Proposals for revisions to drafts and new proposals
Submitted by Bruce Corker

I. “UNSPECIFIED CHANGES” TO THE DAVIDSON DRAFT #4/IAL 
#2, OPTION B:

(1) CONSTITUTIONALLY IMPERMISSIBLE DELEATION:

Article XI, Section 3 of the State Constitution could not be more clear in its requirement that important agricultural lands (“IAL”) be “identified by the State.”

Draft #4, by contrast, purports to delegate authority and responsibility for identification of IAL to the Counties, with only a negative veto power for the State. This purported delegation to the Counties violates both the letter and spirit of Article XI, Section 3. (See Proceedings of the 1978 Constitutional Convention, Volume I at 439-443; Attorney General Opinion to Rick Egged of March 18, 1998.)

This Constitutional defect is compounded by the vague and subjective nature of the nine draft “standards and criteria” appearing in Draft #4--See Attorney General Opinion of March 18, 1998 at 4 and 5 (standards and criteria are to be “specific” and “clear”). As Maui County Planning Director Mike Foley observed in the 1/6/04 AWG meeting, those draft standards and criteria are so indefinite and vague that four different County systems for identification of IAL would be the likely result--as contrasted with a single Statewide system mandated by Article XI, Section 3.

If the Legislature were to adopt Draft #4’s system of County-by-County identification of IAL, litigation is a certainty and the State’s protection system for ag lands will be left in disarray for years while the courts sort out the constitutional issues.

(2) PROPOSED CHANGES TO DRAFT #4

DELETE Sec. 205-xxx and REPLACE it with the following:

“Sec. 205-__: STATEWIDE IDENTIFICATION OF IAL BY LAND USE COMMISSION

The Land Use Commission (“LUC”) shall identify important agricultural lands (“IAL”) on a Statewide basis and shall adopt maps which delineate such identification, through notice and public meetings in accordance with chapter 92. This identification of IAL shall be completed by the LUC on or before June 30, 2005. The LUC shall give consideration to recommendations and
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maps prepared by the Counties pursuant to Sec. 205-___, above, and which are submitted to the LUC for consideration on or before December 31, 2004, provided that the identification of IAL shall be the independent determination of the LUC in accordance with the State Constitutional objectives to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands on a Statewide basis. “

DELETE “Sec. 205-___ County identification of other lands within the state agricultural district.”
This provision carries the same constitutionally impermissible delegation; was voted down by the drafting committee; and was not considered in AWG meetings.
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STATE PDR PROGRAM PROPOSAL

STATE FUNDED AND ADMINISTERED PDR PROGRAM

At the October 17 AWG meeting, Purchase of Development Rights as an incentive tool to preserve ag lands received the highest number of votes (41) among the various tools considered. Bob Wagner of the American Farmland Trust has provided the AWG with extensive information on PDR programs and information on the State of Maryland’s Agricultural Land Transfer Tax Program (See Bulletin Board on AWG website), as a model for funding a Hawaii PDR program.

Legislative Proposal:

“HRS___: The Department of Agriculture is authorized and directed to draft proposed legislation to establish a State PDR Program for IAL; the program shall be administered by Department of Agriculture; the program shall provide for the purchase of development rights at the fair market value of such rights from the owners of IAL who voluntarily elect to participate in the program; and shall provide for promulgation of rules and regulations by the Department of Agriculture for, among other things, priority of such purchase of such rights. Funding for the State PDR Program shall be: (1) from an “agriculture land reclassification assessment” at a rate of 10% on post-reclassification fair market value of IAL which has been reclassified to another land classification and at a rate of 5% on the post-reclassification fair market value of non-IAL agricultural land which has been reclassified to another land classification other than IAL; and (2) from trust income from lands granted to the State by the Federal Government which the Admission Act provides shall be used for, among other purposes, the development of farm ownership on as wide a basis as possible. The draft proposed legislation shall be submitted to the legislature in January 2005.
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PROPOSAL FOR FIVE ACRE MINIMUM LOT SIZE FOR IAL
(Can be incorporated in IAL #3B, New standards for IAL)

Given the historical inability of the Counties to withstand pressures for boundary changes and special use permits allowing non-ag development of Agricultural District parcels of under 15 acres (See, for example, footnote 2 at page 6 of the paper concerning Hawaii land use posted on the AWG website Bulletin Board by the American Planning Association, Hawaii Chapter), legislation providing for the identification of IAL should also include a 5 acre minimum lot size for IAL (with grandfathering of current undersized lots at their present size). Eliminating the “less than 15 acre” loophole will provide an incentive to IAL landowners to concentrate on the developing agricultural potential of IAL lands.