

SB 708

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 SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

FEBRUARY 1, 2017
1:15 P.M.
CONFERENCE ROOM 224

SENATE BILL NO. 708
RELATING TO AGRICULTURAL LAND

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 708 that seeks to amend sections 514B-31 (creation of condominiums), and 205-4.5 (permissible uses within the Agricultural Districts) to prohibit:

1. the creation of a residential project via condominium property regime (CPR) or a planned community association on a parcel of agricultural land 25 or more acres in size;
2. CPRs on any parcel of agricultural land from being later amended to allow residential dwellings; and
3. the subdivision of parcels of agricultural land 25 or more acres in size for the purpose of creating a CPR.

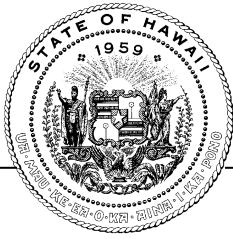
The Department of Agriculture supports this measure and offers comments.

CPR is an alternative to the subdivision of a parcel of land. When applied to agricultural land, it can theoretically result in a larger contiguous area available for



farming than under a subdivision. However, without sufficient controls, monitoring, and enforcement, CPRs have resulted in the establishment of “gentlemen farms” where “farm dwellings” are constructed but are not connected to a farm or where agricultural activity provides income to the family occupying the dwelling.

Thank you for the opportunity to submit our testimony.



**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
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT
Wednesday, February 1, 2017
1:15 PM
State Capitol, Conference Room 224

in consideration of
SB 708
RELATING TO AGRICULTURAL LAND.

Chair Gabbard, Vice Chair Riviere, and Members of the Senate Committee on
Agriculture and Environment.

The Office of Planning (OP) has concerns about SB 708 and offers these comments. SB 708 would amend Hawaii Revised Statutes (HRS) § 205-4.5 (a)(4) to prohibit residential projects as a condominium property regime (CPR) or planned community association on lands rated by the Land Study Bureau as 'A' or 'B' overall master productivity rating. The measure would also prohibit: the creation of CPRs on parcels of agricultural land of 25 or more acres; the amendment of CPRs created on agricultural land to allow residential uses; and the subdivision of a parcel of agricultural land 25 acres or greater for the purpose of creating a CPR.

OP is very concerned about the encroachment of low-density, higher-valued residential uses on Hawaii's agricultural lands, and we generally support measures that attempt to address this problem. However, we are concerned that a blanket prohibition on the use of CPRs on agricultural lands to address residential encroachment eliminates the CPR as a very important tool for legitimate farmers, especially small farmers. Agricultural CPRs could lower costs to

farmers, farm cooperatives, or other farm entities by making it easier to access agricultural lands and by reducing the cost of agricultural infrastructure and operations through shared infrastructure investments and maintenance.

Other means to curtail residential use of agricultural land without prohibiting CPRs for agricultural users could include:

- The prohibition of residential uses in the master deed and declaration of any CPRs created under HRS 514B-31 on lands in the State Agricultural District.
- Authorization for the creation of an agricultural CPR, which is specifically limited to agricultural operations and prohibits residential uses, on lands in the State Agricultural District—with the prohibition of the creation of CPRs that are not constituted as an agricultural CPR on lands in the State Agricultural District. A measure for something similar to an agriculture-only CPRs was introduced in the Senate this session, referring to this type of CPR as “common interest agricultural communities.”

Thank you for the opportunity to testify on this measure.

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
Senate Committee on Agriculture and Environment
Wednesday February 1, 2017
1:15 PM
State Capitol, Conference Room 224

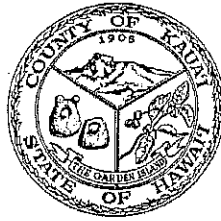
In consideration of
SB 0708
RELATING TO AGRICULTURAL LAND

Chair Gabbard, and Vice Chair Riviere, and members of the Committee on Agriculture and Environment:

The Land Use Commission supports the intent of this measure which prohibits the use of condominium property regime (CPR) on agricultural lands for residential project development. This is consistent with ensuring that agricultural lands will be available for agricultural use and not cause impacts to public trust resources and infrastructure systems in areas not planned for residential development.

Thank you for the opportunity to testify on this matter.

Bernard P. Carvalho, Jr.
Mayor



Michael A. Dahilig
Director of Planning

Wallace G. Rezentes, Jr.
Managing Director

Ka'aina S. Hull
Deputy Director of Planning

PLANNING DEPARTMENT
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite A-473, Lihu'e, Hawai'i 96766

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

Chairs Gabbard, Vice Chairs 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.

From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 27, 2017 1:11 PM
To: AEN Testimony
Cc: prentissc001@hawaii.rr.com
Subject: Submitted testimony for SB708 on Feb 1, 2017 13:15PM

SB708

Submitted on: 1/27/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Charles Prentiss	Kailua Neighborhood Board	Support	No

Comments: The Kailua Neighborhood Board fully supports the protections that this bill will provide for our agricultural lands. It will help to close loopholes in development procedures that negatively impact implementing requirements in our State constitution to preserve and protect agricultural land, and promote food sustainability programs.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



300 Kuulei Rd. Unit A #281 * Kailua, HI 96734 * Phone/Fax (808) 262-0682 E-Mail: htff3000@gmail.com

COMMITTEE ON AGRICULTURE AND ENVIRONMENT'

Senator Mike Gabbard, Chair
Senator Gil Riviere, Vice Chair

SB 708
RELATING TO AGRICULTURAL LAND

February 1, 2017

Chair Gabbard
Vice Chair Riviere
Committee members



Hawaii's Thousand Friends (HTF) supports SB 708 that prohibits the creation of condominium property regime (CPR) on agricultural land 25 acres or greater.


Since the demise of sugar and pineapple as major crops much of our islands agricultural lands have been changed from agriculture to urban development in one form or another, including CPR. These lands, usually the most productive with available water and good soil, are then lost to farming forever.

If Hawai'i is ever going to comply with the State Constitution mandate to *protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, assure the availability of agricultural suitable lands* and meet Governor Ige's goal of *doubling local food production by 2020* there must be sufficient land available on all islands for farming.

HTF urges you to pass SB 708 to ensure that agricultural land, 25 acres or greater, is protected from urban development and remains accessible for farming.



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

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

February 1, 2017

The Honorable Mike Gabbard, Chair
Senate Committee on Agriculture and Environment
State Capitol, Room 224
Honolulu, Hawaii 96813

RE: S.B. 708, Relating to Agricultural Land

HEARING: Wednesday, February 1, 2017, at 1:15 p.m.

Aloha Chair Gabbard, Vice Chair Riviere, and Members of the Committee.

I am Myoung Oh, 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 9,000 members. HAR **opposes** S.B. 708, which:

1. Prohibits the creation of a condominium property regime on agricultural land 25 acres or greater;
2. Prohibits a condominium property regime on agricultural land from being amended to allow a residential dwelling;
3. Prohibits the subdivision of agricultural land 25 acres or greater for the purpose of creating a condominium property regime; and
4. Prohibits any residential project created as a condominium under chapter 514B, HRS, or a planned community association under chapter 421J, HRS, in class A or B agricultural lands.



HAR believes this measure could penalize retired bona fide farmers who own more than 25 acres and whose children do not wish to be farmers. These families would not be able to build and finance their own property and extended families would not be allowed to gain title to any unit on the property.


While one purpose may be to preserve agricultural lands by using state law that will affect agricultural properties statewide, we stress the importance that each county has its own individual characteristic and state law should maintain for home rule management over these lands.

A recent Department of Agriculture study shows that in the last 35 years, the statewide use of agricultural land for crops has shrunk from 350,000 acres to 150,000 acres which suggests that there is no shortage of agricultural lands but rather a shortage of bona fide





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

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

farmers.

A condominium property regime requires the State LUC approval if the land needs to be reclassified from agricultural or other to urban and to determine compliance with state planning. It also requires county approval for zoning compliance, while counties are required to conform zoning decisions with county general plans.

We stress the importance of existing compliance with state and county planning. Adequate protections already exist under the Land Use Commission on specific standards and criteria as well as county oversight and regulation. S.B. 708 may relegate thousands of existing properties to the category of being “non-conforming.”

For the foregoing reasons, we are opposed to this measure.

Mahalo for the opportunity to testify.





Hawaii Cattlemen's Council, Inc.

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

DATE: Wednesday, February 1, 2017
TIME: 1:15 p.m.
PLACE: Conference Room 224

SB 708 – RELATING TO AGRICULTURAL LAND.

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. Prohibits any residential project created as a condominium under chapter 514B, HRS, or a planned community association under chapter 421J, HRS, in class A or B agricultural lands.

Chair Gabbard, Vice Chair Riviere, 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 five 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 708 as this is unfair to land owners with large TMK's in the agricultural district and should not be attempted without a clear definition of an agricultural producer.

If the purpose of this bill is to reduce the number of "gentlemen 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 ability to define a bona fide agricultural producer should be created first in order to prevent unfairly targeting those in an active agricultural pursuit.

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. Additionally, creating a CPR of these lands does provide practical benefit in portioning off ag land for the purpose of estate planning, thus passing these portions on to future generations of their heirs that want to farm.

We all want to keep productive ag land in production, and not lose it to gentlemen farms. The Important Ag Lands (IAL) legislation this legislature passed years ago was supposed to help address that. Counties have yet to create the incentives for land owners to keep their land in ag. If we do that, maybe we will start to address the issue of gentlemen farms.



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 best solution to the problem.

Please excuse our lack of physical presence as our industry's national convention is being held on the mainland during the time of this hearing. We thank you for your understanding and for giving us the opportunity to testify on this important matter.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 1:00 PM
To: AEN Testimony
Cc: alan@prlooffice.com
Subject: Submitted testimony for SB708 on Feb 1, 2017 13:15PM

SB708

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Gottlieb	Ponoholo Ranch	Oppose	No

Comments: While limiting the size of the land to 25 acres or more, this measure would not allow for the equitable division of land in the case of a large parcel split among several heirs. Although this might not affect the smaller parcels in the state, it does hinder the rights and privileges of large landowners unfairly. Also, the infrastructure that is needed to service the rural areas of the state could be provided more efficiently as a larger lot could be split into several smaller portions. By centralizing the infrastructure needed to serve the split, this would require fewer resources to complete. Also, if this measure is passed, the cost to purchase or lease smaller parcels of land for ag use is likely to escalate. With the cost of the land being one of the highest inputs for farmers and ranchers, this could cripple the profitability of the farm or ranch. Having more options for farmers and ranchers through being able to include large TMK's for consideration in a CPR, would yield for a more sustainable future for both the farmer or rancher and the state's food sustainability. If the purpose of this bill was to reduce the number of "gentleman's farms" in the state, we believe that this could be accomplished through enforcement of current land use laws by both the state and the counties.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2017 2:41 PM
To: AEN Testimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB708 on Feb 1, 2017 13:15PM*

SB708

Submitted on: 1/28/2017

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

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

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Friday, January 27, 2017 3:22 PM
To: AEN Testimony
Cc: lfreed@hawaii.rr.com
Subject: *Submitted testimony for SB708 on Feb 1, 2017 13:15PM*

SB708

Submitted on: 1/27/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Freed	Individual	Support	No

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 4:05 PM
To: AEN Testimony
Cc: pua62488@gmail.com
Subject: *Submitted testimony for SB708 on Feb 1, 2017 13:15PM*

SB708

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Margaret Ralston	Individual	Support	No

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 3:23 PM
To: AEN Testimony
Cc: skaye@runbox.com
Subject: *Submitted testimony for SB708 on Feb 1, 2017 13:15PM*

SB708

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
sally kaye	Individual	Support	No

Comments:

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2017 12:03 PM
To: AEN Testimony
Cc: daniel.dano.gardner@gmail.com
Subject: Submitted testimony for SB708 on Feb 1, 2017 13:15PM

SB708

Submitted on: 1/31/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Dan Gardner	Individual	Support	No

Comments: How will we ever make progress toward growing our own food here in Hawaii if we keep dividing up our designated agricultural lands for condominiums. We also do not need any more "Country Squires" on ag lands. Thank you for your support of this needed legislation.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 31, 2017 11:43 AM
To: AEN Testimony
Cc: lisamarten@hawaii.rr.com
Subject: Submitted testimony for SB708 on Feb 1, 2017 13:15PM

SB708

Submitted on: 1/31/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Marten	Individual	Support	No

Comments: Dear members of the Committee on Agriculture and Environment, Please support SB708 as it will address a loophole in the current law that allows development of agricultural land for high end residential use. Once that land converts to residential, it will never be returned to agricultural use. One of two areas that has lost the most tree canopy on Oahu, according to a study by Smart Trees Pacific, is Kailua / Waimanalo because of a single development where 64 acres of forest land, zoned agricultural, was clear cut and developed and marketed as a gated, luxury community "Olomana heights." In order to meet agricultural requirements, they told clients they would plant fruit trees along the shared roads and have someone harvest them and take them to farmers market. Residents need not be involved in any way. Where there is money to be made, investors will take advantage of this loophole. Please protect our agricultural and forest lands. Mahalo, Lisa Marten

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2017 5:09 PM
To: AEN Testimony
Cc: dianaburg@earthlink.net
Subject: Submitted testimony for SB708 on Feb 1, 2017 13:15PM

SB708

Submitted on: 1/30/2017

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

Submitted By	Organization	Testifier Position	Present at Hearing
Eileen Diana Burg	Individual	Support	No

Comments: This bill is particularly critical now that A&B is shutting down. The future of our island needs to have this protection from disguised housing use of ag lands through the fiction of calling the subdivision a CPR

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov