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Statement of  
**ABBEY SETH MAYER**  
Director, Office of Planning  
Department of Business, Economic Development, and Tourism  
before the  
**HOUSE COMMITTEE ON WATER, LAND AND OCEAN RESOURCES**  
**AND**  
**HOUSE COMMITTEE ON AGRICULTURE**

Monday, February 23, 2009  
9:00 AM  
State Capitol, Conference Room 325

in consideration of  
**HB 1008**  
**RELATING TO LAND USE.**

Chairs Ito and Tsuji, Vice Chairs Har and Wooley, and Members of the House Committees on Water, Land, and Ocean Resources, and Agriculture.

The Office of Planning (OP) supports HB 1008, an Administration bill submitted in support of the implementation of Act 183 of the 2005 Legislative Session. HB 1008 is directed at curtailing residential subdivisions on lands in the State Agricultural District rated as "A" or "B" by the Land Study Bureau overall (master) productivity rating system. The bill would amend Chapter 46, Hawaii Revised Statutes, to specify minimum requirements for County subdivision and building permit approvals involving farm dwellings on these lands. HB 1008 also strengthens the link of permissible uses in the Agricultural District, including farm dwellings, to agribusinesses engaged in the commercial cultivation of crops, game and fish propagation, or livestock production. The bill would apply to permit applications received after the effective date of the Act. Family subdivisions of lands less than fifteen acres for family members are exempt for the permit requirements unless they are filed after the effective date of the Act.

HB 1008 will help stem the encroachment of residential subdivisions and other non-agricultural uses on productive agricultural lands, by discouraging development and improvements on agricultural land that would increase the value and price of agricultural land for non-agricultural purposes. Failure to separate higher-valued, non-agricultural uses, like non-farm residential uses, from bona fide agricultural use on "A" and "B" rated land creates expectations of land values in excess of its value in agricultural use. As the value and price of land in the Agricultural District rises, agricultural lands are priced out of the reach of farmers, and the economic viability of existing and new agricultural

operations is eroded. The consequences of allowing higher-valued uses in the Agricultural District include the conversion of lands to non-agricultural use, a shrinking supply of productive agricultural land, and an agricultural industry that struggles to remain in business and profitable.

The land use regulatory system should work in support of separation of high-value, non-agricultural uses, and discourage the permitting of non-agricultural activities or uses that have no nexus to agriculture on agriculturally-designated lands. HB 1008 is a major step in that direction.

OP offers one comment on the bill: the grandfathering language of subsection (f) on page 6, lines 18-20, blurs the distinction made in planning between “legal nonconforming uses” and “permissible uses”. This can be corrected by substituting the following language for the existing language:

“(f) Nothing in this section shall prevent lawful uses or activities in existence on the effective date of this Act from continuing as legal nonconforming uses.”

Thank you for the opportunity to testify.



State of Hawaii  
DEPARTMENT OF AGRICULTURE  
1428 South King Street  
Honolulu, Hawaii 96814-2512

TESTIMONY OF SANDRA LEE KUNIMOTO  
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEES ON  
WATER, LAND, AND OCEAN RESOURCES  
AND  
AGRICULTURE  
MONDAY, FEBRUARY 23, 2009  
9:00 a.m.  
Room 325

HOUSE BILL 1008  
RELATING TO LAND USE

Chairpersons Ito and Tsuji and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 1008 which is an Administration measure. The Department of Agriculture strongly supports this measure that will prevent future development of "fake farms" or "gentlemen estates" on Hawaii's best agricultural lands. This measure provides the counties with clearer statutory guidance to ensure farm dwellings are built and used in direct connection with specified agricultural uses and requires applications for subdivisions of Hawaii's best agricultural lands to include demonstrable evidence that meaningful agriculture will be the primary activity undertaken on the land.

The negative impact of "fake farms" is substantial. The marketing and pricing of "fake farm" lots and dwellings reflect rural-residential or urban uses and not their use in agricultural production. Their contribution to fresh food production for Hawaii residents is, at best, token. High fake farm lot prices drive up prices for other adjacent agricultural lands reducing their availability for farming, increasing the property tax burden for bona fide farmers, and may eventually cause the subdivision of additional agricultural lands adjacent to "fake farms". Finally, counties may experience reduced revenue generation

if “fake farms” are issued property tax breaks and agricultural water rates meant to benefit real farmers.

To ensure that future subdivisions of class “A” and “B” agricultural lands are primarily for agricultural activity and farm dwellings constructed on these lots are clearly in connection with an agricultural activity, this measure contains the following features:

1. Newly subdivided agricultural lands or where farm dwellings are proposed must be conducting agribusiness activity. Agribusiness is defined as a business licensed for the sale of products derived from certain agricultural uses defined in Section 205-4.5. The other permissible uses in Section 205-4.5, such as wind energy facilities, roadside stands, and open area recreational uses remain permissible uses on subdivided lands.
2. Counties are to require applicants for subdivisions of agricultural land to demonstrate the feasibility of agribusiness as the primary activity undertaken on the lots. Evidence of feasibility includes sufficient availability of irrigation water, agronomic suitability of proposed agricultural uses, potential income, realistic cost of production, informed market outlook, and a form of organization of lot owners and how it will optimize agribusiness uses.
3. Approved subdivisions and farm dwellings must have deed restrictions that run with the land, to be enforced by the counties, requiring lot owners or lessees to use the lot primarily for agribusiness.
4. For farm dwelling building permits, the county shall require the applicant to demonstrate an established and substantial agribusiness activity. Evidence of an established and substantial agribusiness activity shall include annual income from farming, farm-related capital expenditures, and a farm plan demonstrating substantial progress in establishing a farm.
5. For subdivisions of agricultural land for which no dwellings are proposed, the use of the land is to be primarily in pursuit of an agricultural activity or agribusiness and recorded deed restrictions similar to item 3 are required.

Finally, this bill addresses four important issues that prevented the passage of a similar measure in the 2007 and 2008 legislative sessions.

1. This bill shall only apply to future agricultural subdivisions and farm dwellings which are defined as agricultural subdivisions and farm dwellings for which applications have been received by the counties **after the effective date** of this bill.
2. This bill shall not apply to subdivisions of agricultural land and building permits for farm dwellings for which applications have been received by the counties **prior to the effective date** of this bill.
3. This bill will not cause or confer non-conforming status on legal existing subdivisions of "A" and "B" agricultural land, farm dwellings, other improvements, and land uses that were approved, granted, or issued by the counties prior to the effective date of this bill. However, existing subdivisions, dwellings, improvements, and land uses that are already declared as non-conforming will remain non-conforming and subject to Section 205-8 (relating to non-conforming uses).
4. The counties may permit family subdivisions on parcels of less than 15 acres for the purpose of transferring title to the children of the landowner, provided the lots created are not sold for at least 25 years. Under certain conditions, the provisions of this measure do not apply to family subdivisions.

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

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MUFI HANNEMANN  
MAYOR



DAVID K. TANOUE  
ACTING DIRECTOR  
ROBERT M. SUMITOMO  
DEPUTY DIRECTOR

February 23, 2009

The Honorable Ken Ito, Chair  
and Members of the Committee on Water,  
Land, & Ocean Resources

The Honorable Clift Tsuji, Chair  
and Members of the Committee on Agriculture  
State House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chairs Ito and Tsuji and Members:

**Subject: House Bill No. 1008  
Related to Land Use**

The Department of Planning and Permitting **opposes** House Bill 1008, which would add requirements to the county subdivision process for agricultural lands.

We are strong supporters of an economically healthy agricultural industry, as well as the continued presence of small agricultural family lots. We agree with the desire reflected in the bill to discourage housing in the state agricultural district that is not farm dwellings. However, we have serious issues with this bill:

1. It places a costly unfunded mandate on the counties to regulate agribusinesses. Currently, we have no expertise on validating the sufficiency of annual income from agribusiness, capital expenditures and farm plans, as substantial evidence of a valid agribusiness activity.
2. It increases bureaucracy because it requires us to track and differentiate between "family subdivision" lots, and other lots. The additional requirements imposed at the time building permit application for farm dwellings will likely extend the processing time, for which we are already heavily criticized.

The Honorable Ken Ito, Chair  
and Members of the Committee on Water,  
Land, & Ocean Resources

The Honorable Clift Tsuji, Chair  
and Members of the Committee on Agriculture  
State House of Representatives  
Re: House Bill 1008  
February 23, 2009  
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3. The bill seems defective as it does not include remedies or penalties, in the event that a property owner discontinues his agribusiness for economic or other reasons. Will the counties need to force the owner to resume agribusiness activities within a certain time period? Will the counties force the owner to sell the land?

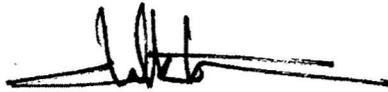
We would have fewer objections to the bill if the state department of agriculture were assigned the responsibilities outlined in Section 2 of the bill. We would still be concerned about the increasing red tape proposed by this bill.

Lastly, please note that we are considering other zoning measures to discourage "gentlemen estates" in agricultural areas. They include a limitation on the size of the dwelling, and a minimum lag time between when a lot is created and a building permit for a dwelling on the lot can be issued. These requirements may accomplish the same intent as House Bill 1008, without significant administrative cost.

Thus, In conclusion, we respectfully recommend that House Bill 1008 be filed.

Thank you for the opportunity to testify.

Very truly yours,



David K. Tanoue, Acting Director  
Department of Planning and Permitting

DKT: jmf  
hb1008-mft.doc



## Hawaii Agriculture Research Center

Administration: P.O. Box 100, Kunia, HI 96759  
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**TESTIMONY BEFORE THE HOUSE COMMITTEES  
ON  
WATER, LAND, AND OCEAN RESOURCES  
AND  
AGRICULTURE**

**HOUSE BILL 1008**

**Relating to Land Use**

**February 23, 2009**

Chairmen Ito and Tsuji, Vice Chairs Har and Wooley, and Members of the Committees:

My name is Stephanie Whalen. I am Executive Director of the Hawaii Agriculture Research Center (HARC). I am testifying today on behalf of the center and our research and support staff.

**HARC supports the intent of House Bill 1008 but STRONGLY recommends amendments.**

We are recommending the following two amendments:

**Page 5 of 12 inserts**

**(f) This section shall not apply to agricultural conservation easements: perpetual easements intended to preserve parcels for agricultural production and/or agricultural infrastructure,**

**(g) This section shall not apply to subdivisions, which may or may not be plantation subdivisions but are in compliance with *HRS 205-4.5 (12) (B) and/or (C)***

At the end of this testimony I have a copy of HRS 205-4.5 (12) for your perusal.

The existing (g) in the proposed legislation becomes (h).

HARC is currently in an ambitious plan of providing for the very important agricultural infrastructure that diversified agriculture needs which may serve as a model for other areas in the state. We are in the process of acquiring the Del Monte housing and agribusiness infrastructure to be used for the benefit of agricultural businesses on Oahu. While this is on agriculturally zoned land and is for the sole benefit of agriculture, it is not directly connected (on the same parcel) to the agricultural businesses that it is servicing. Therefore it is not considered an

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acceptable land use under the current state laws and ordinances. I am afraid that passage of this bill as is would just make this potential model even harder to achieve. I believe the amendment offered would not allow circumventing of this measure if passed for purposes other than what I have described.

HARC is a non-profit, 501(c)(3), organization focused on improving crops and developing new agricultural businesses in Hawaii. Over the years I have been uneasy with the various definitions of agricultural production and agribusiness as to how our organization fits into those definitions as a research organization. It is important that HARC meets those definitions for it to operate on agriculturally designated lands.

To prevent any future unintended consequences the following amendment is suggested:

Page 4 of 12

**"Agribusiness" means a business licensed for the sale of products in processed or unprocessed form, derived from the uses permitted in section 205-4.5(a) (1), (2) and (3) and grown or raised on lands subject to this measure or a non-profit agricultural research entity supporting Hawaii's agribusiness.**

I am very willing to work with the interested parties to further work this language to achieve the intent while allowing the clustering of agricultural infrastructure where it is needed and the inclusion of agricultural research entities in the definition of agribusiness.

#### *HRS 205-4.5*

*(12) Plantation community subdivisions, which as used in this chapter means an established subdivision or cluster of employee housing, community buildings, and agricultural support buildings on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation; provided that the existing structures may be used or rehabilitated for use, and new employee housing and agricultural support buildings may be allowed on land within the subdivision as follows:*

- (A) The employee housing is occupied by employees or former employees of the plantation who have a property interest in the land;*
- (B) The employee housing units not owned by their occupants shall be rented or leased at affordable rates for agricultural workers; or*
- (C) The agricultural support buildings shall be rented or leased to agricultural business operators or agricultural support services;*

Thank you for the opportunity to testify in support of Hawaii's agricultural needs.

*HB 1008 Relating to Land Use*

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**KONA COUNTY FARM BUREAU**  
**P.O. Box 2341 • Kealahou, Hawaii 96750**  
**Phone: 324-6011**

February 20, 2008

**HOUSE COMMITTEE ON AGRICULTURE**  
**And**  
**HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES**

Testimony on HB 1008  
(Relating to Agricultural Lands)

Chairman Cliff Tsuji, Chairman Ken Ito, and Committee Members:

The Kona County Farm Bureau is in support of the approval of HB 1008. In addition, we ask that you consider the following amendment. This amendment to HRS 205, will provide the Counties the means to permit the formation of farm dwelling cluster subdivisions where individual Farm Dwellings may be clustered together on lots smaller than one-acre without increasing the zoning density of the overall site. In order to qualify for the creation of Farm Dwelling lots smaller than one-acre, the remaining farm land making up the agricultural subdivision shall be protected from future subdivision in the future. This will serve to preserve open farm lands while maintaining the prorated density of farm dwelling lots for the overall site area allowable by the existing county zoning. Please note that is opportunity would serve in addition to current state and county land use laws regarding the use of agricultural lands.

Below we have underlined the proposed HB 1008 language serving to amend HRS Sections 205-4.5 and Section 205.5

**§205-4.5 Permissible uses within the agricultural districts.** (a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;

- (3) Raising of livestock, including but not limited to poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, Farm dwelling cluster subdivisions, employee housing, farm buildings, or activities or uses related to farming and animal husbandry.

(a)"Farm dwelling", as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;

(b) Farm Dwelling Cluster Subdivision, which as used in this paragraph means a cluster of housing, farm buildings, and where at least fifty percent of the acreage is protected as productive farmland; the County ordinance shall include a set of criteria for evaluating agricultural use priorities, that the farmland be protected in perpetuity by a legal instrument that the County will record with the Bureau of Conveyances or Land Court, as appropriate, and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural cluster subdivisions under section 205-5;

**§205-5 Zoning.** (a) Except as herein provided, the powers granted to counties under section 46-4 shall govern the zoning within the districts, other than in conservation districts. Conservation districts shall be governed by the department of land and natural resources pursuant to chapter 183C.

(b) Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance. Each county shall adopt ordinances setting forth procedures and requirements, including provisions for enforcement, penalties, and administrative oversight, for the review and permitting of agricultural tourism uses and activities as an accessory use on a working farm, or farming operation as defined in section 165-2; provided that agricultural tourism activities shall not be permissible in the absence of a bona fide farming operation. Ordinances shall include but not be limited to:

- (1) Requirements for access to a farm, including road width, road surface, and parking;
- (2) Requirements and restrictions for accessory facilities connected with the farming operation, including gift shops and restaurants; provided that overnight accommodations shall not be permitted;
- (3) Activities that may be offered by the farming operation for visitors;
- (4) Days and hours of operation; and

(5) Automatic termination of the accessory use upon the cessation of the farming operation.

Each county may require an environmental assessment under chapter 343 as a condition to any agricultural tourism use and activity. Other uses may be allowed by special permits issued pursuant to this chapter. The minimum lot size in agricultural districts shall be determined by each county by zoning ordinance, subdivision ordinance, or other lawful means; provided that the minimum lot size for any agricultural use shall not be less than one acre, except as provided herein. If the county finds that unreasonable economic hardship to the owner or lessee of land cannot otherwise be prevented or where land utilization is improved, the county may allow lot sizes of less than the minimum lot size as specified by law for lots created by a consolidation of existing lots within an agricultural district and the resubdivision thereof; provided that the consolidation and resubdivision do not result in an increase in the number of lots over the number existing prior to consolidation; and provided further that in no event shall a lot which is equal to or exceeds the minimum lot size of one acre be less than that minimum after the consolidation and resubdivision action. The county may also allow lot sizes of less than the minimum lot size as specified by law for lots created or used for plantation community subdivisions as defined in section 205-4.5(a)(12), for public, private, and quasi-public utility purposes, and for lots resulting from the subdivision of abandoned roadways and railroad easements. The county may also allow lot sizes of less than the minimum lot size of one acre as specified by law for lots created for farm dwelling cluster subdivisions, provided that the consolidation and resubdivision do not result in an increase in the number of lots over the number existing prior to consolidation, as defined in section 205-4.5(a)(15).

Thank you for providing this opportunity to share with you the position of the Kona County Farm Bureau.

Sincerely yours,

Nancy Pisicchio  
President

(808) 987-9195



**KONA COUNTY FARM BUREAU**  
**P.O. Box 2341 • Kealahou, Hawaii 96750**  
**Phone: 324-6011**

February 21, 2008

**HOUSE COMMITTEE ON AGRICULTURE**  
**And**  
**HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES**

Testimony on HB 1008  
(Relating to Agricultural Lands)

Chairman Cliff Tsuji, Chairman Ken Ito, and Committee Members:

Re: HB 1008.

For your consideration, we are including a re-positioning of our proposed amendment within HRS 204.5 we had submitted in our testimony dated February 20, 2009.

This amendment to HRS 205, will provide the Counties the optional land use tool to permit the formation of agriculture cluster subdivisions allowing individual Farm Dwellings to be clustered together on lots smaller than one-acre without increasing the zoning density of the overall site. In order to qualify for the creation of this agriculture cluster subdivision, at least 50% of farm land making up the site shall be protected from future subdivision in the future. This will serve to preserve open farm lands while maintaining the prorated density of farm dwelling lots for the overall site area allowable by the existing county zoning.

Below we have underlined the proposed HB 1008 language serving to amend HRS Sections 205-4.5 and Section 205.5

**§205-4.5 Permissible uses within the agricultural districts.** (a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

(18.) Agriculture Cluster Subdivision, which as used in this paragraph means a cluster of housing, farm buildings, and where at least fifty percent of the acreage is protected as productive farmland; the County ordinance shall include a set of criteria for evaluating agricultural use priorities, that the farmland be protected in perpetuity by a legal instrument that the County will record with the Bureau of Conveyances or Land Court, as appropriate, and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural cluster subdivisions under section 205-5;

**§205-5 Zoning.** (a) Except as herein provided, the powers granted to counties under section 46-4 shall govern the zoning within the districts, other than in conservation districts. Conservation districts shall be governed by the department of land and natural resources pursuant to chapter 183C.

The county may also allow lot sizes of less than the minimum lot size as specified by law for lots created or used for plantation community subdivisions as defined in section 205-4.5(a)(12), for public, private, and quasi-public utility purposes, and for lots resulting from the subdivision of abandoned roadways and railroad easements. The county may also allow lot sizes of less than the minimum lot size of one acre as specified by law for lots created for agriculture cluster subdivisions, provided that the consolidation and re subdivision do not result in an increase in the number of lots over the number existing prior to consolidation, as defined in section 205-4.5(a)(18).

Thank you for providing this opportunity to share with you the position of the Kona County Farm Bureau.

Sincerely yours,

Nancy Pisicchio  
President

(808) 987-9195

TESTIMONY

House Committee on Agriculture and Committee on Water, Land and Ocean Resources

**RE: HB1008 RELATING TO LAND USE**

Chair Tsuji, Chair Ito and Members of the Committees:

Hawaii Farm Bureau Federation, on behalf of its' farm and ranch families and organizations is in **support of HB1008**, seeking to clarify the types of dwellings that are allowed on agricultural lands. We additionally **support the amendments** provided by Kona Farm Bureau and HARC with some clarification.

While there is a major demand for housing in a rural environment, State and County land use laws have not kept pace with the demand. As a result, "fake farms" have taken hold, using agricultural resources in manners not intended as well as denying the State and Counties revenues through appropriate taxes and increasing cost of community services. This Bill attempts to address these issues.

We agree with the intent of Kona County Farm Bureau's intent of providing for clustering of homes in an area to maximize agricultural land use. As family subdivisions are approved, scattering of homes would result in significant loss of critical mass of farmable lands, reducing the viability of the operations. We strongly believe that it is important to preserve the availability of contiguous parcels to ensure maximum productivity and to minimize nuisance complaints. We respect the County's right to home rule in these areas and am open to suggestions on solutions that will not infringe on those rights. It should be noted that this amendment is written to be an optional tool.

We support HARC's request for an amendment to address the needs of the vision for agricultural lands in the Kunia area. While traditional plantation operations are gone in most areas, groups of farming operations working together to address farm worker needs is an important part of agricultural viability.

HFBF respectfully urges the passage of HB1008 with the suggested amendments. Thank you for this opportunity to provide our comments on this matter.

Ka'u Farm Bureau  
PO Box 1109  
Naalehu, Hawai'i  
96772  
808-929-9550

February 22, 2009

**RE: HB 1008. Testimony in OPPOSITION**

Dear esteemed Representatives,

The Ka'u Farm Bureau opposes HB 1008, as written, on the following grounds:

**First:**

The language in HB 1008 provides that an applicant for a building permit must first "demonstrate a substantial and established agribusiness activity" before being granted a building permit for his farm dwelling. Should a small farmer be fortunate enough to secure a manageable parcel of farmland, where is he expected to live? He will likely first what to build his house and move his family in so they can all work to establish the farm. I can envision a family in Hilo that wants to start a coffee farm in Ka'u. Is he expected to commute from Hilo to Ka'u every day for more than three years while his coffee trees are established? Add his fuel and vehicle maintenance costs to land and preparation, fertilizer, and plant material? This is hardly an efficient and sustainable model.

**Second:**

The language in this measure provides that the applicant demonstrate "... sufficiency in quantity, storage, and distribution of irrigation water for each proposed lot..." Some of the best coffee in the State is grown in Ka'u without a single drop of irrigation water. Who will make the determination at the County Building Department? Will they have a resident Ka'u coffee expert that is intimately familiar with site specifics?

The Ka'u Farm Bureau has members that are successful farmers that could not qualify for a building permit or subdivision under HB 1008 because they do not know, or cannot define "cost of production, potential income, and market outlook..." Are they to be denied their land use rights?

Additionally, the language of HB1008 states that a "form of organization of lot owners" must be identified by the applicant. Consider a case in which one farmer wants to grow coffee, another papaya. Should they form a co-op?

If the State truly wants to promote diversified agriculture on small family farms, it needs to be sensitive to the realities and needs of the small farmer. Additional land use restrictions and permitting hurdles that deter the creation of small family-manageable tracts will continue to promote large corporate-style agribusiness, which has proven time and again to be an unsustainable model given Hawaii's remoteness and resultant high cost of production.

It's hard enough to create new farms and farmers given the current economic climate, marketing challenges, high cost of production and challenges posed by vog. Please don't make it harder for young and new farmers to compete.

Thank you for this opportunity to testify.

Chris Manfredi



President