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**TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE HOUSE COMMITTEE ON FINANCE

**FEBRUARY 28, 2017
1:00 P.M.
CONFERENCE ROOM 308**

**HOUSE BILL NO. 1330 HD1
RELATING TO COMMON INTEREST AGRICULTURAL COMMUNITIES**

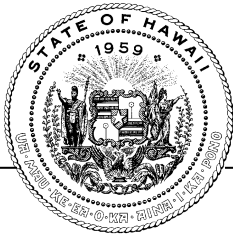
Chairperson Luke and Members of the Committee:

Thank you for the opportunity to testify on House Bill No.1330 HD1 that establishes common interest agricultural communities (CIAC). The Department of Agriculture opposes this measure as it now allows farm dwellings (Page 8, line 8). This dramatically changes the nature of the CIAC which was originally envisioned as a land ownership and management mechanism to make land available solely for agricultural production.

The Department of Agriculture strongly support efforts that support and sustain active agricultural production. However, this new form of agricultural land development is quite complex and the consequences of its application on agricultural land over time is not fully understood. We are very concerned that the CIAC as proposed not become another gateway to low-density, rural-residential development on agricultural land as is currently possible through the subdivision and condominium property regime processes. Therefore, we cannot recommend this bill be moved forward.

Thank you for the opportunity to comment on this measure.





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DAVID Y. IGE
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LEO R. ASUNCION
DIRECTOR
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Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
HOUSE COMMITTEE ON FINANCE
Tuesday, February 28, 2017
1:00 PM
State Capitol, Conference Room 308

in consideration of
HB 1330, HD1
RELATING TO COMMON INTEREST AGRICULTURAL COMMUNITIES.

Chair Luke, Vice Chair Cullen, and Members of the House Committee on Finance.

The Office of Planning (OP) supports the intent of HB 1330, HD1 but modifications to the bill are needed to provide adequate safeguards. HB 1330, HD1 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. HB 1330, HD1 inserts uses under Hawaii Revised Statutes (HRS) § 205-4.5(a)(4) as a permitted use in a project, to allow farm dwellings, and by reference, employee housing, farm buildings, or other activities or uses related to farming and animal husbandry. OP is concerned that the measure lacks the necessary safeguards to ensure that the tool does not facilitate the encroachment of non-agricultural uses on Hawaii’s limited productive agricultural lands.

First, OP affirms its support for agricultural CPRs as a means to lower farmers’ costs of accessing farm land and to lower their operational costs through shared agricultural infrastructure investments and maintenance. Agricultural CPRs provide the means to avoid the subdivision and fragmentation of contiguous blocks of agricultural land to assure their availability for agricultural use in the future. However, these benefits will not be realized if productive agricultural land is allowed to be encumbered with structures, which would impair flexibility in crop selection and agricultural practices, or hinder the use of the entire project area for agricultural cultivation should an agricultural CPR be terminated or dissolved for any reason.

The provision in HB 1330, HD1 allowing farm and employee housing would enable use of the CPR mechanism to access land in the State Agricultural District for residential use by a non-farming parcel owner for whom agriculture is subordinate, thus, facilitating the gentrification of agricultural lands and rural areas. OP’s primary concern with HB 1330, HD1 is the degree to which non-farming owners residing on parcels or owning residential structures within a project could control agricultural operations, and possibly constrain agricultural activities

deemed to be a nuisance, not only on their parcel/s, but in the project as a whole. The bill would allow a non-farming parcel owner who enters into a right-to-till agreement with a farmer, to restrict the type of agricultural operations and activities that could be a nuisance to their occupancy of a dwelling on their parcel, which could lead to potential conflicts, nuisance complaints, and litigation against other agricultural operations on adjoining parcels or within the project. Prohibiting residential use within an agricultural CPR also avoids the problem of what happens to the dwelling when a farmer no longer wishes to farm or wishes to retire.

OP is concerned that HB 1330, HD1 would contribute to encroachment of residential uses on agricultural land, which conflicts with and undermines State agricultural land use policies in HRS Chapters 165, 205, and 226, whose purpose is to ensure that farming and agriculture remain a major of Hawaii's economy, and that agricultural land remains affordable and accessible for future generations of farmers.

Furthermore, the inclusion of dwellings in a project under HB 1330, HD1 no longer distinguishes this CPR from a CPR that is created under HRS Chapter 514B. Therefore, OP believes this measure as written is duplicative and unnecessary.

While OP has concerns with HB 1330, HD 1 in its current form and would prefer incorporation of amendments to safeguard against further encroachment of residential and non-agricultural uses on productive agricultural land in the State Agricultural District, we would not object if HB 1330, HD1 is passed out to allow for further discussion and resolution of issues.

OP and the Department of Agriculture have prepared proposed amendments in response to the Senate Committees on Agriculture and Environment and Commerce, Consumer Protection, and Health requesting for us to work together to develop amendments to address our concerns with the companion bill, SB 1177, SD1. We can provide copies of the proposed amendments, if desired.

Thank you for the opportunity to testify on this measure.

Testimony of
Alec Sou
on
H.B. No. 1330, H.D.1
Relating to Common Interest Agricultural Communities
Committee on Finance
Tuesday, February 28, 2017, 1:00 p.m.
Room 308

Thank you for the opportunity to testify in strong support of H.B. No. 1330, H.D.1, which proposes to establish the regulatory structure for “common interest agricultural communities,” and to request some amendments to the bill.

H.B. No. 1330, H.D.1, 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, game and fish propagation, raising of livestock, a farm dwelling used in connection with a farm, and buildings, such as storage, processing, and maintenance facilities solely for agricultural use; and
- (2) 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 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.

Thank you for the opportunity to testify on H.B. 1330, H.D.1.



LATE

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February 28, 2017

HEARING BEFORE THE
HOUSE COMMITTEE ON FINANCE

TESTIMONY ON HB 1330, HD1
RELATING TO COMMON INTEREST AGRICULTURAL COMMUNITIES

Room 308
1:00 PM

Aloha Chair Luke, Vice Chair Cullen, 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 interest of our diverse agricultural community.

Hawaii Farm Bureau **supports HB 1330, HD1, with comments**, establishing common interest agricultural communities.

Farms in Hawaii are small when compared to those on the continent. 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 continued 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. Farmers who provide worker housing face their own challenges with extensive federal rules enforced by the Department of Labor. We believe a centralized farm worker housing process that includes worker training may be a necessity for agriculture to expand to levels that move the needle on our State's production. These dormitory/apartment housing would be required to meet Federal Farmworker Housing Standards and have a reduced footprint compared to single family dwellings. They would also be subject to inspection by Federal agents.

The opportunities for sharing other resources deserves consideration. This will allow economies of scale especially for expensive infrastructure such as processing, with smaller farmers coming together for mutual benefit. We are interested in working with the parties to develop a workable program.

We believe the intent of this measure should be entrepreneurial farmers vs. a sharecropping system. Farms in rural areas face vandalism and theft. Remote locations make addressing the problem difficult even with cameras. The farmer/owner who derives the majority of income from the land should have an option to reside on the property. Language that requires that the majority of income be derived from activity on the land is reasonable.

We also recognize that there are other models that have worked to keep large tracts of lands in agriculture. Kaanapali Coffees have landowners who do not actively take part in the operation of their coffee fields and have an agreement with the Kaanapali Coffee to do the work. By selling the lands, KC was able to keep the lands in agriculture. This emphasizes the fact that solutions are not simple. Large landowners will find themselves in a land rich/cash poor situation. Solutions such as KC allowed the majority of lands to remain in active viable production. .

One cannot force another to do agriculture. It can only be nurtured. For this reason, HFB respectfully requests your support in passage of this measure to encourage further discussion. Thank you.