



State of Hawaii
DEPARTMENT OF AGRICULTURE
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TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEES ON AGRICULTURE AND WATER AND LAND
THURSDAY, FEBRUARY 6, 2014
9:39 A.M.
Room 312

HOUSE BILL NO. 2629
RELATING TO AGRICULTURAL LANDS

Chairpersons Wooley and Evans and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 2629 that seeks to clarify and specify permitted uses on designated Important Agricultural Lands. The Department of Agriculture supports this measure with two amendments.

The first amendment is to exclude from the provisions in this measure, existing designated IAL (over 101,000 acres) that were voluntarily offered by private landowners on Kauai, Oahu, Maui, and Hawaii.

Page 25, lines 5 to 7:

SECTION 10. This Act shall not apply to those lands which have been designated by the land use commission as important agricultural lands as of the effective date of this Act.

Sections thereafter are to be renumbered.

The second amendment is technical. References to "important agricultural lands" should be amended to "designated important agricultural lands". This is to distinguish agricultural lands that have been designated as IAL by the Land Use



Commission, versus those agricultural lands that are identified as potential IAL by the counties pursuant to Section 205-47 and individual landowners pursuant to Section 205-45, but have yet to be designated by the Land Use Commission.

Specifically, amendments are to be made in the following areas:
page 1, line 4; page 5, line 3; page 7, line 12; page 16, lines 5 and 14;
page 18, line 19; page 21, lines 16 and 18; page 24, line 3; and
page 26, under "Description"

We believe House Bill 2629 is very important because neither the IAL Act (Act 183, SLH 2005) nor Part III of Chapter 205 provide guidance as to whether IAL is subject to all of the permissible uses and activities that apply to non-IAL agricultural land. This bill directly addresses this issue by identifying permissible and accessory uses and activities on IAL that are in consonance with the definitions, objectives and policies governing IAL.

Thank you for the opportunity to present our testimony.



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Statement of
JESSE K. SOUKI
Director, Office of Planning
Department of Business, Economic Development, and Tourism
before the
**HOUSE COMMITTEE ON AGRICULTURE
AND
HOUSE COMMITTEE ON WATER AND LAND**
Thursday, February 6, 2014
9:39 AM
State Capitol, Conference Room 312
in consideration of
HB 2629
RELATING TO AGRICULTURAL LANDS.

Chairs Wooley and Evans, Vice Chairs Onishi and Lowen, and Members of the House Committees on Agriculture and Water and Land.

The Office of Planning (OP) offers the following comments to HB 2629, which would amend Hawaii Revised Statutes (HRS) Chapter 205, Part III, to establish permissible uses for lands within the State Agricultural District that are designated as important agricultural lands (IAL) by the State Land Use Commission (LUC).

With the exception of farmer and farm employee housing, there are no defined use standards for IAL-designated lands in HRS Chapter 205. Act 183, Session Laws of Hawaii 2005, was passed and enacted to fulfill the mandate in Article XI, Section 3 of the State Constitution, to protect important agricultural lands to the State of Hawaii. Although the intent of Act 183 was to provide a higher level of protection for valued agricultural lands to ensure their availability for agricultural use both now and into the future, it did not include legislation for use or density standards to regulate lands designated as IAL. Existing provisions in HRS

Chapter 205 for the Agricultural District allow for a range of non-agricultural uses and do not offer the land use protections needed for lands that have been designated as IAL.

Since 2007, the LUC has designated over 101,000 acres of land as IAL statewide. The County of Kauai and the City and County of Honolulu are currently in the process of identifying and preparing recommendations for lands to be designated as IAL for their respective counties. HB 2629 would provide a delimited set of permissible uses by which to manage agricultural use of these lands. In doing so, this measure will strengthen State agricultural land use policy and promote agricultural use of IAL lands in support of the State's food self-sufficiency and food security objectives in the Administration's New Day Plan and its "Increased Food Security and Food Self-Sufficiency Strategy," published in October 2012.

We note that the list of permitted uses in HB 2629 excludes solar facilities. However, the definition of "Agricultural-energy facility" in the proposed HRS § 205- (a)(9) refers to renewable energy as defined in HRS § 269-91, which includes energy generated from the sun. Accordingly, we recommend the following amendment to this sub-section:

"Agricultural-energy facility" means a facility that generates, stores, or distributes renewable energy as defined in section 269-91 or renewable fuel including electrical or thermal energy or liquid or gaseous fuels from products of agricultural activities from agricultural lands located in the State.

We also recommend amending the clause, "paragraph (1)," in line 11 on pages 2 and 3, to read, "paragraphs (1)–(3)". These amendments would ensure that accessory agricultural buildings and improvements for game and fish propagation and the raising of livestock would also be permissible uses on IAL lands.

Thank you for the opportunity to testify on this measure.



**HB 2629
RELATING TO AGRICULTURAL LANDS**

**BRANDI BEAUDET
LAND MANAGER
PARKER RANCH INC.**

FEBRUARY 6, 2014

Chair Wooley and Members of the House Committee on Agriculture:

I am Brandi Beaudet, testifying on behalf of Parker Ranch on HB 2629, "A BILL FOR AN ACT RELATING TO AGRICULTURAL LANDS." We respectfully oppose this bill.

After many years of debate, negotiation, and compromise, the IAL Law and process was finally enacted in July 2008. 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. To date, the IAL Law has resulted in the designation by the LUC of over 100,000 acres of agricultural lands as IAL from voluntary petitions by Parker Ranch, Alexander & Baldwin, Castle & Cooke, and Grove Farm.

The purpose of this bill is to establish new, more restrictive permissible uses for IAL. At present, the permissible uses for IAL are consistent with the permissible uses for all other agricultural lands, with the various agricultural land uses appropriately categorized based upon the Land Study Bureau's overall master productivity soil classification ratings. In essence, the primary difference between IAL and non-IAL agricultural lands is that IAL is committed to remain in agriculture for the long term.

Agriculture is a very difficult business, with profit margins that are often marginal. It is not uncommon for an agricultural operation to have other presently authorized business endeavors on their agricultural land to supplement and support their agricultural income, which may be prone to fluctuation due to changing market prices, weather conditions, and the availability of water. Permissible uses for agricultural lands, especially lands dedicated to remain in agriculture for the long term such as IAL, must be broad enough to include the various types of supplemental uses that may be pursued by farmers to sustain their overall agricultural operations.

This bill also prohibits the approval of special permits to accommodate reasonable uses for IAL that may not be specifically included in the more restrictive permissible uses for IAL that are proposed in this bill. In addition to ensuring that customary agricultural and other support uses are allowed on agricultural lands, we believe that additional flexibility is needed to accommodate new agricultural concepts and operations that may be developed in the future. The agricultural industry is constantly evolving, with new agricultural technologies, crops, and applications being developed and implemented. We believe that a process that is able to accommodate, on a timely basis, new agricultural endeavors and operations on agricultural lands is essential to assist present and future IAL farmers and agricultural operations.

Based on the aforementioned, we respectfully request that this bill be held in
Committee. Thank you for the opportunity to testify.

Respectfully submitted,



Brandi Beaudet,
Land Manager



LAND USE RESEARCH
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February 4, 2014

Representative Jessica Wooley, Chair
Representative Richard H.K. Onishi, Vice Chair
House Committee on Agriculture

Representative Cindy Evans, Chair
Representative Nicole E. Lowen, Vice Chair
House Committee on Water and Land

Testimony in Strong Opposition to HB 2629, Relating to Important Agricultural Lands (Clarifies and Specifies Permitted Uses on Important Agricultural Lands).

Thursday, February 6, 2014, 9:39 a.m., in Conference Room 312

The Land Use Research Foundation of Hawaii (LURF) is 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 strong opposition to HB 2629**, and to offer comments.

HB 2629. The intent of this bill is to further restrict use of certain lands classified as agricultural, by proposing to amend portions of Chapter 205 of the Hawaii Revised Statutes (HRS) to clarify and specify permitted uses on Important Agricultural Lands (IAL).

LURF's Position. LURF members include private property owners, farmers and ranchers who own, maintain, and engage in a wide array of diverse agricultural enterprises, and who consider such activities and ventures critical to the conduct of their operations and to help sustain their businesses. Several of these LURF members have already designated over fifty percent (50%) of their private lands as IAL.

Most significant about the IAL laws is the fact that said laws were based on a **consensus of agricultural stakeholders** (including landowners, the Hawaii Farm Bureau Federation (HFBF), and various agricultural and government stakeholders); all of them coming together to form a mutual agreement on a system to protect agricultural lands based on the common understanding that the only effective long-term way to protect agricultural lands is to protect and support viable agricultural businesses on such lands.

- **HB 2629 Epitomizes Unilateral and Non-Collaborative State Action.**

Enactment of the IAL laws involved extensive collaboration between private property owners, agricultural stakeholders and government entities, including more than five years of public input through the legislative process, which was culminated by the legislative finding that the laws are consistent with the goals and objectives of creating a viable agricultural industry and protecting Hawaii's agricultural lands as mandated by the Hawaii Constitution.

Despite the significance and potentially dire consequences of this measure, as far as LURF and its members are aware, there was no such consensus, or even an attempt at collaboration, with regard to this bill. The introducers and proponents of HB 2629 never consulted with the HFBF, agricultural landowners, farmers, livestock business operators, or other agricultural stakeholders regarding this proposal which improperly attempts to limit, rather than diversify agriculture throughout the State. The proposed bill thereby completely disregards, if not destroys the very essence of the IAL laws and State planning policies and objectives relating to agriculture.

- **There is no Reason for this Legislation; No IAL Problems Exist Which Must be Addressed by this Bill.**

There are no recognized or known reasons for this legislation, as there are absolutely no problems or issues raised by farmers, ranchers, landowners or agricultural operators (i.e., the actual agricultural stakeholders who are bound by and committed to the IAL laws) with respect to the current IAL laws or processes thereunder. As to the IAL processes, adequate protections already exist as the IAL law requires that the Land Use Commission use specific standards and criteria to approve IAL, as well as review and comment by interested parties including the State Department of Agriculture. In short, the current proposal is not necessary to ensure the intended use of IAL.

It is therefore curious why so much time and effort has been put into devising the proposed amendments to the IAL laws, and why such amendments are believed to be so necessary by proponents of this bill.

If the objective of HB 2629 was truly to support agriculture in the State, legitimate agricultural stakeholders would all agree that there are a number of measures that could and should be more strongly pursued to further and sustain agricultural production, in lieu of the implementation of unwelcomed and misguided amendments to the IAL laws. Such measures include additional appropriations for research and development; irrigation infrastructure; and agriculture-related programs that would help the industry manage and sustain itself well into the future.

Land owners and agricultural stakeholders are therefore left to surmise that HB 2629 may be an imprudent attempt to use the IAL laws to generally restrict agricultural operations and development in this State. That would be unfortunate since such misguided efforts, including the proposed land use restrictions, are in direct opposition to the policies and objectives for the State's economy with regard to agriculture pursuant to the Hawaii State Planning Act (HRS Section 226), which include "growth and development of diversified agriculture throughout the State. As stated above, the proposed bill undermines the foundation, and violates underlying principles of the constitutional mandate that is Hawaii's IAL law, which includes "promoting diversified agriculture" (HRS Section 205-41(2)).

- **In Order to be Successful, IAL Requires Flexibility and Incentives - Not More Restrictions.**

As these Committees should be well aware, the unsustainable operating costs cast upon land owners and agricultural stakeholders, together with the various safety and security standards, programs and regulations being put in place, are already proving to be counterproductive to the long-term objective of sustainable agriculture. Permitted uses on agricultural lands, including IAL, must therefore be sufficiently broad to allow various supplemental uses by farmers in order to sustain their agricultural operations. Flexibility is also essential to accommodate new agricultural concepts and technologies that may be required to be developed and implemented in the future.

- **Imposition of After-the-Fact Restrictive Uses on IAL Constitutes a Breach of Trust by the State and May be Considered Illegal.**

Agricultural operators and landowners who were involved in, and supported the establishment and passage of the IAL laws, did so based in part on the assurances and certainties they believed said laws would provide in exchange for certain concessions that were made in good faith.

Given the many years of extended negotiation and debate underlying the IAL laws, and given that approximately one hundred thousand (100,000) acres of agricultural lands have to date, already been designated via voluntary petitions by a number of private landowners (whereas, notably, the State itself has not yet satisfied its obligation to make the IAL designations required to have been made years ago), any unilateral restrictions or changes now imposed by the State upon the IAL structure after-the-fact would be grossly unfair to say the least, and in view of all of the circumstances, may arguably constitute a violation of agricultural operators' and landowners' constitutional rights.

- **Further IAL Use Restrictions Will Prove to be a Deterrent, Rather than an Incentive for Future Designation of IAL.**

Unilateral changes to the original intent upon which the IAL designation program was premised and the creation of additional land use restrictions on IAL, will in fact act as deterrents, rather than incentives for landowners to further designate agricultural lands to IAL. Agricultural operators and landowners no doubt consider State's mid-stream attempt to change its position and the IAL framework, to be disturbing and demoralizing. HB 2629 creates uncertainty and doubt for individuals and entities currently designating land as IAL, as well as for those who have plans to do so in the future.

Rather than "prioritizing and promoting" agriculture in Hawaii, HB 2629 will negatively affect farmers, ranchers, and other stakeholders who utilize agricultural land, as well as hinder the growth of agricultural operations and constrain the agricultural industry in general, for no defensible reason. Given the current circumstances, there appears to be no viable justification or support for this proposed measure.

For the reasons stated above, LURF **must strongly oppose HB 2629**, and respectfully requests that this bill be held in Committee.

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

February 6, 2014

The Honorable Jessica Wooley, Chair
House Committee on Agriculture

The Honorable Cindy Evans, Chair
House Committee on Water & Land
State Capitol, Room 312
Honolulu, Hawaii 96813

RE: H.B. 2629, Relating to Agricultural Lands

HEARING: Thursday, February 6, 2014, at 9:39 a.m.

Aloha Chair Wooley, Chair Evans, and Members of the Committees:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,300 members. HAR **submits comments** on H.B. 2629 which clarifies and specifies permitted uses on Important Agricultural Lands ("IAL").

In 1978, voter approved article XI, section 3, of the Constitution of the State of Hawai'i, which sets out the framework for state policies to promote agriculture and the conservation of productive agricultural lands in the State.

In 2005, the Legislature passed Act 183, finding that there is a compelling need to provide standards, criteria, and mechanisms to fulfill the intent and purpose of Article XI, section 3 of the Constitution. Additionally, Act 183 tasked the Counties to identify IAL, provide maps, and establish one or more citizens' advisory committees to provide public input.

HAR supports the mapping and identification of IALs in Hawai'i. HAR believes that until such mapping and identification is complete, it may be premature to fully dictate what uses will be permitted on IAL.

Mahalo for the opportunity to testify.

**HB 2629
RELATING TO AGRICULTURAL LANDS**

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

FEBRUARY 6, 2014

Chair Wooley, Chair Evans, and Members of the House Committees on Agriculture and Water & Land:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) and its agricultural company Hawaiian Commercial & Sugar Company (a division of A&B) on HB 2629, "A BILL FOR AN ACT RELATING TO AGRICULTURAL LANDS." We respectfully oppose this bill.

After over twenty five years of debate, negotiation, and compromise, the 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; or subsequently by the Counties filing a petition to designate lands as IAL pursuant to a County identification and mapping process. The IAL Law further provides incentives to the landowner and/or farmer to conduct agricultural activities on IAL lands. 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 100,000 acres of agricultural lands as IAL from voluntary petitions by Alexander & Baldwin, Parker Ranch, Castle & Cooke, and Grove Farm. We believe that additional acres will be designated through the voluntary landowner and County petition process in the years to come.

The purpose of this bill is to establish new, more restrictive permissible uses for IAL. At present, the permissible uses for IAL are consistent with the permissible uses for all other agricultural lands, with the various agricultural land uses appropriately categorized based upon the Land Study Bureau's overall master productivity soil classification ratings. In essence, the primary difference between IAL and non-IAL agricultural lands is that IAL is committed to remain in agriculture for the long term.

As cited above, the IAL Law is premised on the principle that the best way to preserve agricultural lands is to preserve agricultural businesses and agricultural viability. We believe it to be essential that the range of allowable uses for IAL compliment and fully support the need to sustain viable agricultural operations on these lands. With lands designated as IAL committed to remain in agriculture for the long

term, we believe it to be imperative that IAL farmers retain the flexibility that they presently have to determine the appropriate agricultural use for their lands to effectively sustain their agricultural operations into the future.

Agriculture is a very difficult business, with profit margins that are often marginal. It is not uncommon for an agricultural operation to have other presently authorized business endeavors on their agricultural land to supplement and support their agricultural income, which may be prone to fluctuation due to changing market prices, weather conditions, and the availability of water. Permissible uses for agricultural lands, especially lands dedicated to remain in agriculture for the long term such as IAL, must be broad enough to include the various types of supplemental uses that may be pursued by farmers to sustain their overall agricultural operations.

This bill also prohibits the approval of special permits to accommodate reasonable uses for IAL that may not be specifically included in the more restrictive permissible uses for IAL that are proposed in this bill. In addition to ensuring that customary agricultural and other support uses are allowed on agricultural lands, we believe that additional flexibility is needed to accommodate new agricultural concepts and operations that may be developed in the future. The agricultural industry is constantly evolving, with new agricultural technologies, crops, and applications being developed and implemented. We believe that a process that is able to accommodate, on a timely basis, new agricultural endeavors and operations on agricultural lands is essential to assist present and future IAL farmers and agricultural operations.

Based on the aforementioned, we respectfully request that this bill be held in Committee. Thank you for the opportunity to testify.

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Email Submittal: <http://www.capitol.hawaii.gov/submittestimony.aspx>

Testimony by Carleton Ching
Vice President, Castle & Cooke Hawai'i
February 5, 2014

Before the House Committees on
Agriculture
and
Water and Land

February 6, 2014
9:39 a.m.
Conference Room 312

OPPOSITION TO:
HB 2629
RELATING TO AGRICULTURAL LANDS

Chair Wooley, Vice Chair Onishi and Members of the House Committee on Agriculture and Chair Evans, Vice Chair Lowen and Members of the House Committee on Water and Land:

I am Carleton Ching, Vice President of Castle & Cooke Hawai'i. Castle & Cooke Hawai'i is the first O'ahu landowner to voluntarily designate land as Important Agriculture Lands (IAL) to promote diversified agriculture; and to commit these lands for long term agricultural uses.

We respectfully oppose this bill because it contradicts the purpose of IAL. Permissible uses for agricultural lands dedicated to remain in agriculture for the long term such as IAL, must be broad enough to allow various and appropriate uses that may be pursued to sustain overall agricultural operations. Agri-businesses must have the flexibility to determine appropriate agricultural and related uses to effectively sustain their agricultural operations and to accommodate new agricultural concepts, technologies and operations that may be developed in the future.

Agri-businesses need support and assistance in various areas of operations such as labor, infrastructure, water, fuel, transportation, marketing and other challenges in order to compete and to bring their products to market at competitive price points for consumers. Restrictive land uses contradict the promotion of diversified agriculture.

Based on the aforementioned, we respectfully request that this bill be held in Committee.

Thank you for the opportunity to testify. If you have any questions, please feel free to contact us:

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From: mailinglist@capitol.hawaii.gov
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Subject: Submitted testimony for HB2629 on Feb 6, 2014 09:39AM

HB2629

Submitted on: 2/4/2014

Testimony for AGR/WAL on Feb 6, 2014 09:39AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa Parsons	Individual	Support	No

Comments: Representatives, I appreciate the opportunity to testify in SUPPORT of this measure. As a resident of the Windward side, I watch the loss of agricultural lands to residential developers who choose to "skirt" the provisions of land use legislation for personal gain. My heart cries out when I watch the construction equipment tear out trees and uncover fertile land for the sake of "luxury farms". The developers create videos to "advertise" the development stating "you can do any amount of farming you want, but we'll put at least one fruit tree on your property to help you get started". I truly hope this legislation will address this gross miscarriage of the intent of separating residential and agricultural lands with a special eye to preserving the precious agricultural lands for future generations. Mahalo for allowing me to submit testimony in SUPPORT of this bill.

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onishi2-Micah-Seth

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Subject: *Submitted testimony for HB2629 on Feb 6, 2014 09:39AM*

HB2629

Submitted on: 2/5/2014

Testimony for AGR/WAL on Feb 6, 2014 09:39AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Lyn Howe	Individual	Support	No

Comments:

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