernal@gmail.com
Subject: Submitted testimony for HCR187 on Mar 20, 2015 09:30AM

HCR187
Submitted on: 3/19/2015
Testimony for AGR/EDB on Mar 20, 2015 09:30AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Lydi Morgan Bernal	Individual	Support	No

Comments: This is an important opportunity to facilitate communication and remove obstacles to small farming and local food production in Hawaii.

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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HCR187
Submitted on: 3/19/2015
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Submitted By	Organization	Testifier Position	Present at Hearing
Chris Manfredi	Hawaii Farm Bureau	Support	Yes

Comments:

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DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor

SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
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LATE

TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEES ON AGRICULTURE AND ECONOMIC DEVELOPMENT AND BUSINESS

March 20, 2015
9:30 A.M.
CONFERENCE ROOM 312

HOUSE CONCURRENT RESOLUTION NO. 187 AND HOUSE RESOLUTION NO. 123

REQUESTING THE DEPARTMENT OF AGRICULTURE TO CONVENE A TASK FORCE TO CLARIFY AND COORDINATE AGRICULTURAL-BASED COMMERCE SUPPORT OF BONA-FIDE FARMING OPERATIONS ACROSS THE STATE

Chairpersons Tsuji and Kawakami and Members of the Committees:

Thank you for the opportunity to testify on House Concurrent Resolution No. 187 and Resolution No. 123. These resolutions request the Department of Agriculture to convene an 18-member state-wide task force to clarify and coordinate agricultural-based commerce support of bona-fide farming operations across the State. The Department has reservations about the measure.

The Department of Agriculture supports the concept of truly bona-fide farming operations being able to generate additional revenue from activities that are clearly accessory and secondary to the agricultural production occurring on the property for which a permit is sought. Act 113, Session Laws of Hawaii 2012, defines three activities as agricultural-based commercial operations and permitted on agricultural land – roadside stands, retail activities, and retail food establishments, and simply requires that agricultural-based commercial operations sell and use agricultural products grown in Hawaii. To our knowledge, only the Maui County Council is currently considering legislation to define and regulate agricultural-based commercial operations.

The Department is concerned about the resources that would be required to assemble and staff the proposed task force and would respectfully request the committees to consider

revising the resolutions to encouraging the counties to consider and implement ordinances for agricultural-based commercial operations to enable those opportunities to be available to qualified farming operations.

Thank you for the opportunity to present our testimony.

LATE

Testimony of
Howard R. Green, Owner
GreenWorld Coffee Farm

In 2012 the legislature passed Senate Bill 2375 which became Act 113, and ultimately became Section 205-2(d)(15) Hawaii Revised Statutes. Act 113 was intended to permit farmers to retail farm products and sell farm products as prepared foods from their farms. But Act 113 did not actually take effect for reasons explained below. Senate Bill 2777 was written to make Act 113 effective.

I. The Purpose of Act 113 (2012).

The legislature which passed Act 113 understood an economic reality facing Hawaii's farmers, especially small farmers: That farms on the average receive 10% or less of the retail dollars being spent for their products, and for farms to be economic, farmers needed to be able to recover a larger percentage of the retail dollar. This means as a practical matter, development of more direct channels for marketing products to ultimate consumers, including direct farm retail sales, farmers' markets, and the like. State Legislative Committees have been acutely aware of the economic reality farmers face.

Nevertheless a patchwork of county zoning ordinances throughout the state had by various means, limited or restricted sales operations from farms to the point that they were illegal or so restricted as to be uneconomic. Act 113 sought to bypass country restrictions by permitting such sales directly by State Law. Rather than restate the reasons for the adoption of Act 113 in 2012, I am attaching to my testimony, a copy of all of the testimony provided by farmers in support of that Act. All of those reasons are as relevant now as they were in 2012 as Exhibit A.

II. Why Act 113 did not take effect.

Act 113 did not in practice have any effect, because it is nullified by a Land Use Commission Rule.

Act 113 became the present Section 205-2-(d)(15) HRS which includes the described commercial activity as a permitted use in ag zones. Section 205-5 HRS modifies the zoning power of the counties to define uses as described in that section as permitted uses in an Ag zone. Section 205-5 reads as follows:

> "(a) Except as herein provided, the powers granted to counties under section 46-4 HRS shall govern the zoning districts, other than conservation districts.
>
> "***(b)Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted*** (emphasis added); provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance...."

It is important to understand Section 205-5HRS. Under the State Constitution, the power to zone land resides in the State Legislature. Generally speaking, the power to zone agricultural lands is delegated to the Counties under Chapter 46 HRS, but the State legislature did reserve to itself the power to specify particular uses which would be permitted within agricultural lands. Chapter 205 sets forth a listing of activities that the legislature has determined from time to time, will be permitted. Thus, under Land Use Commission Rules to be adopted, the uses in Sections 205-2 and 205-4.5 became permitted uses in Ag districts, and uses "compatible to the activities" described in those sections could also be permitted by Land Use Commission Rule.

So how did the Land Use Commission deal with this question: Land Use Commission Rule 15-15-25 provides as follows:

> "Permissible uses within the "A" agricultural district.

"(a) Permissible uses within agricultural district land classified by the land study bureau's detailed land classification as overall master productivity rating class A or B shall be those uses set forth in section 205-4.5, HRS.

"(b) Permissible uses within the agricultural district land classified by the land study bureau's detailed land classification as overall(master) productivity rating class of C, D, E, and U, shall be those uses permitted in A and B lands as set forth in section 205-4.5, HRS, and also those uses set forth in section 205-2(d), HRS."

Section 205-4.5 separately identifies "Agricultural based commercial operations as described in Section 205-2(d)(15). So under these Land Use Commission Rules commercial activities are permitted.

So by this rule the Land Use Commission essentially adopts a rule which enacts the provisions of Sections 205-2HRS and 205-4.5 HRS as permissible activities without any change or addition of other uses compatible with those set forth in the Statutes.

So far, so good. However, Land Use Commission regulation section 15-15-23 provides as follows:

"Except as otherwise provided in this chapter, the following land and building uses are compatible and permitted within the following land use districts, ***except when applicable county ordinances or regulations are more restrictive.*** (Emphasis added). Except as otherwise provided in this chapter, uses not expressly permitted are prohibited."

Thus, by this rule, the Land Use Commission has reversed the action of the legislature by giving back to the Counties, those powers specifically reserved by the Legislature to State law. referred all such activities back to the Counties. back to the counties, those matters that had been expressly reserved to the state by the legislature.

So to the extent County regulations restrict agriculturally based commercial operations including the provisions added by Act 113, the state law has no effect. And in fact, at least on Oahu, the County has pointedly ignored Act 113. A copy of the Honolulu Department of Planning and Permitting letter to GreenWorld Farms, written after passage of Act 113, is attached as Exhibit B.

III. Impact on Farmers and Farms.

In this testimony I do not want to reiterate all of the reasons why Act 113 was passed in the first place. But just to give a short version, in Honolulu, by way of example, a whole series of provisions of the Land Use Ordinance place completely unreasonable burdens and restrictions on farm based commercial operations. By way of example only, a commercial agricultural operation can only be conducted if a discretionary conditional use permit is obtained. The permit application requirements require a written application of roughly 45 pages prepared by a design professional at a cost of roughly $35,000. A farm product retail shop is limited to 500 square feet of retail area which must be in a separate building. This limitation alone severely hampers the economics of such a store. Furthermore, for no apparent reason, farm products sold cannot come from any other Island except Oahu. Regardless of the size of a parcel, 50% of the floor area of a retail shop must display products grown only on that specific parcel, and cannot include products from the remainder of a farm which may include multiple parcels. Moreover, 50% of the land in the zoning lot on which the shop is located must be in agricultural production, without regard to any of the other agricultural areas of the farm involved.

Have you wondered why with the advent of farmers markets, none of them are located on agricultural land? It's because such markets must be located in buildings on which the sides are 60% open to the elements. A farmer's market on ag land must be on a site of 5 acres or more

even though you can have a farmer's market in town on a site of half an acre or less. Thus farmer's market buildings are thus not capable of being secured at night. Thus cleaning, refrigeration and storage equipment cannot be used because of lack of ability to provide storage. There are limited hours of operation, though no such limitation exists for farmers markets on urban land.

IV. This Resolution

The actual situation at the Counties is that the regulations in each county are different. The County governments do not have Departments of Agriculture, their County Councils do not have Agriculture Committees, and thus the agricultural land use regulation of Counties often does not take into account, reasonable use needs of farmers. The resolution is a smart way to approach this problem. It sets up a study group that will look not only at the regulatory uses of the counties, but also at the reasonable needs of farmers, to make recommendations as to specific recommended changes at the Counties, or in state law. The County Planning Departments are included in the process, as are farming interests. It has a good chance of producing a balanced well thought out set of solutions which will have broad consensual support.

For GreenWorld Farms

By Howard R Green

3/20/2015