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February 24, 2012

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn Baker, Chair
Senator Brian Taniguchi, Vice Chair

SB 1162 SD1 RELATING TO AGRICULTURE

Committee Chair and members;

Hawaii's Thousand Friends, a statewide nonprofit organization dedicated to comprehensive planning and reasonable, responsible and appropriate land use, supports SB 1162 SD1 that prohibits subdivision and use of condominium property regime on agriculturally designated lands one hundred acres or greater in size with soil classification of A or B.

Agricultural lands in Kunia on Oahu are a prime example of what can happen when large agriculturally designated lands are subdivided. The Kunia agriculture lands were subdivided using condominium property regime (CPR) and overseen by a nonprofit whose members have 99-year leases to specific lots.

Under CPR the lack of management has led to the creation of some lots smaller than 5 acres, which is prohibited on A-1 zoned land under City and County zoning. Some of the parcels even have house-like structures on them, which is also prohibited.

Oversight is non-existent because the City and County of Honolulu says that the Department of Planning and Permitting considers the entire 854-acres as one lot so that how a landowner internally divides that parcel is not under the city's control. The city takes this hands off position because the State approved the CPR meaning that the property did not go through the county subdivision process but the state CPR process.

The result of this dual jurisdiction is that neither the county nor the state feel that they are responsible to clean up this mess. So while no one is doing anything the area is turning into a de facto housing subdivision.

SB 1162 is needed to prevent the subdivision of large agricultural lots and help close the loophole between county and state jurisdiction.



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February 23, 2015

Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair
Senate Committee on Commerce and Consumer Protection

Testimony in Strong Opposition to SB 1162, SD1 Relating to Agriculture; Agricultural Lands; Farming; Livestock; Land Use; Zoning; Subdivision; Condominium Property Regime (CPR); Bona Fide Commercial Farmer (Prohibits any subdivision, including by condominium property regime, of parcels of agricultural lands one hundred acres or greater in size if at least fifty per cent of the parcel has soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B. Exempts a landowner applicant who is the department of agriculture, the agribusiness development corporation, or a "bona fide commercial farmer" from this prohibition. [SD1])

CPN Hearing: Tuesday, February 24, 2015, 9:30 a.m., in Conf. Rm. 229

The Land Use Research Foundation of Hawaii (LURF) is 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 testimony **in opposition to SB 1162, SD1** because, while this bill is supposedly well intended, the current proposal:

- appears to lack prior consultation or collaboration with the Agricultural Stakeholders who would be most affected, state agencies and the counties;
- the Committee Report No. 360 is misleading and disingenuous, as it claims that the Hawaii State Plan goals of a strong, viable economy through expanded agriculture throughout the islands, "*which requires preservation of large parcels of agricultural lands.*"
- hypocritically exempts the Department of Agriculture and the Agribusiness Development Corporation from the requirements of the law to prohibit subdivisions and CPRs, after Committee Report No. 360 proclaims that the Hawaii State Plan Goals require the preservation of large parcels;
- SD1 and Committee Report No. 360 also include a definition of "*Bona fide commercial farmer*" that is inconsistent with the definition of "*Bona fide farming operation*" in other legislation passed by Senate committees;
- ignores that fact that private land owners have designated over 100,000 acres of IAL, including some parcels and farming areas which are smaller than one hundred acres;

- indiscriminately imposes severe restrictions on all private landowners, including those landowners who have already designated over fifty percent of their lands as Important Agricultural Lands (IAL);
- hypocritically imposes restrictions only on private lands, yet does nothing to address the known failure of the State of Hawaii to comply with the IAL statutory requirement that the State identify its own state public lands that should be designated as IAL, and submit those lands for IAL designation by December 31, 2009 (over four years ago);
- disregards the well-known fact that the State has not provided adequate funding for the “State mandate” that the Counties map and identify potential IAL;
- will cause the unnecessary and unintended negative consequences of actually harming diversified agriculture, by making it more difficult for new, small “bona fide” farmers to have access to smaller and affordable leased lands less than 100 acres; and
- will bar newly formed bona fide agricultural entities, like farmer cooperatives, from utilizing a CPR to create separate interests in the land for individual farmers’ operational and financing purposes.

SB 1162. This bill prohibits any subdivision, including by condominium property regime, of parcels of agricultural lands one hundred acres or greater in size if at least fifty per cent of the parcel has soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A or B. Exempts a landowner applicant who is the department of agriculture, the agribusiness development corporation, or a “bona fide commercial farmer” from this prohibition

The effect of this bill is to unnecessarily restrict the use of private agricultural lands by small farmers, ranchers, agricultural operators and landowners (Agricultural Stakeholders); and creates confusing inconsistencies by creating a definition of “*bona fide commercial farmer*” that is very different from the definition of “*bona fide farming operation*” in other legislation.

LURF’s Position. LURF members include Agricultural Stakeholders who are committed to viable and diversified agriculture in Hawaii, have supported and co-sponsored the IAL law together with the Hawaii Farm Bureau Federation; and several of LURF’s members have already designated over fifty percent (50%) of their private agricultural lands as IAL.

LURF and its members **oppose** this measure based on, amongst other things, the following:

- **SB 1162 Lacks the Consensus, Collaboration and Support of Agricultural Stakeholders Who Will Be Most Affected.** Unlike the IAL law, this measure was proposed without a consultation and collaborative process with those most affected – the Agricultural Stakeholders and large landowners. The IAL laws were based on a consensus of agricultural stakeholders (including landowners, the Hawaii Farm Bureau Federation (HFBF), and various agricultural and government stakeholders); all of them coming together to form a mutual agreement on a system to protect agricultural lands based on the common understanding that the only effective long-term way to protect agricultural lands is to protect and support viable agricultural businesses on such lands.

Enactment of the IAL laws involved extensive collaboration between private property owners, agricultural stakeholders and government entities, including more than five years of public input through the legislative process, which was culminated by the legislative finding that the laws are consistent with the goals and objectives of creating a viable agricultural industry and protecting Hawaii’s agricultural lands as mandated by the Hawaii Constitution. This bill lacks the collaboration between those stakeholders that participated in the IAL process.

Even the State Department of Agriculture (DOA) has recommended that there should be more public discussion and consultation regarding issues including, but not limited to quantifying the actual harm done by subdivisions and CPRs and the involvement of the counties, who have the primary authority for granting subdivisions of agricultural lands.

- **Section 1 of the Bill Includes Major Omissions of Important Facts, Misleading Statements, Questionable Legal Interpretations and Unfair Attacks.** While probably well-intended, this bill includes the following false and misleading statements and glaring omissions of fact (probably due to the lack of collaboration, consensus and support of the various Agricultural Stakeholders and government agencies), including, but not limited to the following:
 - Omission of key provisions from Article XI, Section 3 of the Hawaii State Constitution, relating to Important Agricultural lands. The bill does not include the Constitutional mandate that: *“The Legislature shall establish standards and criteria to accomplish the foregoing (“to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands”)...Lands identified by the state as important agricultural lands shall not be reclassified by the state or rezoned by its political subdivisions without meeting the standards and criteria established by the legislature and approved by two-thirds vote of the body responsible for the reclassification or rezoning action.”*
 - Questionable legal interpretations and incorrect assumptions regarding satisfaction of the “goals” of the Hawaii Constitution, State Plan and the IAL law. This bill appears to imply that *“These goals can only be met if large parcels of agricultural lands are preserved”* by means of a prohibition of subdivisions and CPRs of less than one hundred acres. The truth is that the Hawaii Constitution, state plan and IAL law do not prohibit agricultural subdivisions or CPRs, and in fact, encourage “diversified agriculture,” which often flourishes on parcels smaller than one hundred acres;
 - Mischaracterizations appearing to blame the counties and county councils for the failure to identify IAL, while either omitting or ignoring the well-known fact that the Legislature has failed to provide adequate funding to the counties to comply with the “unfunded State mandate” that the counties must map and identify potential IAL;
 - Omission of the well-known fact that the State of Hawaii is in violation of the IAL law, due to its failure to identify, map and submit its own State agricultural lands for designation as IAL by the statutory deadline of December 31, 2009;
 - Unfair and unreasonable mischaracterizations demonizing all large, private agricultural landowners/developers, claiming that they “maneuver land use restrictions, rather than following proper channels to rezone, resulting in the urbanization of agricultural lands.”
 - Omission of the fact that most large landowners/developers have followed the law and complied with the county planning, State Land Use Commission, and county zoning a subdivision law, rules and processes;
 - Omission of the well-known fact that such large agricultural landowners/developers have already designated over fifty percent (50%) of their lands, totally over 100,000 acres as IAL;
 - The tactic of demonizing land owners with false allegations of “maneuvering land use restrictions” is particularly distasteful, because the Legislature knows that State is in blatant violation of the IAL law by failing to identify and map its own IAL lands for designation by December 31, 2009;

- Omission of the fact that this bill will indiscriminately and unfairly impose further severe land use restrictions on all each of the large private agricultural landowners/developers, who have already designated over fifty percent (50%) of their lands as IAL;
 - Violation of the spirit, intent and letter of the IAL law, which allows for parcels less than one hundred acres to be designated as IAL, and by attempting to impose unjustified and unreasonable restrictions and land use prohibitions against such Agricultural Stakeholders;
 - Questionable, misleading and shameful justification of this bill based on the dairy farm on the south shore of Kauai, implying that that the Kauai dairy would be approved by neighboring landowners and the nearest hotel - if only there were buffers included between agricultural lands and non-agricultural operations and if only there was a law that required large, contiguous parcels of agricultural land; and
 - Mischaracterizing the Kauai dairy case using “*blame the farmer*” logic and omission of any discussion of Hawaii’s “Right to Farm” law (HRS Chapter 165).
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- **This Bill is Unnecessary, because the Standards, Criteria and Process in the IAL Law Address the Constitutional Mandates Relating to Agriculture.** Adequate protections for IAL already exist, because the IAL law requires that the Land Use Commission use specific standards and criteria to approve IAL, as well as review and comment by interested parties including the State Department of Agriculture.
 - **This Bill is Unnecessary, because the Counties are authorized to Grant and Enforce Subdivision Approvals.** The counties are authorized to enforce subdivision requirements on agricultural lands.
 - **Unintended Negative Consequences on Providing Smaller Parcels for “New” Small Farmers and Diversified Agricultural Operations.** This bill provides an exemption limited to a “*bona fide commercial farmer*,” which requires a three-year requirement of agricultural sales and annual income of \$35,000 or greater; and a two-year requirement of agricultural enterprise immediately preceding the application for subdivision. Given that definition, this measure will have the unnecessary and unintended negative consequences of actually harming diversified agriculture, by making it more difficult for smaller “real” farmers to start-up farming operations on smaller and affordable leased lands less than one hundred acres. LURF understands that the CPR process has been used to provide smaller parcels used for new, small farming and other new diversified agricultural uses. This measure would prohibit agricultural landowners to utilize subdivisions and CPRs to allow parcels for start-up smaller farmers and diversified agricultural operations.
 - **Unintended Negative Consequences on Newly formed Farmer Cooperatives and Other New Bona Fide Farming Entities.** This bill will bar new, bona fide agricultural entities, like new farmer cooperatives, from utilizing a CPR to create separate interests in the land for individual farmers’ operational and financing purposes, without the necessity of subdividing and fragmenting the lot of record.
 - **Unintended Negative Consequences on Kamaaina Farming Families.** LURF understands that in some Neighbor Island Counties, this measure would penalize retired life-long farmers whose children no longer want to farm, yet the farmers want to be able to help their children build and finance their own homes nearby. Firstly, the farmer

would not be able to subdivide their property, and secondly, the farmer's children would not be allowed to gain title to a residential unit on the property.

- **Prohibiting the Subdivision or CPR of Agricultural Lands Could Have the Unintended Negative Consequences of Landowners Changing the Land Use District and/or Zoning Designations of Their Lands From Agriculture to Other Urban or Rural Designations.** One of the possible unintended negative impacts of this bill is that many land owners may seek to change the land use district designation and/or zoning designation from agriculture to other designations (Urban or Rural), because this bill will unnecessarily increase the cost basis for anyone who wants to purchase land for farming; and will prohibit agricultural sub leases of less than 100 acres.

For the reasons stated above, LURF **must strongly oppose SB 1162, SD1** and respectfully requests that this bill be **held** in your Committee.

Thank you for the opportunity to present testimony regarding this matter.