



# OFFICE OF PLANNING STATE OF HAWAII

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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 AGRICULTURE AND ENVIRONMENT  
AND  
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL,  
AND MILITARY AFFAIRS**  
Monday, February 5, 2018  
1:30 PM  
State Capitol, Conference Room 224

in consideration of  
**SB 3032**  
**RELATING TO CONDOMINIUM PROPERTY REGIMES.**

Chairs Gabbard and Nishihara, Vice Chairs Riviere and Wakai, and Members of the Senate Committees on Agriculture and Environment, and Public Safety, Intergovernmental, and Military Affairs.

The Office of Planning (OP) provides comments on SB 3032 due to concerns for certain provisions in the bill, as noted below. SB 3032 would: (1) amend Hawaii Revised Statutes (HRS) § 205-4.5(f) to make lands subdivided for the purpose of agricultural use subject to county subdivision standards; and (2) amend HRS Chapter 514B to require that condominium property regimes (CPR) conform to county subdivision or equivalent requirements, and repeal the exemption from registration for nonresidential CPRs whose units are sold for \$1 million or more.

OP is very concerned about the encroachment of low-density, higher-valued residential uses on Hawaii's agricultural lands, and OP generally supports measures that attempt to address this problem.

However, OP is particularly concerned about Section 2 of the measure amending HRS § 205-4.5(f), which OP recommends be removed or amended. 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 higher lease rents to agricultural lessees.

If there is a concern that storage sheds, equipment sheds, etc. 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 for 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 for the Committee’s consideration:

1. Section 3 of the bill. OP is concerned that the amendment could have the effect of subjecting CPRs proposed for bona fide agricultural producers to the same infrastructure requirements of residential subdivisions. As noted earlier, this could have an adverse effect on working lands, crop flexibility, and agricultural lease rents.
2. Section 4 of the bill. It is not clear what effect requiring the registration of all nonresidential CPRs would have on large public or private commercial projects. Furthermore, the exemption in paragraph (3) could itself offer a loophole for the initial registration of a CPR that establishes ownership interests in agricultural land.

Effective regulation and management of lands in the State Agricultural District is a complex matter, requiring a careful balancing of the needs of agricultural producers with the desire to eliminate encroachment of non-agricultural uses on agricultural lands. This will require agencies and users to work collaboratively to identify new approaches and tools to accomplish this.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE  
Governor

DOUGLAS S. CHIN  
Lt. Governor



State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
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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 PUBLIC SAFETY,  
INTERGOVERNMENTAL, & MILITARY AFFAIRS AND AGRICULTURE &  
ENVIRONMENT**

**FEBRUARY 5, 2018  
1:30 P.M.  
CONFERENCE ROOM 224**

**SENATE BILL NO. 3032  
RELATING TO CONDOMINIUM PROPERTY REGIMES**

Chairperson Nishihara, Chairperson Gabbard and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill No. 3032 that proposes three amendments:

1. Establishes county authority to require subdivision standards be met in leasehold agricultural subdivisions (Section 205-4.5(f));
2. Requires condominium property regimes to conform with county subdivision or equivalent requirements for a property (Section 514B-5); and
3. Repeals the exemption from the condominium property regime registration requirement for projects where all units are restricted to nonresidential uses and all units are to be sold for \$1,000,000 or more.

The Department of Agriculture supports attempts to impose the counties oversight and authority as found in their respective plans, ordinances and rules on condominium property regimes. We note that the first amendment affects leased and not "CPR'd" agricultural land.

Thank you for the opportunity to comment on this measure.



**LATE**

**PRESENTATION OF THE  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE SENATE COMMITTEES ON  
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS  
AND  
AGRICULTURE AND ENVIRONMENT

TWENTY-NINTH LEGISLATURE  
Regular Session of 2018

Monday, February 5, 2018  
1:30 p.m.

**WRITTEN TESTIMONY ONLY**

**TESTIMONY ON SENATE BILL NO. 3032, RELATING TO CONDOMINIUM PROPERTY REGIMES.**

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

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on S.B. 3032, Relating to Condominium Property Regimes. My name is Celia Suzuki, and I am the Licensing Administrator for the Department’s Professional and Vocational Licensing Division (“PVL”). PVL appreciates the intent of this measure and provides suggested amendments to fully capture its intended purpose.

The Department’s comments relate solely to section 3 of the bill. The purpose of section 3 of this measure is to require condominium property regimes to comply with county subdivision requirements. The Department recommends the following amendments to section 3:

- **§ 514B-5 Conformance with county [~~land-use~~] laws.** Any condominium property regime established under this chapter shall conform to the existing underlying county zoning for the property and all applicable county permitting requirements adopted by the county in which the property is located, including any supplemental rules adopted by the county, pursuant to section 514B-6, to ensure the conformance of condominium property regimes to the purposes and provisions of county zoning, subdivision, and development ordinances and rules, and chapter



205, including section 205-4.6 where applicable. In the case of a property which includes one or more existing structures being converted to condominium status, the condominium property regime shall comply with section 514B-32(a)(13) or 514B-84(a).

- **§ 514B-6 Supplemental county ordinances and rules governing a condominium property regime.** Whenever any county deems it proper, the county may adopt supplemental ordinances and rules governing condominium property regimes established under this chapter in order to implement this program; provided that any of the supplemental rules adopted shall not conflict with this chapter or with any of the rules adopted by the commission to implement this chapter.
- **§ 514B-52. Application for registration.** (a) An application for registration of a project shall:
  - (1) Be accompanied by nonrefundable fees as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91; and
  - (2) Contain the documents and information concerning the project and the condominium property regime as required by sections 514B-54, 514B-83, and 514B-84, as applicable, and as otherwise may be specified by the commission.
- (b) An application for registration of a project in the agricultural district classified pursuant to chapter 205 shall include a verified statement, signed by an appropriate county official, that the project as described and set forth in the project's declaration, condominium map, bylaws, and house rules does not include any restrictions limiting or prohibiting agricultural uses or activities, in compliance with section 205-4.6. The commission shall not accept the registration of a project where a county official has not signed a verified statement.



(c) An application for registration of a project in a county agricultural zoning district or preservation zoning district shall include a verified statement, signed by an appropriate county official, that the project is in compliance with any supplemental county ordinances and rules adopted pursuant to section 514B-6.

~~[(c)]~~(d) The commission need not process any incomplete application and may return an incomplete application to the developer and require that the developer submit a new application, including nonrefundable fees. If an incomplete application is not completed within six months of the date of the original submission, it shall be deemed abandoned and registration of the project shall require the submission of a new application, including nonrefundable fees.

~~[(d)]~~(e) A developer shall promptly file amendments to report either any actual or expected pertinent or material change, or both, in any document or information contained in the application.

Thank you for the opportunity to provide written testimony on S.B. 3032.

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

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KIRK CALDWELL  
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EUGENE H. TAKAHASHI  
DEPUTY DIRECTOR

February 5, 2018

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 Nishihara and Gabbard, and Committee Members:

**Subject:** Senate Bill No. 3032  
Relating to Condominium Property Regimes

The Department of Planning and Permitting (DPP) **strongly supports** Senate Bill No. 3032 in its present form, or with the inclusion of any supportive amendments recommended by the State Department of Commerce and Consumer Affairs (DCCA).

The DPP has had meetings with DCCA on this matter, and is in accord with the Bill's intent to allow conformance of agricultural condominium property regimes with county subdivision requirements in order to ensure availability of necessary supporting infrastructure to prospective condominium owners.

Accordingly, we urge that this Bill, with any pertinent amendments, be passed by your committees.

Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in blue ink that reads "Kathy K. Sokugawa".

Kathy K. Sokugawa  
Acting Director

**SB-3032**

Submitted on: 2/3/2018 2:48:06 PM

Testimony for PSM on 2/5/2018 1:30:00 PM

| <b>Submitted By</b>          | <b>Organization</b>                | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|------------------------------|------------------------------------|---------------------------|---------------------------|
| Benton Kealii Pang,<br>Ph.D. | Hawaiian Civic Club of<br>Honolulu | Support                   | No                        |

Comments:



**LATE**



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February 5, 2018

HEARING BEFORE THE  
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND  
MILITARY AFFAIRS  
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

**TESTIMONY ON SB 3032**  
RELATING TO CONDOMINIUM PROPERTY REGIMES

Room 224  
1:30 pm

Aloha Chair Nishihara, Chair Gabbard, Vice Chair Wakai, Vice Chair Riviere, 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 interests of our diverse agricultural community.

**The Hawaii Farm Bureau opposes SB 3032**, which repeals the exemption for agricultural lands that are subdivided and leased for agricultural uses due to the unintended consequences to commercial agricultural operations.

Many parcels in the State of Hawaii, especially on the neighbor islands are very large, in the thousands of acres. Our farmers and ranchers are often incapable of leasing such large acreage. On Maui, these lots are subdivided on a temporary basis, so leases can be created that may be used as collateral at financial institutions. Without such a subdivision, loans or other financial opportunities will not be possible.

There are success stories of this exemption that has resulted in real agriculture. A one size fits all solution is not the answer to problems that exist elsewhere. This measure needs careful review to prevent unintended consequences before passage.

For these reasons, HFB opposes this measure.

Thank you for this opportunity to provide our opinion on this important matter.