

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON AGRICULTURE

JANUARY 31, 2018
8:30 A.M.
CONFERENCE ROOM 312

HOUSE BILL NO. 2020
RELATING TO AGRICULTURAL LANDS

Chairperson Creagan and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2020 that requires the Land Use Commission to approve subdivision of agricultural land when the following situations are present.

1. The subdivision consists of more than five lots, and at least one lot is two acres or less; or the subdivision has been submitted for approval by the Department of Commerce and Consumer Affairs for condominium property regime;
2. The use of the entire parcel subject to subdivision will remain in agricultural use for no less than twenty years; and
3. the subdivision will not result in fragmentation of the Agricultural District; the subdivision is consistent with relevant county general and community plans and State agricultural sustainability plans; and is not primarily for residential use.

The Department of Agriculture has long been concerned about subdivisions and condominium property regimes of agricultural land that result in little, if any, agricultural activity. This bill inserts the Land Use Commission into the subdivision of agricultural land which has been solely a county responsibility for many years. Likewise,



condominium property regimes are under the purview of the Department of Commerce and Consumer Affairs. The Department is concerned that this bill may result in adverse unintended consequences.

The Department believes that any amendments to Chapter 205 meant to increase the likelihood of agricultural activity occurring on subdivision and condominium property regimes of agricultural lands should come from a systematic analysis of the existing laws, ordinances, rules, and plans that govern agricultural lands. We look forward to working with the Legislature in developing and enacting legislation that protects and encourages Hawaii's best agricultural lands for agricultural production.

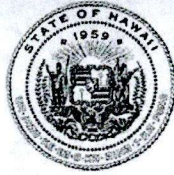
Thank you for the opportunity to submit our testimony.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lieutenant Governor

LUIS P. SALAVERIA
Director

MARY ALICE EVANS
Deputy Director



LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

DANIEL ORODENKER
Executive Officer

Bert K. Saruwatari
Planner

SCOTT A.K. DERRICKSON AICP
Planner

RILEY K. HAKODA
Chief Clerk/Planner

FRED A. TALON
Drafting Technician

Statement of
Daniel E. Orodenker
Executive Officer
Land Use Commission
Before the
House Committee on Agriculture
Wednesday January 31, 2018
8:30 AM
State Capitol, Conference Room 312

In consideration of
HB 2020
RELATING TO AGRICULTURAL LANDS

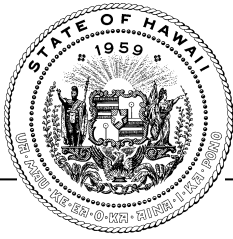
Chair Creagan, Vice Chair DeCoite, and members of the Committee on Agriculture:

The Land Use Commission supports the intent of HB 2020 but feels the existing language is unclear. We suggest the following language that should provide greater clarity to move forward.

“(g) Notwithstanding any other law to the contrary, a subdivision or condominium or horizontal property regime of agricultural lands shall be subject to approval by the land use commission if:

- (1) The proposed subdivision would create more than five lots and:
 - (A) At least one subdivided lot is two acres or less; or
 - (B) Has been submitted to the department of commerce and consumer affairs for approval for a condominium or horizontal property regime;
- (2) In determining whether such a subdivision or condominium or horizontal property regime should be approved, the land use commission shall consider the following criteria:
 - (A) Continued use of the entire parcel subject to subdivision will remain in agricultural use for a period of not less than twenty years;
 - (B) Will not result in fragmentation of the agricultural district;
 - (C) Is consistent with relevant county general and community plans;
 - (D) Is consistent with all relevant state agricultural sustainability plans; and
 - (E) Is not done primarily for residential purposes.”

Thank you for the opportunity to testify on this matter.



OFFICE OF PLANNING STATE OF HAWAII

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <http://planning.hawaii.gov/>

DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
HOUSE COMMITTEE ON AGRICULTURE
Wednesday, January 31, 2018
8:30 AM
State Capitol, Conference Room 312

in consideration of
HB 2020
RELATING TO AGRICULTURAL LANDS.

Chair Creagan, Vice Chair DeCoite, and Members of the House Committee on Agriculture.

The Office of Planning (OP) supports the intent of HB 2020 to protect agricultural land from being subdivided or otherwise developed for non-agricultural residential use, however, we have concerns with the measure in its current form. HB 2020 amends Hawaii Revised Statutes (HRS) § 205-4.5 to authorize the State Land Use Commission (LUC) approval of all subdivisions or condominium property regime submittals for agricultural lands that would result in more than five lots, provided that the applications met certain criteria intended to ensure long-term agricultural use of the property.

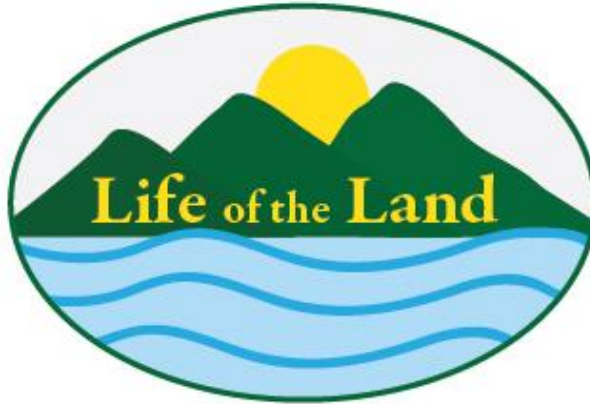
We are concerned that HB 2020 would require the LUC to approve all such applications and provides no discretionary authority for the LUC to disapprove an application that, only on its face, met the criteria. This could result in unintended consequences including legal challenges, enforcement problems, and potentially, even greater fragmentation through an increase in land transactions that avoid triggering the LUC approval requirement.

OP offers the following comments regarding issues that could arise in implementation of the bill, if enacted:

- (1) The proposed criteria are very broad and don't provide the standards and mechanisms an applicant would need to incorporate to enable the LUC to make a determination as to individual impacts on fragmentation, applicant representations as to long-term agricultural use, and the emphasis on agriculture rather than residential use; and

- (2) The proposal is not sufficiently clear as to what entity would be responsible for monitoring and enforcing compliance with the requirement for agricultural use of the property for no less than twenty years, and thus, it is unclear whether sufficient technical and staff capacity exist for effective enforcement of this provision.

Thank you for the opportunity to testify on this measure.



P.O. Box 37158, Honolulu, Hawai'i 96837-0158
Phone: 927-0709 henry.lifeoftheland@gmail.com

COMMITTEE ON AGRICULTURE
Rep. Richard P. Creagan, Chair
Rep. Lynn DeCoite, Vice Chair

Wednesday, January 31, 2018
8:30 AM
Conference Room 312

HB 2020 Relating to Agricultural Lands

CONCERNS

Aloha Chair Creagan Vice Chair DeCoite, and Members of the Committee,

Life of the Land is Hawai'i's own energy, environmental and community action group advocating for the people and `aina for 47 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

The bill states building a condominium on ag land is ok if the ag land is somehow not fragmented and stays in ag for one generation. The bill appears to focus on dividing ag land but adds no new safeguards.

Mahalo
Henry Curtis
Executive Director



Hawaii Cattlemen's Council, Inc.

COMMITTEE ON AGRICULTURE
Rep. Richard P. Creagan, Chair
Rep. Lynn DeCoite, Vice Chair

DATE: Wednesday, January 31, 2018
TIME: 8:30 AM
PLACE: Conference Room 312

HB 2020 – RELATING TO AGRICULTURAL LANDS.

Establishes criteria for the subdivision of agricultural lands to promote agricultural uses.

Chair Creagan, Vice Chair DeCoite, and Members of the Committee:

My name is Dale Sandlin, and I am Managing Director of the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the four county level Cattlemen's Associations. Our 150+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council **strongly opposes** HB 2020 as this measure will be detrimental to the success of actual agricultural operations by removing a necessary tool from landowners.

With the constant pressure of development, keeping lands that have been in agricultural production becomes more difficult every year. While placing restrictions on the subdivision of these lands may seem a logical choice, it reduces the landowner's ability to provide for the future of their operations whether dividing their lands for estate planning or selling less productive lands which provide capital for operating costs.

If the purpose of this bill is to reduce the number of "gentlemen farms" or "fake farms" in the state, we believe that this could be better accomplished through enforcement of current land use laws by both the state and the counties. The rural designation of land in Hawaii is rarely used, but should be considered as a solution to classify lands for residential use.

While agriculture is the default land-use classification, the rural designation is one that should be considered to provide additional tax revenue, prevent misuse of agricultural land and prevent penalizing agriculturists with undue burdens. The practice of agriculture on rural lands is voluntary for the land owner and if the landowner wants to keep the lands in agricultural production, they can designate them using the Important Agricultural Lands (IAL) process.



We can't force folks who own ag land to farm. Over time, some owners of large tracks of ag land have had to subdivide and sell off some of their land just to keep the rest of the land in production.

We all want to keep productive ag land in production, and not lose it to misuse. The Important Ag Lands (IAL) legislation this legislature passed years ago was supposed to help address that. Coupling IAL with rural designation use would prevent the misuse of these lands.

We have met and talked for several years now on ways we can curtail the loss of productive ag lands to Gentleman Farms. We would support finding a viable solution, but this bill is not the way. We respectfully ask this committee to oppose HB 2020 in its current format.

Thank you for giving us the opportunity to testify on this important matter. We apologize for not being able to provide this testimony in person as our industry is currently meeting in Phoenix for the National Cattlemen's Beef Association Convention.



P.O. Box 253, Kunia, Hawai'i 96759
Phone: (808) 848-2074; Fax: (808) 848-1921
e-mail info@hfbf.org; www.hfbf.org

January 31, 2018

HEARING BEFORE THE
HOUSE COMMITTEE ON AGRICULTURE

TESTIMONY ON HB 2020
RELATING TO AGRICULTURAL LANDS

Room 312
8:30 AM

Aloha Chair Creagan, Vice Chair DeCoite, 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 interests of our diverse agricultural community.

The Hawaii Farm Bureau provides comments to HB 2020, which seeks to clarify agricultural subdivisions.

HFB believes agricultural subdivisions to be a unique Hawaii land use classification. It was a creative way to address housing needs, using plantation housing recognition in State law and bypass complicated reclassification procedures. The use of agricultural subdivisions forgot the use of the rural land use classification district which was developed to serve as the interface between agriculture and urban land uses. In rural, agriculture is a choice, not a requirement and those who live in the area are expected to accept the nuisance aspects of agriculture while having advantages of lower taxes. In most areas of the country, rural classification also translates to reduced infrastructure e.g. sidewalks or street lights. After all, you are in the rural area ...not a residential city.

Hawaii's use of rural is limited across the state and frowned by some. This leads to difficulties as it forces agriculture to directly interface with the urban district resulting in conflicts. It also results in people creatively farming to ensure that they can retain their reduced property tax rates and counties needing to spend time inspecting properties to check if legitimate farming was being conducted.

The intent of this measure seeks to reduce the incidence of "fake farms". While addressing the issue, it does not reach the core issue which is the desire for housing and the fact that vast expanses of lands are classified as agriculture. We should not forget

agriculture was a default land use classification. It did not intentionally classify lands as agriculture that were suitable for production. Hence, wide expanses of lava lands or hilly and rocky lands are classified as agriculture. To address this problem, a one-time reclassification of agricultural lands to rural seems reasonable. On these lands, agriculture is a choice. Lands can be dedicated to agricultural use for agricultural benefits. However, agriculture is not a requirement and residents can have larger lots without going through the effort of pretending to farm. It is a waste of resources.

We respectfully urge the committee to look at working with the various County Planning Departments to explore rural classifications and address this land use issue and develop a long-term solution.

HFB believes the intent to address agricultural subdivisions is sound. Some counties have mechanisms to temporarily create an agricultural subdivision for farmers to officially split large TMKs to smaller lots that can be recognized in legal documents. There are cases in which these divisions are done unofficially, and farmers are left without legal standing as their lots are not recognized in law. A simple process is needed to recognize these ag subdivisions, many of which have been in existence for a long time. The lots will revert to the original TMK at the time of land transactions. This is a minor change but is a tangible assistance to many of our smaller farmers and ranchers.

Thank you for the opportunity to provide testimony on this measure.

HB-2020

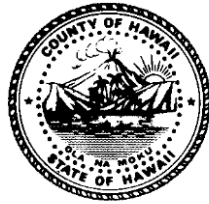
Submitted on: 1/27/2018 11:40:20 AM

Testimony for AGR on 1/31/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez		Support	No

Comments:

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokālole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

January 30, 2018

Testimony by
MICHAEL YEE
Director, County of Hawai'i Planning Department
before the
COMMITTEE ON AGRICULTURE
Wednesday, January 31, 2018, 8:30AM
State Capitol, Conference Room 312
in consideration of
HB 2020
Relating to Agricultural Lands

We express **STRONG RESERVATIONS** regarding this bill that will require the approval of the State Land Use Commission for all subdivisions of Agricultural-designated lands if consisting of more than five (5) proposed lots, of which at least one (1) lot is two acres or less in size.

This bill does not recognize that the sole authority for subdivision of land within the County of Hawai'i is conveyed onto the Planning Department by the Hawai'i County Charter. We question whether the State Land Use Commission ("LUC") has such authority to "approve" subdivisions within each respective county, even if expressed with HB 2020, and when looking at the general jurisdiction and powers conveyed onto the counties by Chapter 46, Hawai'i Revised Statutes.

Another concern is regarding the 20-year agricultural use provision, which raises the question of "to what extent" must each subdivided parcel be maintained in agricultural use and if not, what then becomes of the subdivided parcel? Bear in mind that the State Land Use Law (Chapter 205, Hawai'i Revised Statutes) itself declares that the minimum lot size within the Agricultural District is one (1) acre.

The County of Hawai'i maintains more than 45 percent of its lands within the Agricultural District, which includes lands of both rich soil and barren lava, and everything in-between. Agriculture itself has moved away from plantation-scale operations to smaller farms and subsistence farming. Land use planning documents such as the General Plan and community development plans further define areas that should be maintained in larger agricultural parcels or appropriate for smaller lots.

Testimony HB 2020

January 30, 2018

Page 2

The counties, through its respective planning agencies, already considers the appropriateness of subdividing agricultural lands during its rezoning and subdivision processes, while also being mindful of existing land use entitlements. We envision potential conflicts between the LUC and the respective county councils and planning agencies should the LUC maintain the final decision-making authority over certain subdivision on Agricultural-designated lands.

Thank you for allowing us this opportunity to comment on this bill.