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**PLANNING DEPARTMENT**

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**Testimony before the Senate Committees on Agriculture and Environment**  
**SENATE BILL 708** Relating to Agricultural Land

February 1, 2017 at 1:15 PM  
Senate Conference Room 224

By **Michael A. Dahilig**  
Director of Planning, County of Kaua'i

Chair Gabbard, Vice Chair Riviere, Honorable Members of the Committee:

The Kauai Planning Department **SUPPORTS** the intent of SB708 in that it seeks to prevent the wholesale subdivision of larger agricultural lots through the use of the condominium property regime (CPR) process.

The prohibition on the use of CPR process to agricultural lands of 25 acres or more will potentially be effective in halting subdivision of large and medium size parcels into lots too small for agricultural purposes. Allowing CPR of lots of this size allows the development of "gentleman farm" subdivisions and estates which are essentially low density, but still relatively large subdivisions that do not utilize agricultural land to the extent for which it is intended – to produce substantial agricultural products or to be developed predominantly for permitted, agriculture-oriented uses.

Furthermore, unlike other developments, these agricultural CPR subdivisions are not required to contribute to State and county infrastructure to handle increased impacts and other issues.

In sum, the current use of the CPR process to create agricultural subdivisions allows for significant abuse, costs to the State and counties, and limits the public of its right to have impacts reviewed and mitigated.

Thank you for the opportunity to testify on this matter.



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February 1, 2017

HEARING BEFORE THE  
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

**TESTIMONY ON SB 708**  
RELATING TO AGRICULTURAL LAND.

Room 224  
1:15 PM

Aloha Chair Gabbard, Vice Chair Riviere, 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.

**HFB opposes SB 708, as written**, which prohibits the creation of a condominium property regime on agricultural land 25 acres or greater. Prohibits a condominium property regime on agricultural land from being amended to allow a residential dwelling. Prohibits the subdivision of agricultural land 25 acres or greater for the purpose of creating a condominium property regime.

HFB advocates for public policies and incentives that provide for viable farming and ranching activities on agricultural lands thereby retaining agricultural lands for future generations. Lands capable of supporting viable agricultural activities should be protected and kept in agriculture yet, this bill fails to account for localized conditions that are site specific.

Site specific conditions must be examined when such applications are made. This one-size-fits-all approach will hamstring communities who may want to create small farms on large parcels that are often unavailable to the beginning and family farmer due to the high cost threshold.

Moreover, Hawaii Farm Bureau is a strong supporter of private property rights as outlined in the US Constitution. The removal of property rights will have a net effect of devaluing land without just compensation for the landowner. We therefore argue that this measure, if passed, violates the Constitution of the United States.

We support the retention of agricultural lands in blocks of contiguous, intact, and functional land units large enough to allow **flexibility** in agricultural production and management and discourage the fragmentation of agricultural lands to non-agricultural

uses. Lands zoned for agriculture should be used primarily for productive agricultural purposes, including family farming. This type of localized land use planning is best left to local communities.

Agricultural worker housing is one of the major challenges facing the industry as we try to establish a reliable labor force. The lack of housing in rural areas or the lack of affordable housing in the urban fringe is a serious impediment. HFB is exploring opportunities to partner with entities to develop farm worker housing, some of which may be of a dormitory style with facilities for training. We believe that this type of housing may reduce the foot print needed for agricultural housing. As written, this measure recognizes single-family farm dwellings but will prohibit dormitory or apartment style structures.

HFB recognizes the challenges with illegal dwellings on ag lands. There are other measures such as SB 689, clarifying county authority relating to building inspections. Even under current law, no residential building is exempted from permitting or inspection.

HFB respectfully suggests the following change:

“No residential project shall be created as a condominium under chapter 514B or as a planned community association under chapter 421J **unless associated with an active agricultural operation.**” HFB is ready and willing to work with the legislature to address housing on agricultural lands. We respectfully request your serious consideration of the housing needs of the industry.

Thank you for the opportunity to testify on this measure.

**David Arakawa**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 01, 2017 1:11 PM  
**To:** AENtestimony@capitol.hawaii.gov  
**Cc:** David Arakawa  
**Subject:** Submitted testimony for SB708 on Feb 1, 2017 13:15PM

**SB708**

Submitted on: 2/1/2017  
Testimony for AEN on Feb 1, 2017 13:15PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
David Z. Arakawa	Land Use Research Foundation of Hawaii	Oppose	Yes

Comments: The Land Use Research Foundation of Hawaii (LURF) **STRONGLY OPPOSES SB 708**, which prohibits the creation of a condominium property regime on agricultural land 25 acres or greater; prohibits a condominium property regime on agricultural land from being amended to allow a residential dwelling; prohibits the subdivision of agricultural land 25 acres or greater for the purpose of creating a condominium property regime; and prohibits any residential project created as a condominium under chapter 514B, HRS, or prohibits a planned community association under chapter 421J, HRS, in class A or B agricultural lands. LURF respectfully urges that this Committee consider the DEFERRAL of this measure, based upon the following: **BACKGROUND:** LURF and its members strongly support the use of agricultural lands for agricultural purposes and the preservation of large tracts of parcels of agricultural lands. LURF has worked with the Hawaii Farm Bureau Federation (Hawaii Farm Bureau), the Department of Agriculture (DOA) and other agricultural stakeholders to pass the Important Agricultural Lands (IAL) laws in 2005 and 2008. The purpose of the IAL law is to provide agricultural incentive programs to promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands for agricultural use. To date, LURF members have designated more than 53,942 acres as IAL; and LURF has been working with the Hawaii Farm Bureau, agricultural stakeholders, and the counties to implement county IAL incentives and the county IAL designation process. The effect of this bill is to unfairly and unnecessarily prohibit the use of private agricultural lands for small diversified agriculture, and use by bona fide small farmers, ranchers, agricultural operators, large landowners and landowners who have already designated their lands as IAL (Agricultural Stakeholders). **LURF's Position.** This measure lacks a purpose or justification clause and while LURF believes that this bill may have been well-intended, it should be DEFERRED, because it will negative consequences on bona fide agriculture; and there may be other more reasonable means to achieve whatever this measure is trying to accomplish. Thus, must strongly oppose SB 2350, based on the following: • There are five (5) very broad prohibitions in this measure, however, **THERE IS NOT ONE SINGLE JUSTIFICATION FOR THIS BILL.** • If this bill is based on the concern of non-agricultural uses on agricultural lands, SB 708 is not necessary – the strict enforcement of current laws, rules and regulations and government enforcement powers can prevent non-agricultural uses on agricultural lands. • The prohibitions in this measure will harm new and small bona fide farmers by severely constraining the inventory and availability of smaller, affordable agricultural lands; and will increase the cost of leasing or buying such parcels • The prohibitions in this bill will harm new and small bonafide farmers who use the subdivision and CPRs of agricultural parcels for operational, utility and

financing purposes – much like the parcels in the State’s agricultural parks. • The prohibitions will have negative consequences for the State’s goals for agricultural self-sufficiency and diversified agriculture and the opportunity to pass-on family lands to heirs. • CPRs can actually result in larger contiguous agricultural parcels. • CPRs can create “Agricultural Condominiums,” which are important tools in the successful agricultural use of lands. • This SB 2350 is not based on any reliable facts or quantified data regarding the actual harm done by subdivisions and CPRs. • This measure will indiscriminately and unfairly punish large land owners with bona fide farming, ranching and other agricultural operations (many of whom are LURF members), some of whom have already voluntarily designated a total of over 110,719 acres of IAL, including some IAL parcels and farming areas which are smaller than one hundred acres. • This bill is not based on prior consultation, collaboration or consensus with key Agricultural Stakeholders who would be most affected. • If the Legislature wants to create larger scale agricultural parcels, it should ensure that the State complies with the IAL law and maps all of its agricultural lands for designation IAL (deadline: December 31, 2009, over six years ago). • The counties have not completed identification and mapping of IAL, due to the lack of State funding. For the reasons stated above, LURF must strongly oppose SB 2350 and respectfully requests that this bill be held in this Committee.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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## SB 708 AGRICULTURAL LAND – Prohibits Ag CPRs and Subdivisions

The Land Use Research Foundation of Hawaii (LURF) STRONGLY OPPOSES SB 708, which prohibits the creation of a condominium property regime on agricultural land 25 acres or greater; prohibits a condominium property regime on agricultural land from being amended to allow a residential dwelling; prohibits the subdivision of agricultural land 25 acres or greater for the purpose of creating a condominium property regime; and prohibits any residential project created as a condominium under chapter 514B, HRS, or prohibits a planned community association under chapter 421J, HRS, in class A or B agricultural lands.

LURF respectfully urges that this Committee consider the DEFERRAL of this measure, based upon the following:

**BACKGROUND:** LURF and its members strongly support the use of agricultural lands for agricultural purposes and the preservation of large tracts of parcels of agricultural lands. LURF has worked with the Hawaii Farm Bureau Federation (Hawaii Farm Bureau), the Department of Agriculture (DOA) and other agricultural stakeholders to pass the Important Agricultural Lands (IAL) laws in 2005 and 2008. The purpose of the IAL law is to provide agricultural incentive programs to promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands for agricultural use. To date, LURF members have designated more than 53,942 acres as IAL; and LURF has been working with the Hawaii Farm Bureau, agricultural stakeholders, and the counties to implement county IAL incentives and the county IAL designation process.

The effect of this bill is to unfairly and unnecessarily prohibit the use of private agricultural lands for small diversified agriculture, and use by bona fide small farmers, ranchers, agricultural operators, large landowners and landowners who have already designated their lands as IAL (Agricultural Stakeholders).

**LURF's Position.** This measure lacks a purpose or justification clause and while LURF believes that this bill may have been well-intended, it should be DEFERRED, because it will negative consequences on bona fide agriculture; and there may be other more reasonable means to achieve whatever this measure is trying to accomplish. Thus, must **strongly oppose SB 2350**, based on the following:

- There are five (5) very broad prohibitions in this measure, however, THERE IS NO PURPOSE CLAUSE, NO FACTS, AND NOT ONE SINGLE JUSTIFICATION FOR IT IN THE TEXT OF THIS BILL.
- If this bill is based on the concern of non-agricultural uses on agricultural lands, SB 708 is not necessary – the strict enforcement of current laws, rules and regulations and government enforcement powers can prevent non-agricultural uses on agricultural lands.
- The prohibitions in this measure will harm new and small bona fide farmers by severely constraining the inventory and availability of smaller, affordable agricultural lands; and will increase the cost of leasing or buying such parcels

- The prohibitions in this bill will harm new and small bonafide farmers who use the subdivision and CPRs of agricultural parcels for operational, utility and financing purposes – much like the parcels in the State’s agricultural parks.
- The prohibitions will have negative consequences for the State’s goals for agricultural self-sufficiency and diversified agriculture and the opportunity to pass-on family lands to heirs.
- CPRs can actually result in larger contiguous agricultural parcels.
- CPRs can create “Agricultural Condominiums,” which are important tools in the successful agricultural use of lands.
- This SB 2350 is not based on any reliable facts or quantified data regarding the actual harm done by subdivisions and CPRs.
- This measure will indiscriminately and unfairly punish large land owners with bona fide farming, ranching and other agricultural operations (many of whom are LURF members), some of whom have already voluntarily designated a total of over 110,719 acres of IAL, including some IAL parcels and farming areas which are smaller than one hundred acres.
- This bill is not based on prior consultation, collaboration or consensus with key Agricultural Stakeholders who would be most affected.
- If the Legislature wants to create larger scale agricultural parcels, it should ensure that the State complies with the IAL law and maps all of its agricultural lands for designation IAL (deadline: December 31, 2009, over six years ago).
- The counties have not completed identification and mapping of IAL, due to the lack of State funding. If the State wants to encourage voluntary preservation of agricultural lands, the State should help fund the county IAL efforts.

For the reasons stated above, LURF **must strongly oppose SB 2350** and respectfully requests that this bill be **held** in this Committee.