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

BEFORE THE SENATE COMMITTEES ON JUDICIARY & LABOR & WAYS & MEANS

**FEBRUARY 28, 2017
9:50 A.M.
CONFERENCE ROOM 211**

**SENATE BILL NO. 1177 SD1
RELATING TO COMMON INTEREST AGRICULTURAL COMMUNITIES**

Chairpersons Keith-Agaran and Tokuda and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill No.1177, SD1 that establishes common interest agricultural communities (CIAC). Because this measure is quite complex and the consequences of its application on agricultural land over time is not fully understood, we strongly recommend caution in moving this bill forward.

SD 1 proposes a form of agricultural land ownership and management different from the existing subdivision and condominium property regime options. Common interest agricultural communities (CIAC) create agricultural production areas, sharing common infrastructure development costs, may be fee simple with separate ownership for each farm parcel or leasehold, do not allow dwellings of any type, and have a "coordinating entrepreneur". We do not know if the parcels created would qualify as collateral by commercial lending institutions. Individual farm parcel owners may enter into agricultural production contracts with the "coordinating entrepreneur" who has the authority to select the crop to be grown, and when and how it is to be grown.

This bill does offer an opportunity to provide agricultural lands for agricultural production for farmers who can work within the ownership and management structure. Pursuant to the recommendation of the committees on Agriculture and Energy, and Commerce, Consumer Protection and Health, the Office of Planning and the



Department of Agriculture have developed amendments that improve the likelihood that this new form of agricultural land development will support and sustain active agricultural production and 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.

In addition to the many features found in SD1, the Office of Planning and the Department of Agriculture identified areas where our amendments would improve the bill:

The counties should have an enforcement role in CIACs:

- “Common interest agricultural communities” must be in strict compliance with county zoning ordinances and the county planning departments must be made responsible for enforcement.
- The applicable county planning department is to be notified thirty days prior to recordation of the declaration and by-laws of a “common interest agricultural community”;
- Similarly, a copy of the “final public offering statement”, approved by the director of the Department of Commerce and Consumer Affairs which fully discloses to prospective purchasers of farm parcels all the pertinent facts of the development, must be filed with the applicable county planning department within 30 days of the final order.

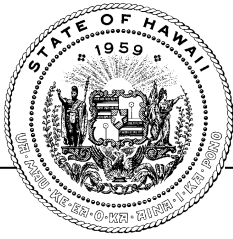
The management and enforcement authority of the farm parcel owners’ association and/or developer, responsibility for violations and fines, “first right of refusal” when farm parcels come up for sale.

- Ownership of farm parcels must be inseparable from the “common interest agricultural communities”.
- Primary responsibility for management and enforcement within the community must be the farm parcel owners’ association and/or the developer. Violations of the common and limited common infrastructure by farm parcel owners or lessees must be the responsibility of the farm parcel owners’ association and/or the

developer. County fines levied on a farm parcel are the responsibility of the farm parcel owner.

- “Common interest agricultural communities” are not permitted if done in conjunction with a condominium property regime pursuant to Chapter 514B or subdivision of land for the creation of individual lots of record.
- Where the owner wishes to sell the ownership interest in a farm parcel, the developer or farm parcels owners’ association shall have the “first right of refusal”. This is to ensure the farm parcel is being sold to another farmer who will farm.

Thank you for the opportunity to comment on this important measure.



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DIRECTOR
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Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
**SENATE COMMITTEE ON JUDICIARY AND LABOR
AND
SENATE COMMITTEE ON WAYS AND MEANS**
Tuesday, February 28, 2017
9:50 AM
State Capitol, Conference Room 211

in consideration of
SB 1177, SD1
RELATING TO COMMON INTEREST AGRICULTURAL COMMUNITIES.

Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Senate Committees on Judiciary and Labor and Ways and Means.

The Office of Planning (OP) supports the intent of SB 1177, SD1, but some modifications are needed to provide adequate safeguards. SB 1177, SD1 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. OP strongly supports the bill’s prohibition on residential use of land within a project created under the proposed chapter. However, we are concerned that the bill 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 strong 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, and hinder the use of the entire project area for agricultural cultivation should an agricultural CPR be terminated.

The Senate Committees on Agriculture and Environment and Commerce, Consumer Protection, and Health’s Standing Committee Report No. 233 encouraged the Department of Agriculture (DOA) and OP to work together to prepare proposed amendments to address our concerns. We appreciate this opportunity to refine the measure to safeguard against the potential for this tool to morph into low-density residential projects in the State Agricultural District.

OP and DOA have prepared proposed amendments in response to Standing Committee Report No. 233. We have done so because we are concerned about legislative interest in prohibiting CPRs in the Agricultural District as a means to stem the expansion of residential uses in the Agricultural District. This bill is needed to ensure that the agricultural CPR is not eliminated as a means for legitimate farmers to access agricultural land and share infrastructure costs.

The proposed amendments clarify the purpose of the bill and the use of the tool, and provide stronger policy on uses and the enforcement of uses in an agricultural CPR on lands classified in the State Agricultural District. Suggested language for the proposed amendments is attached to our testimony. The proposed amendments include:

1. The insertion of a new section that states the purpose and objectives to be achieved by use of the tool, as well as a change in the chapter title and term of the tool from “common interest agricultural communities” to “common interest agricultural property regime” to conform to its purported use for agricultural production.
2. The incorporation of permitted agricultural uses in the new chapter, to avoid cross-referencing those in HRS § 205-4.5, which is subject to frequent amendment and subject to interpretation, and various amendments to other provisions to ensure the use restrictions and prohibition are not eroded over time.
3. The inclusion of language requiring notice of the restriction and prohibition on uses, including residential uses, in the public offering statement and all project documents, to ensure that potential buyers are aware that the land may not be used for residential purposes, but is intended to enable a working landscape of active farms.
4. Amendment of the county enforcement authority in HRS Chapter 205 to clarify county enforcement authority over land use restrictions under an agricultural CPR, and additional provisions for notification to the county planning department for the creation and public offering statement of an agricultural CPR to ensure that the county is aware of the creation of an ag CPR.
5. The insertion of language prohibiting the creation of an agricultural CPR in conjunction with another project proposing residential uses on land in the State Agricultural District.

While OP would prefer the incorporation of the proposed amendments we believe are necessary to preserve effective agricultural use of lands under an agricultural CPR, we would not object if SB 1177, SD1 is passed out to allow for further discussion and resolution of issues.

This would ensure that there is an opportunity to continue to work towards legislation that would enable use of the tool by farmers while addressing the land use concerns raised.

Thank you for the opportunity to testify on this measure.

PROPOSED AMENDMENTS FOR SB 1177, SD 1

February 28, 2107

The Office of Planning and Department of Agriculture respectfully offer the following proposed amendments to SB 1177, SD 1, which we believe are necessary to preserve effective agricultural use of lands under an agricultural condominium property regime (CPR). The proposed amendments are intended to clarify the purpose of the measure and use of the tool, and to provide more effective policy for uses and the enforcement of uses in an agricultural CPR on lands classified in the State Agricultural District. A MS Word file incorporating the following amendments in bill format is available upon request.

1. Change the term and add a new section to reinforce and affirm use for agricultural production.

1.1. We recommend replacing all instances of the term, “common interest agricultural communities,” in the chapter title and the bill with the term, “common interest agricultural property regime,” to better align with the stated purpose of the agricultural CPR for agricultural production.

1.2. We also recommend inserting a new Section 1 of the bill that sets forth the purpose and objectives to be achieved by use of the tool, as follows:

“SECTION 1. The purpose of this Act is to provide a regulatory and management structure for farmers to access land for agricultural production and to share common infrastructure and facilities required to support agricultural production, in order to avoid the subdivision and fragmentation of productive agricultural lands and ensure that agricultural lands remain affordable to farmers. The purpose of a common interest agricultural property regime is to provide land, infrastructure, and ancillary structures essential for agricultural production for commercial purposes, and is not intended for residential use. This focus on agricultural production distinguishes a common interest agricultural property regime from other residential condominium property regimes created under Chapter 514A or 514B, Hawaii Revised Statutes.”

2. Set forth permitted uses in the new chapter and make amendments to ensure notice of and conformance of uses with the purpose and intent of chapter.

2.1. We strongly recommend setting out the permitted agricultural uses in the new chapter to avoid cross-referencing the uses in HRS § 205-4.5, which is subject to frequent amendment. Replace existing language in Part I, Section 4 of the new chapter with the new language, to read as follows:

“§ -4 **Conformance with zoning and land use laws; restriction on uses.** (a) Notwithstanding section 46-88 to the contrary, any common interest agricultural property regime established under this chapter shall comply with county zoning and building ordinances. Each county shall enforce the restriction and prohibition on uses herein for projects created on any land classified in the agricultural district under chapter 205, pursuant to county authority in section 205-12. Use violations of this chapter shall be subject to the same penalties and/or fines for violations of uses that have

been adopted by county ordinance for the enforcement of county land use ordinances and rules pursuant to section 46-4.

(b) Permitted uses of each parcel and within the project shall be restricted to the following agricultural uses; provided that no structure shall be used or occupied for human habitation on a permanent or temporary basis:

- (1) Cultivation of crops for commercial purposes, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation for commercial purposes;
- (3) Raising of livestock for commercial purposes, including poultry, bees, fish, or other animal or aquatic life; and
- (4) Agricultural buildings and uses, including agricultural infrastructure systems, mills, storage, and processing facilities, maintenance facilities, small-scale renewable energy systems producing energy solely for use in the agricultural activities of the parcel interest owner, and agricultural vehicle and equipment storage areas, necessary for and accessory to on-site agricultural activity as defined in paragraphs (1) through (3).

(c) Subject to the restriction and prohibition on uses herein, the board may approve an agricultural use on a farm parcel that is required on-site for cultivation or propagation as defined in paragraphs (1) through (3); provided that the agricultural use shall not be prohibited under sections 205-2 and 205-4.5.

(d) The developer and/or association shall be jointly and severally responsible and liable for any use violation pertaining to common and limited common infrastructure, including any fines levied by a county. A parcel owner and the tenant of the parcel owner shall be jointly and severally responsible and liable for any violation of the restriction and prohibition on uses on a farm parcel, including any fines levied by a county.”

2.2. Conformance to restriction and prohibition on uses. The following amendments are needed to ensure that the creation of a farm parcel and uses on farm parcels conform to the purposes of the chapter and the uses set forth in the amended Section -4, so that uses are not expanded over time or by other provisions in the law.

2.2.1. Amend the definition of “farm parcel” or “parcel,” to read as follows:

““Farm parcel” or “parcel” means a physical portion of the common interest agricultural property regime designated for separate ownership interest for exclusive use by the farm parcel owner, the boundaries of which are described in the declaration or pursuant to section -23; provided that the physical delineation of the farm parcel shall derive from and not be divisible from the common interest agricultural property regime.”

2.2.2. Amend existing provision for amendments to a declaration in section -12(c) of Part II to read as follows:

“(c) The declaration may be amended by a vote or written consent of the parcel owners of at least sixty-seven per cent of the common interest, unless the declaration specifies a different percentage for all amendments or for specific subjects of amendment. Every amendment to the declaration shall be recorded as provided in section -11 by any officer of the association designated for that purpose or, in the absence of a designation, by the president of the association. Any amendment to the declaration shall comply with the restriction and prohibition of uses in section -4.”

2.2.3. Amend existing section -14, common infrastructure, of Part II by: (a) deleting paragraph (3) that gives parcel owners the right to change the permitted uses of the common infrastructure; and (b) amending existing paragraph (4) to conform to the use restrictions, so that the amended section -14 reads as follows:

“§ -14 **Common infrastructure.** Each parcel owner may use the common infrastructure in accordance with the purposes permitted under the declaration, subject to:

- (1) The rights of other parcel owners to use the common infrastructure;
- (2) Any owner's exclusive right to use of the limited common infrastructure as provided in the declaration;
- (3) Any rights reserved in the declaration to amend the declaration for use of the common infrastructure; and
- (4) The right of the board, on behalf of the association, to lease or otherwise use for the benefit of the association common infrastructure that the board determines is actually used by one or more parcel owners for a purpose permitted in the declaration. The lease or use shall be approved by the parcel owners of at least sixty-seven per cent of the project, including all directly affected parcel owners that the board reasonably determines actually use the common infrastructure.”

2.2.4. Amend HRS § 205-4.6(a) as follows:

“(a) [~~Agricultural~~] Except as provided in chapter , agricultural uses and activities as defined in sections 205-2(d) and 205-4.5(a) on lands classified as agricultural shall not be restricted by any private agreement contained in any:

- (1) Deed, agreement of sale, or other conveyance of land recorded in the bureau of conveyances after July 8, 2003, that subject such agricultural lands to any servitude, including but not limited to covenants, easements, or equitable and reciprocal negative servitudes; and
- (2) Condominium declaration, map, bylaws, and other documents executed and submitted in accordance with chapter 514A or 514B.

Any such private restriction limiting or prohibiting agricultural use or activity shall be voidable, subject to special restrictions enacted by the county ordinance pursuant to section 46-4; except that restrictions taken to protect environmental or cultural resources, agricultural leases, utility easements, and access easements shall not be subject to this section.”

2.3. The insertion of language in Part I of the new chapter prohibiting the creation of an agricultural CPR in conjunction with another project proposing residential uses on land in the State Agricultural District, as follows:

“§ ___- **Prohibition on use of chapter.** Creation or amendment of a common interest agricultural property regime on lands classified as agricultural district under chapter 205, shall be prohibited if it is created in conjunction with or as part of:

- (1) The creation or amendment of a condominium property regime pursuant to chapters 514A or 514B on land in the agricultural district, which does not restrict dwellings or non-agricultural uses within the project; or
- (2) The subdivision of land in the agricultural district for the purpose of:
 - (A) The creation of individual lots of record; or
 - (B) The creation or amendment of a condominium property regime pursuant to chapters 514A or 514B.”

3. **Other amendments to ensure the integrity of a project and long-term agricultural use of the project property.**

- 3.1. Amend the definition of “Development rights” to ensure tool provides for agricultural use of the project property as created, to read as follows:

““Development rights” means any right or combination of rights, subject to the limitations of this chapter, reserved by a developer in the declaration to:

- (1) Add real estate to a common interest agricultural property regime;
- (2) Create farm parcels, common infrastructure, or limited common infrastructure within a common interest agricultural property regime;
- (3) Subdivide parcels, combine parcels, or convert parcels into common infrastructure or limited common infrastructure;
- (4) Merge projects, or increments of a project, that are created under this chapter; or
- (5) Otherwise alter the common interest agricultural property regime.”

- 3.2. Ensure the creation of an agricultural CPR conforms to the purpose and intent of the new chapter, by amending section -11 in Part II to read as follows:

“§ -11 **Creation of a common interest agricultural property regime.** (a) A common interest agricultural property regime may be created by recording the declaration and bylaws of the association executed in the same manner as a deed or lease conveying the real estate subject to the declaration to the association; provided that the declaration and bylaws comply with this chapter. Upon recordation of the deed or lease together with the declaration and bylaws, the common interest agricultural property regime shall be deemed created.”

- 3.3. Reserve the opportunity for an association to buy out a farm operation if the farmer quits farming or retires by: (a) inserting in Part I a new section for this provision; and (2) inserting a new paragraph in section -12, contents of declaration, each to read as follows:

- (a) New section in Part I:

“§ -7 **First right of refusal.** The developer or association shall have the first option to acquire the separate ownership interest in a farm parcel, and the interest in common infrastructure and limited common infrastructure appurtenant to that parcel, from the farm parcel owner.”

- (b) New paragraph in section -12:

“(13) The right of the developer or association to have the first option to acquire the exclusive ownership interest in a farm parcel.”

4. **Ensure that the CPR documents, registration, and public offering statements makes explicit the restriction and prohibition on uses.**

- 4.1. Amend the content requirements for the declaration, deeds and leases, application for registration, and public offering statement, and the registration examination to ensure that the restriction and prohibition on uses in amended section -4 are included in all required CPR documents and disclosure materials. These amendments include: (a) replacing existing paragraph 6 in section -12, contents of declaration; (b) inserting a new paragraph in section -16, contents of deeds and leases; (c) replacing existing paragraph

9 in section -21(b) of Part III, application for registration; (d) amending paragraph 9 in section -22, registration; inquiry and examination; and (e) amending paragraph 9 in section -24, public offering statement, with language to read as follows:

(a) Amended paragraph 6, section -12, contents of declaration:

“(6) A statement that the project is in compliance with county zoning and building ordinances and that the permitted uses of each parcel shall be restricted to the uses in section -4; except that the board may approve an agricultural use accessory to and necessary onsite for cultivation or propagation on a farm parcel as provided in section -4(c); provided further that use of any structure for human habitation is prohibited;”

(b) New paragraph, section -16, contents of deeds and leases:

“() The restriction and prohibition on uses in section -4 and a statement that chapter 165 limits the circumstances under which farming activities may be considered a nuisance.”

(c) Amended paragraph 9, section -21(b), application for registration:

“(9) A declaration by the developer that the permitted uses of the parcels in the project shall be restricted to the uses in section -4; provided that the board may approve an agricultural use accessory to and necessary on-site for cultivation or propagation on a farm parcel as provided in section -4(c); provided further that any use of a structure for human habitation is prohibited;”

(d) Amended paragraph 3, section -22, registration; inquiry and examination:

“(3) The advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the rules adopted by the director and afford full and fair disclosure, including the restriction and prohibition on uses within the project;” and

(e) Amended paragraph 9, section -24, public offering statement:

“(9) The permitted uses and prohibitions on the farm parcels, a declaration that the project complies with all land use laws and county zoning and building ordinances, and a statement that chapter 165 limits the circumstances under which farming activities may be considered a nuisance; and”

4.2. Amend the definition of “Public offering statement,” to read as follows:

““Public offering statement” means a statement that fully and accurately discloses the physical characteristics of the common interest agricultural property regime offered and all unusual or material circumstances of features affecting the project, including the restriction and prohibition on uses in this chapter.”

5. **Provide adequate notice to counties and clarify enforcement authority over uses in ag CPRs in the State Agricultural District.**

- 5.1. Add a new subsection to the existing section -11 in Part II to require notification to the county planning department for the creation and public offering statement of an agricultural CPR to ensure that the county is aware of the creation of an ag CPR, to read as follows:

“(c) Written notice of the intent to record the declaration and bylaws for a common interest agricultural property on land in the agricultural district, shall be filed with the planning agency of the county in which the lands are situated thirty days prior to recordation. The written notice shall provide the information required in section -12(a)(1) through (7).”

- 5.2. Add a new subsection to section -24, public offering statement, to require the statement be filed with the county, to read as follows:

“() The final public offering statement, and any amended statement, shall be filed with the planning agency of the county in which the project is situated within thirty days of the effective date of the final order of the director.”

- 5.3. Clarify the responsibility of the association and board to enforce the use restrictions by amending: (a) the existing paragraph 17 of section -33, association powers and duties, to make explicit that the association has an obligation to ensure compliance with the restriction and prohibition of uses under the new chapter; and (b) similarly, existing paragraph 1 of section -36(b), board of directors, each to read as follows:

(a) Amended paragraph 17, section -33, association powers and duties:

“(17) Exercise any other powers necessary and proper for the governance and operation of the association, including enforcement of the restriction and prohibition of uses in section -4.”

(b) Amended paragraph 1, section -36(b), board of directors:

“(1) Develop the policies, procedures, and rules necessary and appropriate for the operation and management of the association, including compliance with the restriction and prohibition of uses within the project and on farm parcels; and”

- 5.4. Clarify county enforcement authority in HRS Chapter 205 over the use restrictions on lands in the State Agricultural District under an agricultural CPR, by amending HRS §205-12 as follows:

“**§205-12 Enforcement.** The appropriate officer or agency charged with the administration of county zoning laws pursuant to section 46-4, shall enforce within each county the use classification districts adopted by the land use commission, including ~~and~~ the restriction on use and the condition relating to agricultural districts under section 205-4.5. ~~and~~ Each county shall have the authority to investigate complaints and enforce the restriction and prohibition on uses in projects created or amended pursuant to chapter . The appropriate county officer or agency shall report to the commission all violations.”

6. Miscellaneous amendments to ensure consistency and clarity.

6.1. Clarify ownership interest in the farm parcel as a right of exclusive use as follows:

6.1.1. Amend section -12(b)(2) to read:

“(2) Two years after the developer has ceased to offer ownership interests in parcels for sale in the ordinary course of business; or”

6.1.2. Amend section -21(a) to read:

“(a) A developer shall not offer for sale an interest in any farm parcels in a project unless the project is registered in accordance with this chapter and rules adopted by the director.”

6.1.3. Amend section -21(b)(5) to read:

“(5) A specimen of the proposed contract of sale of ownership interest in farm parcels;”

6.2. Clarifying that use of the limited common infrastructure shall be subject to the new chapter by amending section -15(a) as follows:

“(a) The limited common infrastructure designated in the declaration shall be subject to the exclusive use of the parcel owner or parcel owners of the parcel or parcels to which they are appurtenant, subject to the provisions of the declaration and bylaws of the association and this chapter. No amendment of the declaration affecting any of the limited common infrastructure shall be effective without the consent of the parcel owner or parcel owners of the parcel or parcels to which the limited common infrastructure is appurtenant.”

6.3. Add a definition for agricultural district to clarify and simplify references:

““Agricultural district” means the state agricultural land use district as defined in chapter 205.”



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February 28, 2017

HEARING BEFORE THE
SENATE COMMITTEE ON JUDICIARY AND LABOR
SENATE COMMITTEE ON WAYS AND MEANS

TESTIMONY ON SB 1177, SD1
RELATING TO COMMON INTEREST AGRICULTURAL COMMUNITIES

Room 211
9:50 AM

Aloha Chairs Keith-Agaran and Tokuda, and Members of the Committees:

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 SB 1177, SD1, 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.

Testimony of
Alec Sou
on
S.B. No. 1177, S.D.1
Relating to Common Interest Agricultural Communities
Committee on Judiciary and Labor
Committee on Ways and Means
Tuesday, February 28, 2017, 9:50 a.m.
Room 211

Thank you for the opportunity to testify in strong support of S.B. No. 1177, S.D. 1, which proposes to establish the regulatory structure for “common interest agricultural communities,” and to request some amendments to the bill.

S.B. No. 1177 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, raising of livestock, and buildings, such as storage, processing, and maintenance facilities solely for agricultural use;
- (2) Any dwelling that may be used and occupied for human habitation is prohibited; and
- (3) 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 shared costs, pooled resources, 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.

Amendments

After discussions with people with experience in condominium law and, in particular, with the Hawaii Farm Bureau, S.B. No. 1177 should be amended as follows:

1. Amend the definition of “common infrastructure” to read:

"Common infrastructure" means the structures, roads, irrigation systems, power supply, agricultural services, and installations, **or other facilities** within the common interest agricultural community **described in the declaration** that are owned or leased by the association and that are other than a farm parcel.

2. Add the definition of “nonmaterial additions and alterations to read:

“Nonmaterial additions and alterations” means an addition to or alteration of the common infrastructure or a farm parcel that does not jeopardize the soundness of safety of the farm parcel, reduce the value thereof, impair any easement, detract from the appearance of the project, or directly affect any nonconsenting farm parcel owner.

3. Amend § 4, subsection (b) to read:

(b) The permitted uses of each parcel shall be restricted to the uses described in section 205-4.5(a)(1), (2), (3), **(4)**, and (10); provided that a use permitted under section 205-4.5 may be approved by the board. ~~[except that any dwelling that may be used and occupied for human habitation shall be prohibited.]~~

Amend § -22 by amending subsection (a)(6) to read:

(6) A statement that the project is in compliance with county zoning and building ordinances and the permitted uses of each parcel shall be restricted to the uses described in section 205-4.5(a)(1), (2), ~~[and]~~ **(3), (4) and (10)**; provided that a use permitted under section 205-4.5 may be approved by the board. ~~[, except that any dwelling that may be used and occupied for human habitation is prohibited];~~

In discussing the bill with the Hawaii Farm Bureau Federation, they requested the allowing of “farm dwelling” as defined in section 205-4.5(a)(4) as “a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling.”

4. Amend § -22 relating to the contents of declaration, to include a “water agreement” to read:

() A water agreement as required in section -6.

5. Delete § -35, relating to voting and proxies. The requirements for meetings, quorum, voting, and related activities are specified in the bylaws. Renumber following sections.
6. Amend the renumbered § -35 Board of directors; officers, powers, and meetings, by amending subsection (a) to read:

“(a) The board of directors of the association shall act on behalf of the association. Upon the termination of the developer's control of the board as provided in the declaration, parcel owners shall elect a board of directors, [~~of at least members,~~] who shall be farm parcel owners. The officers of the board shall be elected by the members of the board from among its members.”

Please support S.B. No. 1177, S.D. 1, with the requested amendments.

Thank you for the opportunity to testify on S.B. 1177.