

Testimony of
Alec Sou or Aloun Farms
on
H.B. No. 1323
Relating to Common Interest Agricultural Communities
Committee on Agriculture
Wednesday, February 10, 2021, 10:00 a.m.
Room 325

Thank you for the opportunity to testify in strong support of H.B. No. 1323, which proposes to establish the regulatory structure for “common interest agricultural communities.”

H.B. No. 1323, uses the **Uniform Common Interest Ownership Act**, which is the template for the Hawaii condominium law, as a guide in its development but includes many provisions to distinguish the 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 on lands classified as agricultural are limited to the uses that include the cultivation of crops, game and fish propagation, raising of livestock, and appurtenant buildings, such as storage, processing, and maintenance facilities solely for agricultural use, agricultural-based commercial operations owned and operated by the producer;
- (2) Prohibits farm dwellings, single-family dwellings including clusters of farm dwellings; and
- (3) Enhances county regulatory authority by requiring county review and verification that the project complies with permitted uses, zoning and subdivision ordinances, emergency access and fire safety requirements, and authorizes county agency access for inspections.
- (4) Condominium property regimes created under Chapter 514B are prohibited on agricultural lands.

Benefits of creating a common interest agricultural community

- A properly structured association permits independence and interdependence by allowing 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.
- The requirements established in the bill attempt to ensure that agricultural condominium-like developments are agricultural.

The objective of H.B. No. 1323, is to promote the development of agriculture while preventing the abuse of short-comings in the condominium law.

Thank you for the opportunity to testify on H.B. 1323..

HB-1323

Submitted on: 2/8/2021 4:06:23 PM

Testimony for AGR on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Emery	Associa	Comments	No

Comments:

Agriculture condos under HRS 514B allow gentlemen farmers to provide agriculture and should not be disallowed.

HB-1323

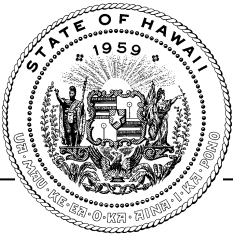
Submitted on: 2/8/2021 10:49:01 PM

Testimony for AGR on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dana Jenkins	Individual	Support	No

Comments:

Please support this bill to clarify and improve animal welfare enforcement.



OFFICE OF PLANNING STATE OF HAWAII

LATE

DAVID Y. IGE
GOVERNOR

MARY ALICE EVANS
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
MARY ALICE EVANS
Director, Office of Planning
before the
HOUSE COMMITTEE ON AGRICULTURE
Wednesday, February 10, 2021
10:00 AM
Via Videoconference

in consideration of
HB 1323
RELATING TO COMMON INTEREST AGRICULTURAL COMMUNITIES.

Chair Hashem, Vice Chair Perruso, and Members of the House Committee on Agriculture.

The Office of Planning (OP) offers these **comments** supporting the intent of HB 1323. HB 1323 would establish a new vehicle, the common interest agricultural community (CIAC), to enable a group of farmers or property owners holding fee or leasehold interest in lands in the State Agricultural Land Use District to share in the economies of scale and the costs of installing, operating, and maintaining common agricultural infrastructure. The measure would limit uses of land under a CIAC to agricultural and agricultural value-added activities; prohibit dwellings; require county verification that the CIAC conforms to county land use and development codes and emergency access and fire safety requirements; authorize county enforcement and penalties for non-compliance; provide for the formation of farm parcel owners' association to manage the CIAC; and prohibit the creation of condominium property regimes on lands in the State Agricultural District. The bill would also task the Department of Agriculture (DOA) with administering registration of CIACs and public disclosure for sale of land under CIACs.

HB 1323 would address many of the concerns raised by Act 278, Session Laws of Hawai'i (SLH) 2019 study participants, who were convened by OP to study issues related to the use of condominium property regimes (CPR) on agricultural lands on O'ahu. With a few exceptions discussed later, HB 1323 aligns well with key agricultural land policies in Hawai'i Revised Statutes (HRS) § 205-43 and provides the means to resolve the following issues raised by Act 278 study participants:

- Bona fide agricultural use of land in the Agricultural District. HB 1323 restricts uses on CIAC lands to agricultural or aquacultural production and ancillary structures that support these primary farming activities. It also prohibits dwellings on the farm lands. It couldn't be clearer as to how the land is to be used.

- County review and verification prior to recordation. A key problem with CPRs on agricultural land is that there is no county review prior to recordation of a CPR with the Bureau of Conveyances, thus ownership interests and rights are created prior to any county or public review or disclosure processes. This one feature of the bill ensures that the counties are able to review and verify conformance with county zoning codes prior to the recordation and creation of the CIAC and individual ownership interest in units or farm parcels being proposed in a project.
- Appropriate development standards for agricultural parcels. Rather than subject working lands to urban-like subdivision standards, this bill appears to focus on those aspects of common infrastructure that are essential to farming operations and basic emergency health and safety. In this way, typical subdivision requirements could be waived under county review, thereby keeping down the cost of agricultural land and infrastructure serving these lands.
- County enforcement of land use and development codes. HB 1323 provides clear authority and tools for county enforcement of CIAC conformance with underlying State and county land use and development codes. This is critical to effective enforcement to avoid encroachment by higher-valued, non-agricultural uses.

OP raises the following concerns with HB 1323 as written:

- Subdivision of agricultural land. HB 1323 retains language in several sections related to conformance with county subdivision codes, which as noted above, is a problem for farmland. More importantly, the bill continues the practice of formal subdivision of agricultural land. Subdivision of land adds cost to making land available for farming, promotes fragmentation of contiguous productive lands, and reduces flexibility in terms of crop selection and farming operations. In comparison, a CPR does not result in separate parcels, but retains the land as one parcel while still enabling financeable units and ensuring short- and long-term flexibility for farming operations.
- DOA administration of CIAC registration and sale of land. OP defers to DOA on the potential impact of the bill on the Department. OP wishes to point out that while DOA is suited to providing technical assistance to CIAC farmers, the registration and public disclosure functions the bill would assign to DOA are much like those currently performed for CPRs under HRS Chapter 514B.
- Inclusion of agricultural-based commercial operations as a permitted use. OP notes that depending on the scale of activity that might seek an application under this provision, this could result in retail activities and traffic that could negatively impact farming operations and public health and safety. This particular activity type could raise permitting and enforcement difficulties.

- Retention of references to ‘communities’, ‘residents’, and ‘occupancy’. Under HB 1323, CIACs are prohibited from having residential uses. The measure would be clearer if these references were removed or replaced with other terms.

Thank you for the opportunity to testify on this measure.

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HB-1323

Submitted on: 2/9/2021 1:27:55 PM

Testimony for AGR on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
R Laree McGuire	Individual	Support	No

Comments:

I strongly support, as we don't need any more development in our Ag districts; otherwise, we'll soon have nowhere else to farm.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE

WEDNESDAY, FEBRUARY 10, 2021
10:00 A.M.
VIA VIDEO CONFERENCE

HOUSE BILL NO. 1323
RELATING TO COMMON INTEREST AGRICULTURAL COMMUNITIES

Chairperson Hashem and Members of the Committee:

Thank you for the opportunity to testify on House Bill 1323. This measure establishes a complex regulatory structure for “common interest agricultural communities” (CIACs) that contains characteristics similar to Chapter 514B (Condominium Property Act). The measure identifies the Department of Agriculture as the registering entity for CIACs, in charge of public disclosures, and has other functions, all of which requires rule-making by the Department. The Department of Agriculture has concerns and offers comments.

This measure does not clearly precisely delineate the functions, expertise, and knowledge that the Department of Agriculture needs to possess to carry out its responsibilities. We do not have an existing program or function to which these responsibilities may be appended.

This measure has made an effort to address some of the concerns raised in testimony during the consideration of the similar measure, HB1330, that was heard during the 2017 session, and appears to have adopted language from other measures. HB1323 does not allow any dwellings and prohibits condominiumization, however the measure does not appear to prohibit subdivision of the CIAC should the board of directors an/or the farm parcel owners’ association decide to terminate the CIAC.

Success of a CIAC is predicated upon the ability of unit owners who presumably are farmers to work together, in common interest. An antecedent to the CIAC concept



is the 455-acre, 35-unit Ohana Farm Parcels CPR north of Wahiawa that has sold 4 units since 2017. We note that the entire parcel is now being offered for sale.

Thank you for the opportunity to comment on this measure.