

DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER  
Acting Chairperson  
Board of Agriculture

State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
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TESTIMONY OF THE DEPARTMENT OF AGRICULTURE  
BEFORE THE SENATE COMMITTEES ON WAYS & MEANS AND COMMERCE,  
CONSUMER PROTECTION, & HEALTH

FEBRUARY 25, 2019  
11:00 A.M.  
CONFERENCE ROOM 211

SENATE BILL NO. 975 SD 1  
RELATING TO COUNTY LAND USE REQUIREMENTS

Chairpersons Dela Cruz and Baker and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill 975 SD1 that:

1. Appears to require public notice of sale and condominiumization of agricultural or preservation property to a planned community association within 90 days of subdivision and sale;
2. Prohibits any residential development and residential use of structures related to agricultural activity on agricultural and preservation land for any length of time;
3. Allows for county enforcement of state and county requirements on subdivided leasehold agricultural land based on reports of suspected violations by property owners in the community adjacent to agricultural lands, and requires the county to annually submit to the Department of Agriculture a report summarizing violations, the county's investigation and any fines levied;
4. Permits the county to submit comments on an application for condominiumization on agricultural land regarding the availability of supportive infrastructure, impact on environmental resources, and other county requirements; and
5. Limits the effect of the bill to counties with a population of at least 750,000.



The Department support efforts to align the laws governing condominiums on agricultural land in alignment with State laws and county ordinances governing land use. We offer comments.

We note that the amendment to Section 205-4.5(f) (leasehold agricultural subdivision) has the effect of obscuring the good intentions of this existing law meant to increase agricultural use of agricultural land without the landowner incurring some of the subdivision standards otherwise required.

Under the new subsection (g) (page 19, lines 4-17), a property owner that lives adjacent to a leasehold agricultural subdivision will be able to report to the county any violations in the use of structures related to agricultural activities in that subdivision. This amendment creates a complaint and enforcement authority limited to a very narrowly defined situation.

The Department respectfully suggests that a more direct approach to addressing the concerns expressed in this bill may be possible by requesting the City and County of Honolulu to consider developing and enacting ordinances to not allow agricultural activities and residential or farm dwellings on preservation zoned land in the State Agricultural District, and to require notification from landowners seeking to create CPRs on agricultural lands prior to applying for CPR recordation or registration.

Thank you for the opportunity to comment on this measure.



**DAVID Y. IGE**  
Governor

**JOSH GREEN**  
Lieutenant Governor

**MIKE MCCARTNEY**  
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

**RASMI AGRAHARI**  
Planner

**FRED A. TALON**  
Drafting Technician

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Statement of  
**Daniel E. Orodener**  
**Executive Officer**  
Land Use Commission  
before the  
**SENATE COMMITTEE ON WAYS AND MEANS**  
**AND**  
**SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND**  
**HEALTH**  
Monday, February 25, 2019  
11:00 AM  
State Capitol, Conference Room 211

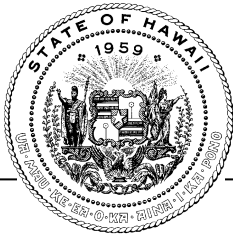
in consideration of  
**SB 975 SD1**  
**RELATING TO COUNTY LAND USE REQUIREMENTS**

Chairs Dela Cruz and Baker, Vice Chairs Keith-Agaran and Chang, and Members of the Senate Committees on Ways and Means; and Commerce, Consumer Protection, and Health.

The Land Use Commission (“LUC”) is confining its comments to those sections of SB 975 SD1 that would amend Hawai‘i Revised Statutes (HRS) §205-4.5(g) that would require the counties to provide annual reports to the State Department of Agriculture (“DOA”) summarizing county investigation and enforcement actions taken governing lands within the State Agricultural District that are also under condominium property regimes (“CPR”).

The LUC supports measures that clarify and effectively protect Hawai‘i’s agricultural lands from encroachment of non-agricultural uses, in particular, residential development with little connection to bona-fide farming activity. The LUC would recommend that, in addition to the county providing a report to the DOA, any report also be provided to the LUC.

Thank you for the opportunity to testify on this matter.



# OFFICE OF PLANNING STATE OF HAWAII

DAVID Y. IGE  
GOVERNOR

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Statement of  
**RODNEY FUNAKOSHI**  
Planning Program Administrator, Office of Planning  
before the  
**SENATE COMMITTEES ON WAYS AND MEANS  
AND  
COMMERCE, CONSUMER PROTECTION, AND HEALTH**  
Monday, February 25, 2019  
11:00 AM  
State Capitol, Conference Room 211

in consideration of  
**SB 975, SD1**  
**RELATING TO COUNTY LAND USE REQUIREMENTS.**

Chairs Dela Cruz and Baker, Vice Chairs Keith-Agaran and Chang, and Members of the Senate Committees on Ways and Means and Commerce, Consumer Protection, and Health.

The Office of Planning (OP) offers **comments** on SB 975, SD1 which would amend various statutes to require public notice and improved regulation of residential uses on condominium property regimes (CPR) on agricultural lands in a county with a population of seven hundred fifty thousand or more. OP strongly supports measures for more effective protection of Hawaii's agricultural lands from encroachment by non-agricultural uses, in particular, residential development with little connection to bona fide farming activity in the State Agricultural District.

OP has concerns for certain elements of this bill, as follows.

1. OP appreciates the revised amendments to Hawaii Revised Statutes (HRS) § 205-4.5(f) in SD 1 that eliminated a potential loophole for residential use of accessory structures. However, we respectfully request that proposed paragraph (3) on page 18 of the bill be dropped, since it would muddle the purpose of this subsection and is not needed. Paragraph (2) already prohibits residential uses on any land in the State Agricultural District subdivided for leasehold agricultural use under this subsection—regardless of county zoning.
2. With respect to Section 4 of the bill, related to supplemental county ordinances governing CPRs, OP prefers the amendments in SB 381, SD1. We believe that measure provides clearer direction for the counties.

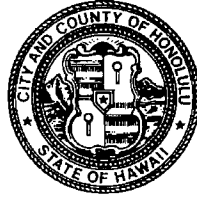
3. SB 975, SD1 would limit application of the amendments to a county with a population of 750,000 or more. HRS Chapters 421J, 514B, and 205 are general laws of Statewide applicability. To ensure consistency and predictability in the application and enforcement of State policy, OP believes any provisions directed at regulating or improving consistency of development with State and county land use laws and ordinances should have applicability Statewide, and not be restricted to a particular geographic area. This is important for this regulatory issue since residential uses under CPRs in the Agricultural District are of concern Statewide.
4. We note that it is in the recordation of a CPR with the State Bureau of Conveyances—prior to registration—that ownership interests in units and declarations for the project are created. It is at this point that conformance with State and county land use laws and applicable development approval processes should be evaluated.

Thank you for this opportunity to provide testimony.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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EUGENE H. TAKAHASHI  
DEPUTY DIRECTOR

February 25, 2019

The Honorable Donovan M. Dela Cruz, Chair  
and Members of the Committee on Ways and Means  
The Honorable Rosalyn H. Baker, Chair  
and Members of the Committee on Commerce,  
Consumer Protection, and Health  
Hawaii State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chairs Dela Cruz, and Baker, and Committee Members:

**Subject: Senate Bill No. 975, SD 1  
Relating to County Land Use Requirements**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill 975, SD 1, which addresses condominium property regime (CPR) on agricultural lands.

This Bill lacks clarity and may have unintended consequences.

The measure requires a "public notification" upon the "sale of the parcel." It is not clear who would enforce this new requirement, and there are no penalties in the event of a violation. Is the intent to give public notice when the first unit is sold, or the last? What would constitute public notice? A legal notice in a newspaper of general circulation? Notification of adjacent property owners? Notification to the applicable neighborhood board? What would be the purpose of a public notice? Is it to disclose the names of the new owners? If it is to provide input on the establishment of the CPR itself, perhaps it should be required prior to the approval of the CPR. It is not clear how the public notice will better protect state agricultural lands from abuse.

Proposed subsection 205-4.5(f)(3) would prohibit residential development on lands zoned preservation by the City within the state agricultural district. The City does not allow any type of housing as a principal use on preservation lands. However, we do allow one caretaker's dwelling as an accessory use for cemeteries. This is a reasonable use, and should not be prohibited.

Furthermore, it is unclear why the measure is in most cases intended to apply only to a county with a population of 750,000 or more, since agricultural condominiums and other instances of preservation zoning in the state agricultural district are likely to also occur in other counties.

The Honorable Donovan M. Dela Cruz, Chair  
and Members of the Committee on Ways and Means  
The Honorable Rosalyn H. Baker, Chair  
and Members of the Committee on Commerce,  
Consumer Protection, and Health  
Hawaii State Senate  
Senate Bill No. 975, SD 1  
February 25, 2019  
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The department is not opposed to CPRs in the state agricultural district, as long as they comply with our subdivision and zoning requirements. An option to the Bill is to allow the counties to have a decision-making role in requests for agricultural CPRs.

Or, as an alternative, please consider the following changes to Sec 514B-32(13):

"A declaration, subject to the penalties set forth in section 514B-69(b), that the condominium property regime is in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5 and Chapter 205, including section 205-4.6 where applicable. In the case of a project in the agricultural district classified pursuant to Chapter 205, the declaration, subject to the penalties set forth in section 514B-69(b), shall include [an] two additional statements: 1) that there are no private restrictions limiting or prohibiting agricultural uses or activities in compliance with section 205-4.6, and 2) the condominium property regime complies with applicable county subdivision ordinance and rules. . . ."

In short, while we respect the intent of this Bill, we ask that Senate Bill No. 975, SD 1 be held for further discussion. We thank you for this opportunity to testify.

Very truly yours,



Kathy K. Sokugawa  
Acting Director

**SB-975-SD-1**

Submitted on: 2/20/2019 5:15:46 PM

Testimony for WAM on 2/25/2019 11:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Elle Cochran	Individual	Comments	No

Comments:

Aloha To whom it may concern:

My name is Elle Cochran former West Maui Councilmember from 2010-2018.

We have been plagued with contentious CPR projects in our community like the Ag lands of Launiupoko and Makila areas in West Maui. Our community wakes up with no warning, no public hearings, outreach, nothing! Then homes, swimming pools, etc pop up on fallow cane fields. I like the intent but it only addresses Counties of a population of 750,000 or more. So, really this is for City and county of Honolulu only. Maui county has a population of @ 166k. Please drop the population count to allow this to apply to Maui county or any other county that feels it would benefit them.

Mahalo for your time and consideration,

Elle Cochran

808-281-7709



**LATE**



February 24, 2019

Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Senate Committee on Ways and Means

Senator Rosalyn Baker, Chair  
Senator Stanley Chang, Vice Chair  
Senate Committee on Ways and Means

**Comments in Strong Opposition to SB 975, SD1, Relating to County Land Use Requirements. (Requires public notice of sale of agricultural property in a planned community association within 90 days of subdivision and sale. Prohibits any residential use for any period of structures on agricultural and preservation land. Allows for county enforcement of state and county requirements on subdivided agricultural land based on community reports of suspected violations. Permits consideration of infrastructure and environmental impacts on applications for condominium projects on agricultural land. Applies to counties with a population of at least 750,000.)**

**WAM-CPH Hrg: Monday, February 25, 2019, 11:00 a.m., in Conf. Rm. 224**

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers, resort operators and major utility companies. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF appreciates the opportunity to express its respectful, but **STRONG OPPOSITION to SB 975, and instead, respectfully recommends that the Legislature consider adopting the following bills**, which provide more reasonable approaches relating to regulating condominium property regimes (CPR) on agricultural and preservation lands:

- **HB 861, HD1**, which requires the Office of Planning, in consultation with the Land Use Commission, Real Estate Commission, and the Department of Planning and Permitting, to study and report on deficiencies in the land subdivision and condominium property regime laws that may result in land being developed contrary to the legislative intent of those laws, or
- **SB 381, SD1**, which requires counties to adopt supplemental rules on condominium property regimes, including those that involve agricultural lands.

While SB 975, SD1 may be well-intended, in its attempt to curtail some “bad actors,” it would punish and restrict bonafide farmers, ranchers and agricultural operators and land owners; is contrary to the Important Agricultural lands (IAL) law allowing employee farm dwellings; and would violate the private property rights of farmers and ranchers.

In 2005 and 2007, LURF and the Hawaii Farm Bureau Federation were the main proponents and drafters of the key provisions in the IAL laws. LURF and its members continue to support bonafide farmers, ranchers and agricultural operations and the IAL law, however, we must **oppose the current version of SB 975, SD1.**

**LURF’s Position.** LURF’s **opposition** to SB 975, SD1 is based on, among other things:

- The original version of SB 975 was **not supported** by the State Department of Agriculture, the Office of Planning, and the Department of Planning and Permitting, of the City and County of Honolulu (DPP), each of which has expressed their own major concerns relating to, among other things, the questionable intent and purpose of imposing restrictions only to the island of Oahu; lack of clarity; enforcement problems; unintended negative consequences which will create obstacles for bona-fide farmers and ranchers; the availability of other, more direct alternatives; and the fact that this bill is contrary to existing State law which facilitate bona-fide farming and ranching; and is unnecessary.
- This measure is **likely to be vetoed**, as it is very similar to SB 2524, SD1, HD1, CD1, which was vetoed by Governor Ige last year;
- **Proponents have failed to consult or seek input from those most affected Stakeholders - farmers, ranchers, agricultural land owners and the counties.** This bill, like SB 2425 last year, has been proposed without consulting with, or obtaining meaningful input from the parties most affected by its prohibitions, farmers, ranchers, the Hawaii Farm Bureau, large agricultural land owners, and the affected counties.
- This bill is **unnecessary.** According to DPP, the number of CPR applications for agricultural lands has dramatically reduced, and the Stakeholders have already begun discussions regarding amending the administrative rules and procedures relating to CPRs on agricultural lands on Oahu;
- **There is no specific factual basis or justification for SB 975, SD1.** This measure imposes drastic negative consequences on bonafide farmers, ranchers and agricultural operators, **without any specific factual basis or justification;**
- **The prohibition on single-family dwellings is contrary to the IAL law, Section 205-45.5, HRS, which specifically allows for farm dwellings and employee housing; and**
- **The prohibition on subdividing and creating CPRs on agricultural lands violates the constitutional property rights of bonafide farmers, ranchers and agricultural land owners.**

Finally, as LURF did last year, we again repeat our offer to work with those who are concerned with the issues that have given rise to this measure.

Based on the above, LURF must **strongly oppose SB 975, SD1**, and respectfully requests that this bill **be held in Committees**.

Instead, LURF also **respectfully recommends that the Legislature consider adopting the following bills**, which provide more reasonable approaches relating to regulating condominium property regimes (CPR) on agricultural and preservation lands:

- **HB 861, HD1**, which requires the Office of Planning, in consultation with the Land Use Commission, Real Estate Commission, and the Department of Planning and Permitting, to study and report on deficiencies in the land subdivision and condominium property regime laws that may result in land being developed contrary to the legislative intent of those laws, or
- **SB 381, SD1**, which requires counties to adopt supplemental rules on condominium property regimes, including those that involve agricultural lands.

Thank you for the opportunity to provide comments in **opposition** to this measure.