

# SB2524

- Measure Title:** RELATING TO COUNTY LAND USE REQUIREMENTS.
- Report Title:** Condominium Property Regimes; Agricultural Lands; Real Estate Commission; County Subdivision Requirements
- Description:** Requires condominium property regimes to comply with county subdivision requirements. Allows the real estate commission to adopt rules that require a developer to seek county council approval for significant projects. Requires agricultural lands that are subdivided and leased for agricultural uses or activities to comply with county subdivision standards.
- Companion:**
- Package:** None
- Current Referral:** CPH/PSM/AEN
- Introducer(s):** DELA CRUZ, GALUTERIA, INOUE, KIDANI, NISHIHARA, WAKAI, S. Chang, K. Kahele, Shimabukuro

**PRESENTATION OF THE  
REAL ESTATE COMMISSION**

TO THE SENATE COMMITTEES ON  
COMMERCE, CONSUMER PROTECTION, AND HEALTH  
AND  
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS  
AND  
AGRICULTURE AND ENVIRONMENT

TWENTY-NINTH LEGISLATURE  
Regular Session of 2018

Friday, February 23, 2018  
1:25 p.m.

**TESTIMONY ON SENATE BILL NO. 2524, RELATING TO COUNTY LAND USE  
REQUIREMENTS.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, THE HONORABLE CLARENCE  
K. NISHIHARA, CHAIR, THE HONORABLE MIKE GABBARD, CHAIR, AND  
MEMBERS OF THE COMMITTEES:

My name is Nikki Senter, and I am the Chairperson of the Hawaii Real Estate Commission (“Commission”). Thank you for the opportunity to testify on S.B. 2524, Relating to County Land Use Requirements. The Commission offers the following comments.

The purpose of this bill is to provide an option for county participation in the approval of major condominium property regimes. Specifically, it requires that certain condominium property regimes established under Hawaii Revised Statutes (“HRS”) chapter 514B conform to the existing underlying county zoning and subdivision requirements, as well as county-adopted requirements, in addition to existing county compliance requirements. It also allows the Commission to adopt rules requiring county council approval for “significant projects” by amending HRS sections 514B-5 and 514B-51. This bill also amends HRS section 205-4.5 concerning permissible uses within the agriculture districts regarding leased land.

As a general matter, a condominium is merely a form of legal ownership. For example, real estate can be owned by tenants in common, tenants by the entirety, or joint tenancy. Condominiums are formed by operation of law as a form of ownership

under HRS section 514B-31, a process in which the Commission is not involved. Many types of property may be condominium projects, including, but not limited to, warehouses, residential high- and low-rises, single family dwellings, parking stalls, commercial offices, and harbor slips.

Once a condominium **project** is created (versus the form of ownership), the owners, leasees, assignees, or successive others must comply with applicable county regulations, zoning, permitting, and rules. Thus, the city and county of each respective jurisdiction enforces the county regulations, zoning, permitting, and rules regarding each project. Subdivision is a matter solely within county jurisdiction. Subdivision creates individual lots from larger parcels and is therefore distinguishable from a condominium, which creates units within a larger parcel but does not divide the property. These are two separate processes, and not all condominium projects are located on subdivided land. Since a condominium creates units but does not divide the property or vest interest in the individual parcels, county subdivision laws do not apply.

The Commission notes that this bill does not address cooperatives and other common forms of ownership.

Thank you for the opportunity to testify on S.B. 2524.

DAVID Y. IGE  
Governor

DOUGLAS S. CHIN  
Lt. Governor



State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
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**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 SENATE COMMITTEES ON COMMERCE, CONSUMER PROTECTION  
& HEALTH, PUBLIC SAFETY, INTERGOVERNMENTAL & MILITARY AFFAIRS AND  
AGRICULTURE & ENVIRONMENT**

**FEBRUARY 23, 2018  
1:25 P.M.  
CONFERENCE ROOM 224**

**SENATE BILL NO. 2524  
RELATING TO COUNTY LAND USE REQUIREMENTS**

Chairpersons Baker, Chairperson Nishihara, Chairperson Gabbard and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill No. 2524 that proposes three amendments:

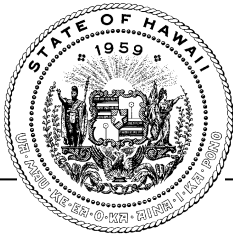
1. Requires condominium property regimes to conform with county zoning, subdivision and other permitting requirements, and Chapter 205; (Section 514B-5); and
2. For "significant projects" proposed on agricultural land outside county-designated development boundaries, the Real Estate Commission of the Department of Commerce and Consumer Affairs is required to adopt rules that require a developer to obtain county council approval by resolution prior to registration of the project; and
3. Requires certain leasehold agricultural subdivisions to comply with county subdivision standards (Section 205-4.5(f)).

The Department of Agriculture supports attempts to require condominium property regimes and certain leasehold subdivisions of agricultural land to comply with county ordinances, rules, and plans. We would like to note that the Section 514B-5



(conformance with county land use laws) already requires condominium property regimes to conform to the purposes and provisions of Chapter 205 (Page 2, line 16 to page 3, line 4). One of most important requirements in Chapter 205 is that any structure built for habitation must be “located on and used in connection with a farm...or where agricultural activity provides income to the family from an agricultural activity” (Section 205-4.5(a)(4)). If there is no farm, no agricultural activity, or no income to the family from agricultural activity, then the structure built for habitation is not a “farm dwelling” and if built, would be in violation of Chapter 205, specifically Section 205-4.5(a)(4).

Thank you for the opportunity to comment on this measure.



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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 COMMITTEE ON COMMERCE,  
CONSUMER PROTECTION, AND HEALTH  
AND  
SENATE COMMITTEE ON PUBLIC SAFETY,  
INTERGOVERNMENTAL, AND MILITARY AFFAIRS  
AND  
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT**  
Friday, February 23, 2018  
1:25 PM  
State Capitol, Conference Room 224

in consideration of  
**SB 2524**  
**RELATING TO COUNTY LAND USE REQUIREMENTS.**

Chairs Baker, Nishihara, and Gabbard, Vice Chairs Tokuda, Wakai, and Riviere, and Members of the Senate Committees on Commerce, Consumer Protection, and Health, Public Safety, Intergovernmental, and Military Affairs, and Agriculture and Environment.

The Office of Planning (OP) supports the intent of SB 2524, but has concerns for some of its provisions. SB 2524 would, in part, amend Hawaii Revised Statutes (HRS) Chapter 514B to: (1) require that condominium property regimes (CPR) created on lands zoned for agricultural use outside the urban growth boundary conform to county zoning and subdivision requirements; and (2) allow the State Real Estate Commission to adopt rules requiring developer of "significant projects" to obtain county council approval prior to registration for a CPR on such lands. SB 2524 would also amend HRS § 205-4.5(f) to make lands subdivided for the purpose of agricultural use subject to county subdivision standards.

OP is particularly concerned about Section 4 of the bill, and recommends this amendment be dropped. HRS § 205-4.5(f) was enacted specifically to facilitate access to agricultural land for small and mid-sized farmers for agricultural use. HRS § 205-4.5(f)(2) clearly prohibits permanent or temporary dwellings or farm dwellings, including trailers and campers, on the lease lots created. The exemption from county subdivision standards was to avoid having to subject the subdivision of working lands to county subdivision standards that are typically geared to the provision of urban infrastructure and facilities, including all-weather roads with adequate pavement widths, curbs and gutters, street lighting, fire protection, etc. Subjecting agricultural

lease lots to any of these improvement requirements would result in urban hardscapes and improvements that are neither necessary nor affordable for farming operations, and would contribute to the physical fragmentation of working lands and greater costs to agricultural lessees.

If there is a concern that storage sheds, equipment sheds, etc. that are allowed under HRS § 205-4.5(f)(2) are being converted to residential use, then that provision should be amended to prohibit the use or conversion of these structures for residential or other non-agricultural use of any duration—with language such as the following:

“(2) No permanent or temporary dwellings or farm dwellings, including trailers and campers, are constructed on the leased area. This restriction shall not prohibit the construction of storage sheds, equipment sheds, or other structures appropriate to the agricultural activity carried on within the lot; provided that no residential or congregate use of such sheds or other structures for any length of time shall be permitted, and any violation of this paragraph shall be subject to county enforcement authority and fines pursuant to sections 46-4, 205-12 and 205-13; and”.

OP offers the following comments related to other provisions:

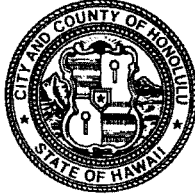
1. The counties are not uniform in the use of urban growth boundaries, which could result in inconsistent application or interpretation of the proposed amendments statewide;
2. The Real Estate Commission’s (REC) role under HRS Chapter 514B is not a land use regulatory one. Therefore, OP defers to REC as to whether they have the capacity to perform the function proposed in Section 3 of the bill.

Thank you for the opportunity to testify on this measure.

DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

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KIRK CALDWELL  
MAYOR



KATHY K. SOKUGAWA  
ACTING DIRECTOR

TIMOTHY F. T. HIU  
DEPUTY DIRECTOR

EUGENE H. TAKAHASHI  
DEPUTY DIRECTOR

February 23, 2018

The Honorable Rosalyn H. Baker, Chair  
and Members of the Committee on Commerce,  
Consumer Protection, and Health  
The Honorable Clarence K. Nishihara, Chair  
and Members of the Committee on Public Safety,  
Intergovernmental, and Military Affairs  
The Honorable Mike Gabbard, Chair  
and Members of the Committee on Agriculture  
and Environment  
Hawaii State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chairs Baker, Nishihara, and Gabbard, and Committee Members:

**Subject:** Senate Bill No. 2524  
Relating to County Land Use Requirements

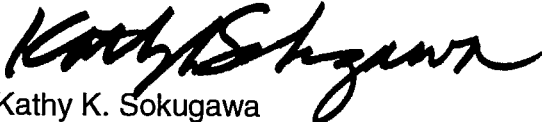
The Department of Planning and Permitting (DPP) **supports** Senate Bill No. 2524, which requires condominium property regimes to comply with county subdivision requirements.

The Bill will allow county participation in the condominium property regime process, in order to ensure availability of necessary supportive infrastructure, and identification of potential negative impacts to environmentally important or culturally significant resources, prior to the piecemeal sale of the property.

Accordingly, we urge that this Bill be passed by your committees.



Thank you for the opportunity to testify.


Very truly yours,

  
Kathy K. Sokugawa  
Acting Director





 | 808-733-7060  
 | 808-737-4977

 | 1259 A'ala Street, Suite 300  
Honolulu, HI 96817

February 23, 2018

**The Honorable Rosalyn H. Baker, Chair**

Senate Committee on Commerce, Consumer Protection and, Health

**The Honorable Clarence K. Nishihara, Chair**

Senate Committee on Public Safety, Intergovernmental, and Military Affairs

**The Honorable Mike Gabbard, Chair**

Senate Committee on Agriculture and Environment

State Capitol, Room 224

Honolulu, Hawaii 96813

**RE: Senate Bill 2524, Relating to County Land Use Requirements**

**HEARING: Friday, February 23, 2018, at 1:25 p.m.**

Aloha Chair Baker, Chair Nishihara, Chair Gabbard and Members of the Joint Committees,

I am Ken Hiraki, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its close to 9,500 members. HAR **provides comments on** Senate Bill 2524 which requires Condominium Property Regimes ("CPR") to comply with county subdivision requirements. This measure allows the Real Estate Commission to adopt rules that require a developer to seek County Council approval for significant projects. Requires agricultural lands that are subdivided and leased for agricultural uses or activities to comply with county subdivision standards.


The preamble to the bill outlines its purpose as assuring that properties, divided through the CPR process, can be required to assure that necessary infrastructure (roads, water and sewer lines) are available.


Simply stated, dividing a property through the CPR process does not add to or impact infrastructure requirements. A property cannot be developed via the CPR process beyond the underlying zoning, use and permitting process already designated by the County.

CPR's are a legal mechanism by which additional owners can be added to title to a property. It is not a process of development. Furthermore, the CPR process does not allow for additional structures beyond what the subject property is already entitled for and it does not allow for or create additional density. Moreover, it does not authorize any new or additional uses permitted on the property.





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Given the above, HAR believes that this legislation is not necessary at this time. Moreover, if enacted, it would take away an owner's exiting rights to exercise control over his property, without creating any meaningful benefit to the counties.

Mahalo for the opportunity to testify on this measure.





Hawaii Cattlemen's Council, Inc.

**COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH**  
**Senator Rosalyn H. Baker, Chair | Senator Jill N. Tokuda, Vice Chair**

**COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS**  
**Senator Clarence K. Nishihara, Chair | Senator Glenn Wakai, Vice Chair**

**COMMITTEE ON AGRICULTURE AND ENVIRONMENT**  
**Senator Mike Gabbard, Chair | Senator Gil Riviere, Vice Chair**

DATE: Friday, February 23, 2018  
TIME: 1:25 PM  
PLACE: Conference Room 224

**SB 2524 – RELATING TO COUNTY LAND USE REQUIREMENTS.**

Requires condominium property regimes to comply with county subdivision requirements. Allows the real estate commission to adopt rules that require a developer to seek county council approval for significant projects. Requires agricultural lands that are subdivided and leased for agricultural uses or activities to comply with county subdivision standards.

Chairs, Vice Chairs, and Members of the Respective Committees:

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** SB 2524 as this measure will be detrimental to the success of actual agricultural operations by requiring additional steps, costs and county approvals to the CPR process.

With the constant pressure of development, keeping lands that have been in agricultural production becomes more difficult every year. While placing restrictions and requirements 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.

Requiring county subdivision requirements is impractical for lands that are most suitable for ranching uses. While water is typically the only required utility to provide for ranch activities, requiring roads, sewer, electrical and other components to meet county codes when creating a CPR of ranch lands is extremely costly and unnecessary. While this could be applicable for an ag park, it does not lend itself well to lands whose current and future purpose is ranch activities.



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 designations. 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 or fake farms. We would support finding a viable solution, but this bill is not the solution. We respectfully ask the committees to oppose this measure in its current format. Thank you for giving us the opportunity to testify on this important matter.

**SB-2524**

Submitted on: 2/22/2018 10:23:45 AM

Testimony for CPH on 2/23/2018 1:25:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Katie Moquin	Individual	Oppose	No

Comments:

CPR does not affect the use, zoning, density, community plans, or island plans - CPR is only a mechanism to hold title. So the intention of this bill to curb growth in the AG district will not be effective at all. It will also prevent affordable properties to be available for sale.

**SB-2524**

Submitted on: 2/22/2018 11:07:09 AM

Testimony for CPH on 2/23/2018 1:25:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael Leake	Individual	Oppose	No

Comments:

Dear Senators:

Last year my family purchased an Agriculture Lot with another family as Tenants in Common. Our goal is to CPR our Lot, so each family can separately finance our homesteads. Without the CPR title mechanism, our dream of building a family farm will be quashed by absence of financing options. Please consider that the CPR mechanism does not affect zoning or reduce density; it merely affects holding title. I humbly request you carefully reconsider this bill before creating an obstacle to realizing our family (and other families too) dream.

Sincerely,

Michae Leake (Paia)

**SB-2524**

Submitted on: 2/22/2018 11:19:38 AM

Testimony for CPH on 2/23/2018 1:25:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
William Jalbert	Individual	Oppose	No

Comments:

Aloha,

I am writing as a Realtor, small business owner and homeowner on Maui. I am very much against limiting CPR's in any way beyond current regulations. Hawaii has an affordable housing crisis. Creating additional requirements (read costs) to CPR's will be detrimental to prices of ohana unit CPR's whether they are sold or rented.

Please do not pass this legislation which will only make our housing affordability crisis even worse.

Sincerely,

Billy Jalbert

**SB-2524**

Submitted on: 2/22/2018 12:47:54 PM

Testimony for CPH on 2/23/2018 1:25:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dave Futch	Individual	Oppose	No

Comments:

To all of those in favor of SB2524 - restricting current CPR rights and entitlements,

Know this before you act:

CPR is only a way to hold title. CPR does not affect use, zoning, density, community plans or island plans... So if you believe that the intention of this bill is to curb growth in the Ag district then you need to realize that this measure *will not work*. **There is no nexus to CPR and development.**

If you read carefully, you will learn that the County does not recognize CPR. Therefore, the original parcel has certain entitlements and on Maui, an Ag parcel of 2 acres is entitled to a house of any size and a cottage of up to 1,000 s.f. When the CPR process is completed, the house portion may NOT construct another dwelling and neither is the cottage portion. This is the beauty of the CPR. **NO GREATER DENSITY CAN BE CREATED BY ENABLING A PROPERTY TO BE CPR'd.**

I have lived in the Ag zone district now for 30 years. I moved here because of the elbow room. I am completely in favor of preserving the density factor. I also know that CPR'd properties do not cause greater density.

In fact, **the CPR process improves neighborhoods as the properties are better cared for when occupied by owners versus tenants.**

STOP THIS BILL NOW. It does not accomplish its purpose and **makes homeownership even more difficult -- THE OPPOSITE OF YOUR DIRECTIVE as a public servant. It is immoral and unethical to act outside of your commitment to the people you serve.**

**VERY VERY SINCERELY,**

**Dave Futch**



**SB-2524**

Submitted on: 2/22/2018 12:55:44 PM

Testimony for CPH on 2/23/2018 1:25:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
louis shields	Individual	Oppose	No

## Comments:

Aloha, as a homeowner of a CPR'ed lot in Launiupoko/Lahaina, I write to oppose SB2524 as it does not limit development or curb growth as the bill purports to do. In fact, the cpr process requires the implementation of farm plans that otherwise are not required. My wife and I purchased a cpr plot and planted a variety of fruit and coconut trees on over 1/2 of our property. Cpr does not affect use or zoning, but is only a way to hold title. SB 2524 will not curb growth or development as the lands can be developed with the exact number of dwelling units whether cpr is in place or not. Please vote against this bill. Respectfully, Louis Shields

**SB-2524**

Submitted on: 2/22/2018 2:07:30 PM

Testimony for CPH on 2/23/2018 1:25:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
debbie arakaki	Individual	Oppose	No

Comments:

To Whom it May Concern,

Please do not pass SB 2524. It is a flawed representation of what the cpr on our Maui Ag lands currently is. With the current Ag zoning the density of what can be built does not change, regardless if the agriculture zoned lands are condominiumized or not. The cpr allows the flexibility and ability to sell or hold different mortgages but does not increase the number or size of the homes that can be built. Please stop this bill from moving forward.

Sincerely,

Debbie Arakaki

808-283-7214

**SB-2524**

Submitted on: 2/22/2018 2:53:57 PM

Testimony for CPH on 2/23/2018 1:25:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Patty Sadler	Individual	Oppose	No

Comments:

Since a CPR allows our young and middle class to get in the market and have affordable real estate there is no reason not to allow it. My daughter is single, born and raised here and a teacher. Without the ability to buy a cottage portion of a CPR she would never be able to get into owning her own home. One of the main points I think people should share is that CPR is only a way to hold title. CPR does not affect use, zoning, density, community plans or island plans... CPR is only a mechanism to hold title. So the intention of this bill to curb growth in the Ag district will not work. There is no nexus to CPR and development.

We really need to start thinking about the people that live and work here full time and allow them a chance to afford their dreams. Otherwise, they will be renting forever and paying someone else's mortgage at a high rate.

**SB-2524**

Submitted on: 2/22/2018 3:54:21 PM

Testimony for CPH on 2/23/2018 1:25:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Charles Iverson	Individual	Oppose	No

Comments:

CPR does not affect use, zoning, density, community plans or island plans... CPR is only a mechanism to hold title. So the intention of this bill to curb growth in the Ag district will not work. There is no nexus to CPR and development. Since this bill effects all islands, a better plan must be presented so that all are not penalized for the actions of the few.