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## A BILL FOR AN ACT

RELATING TO COMMON INTEREST AGRICULTURAL COMMUNITIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that the Hawaii  
2 Constitution mandates: "The State shall conserve and protect  
3 agricultural lands, promote diversified agriculture, increase  
4 agricultural self-sufficiency and assure the availability of  
5 agriculturally suitable lands."  
6       The legislature further finds that agricultural lands are a  
7 finite resource. If the quality agricultural lands are lost to  
8 non-agricultural use, they cannot be replaced and are lost  
9 forever. The State Land Use Law was enacted in 1961 because of  
10 concern that inadequate controls "have caused many of Hawaii's  
11 limited and valuable lands to be used for purposes that may have  
12 a short-term gain to a few but result in a long-term loss to the  
13 income and growth potential of [Hawaii's] economy." The  
14 original Land Use law allowed five permitted uses in the  
15 agricultural district. It now lists twenty-three permitted uses  
16 on agricultural lands. Increasingly, non-agricultural uses,



1 such as residential, renewable energy, and commercial uses have  
2 encroached or been permitted in agricultural districts.

3 Act 278, Session Laws of Hawaii 2019 (Act 278), directed a  
4 study of land subdivision and condominium property regime laws  
5 related to agricultural land to "determine whether there are  
6 ambiguities, omissions, or other deficiencies through which a  
7 landowner might develop land contrary to legislative intent of  
8 those laws" and propose legislation to remedy any deficiencies  
9 found. The task force formed by Act 278 found that, although  
10 the condominium law requires that condominium property regimes  
11 conform to land use and development laws and ordinances, the  
12 lack of enforcement is exacerbated because of conflicts and  
13 ambiguities in the law.

14 The purpose of this Act is to establish a regulatory  
15 structure for the establishment of common interest agricultural  
16 communities on lands classified as agricultural, using the  
17 Uniform Common Interest Ownership Act, which is the template for  
18 the Hawaii condominium law. This Act is intended to promote  
19 agriculture in the State by authorizing the establishment of a  
20 structured association that permits independence and  
21 interdependence by providing for shared costs, pooled resources,



1 economies of scale, and a legally recognized structure, which  
2 can benefit an individual grower or producer; mandating  
3 participation of farm parcel owners in the farm parcel owners'  
4 association, thereby spreading the association responsibilities  
5 among many people and reducing the burden of the individual; and  
6 providing a mechanism for the preservation and enforcement of  
7 the project's authorized land uses and enforcement of  
8 prohibitions. Specifically, this Act:

9 (1) Limits the permitted uses on land developed as a  
10 common interest agricultural community to agricultural  
11 uses of cultivation of crops, raising of livestock,  
12 game and fish propagation, agricultural-based  
13 commercial operations related to the agricultural  
14 operation, and buildings and uses used by the  
15 agricultural operations;

16 (2) Prohibits farm dwellings or buildings suitable for use  
17 as a dwelling;

18 (3) Enhances county regulatory authority by requiring  
19 county review and verification of a proposed project  
20 for compliance with permitted uses, zoning and  
21 subdivision ordinances, emergency access and fire



safety requirements, and authorizing county agency compliance inspections of a project and imposition of an inspection fee;

(4) Establishes penalties for violations of the chapter;

(5) Provides for the establishment of farm parcel owners' associations and governance and management of common interest agricultural communities; and

(6) Prohibits the creation of a condominium property regime under chapter 514B, Hawaii Revised Statutes, on lands classified as agricultural.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## **"CHAPTER**

### **COMMON INTEREST AGRICULTURAL COMMUNITIES**

#### **PART I. GENERAL PROVISIONS**

**§ -1 Applicability.** This chapter applies to all common interest agricultural communities created on or after the effective date of this chapter.



1       §   -2 **Definitions.** As used in this chapter and in the  
2 declaration and bylaws, unless specifically provided otherwise  
3 or required by the context:

4       "Association" means the farm parcel owners' association  
5 organized under section       -31.

6       "Board of directors" or "board" means the body, regardless  
7 of name, designated in the declaration or bylaws to act on  
8 behalf of the association.

9       "Bylaws" means the instruments that contain the procedures  
10 for conduct of the affairs of the association regardless of the  
11 form in which the association is organized, including any  
12 amendments to the instruments.

13       "Chairperson" means the chairperson of the board of  
14 agriculture.

15       "Common expenses" means expenditures made by, or financial  
16 liabilities of, the association, including any allocations to  
17 reserves.

18       "Common infrastructure" means the structures, roads,  
19 irrigation systems, power supply, agricultural services, fire  
20 safety systems, and installations within the common interest  
21 agricultural community that are owned or leased by the



1 association. "Common infrastructure" does not include a farm  
2 parcel.

3 "Common interest" means the percentage of undivided  
4 interest in the common infrastructure appurtenant to each  
5 parcel, as specified in the declaration.

6 "Common interest agricultural community" means real estate  
7 in which portions are designated for separate ownership and the  
8 remainder is designated for common ownership by the owners  
9 described in a declaration with respect to which a person, by  
10 virtue of the person's ownership of a farm parcel, is obligated  
11 to pay for a share of real estate taxes, insurance premiums,  
12 maintenance, or improvement of, or services or other expenses  
13 related to, common infrastructure, other units, or other real  
14 estate described in the declaration.

15 "Common interest agricultural community plat map" or "plat  
16 map" means, however denominated, a map or site plan of the  
17 common interest agricultural community containing the  
18 information required by section -13.

19 "Coordinating entrepreneur" means the developer or a  
20 qualified person capable, under a right-to-till agreement, of



1 organizing, operating, and assuming the risk for the  
2 agricultural operation on a parcel that may include:

- 3 (1) Selecting crops;
- 4 (2) Securing capital, labor, and materials;
- 5 (3) Maintaining and operating equipment and  
6 infrastructure; and
- 7 (4) Providing for the post-harvest processing and  
8 marketing of products.

9 "Declaration" means, however denominated, any instrument  
10 that creates a common interest agricultural community, including  
11 any amendments to the instrument.

12 "Developer" means a person or group of persons who  
13 undertake to develop a common interest agricultural community,  
14 including a person who succeeds to the interest of the developer  
15 by acquiring a controlling interest in the developer or the  
16 common interest agricultural community.

17 "Development rights" means any right or combination of  
18 rights reserved by a developer in the declaration to:

- 19 (1) Add real estate to a common interest agricultural  
20 community;



(2) Create farm parcels, common infrastructure, or limited common infrastructure within a common interest agricultural community;

(3) Subdivide parcels, combine parcels, or convert parcels into common infrastructure or limited common infrastructure;

(4) Withdraw real estate from a common interest agricultural community;

(5) Merge projects or increments of a project; or

(6) Otherwise alter the common interest agricultural community.

"Farm parcel" or "parcel" means a physical portion of the common interest agricultural community designated for separate ownership or occupancy, the boundaries of which are described in the declaration or pursuant to section -13.

"Farm parcel owner" or "parcel owner" means the person or persons owning the fee simple interest in a farm parcel and its appurtenant common interest, or a lessee of a farm parcel and its appurtenant common interest in a leasehold common interest agricultural community.





1 "Fire safety systems" include reservoirs, hydrants, water  
2 tanks and fittings, staging areas, and safety zones.

3 "Leasehold common interest agricultural community" means a  
4 common interest agricultural community in which all of the real  
5 estate is subject to a lease, the expiration or termination of  
6 which will terminate the common interest agricultural community.

7 "Limited common infrastructure" means a portion of the  
8 common infrastructure designated by the declaration for the  
9 exclusive use of one or more but fewer than all of the parcels.

10 "Managing agent" means any person retained, as an  
11 independent contractor, for the purpose of managing the  
12 operation of the project.

13 "Project" means a common interest agricultural community  
14 project.

15 "Public offering statement" means a statement that fully  
16 and accurately discloses the physical characteristics of the  
17 common interest agricultural community offered and all unusual  
18 or material circumstances of features affecting the project.

19 "Real estate" means fee simple or leasehold lands, all  
20 improvements and all structures thereon, and all easements,



1 rights, and appurtenances intended for use in connection with  
2 the common interest agricultural community.

3 "Record", "recordation", "recorded", or "recording" means  
4 to record in the bureau of conveyances in accordance with  
5 chapter 502.

6 "Right-to-till agreement" means a contract between a parcel  
7 owner and a coordinating entrepreneur establishing conditions  
8 that specify the crop or crops that are to be grown on the  
9 parcel, when the crops are to be grown, and how the crops are to  
10 be grown.

11 **§ -3 Separate titles and taxation.** (a) Each farm  
12 parcel that has been created, together with the common interest  
13 appurtenant to each parcel, shall constitute, for all purposes,  
14 a separate parcel of real estate.

15 (b) If there is any parcel owner other than a developer,  
16 each parcel shall be separately taxed and assessed, and no  
17 separate tax or assessment may be rendered against any common  
18 infrastructure. Without limitation of the foregoing, each farm  
19 parcel and its appurtenant common interest shall be deemed to be  
20 a "parcel" and shall be subject to separate assessment and  
21 taxation for all types of taxes authorized by law.



1 (c) If there is no parcel owner other than a developer,  
2 the real estate comprising the common interest agricultural  
3 community may be taxed and assessed in any manner provided by  
4 law.

5 **§ -4 Development requirements; prohibitions.** (a) Any  
6 common interest agricultural community established under this  
7 chapter shall be developed on lands classified as agricultural  
8 pursuant to chapter 205, and, except as provided in section 46-  
9 88, shall comply with the applicable county zoning and  
10 subdivision ordinances and the Hawaii state building codes as  
11 defined in section 107-21, as may be amended by the county  
12 pursuant to section 107-28.

13 (b) The permitted uses of each parcel shall be restricted  
14 to the uses described in section 205-4.5(a)(1), (2), (3), (9),  
15 and (10).

16 (c) Further parceling of the project shall be prohibited  
17 unless approved by seventy-five per cent of the board.

18 **§ -5 Right-to-till agreement.** The parcel owner may  
19 enter into a right-to-till agreement with a coordinating  
20 entrepreneur to carry out the agricultural operations on the  
21 parcel.



1       **§ -6 Water agreement.** (a) The association shall enter  
2 into a water agreement with the farm parcel owners, which shall  
3 describe:

4       (1) The responsibilities of the association for the  
5 design, construction, and maintenance of the  
6 irrigation water system facilities; and

7       (2) The quantity of water allocated to the farm parcel  
8 expressed in gallons-per-acre-per-day.

9       (b) The agreement shall authorize the association to  
10 control or limit the delivery of irrigation water when there is  
11 an equipment failure, government action, force majeure, or other  
12 reason beyond the control of the association. The association  
13 shall be authorized to coordinate the withdrawal and delivery of  
14 irrigation water when the demand exceeds the capacity of the  
15 system.

16       (c) The agreement shall list the production costs of the  
17 irrigation system, including the cost of operations, repair,  
18 maintenance, metering, pumping, transmission lines, reservoirs,  
19 appurtenances and improvements, and administrative costs. The  
20 agreement shall identify the pro rata share of the farm parcel



1 owner and provide for the assessment and payment of the  
2 production costs.

3       **§ -7 Emergency access and fire safety plan.** The  
4 developer shall collaborate with the county fire department to  
5 develop an emergency access and fire safety plan with  
6 information including:

- 7       (1) Available water sources including: fire hydrants,  
8           water tanks, reservoirs, ditches, streams, and rivers;  
9       (2) Maps to identify buildings, hazardous materials,  
10           evacuation routes, locked gates, access points,  
11           bridges with weight limits, road widths, turn outs,  
12           turn arounds for fire engines, potential staging  
13           areas; and  
14       (3) Contact information for farm parcel owners and  
15           residents.

16       A copy of the plan shall be filed with the county fire  
17 department and agency responsible for providing emergency  
18 medical services.

19       **§ -8 Conservation plan.** The developer shall collaborate  
20 with the soil and water conservation district in which the



1 project is located to select the best combination of  
2 conservation practices to prepare a conservation plan that:

- 3 (1) Establishes conservation practices to achieve the  
4 optimum use of resources and minimizes soil erosion;
- 5 (2) Improves the efficiency of water use and minimizes the  
6 environmental impact of farming; and
- 7 (3) Qualifies for exemption from county grading, grubbing,  
8 and stockpiling permit requirements.

9 **§ -9 County review.** (a) The developer shall submit to  
10 the appropriate officer or agency charged with the  
11 administration of county zoning laws the project's declaration,  
12 certified plat map, and bylaws for review of the project and  
13 determination of conformance with the:

- 14 (1) Permissible uses in section 205-4.5(a)(1), (2), (3),  
15 (9), and (10);
- 16 (2) Hawaii state building codes as defined in section 107-  
17 21, as may be amended by the county pursuant to  
18 section 107-28, unless exempted pursuant to section  
19 46-88;
- 20 (3) Zoning and subdivision laws of the county; and



(4) Requirements of this chapter relating to emergency access, fire safety and a conservation plan.

(b) The appropriate officer or agency charged with the administration of county zoning laws shall submit a verified statement to the developer and chairperson that the officer or agency finds that the project meets the requirements of subsection (a).

(c) If the information submitted to the county is incomplete or does not meet the requirements of subsection (a), the project information shall be returned to the developer.

## PART II. CREATION

**§ -11 Creation of a common interest agricultural community.** (a) Upon receipt of the verified statement of county review as provided in section -9, a common interest agricultural community may be created by recording the declaration and bylaws of the association executed in the same manner as a deed or lease conveying the real estate subject to the declaration to the association. Upon recordation of the deed or lease together with the declaration and bylaws, the common interest agricultural community shall be deemed created.



(b) The common interest agricultural community shall be subject to any right, title, or interest existing when the declaration is recorded if the person who owns the right, title, or interest does not execute or join in the declaration or otherwise subordinate the right, title, or interest. A person with any other right, title, or interest in the land may subordinate that person's interest to the common interest agricultural community by executing the declaration, or by executing and recording a document joining in or subordinating to the declaration.

**§ -12 Contents of declaration; amendment.** (a) A declaration shall describe or include the following:

- (1) The name and address of the project, and the name, address, telephone number, and electronic mail address, if any, of the developer or the developer's agent;
- (2) The real estate submitted to the common interest agricultural community;
- (3) The common interest agricultural community plat map filed concurrently with the declaration;
- (4) The number of farm parcels in the project;





1       (5) The farm parcel number or identification designation  
2       of each parcel, as described in the common interest  
3       agricultural community plat map, and the common  
4       interest appurtenant to each parcel;

5       (6) A verified statement pursuant to section     -9, that  
6       the project is in compliance with applicable county  
7       subdivision and zoning laws and the Hawaii state  
8       building codes as defined in section 107-21, as may be  
9       amended by the county pursuant to section 107-28;  
10      provided that the permitted uses of each parcel shall  
11      be restricted to the uses described in section 205-  
12      4.5(a) (1), (2), (3), (9), and (10);

13      (7) To the extent not shown on the common interest  
14      agricultural community plat map, a description of the  
15      location and dimensions of the boundaries of any  
16      parcel;

17      (8) The common interest agricultural community's common  
18      infrastructure, the fraction or percentage of the  
19      common infrastructure and common expenses assigned to  
20      each parcel, and, if an equal vote is not allocated to  
21      each farm parcel, the proportional votes in the



1 association allocated to each farm parcel and the  
2 basis for the allocations;

3 (9) The common interest agricultural community's limited  
4 common infrastructure, if any, and the parcel or  
5 parcels to which each limited common infrastructure is  
6 appurtenant;

7 (10) The total percentage of the parcel owners of the  
8 project that is required to approve rebuilding,  
9 repairing, or restoring the common interest  
10 agricultural community if it is damaged or destroyed;

11 (11) The total percentage of the parcel owners of the  
12 project that is required to amend the declaration.  
13 Except as otherwise specifically provided in this  
14 chapter, and except for any amendments made pursuant  
15 to reservations set forth in paragraph (12), the  
16 approval of the parcel owners of at least sixty-seven  
17 per cent of the common interest shall be required for  
18 all amendments to the declaration;

19 (12) Any rights that the developer or others reserve  
20 regarding the common interest agricultural community,  
21 including, without limitation, any development rights,



1 and any reservations to modify the declaration or  
2 common interest agricultural community plat map. An  
3 amendment to the declaration made pursuant to the  
4 exercise of those reserved rights shall require only  
5 the consent or approval, if any, specified in the  
6 reservation;

7 (13) The emergency access and fire safety plan developed  
8 pursuant to section -7; and

9 (14) The conservation plan prepared pursuant to section  
10 -8.

11 (b) The declaration may provide for a period of developer  
12 control of the association, during which time the developer, or  
13 persons designated by the developer, may appoint and remove the  
14 officers and members of the board. The period of developer  
15 control shall terminate no later than the earlier of:

16 (1) Sixty days after conveyance of seventy-five per cent  
17 of the common infrastructure to parcel owners other  
18 than a developer or affiliate of the developer;

19 (2) Two years after the developer has ceased to offer  
20 parcels for sale in the ordinary course of business;  
21 or



(3) The day the developer, after giving written notice to parcel owners, records an instrument voluntarily surrendering all rights to control any activities of the association.

(c) The declaration may be amended by a vote or written consent of the parcel owners of at least sixty-seven per cent of the common interest, unless the declaration specifies a different percentage for all amendments or for specific subjects of amendment. Every amendment to the declaration shall be recorded as provided in section -11 by any officer of the association designated for that purpose or, in the absence of a designation, by the president of the association.

(d) The declaration may contain any additional provisions that are consistent with this chapter.

**§ -13 Common interest agricultural community plat map; certification.** (a) A common interest agricultural community plat map shall be recorded with the declaration. The plat map shall contain the following:

(1) The metes and bounds of the common interest agricultural community and a depiction of the layout,



1 location, boundaries, farm parcel numbers, and  
2 dimensions of the farm parcels;

3 (2) A depiction of the location, layout, and access to the  
4 common infrastructure included or anticipated to be  
5 included in the project, and a depiction of access for  
6 farm parcels to a public road or to a common  
7 infrastructure road leading to a public road;

8 (3) Unless specifically described in the declaration, the  
9 layout, location, and identifying information of the  
10 common infrastructure; and

11 (4) Unless specifically described in the declaration, the  
12 layout, location, and identifying information of the  
13 limited common infrastructure.

14 (b) The common interest agricultural community plat map  
15 shall bear the statement of a licensed architect, engineer, or  
16 surveyor certifying that the plat map is consistent with the  
17 plans of the project filed or to be filed with the government  
18 agency having jurisdiction over the issuance of permits for the  
19 construction of buildings in the county in which the project is  
20 located. If any building or buildings exist on the project at  
21 the time the plat map is recorded, the certification shall state



1 that, to the best of the architect's, engineer's, or surveyor's  
2 knowledge, the plat map depicts the layout, location,  
3 dimensions, and numbers of the buildings substantially as built.

4 (c) The common interest agricultural community plat map  
5 may contain any additional information that is consistent with  
6 this chapter.

7 **§ -14 Common infrastructure.** Each parcel owner may use  
8 the common infrastructure in accordance with the purposes  
9 permitted under the declaration, subject to:

10 (1) The rights of other parcel owners to use the common  
11 infrastructure;

12 (2) Any parcel owner's exclusive right to use of the  
13 limited common infrastructure as provided in the  
14 declaration;

15 (3) The right of the parcel owners to amend the  
16 declaration to change the permitted uses of the common  
17 infrastructure; provided that nonmaterial additions or  
18 alterations of the common infrastructure or minor  
19 additions to or alterations of the common  
20 infrastructure for the benefit of individual parcels  
21 shall be permitted if the additions or alterations can



1 be accomplished without substantial impact on the  
2 interests of other parcel owners in the common  
3 infrastructure, as reasonably determined by the board;

4 (4) Any rights reserved in the declaration to amend the  
5 declaration to change the permitted uses of the common  
6 infrastructure; and

7 (5) The right of the board, on behalf of the association,  
8 to lease or otherwise use for the benefit of the  
9 association common infrastructure that the board  
10 determines is actually used by one or more parcel  
11 owners for a purpose permitted in the declaration.  
12 The lease or use shall be approved by the parcel  
13 owners of at least sixty-seven per cent of the  
14 project, including all directly affected parcel owners  
15 that the board reasonably determines actually use the  
16 common infrastructure.

17 § -15 **Limited common infrastructure.** (a) The limited  
18 common infrastructure designated in the declaration shall be  
19 subject to the exclusive use of the parcel owner or parcel  
20 owners of the parcel or parcels to which the limited common  
21 infrastructure is appurtenant, subject to the declaration and



1 bylaws of the association. No amendment of the declaration  
2 affecting any of the limited common infrastructure shall be  
3 effective without the consent of the parcel owner or parcel  
4 owners of the parcel or parcels to which the limited common  
5 infrastructure is appurtenant.

6 (b) Except as provided in the declaration, any parcel  
7 owner may transfer or exchange designation of limited common  
8 infrastructure that is designated to the parcel owner's parcel  
9 to another parcel. Any transfer shall be executed and recorded  
10 as an amendment to the declaration. The amendment shall be  
11 executed by the parcel owner of the parcel whose designation of  
12 limited common infrastructure is being transferred and the  
13 parcel owner of the parcel receiving the designation of limited  
14 common infrastructure; provided that parcel mortgages and leases  
15 may also require the consent of mortgagees or lessors,  
16 respectively, of the parcels involved. A copy of the executed  
17 and recorded amendment shall be delivered to the association.

18 § -16 Contents of deeds or leases of parcels. (a) Deeds  
19 or leases of farm parcels shall contain:





- 1           (1) The title and date of the declaration and the  
2           declaration's bureau of conveyances or land court  
3           document number or liber and page numbers;  
4           (2) The farm parcel number of the parcel conveyed or  
5           leased;  
6           (3) The common interest appurtenant to the farm parcel  
7           conveyed or leased as assigned in the declaration;  
8           (4) For a farm parcel, title to which is registered in the  
9           land court, the land court certificate of title number  
10          for the parcel, if available; and  
11          (5) For a farm parcel, title to which is not registered in  
12          the land court, the bureau of conveyances document  
13          number or liber and page numbers for the instrument by  
14          which the grantor acquired title.  
15          (b) Deeds or leases of parcels may contain additional  
16          information and details that are consistent with the declaration  
17          and this chapter.

18                   **PART III. REGISTRATION AND ADMINISTRATION**

19           §    -21   **Registration; public offering statement;**  
20   **application.**   (a) A developer shall not offer for sale any farm  
21   parcels in a project unless the project is registered in



1 accordance with this chapter and rules adopted by the board of  
2 agriculture.

3 (b) An application for registration of a project shall  
4 include:

- 5 (1) The developer's name, telephone number, address, and  
6 electronic mail address; or if a corporation or  
7 partnership, the telephone number, address, and  
8 electronic mail address of each of the developer's  
9 offices in the State;
- 10 (2) The common interest agricultural community plat map  
11 prepared pursuant to section -13;
- 12 (3) A copy of the deed, master lease, or other evidence  
13 that the developer holds the fee or leasehold interest  
14 in the project;
- 15 (4) A statement of all liens or encumbrances, if any, upon  
16 the developer's title to the project's real estate;
- 17 (5) A copy of the proposed contract of sale for farm  
18 parcels;
- 19 (6) A copy of a receipt for a written notice advising the  
20 purchaser of the purchaser's right to rescind a



1 contract within seven days after signing the contract,  
2 without penalty to the purchaser;

3 (7) An executed copy of an escrow agreement with a third  
4 party escrow depository authorized to do business in  
5 the State that provides for the retention and  
6 disposition of funds from purchasers or prospective  
7 purchasers in accordance with rules adopted by the  
8 board of agriculture;

9 (8) A project budget showing all costs required to  
10 complete the project, and evidence of the availability  
11 of sufficient funds to pay all costs required to  
12 complete the project;

13 (9) A statement by the developer that the permitted uses  
14 of the parcels in the project shall be restricted to  
15 the uses described in section 205-4.5(a)(1), (2), (3),  
16 (9), and (10);

17 (10) A description of the promotional plan for the  
18 disposition of the farm parcels together with copies  
19 of all advertising material that has been prepared for  
20 public distribution by any means of communication, or



1 a statement that no advertising material has been  
2 produced as of the date of application;

3 (11) The proposed public offering statement;

4 (12) A statement that the developer has not, or if a  
5 corporation, the officers, directors, and principals,  
6 or if a partnership, general partners, have not been  
7 convicted of a crime involving land dispositions or  
8 any aspect of the land-sales business in this State,  
9 the United States, or any foreign country within the  
10 past ten years, and have not been subject to any  
11 injunction or administrative order within the past ten  
12 years involving land dispositions;

13 (13) A copy of the verified statement that the project has  
14 been reviewed by the county and conforms with the  
15 requirements in section -9; and

16 (14) Any other information that the chairperson may require  
17 to assure full and fair disclosure to prospective  
18 purchasers.

19 (c) The application for registration shall be accompanied  
20 by nonrefundable fees as provided in rules adopted by the board  
21 of agriculture pursuant to chapter 91.



1 (d) The developer shall immediately report to the  
2 chairperson any material changes in the information contained in  
3 any application for registration.

4 § -22 **Registration; inquiry and examination.** Upon  
5 receipt of an application for registration in the proper form  
6 prescribed by the chairperson, and the payment of appropriate  
7 registration, inspection, or consultant fees, the chairperson  
8 shall issue a notice of filing to the applicant, and initiate an  
9 examination to determine that:

10 (1) The developer can convey or cause to be conveyed the  
11 interest in the common interest agricultural community  
12 offered for disposition if the purchaser complies with  
13 the terms of the offer, and when appropriate, the  
14 release clauses, conveyances in trust, or other  
15 safeguards provided;

16 (2) There is reasonable assurance that all of the proposed  
17 improvements will be completed as represented;

18 (3) The advertising material and the general promotional  
19 plan are not false or misleading and comply with the  
20 standards prescribed by the rules adopted by the board  
21 of agriculture and afford full and fair disclosure;



1       (4) The developer has not, or if a corporation, the  
2           officers, directors, and principals, or if a  
3           partnership, general partners, have not been convicted  
4           of a crime involving land dispositions or any aspect  
5           of the land-sales business in this State, the United  
6           States, or any foreign country within the past ten  
7           years, and have not been subject to any injunction or  
8           administrative order within the past ten years; and

9       (5) A verified statement has been given by the appropriate  
10          officer or agency charged with the administration of  
11          county zoning laws pursuant to section       -9.

12       **§   -23 Orders of registration and rejection.** (a) Within  
13       forty-five days from the date of notice of filing, if the  
14       chairperson determines, upon inquiry and examination, that the  
15       project meets the requirements for registration under sections  
16       -21 and       -22, the chairperson shall enter a final order  
17       registering the project and approving the form of the public  
18       offering statement.

19       (b) The chairperson may return an incomplete application  
20       to the developer and require the developer to submit an amended  
21       application.



1       §    -24   Public offering statement.   (a)   A public offering  
2   statement shall disclose fully and accurately to prospective  
3   purchasers all the unusual and material circumstances or  
4   features affecting the project, including but not limited to:

5       (1)   The name and address of the project, and the name,  
6             address, telephone number, and electronic mail  
7             address, if any, of the developer or the developer's  
8             agent;

9       (2)   A general description of the common interest  
10            agricultural community, other than any plats and  
11            plans, and any recorded covenants, conditions,  
12            restrictions, and reservations affecting the project;

13       (3)   The total number of farm parcels, common  
14            infrastructure, and limited common infrastructure in  
15            the project;

16       (4)   The sales contract for a parcel with a statement that  
17            the purchaser has a seven-day period after signing a  
18            contract to rescind the contract;

19       (5)   The annual maintenance fees and the monthly estimated  
20            cost for each parcel and when the purchaser becomes



1 obligated to start paying the common expenses charged  
2 to the parcel;

3 (6) A description of all warranties, if any, for a parcel  
4 and the common infrastructure;

5 (7) The declaration, bylaws, and any rules of the  
6 association; any contracts and leases to be signed by  
7 purchasers at closing; and any other covenants,  
8 conditions, restrictions, and reservations affecting  
9 the common interest agricultural community;

10 (8) A description of any development rights reserved to  
11 the developer;

12 (9) The permitted uses and prohibitions on the farm  
13 parcels; and

14 (10) Any other information as may be required by the  
15 chairperson.

16 (b) The chairperson may require the developer to alter or  
17 amend the proposed public offering statement in order to assure  
18 full and fair disclosure to prospective purchasers, and no  
19 change in the substance of the promotional plan or plan of  
20 disposition or development of the project may be made after





1 registration without notifying the chairperson and without  
2 making appropriate amendment of the public offering statement.

3       **§ -25 Enforcement; inspection.** (a) After giving  
4 appropriate notification, the county agency charged with the  
5 administration of land use and county zoning laws may conduct an  
6 inspection of a project or a farm parcel or parcels for  
7 conformance with this chapter and to enforce the restrictions  
8 relating to agricultural districts.

9       (b) When an inspection is made, the developer or farm  
10 parcel owner shall be required to pay an amount necessary to  
11 cover the actual expenses of the inspection, not to exceed \$500.

12       (c) The penalties and fees for expenses collected by a  
13 county agency to enforce this chapter shall be realizations of  
14 the county enforcing this chapter. The revenues from the  
15 penalties and fees collected by the county enforcing this  
16 chapter shall be deemed to satisfy article VIII, section 5 of  
17 the state constitution.

18       **§ -26 Penalty for violation.** (a) Any person who  
19 violates this chapter or a rule adopted pursuant to this chapter  
20 shall be guilty of a misdemeanor punishable by a fine of not



1 less than \$10,000 and not more than \$ , or imprisonment  
2 for a term not exceeding one year, or both.

3 (b) If any person cited for a violation under this chapter  
4 fails to remove the violation within six months of the citation  
5 and the citation continues to exist, the person shall be subject  
6 to a citation for a new and separate violation.

7 **PART IV. MANAGEMENT AND GOVERNANCE**

8 **§ -31 Farm parcel owners' association; membership and**  
9 **organization.** (a) The membership of the farm parcel owners'  
10 association shall consist exclusively of all the farm parcel  
11 owners.

12 (b) The farm parcel owners' association shall meet and  
13 organize no later than one hundred eighty days after recordation  
14 of the first parcel conveyance; provided that forty per cent or  
15 more of the project has been sold and recorded.

16 **§ -32 Farm parcel owners' association; registration.**

17 (a) Within thirty days of the association's first meeting, the  
18 farm parcel owners' association shall register with the  
19 chairperson by:

20 (1) Submitting a completed registration application  
21 prepared by the chairperson;



- 1       (2)   Paying the fees established by the board of  
2           agriculture by rule;
- 3       (3)   Submitting the names and positions of the officers of  
4           the association;
- 5       (4)   Submitting the name of the association's managing  
6           agent, if any;
- 7       (5)   Providing the street and the postal address of the  
8           common interest agricultural community, and the name  
9           and current address where a designated officer of the  
10          association can be contacted; and
- 11      (6)   Any other additional information required by the  
12          chairperson.

13      (b)   The association shall notify the chairperson, within  
14   thirty days, of any changes to the information contained in the  
15   registration information of the association.

16      §   -33   **Association powers and duties.**   (a)   Except as  
17   provided in the declaration, the bylaws, and this chapter, the  
18   association may:

- 19      (1)   Adopt and amend the declaration, bylaws, and rules of  
20          the association;



- 1           (2) Adopt and amend budgets for revenues, expenditures,  
2                   and reserves and collect assessments for common  
3                   expenses from parcel owners;
- 4           (3) Hire and discharge managing agents and other  
5                   independent contractors, agents, and employees;
- 6           (4) Institute, defend, or intervene in litigation or  
7                   administrative proceedings in its own name on behalf  
8                   of itself or two or more parcel owners on matters  
9                   affecting the common interest agricultural community;
- 10          (5) Make contracts and incur liabilities;
- 11          (6) Regulate the use, maintenance, repair, replacement,  
12               and modification of common infrastructure;
- 13          (7) Cause improvements to the common infrastructure;
- 14          (8) Acquire, hold, encumber, and convey in its own name  
15               any right, title, or interest to real estate or  
16               personal property; provided that any conveyance of or  
17               security interest in any common infrastructure shall  
18               be subject to section     -14;
- 19          (9) Subject to section     -15, grant easements, leases,  
20               licenses, and concessions through or over the common  
21               infrastructure;



1       (10)   Impose and receive any payments, fees, or charges for  
2            the use, rental, or operation of the common  
3            infrastructure, other than limited common  
4            infrastructure, and for services provided for parcel  
5            owners;

6       (11)   Impose charges and penalties for any late payment of  
7            assessments after notice and opportunity to be heard,  
8            and levy reasonable fines for violations of the  
9            declaration, bylaws, and rules of the association;

10      (12)   Impose reasonable charges for the preparation and  
11            recordation of amendments to the declaration,  
12            documents requested for resale of parcels, or  
13            statements of unpaid assessments;

14      (13)   Provide for indemnification of its officers and board  
15            and maintain directors' and officers' liability  
16            insurance;

17      (14)   Assign its right to future income subject to the  
18            limitations in the declaration or bylaws;

19      (15)   With the written approval of parcel owners  
20            representing fifty per cent of the common interest,  
21            authorize the board to borrow money for the repair,



1 replacement, maintenance, operation, or administration  
2 of the common infrastructure and personal property of  
3 the project;

4 (16) Require that disputes between the association and  
5 parcel owners or between two or more parcel owners  
6 regarding the common interest agricultural community  
7 be submitted to nonbinding alternative dispute  
8 resolution as a prerequisite to commencement of a  
9 judicial proceeding; and

10 (17) Exercise any other powers necessary and proper for the  
11 governance and operation of the association.

12 (b) A parcel owner and the tenant of the parcel owner  
13 shall be jointly and severally responsible and liable for any  
14 violation of the declaration, bylaws, or rules of the  
15 association by the tenant, including any reasonable fines levied  
16 by the association and any reasonable attorney's fees and costs  
17 incurred by the association relating to the violations. The  
18 association shall provide the violators with notice of the  
19 violations and a hearing prior to levying any fines therefor.

20 **§ -34 Association annual meetings and notice.** (a) An  
21 annual meeting of farm parcel owners shall be held by the



1 association at a time, date, and place stated in the bylaws.  
2 Special meetings of the association may be called by the  
3 president, a majority of the board, or by a petition to the  
4 board signed by not less than the percentage of the parcel  
5 owners specified in the bylaws.

6 (b) The notice for each annual and special meeting of the  
7 association shall be:

8 (1) Hand delivered;

9 (2) Sent postage prepaid by United States mail to the  
10 mailing address designated by the parcel owner; or

11 (3) Sent by electronic mail to the electronic mail address  
12 designated by the parcel owner.

13 The time, date, place of the meeting, and items on the agenda  
14 shall be set by the board in accordance with the requirements  
15 established in the bylaws.

16 **§ -35 Association meetings, voting, and proxies. (a)**

17 Farm parcel owners may vote:

18 (1) At a meeting in person;

19 (2) By absentee ballot without being present at the  
20 meeting by requesting an absentee ballot from the  
21 association at least days before the scheduled



1 meeting; provided that the association shall verify  
2 that the ballot is cast by the parcel owner having the  
3 right to do so; or

4 (3) By proxy pursuant to subsection (c).

5 (b) At a meeting of the association:

6 (1) Parcel owners who are present in person may vote by  
7 voice vote, show of hands, standing, or any other  
8 method for determining the votes of parcel owners, as  
9 designated by the person presiding at the meeting; or

10 (2) Unless a greater number of the votes of the members of  
11 the association is required by this chapter or the  
12 declaration, a majority of the votes cast shall  
13 determine the outcome of any action of the  
14 association.

15 (c) Unless otherwise provided in the declaration or  
16 bylaws, proxy voting shall require that:

17 (1) The vote allocated to a parcel to be cast pursuant to  
18 a directed proxy be dated, valid only for the meeting  
19 to which it pertains, and duly executed by the parcel  
20 owner; and





(2) A parcel owner may revoke a proxy given pursuant to this section only by giving an actual notice of revocation to the person presiding over a meeting of the association.

**§ -36 Board of directors; officers, powers, and**

**meetings.** (a) The board of directors of the association shall act on behalf of the association. Upon the termination of the developer's control of the board as provided in the declaration, parcel owners shall elect a board of directors, who shall be farm parcel owners. The officers of the board shall be elected by the members of the board from among its members.

(b) The board, as provided in the bylaws, shall:

(1) Develop and enforce the policies, procedures, and rules necessary and appropriate for the operation and management of the association; and

(2) Enter into contracts and agreements necessary for the performance and responsibilities of the association.

(c) Meetings of the board shall be open to the parcel owners, except during executive sessions. An executive session may be held only to:



- (1) Consult with the association's attorney concerning legal matters;
- (2) Discuss existing or potential litigation or mediation, arbitration, or administrative proceedings;
- (3) Discuss labor or personnel matters;
- (4) Discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated; or
- (5) Prevent public knowledge of the matter to be discussed if the board determines that public knowledge would violate the privacy of any person.

§ -37 **Bylaws.** (a) The bylaws of the association shall provide for the following:

- (1) The number of members of the board of directors and the titles of the officers of the association;
- (2) The qualifications, powers and duties, terms of office, the manner of electing and removing of directors and officers, and filing of vacancies;
- (3) Requirements for the meetings, quorums, voting, and other activities of the association;



(4) The process for the preparation, execution, certification, and recordation of amendments to the declaration of the association;

(5) The amendment of the bylaws by the association;

(6) The process for the preparation, amendment, and execution of the association's budget; and

(7) Any other matters the association deems necessary and appropriate.

(b) The bylaws may be amended by a vote or written consent of parcel owners representing at least sixty-seven per cent of the common interest. Every amendment to the bylaws shall be recorded as provided in section -11 by any officer of the association designated for that purpose or, in the absence of a designation, by the president of the association.

**§ -38 Insurance.** (a) Unless otherwise provided in the declaration or bylaws, the association shall purchase and at all times maintain the following:

(1) Property insurance:

(A) On the common infrastructure;

(B) Providing coverage for special form causes of loss; and



1 (C) In the total amount of not less than the full  
2 insurable replacement cost of the insured  
3 property, less deductibles, but including  
4 coverage for the increased costs of construction  
5 due to building code requirements, at the time  
6 the insurance is purchased and at each renewal  
7 date;

8 (2) Commercial general liability insurance against claims  
9 and liabilities arising in connection with the  
10 ownership, existence, use, or management of the  
11 property in a minimum amount of \$1,000,000, or a  
12 greater amount deemed sufficient in the judgment of  
13 the board;

14 (3) Fidelity bond covering the loss of money in the care  
15 or custody of the association or the managing agent in  
16 an amount no less than \$20,000 or greater than  
17 \$200,000, which shall cover the association, the  
18 managing agent, the directors and officers of the  
19 association, agents, and employees, who handle funds  
20 belonging to the association; and



1           (4) Directors' and officers' liability insurance, to the  
2           extent allowed by law, each person who is or was a  
3           director, officer, committee member, agent, or  
4           employee of the association against all liability in  
5           connection with any claim made against the person in  
6           connection with the position held.

7           (b) The insurance need not cover improvements and  
8           betterments to the farm parcels installed by the parcel owners.

9           (c) The association shall buy all other insurance required  
10          by law, and may buy insurance not required by law, but deemed  
11          appropriate or prudent by the board."

12          SECTION 3. Section 205-4.5, Hawaii Revised Statutes, is  
13          amended by amending subsection (b) to read as follows:

14          "(b) Uses not expressly permitted in subsection (a) shall  
15          be prohibited, except the uses permitted as provided in sections  
16          205-6 and 205-8, and construction of single-family dwellings on  
17          lots existing before June 4, 1976. Any other law to the  
18          contrary notwithstanding, no subdivision of land within the  
19          agricultural district with soil classified by the land study  
20          bureau's detailed land classification as overall (master)  
21          productivity rating class A or B shall be approved by a county



1 unless those A and B lands within the subdivision are made  
2 subject to the restriction on uses as prescribed in this section  
3 and to the condition that the uses shall be primarily in pursuit  
4 of an agricultural activity. No condominium property regime  
5 created under chapter 514B shall be approved for lands  
6 classified as agricultural.

7 Any deed, lease, agreement of sale, mortgage, or other  
8 instrument of conveyance covering any land within the  
9 agricultural subdivision shall expressly contain the restriction  
10 on uses and the condition, as prescribed in this section that  
11 these restrictions and conditions shall be encumbrances running  
12 with the land until such time that the land is reclassified to a  
13 land use district other than agricultural district.

14 If the foregoing requirement of encumbrances running with  
15 the land jeopardizes the owner or lessee in obtaining mortgage  
16 financing from any of the mortgage lending agencies set forth in  
17 the following paragraph, and the requirement is the sole reason  
18 for failure to obtain mortgage financing, then the requirement  
19 of encumbrances shall, insofar as such mortgage financing is  
20 jeopardized, be conditionally waived by the appropriate county  
21 enforcement officer; provided that the conditional waiver shall



1 become effective only in the event that the property is  
2 subjected to foreclosure proceedings by the mortgage lender.

3 The mortgage lending agencies referred to in the preceding  
4 paragraph are the Federal Housing Administration, Federal  
5 National Mortgage Association, Department of Veterans Affairs,  
6 Small Business Administration, United States Department of  
7 Agriculture, Federal Land Bank of Berkeley, Federal Intermediate  
8 Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any  
9 other federal, state, or private mortgage lending agency  
10 qualified to do business in Hawaii, and their respective  
11 successors and assigns."

12 SECTION 4. Section 484-3, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

14 "(a) Unless the method of disposition is adopted for the  
15 purpose of evasion of this chapter, or unless the subdivider  
16 files in writing with the director that this chapter shall apply  
17 to the subdivider's subdivision, this chapter shall not apply to  
18 offers or dispositions of an interest in land:

19 (1) By a purchaser of subdivided lands for the purchaser's  
20 own account in a single or isolated transaction;



1 (2) If fewer than twenty separate lots, parcels, units, or  
2 interests in subdivided lands are offered by a person  
3 in a period of twelve months;

4 (3) Where the division of lands is a leasehold  
5 agricultural lot within state agricultural districts  
6 on which no dwelling structures are constructed as  
7 provided in section 205-4.5(f);

8 (4) On which there is a residential, commercial, or  
9 industrial building, or as to which there is a legal  
10 obligation on the part of the seller to construct a  
11 building on the land within two years from the date of  
12 disposition; provided that the obligation to construct  
13 shall not be, directly or indirectly, transferred to  
14 or otherwise imposed upon the purchaser;

15 (5) To persons who are engaged in, and are duly licensed  
16 to engage in, the business of construction of  
17 buildings for resale, or to persons who acquire an  
18 interest in subdivided lands for the purpose of  
19 engaging, and do engage in, and are duly licensed to  
20 engage in, the business of construction of buildings  
21 for resale;





(6) Pursuant to court order;

(7) By any government or government agency;

(8) As cemetery lots or interests;

(9) Registered as a condominium property regime pursuant to chapter 514B or any predecessor thereto; ~~[or]~~

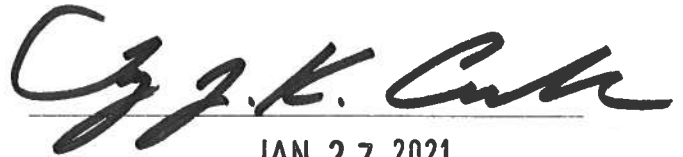
(10) Registered as a common interest agricultural community pursuant to chapter ; or

~~[(10)]~~ (11) Registered as a time share plan pursuant to chapter 514E."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2021.

INTRODUCED BY:



JAN 27 2021



# H.B. NO. 1323

**Report Title:**

Common Interest Agricultural Communities; Establishment; Farm  
Parcel Owners' Association; Agricultural Uses

**Description:**

Establishes a regulatory structure for common interest agricultural communities on lands classified as agricultural. Specifies requirements for development, creation, registration, governance, and management of common interest agricultural communities. Requires county approval of proposed common interest agricultural community projects. Prohibits approval for condominium property regimes created under chapter 514B, Hawaii Revised Statutes, on lands classified as agricultural.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

