

JAN 27 2021

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,



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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,



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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



- 1 safety requirements, and authorizing county agency
- 2 compliance inspections of a project and imposition of
- 3 an inspection fee;
- 4 (4) Establishes penalties for violations of the chapter;
- 5 (5) Provides for the establishment of farm parcel owners'
- 6 associations and governance and management of common
- 7 interest agricultural communities; and
- 8 (6) Prohibits the creation of a condominium property
- 9 regime under chapter 514B, Hawaii Revised Statutes, on
- 10 lands classified as agricultural.

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

14 **"CHAPTER**

15 **COMMON INTEREST AGRICULTURAL COMMUNITIES**

16 **PART I. GENERAL PROVISIONS**

17 § -1 **Applicability.** This chapter applies to all common
 18 interest agricultural communities created on or after the
 19 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;



- 1 (2) Create farm parcels, common infrastructure, or limited
2 common infrastructure within a common interest
3 agricultural community;
- 4 (3) Subdivide parcels, combine parcels, or convert parcels
5 into common infrastructure or limited common
6 infrastructure;
- 7 (4) Withdraw real estate from a common interest
8 agricultural community;
- 9 (5) Merge projects or increments of a project; or
- 10 (6) Otherwise alter the common interest agricultural
11 community.

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

16 "Farm parcel owner" or "parcel owner" means the person or
17 persons owning the fee simple interest in a farm parcel and its
18 appurtenant common interest, or a lessee of a farm parcel and
19 its appurtenant common interest in a leasehold common interest
20 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



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

11 § -12 **Contents of declaration; amendment.** (a) A
 12 declaration shall describe or include the following:

- 13 (1) The name and address of the project, and the name,
 14 address, telephone number, and electronic mail
 15 address, if any, of the developer or the developer's
 16 agent;
- 17 (2) The real estate submitted to the common interest
 18 agricultural community;
- 19 (3) The common interest agricultural community plat map
 20 filed concurrently with the declaration;
- 21 (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



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

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

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

15 § -13 **Common interest agricultural community plat map;**
16 **certification.** (a) A common interest agricultural community
17 plat map shall be recorded with the declaration. The plat map
18 shall contain the following:

19 (1) The metes and bounds of the common interest
20 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.

PART III. REGISTRATION AND ADMINISTRATION

18 § -21 **Registration; public offering statement;**

19 **application.** (a) A developer shall not offer for sale any farm

20 parcels in a project unless the project is registered in

21



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



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

5 § -36 **Board of directors; officers, powers, and**

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

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

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

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

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



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

12 § -37 **Bylaws.** (a) The bylaws of the association shall
13 provide for the following:

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



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

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

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

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

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

15 § -38 Insurance. (a) Unless otherwise provided in the
16 declaration or bylaws, the association shall purchase and at all
17 times maintain the following:

18 (1) Property insurance:

19 (A) On the common infrastructure;

20 (B) Providing coverage for special form causes of
21 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;



- 1 (6) Pursuant to court order;
- 2 (7) By any government or government agency;
- 3 (8) As cemetery lots or interests;
- 4 (9) Registered as a condominium property regime pursuant
- 5 to chapter 514B or any predecessor thereto; [~~or~~]
- 6 (10) Registered as a common interest agricultural community
- 7 pursuant to chapter ; or
- 8 [~~(10)~~] (11) Registered as a time share plan pursuant to
- 9 chapter 514E."

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

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

13

INTRODUCED BY: 
By Request

S.B. NO. 1361

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.

