

**HB 1330, HD1**

**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 SENATE COMMITTEES ON AGRICULTURE & ENVIRONMENT &  
COMMERCE, CONSUMER PROTECTION, & HEALTH**

**MARCH 20, 2017**  
**1:15 P.M.**  
**CONFERENCE ROOM 224**

**HOUSE BILL NO. 1330 HD1**  
**RELATING TO COMMON INTEREST AGRICULTURAL COMMUNITIES**

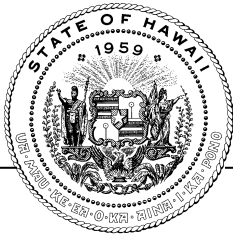
Chairpersons Gabbard and Baker and Members of the Committees:

Thank you for the opportunity to testify on House Bill No.1330 HD1 that establishes common interest agricultural communities (CIAC). The Department of Agriculture opposes this measure as it now allows farm dwellings (Page 8, line 8). This dramatically changes the nature of the CIAC which was originally envisioned as a land ownership and management mechanism to make land available solely for agricultural production.

The Department of Agriculture strongly supports efforts that support and sustain active agricultural production. However, this new form of agricultural land development is quite complex and the consequences of its application on agricultural land over time is not fully understood. We are very concerned that the CIAC as proposed not become another gateway to low-density, rural-residential development on agricultural land as is currently possible through the subdivision and condominium property regime processes. Therefore, we cannot recommend this bill be moved forward.

Thank you for the opportunity to comment on this measure.





**OFFICE OF PLANNING  
STATE OF HAWAII**

**DAVID Y. IGE**  
GOVERNOR

**LEO R. ASUNCION**  
DIRECTOR  
OFFICE OF PLANNING

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846  
Fax: (808) 587-2824  
Web: <http://planning.hawaii.gov/>

Statement of  
**LEO R. ASUNCION**  
Director, Office of Planning  
before the  
**SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT  
AND  
SENATE COMMITTEE ON COMMERCE,  
CONSUMER PROTECTION, AND HEALTH**  
Monday, March 20, 2017  
1:15 PM  
State Capitol, Conference Room 224

in consideration of  
**HB 1330, HD1**  
**RELATING TO COMMON INTEREST AGRICULTURAL COMMUNITIES.**

Chairs Gabbard and Baker, Vice Chairs Riviere and Nishihara, and Members of the Senate Committees on Agriculture and Environment and Commerce, Consumer Protection, and Health.

The Office of Planning (OP) opposes HB 1330, HD1 in its current form. HB 1330, HD1 would create a new chapter authorizing the creation of “common interest agricultural communities,” a form of condominium property regime (CPR) that would be structured for farming operators and limited to agriculture and farming operations on the property. HB 1330, HD1 would allow uses under Hawaii Revised Statutes (HRS) § 205-4.5(a)(4) as a permitted use in a project, including farm dwellings, and by reference, employee housing, farm buildings, or other activities or uses related to farming and animal husbandry.

While OP sees merit in the overall concept of an agricultural CPR, OP believes HB 1330, HD1 lacks the necessary safeguards to protect Hawaii’s limited productive agricultural lands from further encroachment by non-agricultural uses on, and could contribute to the establishment of residential uses on agricultural land. This conflicts with and undermines State agricultural land use policies in HRS Chapters 165, 205, and 226, whose purpose is to ensure that farming and agriculture remain a major of Hawaii’s economy, and that agricultural land remains affordable and accessible for future generations of farmers.

We support the concept of an agriculture-only CPR as a means to facilitate farmer access to productive agricultural land—potentially lowering the cost to farmers for access to farm land—and to lower operational costs to the individual farmer through shared agricultural infrastructure investments and maintenance. Most importantly, an agricultural CPR would avoid the subdivision of productive agricultural land into smaller lots or parcels, thus maintaining

large, contiguous blocks of cultivable land that could be used and reconfigured for agricultural production into the future.

However, these benefits will not be realized if productive agricultural land is allowed to be encumbered with structures. The presence of non-infrastructure-related structures would impair flexibility in crop selection and agricultural practices, as well as hinder the use of the entire project area for agricultural cultivation should an agricultural CPR be terminated or dissolved for any reason.

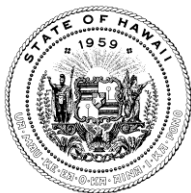
OP does not support residential uses in an agricultural CPR. The provision in HB 1330, HD1 allowing farm and employee housing would enable use of the CPR mechanism to access land in the State Agricultural District for residential use by a non-farming parcel owner for whom agriculture is subordinate, thus, facilitating the gentrification of agricultural lands and rural areas.

OP is concerned with provisions in HB 1330, HD1 that would give non-farming owners residing on parcels, or owning residential structures within a project, control over agricultural operations and the ability to constrain agricultural activities deemed to be a nuisance, not only on their parcel/s, but in the project as a whole. The bill would allow a non-farming parcel owner who enters into a right-to-till agreement with a farmer, to restrict the type of agricultural operations and activities that could be a nuisance to their occupancy of a dwelling on their parcel, which could lead to potential conflicts, nuisance complaints, and litigation against other agricultural operations on adjoining parcels or within the project. Prohibiting residential use within an agricultural CPR also avoids the problem of what happens to the dwelling when a farmer no longer wishes to farm or wishes to retire.

Furthermore, the inclusion of dwellings in a project under HB 1330, HD1 no longer distinguishes this CPR from a CPR that is created under HRS Chapter 514B. Therefore, OP believes this measure as written is duplicative and unnecessary.

For these reasons, OP requests that HB 1330, HD 1 be deferred to allow the Department of Agriculture (DOA) and our office to work with other agricultural stakeholders in the interim, on amendments needed to address our concerns and safeguard against further encroachment of residential and non-agricultural uses on agricultural land in the State Agricultural District.

Thank you for the opportunity to testify on this measure.



DAVID Y. IGE  
GOVERNOR  
SHAN S. TSUTSUI  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
335 MERCHANT STREET, ROOM 310  
P.O. BOX 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR  
JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**PRESENTATION OF THE  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

AND

TO THE SENATE COMMITTEE ON  
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE  
Regular Session of 2017

Monday, March 20, 2017  
1:15 p.m.

**TESTIMONY ON HOUSE BILL NO. 1330, H.D. 1, RELATING TO COMMON  
INTEREST AGRICULTURAL COMMUNITIES.**

TO THE HONORABLE MIKE GABBARD, CHAIR,  
TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND MEMBERS OF THE COMMITTEES:

My name is Neil Fujitani, Supervising Executive Officer for the Professional and Vocational Licensing Real Estate Branch, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to present testimony expressing its concerns regarding House Bill No. 1330, H.D. 1, Relating to Common Interest Agricultural Communities. While the Department would support efforts to further agricultural activities in the State, the Department has strong concerns with those portions of the measure that designate the Department as

the registering entity for common interest agricultural communities ("CIAC"). House Bill No. 1330, H.D. 1 establishes a regulatory structure allowing for the creation of a form of nonresidential condominium property regime on agricultural lands, structured for farming operators, with allowable uses limited to agricultural and farming operations. The regulatory structure created in this measure is similar to the creation and registration process of condominiums.

As an initial matter, condominium oversight is premised on the concept of self-governance and requires full and active participation of volunteer condominium association members, often with the assistance of property managers, attorneys, accountants, and sometimes, parliamentarians. While collaborative governance is the aspirational goal, the realities of condominium governance have proven to be challenging, and have required frequent revisions to applicable law. These problems may be exacerbated in condominiums with fewer owners. The Department is unfamiliar with the issues that this bill seeks to address, but recommends that the pros and cons of the condominium model should be carefully considered before adoption.

Also, House Bill No. 1330, H.D. 1 does not address a number of funding, personnel, and administrative issues that may be necessary to implement this proposed new regulatory measure. It is currently unknown how many agricultural communities will register under this structure and it is therefore unknown how many staff members are necessary. Existing condominium funds, including the Condominium Education Trust Fund ("CETF") is dedicated to regulation under Haw. Rev. Stat. Chapters 514A and 514B. Consequently, if this measure moves forward, the Department requests a

sufficient appropriation and personnel count to provide the comparable level of service the condominium staff provides to the existing condominium community.

With respect to other administrative issues related to implementation of this measure, it is not clear how quickly CIAC registration applications will begin to be received by prospective developers, but a number of administrative rules must be in place under this bill for the registration program to operate. While the original version of this measure included an effective date of “upon its approval”, the Department would respectfully request that, should this measure move forward with the Department continuing as the designated registering entity, the Committees consider a delayed effective date to allow for the promulgation of administrative rules, or, in the alternative, to provide for an explicit exemption from HRS Chapter 91 requirements for all administrative rules the Department is required to promulgate if the Legislature finds this appropriate.

In closing, the Department wants the Committees to know that the Department definitely lacks the expertise and knowledge on creating CIACs. As relayed to the Department, the key features of the bill are that CIACs are created in which: 1) The CIAC is on lands classified as agricultural, and the uses that are permitted are limited to the cultivation of crops, raising of livestock, and storage, processing, and maintenance facilities solely for agricultural use; and 2) The CIAC shall comply with all county zoning and building ordinances. The Department is unfamiliar with matters pertaining to agricultural lands and zoning ordinances.

Testimony on House Bill No. 1330, H.D. 1  
Monday, March 20, 2017  
Page 3

Thank you for the opportunity to provide testimony expressing strong concerns with respect to the implementation provisions of House Bill No. 1330, H.D. 1.





P.O. Box 253, Kunia, Hawai'i 96759  
Phone: (808) 848-2074; Fax: (808) 848-1921  
e-mail [info@hfbf.org](mailto:info@hfbf.org); [www.hfbf.org](http://www.hfbf.org)

March 20, 2017

HEARING BEFORE THE  
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT  
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH

**TESTIMONY ON HB 1330, HD1**  
RELATING TO COMMON INTEREST AGRICULTURAL COMMUNITIES

Room 224  
1:15 PM

Aloha Chairs Gabbard and Baker, Vice Chairs Riviere and Nishihara, and Members of the Committees:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community.

Hawaii Farm Bureau **supports HB 1330, HD1, with comments**, establishing common interest agricultural communities.

Farms in Hawaii are small when compared to those on the continent. Even our larger farmers such as on Oahu are considered small on the national scale so economies of scale that improve the viability of operations is difficult. This measure seeks to address this challenge. It goes beyond the current ag park system to create a mechanism of shared resources.

The opportunities for the sharing of resources deserves consideration. This will allow economies of scale especially for expensive infrastructure such as processing, with smaller farmers coming together for mutual benefit. We are interested in working with the parties to develop a workable program.

We believe the intent of this measure should be entrepreneurial farmers vs. a sharecropping system. Farms in rural areas face vandalism and theft. Remote locations make addressing the problem difficult even with cameras. The farmer/owner who derives the majority of income from the land should have an option to reside on the property. Language that requires that the majority of income be derived from activity on the land is reasonable.

We also recognize that there are other models that have worked to keep large tracts of lands in agriculture. Kaanapali Coffees have landowners who do not actively take part in the operation of their coffee fields and have an agreement with the Kaanapali Coffee to do the work. By selling the lands, KC was able to keep the lands in agriculture. This emphasizes the fact that solutions are not simple. Large landowners will find themselves in a land rich/cash poor situation. Solutions such as KC allowed the majority of lands to remain in active viable production.

One cannot force another to do agriculture. It can only be nurtured. For this reason, HFB respectfully requests your support in passage of this measure to encourage further discussion.



Testimony of  
**Alec Sou**  
on  
**H.B. No. 1330, H.D.1**  
**Relating to Common Interest Agricultural Communities**  
Committee on Agriculture and Environment  
Committee on Consumer Protection and Health  
Monday, March 20, 2017, 1:15 p.m.  
Room 224

Thank you for the opportunity to testify in strong support of H.B. No. 1330, H.D.1, which proposes to establish the regulatory structure for “common interest agricultural communities,” and to request some amendments to the bill.

H.B. No. 1330, H.D.1, incorporates many of the regulatory provisions of the **Uniform Common Interest Ownership Act**, which is the template for the Hawaii condominium law, but includes provisions to distinguish agricultural communities from residential condominium developments.

Key features of the bill are that common interest agricultural communities are created in which:

- (1) The common interest agricultural community is on lands classified as agricultural, and the uses that are permitted are limited to the cultivation of crops, game and fish propagation, raising of livestock, a farm dwelling used in connection with a farm, and buildings, such as storage, processing, and maintenance facilities solely for agricultural use; and
- (2) The community shall comply with all county zoning and building ordinances.

Benefits of creating a common interest agricultural community

- Common interest agricultural communities provide a mechanism for farmers to acquire farm parcels without bearing the costs associated with subdividing the parcel out of a large tract of land. There is a shortage of land in the 10 – 20 acre size range that many farmers are looking for. Under this bill, an agricultural developer will subdivide a large piece of land, create farm parcels, and make them available to farmers, without them having to bear the total costs for subdivision.
- The bill limits the uses in the agricultural communities to the cultivation of crops, game and fish propagation, a single-family dwelling used in connection with the farm, and uses appurtenant to the agricultural uses, such as mills, storage and processing facilities, maintenance facilities, and other accessory uses.



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91-1440 Farrington Hwy, Kapolei, HI 96707

Phone: (808) 677-9516 Fax: (808) 677-9412

- A properly structured association permit independence and interdependence by providing for sharing the costs of systems such as irrigation through a water agreement, pooled resources for the repair and maintenance of infrastructure, economies of scale, and a legally recognized structure, which can benefit an individual grower;
- Common management and mandatory participation of farm parcel owners allow the spreading of the association responsibilities among many people, reducing the burden of the individual; and

The establishment of a farm parcel association provides a mechanism for the preservation and enforcement of the project's authorized land uses and enforcement of prohibitions.

Please support H.B. No. 1330, H.D.1.

Thank you for the opportunity to testify on H.B. 1330, H.D.1.

Sincerely,

Alec Sou,  
General Manager

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 15, 2017 8:34 PM  
**To:** AEN Testimony  
**Cc:** begoniabarry@gmail.com  
**Subject:** \*Submitted testimony for HB1330 on Mar 20, 2017 13:15PM\*

**HB1330**

Submitted on: 3/15/2017

Testimony for AEN/CPH on Mar 20, 2017 13:15PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Barbara Barry	Individual	Support	No

Comments:

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