



LAND USE RESEARCH
FOUNDATION OF HAWAII

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Representative Clift Tsuji, Chair and Representative Mark J. Hashem, Vice Chair
Committee on Agriculture
Representative Jerry L. Chang, Chair and Representative Sharon E. Har, Vice Chair
Committee on Water, Land and Ocean Resources

Testimony of the Land Use Research Foundation of Hawaii

Wednesday, February 2, 2011 at 8:00 a.m. in CR 312

Opposition to HB 289 Relating to Agriculture (Requires County Council approval by ordinance of any agricultural subdivision or agricultural condominium in an agricultural district.)

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions 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 provide our **serious concerns, comments and opposition relating to HB 289**, which would require an agricultural subdivision or agricultural condominium on land that is in an agricultural district pursuant to Chapter 205 of the Hawaii Revised Statutes, to be approved by the relevant county council by ordinance.

LURF supports the use of agricultural lands for purposes allowed under state and county laws and ordinances. LURF partnered with the Hawaii Farm Bureau Federation (HFBF) and other agricultural stakeholders to pass the Important Agricultural Lands (IAL) legislation, which provides for the voluntary and government designation of IAL, loans for qualified agricultural expenses and other incentives to support productive and sustainable farming operations on agricultural lands. LURF and HFBF have also supported legislation to provide irrigation water to agricultural lands and farmers.

HB 289. This bill will change the ministerial process of subdivision or condominium approval into a discretionary political act by conferring upon a county council the flexibility to determine whether the agricultural subdivision or agricultural condominium (CPR) is in the best interest of the county before deciding whether to approve or reject an application. LURF questions and disagrees with the intent behind HB 289 because it is believed that instead of encouraging the preservation of agricultural land, this bill will have the complete opposite effect and will result in an unnecessary, expensive and lengthy process for farmers and landowners to subdivide or CPR their agricultural lands.

LURF's Position. LURF strongly opposes HB 289 for the following reasons:

- **The bill is duplicative of existing laws, ordinances, and rules and regulations, which should be enforced.**

Assuming that the intent of HB 289 is to stop so-called "gentlemen farms," this bill is unnecessary because there are **existing laws, ordinances and rules and regulations** which, if enforced, would protect agricultural lands from "gentlemen farms." The problem is **enforcement of agricultural uses**, so that mandating county council approval of agricultural subdivisions or condominiums by ordinance will not resolve the issue of gentleman farms. County agencies grant subdivision approval only if satisfied that proposed uses meet agricultural use requirements. If this bill is targeting gentleman farms, **the solution is a matter of strengthening county enforcement efforts**, not extending and complicating the agricultural subdivision and CPR approval process.

- **Subdivision approval is a "ministerial" action.**

HB 289 proposes to make agricultural subdivision and CPR approval a discretionary political act. However, in all counties, subdivision approval is a ministerial approval, and thus granted if the applicant meets all the county requirements.

- **Imposing new ordinance processes and public hearing requirements on counties is an unfunded mandate.**

The proposal to change the ministerial county agricultural subdivision and CPR processes to an ordinance approval process would result in additional costs for the counties and would constitute an unconstitutional **unfunded mandate**, as it would require that the counties implement new processes, new procedures and to hold public hearings, imposing new costs on county government without providing any funds for those new state-imposed requirements.

- **Imposition of arduous approval processes will work against the intent of the State Constitution, IAL and the goal of farmers to protect agricultural lands, promote diversified agriculture, and increase agricultural self-sufficiency.**

An extended county council public hearing process necessary to approve ordinances will mean more delays and increased costs in order for farmers to obtain agricultural leases or to purchase agricultural lands. By imposing arduous political and bureaucratic processes, HB 289 entirely defeats the flexibility needed by farmers who are often required, by Mother Nature as well as the inherent nature of their profession and their crops, to quickly adjust, expand, transform, or turnover their operations and their land.

Following the procedures to enact a county ordinance, this bill could require a minimum of **five public hearings** to approve an agricultural subdivision/CPR as an ordinance. A county approval of a land use-related ordinance, for example, entails: 1st reading by the County Council to introduce the bill and refer it to Committee; 2nd reading: Committee hearing and referral to Planning Commission; Planning Commission hearing and re-referral to Committee; 3rd reading at Committee w/Planning Commission recommendation; 4th reading - full Council approval or denial.

To subject agricultural land to such lengthy, complicated and costly approval processes would frustrate the farmers' need for flexibility, and be **completely contrary to the objectives of the IAL law - to create an expedited process for keeping lands productive and dedicated to agriculture and to provide incentives for farmers.**

For the foregoing reasons LURF strongly opposes **HB 289**, and respectfully requests that this bill be held. Thank you for the opportunity to present our testimony regarding this matter.