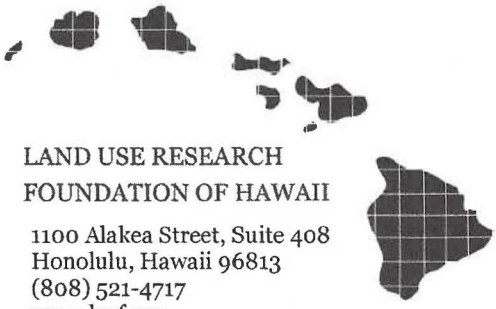

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February 11, 2016

Senator Mike Gabbard, Chair
Senator Clarence K. Nishihara, Vice Chair
Senate Committee on Water, Land and Agriculture

Senator Breene Harimoto, Chair
Senator Brickwood Galuteria, Vice Chair
Senate Committee on Housing

Testimony in Strong Opposition to SB 2350 Relating to Agriculture. (Restricts any subdivision, including by condominium property regime, of parcels of agricultural lands one hundred acres or greater in size. Requires the owner to make and implement a farm plan prior to the construction of any homes on the resulting legal lots of record.)

WLA/HOU Hearing: Thursday, February 3, 2016, 2:45 p.m., in Conf. Rm. 224

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF and its members strongly support the use of agricultural lands for agricultural purposes and the preservation of large tracts of parcels of agricultural lands. LURF has worked with the Hawaii Farm Bureau Federation (Hawaii Farm Bureau), the Department of Agriculture (DOA) and other agricultural stakeholders to pass the Important Agricultural Lands (IAL) laws in 2005 and 2008. The purpose of the IAL law is to provide agricultural incentive programs to promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands for agricultural use. Since that time, LURF members have designated more than 53,942 acres as IAL; and LURF has been working with the Hawaii Farm Bureau, agricultural stakeholders, and the counties to implement county IAL incentives and the county IAL designation process.

SB 2350. This bill restricts any subdivision, including by condominium property regime, of parcels of agricultural lands one hundred acres or greater in size. Requires the owner to make and implement a farm plan prior to the construction of any homes on the resulting legal lots of record.

The effect of this bill is to unnecessarily restrict the use of private agricultural lands by bona fide small farmers, ranchers, agricultural operators and landowners and large landowners who have already designated their lands as IAL (Agricultural Stakeholders).

LURF's Position. LURF appreciates the opportunity to provide testimony **in strong opposition to SB 2350.**, based on the following:

- **SB 2350 lacks prior consultation or collaboration with key Agricultural Stakeholders who would be most affected.** The most effective agricultural laws are based on consultation with farmers and agricultural operators. Unlike the IAL law, the Hawaii Farm Bureau, Cattlemen's Council, some of the large agricultural farmers and operations in the state, and the large land owners, some of whom have already dedicated over fifty percent of their lands to IAL, and the counties – were not consulted regarding this bill.

  In 2015, the State Department of Agriculture (DOA) commented on a similar bill (SB 1162) and recommended that there should be more public discussion and consultation regarding issues including, but not limited to quantifying the actual harm done by subdivisions and CPRs and the involvement of the counties, who have the primary authority for granting subdivisions of agricultural lands;

- **Real Problem: There are not enough large scale agricultural parcels, because the State failed to map all of its agricultural lands for designation IAL prior to December 31, 2009 (over six years ago) as required by the IAL law.** SB 2350 mentions the fact that the State is in violation of the IAL law. Section 205-44.5, Hawaii Revised Statutes requires the DOA and the Department of Land and Natural Resources (DLNR) to collaborate to identify public lands that should be designated as IAL and prepare maps delineating those lands, **prior to December 31, 2009**. Beginning **January 1, 2010**, the State Land Use Commission shall designate public lands as IAL and DOA and DLNR have violated the law and failed to comply with the IAL law.

  Real Solution: The State should fund DLNR and DOA to complete the identification, mapping and designation of the State's large-scale agricultural lands. With such funding, then large-scale agricultural parcels owned by the State could be preserved for bona fide agricultural operations as IAL.

- **Real Problem: The counties have not completed identification and mapping of IAL, due to the lack of State funding.** While it is true that the State law directed the counties to establish county IAL incentives, and to map and designate private lands as IAL, the State has not provided sufficient funding

to the counties to implement their IAL mandate through the counties IAL process.

Real Solution: The Legislature should pass HB 1042, SD1, which would provide funding to the counties to complete the county IAL mapping and designation process. Large-scale agricultural parcels could be preserved for bona fide agricultural operations, if the Legislature passes **HB 1042, SD1**, which provides funding for the counties to identify and map proposed IAL. LURF respectfully recommends that the State provide adequate funding to the counties, so that they can comply with the "State mandate" that the counties shall map and identify potential IAL. The Senate should have a hearing and pass **HB 1042, SD1**, which was in Conference Committee in 2015, and was carried over to this 2016 session and re-referred to the Senate Committees on Water, Land, and Agriculture and Committee on Public Safety, Intergovernmental and Military Affairs (WLA/PSM). If the legislature really wants to preserve more large-scale agricultural parcels for bona fide farmers, it should **pass HB 1042, SD1.**

- **Real problem: This bill violates the spirit and intent of the IAL law and will punish bona fide farmers and agricultural operators (many of whom are LURF member) who have voluntarily designated over 110,719 acres of IAL, including some IAL parcels and farming areas which are smaller than one hundred acres**. The IAL law specifically provides that if an agricultural landowner voluntarily designated over fifty percent (50%) of their lands as IAL, the Land Use Commission could not designate any further lands as IAL – the understanding was that if the land owner designated over fifty percent (50%) of their lands as IAL, they could use the rest of their lands in whatever manner they chose, in compliance with the law. This bill violates the spirit and intent of the IAL law, by further restricting IAL landowners' rights to subdivide and CPR their lands. SB 2350 indiscriminately and unfairly imposes severe restrictions on landowners who have already designated over fifty percent of their lands as IAL – and would prohibit IAL lands from CPRs and being subdivided into smaller parcels for diversified agriculture, family farms and new farmers.

- **Real Problem: This bill is not necessary – the strict enforcement of current laws, rules and regulations and government enforcement powers can prevent non-agricultural uses on agricultural lands.** The real problem is not subdivisions and CPRs - the problem is enforcement of the laws we already have. The DOA's comment to a similar bill, SB 2351, states that without sufficient controls, monitoring, and enforcement, CPRs have resulted in the establishment of "Gentlemen Farms..."

- **Real Problem: This bill is not based on any reliable facts or quantified data regarding the actual harm dome by subdivisions and CPRs.** In 2015, the DOA commented on a similar bill (SB 1162), and recommended that "there should be more public discussion and consultation regarding issues

including, but not limited to quantifying the actual harm done by subdivisions and CPRs..."

- **Real Problem: This bill is contrary to the factual evidence and ignores the fact that subdivisions and CPRs can actually result in larger contiguous agricultural parcels and could be good for agricultural production.** In 2016, the DOA has commented on a similar bill (SB 2351), and stated that CPRs are an alternative to the subdivision of a parcel of land, and when applied to agricultural land, ***CPRs can theoretically result in larger contiguous area available for farming than under a subdivision***.

- **Real problem: This bill will create unnecessary, negative impacts and harm to diversified agriculture, and small bona fide farmers, because it will restrict the creation of smaller parcels for new, small bona fide farmers to have access to smaller and affordable leased lands.** For instance, if a large agricultural land owner wanted to diversify its operations and try **hemp farming**, they will be restricted from subdividing and CPR'ing lands for such hemp farmers. This measure will also unreasonably restrict bona fide farmers, agricultural land owners and entities, like farmer cooperatives, from utilizing a CPR to create separate interests in the land for individual farmers' operational and financing purposes.

For the reasons stated above, LURF **must strongly oppose SB 2350** and respectfully requests that this bill be **held** in your Committees.

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