

SB 975

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Acting Chairperson
Board of Agriculture

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
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TESTIMONY OF THE DEPARTMENT OF AGRICULTURE
BEFORE THE SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

FEBRUARY 13, 2019
1:25 P.M.
CONFERENCE ROOM 224

SENATE BILL NO. 975
RELATING TO COUNTY LAND USE REQUIREMENTS

Chairperson Gabbard and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill No. 975 that:

1. Requires public notice of sale of agricultural property in a planned community association within 90 days of subdivision and sale;
2. Prohibits any residential use for any period of structures on agricultural and preservation land;
3. Allows for county enforcement of state and county requirements on subdivided agricultural land based on community reports of suspected violations.
4. Permits consideration of infrastructure and environmental impacts on applications for condominium projects on agricultural land; and
5. Limits the effect of the bill to counties with a population of at least 750,000.

The Department offers comments on this measure.

The Department of Agriculture has concerns on this measure as we are unable to discern whether the collective effect of the amendments proposed to Chapters 205, 421J, and 514B addresses the purpose of the bill. We note that the amendment to Chapter 205 has the effect of obscuring the good intentions of an existing law meant to increase agricultural use of agricultural land without the landowner incurring some of the

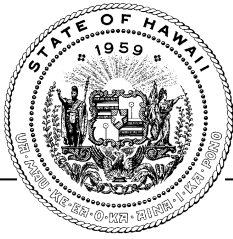


subdivision standards otherwise required (Section 205-4.5(f) leasehold agricultural subdivision).

The Department asks that proponents of this measure consider a more direct approach to addressing their concerns by requesting the City and County of Honolulu to develop and enact amendments necessary to the Land Use Ordinance (Chapter 21, Revised Ordinances of Honolulu) to not allow agricultural activities and residential or farm dwellings on preservation zoned land in the State Agricultural District, to require notification from landowners seeking to create CPRs on agricultural lands prior to applying for CPR recordation or registration, and for the City to make known the maximum number of farm dwellings that are permitted within a CPR of agricultural land.

We note that this bill is nearly identical to Senate Bill 2524 CD 1 (2018) that Governor Ige vetoed (GM 1256).

Thank you for the opportunity to comment on this measure.



OFFICE OF PLANNING STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

DIRECTOR
OFFICE OF PLANNING

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Statement of
RODNEY FUNAKOSHI
Planning Program Administrator, Office of Planning
before the
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT
Wednesday, February 13, 2019
1:25 PM
State Capitol, Conference Room 224

in consideration of
SB 975
RELATING TO COUNTY LAND USE REQUIREMENTS.

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

The Office of Planning (OP) offers the following comments on SB 975. SB 975 is intended to improve public notice and regulation of residential uses on condominium property regimes (CPR) on agricultural lands in a county with a population of seven hundred fifty thousand or more. OP strongly supports measures for more effective protection of Hawaii's agricultural lands from encroachment by non-agricultural uses, in particular, residential development with little connection to bona fide farming activity. There are challenges statewide with the regulation of residential uses on lands under condominium property regimes in the State Agricultural District.

However, OP has major concerns with elements of this bill, as follows.

1. The bill as written blurs the statutory differences between a condominium property regime and a conventional subdivision. This could not only result in provisions having little enforcement value, but also make it more difficult for State and county agencies to respond effectively to perceived abuses of CPRs and subdivisions in the Agricultural District.
2. OP does not support the proposed amendment to Hawaii Revised Statutes (HRS) § 205-4.5(f) on page 18 of the bill and recommends this amendment be dropped. This subsection was enacted specifically to facilitate access to agricultural land for small and mid-sized farmers for agricultural use. HRS § 205-4.5(f)(2) already states that permanent or temporary dwellings or farm dwellings, including trailers and campers, are prohibited on the lease lots created. Furthermore, the amendment would actually create a loophole that could allow accessory structures

to be used for residential use, contrary to the existing statute. If there remains a concern that accessory sheds could be converted to residential use, OP respectfully offers the following language for your consideration:

“(2) No permanent or temporary dwellings or fam 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 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”...

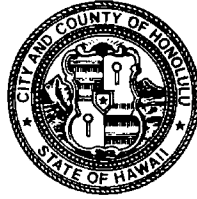
3. OP believes that any provisions directed at regulating or improving consistency of development with State and county land use laws and ordinances should have applicability statewide. Thus, we prefer that provisions are not limited to specific counties.

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 13, 2019

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 Chair Gabbard and Committee Members:

**Subject: Senate Bill No. 975
Relating to County Land Use Requirements**

The Department of Planning and Permitting (DPP) **opposes** Senate Bill 975, which addresses condominium property regime (CPR) on agricultural lands.

There are a number of reasons we cannot support this measure, including lack of clarity and perhaps, unintended consequences.

The measure requires a "public notification" upon the "sale of the parcel." It is not clear who would enforce this new requirement, and there are no penalties in the event of a violation. Is the intent to give public notice when the first unit is sold, or the last? What would constitute public notice? A legal notice in a newspaper of general circulation? Notification of adjacent property owners? Notification to the applicable neighborhood board? What would be the purpose of a public notice? Is it to disclose the names of the new owners? If it is to provide input on the establishment of the CPR itself, perhaps it should be required prior to the approval of the CPR. It is not clear how the public notice will better protect state agricultural lands from abuse.

Proposed new subsection 205-4.5(f)(3) would prohibit residential development on lands zoned preservation by the City within the state agricultural district. The City does not allow any type of housing as a principal use on preservation lands. However, we do allow one caretaker's dwelling as an accessory use for cemeteries. This is a reasonable use, and should not be prohibited.

Furthermore, it is unclear why the measure is intended to apply only to a county with a population of 750,000 or more, since agricultural condominiums and other instances of preservation zoning in the state agricultural district are likely to also occur in other counties.

The Honorable Mike Gabbard, Chair
and Members of the Committee on Agriculture and Environment
Hawaii State Senate
Hawaii State Capitol
Senate Bill No. 975
February 13, 2019
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The department is not opposed to CPRs in the state agricultural district, as long as they comply with our subdivision and zoning requirements. An option to Senate Bill 975 is to allow the counties to have a decision-making role in requests for agricultural CPRs.

In short, while we respect the intent of this Bill, we ask that Senate Bill No. 975 be held for further discussion. We thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy K. Sokugawa". The signature is fluid and cursive, with the first name "Kathy" being the most prominent.

Kathy K. Sokugawa
Acting Director

LATE



February 13, 2019

Senator Mike Gabbard, Chair
Senator Russell E. Ruderman, Vice Chair
Senate Committee on Agriculture and Environment

Comments in Strong Opposition to SB 975, Relating to County Land Use Requirements. (Requires public notice of sale of agricultural property in a planned community association within 90 days of subdivision and sale. Prohibits any residential use for any period of structures on agricultural and preservation land. Allows for county enforcement of state and county requirements on subdivided agricultural land based on community reports of suspected violations. Permits consideration of infrastructure and environmental impacts on applications for condominium projects on agricultural land. Applies to counties with a population of at least 750,000.)

Wednesday, February 13, 2019, 1:30 p.m., in Conference Room 224

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers, resort operators and major utility companies. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

LURF appreciates the opportunity to express its respectful, but **STRONG OPPOSITION to SB 975, and respectfully recommends that the Legislature consider adopting the following bills**, which provide more reasonable approaches relating to regulating condominium property regimes (CPR) on agricultural and preservation lands:

- **SB 381**, which requires counties to adopt supplemental rules on condominium property regimes, including those that involve agricultural lands; or
- **HB 861, HD1**, which requires the Office of Planning, in consultation with the Land Use Commission, Real Estate Commission, and the Department of Planning and Permitting, to study and report on deficiencies in the land subdivision and condominium property regime laws that may result in land being developed contrary to the legislative intent of those laws.

While SB 975 may be well-intended, in its attempt to curtail some "bad actors," it would punish and restrict bonafide farmers, ranchers and agricultural operators and land owners; is contrary to the Important Agricultural lands (IAL) law allowing employee farm dwellings; and would violate the private property rights of farmers and ranchers.

In 2005 and 2007, LURF and the Hawaii Farm Bureau Federation were the main proponents and drafters of the key provisions in the IAL laws. LURF and its members continue to support bonafide farmers, ranchers and agricultural operations and the IAL law, however, we must oppose the current version of SB 975.

LURF's Position. LURF's opposition to SB 975 is based on, among other things:

- This SB 975 is **not supported** by the State Department of Agriculture, the Office of Planning, and the Department of Planning and Permitting, of the City and County of Honolulu (DPP), each of which has expressed their own major concerns relating to, among other things, the questionable intent and purpose of imposing restrictions only to the island of Oahu; lack of clarity; enforcement problems; unintended negative consequences which will create obstacles for bona-fide farmers and ranchers; the availability of other, more direct alternatives; and the fact that this bill is contrary to existing State law which facilitate bona-fide farming and ranching; and is unnecessary.
- This measure is **likely to be vetoed**, as it is similar to SB 2524, SD1, HD1, CD1, which was vetoed by Governor Ige last year;
- **Proponents have failed to consult or seek input from those most affected Stakeholders - farmers, ranchers, agricultural land owners and the counties.** This bill, like SB 2425 last year, has been proposed without consulting with, or obtaining meaningful input from the parties most affected by its prohibitions, farmers, ranchers, the Hawaii Farm Bureau, large agricultural land owners, and the affected counties.
- This bill is **unnecessary**. According to DPP, the number of CPR applications for agricultural lands has dramatically reduced, and the Stakeholders have already begun discussions regarding amending the administrative rules and procedures relating to CPRs on agricultural lands on Oahu;
- **There is no factual basis or justification for SB 975.** This measure imposes drastic negative consequences on bonafide farmers, ranchers and agricultural operators, **without any factual basis or justification**;
- **The prohibition on single-family dwellings is contrary to the IAL law, Section 205-45.5, HRS, which specifically allows for farm dwellings and employee housing; and**
- **The prohibition on subdividing and creating CPRs on agricultural lands violates the constitutional property rights of bonafide farmers, ranchers and agricultural land owners.**

Finally, as LURF did last year, we again repeat our offer to work with those who are concerned with the issues that have given rise to this measure.

Based on the above, LURF must **strongly oppose SB 975**, and respectfully requests that this bill **be held in this Committee**. LURF also **respectfully recommends that the Legislature consider adopting**

Thank you for the opportunity to provide comments in opposition to this measure.

SB-975

Submitted on: 2/6/2019 1:52:12 PM

Testimony for AEN on 2/13/2019 1:25:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Karen Winslow	Individual	Support	No

Comments:

Aloha Lawmakers,

I **OPPOSE** - SB 975,

Please - SAVE HAWAII'S Agricultural land!

Hawaii, has long been economically abused, by out-state-corporations, more interested in growing profits for mainland investors, than meeting the needs, and desires, of the very diverse citizens of Hawai'i.

When I hear agricultural land being transformed condominiums, "workforce housing" or "gentleman's farms" I see a **RED ALERT!**

Hawaii is living under a dreamlike innocence that the ships and planes will never stop coming, and hopefully that is true, but realistically many natural, and man-made dangers threaten our delicate international economies, if shipping of cargo to Hawai'i is drastically curtailed, or cut-off; How would we feed the populous?

The stores would be empty in a week!

Hawaii, especially the outer islands have vast agricultural lands, Hawaii could become a world leader in restoration, and organic regeneration, of agricultural lands, long abused by mono-cropping, and chemical saturation. People want green tourism, that gives them a feeling of being connected with the earth, especially in this tropical paradise.

Unique alternative housing projects hold great promise to ease Hawaii's housing crisis, but not at the expense of Hawaii's agricultural lands, **which are necessary for the domestic security of the islands.**

Agricultural self-sustainability should be lawmakers **Top Priority.** — growing diverse agricultural industries that are necessary to to the survivability of the populous. Plus the bill is "about:blank#blocked so what's it really about?

Mahalo for saving Hawaii's Agricultural farmlands,

Mary Whispering Wind
Puunene, Hawai'i

Aloha Lawmakers,

I **OPPOSE** - SB 975,

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Mahalo for saving Hawaii's Agricultural farmlands,

Brian Murphy
Maui, Hawai'i