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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 ECONOMIC DEVELOPMENT & BUSINESS
Wednesday, February 15, 2017
9:00 AM
State Capitol, Conference Room 309

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

Chair Nakashima, Vice Chair Keohokalole, and Members of the House Committee on Economic Development and Business.

The Office of Planning (OP) offers the following comments on HB 1330. HB 1330 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. The measure includes provisions for a coordinating entrepreneur, who would provide oversight of farming operations and management of shared agricultural infrastructure and facilities.

OP believes this concept would address some of the land use enforcement problems resulting from the use of CPRs to create low-density residential projects in the State Agricultural District. A common interest agricultural community (CIAC) would be distinguishable from other CPRs because of its focus on supporting bona fide farming operations, and prohibiting residential uses on the project property.

More importantly, CIACs could lower farmers’ costs of acquiring farm land as well as lower their operational costs through shared agricultural infrastructure investments and maintenance. CIACs would avoid the subdivision and fragmentation of contiguous blocks of agricultural land; although the portion of the CIAC controlled by the individual farmer would be considered a parcel for real property tax purposes, the project property would remain an intact parcel.

OP has the following concerns about aspects of the proposal, which could create issues in managing CIACs in the State Agricultural District:

- The new chapter references HRS § 205-4.5 in the State Land Use Law to define the uses to be permitted on project parcels. As the permissible uses for the State

Agricultural District in HRS 205 are frequently amended and are subject to interpretation, it would be more effective to define permitted agricultural uses in the new chapter. Similarly, the CIAC board has authority to allow uses permitted in HRS § 205-4.5, many of which are non-agricultural uses that could conflict with the CIAC purpose and function.

- The application for registration of a project should include notice of the restriction to agricultural uses and the prohibition on residential uses, to ensure that potential buyers are aware that the land may not be used for residential purposes, but is intended to be a working landscape of active farms.
- It may be of value to consider language that would safeguard against the potential use of a CIAC as a means to establish an associated low-density residential project on agricultural lands.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



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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 ECONOMIC DEVELOPMENT & BUSINESS

**FEBRUARY 15, 2017
9:00 A.M.
CONFERENCE ROOM 309**

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

Chairperson Nakashima and Members of the Committee:

Thank you for the opportunity to testify on House Bill No.1330 that establishes common interest agricultural communities (CIAC). The Department of Agriculture offers comments and a recommendation.

This measure proposes a form of agricultural land ownership and management different from the existing subdivision and condominium property regime options. Common interest agricultural communities (CIAC) may be fee simple with separate ownership for each farm parcel or leasehold, do not allow dwellings of any type, and have a “coordinating entrepreneur”. The individual farm parcel owners appear to be responsible for funding common infrastructure. We do not know if the parcels created would qualify as collateral by commercial lending institutions. Individual farm parcel owners may enter into agricultural production contracts with the “coordinating entrepreneur” who has the authority to select the crop to be grown, and when and how it is to be grown.



We believe the bill offers an opportunity to provide agricultural lands for agricultural production for farmers who can work within the ownership and management structure. At the same time, we believe caution is merited should this bill move forward. This bill creates a new chapter and the outcome of its application to agricultural lands may affect chapters 205 (land use law) and 46 (county zoning). We recommend that the bill include provisions to prevent a development like Kunia Loa Ridge Farmlands from occurring in the event a CIAC fails.

Thank you for the opportunity to comment on this measure.



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February 15, 2017

HEARING BEFORE THE
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT AND BUSINESS

TESTIMONY ON HB 1330
RELATING TO RELATING TO COMMON AGRICULTURAL COMMUNITIES

Room 309
9:00 AM

Aloha Chair Nakashima, Vice Chair Keohokalole, and Members of the Committee:

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 interests of our diverse agricultural community.

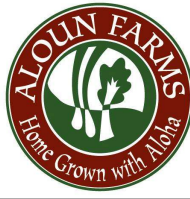
Hawaii Farm Bureau supports HB 1330, establishing common interest agricultural communities.

Farms in Hawaii are small when compared to those on the mainland US. 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.

HFB believes that further discussion to better understand the process is needed. We have raised questions about housing. Affordable housing is necessary to attract workers on farms. This has been a major shortfall as we try to address labor needs for expanding agriculture. The opportunities for sharing other resources deserves consideration. We are interested in working with the parties to develop a workable program.

For these reasons, HFB respectfully requests your support in passage of this measure to encourage further discussion.

Thank you for the opportunity to testify on this measure.



Testimony of
Alec Sou
on
H.B. No. 1330
Relating to Common Interest Agricultural Communities
Committee on Economic Development & Business
Wednesday, February 15, 2017, 9:00 a.m.
Room 309

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

H.B. No. 1330 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:

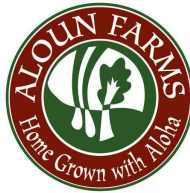
- (1) The common interest agricultural community is on lands classified as agricultural, and the uses that are permitted are limited to the cultivation of crops, raising of livestock, and buildings, such as storage, processing, and maintenance facilities solely for agricultural use;
- (2) Any dwelling that may be used and occupied for human habitation is prohibited; and
- (3) The community shall comply with all county zoning and building ordinances.

Benefits of creating a common interest agricultural community

- A properly structured association permit independence and interdependence by providing for shared costs, pooled resources, 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.

Amendments

After discussions with people with experience in condominium law and, in particular, with the Hawaii Farm Bureau, H.B. No. 1330 should be amended as follows:



1. Amend the definition of “common infrastructure” to read:

"Common infrastructure" means the structures, roads, irrigation systems, power supply, agricultural services, and installations, **or other facilities** within the common interest agricultural community **described in the declaration** that are owned or leased by the association and that are other than a farm parcel.

2. Add the definition of “nonmaterial additions and alterations to read:

“Nonmaterial additions and alterations” means an addition to or alteration of the common infrastructure or a farm parcel that does not jeopardize the soundness of safety of the farm parcel, reduce the value thereof, impair any easement, detract from the appearance of the project, or directly affect any nonconsenting farm parcel owner.

3. Amend § 4, subsection (b) to read:

(b) The permitted uses of each parcel shall be restricted to the uses described in section 205-4.5(a)(1), (2), (3), **(4)**, and (10); provided that a use permitted under section 205-4.5 may be approved by the board. ~~[except that any dwelling that may be used and occupied for human habitation shall be prohibited.]~~

Amend § -12 by amending subsection (a)(6) to read:

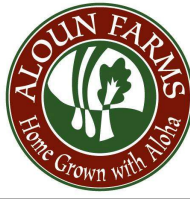
(6) A statement that the project is in compliance with county zoning and building ordinances and the permitted uses of each parcel shall be restricted to the uses described in section 205-4.5(a)(1), (2), ~~[and] (3),~~ **(4) and (10)**; provided that a use permitted under section 205-4.5 may be approved by the board. ~~[, except that any dwelling that may be used and occupied for human habitation is prohibited];~~

The Hawaii Farm Bureau Federation requested the allowing of “farm dwelling” as defined in section 205-4.5(a)(4) as “a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling.”

4. Amend § -12 relating to the contents of declaration, to include a “water agreement” to read:

(10) A water agreement as required in section -6.

5. Delete § -35, relating to voting and proxies. The requirements for meetings, quorum, voting, and related activities are specified in the bylaws. Renumber following sections.



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6. Amend the renumbered § -35 Board of directors; officers, powers, and meetings, by amending subsection (a) to read:

“(a) The board of directors of the association shall act on behalf of the association. Upon the termination of the developer's control of the board as provided in the declaration, parcel owners shall elect a board of directors, ~~[of at least members,]~~ who shall be farm parcel owners. The officers of the board shall be elected by the members of the board from among its members.”

The number of members of the board of directors and titles are specified in the bylaws of the association.

Please support H.B. No. 1330, with the requested amendments.

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

Sincerely,

Alec Sou,
General Manager