

NEIL ABERCROMBIE
Governor



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

RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

JAMES J. NAKATANI
Deputy to the Chairperson

TESTIMONY OF RUSSELL S. KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND
COMMERCE

WEDNESDAY, MARCH 30, 2011
2:05 P.M.
CONFERENCE ROOM 325

SENATE BILL NO. 1559, SENATE DRAFT 2, HOUSE DRAFT 1
RELATING TO IMPORTANT AGRICULTURAL LANDS

Chair Herkes and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 1559, Senate Draft 2, House Draft 1. The purpose of this measure is to establish two incentives for designating Important Agricultural Lands (IAL). The first incentive is to require expedited permit processing for agricultural processing facilities that only process crops from IAL for a period no less than 20 years, and establishing preferential electricity rates for energy used for agricultural activities on IAL. The Department of Agriculture supports the intent of this measure and offers comments.

Part I amends Section 205-46.5 which is the existing IAL Incentive that provides for expedited permit processing for agricultural processing facilities. The existing language does not require agricultural processing facilities to be located on designated IAL lands or be owned by the agribusiness(es) growing crops or livestock on IAL. The amendment magnifies this absence of linkage. Therefore, the amendment would allow, for example, the location of an agricultural processing facility in an industrial or commercial zoned area without requiring the facility to have a physical or ownership



relationship to IAL or crop and livestock production. The amendment does establish linkage between the facility and IAL by requiring the agricultural processing facility process only crops and livestock produced on IAL for no less than 20 years following the issuance of a certificate of occupancy for the facility.

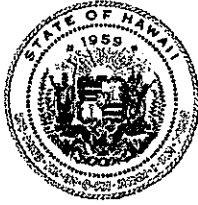
We understand that the issuance of certificates of occupancy is done primarily by the counties and generally involves the inspection of a building or structure for building code (electrical, plumbing, building) compliance prior to occupancy. This appears to limit the expedited permit processing incentive to new agricultural processing facilities or existing buildings substantially reconfigured to become processing facilities.

This bill does not discuss how failure by an agricultural processing facility to comply with the 20-year requirement of processing only IAL-grown crops and livestock will be dealt with. There is no provision for penalty or resolution of failures to comply. Furthermore, there is no identification of the party responsible for monitoring compliance and how the monitor will be able to distinguish IAL and non-IAL sourced products.

The Department defers to the PUC and DBEDT with respect to the portion of the bill establishing preferential electricity rates on IAL.

Thank you, again, for this opportunity to testify on this measure.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
CONSUMER PROTECTION & COMMERCE**

**Wednesday, March 30, 2011
2:05 PM**

State Capitol, Conference Room 325

**In consideration of
SENATE BILL 1559, SENATE DRAFT 2, HOUSE DRAFT 1
RELATING TO IMPORTANT AGRICULTURAL LANDS**

Senate Bill 1559, Senate Draft 2, House Draft 1 proposes to establish incentives for important agricultural lands, including the expediting of permitting procedures. The Department of Land and Natural Resources supports the intent of this measure as it assists and provides incentives to certain landowners to bring their dams and reservoirs into compliance with safety standards.

Thank you for the opportunity to comment.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

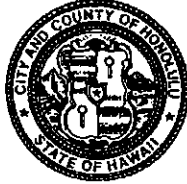
WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIIOGLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
MAYOR



DAVID K. TANOUE
DIRECTOR

JIRO A. SUMADA
DEPUTY DIRECTOR

March 30, 2011

The Honorable Robert N. Herkes, Chair
and Members of the Committee on Consumer
Protection & Commerce
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Herkes and Members:

**Subject: Senate Bill No. 1559, SD2, HD1
Relating to Important Agricultural Lands**

The Department of Planning and Permitting (DPP) opposes Senate Bill No. 1559, SD2, HD1, which proposes certain incentives for Important Agricultural Lands (IAL).

Under Part I of the bill, it is proposed that agricultural processing facilities would receive priority permit processing only if they use crops or livestock produced on IAL lands. Further, IAL crops or livestock must be used for at least twenty years following the issuance of a certificate of occupancy (CO) for the processing facility.

The City cannot enforce this requirement. We have no ability to confirm whether the facility uses crops or livestock from IAL properties. What happens if the twenty-year requirement is not met? Is the intent to withdraw the CO if the requirements are not met? We do not issue conditional certificates of occupancy. Therefore, this proposal will be self-monitored, unless the state will enforce the requirements.

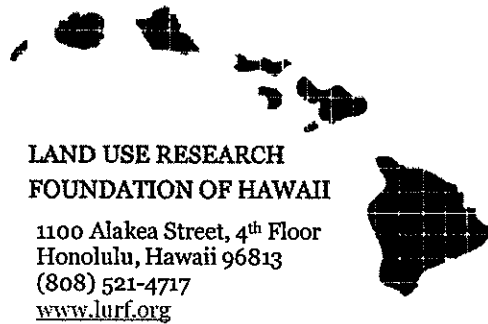
Please hold Senate Bill No. 1559, SD2, HD1. Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "David K. Tanoue", is written over a horizontal line.

David K. Tanoue, Director
Department of Planning and Permitting

DKT:
sb1559sd2hd1-IAL-ks.doc



LAND USE RESEARCH
FOUNDATION OF HAWAII

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March 29, 2011

Representative Robert N. Herkes, Chair and Representative Ryan I. Yamane, Vice Chair
House Committee on Consumer Protection and Commerce

Support of SB 1559, SD 2, HD 1, Relating to Important Agricultural Lands.

Wednesday, March 30, 2011 at 2:05 p.m. in CR 325

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, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF appreciates the opportunity to provide testimony **in support of SB 1559, SD 2, HD 1**, and to offer comments and encouragement to the various agricultural stakeholder groups who support the goals of viable agricultural operations and conserving and protecting important agricultural lands (IAL). Instead of attempting to thwart efforts to implement IAL incentives, the agricultural stakeholders need to work together to resolve any such conflicts, including the possibility of amending either the existing laws or new IAL incentive implementation proposals, or both, in order to come to compromise positions.

SB 1559, SD 2, HD 1. This bill establishes incentives for IAL including expedited permitting procedures and preferential energy rates.

LURF's Position. The purpose of this bill is to implement the underlying intent and objectives of the IAL laws (Hawaii Revised Statutes [HRS], Sections 205-41 to 52), which were enacted to fulfill the mandate in Article XI, Section 3 of the Hawaii State Constitution, "to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." The IAL laws established a new paradigm which avoids requirements and mandates, and instead focuses on promoting agricultural viability by providing incentives for farmers and landowners to designate lands as IAL, and to build necessary infrastructure. This bill is thus an effort to expand the existing IAL program by establishing additional incentives for landowners to preserve and maintain IAL.

As noted in HRS Section 205-41, the intent of Act 183 (2005) was to develop agricultural incentive programs to promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands for agricultural use concurrently with the process of identifying important agricultural lands as required under the Act. Such incentives and programs were identified and noted in Act 183 to specifically include, amongst other things:

1. Reduced infrastructure requirements and facilitated building permit processes for the construction of dedicated agricultural structures;
2. Tax incentives that include tax credits and general excise tax exemptions;
3. Incentives that promote investment in agricultural businesses or value-added agricultural development, and other agricultural financing mechanisms; and
4. Incentives and programs that promote long-term or permanent agricultural land protection, and the establishment of a dedicated funding source for these programs.

Passage of the long-awaited IAL legislation would be meaningless without implementation of these incentives and programs needed to support viable agricultural activity on IAL, so it is anticipated that all efforts will be made and all appropriate legislative measures be taken to fully effectuate the intent and objectives of the IAL laws. As part of this effort, additional legislation may need to be passed and existing laws amended to effectively complete the undertaking. In some instances, there may be inconsistencies or conflicts between current laws and provisions of the IAL laws which seek to allow or authorize certain incentives and programs which had not existed previously.

Some opponents of this bill now attempt to claim that such inconsistencies between existing laws and proposed IAL incentive implementing legislation appear to operate as legal barriers preventing effectuation of additional IAL incentives and programs. However, such inconsistencies or conflicts should not preclude the implementation of IAL incentives and programs, as they may be effectively negotiated and/or resolved through amendments of, or compromises between the existing laws and the new IAL implementation measures.

Given the extensive effort and years of discussion and negotiation leading to the enactment of the IAL laws, and the resulting priority placed on IAL laws and incentives, legislators and all affected stakeholders should understand the need to work together to resolve any such inconsistencies or conflicts, including the possibility of amending either the existing laws or new IAL incentive implementation proposals, or both, in order to come to compromise positions, rather than attempting to flatly strike down or thwart implementation efforts based on legally unsupported grounds.

While LURF is **in support of SB 1559, SD 2, HD 1**, which provides for and implements some of the incentives and programs for agricultural lands which furthers the intent and objectives of the IAL laws, LURF believes that as the various agricultural stakeholders work together, additional measures can and should be taken to provide even more incentives to support and encourage viable agricultural activity on IAL.

Thank you for the opportunity to present testimony regarding this matter.



Hawaii Farm Bureau
F E D E R A T I O N

2343 Rose Street, Honolulu, HI 96819
PH: (808)848-2074; Fax: (808) 848-1921

March 16, 2011

TESTIMONY

Re: SB1559 HD1 RELATING TO IMPORTANT AGRICULTURAL LANDS

Chair Herkes and Members of the Committees:

Hawaii Farm Bureau Federation on behalf of our commercial farmers and ranchers in the State, **strongly supports with amendments SB1559 HD1**, establishing incentives for Important Agricultural Lands.

We respectfully request reconsideration of the measure further expanding County responsibilities relating to permitting of critical agricultural structures on Important Agricultural Lands. The current IAL law requires "priority permitting". Undefined, priority can mean different things to different people. Even as State and Counties advocate increased self sufficiency, tangible assistance to farmers and ranchers to increase their ability to deliver such capacity is lacking. This measure is not financial to agencies but can determine the implementation or cancellation of a project. The proposed language in SD2 removed the ambiguity. We request that the following language be reinserted in the name of support for local agriculture.

"§46- County building permits; important agricultural lands. (a) Each county agency that issues building, construction, or development related permits shall establish a procedure for the priority processing of a permit application submitted by a private entity for a construction project that uses products grown on lands designated as important agricultural lands. The permit processing procedures shall give priority to private sector permit applicants at no additional cost to the applicant and shall provide that if the county does not approve, conditionally approve, or disapprove a completed application within ninety days of the applicant's submission to the county of the application, the application shall be deemed approved. Each county shall develop rules for notifying farmers, ranchers, and landowners of important agricultural lands that specify informational needs and timeframes for permit processing.

(b) Each county shall develop rules for exempting from permit conditions structures strictly used for storage and that:

- (1) Are not attached to any other structure; and**
- (2) Do not have plumbing, heating, or electrical systems.**
- (c) For purposes of this section:**

"Important agricultural lands" are lands so designated pursuant to sections 205-44 and 205-45."

Important Agricultural Lands is NOT just a land use classification or zoning measure. **It is a economic development initiative** that has as its' basic precept that viable farmers and ranchers will keep lands in agriculture. Land by itself is NOT agriculture. You need a farmer or rancher on the land to be agriculture.

The Legislature enacted incentives associated with Important Agricultural Lands in 2008. Unfortunately, other than the income tax credit, other credits have not been implemented as required by law. Other incentives, though recommended were never implemented. **This measure seeks to complete the enactment of incentives, encouraging landowners and farmers and ranchers to designate their lands as Important Agricultural Lands, identifying key measures that have been bottlenecks to farm and ranch viability.**

Value added production is important to expand the revenue base of our farmers and ranchers. Yet, building permits often hinder the process, even to the point of preventing expansion of operations into this area. The first initiative seeks to address this shortcoming. It is meant for non residential facilities directly associated with the growing, raising, or processing of agricultural crops or livestock.

In 2008, as power prices skyrocketed, we saw farmers and ranchers loose their life savings to pay bills. The PUC authorization to provide reduced electrical rates for those on IAL lands will help keep operations going during difficult times. If you loose farms and ranches during those times, Hawaii's intent for self sufficiency will not be possible. Precedence to provide reduced rates for agriculture already exists in the PUC with Island Fresh discounts for interisland transportation.

On July 2011, the IAL law allows the Counties to begin mapping and designating Important Agricultural Lands with the LUC approval. It is important that adequate incentives be in place to preclude any implications of a taking. Nationally, downzoning without compensation looses in court. This measure is a critical part of meeting the Constitutional Mandate to preserve and protect Important Agricultural Lands.

We respectfully request your strong support of this measure. If there are any questions, please contact Warren Watanabe at 2819718.

Thank you.

**SB 1559 HD1
RELATING TO IMPORTANT AGRICULTURAL LANDS**

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

MARCH 30, 2011

Chair Herkes and Members of the House Committee on Consumer Protection &
Commerce:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B),
Hawaiian Commercial & Sugar Company (a division of A&B) and Kauai Coffee
Company (a subsidiary of A&B), on SB 1559 HD1, "A BILL FOR AN ACT RELATING
TO IMPORTANT AGRICULTURAL LANDS." We support this bill.

After over twenty five years of debate, negotiation, and compromise, an IAL Law
and process was finally enacted in July 2008. After years of pursuing a land-use
approach to this constitutional mandate, the IAL law that was successfully passed (Act
183 (2005) and Act 233 (2008)) was premised on the principle that the best way to
preserve agricultural lands is to preserve agricultural businesses and agricultural
viability. As such, the IAL Law not only provides the standards, criteria, and processes
to identify and designate important agricultural lands to fulfill the intent and purpose of
Article XI, Section 3 of the Hawaii State Constitution, it also provides for a package of
incentives designated to support and encourage sustained, viable agricultural activity on
IAL. With the enactment of this comprehensive package of IAL incentives, the long
awaited IAL identification and designation process was finally started in July 2008.

The IAL Law authorizes the identification and designation of IAL in one of two ways --- by voluntary petition to the State Land Use Commission by the landowner or farmer (process started in July 2008); or subsequently by the Counties filing a petition to designate lands as IAL pursuant to a County identification and mapping process (process targeted to start in July 2011). The IAL Law further provides incentives to the landowner and/or farmer to conduct agricultural activities on IAL lands. The IAL Law provides an exclusive three-year window for landowners/farmers to volunteer lands for IAL designation before the County petitions can be considered. In either case, the LUC determines whether the petitioned lands qualify for IAL designation pursuant to the standards, criteria, objectives, and policies set forth in the IAL Law. To date, the IAL Law has resulted in the designation by the LUC of over 30,000 acres of agricultural lands as IAL from voluntary petitions by Alexander & Baldwin for its lands on Maui and Kauai, and we believe significantly more acreage will be designated through the voluntary landowner and County petition process. Two voluntary petitions have recently been announced and are pending LUC action.

This bill provides additional incentives designated to support and encourage sustained, viable agricultural activity on IAL. These incentives, which include the priority processing of permit applications and renewals and preferred energy rates, will assist farmers and other agricultural operations on IAL.

Based on the aforementioned, we respectfully request your favorable consideration on this bill. Thank you for the opportunity to testify.