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Statement of
RODNEY FUNAKOSHI
Planning Program Administrator, Office of Planning
before the
**SENATE COMMITTEES ON
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS
AND
WATER AND LAND**

Monday, February 11, 2019
1:30 PM

State Capitol, Conference Room 229

in consideration of
SB 1064
RELATING TO AGRICULTURE.

Chairs Nishihara and Kahele, Vice Chairs Wakai and Keith-Agaran, and Members of the Senate Committees on Public Safety, Intergovernmental, and Military Affairs and Water and Land.

The Office of Planning (OP) respectfully offers comments on SB 1064, which would amend Hawaii Revised Statutes (HRS) § 514B-31(a) to prohibit the creation of condominium property regimes (CPR) on parcels of land twenty-five acres or larger on agricultural lands in any county where one-third or less of the county's lands is classified in the State Agricultural District.

OP supports measures that would curtail the fragmentation of intact agricultural lands and stem the encroachment of low-density, higher-valued residential uses on Hawaii's productive agricultural lands. However, we have several concerns about this measure.

1. No provision for agricultural operations under a CPR. This measure would eliminate the CPR as a very important tool for legitimate farmers, especially smaller farmers, to gain access to large tracts of intact agricultural land. Agricultural CPRs could also lower costs to farmers, farm cooperatives, or other farm entities by reducing the cost of agricultural infrastructure and operations through shared infrastructure investments and maintenance. Under a CPR, a parcel would remain intact as one lot of record: avoiding the fragmentation that would result with subdivision of the land, and allowing ultimate flexibility as to how the land is allocated to farmers or different crop regimes.

2. Limited application of general law. SB 1064 would limit application of the amendments to a county with less than one-third of its land in the State Agricultural District. HRS Chapter 514B and Chapter 205, governing the Agricultural District, are general laws of statewide applicability. Access by farmers to large tracts of agricultural land and the problem of residential use under CPRs in the Agricultural District are of concern statewide. Thus, any proposed amendment of either of these chapters should not be restricted to a particular geographic area to ensure consistency and predictability in the application and enforcement of State policy.
3. Clarification of “agricultural land”. The proposed amendments do not define “agricultural land,” which could complicate enforcement. This might be remedied by clarifying whether agricultural land is land in the State Agricultural Land Use District and/or zoned agricultural by the county.

Thank you for this opportunity to testify.

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Acting Chairperson
Board of Agriculture

State of Hawaii
DEPARTMENT OF AGRICULTURE
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TESTIMONY OF THE DEPARTMENT OF AGRICULTURE

BEFORE THE SENATE COMMITTEES ON WATER & LAND AND PUBLIC SAFETY,
INTERGOVERNMENTAL, & MILITARY AFFAIRS

FEBRUARY 11, 2019
1:30 P.M.
CONFERENCE ROOM 229

SENATE BILL NO. 1064
RELATING TO AGRICULTURE

Chairpersons Kahele and Nishihara and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill 1064 that amends Section 514B-31(a) (creation of condominium property regime) by prohibiting in the County of Honolulu:

1. CPRs created on any parcel of agricultural land 25 acres or more in size;
2. CPRs created as of the effective date of this Act on a parcel of agricultural land 25 acres or greater from being amended later to allow for a single-family dwelling; and
3. Parcels of agricultural land 25 acres or more from being subdivided to create a CPR.

The Department of Agriculture supports the intent of this measure and offers comments and an amendment.

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.

The Department of Agriculture requests that its agricultural park and non-agricultural park programs (Chapters 166 and 166E, respectively) on Oahu be made exempt from the provisions of this bill. Our agricultural land management programs are managed with the singular intent of promoting commercial agricultural production, and this measure as proposed may prohibit the Department from using CPR as a tool to provide farmland and farm dwellings in a cost-effective manner.

We propose the following amendments to allow the Department to use CPR in its agricultural park and non-agricultural park programs on Oahu:

(Page 4, line 10 to page 5, line 11 deleted language is bracketed and struck through, new language is bold and double underscored)

"SECTION 2. Section 514B-31, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) To create a condominium property regime, all of the owners of the fee simple interest in land shall execute and record a declaration submitting the land to the condominium property regime. Upon recordation of the master deed together with a declaration, the condominium property regime shall be deemed created~~[.]~~; provided that in any county where one-third or less of the county's land is classified in the state agricultural district:

- (1) No condominium property regime shall be created on any parcel of agricultural land consisting of twenty-five or more acres;

- (2) No condominium property regime established as of the effective date of this Act on any parcel of agricultural land greater than twenty-five acres shall be later amended to allow for a single-family dwelling; [and]
- (3) No parcel of agricultural land consisting of twenty-five or more acres shall be subdivided for the purpose of creating a condominium property regime[-]; and "
- (4) Provided that subparagraphs (1), (2), and (3) shall not apply to any agricultural park or non-agricultural park lands project under chapters 166 or 166E."

Thank you for the opportunity to submit our testimony.

SB-1064

Submitted on: 2/10/2019 1:26:38 PM

Testimony for WTL on 2/11/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:



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February 11, 2019

COMMITTEE ON PUBLIC SAFETY, INEROVERNMENTAL AND MILITARY AFFAIRS

Senator Clarence K. Nishihara, Chair

Senator Glenn Wakai, Vice Chair

COMMITTEE ON WATER AND LAND

Senator Kaikali`i Kahele, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

SB 1064

RELATING TO AGRICULTURE

Committee Chairs and Members:

Hawaii's Thousand Friends, a statewide non-profit organization dedicated to reasonable, responsible and appropriate planning, supports SB 1064 that prevents the use of Condominium Property Regime (CPR) to subdivide agricultural land consisting of 25-aces or larger.

Using §514B CONDOMINIUMS to subdivide agricultural designated land circumvents Hawaii's Land Use Law that agricultural land must be used for agriculture.

CPR is a land ownership law, a consumer protection law, and a real estate law. It is *not a land use law*.

The condominium law is written with the idea that what is being regulated is the building. Subdividing agricultural land is not a building.

If Hawai`i is ever to reach the state and constitutional goals of diversified agriculture and increased agricultural self-sufficiency then state and county laws must be used to protect agricultural land not undermine it as the use of CPR does.

We urge you to pass SB 1064 because there is no reason why a real estate law should be used to undermine the ability of the state and counties to manage agricultural lands.



February 10, 2019

LATE

Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

Senator Kaiali'i Kahele, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Water and Land

Comments in Strong Opposition to SB 1064, Relating to Agriculture. (In any county where one-third or less of the county's land is classified in the state agricultural district, prohibits: the creation of a condominium property regime on agricultural land twenty-five acres or greater; an existing condominium property regime on agricultural land greater than twenty-five acres from being amended to allow a single-family dwelling; and the subdivision of agricultural land twenty-five acres or greater for the purpose of creating a condominium property regime.)

Monday, February 11, 2019, 1L30 p.m., in Conference Room 229

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 SB1064**, which proposes to:

1. **Prohibit**, in any county where one-third or less of the county's land is classified in the state agricultural district, the creation of a condominium property regime (CPR) on agricultural land twenty-five acres or greater;
2. **Prohibit** amending an existing CPR on agricultural land greater than twenty-five acres to allow a single-family dwelling; and
3. **Prohibit** the subdivision of agricultural land twenty-five acres or greater for the purpose of creating a CPR.

While SB 1064 may be well-intended, it punishes and restricts bonafide farmers, ranchers and agricultural operators and land owners and violates the IAL law and private property rights, in its attempt to curtail the actions of some "bad actors."

In 2005 and 2007, LURF and the Hawaii Farm Bureau Federation were the main proponents and drafters of the key provisions in the Important Agricultural Lands (IAL) laws. LURF and its members continue to support bonafide farmers, ranchers and agricultural operations and the IAL law.

LURF's Position. LURF's opposition to SB 1064 is based on, among other things, the following:

- **Failure to consult or seek input from those most affected Stakeholders - farmers, ranchers, agricultural land owners and the counties.** This bill was 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.
- **Unnecessary.** This measure is unnecessary, as 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;
- **Lack of factual basis and justification for 25-acre limit.** There is no factual basis or justification for the 25-acre limit;
- **Failure to enforce the requirement that the State designate all State agricultural lands as IAL by December 31, 2009.** Under the IAL law, the State was required to designate all of its agricultural lands as IAL by December 31, 2009. To date, the State has not designated any of its lands as IAL. If the Legislative supporters of this bill are truly concerned about "contiguous" agricultural lands, it should provide funding, assistance and enforcement to require the State to designate all of its agricultural lands as IAL, which was required by December 31, 2009, over nineteen years ago;
- **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, LURF repeats it offer to work with legislators who are concerned with the issues that have given rise to this measure.

Based on the above, LURF must **strongly oppose SB 1064**, and respectfully requests that this bill **be held in this Committee.**

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

SB-1064

Submitted on: 2/9/2019 8:46:42 PM

Testimony for WTL on 2/11/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan P. Armstrong	Individual	Support	No

Comments:

SB-1064

Submitted on: 2/8/2019 4:00:25 PM

Testimony for WTL on 2/11/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Augusto Decastro	Individual	Support	No

Comments: