

LINDA LINGLE  
GOVERNOR

JAMES R. AIONA, JR.  
LT. GOVERNOR



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**SENATE COMMITTEES ON ECONOMIC DEVELOPMENT & TAXATION AND  
WAYS & MEANS**

**TESTIMONY REGARDING SB 2646 SD 1  
RELATING TO IMPORTANT AGRICULTURAL LANDS**

**TESTIFIER: KURT KAWAFUCHI, DIRECTOR OF TAXATION (OR DESIGNEE)**

**DATE: FEBRUARY 26, 2008**

**TIME: 10:55AM**

**ROOM: 211**

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This bill provides an income tax and general excise tax exemption for rental proceeds of certain leases of important agricultural lands. This bill also provides income tax credits for real property taxes paid and for costs incurred

The Senate Committees on Agriculture & Hawaiian Affairs and Water & Land made amendments unrelated to the tax components of this bill.

The Department of Taxation (Department) **has strong concerns with this legislation and comments accordingly.**

**I. INCOME TAX & GENERAL EXCISE TAX EXCLUSION.**

This bill seeks to amend Chapter 235 and 237, relating to the income and general excise taxes respectively, to exclude from taxation income earned and proceeds received from certain important agricultural land leases with the following terms:

- 20 years; or
- Any other lease length term, mutually agreed upon by the parties if the lease rent is set by an independent appraisal using the lower of comparable value or agricultural capitalization methodologies.

The Department's comments and concerns apply equally to both the income tax exclusion under Chapter 235 and the general excise tax exemption under Chapter 237 because these proposed amendments are nearly identical—

**DETERMINATION OF LEASE TERM**—The Department is concerned regarding the means for determining a qualified lease based upon an amount determined by an appraisal method using the lower of comparable value or agricultural capitalization methodologies. The Department is not an expert in this form of arriving at value. Moreover, the Department is always skeptical about any method of arriving at a tax benefit based upon appraisals or fair market value because this value can vary widely from person-to-person. This could lead to collusion for lease rents based upon the most favorable opinion received by an appraiser. One solution would be to have the Department of Agriculture approve any such lease. The bill could be amended to read:

"(B) Any other lease term length mutually agreeable to lessor and lessee, if the amount of the lease rent is set by an independent appraisal using the lower of the comparable value or agricultural capitalization appraisal methodologies and the lease arrangement, including the amount of lease rent determined by an appraisal, is reviewed and approved by the department of agriculture."

The Department also points out that the distinction between twenty-year leases and leases for other terms appears to suggest that the 20-year leases do not have to be at acceptable market rates because these leases are not subject to appraisal. If the intent is to encourage leases to maintain important agricultural lands, is either term condition necessary?

**LENGTH OF TAX BENEFIT**—The Department has concerns over the current language of the length the tax benefit may be utilized. Currently, the measure allows for the taxpayer to be "eligible for the [exclusion/exemption (as the case may be)] initially for up to twenty years." However, the measure does not take into account the alternative measurement of a minimum lease term provided in the previous section, namely that the lease term may be for any term that has been agreed to at a rent determined by appraisal. The Department suggests that clarifying language be added that allows for an initial lease term to reflect the respective lease arrangement entered. Such language could read:

"The taxpayer shall be eligible for the exclusion/exemption initially for up to twenty years or for the agreed term, whichever the case may be, so long as the initial exclusion/exemption is not longer than the original required minimum lease term provided in subsection (a)(1); provided...."

The Department also points out that the twenty-year requirement operates as a sunset on a specific taxpayer. Exclusions and exemptions typically do not operate with expirations based upon the facts of specific taxpayers. If there is a sunset, it is typically for the entire section in the tax code and impacts all taxpayers equally. The twenty-year rule may be unnecessary. It may be simpler and clearer to allow the exclusion or exemption, no matter what the length, only to the extent a qualifying lease is operative and in effect on the land.

## **I. THE DEPARTMENT OPPOSES THE REAL PROPERTY TAX CREDIT.**

This legislation was amended to provide a tax credit equal to 100% of the real property tax assessed on the important agricultural land. The Department opposes the inclusion of this tax credit for the following reasons:

**THE REAL PROPERTY TAX CREDIT, IN EFFECT, MERELY SUPPORTS THE COUNTIES**—The Department believes that the 100% real property tax credit is ultimately a subsidy to the respective county assessing the tax. There are several unintended consequences from this legislation. First, a county would be in a position to consider increasing the tax on agricultural land because the State would be paying for the tax, regardless of the rate or amount. Second, no taxpayer would be interested in challenging any assessments because ultimately the State will pay the bill. The Department believes that this tax credit is poor tax policy because the counties enjoy the ultimate subsidy.

If the intent of this legislation is to provide relief for the real property taxes on important agricultural land, the Department suggests appropriating a set amount of revenue to the various counties and requiring the counties to adopt a direct real property tax credit.

**DISTRIBUTION OF SHARE BY RULE**—Subsection (b) of the proposed real property tax credit allows for distribution of credit by rule. As a conforming jurisdiction, Hawaii conforms to the substantial economic effect rules of IRC § 704(b), as well as other laws relating to distribution of income tax credits. The Department believes that following the well-settled federal tax laws is sufficient and that any provision relating to distribution by rule is unnecessary.

**RECAPTURE**—This legislation includes language regarding the redesignation of land. However, it does not include specific recapture provisions. The Department suggests that specific 100% recapture language be included to avoid an unintended windfall to taxpayers if the land is redesignated.

**REFUNDABLE CREDIT**—This tax credit is refundable. The Department questions whether a refundable tax credit is necessary.

## **II. IMPORTANT AGRICULTURAL LAND AGRICULTURAL BUSINESS TAX CREDIT FOR COSTS**

**CLARIFICATION OF CERTIFICATION PROCESS**—The Department agrees that certain determinations should be made by an entity with more expertise in agriculture than the Department possesses. The Department also agrees that the Department of Agriculture, or a similar entity, should have primary responsibility for assessing and reporting on the effectiveness of this credit.

The current drafting of this bill suggest that a taxpayer "may" obtain a letter from the Department of Agriculture discussing the qualifying costs. This should be amended to require such

a certification letter be issued.

**TAXPAYER INFORMATION IS CONFIDENTIAL**—It is important to keep in mind that taxpayer information is generally confidential and the Department cannot disclose that information to the Department of Agriculture (DOA); so the DOA must gather its own information. This can be accomplished by requiring that the taxpayer have its status pre-approved by the DOA, requiring that the taxpayer provide the DOA with information regarding the costs being claimed, and requiring the taxpayer to get a certificate from the DOA in order to properly claim the credit on its tax return. There is no confidentiality problem with the DOA providing information to the Department.

#### **IV. ADDITIONAL APPROPRIATIONS.**

Many of the bills coming before the legislature regarding taxation incentives relating to important agricultural lands require the Department to consult or provide other support to agencies primarily responsible for assessing the effectiveness of the tax incentive. The Department requests that an appropriation be made to the Department so that it can devote the proper resources to this support without adversely affecting its other responsibilities and obligations.

#### **V. EFFECTIVE DATE**

The effective date for the tax provisions of this bill needs to be amended. With regard to a tax provision, the effective date should state which tax year is affected by the tax provision.

For example: This Act shall take effect on July 1, 2008; provided that section 2, 3, 6 and 10 of this Act shall apply to taxable years beginning after December 31, 2008.

#### **VI. REVENUE ESTIMATE.**

This legislation will result in the following revenue impact to the general fund:

Total Revenue Loss:	
Year	Total (millions)
FY2009	\$ 22.3
FY2010	\$ 25.1
FY2011	\$ 26.5
FY2012	\$ 27.9
FY2013	\$ 29.3
Annually thereafter	\$ 29.3

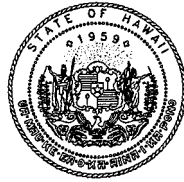
General Fund expenditures will increase by an unspecified amount to pay for expenses associated with this bill.

Based on 2002 Census of Agriculture USDA data and adjusted for inflation, the Department estimates qualifying farm expenses in CY2008 to be approximately \$13.9 million. The Department

estimates real property tax collections from qualifying taxpayers to be approximately \$15.1 million annually. All approximations make the assumption that approximately one-sixth or 17% of all farmlands in Hawaii are important agricultural lands. This approximation is based on an estimate provided by the Department of Agriculture provided in CY2007. The maximum allowable credit for agricultural expenses was not specified. The Department assumes there is no limit.

According to the 2002 Census of Agriculture, total cash rent for land, buildings and grazing fees was approximately \$19.7 million. There are no data on "rental income," but the Department assumes cash out for these farmers implies rental income for another Hawaii farmer. The Department again assumes approximately 17% of the total would qualify as important agricultural land and that 90% of the total would be taxable income. We then apply an average tax rate of 6%.

LINDA LINGLE  
Governor



SANDRA LEE KUNIMOTO  
Chairperson, Board of Agriculture

DUANE K. OKAMOTO  
Deputy to the Chairperson

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 SENATE COMMITTEES ON  
ECONOMIC DEVELOPMENT AND TAXATION  
AND  
WAYS AND MEANS

TUESDAY, FEBRUARY 26 2008  
10:55 A.M.

SENATE BILL NO. 2646, S.D.1  
RELATING TO IMPORTANT AGRICULTURAL LANDS

Chairpersons Fukunaga and Baker and Members of the Committees:

Thank you for the opportunity to testify on Senate Bill No. 2646, S.D.1. The Department of Agriculture supports the intent of this measure; however, we have concerns about the possible adverse budgetary impact that this bill may have on the Executive Supplemental Budget request. We are bringing together HFBF and LURF with DoTax to try to find ways to mitigate the concerns raised by DoTax. We offer the following comments on Parts IV, V, and VI.

Part IV  
Residential Housing

The Department prefers that agricultural housing on IAL occupy minimal space on the lands in order to optimize the production capacity of the lands. We recommend replacing the proposed section on IAL residential housing with more specific language that provides for clustering thereby minimizing the dwelling footprint.

Part V  
IAL Tax Credit

We note that this incentive as currently described has significant cost implications.

We offer the following recommendations:

- This should not be a refundable tax credit. Instead, any unused portion of the credit should be allowed to be carried forward in subsequent years until exhausted.
- There should be a recapture feature in the event that at the end of five years the individual or entity receiving the credit is no longer a qualified agricultural business.
- A sunset date for the credit should be established, we suggest a 10 year period from date of approval.
- In order to receive the tax credit for agricultural housing, we prefer that all of the housing units are occupied by farmers or employees for agricultural businesses and their immediate family members rather than a simple majority.

Part VI  
Loan Guaranty

We defer to the department of budget and finance as to the language of Part VI, Section 13 and will work with budget and finance to determine an appropriate loan guaranty cap and reasonable reserve requirement for each loan.

We offer the following recommendation:

On page 23, delete lines 21-22; on page 24, delete lines 1-6.

~~(3) — After consultation with the director of finance, the State possesses sufficient funds to provide an appropriate reserve for the loan guaranty and which, in the director of finance's judgment, are in excess of the amounts necessary for meeting the immediate requirements of the State and will not impede or hamper the fulfillment of the financial obligations of the State.~~

TESTIMONY BY GEORGINA K. KAWAMURA  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE SENATE COMMITTEES ON ECONOMIC DEVELOPMENT AND  
TAXATION AND WAYS AND MEANS  
ON  
SENATE BILL NO. 2646, S.D. 1

February 26, 2008

RELATING TO IMPORTANT AGRICULTURAL LANDS.

Senate Bill No. 2646, S.D. 1, proposes, among other things, to amend Chapter 155, Hawaii Revised Statutes, by adding a new section that would authorize the chairperson of the board of agriculture to guarantee loans relating to agricultural projects located on important agricultural lands.

The Department opposes the wording contained in the proposed section below and recommends language in Part VI, Section 14 be amended as follows:

“§155-\_\_\_\_...(3) The department of agriculture possesses sufficient funds to provide an appropriate reserve for the loan guaranty and which, in the chairperson of the board of agriculture’s judgment, are in excess of the amounts necessary for meeting the immediate requirements of the department of agriculture and will not impede or hamper the fulfillment of the financial obligations of the department of agriculture.”

In addition, we recommend that the Department of Agriculture (AGR) establish a maximum loan guaranty cap as the amount guaranteed will count against the State’s debt limit.

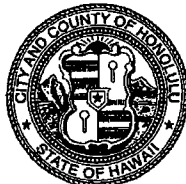


Furthermore, the AGR should also determine a reasonable reserve requirement for each loan guaranteed under this section. As the bill authorizes the AGR to guarantee loans, it is prudent for the AGR to both establish a reasonable reserve requirement and manage such reserve in order to ensure the making of the loan guarantees will not impact the AGR's ability to meet its financial obligations.

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

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MUFI HANNEMANN  
MAYOR



HENRY ENG, FAICP  
DIRECTOR

DAVID K. TANOUE  
DEPUTY DIRECTOR

February 26, 2008

The Honorable Carol Fukunaga, Chair  
and Members of the Committee on Economic  
Development and Taxation

The Honorable Rosalyn H. Baker, Chair  
and Members of the Committee on Ways & Means  
Senate  
State Capitol  
Honolulu, Hawaii 96813

Dear Chairs Fukunaga, Baker and Members:

**Subject: SENATE BILL 2646 SD1  
Relating to Important Agricultural Lands**

The Department of Planning and Permitting **opposes** provisions of Senate Bill 2646 SD1 that relate to farm dwellings and expedited processing.

We agree that more incentives are needed to bolster agri-business. We also support the preservation of Important Agricultural Lands (IAL). We also recognize the need to allow for farm-related housing. However, we cannot support the provisions of Senate Bill 2646 SD1 as they relate to farm dwellings and expedited processing for certain projects on IAL.

Section 8 of the bill imposes more caveats on farm dwellings, distinguishing farmers' dwellings from employee dwellings. However, the bill deems important to define where immediate family members may live – in separate dwellings or not. We question whether this issue is a compelling state interest under Chapter 205. Although we support a better definition of farm dwelling, we believe the provisions in this section are far too detailed for statewide application, and should be an issue better addressed by county zoning and other regulatory codes.

We do not outright object to the proposed twenty percent limit on each IAL property that can be used for dwelling purposes. However, we note that the cumulative effective of many lots using this option, may transform an agricultural area into one that resembles a de facto residential neighborhood. Further, this provision would not control the dwellings from being sold as condominiums.

We also note that there is a proposed subsection (5) that would not allow a residential subdivision on IAL land. Please note that under the city's zoning code, the only type of dwellings allowed under agricultural zoning are farm dwellings, which must be tied to agricultural income from the same lot; therefore, we would not process a subdivision request for strictly residential use.

The Honorable Carol Fukunaga, Chair  
and Members of the Committee on Economic  
Development and Taxation

The Honorable Rosalyn H. Baker, Chair  
and Members of the Committee on Ways & Means  
Senate

Re: Senate Bill 2646 SD1

February 26, 2008

Page 2

Lastly, we are concerned about Part VII of the bill that would mandate priority processing for any permits under Titles 13 and 19, HRS, respectively, with respect to agricultural processing facilities. From a land use perspective, this would affect land use commission boundary amendments, special permits, special management area use permits, and shoreline setback variances. We assume that these sections do not affect "201H" affordable housing requests that have a relationship with agriculture or Chapter 343 environmental documents.

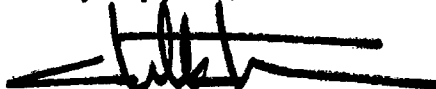
We reiterate our support for the protection of IAL lands and the need for new incentives to keep these lands in active agricultural use, but we object to singling out a use for expedited processing. Note that when one project is given priority it means placing that application ahead of all others, which means adding further delays to their permit processing.

Your Committees should be cautious not to short circuit time tested procedures in a rush to support the latest cause *du jour*. It seems that more and more projects, uses or facilities are seeking to expedite processing in the name of promoting or protecting a particular need or interest. We ask that if the legislature is adamant on establishing permit priorities, it does so within the full context of considering all types of projects, a formidable task. If the legislature is so inclined, we are prepared to participate in such a discussion.

As an alternative, the legislature could fund the Third Party Review program for agricultural processing facilities. Qualified private companies would be hired to review the building permit plans and certify to the city that the plans meet city requirements; on this basis the city issues the permits. Perhaps the State Department of Agriculture could distribute the funds to owners of processing facilities who would use the funds to hire a qualified company. By using the Third Party option, projects are not part of the queue line for city review, and other applications are not impacted, but the processing time is faster.

Please amend this measure to address the concerns expressed in our testimony. Thank you for this opportunity to comment.

Very truly yours,

  
Henry Eng, FAICP Director  
Department of Planning and Permitting



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February 25, 2008

**The Honorable Carol Fukunaga, Chair**  
Senate Committee on Economic Development  
and Taxation

**The Honorable Rosalyn H. Baker, Chair**  
Senate Committee on Ways and Means  
State Capitol, Room 211  
Honolulu, Hawaii 96813

**RE: S.B. 2646, SD1 Relating to Agricultural Lands**  
**Hearing Date: Tuesday, February 26, 2008 @ 10:55 a.m., Room 211**

Dear Chairs Fukunaga and Baker and Members of the Joint Senate Committees on Economic Development and Taxation and Ways and Means:

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS® (HAR) **supports the intent of S.B. 2646, SD1.**

S.B. 2646, SD1 provides mechanisms for incentives for the preservation of important agricultural lands (IAL). The preservation of IALs and long-term agricultural productivity in Hawaii is best assured through meaningful incentives for the designation of IALs.

Mahalo for the opportunity to testify.

Hawaii  
Crop  
Improvement  
Association

Sarah Styan, President  
P.O. Box 609  
Waimea, Hawaii 96796  
Phone: 808- 338-8300 ext 113

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Testimony by: Sarah Styan  
SB2646sd1, Important Agricultural Lands  
Senate EDT/WAMCommittees  
Tuesday, Feb. 26, 2008  
Room 211: 10:55 am

Position: Support

Chairs Fukunaga and Baker, and Members of the Senate EDT/WAM Committees:

My name is Sarah Styan. I am a Kauai resident, President of HCIA and research scientist of Pioneer Hi-Bred International, Waimea Research Station. The HCIA represents seed production and research facilities operating in Hawaii for nearly 40 years. The HCIA is comprised of five member companies that farm an estimated 8,000 acres on four islands, valued at \$97.6 million in operating budget (2006/2007 HASS). We are proud members of Hawaii's diversified agriculture and life sciences industries.

HCIA expresses its support for the Legislature in its policy work for the designation of important agriculture lands. This measure addresses incentives and protections to establish and sustain agricultural operations on IAL. These incentives and protections range from tax exemptions and credits, loan programs, agricultural workforce housing, zoning recommendations for affordable housing on rural lands, and county incentives. We note that reference to agriculture water use has been removed from the SD1. We hope that the HFBF, DOA, and LURF discussions will come to positive outcomes for agriculture. Without water, the best agriculture lands are not of any use.

All aspects of incentives and protections are needed and supported. We ask for your support of this measure.

Thank you for the opportunity to present testimony.



**Hawaii Cattlemen's Council, Inc.**

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COMMITTEE ON ECONOMIC DEVELOPMENT AND TAXATION  
COMMITTEE ON WAYS AND MEANS

February 26, 2008 10:55 am, Room 211

**SB2646 SD1 RELATING TO IMPORTANT AGRICULTURAL LANDS.**

Provides incentives and protections to establish and sustain viable agricultural operations on important agricultural lands. (SD1)

Chairs Fukunaga and Baker, and Members of the Committees on EDT/WAM:

My name is Alan Gottlieb, and I am the Chairman of the Legislative Committee of the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 130+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of over 1 Million acres of land in Hawaii, 25% of the State's total land mass.

The Hawaii Cattlemen's Council strongly supports SB 2646 SD1. Many lawmakers have asked what it will take to save the cattle industry in the State, as other agricultural commodities are slowly being pushed out. While we don't know if IAL will save the cattle industry, or any agriculture for that matter, we do know that if IAL is used as a Land Use initiative, as opposed to an incentive for farmers and ranchers to keep their land in agriculture, then our future is bleak.

We strongly support all of the initiatives left in this SD1, but we are dismayed that there is not enough political will to include the water provision found in the original version of this bill, despite the fact that without water there is no agriculture, and making agriculture a public trust priority, along with the others who already hold this priority, is absolutely essential.

We also very strongly support refundable tax credits for items in this bill which allow for tax credits, despite testimony to the contrary from DOA and DOTax. We can't speak for other farming enterprises, but ranching in the State of Hawaii is marginal at best, and few if any ranchers currently make money in ranching, therefore many ranchers do not have much if any tax liability. Without refundable credits on such items as expenditures for infrastructure improvements, there is no incentive in this incentive bill. I can't answer whether DOTax can afford refundable tax credits, but I would first ask if the State of Hawaii can afford to lose its agricultural industry?

Thank you for giving me the opportunity to testify in favor of this very important issue.

UNIFIED AFFILIATE OF THE NATIONAL CATTLEMEN'S BEEF ASSOCIATION

Hawaii Cattlemen's Association • Kauai Cattlemen's Association • Maui Cattlemen's Association

Molokai Grazier's Association • Oahu Cattlemen's Association

Personal Testimony Presented before the  
Senate Committee on Economic Development and Taxation  
Senate Committee on Ways and Means  
February 26, 2008  
10:55 a.m.  
by  
Dr. Andrew G. Hashimoto

SB 2646, SD1: Relating to Important Agricultural Lands

Chair Fukunaga, Vice Chair Espero, Chair Baker, Vice Chair Tsutsui, and Members of the Committees:

My name is Andrew Hashimoto, and I serve as Dean of the UH Mānoa College of Tropical Agriculture and Human Resources (CTAHR). I am pleased to provide personal testimony on Senate Bill 2646, SD1, which provides incentives and protections to establish and sustain viable agricultural operations on important agricultural lands. This testimony is presented from the perspective of the dean of CTAHR and someone who has participated in the Important Agricultural Lands discussions for the past five years. It does not represent the position of the University of Hawai'i.

I support SB 2646, SD1.

In 1978, the Hawaii State Constitution was revised to add Article XI, Section 3, which mandates: "The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and assure the availability of agriculturally suitable lands." Act 183, Session Laws of Hawai'i 2005 established standards, criteria, and mechanisms to identify important agricultural lands and implement the intent and purpose of article XI, section 3, of the Hawaii State Constitution.

SB 2646, SD1 represents another step toward securing the future of agriculture in Hawai'i. The incentives and protections provided by SB 2646, SD1 reflect years of discussion and study in which diverse groups have come together with the common goal of conserving important agricultural lands and ensuring a vital, sustainable agricultural industry in the state. SB 2646, SD1 will create value and stability for landowners and agribusinesses and will promote the establishment and long-term survival of agricultural ventures on important agricultural lands.

Thank you for the opportunity to testify on this bill.

**HAWAII FARM BUREAU FEDERATION  
2343 ROSE STREET  
HONOLULU, HI 96819**

February 26, 2008

HEARING BEFORE THE  
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TAXATION  
AND  
SENATE COMMITTEE ON WAYS & MEANS

**TESTIMONY ON  
SB 2646, SD 1  
RELATING TO IMPORTANT AGRICULTURAL LANDS**

Chair Fukunaga and Chair Baker and Members of the Committees:

My name is Alan Takemoto, Executive Director, of the Hawaii Farm Bureau Federation, which is the largest non-profit general agriculture organization representing approximately 1,600 farm and ranch family members statewide.

The Hawaii Farm Bureau Federation **strongly supports SB 2646, SD 1, providing mechanisms to begin the IAL process.** Since enactment of the Constitutional Mandate, HFBF has consistently worked for passage of IAL legislation. Working with the landowners, we finally see that this vision can become a reality. But we need the support of the Legislature, the Administration and County Governments.

The incentives within this package were developed over time with many discussions. They cover a wide range of incentives covering the critical areas for long term agricultural expansion in Hawaii. We understand as these incentives are passed, a similar package must be passed by the Counties. We respectfully request that the Legislature lead the path. Please do not put us in a position of the State waiting for the Counties and the Counties waiting for the State to enact incentives first. The lead by the State will send a loud message to the Counties that the IAL process can happen if everyone cooperates in the process.

The price tag for this measure is often called to question. HFBF believes agriculture is key to increasing Hawaii's self sufficiency as well as an important component to fighting invasive species ...a key topic in discussion. So, the question should be, what is the price for self sufficiency?

We respectfully request your strong support in passing this Bill and getting the IAL process started. We must not forget, IAL only happens because there are farmers and ranchers. IAL is not a land use initiative. It is an agricultural viability initiative.

We are working with LURF and it's members as well as respective state agencies to further discuss this measure. We respectfully request your support and passage of this measure. Thank you.



# **Maui County Farm Bureau**

*An Affiliate of the American Farm Bureau Federation and Hawaii Farm Bureau Federation  
Serving Maui's Farmers and Ranchers*

## **TESTIMONY**

### **SB2646 SD1: RELATING TO IMPORTANT AGRICULTURAL LANDS**

#### **HEARING BEFORE THE COMMITTEE ON WAYS AND MEANS**

Chair Baker and Committee Members:

My name is Warren Watanabe, Executive Director of the Maui County Farm Bureau, a non-profit general agriculture organization and an affiliate of the Hawaii Farm Bureau Federation.

Maui County Farm Bureau, on behalf of its member farmers, ranchers and agricultural organizations **strongly SUPPORTS** SB2646 HD1, an IAL Omnibus Bill providing incentives to begin the IAL process.

Important Agricultural Lands is a Agricultural Viability initiative. While there are examples of agricultural successes across the state we have more examples of agriculture struggling or failing. During the past year we have seen dairies close so now we only have dairies on the Big Island after next month. Egg farms now can be counted on one hand. I think both of these industries are agricultural commodities critical to self sufficiency, yet we are loosing them. What will be next? When will the people of Hawaii get excited that we may be loosing agriculture and do something about it?

This Initiative is the chance. It provides the incentives needed to have farmers and landowners commit to long term agricultural operations. Farm Bureau is willing to work with entities to determine a reasonable cap to the incentives.

One of the incentives is working with the Counties for a package. On Maui I saw a project we were very excited about fall to the wayside because of delayed permitting. An expansion that originally was expected to cost \$600,000 and provide an opportunity for two of the siblings to return from college to work on the farm was lost. These farm youngsters were taking college classes to prepare them in business and marketing to take over this operation. Yet, delayed permitting made this vision just a dream. The \$600,000 price tag mushroomed to \$1.2 million ...beyond the reach of the farmers. We must not let these opportunities continue to pass us.

We respectfully request that this **Bill be passed with focus placed on enacting incentives this year** so landowners will designate their lands as Important Agricultural Lands as soon as possible. Time is of the urgency. We cannot lose any more farmers or ranchers.

P.O. Box 148  
Kula, HI 96790

ph: 808 2819718  
email:mauicountyfb@hotmail.com



**The Chamber of  
Commerce of Hawaii**  
Since 1850

**Testimony to the Senate Committees on Economic Development and Taxation and  
Ways and Means  
Tuesday, February 26, 2008 at 10:55 a.m.  
Conference Room 211, State Capitol**

**RE: SENATE BILL NO. 2646 SD1 IMPORTANT AGRICULTURE LANDS**

Chairs Fukunaga and Baker, Vice Chairs Espero and Tsutsui, and Members of the Committees:

My name is Christine H. H. Camp, Chair of the Chamber of Commerce of Hawaii, Land Use and Transportation Committee. The Chamber of Commerce of Hawaii supports the intent of S.B. No. 2646 SD 1 with specific amendments.

The Chamber is the largest business organization in Hawaii, representing 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. The organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

S.B. No. 2646 SD 1 purposes to provide incentives and protections to establish and sustain viable agricultural operations on important agricultural lands.

We strongly supported the original comprehensive IAL Incentive Bill (SB 2646) in its entirety. We believe that meaningful incentives are needed to promote and the growth of agribusinesses in the State. It is through this growth that we will be able to preserve and protect viable agricultural operations in Hawaii.

Act 183, SLH 2005 established a process to identify important agricultural lands (IAL). The IAL designation was established during the 1978 Constitutional Convention. 27 years passed before Act 183 was passed.

Act 183 was based on the promoting agricultural viability and simply identification of agricultural lands believed to be important. Act 183 provides for incentives to be enacted that would assist in making agribusinesses viable and thus, allow for designation of IAL based on "growing" agribusiness.

Over the past two sessions, legislation has been introduced to create incentives to promote agricultural viability in Hawaii. In addition, attempts were also made to have the Counties enact incentives to promote agricultural viability in their respective counties. Neither of these efforts have resulted in meaning incentives being put in place to stimulate interest in designating lands IAL.

The S.D. 1 deleted the Water Code amendments concerning the public trust doctrine. As presently drafted,

Page 2

The Chamber of Commerce of Hawaii Testimony on SB 2646, SD1  
February 26, 2008

the bill lacks any significant landowner incentives.

We understand that a similar action was taken in House on HB 2357; however, the House is also considering a significant incentive in HB 2807 which essentially will allow for reclassification of agricultural lands to rural or urban, consistent with County plans, in exchange for lands being designated IAL. Currently, the House bill allows for a 4:1 ratio or 80%/20% meaning that for every 4 acres of agricultural lands designed by the LUC as IAL, the LUC may reclassify 1 acre of agricultural lands to urban or rural, as long as the reclassified lands fall within areas identified for urban expansion by the Counties. We strongly support this as an incentive for IAL designation and suggest that while further discussions are occurring on the specific ratios, the Senate include this provision in SB 2646.

Passage of this bill without suggested amendment should not constitute fulfilling the spirit and intent of Act 183 when it was drafted.

We strongly support SB 2646 with our proposed amendment. We believe that meaningful incentives are needed to promote and the growth of agribusinesses in the State. It is through this growth that we will be able to preserve and protect viable agricultural operations in Hawaii.

Thank you for this opportunity to express our views.

**testimony**

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**From:** Norfolkldm@aol.com  
**Sent:** Monday, February 25, 2008 7:10 PM  
**To:** testimony  
**Subject:** Important Ag Lands

Doug MacCluer  
360 Hoopalua Dr.  
Pukalani, Hawaii,96768  
phone 572-7336

Re: SB2646sd1, Important Ag Lands  
Hearing Date: Tuesday, Feb. 26, 2008

Position: support

Chairs Fukanaga and Rosalyn Baker  
Hawaii State Senate  
Committees on EDT/WAM  
Chairs Fukanaga and Baker and Members of this Committee<

I am Doug MacCluer and I have been farming on Maui most of my life. I have been very active in trying to promote our Agriculture for many years and feel that as we look at the development on important farm lands we are losing a great asset for our State. How can we keep our open space and provide food for our residents when we allow Developers to take these prime farm land and build houses on them. Certainly we need housing for our people but it should not be at the expense of our important farm lands.

I ask support on this measure.

Doug MacCluer

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FEB 25 2008

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**SB 2646 SD1  
RELATING TO IMPORTANT AGRICULTURAL LANDS**

**PAUL T. OSHIRO  
MANAGER – GOVERNMENT RELATIONS  
ALEXANDER & BALDWIN, INC.**

**FEBRUARY 26, 2008**

Chair Fukunaga, Chair Baker, and Members of the Senate Committees on  
Economic Development & Taxation and Ways & Means:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) and its agricultural companies Hawaiian Commercial & Sugar Company and Kauai Coffee Company, Inc. on SB 2646 SD1, "A BILL FOR AN ACT RELATING TO IMPORTANT AGRICULTURAL LANDS." We support this bill.

After over twenty five years of debate, negotiation, and compromise, the IAL Law was finally passed in the 2005 Legislative Session. After years of pursuing a land-use approach to this constitutional mandate, the IAL law that was successfully passed was one premised on the principle that the best way to preserve agricultural lands is to preserve agricultural businesses and agricultural viability. As such, Act 183 (2005) not only provides the standards, criteria, and processes to identify and designate important agricultural lands (IAL) to fulfill the intent and purpose of Article XI, Section 3 of the Hawaii State Constitution, it also provides for the passage of a package of incentives designated to support and encourage sustained, viable agricultural activity on IAL—prior to the designation of IAL. Once the package of incentives is passed, IAL may be designated in one of two ways --- by voluntary petition by the farmer/landowner to the

State Land Use Commission (LUC); or subsequently by the Counties filing a petition to designate lands as IAL pursuant to a County identification and mapping process. In either case, the LUC must find that the lands qualify for IAL designation pursuant to the standards, criteria, objectives, and policies set forth in the IAL Law prior to designation.

### **Rental Income On Agricultural Leases**

This bill provides both an exclusion from gross income and an exemption from general excise taxes for rental income derived from agricultural leases on lands identified and designated as IAL. In addition to encouraging land owners to lease their IAL lands to active farming operations, these provisions should also result in a reduction in the amount of the rent charged to the farmer for the IAL parcel. We believe that this provision should assist in sustaining active agricultural operations on IAL designated lands.

### **Real Property Tax Credit**

This bill also authorizes a tax credit for real property taxes paid on IAL. It is anticipated that this provision should encourage land owners to designate their lands as IAL and subsequently result in a reduction in land rents for IAL parcels that are leased to a farming operation. We believe that this provision should also assist in maintaining long term active agricultural operations on IAL designated lands.

### **Housing**

Housing accommodations for farmers and their employees is an important component in the success of many agricultural operations. This provision will allow residential dwellings for farmers, their employees and their families on IAL subject to a list of conditions and criteria. With Hawaii's high housing costs and tight labor market,

the ability for the farmer to have housing accommodations on IAL in the immediate vicinity of their crops is anticipated to be of significant benefit to IAL farming operations.

### **Infrastructure Tax Credit**

Major infrastructure requirements such as irrigation systems, roads and utilities, and agricultural processing facilities play a critical role in the survival of many agricultural businesses, and the infrastructure tax credit portion of this bill will provide important financial support for IAL related farming operations. In addition to assisting these agricultural operations in the repair and maintenance of their existing infrastructure, this tax credit will also serve as a stimulus to encourage these entities to expand their operations or to enhance their operating efficiencies through the installation of new agricultural infrastructure, equipment, and other related improvements to service their farming operations. Importantly, this bill also includes provisions to require the quantitative and qualitative assessment of this tax credit, so that the Legislature, and others, can have access to information on the effectiveness of this incentive program.

### **Loan Guaranty**

The loan guarantee portion of this bill will authorize low cost loans for farmers to establish or expand their IAL related agricultural operations or to develop necessary IAL related infrastructure. These provisions will assist in providing farmers with a means of obtaining necessary financing to initiate, maintain, or to expand their agricultural businesses. We believe that this loan guarantee may especially be useful to the smaller farming operations that may experience difficulty in obtaining financing in the open financial market.

## **Expedited Permits**

This bill will also establish and implement a procedure for the priority processing of permit applications and renewals for agricultural processing facilities that process crops or livestock from an IAL related agricultural business. It is anticipated that this bill will result in a total net time savings for an IAL related agricultural processing facility to obtain their necessary permits, which should result in an overall cost savings for the facility. We believe that this incentive may encourage agricultural processing facilities to process crops or livestock from IAL related agricultural businesses, thus increasing the availability of these services to IAL related agricultural businesses.

Based on the aforementioned, we respectfully request your favorable consideration on this bill.

Thank you for the opportunity to testify.





*Hawaii's Thousand Friends*

25 Malunui Ave., Suite 102., PMB 282 • Kailua, HI 96734 • Phone/Fax: (808) 262-0682 E-mail: htf@lava.net

February 26, 2008,

Testimony via email

COMMITTEE ON ECONOMIC DEVELOPMENT AND TAXATION

Senator Carol Fukunaga, Chair

Senator Will Espero, Vice Chair

COMMITTEE ON WAYS AND MEANS

Senator Rosalyn Baker, Chair

Senator Shan Tsutsui, Vice Chair

SB 2646 SD1

RELATING TO IMPORTANT AGRICULTURAL LANDS

Committee Chairs and members:

Hawaii's Thousand Friends, a statewide non-profit land use organization, oppose the following provisions of SB 2646 SD1 that provides some incentives and purports to provide protections to establish and sustain viable agricultural operations on important agricultural lands.

Part IV §205—Important Agricultural land: residential housing. This new section permits residential housing on important agricultural for farmers and immediate family members under certain conditions but is silent on several key issues.

- What agency(s) will have the responsibility of enforcing these conditions?
- What enforcement actions can be taken should the agency(s) discover a violation to these conditions?
- What agency(s) will ensure that residential housing on IAL is being "used exclusively by farmers and their immediate family members who actively and currently farm on IAL upon which the dwelling is situated?"
- What agency(s) will be responsible for ensuring that individuals living in "separate dwellings situated on the same designated land" are "immediate family members of a farmer?"

Part V Tax Credits

Plans, design, engineering, construction, renovation, repair, maintenance, and equipment for: (1) (A) Roads or utilities, primarily for agricultural purposes, for which the majority of the lands serviced by the roads or utilities, excluding lands classified as conservation lands, are important agricultural lands.

- It is unclear why tax credits should be given for roads and utilities that are not being used exclusively for agricultural.
- Without definitions and guidelines for "primarily" and "majority" how can the state agency(s) be sure that the landowner is not taking a greater tax credit than is due?

(c) Water wells, reservoirs, dams, water storage facilities, water pipelines, ditches, or irrigation systems in the State, primarily for agricultural purposes, for which the majority of the lands serviced by its water, excluding lands classified as conservation lands, are important agricultural lands.

- It is unclear why tax credits should be given for utilities and facilities that are used for non-agricultural purposes and not exclusively used for agriculture.
- Without definitions and guidelines for “primarily” and “majority” how can the state agency(s) be sure that the landowner is not taking a greater tax credit than is due?

Pg. 10 §155 – Loan guaranty; important agricultural lands; agriculture and aquaculture.

Once again it seems that small farmers have been left out of the incentive package because even though their land is designated IAL most will be unable to meet the fifty per cent gross income definition of an “agricultural producer.”



# Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803  
808.537.9019 [hawaii.chapter@sierraclub.org](mailto:hawaii.chapter@sierraclub.org)

## SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TAXATION SENATE COMMITTEE ON WAYS AND MEANS

February 26<sup>th</sup>, 2008, 10:55 A.M.

(Testimony is 2 pages long)

### TESTIMONY IN OPPOSITION TO SB 2646 SD1 (PART IV ONLY)

Chairs Fukunaga and Baker and members of the committees:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, opposes SB 2646 SD1, an omnibus agricultural measure, because of its allowance of residential housing on lands deemed "important agricultural lands" (Part IV of the measure). While we fully support efforts to increase the attractiveness and viability of farming in Hawai'i, we must balance those interests against other critical environmental and societal goals while minimizing the opportunity for commercial interests to exploit resources at the public's and future generations' expense.

We are concerned about the invitation to allow residential development on lands that are identified as the best ("important") agricultural lands—particularly occupying up to 20% of the important agricultural land (IAL).

First, the counties historically have been lax in defending the land use law and preventing rural sprawl on agricultural lands. Due to weak enforcement of agricultural land protection, farmland has been subject to the type of real estate speculation that drives up the price of land further out of reach for local residents and local farmers. It has made it difficult to effectively plan Hawaii's future and ensure orderly development. Further, residential developments on ag-zoned lands do not allow for adequate public input on the impact on our community. Although this measure contains controls on what type of housing may be built, it still may open the door to further abuse unless additional protection is put into place. This committee has considered measures in the past that would effectively close some of the loopholes exploited by developers to create "ag housing." Those measures should be reexamined this session.

Second, while we understand that housing for farm workers is important to support farm activities, why does the residential housing need to be built on lands designated as "important?" Such housing should be put on adjacent rural lands or, if absolutely necessary, on agricultural lands that are not designated as "important."

Finally, allowing up to 20% of the important agricultural lands to be covered with development is antithetical to the constitutional charge to protect agricultural lands. If this committee is unwilling to delete this part of SB 2646 SD1, this acreage allowance should at least be reduced to a more appropriate percentage, perhaps 2 – 4% of the total acreage.

Thank you for the opportunity to testify.



LAND USE RESEARCH  
FOUNDATION OF HAWAII  
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Honolulu, Hawaii 96813  
Phone 521-4717  
Fax 536-0132

February 26, 2008

BY E-MAIL

The Honorable Senator Carol Fukunaga and Members  
Committee on Economic Development and Taxation  
The Honorable Senator Rosalyn Baker, Chair, and Members  
Committee on Ways and Means  
State Senate, Room 211  
Honolulu, Hawaii 96813

**Subject: Testimony on Senate Bill No. SB 2646, SD1 Relating to  
Important Agricultural Lands (IAL Incentives Omnibus Bill)**

Dear Chair Fukunaga, Chair Baker, and Committee Members:

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii (LURF), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable and rational land use planning, legislation and regulations affecting common problems in Hawaii.

LURF is providing our testimony **in support of SB 2646 SD1**, which provides incentives for farmers, and would also urge that the Committees approve the following two amendments, which provide some incentives for landowners:

- **A new PART VIII, Information for State DOA Agricultural Water Use and Development Plan and Master Irrigation Inventory Plans.** We believe that this section was inadvertently deleted from the original SB 2646 by the prior Committees on Agriculture and Hawaiian Affairs ("AHW") and Water and Land ("WTL"). We would respectfully request that the following be added back to SB 2646 as a SD2:
  - Require the inventory to cover both public and private irrigation water systems;
  - Delete the requirements for information regarding subsidizing the cost of repair and maintenance of the systems;
  - Delete the establishing criteria to prioritize the rehabilitation of the system;
  - Add the identification of source of water used for agricultural operations, particularly those on IAL;
  - Add the identification of current and future water needs for agricultural operations, particularly those on IAL; and

- Add that each county water use and development plan include a status of water and land development on IAL.
- **A new PART IX**, which would allow affordable and workforce housing on rural lands and would also allow farmers and landowners who file petitions with the State Land Use Commission for the designation of Important Agricultural lands (“IAL”) to also seek a reclassification of land in another agricultural district to a rural district, if said reclassification is consistent with the relevant county general plan, which includes the opportunity for public comment. Please see the attached document entitled: Hawaii Farm Bureau Federation and Land Use Research Foundation Proposed Amendment to SB 2646 (February 8, 2008).

We appreciate the opportunity to provide testimony in **support of SB 2646, SD1, which, together with the amendments proposed by LURF**, are major steps towards providing the land owner incentives to designate Important Agricultural Lands (“IAL”), pursuant to §205-46 of the Hawaii Revised Statutes (“HRS”) and Act 183, Session Laws of Hawaii (“SLH”) 2005. We respectfully request that the Committees pass SB 2646, SD1 with the amendments suggested by LURF.

While this bill and LURF’s proposed amendments may be major positive steps in the right direction, further work will be needed before the issuance of a declaration of satisfaction of implementing incentives under Act 183. Act 183 calls for a comprehensive package of meaningful landowner incentives at the state and county level, so we anticipate further work to be done by the agricultural and landowner stakeholders, by state legislators relating to this IAL incentive legislation, as well as by county administrators and council members with respect to incentive legislation with the counties, before a declaration of satisfaction can be issued relating to the requirements of HRS §205-46 and Part II, §9 of Act 183, SLH 2005 have been fully met. “The clock should not start” on IAL designations until there is **a comprehensive IAL incentive package that addresses both incentives for farming interests and landowners.**

**SB 2646, SD1 provides incentives for farming interests only.** This bill would provide some incentives and protections for farmers to establish and sustain viable agricultural operations on important agricultural lands, however, it does not presently include landowner incentives to designate IAL. The SD1 includes the following:

- **PART II State Income Tax Exclusion and General Excise Tax (“GET”) Exemption.** Provides for an exclusion from income tax and exemption from GE tax collected on IAL leases. This bill would amend Chapter 235, HRS by adding a new section that would allow rental income from agricultural leases on IAL to be excluded from gross and adjusted gross income, and taxable income, under certain conditions. This measure would also exempt rental income derived from agricultural leases on IAL from the general excise tax law, under certain conditions;
- **PART III IAL Real Property Tax (“RPT”) Credit.** Provides for a 100% State tax credit for the actual county RPT paid on IAL by taxpayer;
- **PART IV Agricultural Workforce Housing for farmers, employees and their families.** Allows agricultural workforce dwelling units on IAL lands for farmers, employees and their immediate family who actively and currently farm on the IAL lands. Total land area for housing shall not exceed 20% of total IAL and must be supported by an Agricultural Plan which is approved by the

DOA. Requires major coordination with the counties and county support relating to uses on agricultural lands and expedited review and permitting;

- **PART V Important Agricultural Lands Agricultural Business Tax Credits.** Provides tax credits for qualified agricultural costs for plans, design, engineering, construction, renovation, repair, maintenance and equipment primarily for agricultural purposes: roads, utilities, agricultural processing facilities, water wells, reservoirs, dams, water storage facilities, pipelines, ditches or irrigation systems, agricultural workforce housing, other related professional costs. The five (5) years of tax credits are as follows: 50% of qualified agricultural costs for the year the costs are expended; 20% for the following year; and 10% for the following three (3) years. Includes refundable tax credit to support farmers with limited income. The maximum caps for these credits shall be set by the legislature. Every taxpayer who applies for the credits shall submit an annual written statement which will include information which will allow the quantitative and qualitative assessment of the outcomes of the tax credit to be determined. The Department of Agriculture (“DOA”) in consultation with the Department of Taxation (DOTAX), shall submit an annual report evaluating the effectiveness of the tax credit, and findings and recommendations to improve the effectiveness of the tax credit to further encourage the development of agricultural businesses;
- **PART VI Guaranty Loan Program.** Financing is also a critical component of the long-term viability of agriculture on IAL. This would allow the Chairperson of the Board of Agriculture, after consultation with the Director of Finance (confirmation of sufficient funds), to guarantee loans made by commercial lenders (authorized to do business in Hawaii) to agricultural producers to develop and implement agricultural projects on IAL. The terms of the loans shall be as follows: for operating costs – ten (10) years, for capital improvement costs – twenty (20) years. The interest rate charged on the loan shall be one percent below the commercial lender’s prime rate. The loan guarantee may be for up to eighty-five percent (85%) of the outstanding principal amount of the loan, but shall not include fees or accrued interest. The maximum amount of the loan shall not exceed \$2.5 million;
- **PART VII State Priority Permit Processing.** Requires any applicable state agency issuing permits to establish and implement a procedure for the priority processing of permit applications and renewals, at no additional costs, for agricultural processing facilities which process crops or livestock from an agribusiness with a majority of lands held, owned, or used as IAL.

**S.B. No. 2646, SD1 Deletions from original SB 2646.** Based on some public comments regarding the public trust priority in the Water Code, the Senate Committees on Agriculture and Hawaiian Affairs and Water and Land deleted the following portions of the original S.B. No. 2646 relating to irrigation water for IAL:

- **PART VII Issues relating to Irrigation Water for IAL**
  - **Declaration of policy: IAL as a public trust priority in the Water Code.** These provisions would amend the Water Code by identifying preservation of IAL and the water needs of IAL as a “public trust” priority. This will allow the Water Commission, in appropriate instances, to consider the needs of agriculture and the preservation of agricultural lands on par with domestic use, the preservation of natural resources, native Hawaiian practices, and reservations for the Department of Hawaiian Home Lands.

- **Information for State DOA Agricultural Water Use and Development Plan and Master Irrigation Inventory Plans.** The proposed revisions would include the following:
  - Require the inventory to cover both public and private irrigation water systems;
  - Delete the requirements for information regarding subsidizing the cost of repair and maintenance of the systems;
  - Delete the establishing criteria to prioritize the rehabilitation of the system;
  - Add the identification of source of water used for agricultural operations, particularly those on IAL;
  - Add the identification of current and future water needs for agricultural operations, particularly those on IAL; and
  - Add that each county water use and development plan include a status of water and land development on IAL.

### LURF's Position

**Support for the Farm Bureau and LURF Omnibus IAL Incentives Package.** The legislature is fully aware of the significance in the successful passage, just two years ago, of Act 183 Relating to Important Agricultural Lands. Act 183 established policies and procedures for the identification of IAL and provides a process to develop protection, incentive measures and agricultural viability for IAL. Act 183 also established certain “milestones” for performance on the part of the legislature, administration, private landowners/farmers, and the Counties. The Act was a direct result of building consensus on areas of agreement as opposed to focusing on areas of disagreement. Act 183 does represent a collaboration of a variety of different interests groups, community representatives and agricultural stakeholders, including the Hawaii Farm Bureau Federation (“Farm Bureau”) and LURF. S.B. 2646 and the proposed amendment PART IX, represents a collaborative effort of the Farm Bureau and LURF to provide the incentives for farmers and landowners in compliance with the process required under Act 183.

**LURF Recommendation to amend S.B. No. 2646 by replacing a portion of the original Part VII relating to information regarding water use and development plans and master irrigation inventory plans.** LURF would respectfully recommend that the Committees added back the following into S.B. No. 2646, SD1:

- Require the inventory to cover both public and private irrigation water systems;
- Delete the requirements for information regarding subsidizing the cost of repair and maintenance of the systems;
- Delete the establishing criteria to prioritize the rehabilitation of the system;
- Add the identification of source of water used for agricultural operations, particularly those on IAL;
- Add the identification of current and future water needs for agricultural operations, particularly those on IAL; and
- Add that each county water use and development plan include a status of water and land development on IAL.

**LURF Recommendation to amend SB 2646, SD1 by adding PART IX – Affordable housing in rural districts and petitions for reclassification of**

**agricultural district to rural district as shown on county land use plans.** The original draft of the Farm Bureau/LURF Omnibus IAL Incentives Bill submitted to the Legislature included a PART IX, which would allow affordable and workforce housing on rural lands and would also allow farmers and landowners who file petitions with the State Land Use Commission for the designation of IAL, to also seek the reclassification of land in another agricultural district to a rural or urban district, if said reclassification is consistent with the relevant county general plan. This section represents the only major landowner incentive for designation of IAL, however, it was omitted from the original version of SB 2646. Thus, we have attached the proposed amendment PART IX to this testimony, and are proposing that your Committees add it as a new PART IX to the current version of SB 2646, SD1.

**Conclusion.** Act 183 calls for a comprehensive package of meaningful incentives for farmers and landowners at the state and county level, however, the current version of SB 2646, SD1 does not include meaningful landowner incentives. Thus, LURF would urge that the Committees to approve S.B. No. 2646, SD1, and also to add the proposed amendments: Part VIII, relating to providing information regarding water use and plans; and to add the attached proposed amendment as a new PART IX, relating to landowner incentives for affordable and workforce housing in the Rural District and concurrent designation of IAL and reclassification to a rural or urban district.

We anticipate further work to be done by the agricultural and landowner stakeholders, by state legislators relating to this IAL incentive legislation, as well as by county administrators and council members with respect to incentive legislation with the counties, to satisfy the requirements of HRS §205-46 and Part II, §9 of Act 183, SLH 2005 have been fully met. Thus, “the clock should not start” and there can be no declaration of satisfaction relating to IAL incentives until there is **a comprehensive IAL incentive package that addresses both incentives for farming interests and landowners.**

LURF appreciates the opportunity to express our views on this matter.



PART IX

SECTION 20. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§205- Satisfaction of state or county affordable housing requirements for land in a rural district. (a) In lieu of partially satisfying a state or county affordable housing assessment in the urban district, a project landowner subject to Subsection (b) may fulfill the assessment by providing affordable housing in the rural district in accordance with section 205-2(c)(7).**

**(b) this section shall apply only to a project land owner who has been granted a declaratory order from the land use commission to designate all or some of the landowner's land as important Agricultural land pursuant to section 205-45."**

SECTION 21. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Rural districts shall include [activities]:

(1) Activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration

of people, structures, streets, and urban level  
of services are absent [~~, and where small~~];

(2) Small farms [~~are~~] intermixed with low density  
residential lots except that within a  
subdivision, as defined in section 484-1, the  
commission, for good cause and on petition for a  
special permit, may allow one lot of less than  
one-half acre, but not less than 18,500 square  
feet, or an equivalent residential density,  
within a rural subdivision and permit the  
construction of one dwelling on such lot [~~7~~];  
provided that all other dwellings in the  
subdivision shall have a minimum lot size of one-  
half acre or 21,780 square feet [~~.—Such petition  
for variance may be processed under the special  
permit procedure.—These districts may include  
contiguous~~];

(3) Contiguous areas [which] that are not suited to  
low density residential lots or small farms by  
reason of topography, soils, and other related  
characteristics [~~.—Rural districts shall also  
include golf~~];

(4) Golf courses, golf driving ranges, and golf-  
related facilities [~~7~~];

(5) Agribusiness activities including but not limited to horticulture, apiculture, aquaculture, raising and keeping of livestock, and establishment of plant nurseries;

(6) Farm worker housing; and

(7) Affordable housing, without a special permit; provided that the housing is:

A. Affordable to households with incomes at or below one hundred forty per cent of the median family income as determined by the United States Department of Housing and Urban Development." and

B. Situated on land reclassified to the rural district under a declaratory order issued pursuant to section 205-45 that also designates important agricultural land."

SECTION 22. Section 205-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Unless authorized by special permit issued pursuant to this chapter, only the following uses shall be permitted within rural districts:

(1) Low density residential uses[+], with a minimum lot size of one-half acre, and one dwelling house

per lot, except as provided for in section 205-

2(c);

- (2) Agricultural uses;
- (3) Golf courses, golf driving ranges, and golf-related facilities; ~~[and]~~
- (4) Public, quasi-public, and public utility facilities~~[-]~~;
- (5) Agribusiness activities, as provided in section 205-2(c);
- (6) Farm worker housing; and
- (7) Affordable housing, meeting the requirements of section 205-2(c)(7), with density established by county zoning.

~~[In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre, except as provided for in section 205-2.]"~~

SECTION 23. Section 205-45, Hawaii Revised Statutes, is amended to read as follows:

"~~[†]~~**§205-45**~~[†]~~ **Petition by farmer or landowner.** (a)

A farmer or landowner with lands qualifying under section 205-44 may file with the commission a petition for declaratory ~~[ruling]~~ order to designate those lands as important agricultural lands. The petition may be filed

[with the commission] at any time in the designation process.

(b) Any law to the contrary notwithstanding, within the same petition for declaratory order as described in subsection (a), the petitioner may seek a reclassification of land in the agricultural district to the rural district, urban district, or a combination of both; provided that the:

- (1) Land sought to be reclassified to the rural or urban district is within the same county as the land sought to be designated as important agricultural lands; and
- (2) Reclassification of the land is consistent with the relevant county general, development and community plans.
- (3) Total acreage of the land sought to be designated or reclassified in the petition complies with the following proportions:
  - (A) At least            per cent of the total acreage is sought to be designated as important agricultural land; and
  - (B) The remainder of the acreage is sought to be reclassified to the rural or urban district.

~~[(b)]~~ (c) The petition for declaratory ruling shall be submitted in accordance with subchapter 14 of the commission's rules and shall include:

- (1) Tax map keys of the land to be designated as important agricultural lands and, if applicable, the land to be reclassified from agricultural district to the rural or urban district, along with verification and authorization from the applicable landowners;
- (2) Proof of qualification for designation as important agricultural lands under section 205-44, respecting a regional perspective; [and]
- (3) The current or planned agricultural use of the area to be designated~~[-]~~ as important agricultural lands; and
- (4) If applicable, the current or planned use of the area sought to be reclassified to the rural or urban district.

~~[(e)]~~ (d) The commission shall review the petition and the accompanying submissions to evaluate the qualifications of the land for designation as important agricultural lands in accordance with section 205-44.

If the petition also seeks the reclassification of land to the rural or urban district, the commission shall

review the petition and accompanying submissions to evaluate the suitability of the land for the reclassification in accordance with section 205-2, consistency of the reclassification with the relevant county general, development, and community plans, and compliance with the other provisions of subsection (b).

If the commission, after its review [and evaluation], finds that the [lands qualify for] designation [as important agricultural lands under this part], and, if applicable, reclassification sought in the petition should be approved, the commission shall vote, by a two-thirds majority of the members of the commission, to issue a declaratory order designating the petitioners designated lands as important agricultural lands[-] and, if applicable, reclassifying petitioner's identified land from agricultural district to rural or urban district.

With respect to a petition that seeks to both designate important agricultural lands and reclassify agricultural lands to the rural or urban district, if the commission finds that either the designation or reclassification as proposed by the petitioner should not be approved, the commission shall deny the petition in its entirety.

~~[(d) Designating important agricultural lands by the~~  
~~commission]~~ (e) The designation or reclassification of  
land pursuant to subsection (a) or (b) shall not be  
[considered as an amendment to district boundaries under]  
subject to the district boundary amendment procedures of  
sections 205-3.1 and 205-4 or become effective prior to  
legislative enactment of protection and incentive measures  
for important agricultural land and agricultural viability,  
as provided in section 9 of Act 183, Session Laws of Hawaii  
2005.

~~[(e)]~~ (f) Farmers or landowners with lands qualifying  
under section 205-44 may file petitions for a declaratory  
[ruling] order to designate lands as important agricultural  
lands following the legislative enactment of protection and  
incentive measures for important agricultural lands and  
agricultural viability, as provided in section 9 of Act  
183, Session Laws of Hawaii 2005.

(g) After a declaratory order designates any land as  
important agricultural land pursuant to this  
section, the commission shall not remove that  
designation from any land so designated in the  
order.

(h) The commission may adopt rules pursuant to  
chapter 91 to effectuate this section."