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SB 1744, S.D. 1
Relating to Cluster Developments
in Rural and Agricultural Districts

Statement for
Senate Committees on
Committee on State General Planning
Committee on Water, Land Use Development
and Hawaiian Affairs
Committee on Agriculture
Public Hearing - 28 March 1980

By
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SB 1744, S.D. 1 would amend Section 205-2, Hawaii Revised Statutes, which deals with the districting and classification of lands, to allow rural cluster developments. This statement on the bill does not represent an institutional position on the University of Hawaii.

This bill represents a substantial departure from one of the original purposes of the Land Use Law, namely to prevent scattered urban subdivisions. While the report of the Senate Committee on Economic Development on this bill indicates that the purposes of this bill are to minimize public service costs and assure lower land costs for housing units for agricultural subdivisions, nowhere is the rationale or purpose of facilitating agricultural subdivisions explored.

It may be argued by supporters of this bill that rationale for cluster developments in agricultural and rural districts is to support "rural lifestyles," promote diversified agriculture, and maintain open space. S.B. -1744, S.D. 1 could have such an effect. However, the language of the bill also makes it possible to develop large-scale rural subdivisions that are only nominally supportive of agriculture. Three changes in the bill could help insure that rural cluster development would not serve as rural ranchettes' or provide the justification for subsequent land use district boundary changes.

- 1) Section 205-5(d) states that the undeveloped portion of the land unit shall be "maintained and dedicated for actual agricultural development." However, "agricultural production" is nowhere defined, although an applicant is required to "provide evidence of the feasibility of agricultural production...." [205-5(e)(5)] Hence, "agricultural production" might be intensive cultivation of vegetables, fruit or ornamental plants, but it could also be casual gardening or other "agricultural" endeavors inconsistent with the intent of this section. This ambiguity in the language of the bill could be remedied either by defining agricultural production more specifically or by specifying in greater detail the evidence that would be required to support a finding of the feasibility of agricultural production.
- 2) Section 205-5(d)(2) requires the dedication of the land unit for agricultural uses by restrictive deed covenant "as long as the dedicated parcel of land remains classified as agricultural or rural as the case may be." It is possible that a cluster development in a rural area may serve as the justification for a district boundary amendment. Indeed, one of the standards used by the Land Use Commission to determine the suitability of a land unit for urban purposes is "city-like concentrations of buildings..." which, indeed, is what a cluster development would be. This ambiguity could be clarified by requiring a minimum twenty-year dedication to agriculture of the undeveloped portion of the land unit.
- 3) Finally, Section 205-5(d)(5) sets forth a formula for calculating the allowable number of units in the cluster development. The "maximum dwelling units allowable on an entire parcel proposed for cluster development shall be calculated by multiplying the number of acres in the parcel by the base density for the district involved. Hence, for an agricultural parcel (base density one unit per acre) of one hundred acres, one hundred units would be theoretically possible. Such a large number of units is not consistent with the intent of allowing "small cluster developments." One alternative is to set an arbitrary upper limit to the number of units in the development, say twenty units. Another would be to add to the formula by specifying that for every unit allowed there must be at least five acres of agriculturally productive land in the portion of the parcel dedicated to agriculture.

In summation, we think that the bill serves a defensible public purpose, namely the support of diversified agriculture and "rural lifestyles," but to insure that other undesirable and unintended impacts of the bill are mitigated, we suggest that certain ambiguities in the bill be clarified as indicated above.