“For consideration at the 1/28 AWG meeting, here are (1) general observations and (2) proposed language amendments on the 1/23 “AWG Preliminary Proposal”:

OBSERVATIONS:

(1) DILUTION OF CONSTITUTIONAL PURPOSES: This draft “Preliminary Proposal” takes the clearly stated and straightforward Constitutional purposes of Article XI, Section 3 and obscures those purposes in a seemingly endless list of findings, statements of intent, statements of purpose, declarations of policies, statements of IAL definitions, and declarations of objectives. In many respects these provisions stray from the Constitutional purposes and will provide landowners who want to subdivide and develop IAL lands with a rich source of arguments that their lands should not be identified as IAL, or, if identified, that they should be removed later from the IAL classification. If State policy is to be changed from protection and conservation of agricultural lands to a policy of facilitating subdivision and development of such lands, then change must be made by Constitutional amendment and not under the guise of this Preliminary Proposal.

(2) CONSTITUTIONALLY IMPERMISSIBLE DELEGATION: Article XI, Section 3 of the State Constitution could not be more clear in its requirement that IAL be “identified by the State”. By contrast, the Preliminary Proposal purports to delegate authority and responsibility for identification of IAL to the Counties, with a mere negative veto power for the State. This purported delegation to the Counties violates both the letter and the spirit of Article XI, Section 3. In a written submission to the AWG, Hawaii County Planning Director Chris Yuen observed: “It is questionable whether the constitutional mandate of the “State” identifying IAL is achieved if a county body effectively has a veto over what becomes IAL and what does not.” This delegation defect is compounded by the vague and subjective nature of the nine proposed “standards and criteria” for identification of IAL. As Maui County Planning Director Mike Foley observed at the 1/6 AWG meeting, those proposed 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 the Preliminary Proposal’s system of County-by-County identification of IAL, litigation is a certainty and the State’s system of protection for ag lands would be left in disarray for years while the courts sort out the Constitutional issues.

(3) NO MINIMUM AMOUNT OF IAL: The Preliminary Proposal makes no determination as to how much IAL is needed to provide “agricultural self-sufficiency” or to assure future “availability of agriculturally suitable lands”---that is, there is no determination as to whether these Constitutional purposes require IAL identification of 50%, 70% or some other percentage of the State’s current Agricultural District. If a County identifies only a small portion of its ag land as IAL (or decides to identify none at all), under this Preliminary Proposal the State has no authority whatever to identify a single additional acre of land in that County as IAL.

(4) NO MINIMUM LOT SIZE FOR IAL: The single most effective measure to conserve and protect IAL would be to set a minimum lot size of 5 acres. HCR No. 157, which formalized the Ag Working Group, specifically suggested the AWG address the question of “the appropriateness of increasing minimum agricultural lot sizes from one acre to two, three, or five acres.” The Preliminary Proposal does not do this.

(5) REMOVAL STANDARDS ARE INEFFECTUAL: At the 1/19 AWG drafting committee meeting Honolulu County Interim Planning Division Chief Kathy Sokugawa described the proposed standards and criteria for reclassifying and removing land from the IAL category as so ill-defined that “you could drive a truck through them.” At a bare minimum the removal standards should require a finding that evidence on the record clearly establishes
that (a) a proposed reclassification of IAL would not adversely affect the purposes of Article XI, Section 3, and (b) that the public benefit of any proposed reclassification of IAL could not be achieved by the use of non-IAL land.

PROPOSED LANGUAGE AMENDMENTS:

(1) Page 1--strike "the framework’’ from lines 2-3 and "productive” from line 4. Article XI, Section 3 sets out the state policies, not merely a framework for policies, and requires the conservation not just of currently productive ag lands, but also ag lands which may be suitable for productive ag in the future.

(2) Page 2--at the end of line 7 add "reasonable agricultural land prices”, and in line 12 after the word “face” add “escalating land and”. The Preliminary Proposal fails to mention the greatest obstacle to economic viability to agriculture in the State which is rising land prices caused by development-driven speculation.

(3) Page2--after “policies for” in line 16 add "the conservation and protection of”

(4) Replace the text from Page 4, line 17 to Page 5, line3 with "Important agricultural lands are defined in Article XI, Section 3 as those lands needed to fulfill the purposes stated therein to conserve and protect agriculture lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.” The language in the Preliminary Proposal confuses the clear definition given in the Constitution.

(5) From Page 5, line 18 to Page 7, line 2, strike Section 205-C. This section is redundant; there is already a declaration of policy section (205-A). Is this language from a draft that has been circulated and considered by the AWG?

(6) Page 8, line 3--amend to read "such as coffee and vineyards.” Where did “energy production” come from? Was it in prior drafts? What does it mean? Power plants in ag lands?

(7) Page 8, line 17 through Page 10, line 24--does this section accurately reflect the work of the incentives subcommittee? Where, for example, are the proposals of Hiroshi Sakai for GET exemptions for farmers and farm workers?

(8) Page 11, line 3--after the work “jurisdiction” add “in order to further the Constitutionally mandated purposes of Article XI, Section 3, and.”

(9) Page 11 lines 9 and 10--amend to read: “including representatives from respective County Farm Bureau chapters and other County farmer organizations.” If this is to be a County identification process (notwithstanding the Constitutional mandate for a process for State identification of IAL), then the Counties should be consulting with County Farm Bureau chapters and farmer organizations, rather than with the Oahu-based HFBF.

(10) Page 11, line 25--after the word “lands” add “furthers the Constitutionally mandated purposes of Article XI, Section 3 and”.

(11) Page 12, lines 15-16--amend to read “commission shall act within 180 days of the land use commission’s receipt of the last of the four Counties’ report and maps.” The LUC should consider the County recommendations on a Statewide basis, not on a piecemeal basis depending on the order and timing of County submissions of their recommendations. In his written statement to the AWG, Hawaii County Planning Director Chris Yuen stated, “90 days for LUC action seems too short.” If the LUC is going to act as more than a rubber stamp, time for full consideration is essential.

(12) Page 13, line 4--insert the following and renumber the subsequent subsections: “(1) Whether the Counties’ recommendations, taken as a whole, clearly further the Constitutional purposes of Article XI, Section 3.”

(13) Page 14, line 4--add the following: “(5) a specific finding that the identification of IAL on a Statewide basis clearly satisfies the Constitutional purposes of Article XI, Section 3”.
(14) Page 14, lines 4-19--See Observations (2) and (3) above; and see proposed legislative language in Attachment “BC(Proposals__Jan.14.doc)” to the email of 1/12/04 from Karen K. Stahl.

(15) Page 15, lines 18-20--strike this language and replace with “(1) Whether there is clear evidence the reclassification or rezoning will not adversely affect the Constitutional purposes of Article XI, Section 3.”

(16) Page 17, line 1--after the word “classified” add “as non-important agricultural lands within the Agricultural District or”. Public benefit uses should be directed to non-IAL lands and to IAL only as a necessary last resort.

(17) Page 17 lines 8-14--amend to read “(c) Any decision pursuant to this section shall be based upon specific findings that the public benefit from the proposed district boundary amendment or zone change clearly outweighs the benefit of conserving and protecting important agricultural lands for future agricultural use, that the proposed action will have no significant impact upon the viability of agricultural operations on adjacent agricultural lands, and that the public benefit cannot be met by the available capacity of lands classified as non-important agricultural lands within the Agricultural District or classified for urban and rural uses.”

(18) Page 20, line 20--strike “adoption” and insert “identify”, the term used in the Constitution.

(19) Page 21, line 16--add “Two such representatives of County farmer organizations shall be named by each County Council. Travel expenses to attend meetings for such County-appointed farm organization representatives shall be paid from the funds appropriated in Section 8, below.”

(20) Page 22, line 16--add the following and re-letter subsequent subparagraphs: “(A) Exemptions from general excise taxes for farmers of up to $100,000 in farm income per year and from income taxes for farm workers of up to $10,000 of farm work income per year.”