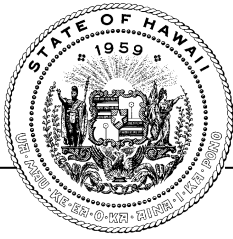


**SB1177**



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**DAVID Y. IGE**  
GOVERNOR

**LEO R. ASUNCION**  
DIRECTOR  
OFFICE OF PLANNING

Statement of  
**LEO R. ASUNCION**  
Director, Office of Planning  
before the  
**SENATE COMMITTEES ON AGRICULTURE AND ENVIRONMENT; AND  
COMMERCE, CONSUMER PROTECTION,  
AND HEALTH**

Friday, February 10, 2017  
1:20 PM  
State Capitol, Conference Room 224

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

Chairs Gabbard and Baker, Vice Chairs Riviere and Nishihara, and Members of the Senate Committees on Agriculture and Environment; and Commerce, Consumer Protection, and Health.

The Office of Planning (OP) offers the following comments on SB 1177. SB 1177 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. The measure includes provisions for a coordinating entrepreneur, who would provide oversight of farming operations and management of shared agricultural infrastructure and facilities.

OP believes this concept would address some of the land use enforcement problems resulting from the use of CPRs to create low-density residential projects in the State Agricultural District. A common interest agricultural community (CIAC) would be distinguishable from other CPRs because of its focus on supporting bona fide farming operations, and prohibiting residential uses on the project property.

More importantly, CIACs could lower farmers’ costs of acquiring farm land as well as lower their operational costs through shared agricultural infrastructure investments and maintenance. CIACs would avoid the subdivision and fragmentation of contiguous blocks of agricultural land; although the portion of the CIAC controlled by the individual farmer would be considered a parcel for real property tax purposes, the project property would remain an intact parcel.

OP has the following concerns about aspects of the proposal which could create issues in managing CIACs in the State Agricultural District:

- The new chapter references HRS § 205-4.5 in the State Land Use Law to define the uses to be permitted on project parcels. As the permissible uses for the State Agricultural District in HRS c. 205 are frequently amended and are subject to interpretation, it would be more effective to define permitted agricultural uses in the new chapter. Similarly, the CIAC board has authority to allow uses permitted in HRS § 205-4.5, many of which are non-agricultural uses that could conflict with the CIAC purpose and function.
- The application for registration of a project should include notice of the restriction to agricultural uses and the prohibition on residential uses, to ensure that potential buyers are aware that the land may not be used for residential purposes, but is intended to be a working landscape of active farms.
- It may be of value to consider language that would safeguard against the potential use of a CIAC as a means to establish an associated low-density residential project on agricultural lands.

Thank you for the opportunity to testify on this measure.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 1, 2017 2:16 PM  
**To:** AEN Testimony  
**Cc:** nredfeather@kohalacenter.org  
**Subject:** Submitted testimony for SB1177 on Feb 10, 2017 13:20PM

**SB1177**

Submitted on: 2/1/2017

Testimony for AEN/CPH on Feb 10, 2017 13:20PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nancy Redfeather	Hawaii Island School Garden Network	Support	No

Comments: What an amazing concept. Create an agricultural community where there are shared resources and shared expenses. I would think that young people would love to entertain something like this. What a great way to build LOTS of small farms in Hawai'i. Mahalo!

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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Testimony of  
**Alec Sou**  
on  
**S.B. No. 1177**  
**Relating to Common Interest Agricultural Communities**  
Committee on Agriculture and Environment  
Committee on Consumer Protection and Health  
Friday, February 10, 2017, 1:20 p.m.  
Room 224

Thank you for the opportunity to testify in strong support of S.B. No. 1177, 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];~~

***The Hawaii Farm Bureau Federation 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.



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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, with the requested amendments.

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

Sincerely,

Alec Sou,  
General Manager