



# University of Hawai'i at Mānoa

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## SB 2063 RELATING TO LAND USE

Senate Committee on Water, Land & Hawaiian Affairs  
Senate Committee on Economic Development

Joint Public Hearing - February 3, 1998  
1:00P.M., Room 229 State Capitol

By

John T. Harrison, Environmental Center  
David Callies, Richardson School of Law  
Casey Jarman, Richardson School of Law  
Kem Lowry, Urban and Regional Planning  
Peter Rappa, Sea Grant

SB 2063 would amend Chapters 46, 205, 225M, and 226, Hawaii Revised Statutes, to rename the State Land Use Commission the State Planning Commission, to redefine the commission's powers and duties, to allocate areas of responsibility and jurisdiction for state and county planning agencies, and to establish the State Important Agricultural Lands Commission.

Our statement on this measure is compiled from voluntarily submitted opinions of the listed academic reviewers, and as such, does not constitute an institutional position of the University of Hawaii.

Our reviewers expressed consensus on the need to revisit Hawaii's land use planning system, and many elements of the proposed structures and procedures in SB 2063 appear to have significant merit. In particular, they cited the following areas of the measure as having noteworthy features:

- The designation of areas of critical state concern. This is an interesting concept that was first introduced in Hawaii in the mid-70's. Based on the American Law Institute's model land development code, it has been implemented elsewhere, notably in Florida and in Oregon.
- The concept of a Strategy Document. Although use of such an instrument offers promising growth management benefits, we would like the proposed measure to be more specific about the content.
- The systematic reconsideration of marginal agricultural lands. However, we suggest that the Office of Planning be required to consult also with the

*Revised by A.C.*

Department of Land and Natural Resources to ensure that marginal lands more appropriately belonging in the conservation district are so designated.

- The cooperative role played by the Office of Planning. Land use allocations require a long range perspective that the Office is best suited to contribute in just such a cooperative fashion.
- Implementation of the Constitutional mandate for preservation of agricultural lands.

However, our reviewers noted a number of areas of uncertainty and concern within the proposed measure. In particular, a major flaw of the existing land use law remains unremedied, in that site size still is used as a surrogate for the magnitude of impact (page 2, line 19). Issues of statewide concern may arise regarding proposed land uses which may occupy less than fifteen acres. A recent example within the City and County of Honolulu involved the construction of a facility for incineration of medical wastes.

*Molokai Ranch*

Another area of concern is that the bill fails to address questions of who decides what are appropriate uses on agricultural land and what process shall be invoked in such decisionmaking. The ongoing dispute over permitted activities at Molokai Ranch is a case in point.

Our reviewers expressed confusion with respect to certain procedural ambiguities, both of district boundary designation appeals and of boundary amendment requests. Some felt the language established a quasi-judicial process similar to the present contested case proceedings, while others felt that such proceedings were eliminated by the amendments. In general, issues of standing and right to appeal need to be clearly specified in all areas of land use decisionmaking.

Another concern was that the time frames established for various processes under the amended law were felt to be unrealistic.

Finally, it was suggested that the bill could usefully do more in the area of considering appropriate rural land uses. Alternatively, a fifth district, open space, might be created in order better to deal with open space uses which are neither agricultural nor rural while still preserving views, for instance.

In summary, we note a great deal of merit in the intent and purpose of this measure. However, we would hope that identified areas of concern are remedied before SB 2063 is adopted.