

KA NU HOU

FROM THE CHAIR

OCTOBER 2010

Aloha Section Members:

I hope you have had a chance to attend one of the CLE sessions your board members have organized this year. This year, we started a brown bag program, which features one hour lunch time discussions and is free to all members. If you have ideas for these sessions, please feel free to contact any of our board members. We are also working on updates to our website, so if you have ideas or want to help, please contact anyone on the website committee (Jennifer Benck, Nathan Natori and Kyle Sakumoto).

As we near the end of the year, I would like to thank the board members for all of their help during the year. Please mark your calendars for our annual meeting on December 10 at the Pacific Club.

Aloha,
Cynthia Ching, Chair



“Save the Dates”

- Wednesday, November 3, 2010, 4:30 p.m. to 5:30 p.m. at William S. Richardson School of Law: 2010 Distinguished Gifford/Starn O’Toole Marcus & Fisher Lectureship in Real Property by Dean Kevin Gray, Trinity College and Professor of Law, University of Cambridge and the National University of Singapore on “Access to Recreational Land: Some Comparative Perspectives”. For more information go to lawevent@hawaii.edu or contact (808) 956-8478
- Litigation Update, Friday, November 19, 2010, 8:00 a.m. to 10:00 a.m. at HSBA Conference Room, 1100 Alakea Street, Suite 1000. Moderator William J. Deeley. Speakers: David Callies, Bill Yuen and Thomas Yeh. Look for seminar notice from HSBA.
- Board Meeting, Friday November 19, 2010, noon to 1:00 p.m. at Carlsmith Office
- Annual Membership Meeting, Friday, December 3, 2010 at the Pacific Club.
- Biennial Section Land Use Conference, January 13-14, 2011, at Ala Moana Hotel. Conference brochure mailed week of October 11. The three hours of property/ land use ethics provided the afternoon of the 14th, included in the registration fee for the conference. You can also register for that ethics portion only for \$195. Section members are entitled to a \$200 reduction in the registration fee listed on the program brochure (e.g., single registration listed on the brochure at \$795 will cost section members \$595). Simply note on your registration that you a Section member. For those who have already registered at the full \$795 fee listed on the program brochure, call The Seminar Group at 800-574-4852 for a refund of \$200 per registration.

In this issue:

- Does Designating Hawai’i’s Agricultural Lands “Important” Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation - by **Douglass Cole**, who was a third year law student at the William S. Richardson School of Law in 2010 and graduated in 2010. Mr. Cole was the recipient of our 2009 Real Property Financial Services Section Award.
- Perfection and Importance of a Name (Under UCC Article 9) - by Trevor A. Brown, Esq., and Shyla P.Y. Cockett, Esq., who are a Director and Associate, respectively, at Starn O’Toole Marcus & Fisher, a Law Corporation.



Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

by *Douglass Cole*^{*1}

I. INTRODUCTION

On July 8, 2008, the Hawai'i Legislature enacted Act 233² in an effort to fulfill a thirty-year-old state constitutional mandate to conserve and protect important agricultural lands (IAL).³ Representative Michael Magaoay (D, District 46 – Ka'ena Point, Schofield, Mokolē'ia, Waialua, Hale'iwa, Waimea, Pūpūkea, Sunset, Kahuku, Kunia Camp, Poamoho, Wheeler, Lā'ie) described Act 233 as "another step toward securing the future of agriculture in Hawai'i."⁴ Representative Maile Simabukura (D, District 45 – Wai'anae, Mākaha, Mākuā) declared to the contrary that Act 233 was "a brazen expedited land development scheme."⁵ Although Act 233 was the Hawai'i Legislature's latest attempt to satisfy the 1978 constitutional mandate,⁶ these conflicting viewpoints evidence serious disagreement over whether Act 233 was a step towards fulfilling this mandate, or a step in the opposite direction. This paper will analyze the recent IAL legislative proposals and several different stakeholder viewpoints on the IAL issue.

Although Act 233 brought Hawai'i's agricultural lands to the forefront of political discourse in 2008, agricultural land is not a stranger to Hawai'i politics. The 1961 Hawai'i State Legislature, the 1978 Hawai'i State Constitutional Convention, and the 2005 and 2008 Hawai'i State Legislatures all indicated that preserving land in Hawai'i for agricultural use is a very important governmental interest. In 1961, the Hawai'i Legislature took a revolutionary step in land use planning and enacted the nation's first comprehensive Land Use Law (LUL).⁷ In 1978, delegates to the Hawai'i State Constitutional Convention amended the state's constitution to make preserving "important agricultural lands" a constitutional mandate.⁸ Nearly thirty years later, the 2005 Legislature finally took the next step towards protecting IAL when it passed Act 183, which established standards and criteria for the identification of IAL, a process for designation of IAL, and policies and processes to develop incentives for voluntary designation of IAL.⁹ Three years later, the 2008 Legislature passed Act 233, which established an incentive package to meet the requirements of Act 183.¹⁰ Whether Act 233 was a step toward protecting agriculture in Hawai'i, or a land development scheme is still the subject of much debate. This paper is the first paper since the enactment of Act 233 to analyze Acts 183 and 233 through the lens of several different stakeholders, and in the historical context of agricultural land use in Hawai'i.

Part II of this paper will discuss the history of agriculture and land ownership in Hawai'i, the 1961 LUL, and the 1978 Hawai'i State Constitutional Convention. Part III will first discuss the historical context of Act 183, the IAL standards, criteria, and procedures established by Act 183, and the political discourse surrounding Act 183. Part III will then discuss the historical context of Act 233, the IAL incentive package established by Act 233, and the political discourse surrounding Act 233. Part IV will present some provocative questions about agriculture in Hawai'i and will offer some observations based on the different stakeholder viewpoints regarding IAL and other agricultural priorities in Hawai'i. This paper will not attempt to determine if the recent IAL legislation establishes a good framework for addressing Hawai'i's agricultural issues, but it will encourage the State of Hawai'i to engage in more political discourse on IAL and the state's other important agricultural priorities.

II. BACKGROUND

This section will discuss useful background information that relates to the important agricultural lands legislation discussed in Section III. Part A will discuss pre-contact Native Hawaiian agriculture, and the rise, fall, and lasting legacies of mono-crop agriculture (sugar in particular). Part B will discuss Hawaii's enactment of the first statewide land use law (LUL) and the subsequent implementation of the LUL as it relates to agricultural lands. Part C will discuss the 1978 Constitutional Convention deliberations over Article XI, section three of the state constitution, and the subsequent failure to fulfill the constitutional mandate to protect important agricultural lands.

A) Agriculture In Hawai'i

The following three subsections will discuss Hawaiian subsistence agriculture, the rise of mono-crop commercial agriculture, and the subsequent fall of mono-crop commercial agriculture.

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

1) Hawaiian Agriculture: A Mastered Skill and A Way of Life

Although the Native Hawaiians supplemented their diets with fish and seafood caught, harvested, and cultivated from the ocean,¹¹ and with animals, both domesticated and wild,¹² the vast majority of Hawaiians were planters.¹³ According to E.S. Craighill Handy, Elizabeth Green Handy, and Mary Kawena Pukui, in pre-contact Hawai'i¹⁴ the cultivation of the soil was a central part of Hawaiian culture that shaped Hawaiian character differently than any other Polynesian people.¹⁵ Hawaiians grew sweet potatoes, breadfruit, yams, bananas, coconuts, arrowroot, sugarcane, in addition to their most important crop, taro.¹⁶ Hawaiian farming and gardening, described by these leading authors as "a highly advanced type of horticulture," involved skillful terracing techniques, complex irrigation systems, and an intricate understanding of weather patterns and what plant varieties grew best in different environments.¹⁷ In 1938, historian Ralph S. Kuykendall described the Hawaiians' cultivation of taro as "a perfected technique" yet to be improved upon by others.¹⁸ According to Handy, Handy, and Pukui, "the whole list of plants and animals that the native planters were raising at the time of discovery in the late 18th century" indicates that their subsistence economy was extremely advanced.¹⁹

The following subsection will not discuss the reasons that Native Hawaiian subsistence agriculture declined dramatically after contact with westerners,²⁰ but will instead focus on the rise of mono-crop agriculture, and Hawai'i's sugar industry in particular.

2) Mono-Crop Agriculture: The Rise of Sugar

The nineteenth and twentieth century influx of foreigners to Hawai'i coincided with a shift from a "satisfied dependence on local products for necessary food to dependence on imports [for necessary food]."²¹ However, agricultural cultivation in Hawai'i did not disappear during these years. To the contrary, during the nineteenth and twentieth centuries agriculture in Hawai'i transitioned from small scale subsistence agriculture into mono-crop export commercial agriculture.²² After a slow start,²³ by the late eighteenth century the sugar industry was Hawai'i's primary source of economic activity.²⁴ Most Hawai'i historians agree that the Civil War, more than anything, is owed credit for the rise of the sugar industry in the isolated island kingdom of Hawai'i.²⁵ Due to the Northern states boycott of the Southern sugar industry and a growing West Coast market, Hawai'i's sugar industry rapidly grew, with twelve plantations in 1860, twenty-two in 1861, forty-six in 1878, and ninety in 1884.²⁶

The rise of sugar brought with it a demand for a larger workforce and the establishment of a few dominant and very successful big businesses that came to control the sugar industry and all the land that it required.²⁷ As early as 1852, Chinese laborers were recruited to Hawai'i,²⁸ and other foreign workers soon followed. By 1900, there were approximately 26,000 Chinese, 61,000 Japanese, and 18,000 Portuguese,²⁹ and by the 1930s, two thirds of Hawai'i's plantation workers were Filipinos.³⁰ In contrast to the need for a very plentiful and diverse workforce, the sugar industry and its lands were controlled by a very small number of business interests.³¹

At the beginning of the twentieth century, there were sixty plantations operating in the islands, but eighty-nine percent of the plantation production was controlled by only six companies.³² These companies evolved into what is commonly referred to in Hawai'i as "the Big Five:"³³ Alexander & Baldwin, Castle & Cooke, Theo Davies, Amfac, and C. Brewer & Company. By 1933, the Big Five controlled ninety-six percent of the sugar industry,³⁴ which was then cultivating over 200,000 acres of their lands in Hawai'i.³⁵ The Big Five also controlled just about every other Hawai'i business that profited from the success of sugar³⁶ and in both good years and bad years their profits were substantial.³⁷

Significant land ownership usually carries with it a degree of power and influence greater than that enjoyed by others,³⁸ and Hawai'i was no exception.

Does Designating Hawai‘i’s Agricultural Lands “Important” Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

3) Fall of Hawai‘i’s Mono-Crop Sugar Industry

By the 1980s the acreage of land being used for cultivating sugarcane began to decline and in 1983, Hawai‘i’s sugarcane acreage dropped below 200,000 acres for the first time in almost a century.³⁹ In 1995, Castle & Cooke announced the closing of O‘ahu’s only remaining sugar plantation, the Waialua Sugar Company,⁴⁰ and by 2008 only twenty-two thousand acres in Hawai‘i were still in sugar cultivation.⁴¹ There are multiple reasons for the decline of sugar and Hawai‘i’s commercial agriculture in general. Some credit the rise of tourism and development as a more economically remunerative use of agricultural lands as contributing factors,⁴² others credit the availability of cheaper labor and consequently cheaper agricultural products in smaller countries,⁴³ and yet others credit a growing population’s need for more housing and the pursuit of development profits.⁴⁴ Regardless of the numerous factors causing the decline, there is no argument that the nature of agriculture in Hawai‘i has dramatically changed – and permanently shifted away from mono-crop sugar export agriculture – in the past two decades. The remainder of this paper will discuss Hawai‘i’s continued efforts to protect its agricultural lands.⁴⁵

B) 1961 Land Use Law

The following subsections will discuss Hawai‘i’s revolutionary Land Use Law (LUL). In 1961, Hawai‘i was the first state in the nation to enact a comprehensive statewide land use law.⁴⁶ Subsection one will provide historical context for the LUL, subsection two will describe the LUL, and subsection three will discuss the implementation of the LUL.

1) Historical Context

By the 1960’s, Hawai‘i’s total populace had grown substantially.⁴⁷ The tourism industry had become a big business industry with more tourists visiting the islands than the number of permanent residents living in the islands.⁴⁸ Hawai‘i’s growing population in the mid-twentieth century coincided with increased pressure to develop new homes to “satisfy the new urban needs.”⁴⁹ O‘ahu, which was the focal point of this development pressure,⁵⁰ was also home to fifty-four percent of the state’s so-called “prime agricultural land.”⁵¹ As O‘ahu’s urban sprawl moved westward it began to infringe on these lands.⁵²

In 1961, Hawai‘i’s legislative response to growing concerns over urban infringement on prime agricultural lands⁵³ was Act 187.⁵⁴ Led by Representative Thomas Gill, a liberal Democrat in the state House of Representatives, a faction within the democratic majority argued for greater state control over land use decisions.⁵⁵ According to George Cooper and Gavan Daws, the authors of *Land and Power In Hawaii*, Gill and others felt that Hawai‘i’s county governments were too small and disorganized to handle these early years of extensive development.⁵⁶ Their successful efforts resulted in the 1961 Land Use Law (LUL), codified as chapter 205 of the Hawai‘i Revised Statutes, which was revolutionary at the time because it was the “first statewide zoning measure in the United States.”⁵⁷ A basic understanding of the LUL’s purpose and its role in land use control is essential to understanding how the new important agricultural land (IAL) legislation fits into Hawai‘i’s land use framework.

2) Purpose and Description

The land use law (LUL)’s findings and declaration of purpose state that:

Inadequate controls have caused many of Hawaii’s limited and valuable lands to be used for purposes that may have a short-term gain to a few but result in a long-term loss to the income and growth potential of our economy. Inadequate basis for assessing lands according to their value in those uses that can best serve both the well-being of the owner and the well-being of the public have resulted in inequities in the tax burden, contributing to the forcing of land resources into uses that do not best serve the welfare of the State. Scattered subdivisions with expensive, yet reduced public services; the shifting of prime agricultural lands into nonrevenue producing residential uses when other lands are available that could serve adequately the urban needs; failure to utilize fully multiple-purpose lands; these are evidences of the need for public concern and action.

Therefore, the Legislature finds that in order to preserve, protect and encourage the development of the lands in the State for those uses to which they are best suited for the public welfare and to create a complementary assessment basis according

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

to the contribution of the lands in those uses to which they are best suited, the power to zone should be exercised by the State and the methods of real property assessment should encourage rather than penalize those who would development [sic] these uses.⁵⁸

Cooper and Daws describe the legislative purpose behind the LUL as serving two primary principles: "make urbanization efficient in the use of all types of resources; and preserve agricultural and conservation lands as much as possible."⁵⁹ To further these principles, the most significant provisions of the 1961 LUL provided for the following: a statewide land use commission (LUC);⁶⁰ three land use districts - urban, agricultural, and conservation (a fourth land use district, rural, was added a few years later);⁶¹ the acceptable uses for the land use districts;⁶² the process by which amendments to the land use district boundaries could be requested and either approved or disapproved by the LUC;⁶³ and, the criteria upon which the LUC would base its decisions.⁶⁴ Essentially, the LUL controlled how a landowner could use his/her land by establishing the land use districts. Any request for a land use district reclassification, such as a request to reclassify agricultural land as urban land, would need to be approved by the LUC. This gave the LUC an extraordinary amount of power and influence.⁶⁵ The LUC's role in the implementation of the LUL, and the LUC's role in reclassifications of agricultural lands in particular, will be a central theme throughout the remainder of this paper.

The following subsection will discuss the legislative history of the LUL.

3) Support and Opposition

In 1961 the democrats controlled the state House of Representatives with a comfortable majority and the republicans had a very slight majority in the state Senate with thirteen of the twenty-five seats.⁶⁶ Although the 1961 LUL was the work of a liberal democrat, Thomas Gill, it would not have passed had it not been for the republican support in the Senate.⁶⁷ After passing with twelve republican votes out of eighteen votes total in the Senate, the final version of the 1961 LUL passed almost unanimously out of the House.⁶⁸

Cooper and Daws maintain that the reason for the republican support for the 1961 LUL was due to the fact that many of the republican senators worked for big Hawai'i companies, such as Alexander & Baldwin, and these companies favored the bill because of agricultural and conservation tax breaks from which they would benefit.⁶⁹ According to Cooper and Daws, the democratic tax policy at the time drove up taxes on idle agricultural lands in an effort to both collect more taxes from the large landowners, and to force the development of lands that they considered underutilized.⁷⁰ Consequently, the republicans, who were more aligned with the large landowners, supported the 1961 LUL because they thought it could provide tax breaks for the owners of agricultural and conservation lands – (i.e. large landowners).⁷¹

This raises the question of why the democrats supported the 1961 LUL. Thomas Gill told the authors that he believes that the 1961 LUL passed largely due to the ignorance of many members of the democratic majority, who simply voted along party lines "not realizing the extent to which [the 1961 LUL] would impede some of the development practices then standard."⁷² However, any impediment on development that the 1961 LUL created was to a large extent circumvented by the relative ease with which urban reclassifications were approved by the LUC in the subsequent seventeen years.⁷³

4) From 1961 to 1978: Reclassifications From Agriculture to Urban

Keeping in mind the primary two LUL principles of efficient urbanization and conserving as much agricultural and conservation lands as possible, it seems logical that a set of commissioners with diverse backgrounds would provide the LUC with a well balanced approach towards making land use decisions that give both principles equal consideration. However, in 1961, four of the seven LUC commissioners, nominated by republican Governor Quinn, were executives for some of Hawai'i's largest landowners and businesses.⁷⁴ Two others came from small business backgrounds.⁷⁵ Although, there did not seem to be any controversy over these commissioners and their ties to business in Hawai'i, when Robert G. Wenkam, a conservationist, was up for

Does Designating Hawai‘i’s Agricultural Lands “Important” Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

reappointment in 1967, Senator Nadao Yoshinaga blocked Wenkam’s reappointment. Yoshinaga felt that Wenkam’s conservation efforts, “were not compatible with his position as a member of the Land Use Commission.”⁷⁶

Although Yoshinaga’s feelings about Wenkam were probably consistent with the LUC’s approach to decision making at that time, these feelings do not reflect an equal balancing of the two LUL principles of efficient urbanization and conservation of agricultural and conservation lands. According to Cooper and Daws, in a 1980 law review article, which studied all of the petitions to the LUC for urban reclassification between the years 1964 and 1975, Kem Lowry makes the argument that there was “something of a tilt in the direction of one of the original Land Use Law’s two most fundamental principles as against the other – efficient urbanization over preservation of farm lands.”⁷⁷ In Lowry’s own words, “in spite of the express goal to protect agricultural land, agricultural suitability does not appear to have been a major factor in Commission decision-making.”⁷⁸

In 1969, LUC staff director, Ramon A. Duran, complained that the LUC continued to approve nearly every urban reclassification request that was made despite the fact that the State’s General Plan reflected more than enough urban land to absorb the next twenty years of anticipated population growth.⁷⁹ In particular, Duran expressed concern that “[t]he vast plain of prime agricultural land in Central O‘ahu will be sacrificed to urban use as fast as leases expire, withdrawal clauses are executed, development contracts are signed and bulldozers can move.”⁸⁰ Consistent with Duran’s concerns is the fact that Mililani Town, which is situated on much of central O‘ahu’s prime agricultural lands, received all the urban reclassifications that it needed from the LUC throughout the 1960s and 1970s.⁸¹ According to one source, by 1978 “the LUC has turned down only 2 of more than 30 requests to reclassify from agriculture to urban [in central O‘ahu].”⁸²

However, dissatisfaction with the LUC was not limited to those who felt that too little emphasis was being placed on conserving agricultural and conservation lands. According to Cooper and Daws, from the perspectives of many big businesses, the LUC “inhibited economic development and/or made it more expensive.”⁸³ From the 1970s on the LUC began to require that residential projects, seeking reclassification from agricultural to urban, set aside ten percent of the housing for low to moderate income homes.⁸⁴ In 1983, *Forbes* magazine called Hawai‘i a “purgatory for business,” and alleged that the LUC was more concerned with conserving agricultural lands than promoting economic growth.⁸⁵

Amidst the above dissatisfactions among both conservationists and big businesses, delegates to the 1978 Hawai‘i Constitutional Convention sought to amend the state Constitution to clarify the land use priorities in relation to Hawai‘i’s agricultural lands.

C) 1978 Hawai‘i State Constitutional Convention: Article XI, Section Three

The following subsections will discuss the historical context of the 1978 state Constitutional Convention, Article XI, section three of the state constitution, the political discourse that preceded the passage of Article XI, section three, and the subsequent failure of Hawai‘i’s Legislature to respond to Article XI, section three’s mandate to identify and protect important agricultural lands.

1) Historical Context of the Convention

The 1960s and 1970s in Hawai‘i are frequently described as being a period of cultural renaissance.⁸⁶ Awareness for Hawaiian hula, music, navigation and voyaging, and language grew, and political activism regarding native Hawaiian issues and rights was at an all time high.⁸⁷ Several amendments adopted at the 1978 Hawai‘i State Constitutional Convention reflected this cultural renaissance and increased political activism: funding for the Department of Hawaiian Homelands was increased; the Office of Hawaiian Affairs was created; Hawaiian was established as an official language of the state; and, native Hawaiian traditional and customary rights were reaffirmed.⁸⁸ Sometimes referred to as the “People’s ConCon” because sitting representatives and senators were strongly discouraged from running as delegates,⁸⁹ the 1978 Constitutional Convention also addressed the growing concerns over the loss of Hawai‘i’s “prime agricultural lands” by amending the constitution to include article XI, section three.

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

2) Article XI, Section Three: Purpose and Description

The purpose and description of Article XI, section three of the Hawai'i State Constitution are stated below:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions without meeting the standards and criteria established by the legislature and approved by two-thirds vote of the body responsible for the reclassification or rezoning action.⁹⁰

3) Article XI, Section Three: Support and Opposition

The support for article XI, section three, as documented in the proceedings of the 1978 Constitutional Convention of Hawai'i, reveals that delegates were concerned that the LUC was not acting consistently with its intended purpose and consequently too much urbanization was occurring at the expense of unnecessary losses of prime agricultural lands.

Delegate Hornick pointed out that the 1961 LUL was enacted for the purpose of "protecting the state's dwindling supply of prime agricultural land and preventing scattered urban subdivisions."⁹¹ However, according to Hornick, "the LUC's role in preserving agricultural lands has been dubious, despite its intended purpose."⁹² She also cited the Kem Lowry study for the proposition that "land units involving prime agricultural lands were almost as likely to be approved [for urban reclassification] as non-prime agricultural land units."⁹³ Hornick expressed that her comments were not meant to be indictments of the LUC, "but merely seek to illustrate why the present system is not working well, and why the committee's proposal as amended would constitute an improvement."⁹⁴

Delegate Hornick was not alone in her concern. According to delegate Jeremy Harris, who later served two terms as mayor of Honolulu, "there is an increasing demand for . . . agricultural products which can be produced here in Hawai'i," and there is a need for "fundamental changes in the system for regulating land uses to assure the availability of agricultural lands at a reasonable cost."⁹⁵ Harris went on to say that "[o]ur present land use laws, I believe, are not addressing this critical problem," and he substantiated this statement by pointing out that since the enactment of the 1961 LUL, the "State has seen the urbanization of over 37,000 acres of its agricultural land."⁹⁶ Several other delegates expressed similar concerns.⁹⁷

Although it appears that the overwhelming majority of the delegates were in support of the amendment that established article XI, section three as it reads today, one delegate did rise in opposition. Delegate Petersen's opposition to the current article XI, section three likened it to "us[ing] an elephant gun to shot [sic] a mouse."⁹⁸ According to delegate Peterson, only 1.6 percent of the lands being cultivated for sugarcane in 1978 were needed for agricultural self-sufficiency.⁹⁹ He stressed that a distinction between lands for agricultural self-sufficiency and commercial agricultural lands was needed in order to prevent unnecessary loss of property rights.¹⁰⁰ That article XI, section three makes no such distinction supports the conclusion that the majority of delegates to the 1978 Constitutional Convention felt that agricultural lands, especially those deemed important agricultural lands, were entitled to protection regardless of how they were being used at that time.¹⁰¹

4) From 1978 to 2005: Land Development and Agricultural Use In Hawai'i

In the twenty seven years that followed the 1978 Constitutional Convention the Legislature did not establish any "standards and criteria" to accomplish the mandates of article XI, section three,¹⁰² and no lands were identified as important agricultural lands.¹⁰³ However, during that same period of time, the LUC approved the reclassification from the agricultural district to the urban district of just over ten thousand acres of land on O'ahu alone.¹⁰⁴ The LUC only denied the urban reclassification requests for approximately five hundred acres of land on O'ahu, some of which were later reclassified to urban under subsequent petitions.¹⁰⁵ The twenty-seven year delay suggests that protecting agricultural lands has not been as high of a priority to the state

Does Designating Hawai‘i’s Agricultural Lands “Important” Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

Legislature, as it was to the delegates of the 1978 Constitutional Convention. In 2005, however, the Legislature finally took a step towards fulfilling the 1978 Constitutional mandate to identify and protect important agricultural lands by passing the first IAL legislation.

III. ANALYSIS: IAL LEGISLATION IN 2005 (ACT 183) AND 2008 (ACT 233)

This section of the paper will analyze the recently enacted important agricultural lands (IAL) legislation: Act 183 (2005) and Act 233 (2008). This is the first paper to comprehensively analyze a diverse range of stakeholder viewpoints on the Legislature’s latest attempts to fulfill the 1978 constitutional mandate to identify and protect important agricultural lands. Part A of this section will analyze Act 183, which established standards and criteria for IAL, established procedures to identify and designate IAL, and called for a task force to develop an incentive package to encourage IAL designation. Part B of this section will analyze Act 233, which established that incentive package. By analyzing several different stakeholder viewpoints on IAL, both Part A and Part B will attempt to inspire further discussion on why agriculture is important to Hawai‘i, what aspects of agriculture IAL helps most, and whether IAL is the right approach to helping agriculture or just the latest attempt to reinvent the wheel.

A) 2005 IAL Legislation: Act 183’s Standards, Criteria, Procedures, and Call For Incentives

The following subsections will discuss the historical context preceding Act 183, the Act itself, and the political discourse that it inspired.

1) Historical Context

The enactment of Act 183¹⁰⁶ on July 1, 2005 symbolized the first substantial legislative step towards designating important agricultural lands (IAL) in Hawai‘i in twenty-seven years. Although this was not the first attempt by the Legislature to fulfill the 1978 constitutional mandate, prior efforts, such as those in 2002,¹⁰⁷ 2003,¹⁰⁸ and 2004,¹⁰⁹ had all failed. According to Alan Takemoto, the Executive Director of the Hawai‘i Farm Bureau Federation (HFBF),¹¹⁰ the reason that it took so many years to enact the first IAL legislation was that large landowners and farmers could never reach an agreement on the threshold IAL designation issue.¹¹¹ The collaboration of the Land Use Research Foundation (LURF),¹¹² HFBF, and several other stakeholders as diverse as Alexander and Baldwin and Hawai‘i’s Thousand Friends¹¹³ began as early as 2001 as an informal “Agricultural Coalition.”¹¹⁴ In 2003, the Legislature formally recognized the coalition as the Agriculture Working Group and called upon them to prepare IAL legislation for the 2004 session.¹¹⁵

The failed IAL proposals in 2002, 2003, and 2004 suggest that the group initially struggled to reach a sufficient consensus on IAL. David Arakawa, Executive Director of LURF, credits the HFBF President Dean Okimoto with helping bring about a paradigm shift that was critical to the passage of IAL.¹¹⁶ Arakawa says that Okimoto was able to effectively communicate to the legislators and other agricultural stakeholders that the IAL legislation was an agricultural viability initiative and not a land use initiative.¹¹⁷ According to Dean Okimoto,¹¹⁸ who became President of HFBF in 2003,¹¹⁹ he believed that the only way to protect IAL was to gain the support of the large landowners because they own most of the good agricultural lands in the state.¹²⁰ Okimoto also believed that if he could get as many different stakeholders to work together to address the IAL issue, everyone would gain a better understanding of each others interests and it would be easier to build healthy partnerships, which he feels are essential to improving agricultural viability in Hawai‘i.¹²¹ Within two years of Okimoto’s first year as President of HFBF in 2003, the collaboration of the Agriculture Working Group resulted in the 2005 enactment of Act 183, which is described in detail in the following section.

2) Purpose and Description

The 2005 Hawai‘i State Legislature determined that the necessary first step to protect IAL was to determine what lands qualified as IAL and how to designate them as such. In particular, the Legislature stated that there was a “compelling need to provide standards, criteria, and mechanisms to fulfill the intent and purpose of article XI, section three, of the state constitution and

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

enable implementation of the constitutional mandate."¹²² The Legislature further determined that, in addition to establishing a process to identify and designate IAL, incentives were needed to ensure the agricultural viability of "agricultural enterprises that farm [IAL] and for landowners of [IAL]." ¹²³ Specifically, the Legislature sought to fulfill the constitutional mandate by:

- (1) Establishing a new part of chapter 205 [the LUL], Hawaii Revised Statutes, that sets forth policies and procedures for the identification of [IAL] . . . and
- (2) Providing for a process to develop proposals for state and county incentives to promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of [IAL] for agricultural use.¹²⁴

IAL are defined by Act 183 as lands that (1) "are capable of producing sustained high agricultural yields";¹²⁵ (2) "produce agricultural commodities for export or local consumption; or"¹²⁶ (3) "are needed to promote the expansion of agricultural activities . . . even if currently not in production."¹²⁷ Under Act 183, lands possessing any of the established IAL standards and criteria were eligible for designation as IAL, and the LUC must weigh the standards and criteria in each petition for IAL designation "to meet the constitutionally mandated purposes of article XI, section 3."¹²⁸ The eight enumerated standards and criteria in Act 183 are: (1) Land currently used for agricultural purposes; (2) Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel – and energy-producing crops; (3) Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the board of agriculture on January 28, 1977; (4) Land types associated with traditional native Hawaiian agricultural use, such as taro cultivation, or unique agricultural crops such as coffee, vineyards, aquaculture, and energy production; (5) Land with sufficient quantities of water to support viable agricultural production; (6) Land whose designation as [IAL] is consistent with general, development, and community plans of the county; (7) Land that contributes to maintaining a critical land mass important to agricultural operating productivity; and, (8) Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power.¹²⁹

Designation of IAL occurs upon the LUC's approval of a petition from a farmer or landowner, or upon the LUC's approval of county recommended IAL maps.¹³⁰ "[N]o later than sixty months from the date of county receipt of state funds appropriated for the identification process,"¹³¹ the counties are required by Act 183 to "identify and map potential [IAL]" based on the above listed standards and criteria.¹³² The counties are then required to submit the recommendations and potential IAL maps to the LUC.¹³³ After receiving comments from the State Office of Planning and Department of Agriculture, and after at least one public hearing, the LUC can designate lands as IAL pursuant to the county recommendations with the approval of at least two-thirds of the LUC commissioners.¹³⁴ The Legislature appropriated seventy-five thousand dollars in grants-in-aid to the counties to aid them in the identification and designation of IAL.¹³⁵

To facilitate and encourage voluntary landowner designations of IAL prior to the county IAL recommendations, Act 183 established a process for farmers or landowners to petition the LUC for IAL designation by declaratory order without going through the district boundary amendment process set forth in Chapter 205-4.¹³⁶ Act 183 mandated that the Department of Agriculture "contract appropriate meeting facilitation and cost-benefit analysis services to develop and recommend a package of proposals for agricultural incentives,"¹³⁷ and appropriated seventy-five thousand dollars to the Department of Agriculture for this purpose.¹³⁸ The Department of Agriculture was to report back to the legislature with "stakeholder findings and recommendations, including proposed legislation," by the 2007 legislative session.¹³⁹ Although the incentives for IAL designation were not established in Act 183, guidelines for the State and the counties to establish incentive programs were listed in Act 183.¹⁴⁰ Among other things, incentive programs could include grant assistance, favorable tax systems, reduced infrastructure requirements, tax incentives to offset costs, and water regulations and policies that provide IAL farmers with cost effective sources of waters.¹⁴¹

Whether by landowner petition or by county identification, once lands are designated IAL, the IAL designation is difficult

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

to remove. IAL designation can be removed if, upon consideration of the standards and criteria for removal,¹⁴² the LUC determines that:

- (1) On balance, the public benefit from the proposed district boundary amendment or zone change outweighs the benefits from retaining the lands for agricultural purposes; and
- (2) The proposed action will have no significant impact upon the viability of agricultural operations on adjacent lands.¹⁴³

Additionally, lands can have IAL designation removed if "due to governmental actions, acts of God, or other causes beyond a farmer's or landowner's reasonable control," sufficient water for profitable farming is no longer available.¹⁴⁴

In contrast to the difficulty that prior IAL legislation proposals faced, there was little difficulty in getting Act 183 passed into law during the 2005 legislative session.

3) Stakeholders Analysis: Support, Opposition, and Comment

Act 183 passed through both houses of the Legislature with relatively little opposition, receiving only four "no" votes at the Final Reading in the House, and receiving unanimous support at the Final Reading in the Senate.¹⁴⁵ Representative Lyla Berg (D, District 18 - Hahaione, Kuli'ou'ou, Niu Valley, Hawai'i Loa Ridge, 'Āina Haina, Wailupe, Kāhala) described Act 183 as "essential for preserving Hawaii's ability to survive and thrive."¹⁴⁶ Representative Felipe Abinsay (D, District 29 - Sand Island, Mokauea, Kalihi Kai, Kapālama) commended Act 183 for "ensur[ing] that the future generation of Hawaii will have agricultural lands left for them to farm, that future ranchers will have lands to graze their cattle."¹⁴⁷ Representative Ezra Kanoho (D, District 15 – Līhu'e, Kōloa) observed that "as Hawaii's population continues to increase and more and more of our lands are purchased and developed, we could encounter serious problems later. For this reason, sound and reasonable IAL policies . . . must be implemented today."¹⁴⁸ Representative Kanoho's remarks in support of Act 183 expressed deep appreciation to several key members of the Agricultural Working Group,¹⁴⁹ including Dean Okimoto and Alan Takemoto of the Hawai'i Farm Bureau Federation (HFBF), and Dean Uchida of the Land Use Research Foundation (LURF).¹⁵⁰

The written testimony submitted at the legislative hearings for Act 183 reveals that several members of the Agricultural Working Group also considered Act 183 an important step towards protecting IAL that would not have occurred without the hard work of several different stakeholders. According to the Chairperson of the Board of Land and Natural Resources, who supported Act 183 in part because he believed that "a strong and expanding agricultural sector would bring greater stability and robustness to Hawaii's economy,"¹⁵¹ Act 183 resulted from a "collaborative process"¹⁵² that "included a wide spectrum of representatives from large and small agricultural interests, community groups, landowners, and state, county, and Federal agencies."¹⁵³ Anthony Ching, then Executive Officer of the LUC, commended the coalition of organizations sponsoring the proposed IAL legislation for "work[ing] long and hard to produce an appropriate proposal, which incorporates specific features and mechanism [sic] designed to satisfy the requirements of the State Constitution."¹⁵⁴ Meredith Ching, Vice President of Alexander and Baldwin, commended the legislation for representing a "first time consensus between the farming community and the landowners on IAL legislation."¹⁵⁵ Dean Uchida, then Executive Director of LURF, stressed that "the significance of having legislation that both the major landowners and the [HFBF] agree on should not be lost in this discussion."¹⁵⁶

Although the vast majority of the written testimony submitted on Act 183 reflects widespread support, testimony commenting on Act 183 from Jeff Mikulina, Executive Director of Sierra Club Hawai'i at that time, "caution[ed] the legislature . . . to proceed very carefully."¹⁵⁷ In particular, Mikulina emphasized the value of the existing land use law and warned that "development forces may also call for creating a process to facilitate moving hundreds of thousands of acres of land out of the agricultural district."¹⁵⁸ Therefore, the Sierra Club's support of any IAL legislation was conditioned on the demand that "the agricultural lands that are not designated IAL will be left in the agricultural district."¹⁵⁹ Expressing similar concerns and testi-

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

fyng in his individual capacity in opposition to Act 183, Blake McElheny argued that "the state land-use law purposefully includes lands in the state 'agricultural' district that are not particularly suited for intensive agricultural activity or farming . . . to prevent costly urbanization."¹⁶⁰ McElheny characterizes this as a "growth-management or urban-containment strategy."¹⁶¹ Although the concerns expressed by Mikulina and McElheny would be echoed by the opposition to the 2008 IAL incentives package that followed three years after Act 183's passage, such concerns were not widely shared in 2005. The emphasis on protecting agriculture through IAL designation dominated the discourse and any threats to agriculture cautioned by a quiet minority of the stakeholders did not receive much attention at that time.

Just as the support for Act 183 was widespread, so too was the agreement among stakeholders that developing an incentive package for voluntary IAL designation was an essential next step to securing agricultural viability. The Hawai'i Agricultural Research Center, formerly Hawaiian Sugar Planters' Association, cautioned that "without incentives for agricultural businesses they will not proliferate and occupy even currently available agricultural lands."¹⁶² Similarly, Anthony Ching of the LUC emphasized that "enactment of a comprehensive protection and incentive package to spur the development of agri-business on IAL is a critical component to this proposal."¹⁶³ Looking forward, Alan Takemoto of HFBF stated that "it will take time and efforts by all stakeholders during the interim and several legislative sessions to build a solid comprehensive foundation. But we need to start from somewhere and the time is now."¹⁶⁴ Three years later, the incentive package was established in Act 233, which is discussed in detail in the following sections.

B) 2008 IAL Legislation: Act 233's Incentive Package For IAL

The following subsections will discuss the historical context preceding Act 233, the incentive package it established, and the political discourse that it inspired.

1) Historical Context

The proposal of Act 233 in 2008 was the result of the continued efforts of many of the same members of the Agricultural Working Group credited with developing the IAL proposal that resulted in the enactment of Act 183 in 2005.¹⁶⁵ Pursuant to Act 183, from 2005 to 2008, the Department of Agriculture, with the assistance of the Department of Taxation, fulfilled its mandate to "promote a facilitated meeting process and deliberation and [sought] the assistance and input from the Hawaii Farm Bureau Federation, landowners, affected state and county agencies, other stakeholders, and persons with relevant expertise that are necessary to develop and implement a comprehensive and integrated framework of incentives."¹⁶⁶ Alan Takemoto of the HFBF described this meeting process as an effort to "balance the landowner rights with the farmers needs."¹⁶⁷ Takemoto believes that the incentive package, Act 233, which resulted from this deliberation was "a huge step forward that may not be perfect, but is at least a start."¹⁶⁸ According to Takemoto, because there were stakeholders from many different backgrounds, the IAL incentive package that resulted from the meeting process contains several incentives that will benefit specific stakeholder groups more than other stakeholder groups, but his hope is that any given stakeholder group can benefit from at least some of the incentives.¹⁶⁹ Act 233 and its most significant incentives will be discussed in greater detail in the following section.

2) Purpose and Description

On July 9, 2008, the Legislature established the IAL incentives, mandated by Act 183 just three years earlier, with the enactment of Act 233.¹⁷⁰ Specifically, Act 233 responded to the requirements of Act 183 by:

- (1) Providing incentives and protections to establish and sustain viable agricultural operations on [IAL]; and
- (2) [omitted]¹⁷¹
- (3) Providing for the combined designation of [IAL] and reclassification to other land use districts by declaratory order of the land use commission [LUC].¹⁷²

Does Designating Hawai‘i’s Agricultural Lands “Important” Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

To achieve the above goals, Act 233 offers the following six significant incentives to farm owners and landowners: (1) Provides for limited farmer and employee farm dwellings on IAL;¹⁷³ (2) Provides for qualified agricultural tax credits for up to three years to IAL farm owners and landowners;¹⁷⁴ (3) Provides for loan guaranties from the Department of Agriculture;¹⁷⁵ (4) Provides for a publicly funded Department of Agriculture inventory and assessment of public and private irrigation systems, and provides for publicly funded subsidies for repairs to such systems;¹⁷⁶ (5) Provides for priority permit processing for agricultural processing facilities on IAL;¹⁷⁷ and (6) Establishes a process for combined IAL designation and agriculture-to-urban-or-rural reclassification petitions for declaratory rulings.¹⁷⁸ These incentives will be discussed in greater detail below.

In response to the need for workforce housing expressed by farmers and ranchers,¹⁷⁹ Act 233 Part II, § 2 allows a farm owner or landowner to “develop, construct and maintain farm dwellings and employee housing for farmers, employees, and their immediate family members,” on IAL so long as such housing does not use more than the lesser of five percent of the subject IAL or fifty acres.¹⁸⁰

In an effort to help make agriculture¹⁸¹ more economically viable, Act 233 Part III, §§ 3-6 allow an IAL farm owner or landowner to deduct qualified agricultural cost tax credits from his or her net income in each of the three years following the date that the first IAL cost tax credit is claimed.¹⁸² Among other things, the qualified agricultural costs include: (1) “plans, design, engineering, construction, renovation, repair, maintenance, and equipment”; (2) “Feasibility studies, regulatory processing, and legal and accounting services related to items under (1)”; (3) Equipment; and (4) “Regulatory processing, studies, and legal and other services related to obtaining or retaining sufficient water.”¹⁸³ In the first year, the tax credits for each IAL farm owner or landowner can be twenty five percent of the lesser of the qualified agricultural costs incurred after July 1, 2008 or \$625,000. In the second year, the tax credits can be fifteen percent of the lesser of the qualified agricultural costs incurred after July 1, 2008 or \$250,000. In the third year, the tax credits can be ten percent of the lesser of the qualified agricultural costs incurred after July 1, 2008 or \$125,000.¹⁸⁴

In order to encourage agribusinesses to stay in business and to encourage others to start new agribusinesses,¹⁸⁵ Act 233 Part IV, § 8 authorizes the chairperson of the Board of Agriculture to guarantee commercial loans, subject to certain restrictions, made to agricultural producers¹⁸⁶ for agricultural projects¹⁸⁷ that take place on IAL.¹⁸⁸

In response to concerns expressed about the lack of adequate water for viable agricultural activities, Act 233, Part VI, § 10 mandates that the Department of Agriculture prepare a state agricultural water use and development plan.¹⁸⁹ The plan needs to include, among other requirements, a “master irrigation inventory plan that shall: Inventory public and private irrigation water systems; identify the extent of rehabilitation needed for each system; [and] subsidize the cost of repair and maintenance of the systems.”¹⁹⁰

In an effort to reduce the administrative burdens faced by agribusinesses in Hawai‘i,¹⁹¹ Act 233, Part VII, §§ 11-12, mandate that any agencies issuing permits to agribusinesses shall provide priority processing for issuance and renewal of such permits at no additional cost when the majority of the lands owned or used by the agribusiness are IAL.¹⁹²

Easily, the most controversial of the incentives is the section commonly referred to as the “85:15” provision of Act 233.¹⁹³ Act 233 Part X, § 19 amends the farmer or landowner petition provision of the land use law (LUL)¹⁹⁴ to allow a farmer or landowner to submit a single petition that seeks to both designate agricultural lands as IAL and reclassify agricultural lands to the urban, rural, or conservation land use district provided that:

(1)The land sought to be reclassified to the rural, urban, or conservation district is within the same county as the land sought to be designated as [IAL];

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

(2) If the reclassification of the land is proposed to the urban district, that the reclassification to urban is consistent with the relevant county general and community, development, or community development plans; and

(3) The total acreage of the land sought to be designated or reclassified in the petition complies with the following proportions:

(A) At least eighty-five percent of the total acreage is sought to be designated as [IAL]; and

(B) The remainder of the acreage is sought to be reclassified to the urban, rural, or conservation district.¹⁹⁵

Additionally, a farmer or landowner can earn credits for future reclassification petitions when a combined petition designates more than 85% of the land subject to the petition as IAL. In such cases, the credits are equal to the amount of IAL designated over the minimum 85% requirement.¹⁹⁶ A farmer or landowner can use the credits to petition for reclassification of other agricultural lands that he or she owns without seeking any IAL designation in that petition.¹⁹⁷

Directly related to the 85:15 provision, Act 233 Part X, § 18 amended the IAL standards and criteria provisions established in Act 183 to *mandate* that the LUC approve any IAL designation request that is made in a petition that also seeks reclassification of other lands to urban, rural, or conservation, when the lands seeking IAL designation meet standards and criteria (c)(5) and (7).¹⁹⁸ Thus, in a combined petition as described above, so long as agricultural lands have "sufficient quantities of water to support viable agricultural production," and "contribute[] to maintaining a critical land mass important to agricultural operating productivity,"¹⁹⁹ the LUC is *required* to approve the IAL designation.

The following subsection will analyze different stakeholder viewpoints on Act 233 and these six significant incentives.

3) Stakeholders Analysis: Support, Opposition, and Comment

Although Act 183 received much praise, and little criticism, Act 233 did not enjoy such an easy path to enactment. The remainder of this paper will attempt to determine why some legislators felt that Act 233 was a step toward protecting the future of agriculture²⁰⁰ and others considered it a development scheme²⁰¹ by analyzing the different stakeholder viewpoints on the IAL designation incentive package established by Act 233.

a. Legislators

Act 183 was passed out of the State House just three years earlier with only four "no" votes and only one opposing comment in the record.²⁰² In contrast, Act 233, which sought to fulfill requirements that were set forth in Act 183, received eighteen "no" votes in the State House²⁰³ and there are several comments in the record expressing adamant opposition to Act 233.²⁰⁴ In the Senate, where Act 183 passed unanimously in 2005, Act 233 passed with only a four vote margin.²⁰⁵ The official 2008 House Journal and the official 2008 Senate Journal provide insightful statements from representatives and senators on both sides of the Act 233 debate.

Representative Lyla Berg (D, District 18 - Haha'ione, Kuli'ou'ou, Niu Valley, Hawai'i Loa Ridge, 'Āina Haina, Wailupe, Kāhala), who just three years earlier spoke in strong support of Act 183, submitted written remarks to the record that provide a comprehensive and harsh critique of Act 233's incentives.²⁰⁶ To substantiate her claim that "this bill is the most blatant land development grab in history, disguised as an IAL incentive measure,"²⁰⁷ Representative Berg argued that: (1) the amended farmer or landowner petition provision²⁰⁸ will "enable landowners to reclassify 15% of their lands to urban or rural under an expedited Declaratory Ruling Petition ... [t]he implication of which is to avoid a contested case procedure"; (2) "lands that might not otherwise qualify as

Does Designating Hawai‘i’s Agricultural Lands “Important” Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

qualify as IALs under current law,” could qualify easier because “a landowner combining lands under this declaratory order procedure needs only to meet two of the eight criteria”;²⁰⁹ (3) “the bill gives large landowners the opportunity to get State tax credits for attempting to deprive taro farmers of water from streams,” because the tax credits include legal fees related to securing water for IAL;²¹⁰ and (4) because there is no requirement that lands seeking to be reclassified as rural conform to the county or community plans,²¹¹ “[t]his provision will allow for luxury residential subdivisions that would otherwise be illegal under the Ag. District.”²¹²

Representative Jon Riki Karamatsu (D, District 41 - Waipahu, Village Park, Waikele), who supported Act 233, accused Representative Berg and others that shared her views of making “misstatements” about Act 233.²¹³ In response to the argument that the 85:15 provision of Act 233 implicates an attempt to avoid contested case hearings, Representative Karamatsu argued that contested case hearings are still available because, “under the Commission rules in Section 15-15-103, any petitioner or party may request the commission to hold a hearing.”²¹⁴ In response to the argument that the combined petition process will result in a lower threshold for IAL designation, Representative Karamatsu claimed to the contrary that IAL designation is harder to receive under the combined petition than it would be otherwise because “you’ve got to have[sic], not only weigh the eight, but you’ve got to have those two [(c)(5) & (7)].”²¹⁵ According to Representative Karamatsu, “you can’t grow crops without water. And if you don’t have land mass, then where are you going to grow your produce?”²¹⁶ Although Representative Karamatsu raises two good points about the basic necessities for successful agricultural cultivation, because Act 233 does not explain what is “sufficient quantities of water,” or what is a “critical land mass,”²¹⁷ it is arguably not clear what is the minimum threshold for IAL designation. This makes it difficult to determine whether weighing all eight standards and criteria is a lower or higher threshold than requiring that just these two standards and criteria are satisfied.

The 85:15 combined petition provision was also the focus of much debate in the Senate. Senator Kokubun (D, District 2 - Waiākea Uka, Kalapana, Volcano, Kahuku), one of the named sponsors that introduced Act 233 in 2008, would have voted in support of the final version of Act 233 had it not been for this provision.²¹⁸ Instead, Senator Kokubun voted in *opposition* stating that “utilizing the IAL incentives [for the 85:15] is strictly a ruse here. The point is people want to be able to develop their agricultural lands-big landowners do, in particular.”²¹⁹ Specifically, Senator Kokubun argued that the 85:15 provision allowed for landowners to avoid the zoning process by seeking reclassification of land use district through declaratory order instead of through the district boundary amendment procedures.²²⁰ In contrast to Representative Karamatsu’s argument above, Senator Kokubun describes the distinction between these two processes as a difference of “night and day.”²²¹ According to Senator Kokubun, the LUC’s administrative rules section 15-15-103 pertaining to declaratory orders states that, “the commission may, *but shall not be required to*,²²² conduct a hearing on a petition for a declaratory order.”²²³ In his closing remarks, Senator Kokubun warned his colleagues that Act 233 would not enhance agriculture, but would instead nibble away at agricultural lands.²²⁴

Senator Jill Tokuda (D, District 24 – Kāne‘ohe, Kāne‘ohe MCAB, Kailua, Enchanted Lake), rose in response to Senator Kokubun and argued that Act 233 does not eliminate the guaranty of contested case hearings because “if individuals are unsatisfied with an LUC decision, they also have the ability to obtain judicial review, as stated in section 15-15-75 in the LUC’s administrative rules.”²²⁵ In contrast to concerns that the 85:15 provision will lead to fast tracked development of good agricultural lands, Senator Tokuda believed that Act 233 “would help our state protect these very lands, and so many other communities under threat of encroachment and development.”²²⁶ According to Senator Tokuda, without incentives such as the 85:15 provision, “100 percent of our best agricultural lands will remain under threat of development,”²²⁷ and the “chance to safely protect 85% of these lands under this provision,”²²⁸ justified its inclusion in Act 233.

Although the 2008 Legislators ultimately cast the votes that resulted in the enactment of Act 233, they did so amidst political discourse that involved several different stakeholder groups. The following three subsections will discuss some of the different viewpoints on Act 233 expressed by large landowners, farmers and ranchers, and public interest groups. This paper is not able to record all viewpoints on Act 233, nor does this paper purport to do so. These subsections are designed to provide a

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

general understanding of some of the different, and often conflicting stakeholder viewpoints, why these different stakeholders were unsatisfied with, in support of, or in opposition to Act 233, and what these different stakeholders think are the biggest strengths and weaknesses of Act 233.

b) Large landowners

The 85:15 provision discussed by Senators Kokubun and Tokuda was, indeed, an incentive created specifically with the large landowners in mind.²²⁹ This provision was the direct result of a proposed amendment to Act 233 submitted by the Land Use Research Foundation (LURF) along with its testimony on February 26, 2008.²³⁰ According to David Arakawa, Executive Director of LURF, "this section represents the only major landowner incentive for designation of IAL."²³¹ Arakawa says that the reality is that you cannot force landowners to keep their land in agriculture, but with good incentives, such as those in Act 233, you can try to keep the best lands in agriculture.²³²

According to HFBF Executive Director Alan Takemoto, who worked closely with Arakawa on developing the IAL incentive package, the 85:15 provision was not an incentive to which HFBF and LURF initially agreed.²³³ Takemoto claims that HFBF was agreeable to a 95:5 or 90:10 provision, but HFBF thought that giving up fifteen percent of potential IAL was just too much.²³⁴ The compromise made by LURF, and finally agreed to by HFBF prior to submission of the proposed 85:15 amendment, was to require a concurrent resolution approved by two thirds of the Legislature in order to remove IAL designation from lands designated IAL as a result of an 85:15 petition.²³⁵

Ironically, since the passage of Act 233, the LUC has not issued any rules for the administration of 85:15 petitions from the large landowners.²³⁶ Although the only two IAL petitions that the LUC has received to date did come from a large landowner, Alexander & Baldwin (A&B), both petitions "voluntarily waiv[ed] any and all rights to assert, claim or exercise any credits pursuant to HRS § 205-45(h) [reclassification credits],²³⁷ that are earned as a result of the petitions.²³⁸

On March 9, 2009, the LUC granted A&B's first petition and designated 3,773 acres in Kōloa and Waimea on Kaua'i as IAL.²³⁹ According to HFBF President Dean Okimoto, who testified in support of A&B's first petition to the LUC for its land in Kaua'i, that petition "would pave the way for other landowners interested in having their lands designated,"²⁴⁰ and the LUC's quick action on A&B's petition would ease the concerns of other landowners who fear that IAL designation will be an onerous process.²⁴¹ Okimoto was pleased that the LUC took only three months from the date that the petition was submitted to approve the state's first IAL designation.²⁴² That A&B quickly filed its second petition one month later is indication that at least one landowner, A&B, is happy with the process. On June 6, 2009, the LUC approved A&B's second petition.²⁴³ Although A&B waived the 85/15 reclassification and credit incentives for both petitions, A&B does plan to take advantage of the qualified agricultural costs tax credits.²⁴⁴

It is difficult to determine why large landowners do not appear eager to capitalize on the 85:15 provision, but according to an anonymous source at the LUC, the message that he is getting is that the large landowners are uncertain how the mechanics of the provision will work.²⁴⁵ Donna Wong, Executive Director of Hawaii's Thousand Friends²⁴⁶ is more skeptical. She suspects that, because of all the controversy surrounding the 85:15 provision, the large landowners are just waiting to let the dust settle some before they take advantage of this incentive. Nonetheless, large landowners have begun to take advantage of at least one of Act 233's incentives. Whether or not farmers are likely to take advantage of the IAL incentives will be discussed in the following section.

c) Farmers and ranchers

Before discussing the viewpoints of farmers and ranchers, it is important to note that they do not constitute one single stakeholder group. This paper discusses farmer and rancher viewpoints in the same subsection only because they can both be described as the primary users of Hawai'i's agricultural lands. The first two enumerated uses of the agricultural district in the land use law (LUL) are, "(1) activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage,

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

and forestry,²⁴⁷ and "(2) farming activities or uses related to animal husbandry²⁴⁸ and game and fish propagation."²⁴⁹ Within both the farmer and the rancher categories, there are several subcategories of farmers and ranchers.²⁵⁰ Because there is a plethora of farmers and ranchers, their viewpoints are aligned on some issues, and vary substantially on other issues. This subsection will highlight some of the shared viewpoints as well as some of the contrasting viewpoints.

Most farmers and ranchers agree that incentives are needed for farming and ranching to be viable uses of agricultural land in Hawai'i.²⁵¹ Alan Takemoto, Executive Director of the Hawai'i Farm Bureau Federation (HFBF), describes Act 233 as an "agricultural viability initiative,"²⁵² that includes "a wide range of incentives covering the critical areas for long term agricultural expansion in Hawai'i."²⁵³ He claims that helping farmers has historically been a low priority, and one of the most important results of Act 233 is that it brings farming and the IAL issue to the forefront of political discourse in Hawai'i.²⁵⁴ Despite his praise for Act 233's "wide range of incentives,"²⁵⁵ according to Takemoto, HFBF wanted more incentives than those contained in Act 233.²⁵⁶ In particular, HFBF wanted larger tax credits and the extension of public trust protections to agricultural water usage.²⁵⁷ Nonetheless, Takemoto considers Act 233 "a huge piece of legislation and a huge step towards achieving greater agricultural viability,"²⁵⁸ and he anticipates that there will be further refinements to the LUL IAL provisions that will lead to even better incentives for farmers and ranchers.²⁵⁹

Dean Okimoto,²⁶⁰ owner and President of Nalo Farms as well as President of HFBF,²⁶¹ agrees that the incentives could be much better,²⁶² but even with the current incentives he is confident that farmers and landowners still have a lot to gain by designating IAL.²⁶³ Although Alexander & Baldwin's two IAL petitions, which combine for a total of 30,906 IAL acres,²⁶⁴ provide some justification for Okimoto's confidence as to large landowners, to date no small farmers have petitioned for IAL designation.²⁶⁵ According to Okimoto, Nalo Farms, which is comprised of approximately twenty acres in Waimanalo (seven acres are owned by Okimoto's family and an additional thirteen acres are leased by Nalo Farms),²⁶⁶ is seriously considering IAL designation for the seven acres it owns, and he knows of at least two other small farms that are also very likely to seek IAL designation within the next year.²⁶⁷ Because it is extremely difficult for farmers to pay their expenses and stay in business, Okimoto claims that the tax credits for qualified agricultural costs, although smaller than he prefers, will be very helpful to small farmers.²⁶⁸ Okimoto believes that it is important for HFBF leaders, such as him, to lead the way in the submission of voluntary farm owner petitions for IAL.²⁶⁹

In contrast to Takemoto and Okimoto's viewpoints, there are other farmers and ranchers who feel that Act 233 falls far short of substantially improving agricultural viability. Alan Gottlieb, President of the Hawaii Cattlemen's Council,²⁷⁰ agrees with HFBF that something needs to be done to protect agriculture in Hawai'i, but he does not think that IAL legislation alone will provide adequate protection.²⁷¹ His biggest concerns with Act 233 are that there are not enough strong incentives for ranchers to voluntarily designate their lands IAL, and, even if the incentives were strong enough, he believes that a lot of ranchlands probably would not meet the necessary standards and criteria for IAL designation.²⁷² In Gottlieb's opinion, the Legislature is not acting like it considers agriculture important yet and he points to the Legislature's refusal to clarify the water code in the IAL legislation by making agriculture a public policy priority as evidence that the Legislature does not consider agriculture important. He says that, "until the Legislature provides stronger more meaningful incentives, Hawai'i's farmers and ranchers will continue to struggle regardless of whether or not their land is IAL."²⁷³ Instead of designating agricultural lands as important, Gottlieb suggests that the first step to take towards protecting agriculture is to make the general public and policy makers aware of why we should value agriculture.²⁷⁴ In his opinion, "if we as a society truly valued agriculture, we would not have to take measures to protect it."²⁷⁵

Similarly, John Ray, a former trustee for the Parker Ranch Foundation Trust²⁷⁶ (2004 to 2007) and the current General Manager of SunFuels Hawaii LLC,²⁷⁷ believes that "the state has never done its homework to really understand how agriculture works and where agriculture works."²⁷⁸ According to Ray, it is absolutely necessary for the state to take a closer look at

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

agriculture before the state can adequately address its agricultural viability problems.²⁷⁹ In the meantime, Ray cautions that IAL should not be misused as a tool for protecting green space, because its principal purpose is to protect agriculture.²³⁰

Keith Unger, Manager of McCandless Ranch,²³¹ takes a more critical position on IAL and argues that IAL designation is an unnecessary and potentially devastating regulation that could "be one more of the reasons why farmers and ranchers go out of business in Hawai'i, or decide to develop or sell, [which is] the exact opposite of what the goal is."²³² Unger claims that IAL designation by way of county submitted IAL maps is government initiated down zoning of private property, which will result in diminished borrowing power for landowners.²³³ He feels strongly that "IAL designations should be entirely voluntary and if private landowners and farm owners don't participate in IAL designations then the incentives must not be good enough."²³⁴ From his perspective, rather than designate the land important, the state needs to designate the farmer and agriculture important. To do this, he recommends that the state establish meaningful economic incentives²⁸⁵ that enable local farmers and ranchers to compete with the mainland markets.²⁸⁶

Although most stakeholder groups agree that the state needs to help farmers and agriculture, as Unger suggests should be the state's top priority, there is disagreement over how to achieve this objective. The following section will discuss the viewpoints of some of the public interest groups that adamantly opposed Act 233 in 2008.

d) Public interest

In the 2008 legislative session, Public interest groups, such as Hawaii's Thousand Friends,²⁸⁷ Life of the Land,²⁸⁸ and Sierra Club,²⁸⁹ argued unsuccessfully that Act 233 did not further the purpose of protecting agricultural viability in Hawai'i and that it undermined the existing Land Use Law.²⁹⁰ According to Henry Curtis, Executive Director of Life of the Land, Act 233 "had nothing to do with protecting agriculture,"²⁹¹ and is better described as a "gift to five or six of the largest landowners in the State from the Legislature."²⁹² Curtis fears that the 85:15 provision could allow some of the state's largest private landowners, such as Alexander and Baldwin or Kamehameha Schools, to turn fifteen percent of their lands into cities.²⁹³ Curtis claims that this would keep large landowners busy building and selling homes for decades, and would leave them with little or no incentive to promote any agriculture on the remaining eighty-five percent of their lands.²⁹⁴ Curtis further argues that any IAL designation that takes place prior to a comprehensive effort to better understand which lands are needed to grow the State's food supply is premature and not good land use policy.²⁹⁵

Donna Wong, Executive Director of Hawaii's Thousand Friends, also contends that Act 233 does nothing to help agriculture and argues that the incentives only cater to large landowners.²⁹⁶ Of particular concern to her is the fact that there are no incentives available to farmers who do not own the lands they farm.²⁹⁷ Because most of these small leasing farmers grow food for in state consumption,²⁹⁸ Wong believes they do far more than large landowners to promote greater agricultural self sufficiency²⁹⁹ and are therefore much more deserving of IAL incentives.³⁰⁰ Dean Okimoto, President of HFBF and owner of Nalo Farms, concedes that none of Act 233's incentives directly benefit farmers who lease their lands.³⁰¹ However, he believes that, as large landowners begin to designate IAL, these farmers will benefit indirectly because large landowners will be more likely to offer long-term leases on IAL than on other lands.³⁰² Okimoto claims that this is because IAL will not be subject to the pressures, faced by non-important agricultural lands, to convert to non-agricultural uses.³⁰³ In Wong's opinion, leasing farmers should be given direct incentives, such as the opportunity and assistance needed to buy the lands they currently lease, so that they can continue their efforts to grow food for in state consumption.³⁰⁴ Until Hawai'i can grow enough food to be self-sufficient as well as maintain a successful agricultural export industry Wong asserts that all agricultural land should be considered "important" and it should be the landowner's burden to prove that its agricultural land is not important.³⁰⁵

Jeff Mikulina, then Executive Director of Sierra Club Hawai'i Chapter, also made an argument that emphasized the importance of all agricultural lands. In his testimony in opposition to Act 233, Mikulina expressed the same fundamental concern

Does Designating Hawai‘i’s Agricultural Lands “Important” Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

that he had raised three years earlier in response to Act 183: IAL legislation should not undermine the value of the existing land use law. According to Mikulina,

[W]hat this measure seems to overlook is the sprawl preventing aspect of our state Land Use Law and the process it provides. The founders of Hawai‘i’s Land Use Law were the first in the nation to establish de facto ‘urban growth boundaries’ and use comprehensive zoning as a way to keep unbridled development in check statewide. Our current law helps prevent costly urbanization of lands far from existing urban areas where additional development is more efficient. In other words, when agriculturally designated lands restrict urban uses outside the urban core (i.e., by prohibiting ‘residential’ uses), they serve their purpose even if they are not actively farmed. Agricultural designation is a critical tool to contain urban growth and focus development where it makes the most sense.

Although Mikulina’s testimony did not convince the Legislature to strike down Act 233, it does bring this discussion back around to the principles that Cooper and Daws claim are fundamental to Hawai‘i’s Land Use Law: “make urbanization efficient in the use of all types of resources; and preserve agricultural and conservation lands as much as possible.” Mikulina makes a strong argument that Act 233 undermines the efficient urbanization growth management aspect of the LUL. However, his argument falls far short of answering the question suggested by Alan Gottlieb: Why should Hawai‘i value agriculture? Until there is more of a consensus across the state on the answer to this question, the state will most likely struggle to balance the competing interests in its agricultural lands regardless of whether or not these lands are designated important. The final section of this paper will offer some concluding observations that do not begin to answer why Hawai‘i should value agriculture, but that do help to keep agriculture in Hawai‘i at the forefront of the state’s political discourse.

IV. CONCLUDING OBSERVATIONS

This section will present some observations based primarily on the stakeholder viewpoints discussed in this paper. This paper does not purport to answer the questions it presents, nor does it purport to raise all of the important issues relating to agriculture in Hawai‘i. This paper does challenge the State of Hawai‘i to do more to identify and promote the state’s most *important agricultural priorities* (IAP).

A) Why Is Agriculture Important to Hawai‘i?

This is the threshold question that needs to be answered before Hawai‘i can adequately promote its important agricultural priorities (IAP) - not necessarily, “this is the answer . . . ,” but more, “here are some important priorities” Different agricultural issues are important to different stakeholders for different reasons. For Donna Wong, the most important agricultural priority could be helping Hawai‘i’s small farmers put food on the tables of friends and family so that she need not worry about what they will eat when the supply lines are cut off by a hurricane, tsunami, earthquake, or union strike. For Keith Unger, the most important agricultural priority could be establishing meaningful economic incentives for farmers and ranchers so that they can lower their costs, lower their prices, increase their economic viability, and keep their lands green and open for all to enjoy. For Dean Okimoto, the most important agricultural priority could be a statewide “buy local” campaign so that the market for local products grows and gives his peers the confidence they need to invest in branding their own “Waimanalo Greens,” “Hamakua Mushrooms,” or “Kamuela Tomatoes.”

For the State of Hawai‘i, the most important agricultural priority should be the continued political discourse on why we value agriculture so that Hawai‘i’s diverse populace can understand all the issues, search for common ground, and implement agricultural laws and policies that are not catered too much to some stakeholders at the expense of others.

B) What Aspects of Agriculture In Hawai‘i Does IAL Help Most?

Once there is a consensus on what are Hawai‘i’s most important agricultural priorities (IAP), the next step is to examine the existing laws and policies that affect agriculture and to determine what aspects of agriculture still need help. Acts 183 and 233 are in their early years and how they shape the future of agriculture in Hawai‘i will become more clear over time. However, a close analysis of the incentives in Act 233 suggests that IAL could be most helpful to landowners or farm owners that: (1) *own agricultural lands* and have agricultural expenditures; (2) can afford to employ several workers and construct housing for such workers on *their lands*; (3) earn more than 50% of their income from agricultural activities taking place on *their lands*; (4) *own*

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

lands with already established public or private irrigation systems; (5) desire to construct agricultural processing facilities on *their lands*; and/or (6) *own large amounts of agricultural land*. The IAL incentives clearly are designed to provide direct benefits to Hawai'i's large landowners, which should come as no surprise because the large landowners own most of the state's best agricultural lands.

The State of Hawai'i therefore needs to determine if helping large landowners is the best way to promote Hawai'i's most important agricultural priorities.

C) Is IAL Just Another Attempt to Reinvent the Wheel?

In 1961, the legislature determined that there was a lack of adequate land controls and it enacted the Land Use Law, which resulted in the classification of close to 50% of the state's lands as agricultural. Mililani, in addition to other isolated "towns," popped up on the state's best agricultural lands, and in 1978, delegates to the state constitutional convention amended the constitution to clarify that agricultural lands are important and should be protected. Twenty-seven years and countless urban and agricultural subdivisions later, and the Legislature designated agricultural lands important.

The State of Hawai'i needs to determine if classifications and designations are the best way to promote the state's important agricultural priorities. If so, then the state is on the right track. If not, then a new approach is needed.

D) Are There Other Approaches to Promote Hawai'i's Important Agricultural Priorities (IAP) That Need Consideration?
You tell me.



ENDNOTES:

1. The author would like to express his sincere appreciation to the many stakeholders who contributed their insights on the topic of this paper. The paper could not have been possible, nor would it have been nearly as insightful, without these contributions. The author would also like to thank Professor Denise Antolini for her excellent guidance and feedback throughout the process of writing this paper.
2. Act 233, 2008 Haw. Sess. Laws 856.
3. Haw. Const. art. XI, § 3.
4. Conf. Com. Rep. on S.B. 2646, 2008 Haw. House J. 957, 960 (Rep. Magaoy in support of Act 233).
5. Conf. Com. Rep. on S.B. 2646, 2008 Haw. House J. 957, 960 (Rep. Shimabukura in opposition to Act 233).
6. Haw. Const. Art. XI, § 3.
7. Act 187, 1961 Haw. Sess. Laws 229.
8. Haw. Const. Art. XI, § 3.
9. Act 183, § I, 2005 Haw. Sess. Laws 580.
10. Act 233, Pt. VI, § 10, 2008 Haw. Sess. Laws 862.
11. E.S. Craighill Handy & Elizabeth Green Handy with the collaboration of Mary Kawena Pukui, *NATIVE PLANTERS IN OLD HAWAII; THEIR LIFE, LORE, & ENVIRONMENT* 259-64 (1991, reprinted in 2004) (discussing Hawaiian fishing and fishpond cultivation).
12. E.S. Craighill Handy & Elizabeth Green Handy with the collaboration of Mary Kawena Pukui, *NATIVE PLANTERS IN OLD HAWAII; THEIR LIFE, LORE, & ENVIRONMENT* 242-59 (1991, reprinted in 2004) (discussing animals domesticated and hunted by the Hawaiians).
13. E.S. Craighill Handy & Elizabeth Green Handy with the collaboration of Mary Kawena Pukui, *NATIVE PLANTERS IN OLD HAWAII; THEIR LIFE, LORE, & ENVIRONMENT*, Foreword, vi (1991, reprinted in 2004).
14. By "old Hawaii" I refer to Hawaii in the years prior to 1778 through the first half of the nineteenth century.
15. E.S. Craighill Handy & Elizabeth Green Handy with the collaboration of Mary Kawena Pukui, *NATIVE PLANTERS IN OLD HAWAII; THEIR LIFE, LORE, & ENVIRONMENT*, Foreword (1991, reprinted in 2004).
16. Ralph S. Kuykendall, *THE HAWAIIAN KINGDOM, 1778 – 1854: FOUNDATION AND TRANSFORMATION*, 6 (Univ. of Haw. 1938).
17. E.S. Craighill Handy & Elizabeth Green Handy with the collaboration of Mary Kawena Pukui, *NATIVE PLANTERS IN OLD HAWAII; THEIR LIFE, LORE, & ENVIRONMENT* 14 (1991, reprinted in 2004).
18. Ralph S. Kuykendall, *THE HAWAIIAN KINGDOM 1778 – 1854: FOUNDATION AND TRANSFORMATION* 6 (Univ. of Haw. 1938).
19. E.S. Craighill Handy & Elizabeth Green Handy with the collaboration of Mary Kawena Pukui, *NATIVE PLANTERS IN OLD HAWAII; THEIR LIFE, LORE, & ENVIRONMENT* 14 (1991, reprinted in 2004).
20. See Thomas H. Creighton, *THE LANDS OF HAWAII: THEIR USE AND MISUSE* 131 (Univ. of Haw. 1978).
21. Thomas H. Creighton, *THE LANDS OF HAWAII: THEIR USE AND MISUSE* 131 (Univ. of Haw. 1978).

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

22. See, e.g., Ralph S. Kuykendall, *THE HAWAIIAN KINGDOM, 1854 – 1874: TWENTY CRITICAL YEARS*, ch. 5, 135 – 176 (Univ. of Haw. 1953) (discussing the shift from an economy dependant on the whaling industry to one dependant on the sugar industry).
23. Gavan Daws, *SHOAL OF TIME: A HISTORY OF THE HAWAIIAN ISLANDS* 174 (1968, reprinted in 1974) (writing that there were many bankruptcies in the 1850s as a result of failed sugarcane start ups).
24. Ralph S. Kuykendall, *THE HAWAIIAN KINGDOM, 1854 - 1874: TWENTY CRITICAL YEARS* 143 (Univ. of Haw. 1953) (stating that “by the close of the Civil War, sugar had definitely replaced whaling as the mainstay of island economy”)
25. Carol Wilcox, *SUGAR WATER: HAWAII'S PLANTATION DITCHES* 2 (1996); Gavan Daws, *SHOAL OF TIME: A HISTORY OF THE HAWAIIAN ISLANDS* 174 (1968, reprinted in 1974); Ralph S. Kuykendall, *THE HAWAIIAN KINGDOM, 1854 - 1874: TWENTY CRITICAL YEARS* 141-42 (Univ. of Haw. 1953).
26. Carol Wilcox, *SUGAR WATER: HAWAII'S PLANTATION DITCHES* 5 (1996).
27. See Carol Wilcox, *SUGAR WATER: HAWAII'S PLANTATION DITCHES* 20 (1996) (noting that C. Brewer & Co., Cavies & Co., Castle & Cooke, Alexander & Baldwin, Irvin & Co, and Hackfield & Co. controlled 89 percent of the plantation production); see also Wikipedia, *The Free Encyclopedia*, (citing Takaki, Ronald, *RAISING CANE: THE WORLD OF PLANTATION HAWAII*, New York, NY: Chelsea House Publishers (1994)) available online at: http://en.wikipedia.org/wiki/Hawaiian_sugarcane#cite_note-Takaki94-5 (last visited on April 26, 2009).
28. Gavan Daws, *SHOAL OF TIME: A HISTORY OF THE HAWAIIAN ISLANDS* 179-81 (1968, reprinted in 1974) (noting that between 1852 and 1876 several thousand Chinese men immigrated to Hawaii and soon outnumbered white men).
29. Ralph S. Kuykendall, *THE HAWAIIAN KINGDOM 1874-1893: THE KALAKAUA DYNASTY* 116 (1967, reprinted 1987) (citing from the 1900 U.S. Census Bureau).
30. Gavan Daws, *SHOAL OF TIME: A HISTORY OF THE HAWAIIAN ISLANDS* 358 (1968, reprinted in 1974).
31. See Carol Wilcox, *SUGAR WATER: HAWAII'S PLANTATION DITCHES* 20 (1996); See also Wikipedia, *The Free Encyclopedia*, (citing Takaki, Ronald, *Raising Cane: The World of Plantation Hawaii*, New York, NY: Chelsea House Publishers (1994)) available online at: http://en.wikipedia.org/wiki/Hawaiian_sugarcane#cite_note-Takaki94-5 (last visited on April 26, 2009).
32. Carol Wilcox, *SUGAR WATER: HAWAII'S PLANTATION DITCHES* 20 (1996) (noting that C. Brewer & Co., Cavies & Co., Castle & Cooke, Alexander & Baldwin, Irvin & Co, and Hackfield & Co. controlled 89 percent of the plantation production)
33. Carol Wilcox, *SUGAR WATER: HAWAII'S PLANTATION DITCHES* 20 (1996).
34. Gavan Daws, *SHOAL OF TIME: A HISTORY OF THE HAWAIIAN ISLANDS* 312 (1968, reprinted in 1974).
35. Carol Wilcox, *SUGAR WATER: HAWAII'S PLANTATION DITCHES*, 20-22 (1996) (stating that land being used for cultivating sugar remained at around 200,000 acres, but rose to as high as 250,000 acres in 1920).
36. Gavan Daws, *SHOAL OF TIME: A HISTORY OF THE HAWAIIAN ISLANDS* 312 (1968, reprinted in 1974) (stating that the Big Five owned “every business associated with sugar: banking; insurance; utilities; wholesale and retail merchandising; railroad transportation in the islands; shipping between islands and between islands and California.”).
37. Gavan Daws, *SHOAL OF TIME: A HISTORY OF THE HAWAIIAN ISLANDS* 312 (1968, reprinted in 1974) (quoting a federal labor investigator who said in 1906 that these business “all liv[ed] off the plantations and [took] their profits in lean years as well as in fat ones.”).
38. George Cooper & Gavan Daws, *LAND AND POWER IN HAWAII* 2 (1985, reprinted in 1990).
39. Carol Wilcox, *SUGAR WATER: HAWAII'S PLANTATION DITCHES* 22 (1996).
40. Carol Wilcox, *SUGAR WATER: HAWAII'S PLANTATION DITCHES* 110 (1996).
41. *Hawaii sugarcane yield estimated to be up 7% in 2008*, HONOLULU ADVERTISER, <http://www.honoluluadvertiser.com/article/20090212/BREAKING03/90212107> (last visited on Mar. 8, 2009).
42. See Annette Clausen, *Hawaii's sugar industry under stress - Hawaiian sugar cane acreage and production decreases to 26% of U.S. cane production, down from 38% in 1975 - U.S. Dept. of Agriculture, Foreign Agricultural Service Report*, *Agricultural Outlook*, Oct. 1991. Available online at: http://findarticles.com/p/articles/mi_m3778/is_1991_Oct/ai_12013447/?tag=content:coll (last visited on Oct. 6, 2010).
43. See Annette Clausen, *Hawaii's sugar industry under stress - Hawaiian sugar cane acreage and production decreases to 26% of U.S. cane production, down from 38% in 1975 - U.S. Dept. of Agriculture, Foreign Agricultural Service Report*, *Agricultural Outlook*, Oct. 1991. Available online at: http://findarticles.com/p/articles/mi_m3778/is_1991_Oct/ai_12013447/?tag=content:coll (last visited on Oct. 6, 2010).
44. See Annette Clausen, *Hawaii's sugar industry under stress - Hawaiian sugar cane acreage and production decreases to 26% of U.S. cane production, down from 38% in 1975 - U.S. Dept. of Agriculture, Foreign Agricultural Service Report*, *Agricultural Outlook*, Oct. 1991. Available online at: http://findarticles.com/p/articles/mi_m3778/is_1991_Oct/ai_12013447/?tag=content:coll (last visited on Oct. 6, 2010).
45. Used here, “agricultural lands” refers to lands in Hawaii with a state land use designation of “agricultural 1” or “agricultural 2.”
46. George Cooper & Gavan Daws, *LAND AND POWER IN HAWAII* 86 (1985, reprinted in 1990).
47. Gavan Daws, *SHOAL OF TIME: A HISTORY OF THE HAWAIIAN ISLANDS* 395 (1968, reprinted in 1974) (noting that Hawaii's population was approximately 500,000 at the end of World War II, and had increased to approximately 750,000 by the mid-sixties.).
48. Gavan Daws, *SHOAL OF TIME: A HISTORY OF THE HAWAIIAN ISLANDS* 394 (1968, reprinted in 1974).
49. Thomas H. Creighton, *THE LANDS OF HAWAII: THEIR USE AND MISUSE* 239 (Univ. of Haw. 1978).
50. George Cooper & Gavan Daws, *LAND AND POWER IN HAWAII* 2 (1985, reprinted in 1990).
51. George Cooper & Gavan Daws, *LAND AND POWER IN HAWAII* 86-87 (1985, reprinted in 1990).
52. George Cooper & Gavan Daws, *LAND AND POWER IN HAWAII* 86-87 (1985, reprinted in 1990).
53. George Cooper & Gavan Daws, *LAND AND POWER IN HAWAII* 86-87 (1985, reprinted in 1990).
54. Act 187, 1961 Haw. Sess. Laws 229.
55. George Cooper & Gavan Daws, *LAND AND POWER IN HAWAII* 86 (1985, reprinted in 1990).
56. George Cooper & Gavan Daws, *LAND AND POWER IN HAWAII* 86 (1985, reprinted in 1990).
57. George Cooper & Gavan Daws, *LAND AND POWER IN HAWAII* 86 (1985, reprinted in 1990).
58. Act 187, 1961 Haw. Sess. Laws 229.

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

59. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 87 (1985, reprinted in 1990).
60. Haw. Rev. Stat. § 205-1 (2001 & Supp. 2008).
61. Act 205, 1963 Haw. Sess. Laws 316.
62. Haw. Rev. Stat. § 205-2 (2001 & Supp. 2008).
63. Haw. Rev. Stat. § 205-4 (2001 & Supp. 2008).
64. Haw. Rev. Stat. § 205-17 (2001 & Supp. 2008).
65. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 87 (1985, reprinted in 1990).
66. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 88 (1985, reprinted in 1990).
67. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 88 (1985, reprinted in 1990).
68. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 88 (1985, reprinted in 1990).
69. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 89 (1985, reprinted in 1990).
70. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 89 (1985, reprinted in 1990).
71. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 89 (1985, reprinted in 1990).
72. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 86 (1985, reprinted in 1990) (sharing Gill's thoughts on why the LUL received enough votes for passage.).
73. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 91 (1985, reprinted in 1990).
74. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 97 (1985, reprinted in 1990) (stating that the Parker Ranch land manager, the Dole Corporation land manager, the manager of an Amfac sugar plantation on Kauai, and the president of Dillingham Investment Co. were four of the first seven LUC commissioners.).
75. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 97 (1985, reprinted in 1990).
76. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 98 (1985, reprinted in 1990) (quoting a Star Bulletin article reporting on Senator Yoshinaga's reasons for blocking Wenkam's reappointment in the committee that he chaired. HSB May 5, 1967).
77. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 122 (1985, reprinted in 1990) (citing G. Kem Lowry Jr., *Evaluating State Land Use Control: Perspectives and a Hawaii Case Study*, 18 URB. L. ANN. 85 (1980), and summarizing some of Lowry's findings.).
78. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 122 (1985, reprinted in 1990) (citing G. Kem Lowry Jr., *Evaluating State Land Use Control: Perspectives and a Hawaii Case Study*, 18 URB. L. ANN. 85 (1980)).
79. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 91 (1985, reprinted in 1990) (summarizing a staff reports made by LUC staff director, Ramon A. Duran, in 1969).
80. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 91 (1985, reprinted in 1990) (quoting LUC staff director, Ramon A. Duran, from comments made in an LUC staff report in 1969).
81. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 90-92 (1985, reprinted in 1990) (discussing the reclassifications from agricultural to urban in Central Oahu).
82. Delegate Hornick in support of Am. 9, Com. Whole Rep. No. 18, reprinted in Proceedings of Con Con of Haw. 442 (1978).
83. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 123 (1985, reprinted in 1990).
84. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 123 (1985, reprinted in 1990).
85. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 91 (1985, reprinted in 1990) (quoting and summarizing a 1983 *Forbes* magazine article, "East of Eden," FORBES, Jan 31 (1983)).
86. "Cultural Renaissance," HawaiianHistory.org, <http://www.hawaiihistory.org/index.cfm?fuseaction=ig.page&PageID=440> (last visited on Mar. 8, 2009).
87. "Cultural Renaissance," HawaiianHistory.org, <http://www.hawaiihistory.org/index.cfm?fuseaction=ig.page&PageID=440> (last visited on Mar. 8, 2009).
88. Jon M. Van Dyke, *Time for a tune-up*, HONOLULU ADVERTISER, May 5, 2008 (discussing the many native Hawaiian issues that were addressed in the 1978 ConCon.)
89. Jon M. Van Dyke, *Time for a tune-up*, HONOLULU ADVERTISER, May 5, 2008 .
90. Haw. Const. art. XI, § 3.
91. Delegate Hornick in support of Am. 9, Com. Whole Rep. No. 18, reprinted in Proceedings of Con Con of Haw. 441 (1978).
92. Delegate Hornick in support of Am. 9, Com. Whole Rep. No. 18, reprinted in Proceedings of Con Con of Haw. 443 (1978).
93. Delegate Hornick in support of Am. 9, Com. Whole Rep. No. 18, reprinted in Proceedings of Con Con of Haw. 442 (1978) (citing Kem Lowry's study of LUC petitions for reclassifications of agricultural lands).
94. Delegate Hornick in support of Am. 9, Com. Whole Rep. No. 18, reprinted in Proceedings of Con Con of Haw. 442 (1978).
95. Delegate Harris in support of Am. 9, Com. Whole Rep. No. 18, reprinted in Proceedings of Con Con of Haw. 440 (1978) (agreeing with and quoting a central Oahu planning document).
96. Delegate Harris in support of Am. 9, Com. Whole Rep. No. 18, reprinted in Proceedings of Con Con of Haw. 440 (1978).
97. Delegates De Costa, Lacy, McCall, and Odanaka all in support of Am. 9, Com. Whole Rep. No. 18, reprinted in Proceedings of Con Con of Haw. 442 (1978).
98. Delegate Peterson in opposition to Am. 9, Com. Whole Rep. No. 18, reprinted in Proceedings of Con Con of Haw. 444 (1978).
99. Delegate Peterson in opposition to Am. 9, Com. Whole Rep. No. 18, reprinted in Proceedings of Con Con of Haw. 444 (1978).
100. Delegate Peterson in opposition to Am. 9, Com. Whole Rep. No. 18, reprinted in Proceedings of Con Con of Haw. 444 (1978).
101. Haw. Const. art. XI, § 3.

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

102. Representative Kanoho in support of HB No. 1640, 2005 House J. 993 (noting the 27 years that had passed since article XI, sect. 3 was adopted).
103. Representative Kanoho in support of HB No. 1640, 2005 House J. 993 (noting the 27 years that had passed since article XI, sect. 3 was adopted).
104. This number is based on information gathered from the Findings of Fact, Conclusions of Law, and Decisions and Orders issued by the Land Use Commission for petitions for land reclassifications on the island of Oahu between 1979 and 2005 published on the LUC website: http://luc.state.hi.us/candc_honolulu.htm (last visited on Mar. 8, 2009).
105. This number is based on information gathered from the Findings of Fact, Conclusions of Law, and Decisions and Orders issued by the Land Use Commission for petitions for land reclassifications on the island of Oahu between 1979 and 2005 published on the LUC website: http://luc.state.hi.us/candc_honolulu.htm (last visited on Mar. 8, 2009).
106. Act 183, § I, 2005 Haw. Sess. Laws, 580.
107. S.B. No. 2419, Status Rep., 2003 Haw. Leg. Sess., available at <http://www.capitol.hawaii.gov/session2002/status/SB2419.asp> (last visited on April 8, 2009).
108. H.B. No. 1558 HD1, Status Rep., 2003 Haw. Leg. Sess., available at <http://www.capitol.hawaii.gov/session2003/status/HB1558.asp> (last visited on April 8, 2009).
109. S.B. No. 3052 SD2 CD2 Status Rep., 2004 Haw. Leg. Sess., available at <http://www.capitol.hawaii.gov/session2004/status/SB3052.asp> (last visited on April 8, 2009).
110. The Hawaii Farm Bureau Federation (HFBF) was formed in 1948 and has since "grown into the present statewide organization consisting of approximately 2200 member families in ten counties located throughout the State." HFBF website, available at <http://www.hfbf.org/about.html#about> (last visited on April 8, 2009).
111. Telephone interview with Alan Takemoto, 2008 Exec. Dir., HFBF (Feb. 12, 2009).
112. "The Land Use Research Foundation of Hawaii (LURF) was established in 1979 to promote and advance the interests of the development community, particularly in the areas of land use laws and regulations." LURF's current membership includes Alexander and Baldwin, Maui Land and Pineapple, Castle and Cooke, the Kamehameha Schools, and several of Hawai'i's other large landowners and developers. <http://www.lurf.org/> (last visited on Feb. 8, 2009).
113. Hawaii's Thousand Friends is a non-profit organization "dedicated to ensuring that growth is reasonable and responsible, that appropriate planning, management, and water & land use decisions are made that protect the environment, human health and cultural and natural resources, and that decisions are made and proposals are implemented in conformity with the law." <http://www.hawaiis1000friends.org/> (last visited on April 9, 2009).
114. "[T]he Agriculture Working Group representing all involved stakeholders of the community comprised of Agribusiness Development Corporation, Alexander & Baldwin, Inc., Business Retention and Expansion, Brigham Young University Farms, Castle & Cooke, Department of Business, Economic Development and Tour Tourism, Department of Agriculture, City and County of Honolulu Department of Planning and Permitting, Maui Planning Department, Kauai Planning Department, Hawaii Planning Department, Department of Land and Natural Resources, Grove Farms, Hawaii Agriculture Research Center, Hawaii's Thousand Friends, Hawaiian Commercial & Sugar, Hawaii Farm Bureau Federation, Hawaii Farm Bureau Federation-Kauai, Hawaii Leeward Planning Conference, HPC Foods, Ltd., Jeffs Farms, Kahili Farm Kauai, Kamehameha Schools, Kauai County Council, Land Use Research Foundation of Hawaii, Lanihau Partners, Life of the Land, Mark A. Robinson Trust, Matsuda-Fukuyama Farms, Maui County Farm Bureau, Maui Land & Pineapple Co., Inc., Mountain View Dairy, Inc., Nalo Farms, Native Hawaiian Legal Corporation, Okudara & Associates, Inc., Parker Ranch, Princeville Corp., Royal Coast Tropical Fruit Company, state Land Use Commission, state Office of Planning, The Estate of James Campbell, The Nature Conservancy, University of Hawaii at Manoa, Public Policy Center, University of Hawaii at Manoa, College of Tropical Agriculture and Human Resources, United States Department of Agriculture-Natural Resources Conservation Service, Volcano Island Fruit Co., W.T. Haraguchi Farm, Inc., and Waialua Coffee Farm." H.R. No. 157 HD1, 2003 Haw. Leg. Sess., available at http://www.capitol.hawaii.gov/session2003/bills/hcr157_hd1_.htm (last visited on April 9, 2009).
115. H.R. No. 157 HD1, 2003 Haw. Leg. Sess., available at http://www.capitol.hawaii.gov/session2003/bills/hcr157_hd1_.htm (last visited on April 9, 2009).
116. Personal interview with David Arakawa, Exec. Dir., LURF (Sept. 30, 2010).
117. Personal interview with David Arakawa, Exec. Dir., LURF (Sept. 30, 2010).
118. In addition to being the President of HFBF, Dean Okimoto is the owner and President of Nalo Farms. "Founded in 1953, Nalo Farms has been a family farm for over half a century. Nestled at the feet of the majestic Ko'olau Mountains in Waimanalo, on the beautiful island of Oahu, the farm supplies fresh-cut, top-quality greens to Hawaii's top restaurants' chefs daily." Nalo Farms website, available at <http://www.nalo-farms.com/index.html> (last visited on April 25, 2009).
119. Telephone interview with Dean Okimoto, Pres. of HFBF, Owner & Pres. of Nalo Farms, (April 25, 2009).
120. Telephone interview with Dean Okimoto, Pres. of HFBF, Owner & Pres. of Nalo Farms, (April 25, 2009).
121. Telephone interview with Dean Okimoto, Pres. of HFBF, Owner & Pres. of Nalo Farms, (April 25, 2009).
122. Act 183, § I, 2005 Haw. Sess. Laws 580.
123. Act 183, § I, 2005 Haw. Sess. Laws 580.
124. Act 183, § I, 2005 Haw. Sess. Laws 580.
125. Act 183, Pt. I, § 2, § 205-B(1), 2005 Haw. Sess. Laws 580.
126. Act 183, Pt. I, § 2, § 205-B(2), 2005 Haw. Sess. Laws 580.
127. Act 183, Pt. I, § 2, § 205-B(3), 2005 Haw. Sess. Laws 580.
128. Act 183, Pt. I, § 2, § 205-D, 2005 Haw. Sess. Laws 580.
129. Act 183, Pt. I, § 2, § 205-, 2005 Haw. Sess. Laws 580.
130. Act 183, Pt. I, § 2, § 205-I(d)(1) & (2), 2005 Haw. Sess. Laws 580.
131. Act 183, Pt. II, § 7, 2005 Haw. Sess. Laws 580.

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

132. Act 183, Pt. I, § 2, § 205-G, 2005 Haw. Sess. Laws 580.
133. Act 183, Pt. I, § 2, § 205-H, 2005 Haw. Sess. Laws 580.
134. Act 183, Pt. I, § 2, §§ 205-H to I, 2005 Haw. Sess. Laws 580.
135. Act 183, Pt. II, § 8, 2005 Haw. Sess. Laws 580.
136. Act 183, Pt. I, § 2, § 205-E, 2005 Haw. Sess. Laws 580.
137. Act 183, Pt. III, § 9, 2005 Haw. Sess. Laws 580.
138. Act 183, Pt. II, § 11, 2005 Haw. Sess. Laws 580.
139. Act 183, Pt. III, § 9, 2005 Haw. Sess. Laws 580.
140. Act 183, Pt. I, § 2, § 205-F, 2005 Haw. Sess. Laws 580.
141. Act 183, Pt. I, § 2, § 205-F(c), 2005 Haw. Sess. Laws 580.
142. Act 183, Pt. I, § 2, § 205-J(c)(1-5), 2005 Haw. Sess. Laws 580.
143. Act 183, Pt. I, § 2, § 205-J(d)(1-2), 2005 Haw. Sess. Laws 580.
144. Act 183, Pt. I, § 2, § 205-J(g), 2005 Haw. Sess. Laws 580.
145. H.B. 1640 Measure Hist., 2005 Haw. Leg. Sess., available at <http://capitol.hawaii.gov/session2005/status/HB1640.asp> (last visited on Feb. 27, 2009).
146. Rep. Berg in support of H.B. No. 1640, 2005 Haw. House J. 298.
147. Rep. Abinsay in support of H.B. No. 1640, 2005 Haw. House J. 994.
148. Rep. Kanoho in support of H.B. 1640, 2005 Haw. House J. 993.
149. Rep. Kanoho in support of H.B. 1640, 2005 Haw. House J. 993 (thanking HFBF President Dean Okimoto, HFBF Executive Director Alan Takemoto, LURF Executive Director Dean Uchida, UIH CTAHR faculty member Dr. Andrew Hashimoto, Board of Agriculture Chairperson Sandy Kunimoto, then Deputy Director of DLNR Dan Davidson, then Executive Officer of LUC Anthony Ching, and Ruby Edwards of the Office of Planning).
150. Rep. Kanoho in support of H.B. 1640, 2005 Haw. House J. 993.
151. Testimony of the Chairperson of the Board of Land and Natural Resources in support of H.B. No. 1640, hearing before House WLO/AGR on Feb 5, 2005, available at Hawaii State Archives (last visited on April 8, 2009).
152. Testimony of the Chairperson of the Board of Land and Natural Resources in support of H.B. No. 1640, hearing before House WLO/AGR on Feb 5, 2005, available at Hawaii State Archives (last visited on April 8, 2009).
153. Testimony of the Chairperson of the Board of Land and Natural Resources in support of H.B. No. 1640, hearing before House WLO/AGR on Feb 5, 2005, available at Hawaii State Archives (last visited on April 8, 2009).
154. Testimony of Anthony Ching, Executive Officer, State Land Use Commission, in support of H.B. No. 1640, hearing before House EDB on Feb 14, 2005, available at Hawaii State Archives (last visited on April 8, 2009).
155. Testimony of Meredith Ching, Vice Pres., Alexander and Baldwin, in support of H.B. No. 1640, hearing before House EDB on Feb 14, 2005, available at Hawaii State Archives (last visited on April 8, 2009).
156. Testimony of Dean Uchida, Executive Director of LURF, in support of H.B. No. 1640, hearing before House WLO/AGR on Feb 5, 2005, available at Hawaii State Archives (last visited on April 8, 2009).
157. Testimony of Jeff Mikulina, then executive director of Sierra Club Hawaii, commenting on H.B. No. 1640, hearing before House EDB on Feb 14, 2005, available at Hawaii State Archives (last visited on April 8, 2009).
158. Testimony of Jeff Mikulina, then executive director of Sierra Club Hawaii, commenting on H.B. No. 1640, hearing before House EDB on Feb 14, 2005, available at Hawaii State Archives (last visited on April 8, 2009).
159. Testimony of Jeff Mikulina, then executive director of Sierra Club Hawaii, commenting on H.B. No. 1640, hearing before House EDB on Feb 14, 2005, available at Hawaii State Archives (last visited on April 8, 2009).
160. Testimony of Blake McElheny in his individual capacity in opposition to H.B. No. 1640, hearing before House WLO/AGR on Feb 5, 2005, available at Hawaii State Archives (last visited on April 8, 2009).
161. Testimony of Blake McElheny in his individual capacity in opposition to H.B. No. 1640, hearing before House WLO/AGR on Feb 5, 2005, available at Hawaii State Archives (last visited on April 8, 2009).
162. Testimony of Hawaiian Agriculture Research Center, in support of H.B. No. 1640, hearing before Senate Ways and Means on April 1, 2005, available at Hawaii State Archives (last visited on April 8, 2009).
163. Testimony of Anthony Ching, Executive Officer, State Land Use Commission, in support of H.B. No. 1640, hearing before House EDB on Feb 14, 2005, available at Hawaii State Archives (last visited on April 8, 2009).
164. Testimony of Alan Takemoto, then executive director of Hawaii Farm Bureau Federation, in support of H.B. No. 1640, hearing before Senate Ways and Means on April 1, 2005, available at Hawaii State Archives (last visited on April 8, 2009).
165. Act 183, Pt. III, § 9, (b) 2005 Haw. Sess. Laws 580.
166. Act 183, Pt. III, § 9, (b) 2005 Haw. Sess. Laws 580.
167. Telephone interview with Alan Takemoto, 2008 Exec. Dir., HFBF (Feb. 12, 2009).
168. Telephone interview with Alan Takemoto, 2008 Exec. Dir., HFBF (Feb. 12, 2009).
169. Telephone interview with Alan Takemoto, 2008 Exec. Dir., HFBF (Feb. 12, 2009).
170. S.B. No. 2646, Bill Status, 2008 Haw. Leg. Sess., available at <http://capitol.hawaii.gov/session2008/lists/getstatus2.asp> (last visited on Feb. 26, 2009).
171. Act 233, Pt. I, § 1(2), 2008 Haw. Sess. Laws 856-57. Act 233, Pt 1, § 1(2) is omitted here because it is unrelated to the IAL incentives, which are the focus of the discussion in this section of the paper. Section 1(2) expresses the goal of "providing for the designation of [IAL] on public lands." Act 183 did not express whether IAL designation would occur on public lands.
172. Act 233, Pt. I, § 1, 2008 Haw. Sess. Laws 856-57.
173. Act 233, Pt. II, § 2, 2008 Haw. Sess. Laws 857.
174. Act 233, Pt. III, §§ 3-4, 2008 Haw. Sess. Laws 857-61.

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

175. Act 233, Pt. IV, §§ 7-9, 2008 Haw. Sess. Laws 861-62.
176. Act 233, Pt. VI, § 10, 2008 Haw. Sess. Laws 862.
177. Act 233, Pt. VII, §§ 11-12, 2008 Haw. Sess. Laws 863.
178. Act 233, Pt. X, §§ 18-19, 2008 Haw. Sess. Laws 866-69.
179. *E.g.*, telephone interview with Keith Unger, McCandless Ranch, Honaunau, HI (Mar. 27, 2009).
180. Act 233, Pt. II, § 2, 2008 Haw. Sess. Laws 857.
181. *E.g.* farming, ranching, and other agribusiness enterprises.
182. Act 233, Pt. III, § 3-4, 2008 Haw. Sess. Laws 857-61.
183. Act 233, Pt. III, §§ 3-4, 2008 Haw. Sess. Laws 857-61.
184. Act 233, Pt. VI, § 10, 2008 Haw. Sess. Laws 857-61.
185. According to Alan Takemoto, Executive Officer of HFBB, one of HFBB's primary goals is "to encourage farm businesses to stay in business and to encourage new farmers to take up farming." Telephone interview with Alan Takemoto, 2008 Exec. Dir., HFBB (Feb. 12, 2009).
186. Defined as "a farmer, cooperative association, or landowner who derives at least fifty per cent of its gross income from agricultural or aquacultural activities." Act 233, Pt. IV, § 8, 2008 Haw. Sess. Laws 857-61.
187. Defined as "a project relating to agricultural or aquacultural operations or capitol improvements." Act 233, Pt. IV, § 8, 2008 Haw. Sess. Laws 857-61.
188. Act 233, Pt. IV, § 8, 2008 Haw. Sess. Laws 857-61.
189. Act 233, Pt. VI, § 10, 2008 Haw. Sess. Laws 857-61.
190. Act 233, Pt. VI, § 10(e)(1,2, & 5), 2008 Haw. Sess. Laws 857-61.
191. Defined as "a business primarily engaged in the care and production of livestock, livestock products, poultry, poultry products, apiary, horticultural or floracultural products, the planting, cultivating, and harvesting of crops or trees, or the farming of any plant or animal species in a controlled salt, brackish, or fresh water environment." Act 233, Pt. VII, §§ 11, 12, 2008 Haw. Sess. Laws 857-61.
192. Act 233, Pt. VII, §§ 11, 12, 2008 Haw. Sess. Laws 857-61.
193. The controversial nature of the farmer or landowner petition process is discussed in greater detail in the Act 233 Stakeholder support, opposition, and comment section of this paper.
194. Haw. Rev. Stat. § 205-45 (2001 & Supp. 2008).
195. Act 233, Pt. X, §§ 18-19, 2008 Haw. Sess. Laws 866-69.
196. For example, in a petition that seeks to designate 950 acres IAL and reclassify 50 acres from agriculture to urban, if the petition is granted the landowner would receive credit for 100 acres. The landowner could subsequently file another petition that seeks to reclassify 100 acres elsewhere from agriculture to urban.
197. Act 233, Pt. X, §§ 18-19, 2008 Haw. Sess. Laws 866-69.
198. Act 233, Pt. X, § 18, 2008 Haw. Sess. Laws 866-69.
199. Act 233, Pt. X, § 18, 2008 Haw. Sess. Laws 866-69.
200. Conf. Com. Rep. on S.B. 2646, 2008 Haw. House J. 957, 960 (Rep. Magaoay in support of Act 233).
201. Conf. Com. Rep. on S.B. 2646, 2008 Haw. House J. 957, 960 (Rep. Shimabukura in opposition to Act 233).
202. H.B. No. 1640, Measure Hist., 2005 Haw. Leg. Sess., available at <http://capitol.hawaii.gov/session2005/status/HB1640.asp> (last visited on Feb. 27, 2009).
203. S.B. No. 2646, Bill Status, 2008 Haw. Leg. Sess., available at <http://capitol.hawaii.gov/session2008/lists/getstatus2.asp> (last visited on Feb. 26, 2009).
204. Conf. Com. Rep. No. 177-08 & S.B. No. 2646, 2008 Haw. House J., 957-66.
205. S.B. No. 2646, Bill Status, 2008 Haw. Leg. Sess., available at <http://capitol.hawaii.gov/session2008/lists/getstatus2.asp> (last visited on Feb. 26, 2009).
206. It is worth noting that Representative Berg was supportive of Act 183 just three years earlier.
207. Conf. Com. Rep. on S.B. 2646, 2008 Haw. House J. 957 (Rep. Berg in opposition to Act 233).
208. Conf. Com. Rep. on S.B. 2646, 2008 Haw. House J. 957 (Rep. Berg in opposition to Act 233) (Referring to Act 233, Pt. X, §§ 18-19, 2008 Haw. Sess. Laws, 866-69; Haw. Rev. Stat. §§ 205-45(b) (2001 & Supp. 2008)).
209. Conf. Com. Rep. on S.B. 2646, 2008 Haw. House J. 957 (Rep. Berg in opposition to Act 233) (Referring to Act 233, Pt. X, § 18, 2008 Haw. Sess. Laws, 866-69; Haw. Rev. Stat. § 205-44(b) (2001 & Supp. 2008)).
210. Conf. Com. Rep. on S.B. 2646, 2008 Haw. House J. 957 (Rep. Berg in opposition to Act 233) (referring to Act 233, Pt. III, §§ 3-4, 2008 Haw. Sess. Laws, 857-61; Haw. Rev. Stat. § 235-?? (2001 & Supp. 2008)).
211. Conf. Com. Rep. on S.B. 2646, 2008 Haw. House J. 957 (Rep. Berg in opposition to Act 233) (referring to Act 233, Pt. X, §§ 18-19, 2008 Haw. Sess. Laws, 866-69; Haw. Rev. Stat. §§ 205-45(b)(2) (2001 & Supp. 2008)).
212. Conf. Com. Rep. on S.B. 2646, 2008 Haw. House J. 957 (Rep. Berg in opposition to Act 233).
213. Conf. Com. Rep. on S.B. 2646, 2008 Haw. House J. 957, 960 (Rep. Karamatsu in support of Act 233).
214. Conf. Com. Rep. on S.B. 2646, 2008 Haw. House J. 957, 960 (Rep. Karamatsu in support of Act 233) (citing Haw. Code R. § 15-15-103 (Weil 2009)).
215. Conf. Com. Rep. on S.B. 2646, 2008 Haw. House J. 957, 960 (Rep. Karamatsu in support of Act 233). (It is worth noting here that Karamatsu's statement is arguably misleading. The plain language reading of the statute requires the LUC to approve IAL designations under such combined petitions when the lands meet criteria five and seven, under Chapter 205-44(c)(5)&(7), regardless of whether any of the other criteria are satisfied. It follows that the logical approach for the LUC to take in such petitions would be to first look to see if criteria (c)(5) & (7) are satisfied. If (c)(5) & (7) are satisfied, then the LUC must designate the lands as IAL and the other criteria are moot. If (c)(5) & (7) are not satisfied, then the LUC can consider the other five criteria.)

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

216. Conf. Com. Rep. on S.B. 2646, 2008 Haw. House J. 957, 960 (Rep. Karamatsu in support of Act 233).
217. Act 233, Pt. X, § 18, 2008 Haw. Sess. Laws, 866-69; Haw. Rev. Stat. § 205-44(c) (2001 & Supp. 2008).
218. See Conf. Com. Rep. on S.B. 2646, 2008 Haw. Senate J. 690, 691 (Senator Kokubon in opposition to Act 233).
219. Conf. Com. Rep. on S.B. 2646, 2008 Haw. Senate J. 690, 691 (Senator Kokubon in opposition to Act 233).
220. Conf. Com. Rep. on S.B. 2646, 2008 Haw. Senate J. 690, 691-92 (Senator Kokubon in opposition to Act 233).
221. Conf. Com. Rep. on S.B. 2646, 2008 Haw. Senate J. 690, 692 (Senator Kokubon in opposition to Act 233).
222. Representative Karamatsu's remarks quoted above omitted the italicized words when he cited this same rule. Conf. Com. Rep. on S.B. 2646, 2008 Haw. House J. 957, 960 (Rep. Karamatsu in support of Act 233)(citing Haw. Code R. § 15-15-103 (Weil 2009)).
223. Conf. Com. Rep. on S.B. 2646, 2008 Haw. Senate J. 690, 692 (Senator Kokubon in opposition to Act 233) (quoting Haw. Code R. § 15-15-103 (Weil 2008)(emphasis added)).
224. Conf. Com. Rep. on S.B. 2646, 2008 Haw. Senate J. 690, 692 (Senator Kokubon in opposition to Act 233).
225. Conf. Com. Rep. on S.B. 2646, 2008 Haw. Senate J. 690, 693 (Senator Tokuda in support of Act 233) (citing Haw. Code R. § 15-15-75 (Weil 2009)). However, this section provides that a person or agency that wishes to appeal an LUC decision pursuant to § 15-15-75 *must be a party "to a proceeding to amend land use district boundaries,"* § 15-15-75 (emphasis added)).
226. Conf. Com. Rep. on S.B. 2646, 2008 Haw. Senate J. 690, 691 (Senator Tokuda in support of Act 233) (emphasis not added).
227. Conf. Com. Rep. on S.B. 2646, 2008 Haw. Senate J. 690, 691 (Senator Tokuda in support of Act 233).
228. Conf. Com. Rep. on S.B. 2646, 2008 Haw. Senate J. 690, 691 (Senator Tokuda in support of Act 233).
229. Telephone conversation with John Ray, Parker Ranch Trustee, (Mar 26, 2009); Telephone interview with Henry Curtis, Executive Director, Life of the Land, (Mar. 27, 2009); Telephone interview with Alan Takemoto, Exec. Dir., HFBF, (Mar. 27, 2009).
230. Testimony of David Arakawa, Exec. Dir., LURF, in support of S.B. No. 2646, hearing before Senate Committee on Economic Development and Taxation and Senate Committee on Ways and Means on Feb. 26, 2008, available online at http://www.capitol.hawaii.gov/session2008/Testimony/SB2646_EDT-WAM_02-26-08.pdf (last visited on April 26, 2009).
231. Testimony of David Arakawa, Exec. Dir., LURF, in support of S.B. No. 2646, hearing before Senate Committee on Economic Development and Taxation and Senate Committee on Ways and Means on Feb. 26, 2008, available online at http://www.capitol.hawaii.gov/session2008/Testimony/SB2646_EDT-WAM_02-26-08.pdf (last visited on April 26, 2009).
232. Telephone interview with David Arakawa, Exec. Dir., LURF (March 26, 2009).
233. Telephone interview with Alan Takemoto, Exec. Dir., HFBF, (Mar. 27, 2009).
234. Telephone interview with Alan Takemoto, Exec. Dir., HFBF, (Mar. 27, 2009).
235. Telephone interview with Alan Takemoto, Exec. Dir., HFBF, (Mar. 27, 2009).
236. Telephone interview with an anonymous staff member of the LUC, (Mar. 30, 2009).
237. *Alexander & Baldwin, Inc.*, Docket No. DR08-37, 9 (Haw. Land Use Comm'n Mar. 9, 2009), http://luc.state.hi.us/dockets/dr0837aandb/dr0837_comp_page.htm (last visited on April 26, 2009); *Alexander & Baldwin, Inc.*, Docket No. DR09-38, 10-11 (Haw. Land Use Comm'n April 6, 2009) (still pending as of April 26, 2009), http://luc.state.hi.us/pendg_dr_pet.htm (last visited on April 26, 2009).
238. Referring to the credits that can be used for future petitions to reclassify lands as opposed to the qualified agricultural costs tax credits. *Alexander & Baldwin, Inc.*, Docket No. DR08-37, 9 (Haw. Land Use Comm'n Mar. 9, 2009), http://luc.state.hi.us/dockets/dr0837aandb/dr0837_comp_page.htm (last visited on April 26, 2009); *Alexander & Baldwin, Inc.*, Docket No. DR09-38, 10-11 (Haw. Land Use Comm'n April 6, 2009) (still pending as of April 26, 2009), http://luc.state.hi.us/pendg_dr_pet.htm (last visited on April 26, 2009).
239. *Alexander & Baldwin, Inc.*, Docket No. DR08-37, 9 (Haw. Land Use Comm'n Mar. 9, 2009), http://luc.state.hi.us/dockets/dr0837aandb/dr0837_comp_page.htm (last visited on April 26, 2009).
240. Teresa Dawson, *In a First, LUC Designates A&B Property on Kaua'i as Important Agricultural Lands*, ENVIRONMENT HAWAII'i, Vol. 19, No. 10 (April 2009) (paraphrasing testimony of Dean Okimoto before Haw. LUC).
241. Teresa Dawson, *In a First, LUC Designates A&B Property on Kaua'i as Important Agricultural Lands*, ENVIRONMENT HAWAII'i, Vol. 19, No. 10 (April 2009) (paraphrasing testimony of Dean Okimoto before Haw. LUC).
242. Teresa Dawson, *In a First, LUC Designates A&B Property on Kaua'i as Important Agricultural Lands*, ENVIRONMENT HAWAII'i, Vol. 19, No. 10 (April 2009) (paraphrasing testimony of Dean Okimoto before Haw. LUC).
243. News Release – NR09-07 – June 26, 2009, Hawaii Dept. of Ag. website, available at <http://hawaii.gov/hdoa/news/2009-news-releases/news-release-nr09-07-june-26-2009> (last visited on May 24, 2010); see also *Alexander & Baldwin, Inc.*, Docket No. DR09-38, available at http://luc.state.hi.us/dockets/dr0938aandb_maui/dr0938aandb_maui_dr_page.htm (last visited on May 24, 2010).
244. See Teresa Dawson, *In a First, LUC Designates A&B Property on Kaua'i as Important Agricultural Lands*, ENVIRONMENT HAWAII'i, Vol. 19, No. 10 (April 2009).
245. Telephone interview with LUC staff member who wished to remain anonymous (Mar. 2009).
246. "Hawai'i's Thousand Friends is dedicated to ensuring that growth is reasonable and responsible, that appropriate planning, management, and water & land use decisions are made that protect the environment, human health and cultural and natural resources, and that decisions are made and proposals are implemented in conformity with the law." Hawai'i's Thousand Friends website, available at <http://www.hawaiis1000friends.org> (last visited on April 26, 2009).
247. Haw. Rev. Stat. § 205-2(d)(1) (2001 & Supp. 2008).
248. "Also called animal science, stockbreeding or simple husbandry, is the agricultural practice of breeding and raising livestock." Wikipedia, The Free Encyclopedia, available online at http://en.wikipedia.org/wiki/Animal_husbandry (last visited on April 25, 2009).
249. Haw. Rev. Stat. § 205-2(d)(2) (2001 & Supp. 2008).
250. See, e.g., Telephone interview with Alan Takemoto, Exec. Dir., HFBF, (Mar. 27, 2009); telephone interview with Dean Okimoto, Pres. of HFBF, Owner & Pres. of Nalo Farms, (April 25, 2009); telephone interview with Keith Unger, Manager of McCandless Ranch, (Mar. 27, 2009); telephone interview

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

- with Alan Gottlieb, Pres. Hawaii Cattlemen's Council, Ponoholo Ranch (Mar. 26, 2009).
251. *See, e.g.*, Testimony of Hawaiian Agriculture Research Center, in support of H.B. No. 1640, hearing before Senate Ways and Means on April 1, 2005, available at Hawaii State Archives (last visited on April 8, 2009); Telephone interview with Alan Gottlieb, Pres. Hawaii Cattlemen's Council, Ponoholo Ranch (Mar. 26, 2009); Telephone interview with Alan Takemoto, 2008 Exec. Dir., HFBB (Feb. 12, 2009).
 252. Testimony of Alan Takemoto, Exec. Dir. of HFBB, in support of S.B. No. 2646, hearing before Senate Committee on Agriculture & Hawaiian Affairs and Senate Committee on Water and Land on Feb. 8, 2008, available online at http://www.capitol.hawaii.gov/session2008/Testimony/SB2646_AHW-WTL_02-08-08_.pdf (last visited on April 25, 2009).
 253. Testimony of Alan Takemoto, Exec. Dir. of HFBB, in support of S.B. No. 2646, hearing before Senate Committee on Agriculture & Hawaiian Affairs and Senate Committee on Water and Land on Feb. 8, 2008, available online at http://www.capitol.hawaii.gov/session2008/Testimony/SB2646_AHW-WTL_02-08-08_.pdf (last visited on April 25, 2009).
 254. Telephone interview with Alan Takemoto, Exec. Dir., HFBB, (Mar. 27, 2009).
 255. Testimony of Alan Takemoto, Exec. Dir. of HFBB, in support of S.B. No. 2646, hearing before Senate Committee on Agriculture & Hawaiian Affairs and Senate Committee on Water and Land on Feb. 8, 2008, available online at http://www.capitol.hawaii.gov/session2008/Testimony/SB2646_AHW-WTL_02-08-08_.pdf (last visited on April 25, 2009).
 256. Telephone interview with Alan Takemoto, Exec. Dir., HFBB, (Mar. 27, 2009).
 257. Telephone interview with Alan Takemoto, Exec. Dir., HFBB, (Mar. 27, 2009). Early versions of S.B. 2646 contained the incentive of extending public trust water protections to agricultural water usage, but this element of the bill was removed due in large part to testimony from public interest groups, such as Earthjustice and Sierra Club, and several individuals that criticized this part of the original legislative proposal. *See, e.g.*, Testimony of Isaac H. Moriwake, Earthjustice, in opposition to S.B. 2646, hearing before Senate Committee on Agriculture & Hawaiian Affairs and Senate Committee on Water and Land on Feb. 8, 2008, available online at http://www.capitol.hawaii.gov/session2008/Testimony/SB2646_AHW-WTL_02-08-08_.pdf (last visited on April 25, 2009); Telephone interview with Alan Murakami, Litigation Dir., Native Hawaiian Legal Corp., on April 24, 2009.
 258. Telephone interview with Alan Takemoto, Exec. Dir., HFBB, (Mar. 27, 2009).
 259. Telephone interview with Alan Takemoto, Exec. Dir., HFBB, (Mar. 27, 2009).
 260. Dean Okimoto is also the President of HFBB as discussed in section III (A)(1).
 261. "Founded in 1953, Nalo Farms has been a family farm for over half a century. Nestled at the feet of the majestic Ko'olau Mountains in Waimanalo, on the beautiful island of Oahu, the farm supplies fresh-cut, top-quality greens to Hawaii's top restaurants' chefs daily." Nalo Farms website, available at <http://www.nalo-farms.com/index.html> (last visited on April 25, 2009).
 262. In particular, Dean Okimoto thinks that "the tax credits are not nearly enough." Telephone interview with Dean Okimoto, Pres. of HFBB, Owner & Pres. of Nalo Farms, (April 25, 2009).
 263. Telephone interview with Dean Okimoto, Pres. of HFBB, Owner & Pres. of Nalo Farms, (April 25, 2009).
 264. Alexander & Baldwin successfully designated 3,773 acres in Kōloa and Waimea on Kaua'i, and also has a pending petition before the LUC for the designation of 27,133 acres in Wailuku and Makawao on Maui. Petitions available online at LUC website links: http://luc.state.hi.us/dockets/dr0837aandb/dr0837_comp_page.htm, (Kōloa and Waimea), and http://luc.state.hi.us/pendg_dr_pet.htm, (Wailuku and Makawao) (last visited on April 27, 2009).
 265. Telephone interview with Dan Davidson, Exec. Off., LUC (Mar. 30, 2009).
 266. Telephone interview with Dean Okimoto, Pres. of HFBB, Owner & Pres. of Nalo Farms, (April 25, 2009).
 267. Telephone interview with Dean Okimoto, Pres. of HFBB, Owner & Pres. of Nalo Farms, (April 25, 2009).
 268. Telephone interview with Dean Okimoto, Pres. of HFBB, Owner & Pres. of Nalo Farms, (April 25, 2009).
 269. Telephone interview with Dean Okimoto, Pres. of HFBB, Owner & Pres. of Nalo Farms, (April 25, 2009).
 270. "The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 110+ 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, or 25% of the State's total land mass. HCC is also unified with the National Cattlemen's Beef Association (NCBA), so its members are represented on a County level, State-wide level and National level." Hawaii Cattlemen's Council website, available at www.hicattle.org (last visited on April 25, 2009).
 271. Telephone interview with Alan Gottlieb, Pres. Hawaii Cattlemen's Council, Ponoholo Ranch (Mar. 26, 2009).
 272. Telephone interview with Alan Gottlieb, Pres. Hawaii Cattlemen's Council, Ponoholo Ranch (Mar. 26, 2009).
 273. Telephone interview with Alan Gottlieb, Pres. Hawaii Cattlemen's Council, Ponoholo Ranch (Mar. 26, 2009).
 274. Telephone interview with Alan Gottlieb, Pres. Hawaii Cattlemen's Council, Ponoholo Ranch (Mar. 26, 2009).
 275. Telephone interview with Alan Gottlieb, Pres. Hawaii Cattlemen's Council, Ponoholo Ranch (Mar. 26, 2009).
 276. More information about the Parker Ranch Foundation Trust is available at <http://www.parkerranchfoundationtrust.com> (last visited on April 25, 2009).
 277. SunFuels is a biomass diesel producer based out of 65-1230 Māmalahoa Hwy, Kamuela, HI 96743 (website unavailable as of April 25, 2009).
 278. Telephone interview with John Ray, G.M., SunFuels Hawaii LLC., (March 26, 2009).
 279. Telephone interview with John Ray, G.M., SunFuels Hawaii LLC., (March 26, 2009).
 280. Telephone interview with John Ray, G.M., SunFuels Hawaii LLC., (March 26, 2009).
 281. McCandless Ranch is located in Hōnaunau on the island of Hawai'i.
 282. Keith Unger, *Designation of Important Agricultural Lands (IAL)*, Pacific Business News, (Nov. 4, 2008).
 283. Telephone interview with Keith Unger, Manager of McCandless Ranch, (Mar. 27, 2009).
 284. Telephone interview with Keith Unger, Manager of McCandless Ranch, (Mar. 27, 2009).

Does Designating Hawai'i's Agricultural Lands "Important" Make Them More Important Than They Already Are? A Stakeholder Analysis of the New IAL Legislation

285. Specifically, Unger recommends economic incentives such as lower income tax brackets for farmers, no real property taxes on agricultural lands, no general excise tax for local agricultural products, state efforts to promote visibility and viability of farmer's markets, and a state "buy local" public relations campaign. Keith Unger, *Designation of Important Agricultural Lands (IAL)*, Pacific Business News, (Nov. 4, 2008).
286. Telephone interview with Keith Unger, Manager of McCandless Ranch, (Mar. 27, 2009).
287. "Hawai'i's Thousand Friends is dedicated to ensuring that growth is reasonable and responsible, that appropriate planning, management, and water & land use decisions are made that protect the environment, human health and cultural and natural resources, and that decisions are made and proposals are implemented in conformity with the law." Hawai'i's Thousand Friends website, available at <http://www.hawaiis1000friends.org> (last visited on April 26, 2009).
288. A "Hawai'i non-profit environmental and community action public interest group," since 1970. Life of the Land website, available at www.lifeofthelandhawaii.org (last visited on April 26, 2009).
289. "America's oldest, largest, and most influential grassroots environmental organization. Inspired by nature, we are 1.3 million and neighbors, working together to protect our communities and the planet." From Sierra Club website, available at <http://sierraclub.org> (last visited on April 26, 2009). Hawai'i chapter has over 5,000 members statewide. Testimony of Jeff Mikulina, then Exec. Dir., Sierra Club, Haw. Ch., in opposition to S.B. 2646 hearing before Senate Committee on Agriculture & Hawaiian Affairs and Senate Committee on Water and Land on Feb. 8, 2008, available online at http://www.capitol.hawaii.gov/session2008/Testimony/SB2646_AHW-WTL_02-08-08_.pdf (last visited on April 25, 2009).
290. See, e.g., Telephone interview with Alan Murakami, Litigation Dir., Native Hawaiian Legal Corp. (April 24, 2009); telephone interview with Henry Curtis, Exec. Dir., Life of the Land (Mar. 27, 2009); telephone interview with Donna Wong, Exec. Dir., Hawai'i's Thousand Friends (April 24, 2009).
291. Telephone interview with Henry Curtis, Executive Director, Life of the Land, (Mar. 27, 2009).
292. Telephone interview with Henry Curtis, Executive Director, Life of the Land, (Mar. 27, 2009).
293. Telephone interview with Henry Curtis, Executive Director, Life of the Land, (Mar. 27, 2009).
294. Telephone interview with Henry Curtis, Executive Director, Life of the Land, (Mar. 27, 2009).
295. Telephone interview with Henry Curtis, Executive Director, Life of the Land, (Mar. 27, 2009).
296. Telephone interview with Donna Wong, Exec. Dir., Hawai'i's Thousand Friends (April 24, 2009).
297. Telephone interview with Donna Wong, Exec. Dir., Hawai'i's Thousand Friends (April 24, 2009).
298. Telephone interview with Donna Wong, Exec. Dir., Hawai'i's Thousand Friends (April 24, 2009).
299. By "agricultural self-sufficiency," Wong refers to producing enough food to fill the in-state consumption needs. Telephone interview with Donna Wong, Exec. Dir., Hawai'i's Thousand Friends (April 24, 2009).
300. Telephone interview with Donna Wong, Exec. Dir., Hawai'i's Thousand Friends (April 24, 2009).
301. Telephone interview with Dean Okimoto, Pres. of HFBF, Owner & Pres. of Nalo Farms, (April 25, 2009).
302. Telephone interview with Dean Okimoto, Pres. of HFBF, Owner & Pres. of Nalo Farms, (April 25, 2009).
303. Telephone interview with Dean Okimoto, Pres. of HFBF, Owner & Pres. of Nalo Farms, (April 25, 2009).
304. Telephone interview with Donna Wong, Exec. Dir., Hawai'i's Thousand Friends (April 24, 2009).
305. Telephone interview with Donna Wong, Exec. Dir., Hawai'i's Thousand Friends (April 24, 2009).
306. Testimony of Jeff Mikulina, then Exec. Dir. of Sierra Club Hawaii, commenting on H.B. No. 1640, hearing before House EDB on Feb 14, 2005, available at Hawaii State Archives (last visited on April 8, 2009); testimony of Jeff Mikulina, then executive director of Sierra Club Hawaii, in opposition to S.B. No. 2646, hearing before Senate Committee on Agriculture & Hawaiian Affairs and Senate Committee on Water and Land on Feb. 8, 2008, available online at http://www.capitol.hawaii.gov/session2008/Testimony/SB2646_AHW-WTL_02-08-08_.pdf (last visited on April 26, 2009).
307. Testimony of Jeff Mikulina, then Exec. Dir. of Sierra Club Hawaii, commenting on H.B. No. 1640, hearing before House EDB on Feb 14, 2005, available at Hawaii State Archives (last visited on April 8, 2009); testimony of Jeff Mikulina, then executive director of Sierra Club Hawaii, in opposition to S.B. No. 2646, hearing before Senate Committee on Agriculture & Hawaiian Affairs and Senate Committee on Water and Land on Feb. 8, 2008, available online at http://www.capitol.hawaii.gov/session2008/Testimony/SB2646_AHW-WTL_02-08-08_.pdf (last visited on April 26, 2009).
308. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 87 (1985, reprinted in 1990).
309. Act 233, Pt. III, §§ 3-4, 2008 Haw. Sess. Laws 857-61.
310. Act 233, Pt. II, § 2, 2008 Haw. Sess. Laws 857.
311. Act 233, Pt. IV, §§ 7-9, 2008 Haw. Sess. Laws 861-62.
312. Act 233, Pt. VI, § 10, 2008 Haw. Sess. Laws 862.
313. Act 233, Pt. VII, §§ 11-12, 2008 Haw. Sess. Laws 863.
314. Act 233, Pt. X, §§ 18-19, 2008 Haw. Sess. Laws 866-69.
315. George Cooper & Gavan Daws, LAND AND POWER IN HAWAII 87 (1985, reprinted in 1990).

PERFECTION AND THE IMPORTANCE OF A NAME (Under UCC Article 9)

By: Trevor A. Brown, Esq., Director, and Shyla P.Y. Cockett, Esq., Associate, Starn O’Toole Marcus & Fisher, A Law Corporation

The pursuit of perfection in many aspects of our lives is not about money. And a good name cannot be bought. But when it comes to “perfection” of security interests and having the right name under Article 9 of the Uniform Commercial Code (“UCC”), it is all about money and who gets it.

Perfection – the steps necessary for a creditor to establish rights to a pledged asset which are superior to the claims of other creditors – can be accomplished in a variety of ways depending on the type of asset.¹ But the most common way is through filing a financing statement. In 1999, Article 9 of the UCC was significantly revised (“Revised Article 9”) to, among other things, require more precision in preparing financing statements. Included with those changes was a rule – counterintuitive to many real estate practitioners – that impacted financing statements for collateral held in a trust. That rule is that the name of the debtor to be used in a financing statement – where the collateral pledged is held in a trust – is the name of the trust as set out in its organic documents, not the name of the trustee of the trust.

Although many years have passed since Revised Article 9 was adopted in Hawaii,² the authors’ recent experience indicates that the special rules for trusts are still unfamiliar to many practitioners. This article explains some of those rules.

Properly Identifying the Debtor

While a security interest may be valid even though it is unperfected, perfection is necessary to protect a creditor’s security interest from being subject to the rights of other creditors or transferees.³ “The requirement that a financing statement provide the debtor’s name is particularly important” because “[f]inancing statements are indexed under the name of the debtor, and those who wish to find financing statements search for them under the debtor’s name.”⁴ The failure to properly identify a debtor can render a financing statement defective⁵ and a secured creditor unperfected, placing that creditor at the back of the line when it comes to payment from the proceeds of an asset.

Under the former Article 9, financing statements that substantially complied with Section 9-402(1)⁶ were sufficient, despite having minor errors or omissions, so long as those errors did not make the financing statement seriously misleading.⁷ Former Article 9 did not define “seriously misleading,” and so courts sought to apply the “reasonably diligent searcher” standard – “a standard that required the reviewing court to determine, on a case-by-case basis, whether a hypothetical reasonable searcher would have been able to discover the non-conforming financing statement despite the error in the debtor’s name” – to determine whether a financing statement was defective.⁸ This standard “created extensive litigation and fragmented or contradictory decisions.”⁹

In 1999, Article 9 was significantly revised. Revised Article 9 changed the requirements for a financing statement. Revised Section 9-502 reduced former Section 9-402 to three general¹⁰ requirements: (1) “the name of the debtor;” (2) “the name of the secured party or a representative of the secured party;” and (3) “indicate[] the collateral covered by the financing statement.” In an attempt to provide clarity with respect to a debtor that was a “registered organization,” a “decendent’s estate,” and/or a “trust or a trustee acting with respect to property held in trust,” Revised Article 9 introduced Section 9-503 that provided specific and clear rules governing the sufficiency of the debtor’s name.¹¹

Also included in the revisions to Article 9 was Section 9-506, which replaced the former “reasonable searcher” standard with a clearer standard. Section 506 provides a concrete rule for determining if errors are seriously misleading, by expressly providing that “a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9-503(a) . . . [is] seriously misleading” and ineffective to perfect a security interest, unless the financing statement is found using the standard search logic of the filing office when the debtor’s correct name is searched.

The Practical Application Of Revised Article 9 to Trusts

Revised Article 9 represented a significant shift from the prior law. The object of the revisions was to shift the responsibility for name accuracy to the filer of a financing statement by placing on the filer “the not too heavy burden of using the legal

PERFECTION AND THE IMPORTANCE OF A NAME (Under UCC Article 9)

name of the debtor, thereby relieving the searcher from conducting numerous searches using every conceivable name variation of the debtor.”¹²

Under former Article 9, Section 9-402, a financing statement was sufficient if it “[gave] the names of the debtor and the secured party, [was] signed by the debtor, [gave] an address of the secured party from which information concerning the security interest may be obtained, [gave] a mailing address of the debtor and contain[ed] a statement indicating the types, or describing the items, of collateral.”¹³ As legal title to assets held in a trust is lodged in the trustee, the listing of the trustee’s name – as the debtor – was sufficient.¹⁴ Therefore, for example, if John A. Adams were the trustee of the “John A. Adams Revocable Living Trust” under a written trust document, a typical financing statement listing John A. Adams, trustee, as the debtor would be sufficient. Significant problems arose under Section 9-402’s general rule, however, when banks and trust companies were the trustees for many different trusts.¹⁵ Creditors of trusts with institutional trustees argued that the financing statements were insufficient because they were “seriously misleading” under the former Section 9-402(8).

Section 9-503(a)(3) of Revised Article 9 was specifically crafted to avoid the confusion caused in the situations where banks and trusts companies are the trustees of many different trusts.¹⁶ In particular, when “the debtor is a trust or a trustee acting with respect to property held in trust,” Section 9-503(a)(3) of Revised Article 9 specifically requires that the financing statement:

- (A) **Provide[] the name specified for the trust in its organic documents** or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and
- (B) Indicate[], in the debtor’s name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust[.]

Financing statements failing to comply with this rule are *per se* “seriously misleading”¹⁷ under the bright-line rule established under Section 9-506(b) of Revised Article 9, which was conjointly enacted. So under Revised Article 9, a proper financing statement would need to list as the debtor in the example above “John A. Adams Revocable Living Trust,” not “John A. Adams, Trustee.”

Conclusion

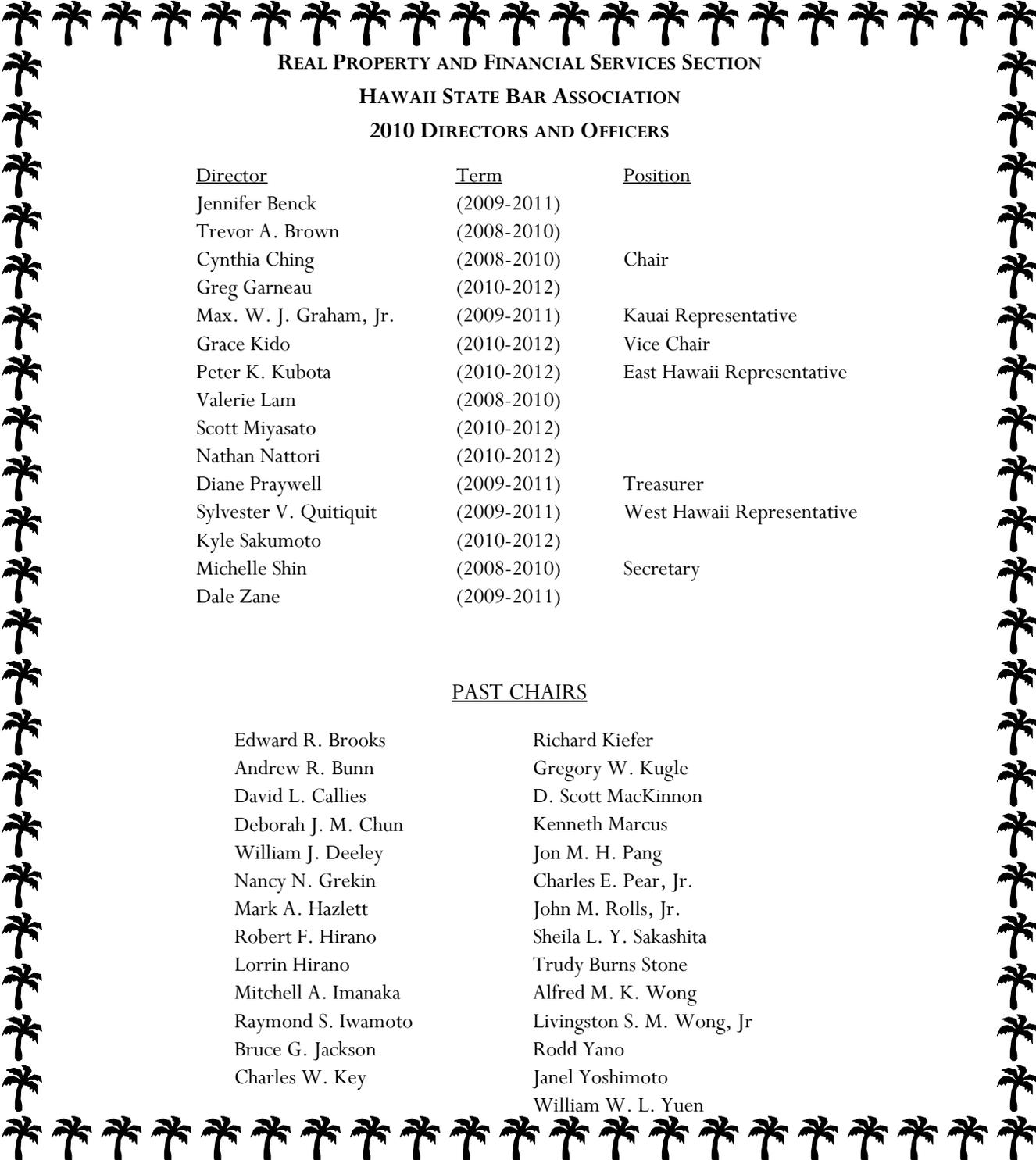
A financing statement listing the trustee’s name as the debtor may have been sufficient under the former version of Article 9. Now, a financing statement listing the trustee’s name as the debtor is “seriously misleading” under the provisions of Sections 9-503 and 9-506 of Revised Article 9, and the security interest in the collateral identified in the financing statement would be unperfected, even though the trustee is the legal owner of the pledged collateral.

The UCC provides certainty, but lawyers working with the UCC need to be familiar with its requirements to properly protect their clients.



PERFECTION AND THE IMPORTANCE OF A NAME (Under UCC Article 9)**ENDNOTES:**

1. A financing statement is not always effective to perfect a security interest, and even if effective as a general matter can be subordinate to perfection accomplished by another means such as possession or control with respect to certain collateral. A discussion of these issues is beyond the scope of this article.
2. The Revised Article 9 was adopted in Hawaii and codified in Hawaii Revised Statutes Chapter 490 in 2000.
3. See 79 C.J.S. *Secured Transactions* § 48.
4. UCC § 9-503 (1999) cmt. 2.
5. See UCC Revised Article 9, § 9-506.
6. Under Section 9-402(1) of the former version of Article 9, a financing statement was sufficient if it “[gave] the names of the debtor and the secured party, [was] signed by the debtor, [gave] an address of the secured party from which information concerning the security interest may be obtained, [gave] a mailing address of the debtor, and contain[ed] a statement indicating the types, or describing the items, of collateral.” See UCC § 9-402(1) (1995).
7. See UCC § 9-402(8) (1995) (“A financing statement substantially complying with the requirements of this Section is effective even though it contains minor errors which are not seriously misleading.”).
8. *In re John’s Bean Farm of Homestead, Inc.*, 378 B.R. 385 (Bankr. S.D. Fl. 2007).
9. *Id.*
10. Additional information is required for financing statements concerning “as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures” as set forth under Section 9-502(b).
11. See UCC § 9-503 (1999).
12. See *Pankratz Implement Co. v. Citizens Nat’l Bank*, 130 P.3d 57, 68 (Kan. 2006); see also *In re Kinderknecht*, 308 B.R. 71, 75 (B.A.P. 10th Cir. 2004) (“The intent to clarify when a debtor’s name is sufficient shows a desire to foreclose fact-intensive tests, such as those that existed under the former Article 9 of the UCC”); see also *In re John’s Bean Farm of Homestead*, 378 B.R. 385 (Bankr. S.D. Fl. 2007) (explaining that “[r]evised Article 9 requires more accuracy in filings, and places less burden on the searcher to seek out erroneous filings” by “remov[ing] some of the burden placed on searchers under the former law, [such as] multiple searches using variations on the debtor’s name”); see also *In re Tyingham Holdings, Inc. v. Suna Bros. Inc.*, 354 B.R. 363 (Bankr. E.D. Va. 2006).
13. UCC § 9-402(1) (1995).
14. See 76 AM. JUR. 2D *Trusts* § 253 (2010).
15. See Emory Ireland, *Financing Statements Under Revised UCC Article 9*, WISCONSIN LAWYER, Vol. 74, No. 8, August 2001, available at http://www.wisbar.org/am/template.cfm?section=wisconsin_lawyer&template=/cm/contentdisplay.cfm&contentid=50189.
16. See note 14, *supra*.
17. Unless the financing statement is found using the standard search logic of the filing office when the debtor’s correct name is searched. See UCC § 9-506(c).


 REAL PROPERTY AND FINANCIAL SERVICES SECTION

HAWAII STATE BAR ASSOCIATION

2010 DIRECTORS AND OFFICERS

<u>Director</u>	<u>Term</u>	<u>Position</u>
Jennifer Benck	(2009-2011)	
Trevor A. Brown	(2008-2010)	
Cynthia Ching	(2008-2010)	Chair
Greg Garneau	(2010-2012)	
Max. W. J. Graham, Jr.	(2009-2011)	Kauai Representative
Grace Kido	(2010-2012)	Vice Chair
Peter K. Kubota	(2010-2012)	East Hawaii Representative
Valerie Lam	(2008-2010)	
Scott Miyasato	(2010-2012)	
Nathan Nattori	(2010-2012)	
Diane Praywell	(2009-2011)	Treasurer
Sylvester V. Quitiquit	(2009-2011)	West Hawaii Representative
Kyle Sakumoto	(2010-2012)	
Michelle Shin	(2008-2010)	Secretary
Dale Zane	(2009-2011)	

PAST CHAIRS

Edward R. Brooks	Richard Kiefer
Andrew R. Bunn	Gregory W. Kugle
David L. Callies	D. Scott MacKinnon
Deborah J. M. Chun	Kenneth Marcus
William J. Deeley	Jon M. H. Pang
Nancy N. Grekin	Charles E. Pear, Jr.
Mark A. Hazlett	John M. Rolls, Jr.
Robert F. Hirano	Sheila L. Y. Sakashita
Lorin Hirano	Trudy Burns Stone
Mitchell A. Imanaka	Alfred M. K. Wong
Raymond S. Iwamoto	Livingston S. M. Wong, Jr
Bruce G. Jackson	Rodd Yano
Charles W. Key	Janel Yoshimoto
	William W. L. Yuen

Ka Nu Hou is a publication of the Real Property and Financial Services Section of the Hawaii State Bar Association, © 2005, all rights reserved. This newsletter provides general information only, which may or may not be correct, complete or current at the time of reading. Laws change rapidly, and a qualified professional attorney should be consulted with respect to recent developments. The contents of this newsletter are not intended and should not be used as a substitute for specific legal advice or opinions regarding any reader's situation. No recipient of this newsletter should act or refrain from acting on the basis of any content of this letter without seeking appropriate legal advice from a licensed attorney at law. The opinions of the authors in the articles of this newsletter do not necessarily represent the opinions of the Real Property and Financial Services Section or the Hawaii State Bar Association.