

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
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SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson

**TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE**

BEFORE THE HOUSE COMMITTEE ON FINANCE

**FEBRUARY 24, 2017
2:00 P.M.
CONFERENCE ROOM 308**

**HOUSE BILL NO. 1584 HD1
RELATING TO IMPORTANT AGRICULTURAL LANDS**

Chairperson Luke and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 1584 HD1 that appropriates the sum of \$250,000 for FY2017-18 and the same amount for 2018-19 to the Department of Business and Economic Development, and Tourism (DBEDT) to be disbursed equally to the counties as grants-in-aid upon submittal of the counties recommendations for potential Important Agricultural Lands (IAL) pursuant to Section 205-47 to the Land Use Commission. If a county fails to submit its maps of potential IAL to the Land Use Commission by June 30, 2019, then DBEDT shall disburse the funds to the Land Use Commission which shall identify maps of IAL for that county by June 30, 2020, pursuant to new Section 205-48(d) which will authorize the Land Use Commission to identify potential IAL and after Office of Planning and Department of Agriculture review, proceed to designate IAL. This measure also amends the IAL Qualified Agricultural Cost Tax Credit (Section 235-110.93) by changing the credit amount for each year in which the credit is claimed to 30 percent or \$1 million; adding costs associated with clearing of and restoring soil productivity of former plantation lands that have been unused for three years; and extending the availability of the tax credit by 10 years. The Department of Agriculture supports the intent of this measure and offer comments and an amendment. We defer to the counties as to which of the



legislative initiatives that they feel will best cause the identification of potential IAL and subsequent designation. We defer to the Department of Taxation as to the effect of the amendment on the manner in which the tax credit is calculated and the amount of tax credit received by a taxpayer in comparison to what the taxpayer will receive under the existing method.

The proposed additional qualified agricultural cost item (page 10, lines 15-18) is limited to the grubbing of former sugarcane and pineapple plantation land that is unused for a minimum of 3 years. To be consistent with the other qualified agricultural cost items, we offer the following amendment that requires that the land to be cleared and soil restored to be used primarily for agricultural purposes.

We propose an amendment to the proposed new qualified agricultural cost on page 10, lines 15-18, as follows:

(new language in bold and double underscored, deleted language is overstruck)

(5) The clearing, removal of trees and debris from, and soil restoration **to correct any nutrient deficiency that is present on** ~~of~~ former sugar and pineapple plantation lands that have been out of **agricultural** use for more than three years **and are to be used primarily for agricultural purposes.**"

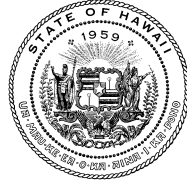
Clarity in the definition as to what is allowed as a qualified agricultural cost will help to ensure we are consistent in the manner we review and assess each application and cost item for the tax credit.

Additionally, The Department asks for general fund resources to help administer this program.

Thank you for the opportunity to submit our testimony.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
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MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Friday, February 24, 2017
Time: 2:00 P.M.
Place: Conference Room 308, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 1584, H.D. 1, Relating to Important Agricultural Lands

The Department of Taxation (Department) appreciates the intent of H.B. 1584, H.D. 1, and provides the following comments for your consideration.

Section 4 of H.B. 1584, H.D. 1, makes amends the important agricultural lands qualified agricultural cost tax credit (IAL credit) codified at section 235-110.93, Hawaii Revised Statutes (HRS). The measure changes the amount of the credit to the lesser of thirty percent of the qualified agricultural costs incurred by taxpayer or \$1,000,000; and removes the 3 year limit for claiming the credit. The measure also adds an additional activity to the definition of "qualified agricultural cost" and extends the date by which the Department of Agriculture must cease certifying credits from 4 years to 14 years. H.D. 1 has a defective effective date of July 1, 2050.

First, the Department notes that under current law, the IAL credit may only be claimed for three years. The first year, the credit amount is the lesser of twenty-five percent of the qualified agricultural costs incurred or \$625,000; the lesser of fifteen percent of the costs or \$250,000 in the second year; and the lesser of ten percent of the costs or \$125,000. This means that the maximum IAL credit available to a taxpayer is \$1 million over three tax years. H.D. 1, substantially increases the credit amount by changing the cap to \$1 million per tax year and removing any limitation as to the maximum number of years that each taxpayer can claim the IAL credit.

In addition, under current law, the Department of Agriculture must cease certifying IAL credits after the fourth taxable for which the IAL credit is first claimed. H.D. 1 extends this provision by ten years to allow certifications to be issued up to the fourteenth taxable year. Combined with the change in the IAL credit calculation described above, the IAL credit will be capped at \$1 million per taxpayer per year for the life of the IAL credit. To illustrate, if the first IAL credit was claimed four years ago, \$10 million worth of IAL credit would be available to each taxpayer because the cap is \$1 million per year and the IAL credit is effective for ten more

years. This is drastically different from current law which limits each taxpayer a total of \$1 million of IAL credit.

Second, the Department notes that the purpose of tax credits is generally to incentivize certain activity; in this case the stated purpose is to conserve and protect important agricultural lands. Because of the unrestricted nature of the IAL credit, the amendments proposed by this measure would also apply to costs that were already paid or incurred after July 1, 2008. This retroactive application may result in an unintentional windfall for some taxpayers.

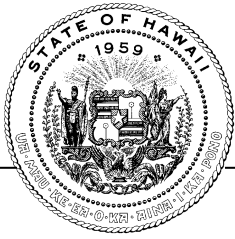
For example, taxpayers who incurred costs that could have generated an IAL credit that exceeded the cap could now claim the IAL credit for those additional costs that did not generate a credit. Similarly, taxpayers who incurred costs for the clearing and removal of trees and debris from former sugar and pineapple plantation lands with no expectation of a tax credit would now be able to claim the IAL credit for these costs. The Department suggests addressing this issue by applying the amendments to costs paid or incurred on or after July 1, 2017 and taxable years beginning after December 31, 2017.

Third, the Department suggests removing the provision in subsection (a) of section 235-110.93, HRS, which allows the tax credit to be claimed in any taxable year after the taxable year in which the costs are incurred. This feature is unique to the IAL credit, and creates tax compliance and enforcement issues. In addition, this provision leaves the twelve months deadline to claim the credit ineffective because the credit can be claimed in any year after the year in which the costs were incurred. If a taxpayer fails to file within twelve months of the close of the taxable year, they can simply claim the credit in the following year.

Fourth, the Department defers to the Department of Agriculture regarding its ability to continue certifying credits for the prescribed period, as well as its ability to certify costs for the new activity listed as a "qualified agricultural cost."

Finally, if changes to the IAL credit are retained in this measure, the Department requests that the changes be applicable to taxable years beginning after December 31, 2017 to allow time to make necessary changes to forms, instructions, and the Department's computer system.

Thank you for the opportunity to provide comments.



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DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
DIRECTOR
OFFICE OF PLANNING

Statement of
LEO R. ASUNCION
Director, Office of Planning
before the
HOUSE COMMITTEE ON FINANCE
Friday, February 24, 2017
2:00 PM
State Capitol, Conference Room 308

in consideration of
HB 1584, HD1
RELATING TO IMPORTANT AGRICULTURAL LANDS.

Chair Luke, Vice Chair Cullen, and Members of the House Committee on Finance.

The Office of Planning (OP) supports HB 1584, HD1, provided that the appropriation does not displace Administration priorities in the Executive Budget, and offers comments on the amendments introduced in this current draft.

HB 1584, HD1 amends Hawaii Revised Statutes (HRS) §§ 205-48 and 49 to require the counties to submit maps identifying lands to be designated as important agricultural lands (IAL) to the State Land Use Commission by June 30, 2019, and charges the LUC with mapping and designating IAL if a county fails to submit IAL maps. HB 1584, HD1 also provides funds to the counties for their IAL mapping and adoption process, to be disbursed to the county upon submittal of county maps to the LUC. The funds appropriated for a county may be used by the LUC to identify and prepare IAL maps for a county that doesn't submit maps by the deadline.

HB 1584, HD1 includes a new section amending the IAL tax credit provisions in HRS § 235-110.93 to: add tree and debris clearing and soil restoration of fallow sugar and pineapple lands as a qualified agricultural cost; increase the amount of tax credit allowable per claim in one year; and extend the Department of Agriculture's (DOA) authority to certify the IAL tax credit for another ten years.

OP believes the bill offers appropriate incentives for the counties to complete their IAL mapping process. It is our understanding that the County of Kauai has completed their mapping studies, but does not anticipate petitioning for the designation of additional IAL lands beyond what has already been designated under the voluntary petition process. The City and County of Honolulu is nearing the completion of its identification and mapping process, and maps of proposed IAL are currently undergoing public review and comment.

OP notes that disbursement of funds upon completion of the mapping process and submittal of adopted maps to the LUC may not resolve funding issues faced by those counties that have yet to start their IAL mapping process.

We have the following concerns and comments regarding Section 4 of HB 1584, HD 1:

1. The proposed qualified agricultural cost for clearing, removal of trees and debris, and soil restoration as written will be problematic for DOA. These are legitimate costs in preparing fallowed fields for cultivation; however, further amendment is required to define what constitutes soil restoration and former plantation lands, and to ensure that the tax credit can't be claimed by an entity that clears the land, but does not put the land into commercial agricultural production or cultivation;
2. OP is concerned that the proposed increase in the amount to be claimed could limit the number of entities that could claim the tax credit in any one year, since the total amount of tax credit available each tax year is capped at \$7.5 million dollars; and
3. While the extension of ten years is needed, OP would prefer that subsection (1) be deleted in its entirety to ensure that the IAL tax credit is a permanent incentive for agricultural use of IAL, as was intended when its enabling legislation was introduced.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lieutenant Governor

LUIS P. SALAVERIA
Director

MARY ALICE EVANS
Deputy Director



LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai`i

DANIEL ORODENKER
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Drafting Technician

Statement of
Daniel E. Orodenker
Executive Officer
Land Use Commission
Before the
House Committee on Water and Land, and
Friday February 24, 2017
2:00 PM
State Capitol, Conference Room 308

In consideration of
HB 1584 HD1
RELATING TO IMPORTANT AGRICULTURAL LANDS

Chair Luke, Vice Chair Cullen, and members of the Committee on Finance:

The Land Use Commission (LUC) supports HB 1584 HD1 that would provide funds for grants-in-aid to the counties for the identification and mapping of important agricultural lands (IAL) and submittal of recommendations and maps to the LUC by June 30, 2019. Further, that if the counties are unable to submit recommendations by that date, the LUC is directed to proceed to identify and designate IAL with recommendations from the State Department of Agriculture and State Office of Planning.

The IAL identification and mapping process for the counties as set out in Section 205-47, Hawai`i Revised Statutes (HRS) requires significant public involvement to include coordination with a broad range of stakeholders, public meetings, and citizen advisory groups. Adequate funding to complete this process could result in a quality product supported by a broad range of stakeholders.

Under the State Constitution, Article XI, section 3, the State has a duty to conserve and protect important agricultural lands. To conserve and protect the broadest range of the best agricultural lands requires identification of large contiguous areas in each county. The identification and designation of important agricultural lands will provide a clear guide for future district boundary amendment requests to move land into the State Urban or Rural districts. This should expedite future boundary amendments and reduce potential litigation over reclassification of important agricultural lands.

The current House Draft 1 also incorporates amendments to agricultural tax credits which support agricultural operations on IAL. The LUC defers to the State Office of Planning, The

Department of Agriculture, and the Department of Taxation on whether they believe the amendments would be beneficial in their current form.

Thank you for the opportunity to testify on this matter.



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February 24, 2017

HEARING BEFORE THE
HOUSE COMMITTEE ON FINANCE

TESTIMONY ON HB 1584, HD1
RELATING TO IMPORTANT AGRICULTURAL LANDS

Room 308
2:00 PM

Aloha Chair Luke, Vice Chair Cullen, and Members of the Committee:

I am Randy Cabral, President of the Hawaii Farm Bureau (HFB). Organized since 1948, the HFB is comprised of 1,900 farm family members statewide, and serves as Hawaii's voice of agriculture to protect, advocate and advance the social, economic and educational interest of our diverse agricultural community.

HFB supports HB 1584, HD1, which requires the counties to make recommendations for important agricultural lands by 6/30/2019 and requires the Land Use Commission to identify and designate important agricultural lands by 6/30/2020 for any county that fails to meet the 6/30/2019 deadline.

Since the enactment of the Constitutional Mandate in 1978 to preserve and protect Important Agricultural Lands (IAL), HFBF came before the Legislature every year with proposals of how this measure could be implemented. It was only in 2005 when the standards and criteria to designate IAL was finally passed and in 2008 when the incentives were passed. It was a long road.

We were pleased when the first lands were designated by Alexander and Baldwin in 2009 totaling nearly 4000 acres in Kauai. Today, we have over 100,000 acres that were voluntarily designated by landowners across the State.

Nearly nine years have passed since the incentives were passed in 2008 and we remain in the phase in which counties will submit maps to the LUC identifying lands to be designated as IAL. Act 183 (SLH 2005) states that the counties will work on identification and mapping of important agricultural lands via funding from the State disbursed through the Land Use Commission. Most Counties have yet to receive funding and in turn the county IAL identification and mapping has not progressed as anticipated. HFB supports the Legislators support in implementing Act 183 by providing the funds necessary to identify and map IAL in each county.

Thank you for this opportunity to testify on this measure.

**HB 1584 HD1
RELATING TO IMPORTANT AGRICULTURAL LANDS**

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

FEBRUARY 24, 2017

Chair Luke and Members of the House Committee on Finance:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) on HB 1584 HD1, “A BILL FOR AN ACT RELATING TO IMPORTANT AGRICULTURAL LANDS.” We support this bill with amendments.

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.

The IAL Law presently 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. 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 voluntary petition process has resulted in the designation by the LUC of over 110,000 acres of agricultural lands as IAL from voluntary petitions by Alexander & Baldwin, Parker Ranch, Castle & Cooke, Mahaulepu Farm, Grove Farm, and Kamehameha Schools.

This bill provides grants in aid to the Counties for the identification and mapping of IAL. With the voluntary petition process already providing a significant amount of IAL throughout Hawaii, this appropriation will assist the Counties in fulfilling the second method of IAL designation, which will be initiated by the County identification and mapping of IAL. When completed, these County maps will be forwarded to the LUC which will enable them to designate qualified lands as IAL. Should a County not submit IAL recommendations and mapping to the LUC by June 30, 2019, this bill authorizes the LUC to identify, map, and designate IAL in that particular County. We believe that these provisions should collectively result in the designation of additional qualified agricultural lands as IAL.

This bill also includes provisions to extend the authorization to certify IAL Tax Credits beyond its present sunset date and to modify the amount and availability of the IAL Tax Credits. The Department of Agriculture's authorization to certify IAL Tax Credits, which has been in effect for the past four years and will sunset after Tax Year 2017, will be extended by this bill through Tax Year 2027. This bill also includes provisions intended to modify the amount and availability of the present IAL Tax Credits

from a one-time tax credit claimed over a three year period to an annual recurring tax credit.

We respectfully request your consideration to incorporate amendments into this bill to ensure that the statutory language for the present IAL Tax Credits, under which the present certification authorization remains in effect through Tax Year 2017, is not impacted by the new language to modify the amount and availability of the IAL Tax Credits. Ensuring that the statutory language for the present IAL Tax Credits remains unchanged will enable present IAL farmers/entities the opportunity to claim qualified agricultural costs as tax credits over the three year collection period as presently authorized by law. We have attached to our testimony proposed language for your consideration.

Thank you for the opportunity to testify.

HB 1584 HD1 (Proposed amendments to Section 4(2), Page 10 Line 19 to Page 12 Line 11)

2. By amending subsection (a) to read:

"(a) There shall be allowed to each taxpayer an important agricultural land qualified agricultural cost tax credit that may be claimed in taxable years beginning after the taxable year during which the tax credit under section 235-110.46 is repealed, exhausted, or expired. The credit shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. **[The] For qualified agricultural costs certified by the department of agriculture in taxable years prior to January 1, 2018, the** tax credit amount shall be determined as follows:

(1) In the first year in which the credit is claimed, the lesser of the following:

- (A) Twenty-five per cent of the qualified agricultural costs incurred by the taxpayer after July 1, 2008; or

(B) \$625,000;

(2) In the second year in which the credit is claimed, the lesser of the following:

- (A) Fifteen per cent of qualified agricultural costs incurred by the taxpayer after July 1, 2008; or
- (B) \$250,000; and

(3) In the third year in which the credit is claimed, the lesser of the following:

- (A) Ten per cent of the qualified agricultural costs incurred by the taxpayer after July 1, 2008; or
- (B) \$125,000.

The taxpayer may incur qualified agricultural costs during a taxable year in anticipation of claiming the credit in future taxable years during which the credit is available. The taxpayer may claim the credit in any taxable year after the taxable year during which the taxpayer incurred the qualified agricultural costs upon which the credit is claimed. The taxpayer also may claim the credit in consecutive or inconsecutive taxable years until exhausted.

For qualified agricultural costs certified by the department of agriculture in taxable years after December 31, 2017, the tax credit amount shall be determined as follows:

In each year in which the credit is claimed, the lesser of the following:

- (A) Thirty per cent of the qualified agricultural costs incurred by the taxpayer; or**
- (B) \$1,000,000."**



Email: communications@ulupono.com

HOUSE COMMITTEE ON FINANCE
Friday, February 24, 2017 — 2:00 p.m. — Room 308

Ulupono Initiative Supports HB 1584 HD 1, Relating to Important Agricultural Lands

Dear Chair Luke, Vice Chair Cullen, and Members of the Committee:

My name is Kyle Datta and I am General Partner of Ulupono Initiative, a Hawai'i-based impact investment firm that strives to improve the quality of life for the people of Hawai'i by working toward solutions that create more locally produced food; increase affordable, clean, renewable energy; and reduce waste. Ulupono believes that self-sufficiency is essential to our future prosperity and will help shape a future where economic progress and mission-focused impact can work hand in hand.

Ulupono supports HB 1584 HD 1, which helps to speed up designation of important agricultural lands, because it aligns with our goal of creating more locally produced food.

The Important Agricultural Lands designation is one of the policies that helps to keep agricultural land in agriculture, especially as development grows. This bill will help designate key lands for agriculture. Once designated, agricultural operations on important agricultural lands are eligible for favorable benefits and regulations. Greater clarity on Important Agricultural Lands will help provide expanded opportunities for farmers and ranchers to obtain access to high quality land at affordable rates by protecting such land from development. The cost and availability of high quality land is a critical requirement for the success of local agriculture.

As Hawai'i's local food issues become more complex and challenging, organizations need additional resources and support to address and overcome them. We appreciate this committee's efforts to look at policies that support local food production.

We believe that by collaborating, we can help produce more local food and support an economically robust homegrown agriculture industry, which strengthens our community with fresh, healthy food. Thank you for this opportunity to testify.

Respectfully,

Kyle Datta

Investing in a Sustainable Hawai'i

General Partner

Testimony of
Jon Okudara
on
H.B. No. 1584, H.D.1
Relating to the Important Agricultural Lands
Committee on Finance
Friday, February 24, 2017, 2:00 p.m.
Room 308

I would like to testify in support of H.B. No. 1584, H.D.1, which proposes to:

- Include in the tax credit for “qualified agricultural costs,” the clearing , removal of trees and debris, and soil restoration of former sugar and plantation lands, that have been out of use for more than three years;
- Increases the tax credit; and
- Extends the important agricultural land qualified agricultural cost tax credit by ten years.

In 2008, Act 233, SLH 2008, established a variety of incentives and protections to establish and sustain viable agricultural operations on important agricultural lands. Included in the “qualified agricultural costs” are expenditures for:

- Plans, design, engineering, construction, renovation, repair, maintenance, and equipment for roads and utilities, processing facilities, irrigation systems, and agricultural housing;
- Studies;
- Equipment for agricultural purposes; and
- Regulatory processing, studies, and consultant services.

Many of the former plantation lands are now over-grown with brush, albizia and Christmas berry trees, which may cost over \$6,000/acre to clear. Further, the soil in many of these lands have to be restored to add micro nutrients and improve the pH of the soil, which have been depleted by the plantation operations. This is a cost that is equal to or more important than the “qualified agricultural costs” now listed.

Section 235-110.93(k), HRS, should be amended by amending the definition of “qualified agricultural costs” to include a paragraph (5) to read:

“(5) The clearing, removal of trees and debris, and soil restoration to correct any nutrient deficiency that may be present on former sugar and pineapple plantation lands that have been out of use for more than three years.”

I support H.B. 1584, H.D. 1, with the amendment proposed.



Chamber of Commerce HAWAII

The Voice of Business

LATE

**Testimony to the House Committee on Finance
Friday, February 24, 2017 at 2:00 P.M.
Conference Room 308, State Capitol**

**RE: HOUSE BILL 1584 HD1 RELATING TO IMPORTANT AGRICULTURAL
LANDS**

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** HB 1584 HD1, which requires the counties to make recommendations for important agricultural lands by 6/30/2019 or forfeit that right to the Land Use Commission; extends the period to claim important agricultural land qualified agricultural cost tax credits by 10 years and amends qualified agricultural costs and the amount of the credit.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, 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.

After almost three decades of discussion, negotiation, and debate, the IAL Law and process was finally enacted in July 2008. We support this bill as it will continue the process of the IAL law.

The IAL Law presently authorizes the identification and designation of IAL in one of two ways. 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 voluntary petition process has resulted in the designation by the LUC of over 110,000 acres of agricultural lands as IAL from voluntary petitions by Alexander & Baldwin, Parker Ranch, Castle & Cooke, Mahaulepu Farm, Grove Farm, and Kamehameha Schools.

We support suggested amendments to ensure that the new provisions relating to the LUC mapping and designation of IAL are consistent with the present statutory criteria, provisions, and process for the designation of IAL via the County mapping process.

Thank you for the opportunity to testify.