MEMORANDUM

TO: Mary Lou Kobayashi, Planning Program Administrator
    State of Hawaii Office of Planning
FROM: Bob Wagner

The following notes and observations are compiled from a variety of sources of information and conversations on Hawaii agriculture and land use, including: documents, statutes, reports, and news articles; meetings with the county council and planning staff of each county; five public meetings; tours and visits with farmers and landowners on Oahu, Maui and Hawaii; an Agriculture Working Group work session; smaller meetings with local and state officials and organizations; and, numerous one-on-one conversations.

Throughout the week’s series of programs, meetings and workshops, the variety of farmland protection tools and techniques being employed by states and localities on the mainland were outlined and discussed. An overview of these programs can be found in the attached PowerPoint handout and annotated presentation outline that links key topics to materials and resources provided in the workbook prepared for the Ag Working Group.

A number of questions and requests for additional details on specific programs came up during the meetings that required followup. These included an update on PDR activity in Marin County, California; additional details on Pennsylvania’s Ag Security Area program; lease terms in the Point Reyes National Seashore; and, information on land protection tools in South Florida. These requests as well as others that have been communicated since the workshop series are being handled with responses and supporting information going to the requestor when applicable and, as you have instructed, to you for posting on the AWG website.

The full array of experiences of other states and communities that have developed and implemented farmland protection programs provide a wealth of information to draw from and analyze. A few common themes from these collective experiences were emphasized during the workshops: no one tool or technique will get the job done; a comprehensive approach that addresses the land use and economic needs of agriculture has the greatest chance of success; and, even with all the information and history on the various tools and techniques available, there is rarely an “off-the-shelf” solution.

The week’s programs, discussions and tours were a fascinating immersion in Hawaii agriculture and land use issues. Despite the changing face of agriculture in the state,
there was an obvious enthusiasm for future opportunities in the farming sector and excitement over some of the recent successes of niche or local marketing ventures. As in most every state or region experiencing nonfarm growth, there are many competing interests and issues surrounding the future use of farmland in Hawaii. The topics raised during the week ran the gamut: regulatory vs. incentive-based solutions; protecting farmland and farming activities from urban encroachment; how much farmland is enough?; who takes the lead, state or county?; access to land to farm and to water.

It is evident that the multiple benefits and values of agricultural land, beyond its food and fiber producing capacity, are clearly acknowledged in Hawaii. The designation of a large percentage of the state’s land mass as “Agricultural” under the 1961 State Land Use Law is evidence of this acknowledgement. But, it has also resulted in lands being defined as “agricultural land” without necessarily distinguishing those lands with clear agricultural producing qualities from those lands with agricultural producing qualities and other resource values, or from those with other resource values but questionable agricultural production value. In addition, in 1961, much of the agricultural land was in plantation agriculture. As the state moves toward diversified agriculture, the future use of plantation lands and the variability in land and crop requirements of diversified agriculture are other key factors in the discussion of not only what is agricultural land in Hawaii, but also which lands are of strategic importance to Hawaii’s agricultural future.

The tensions surrounding the use of arable land for agriculture versus some other more intensively developed uses in the face of market demands for residential, recreation, vacation or industrial/commercial development are not new or unique to Hawaii. What does of course add a layer of complexity to the debate in Hawaii is that in most cases landowner and farmer are not one and the same. The traditional land use challenges surrounding farmland and agriculture in Hawaii are therefore further complicated by the need to provide access to land for farmers to farm. Two sentiments expressed in Hawaii, “there is more than enough agricultural land in the state” and “there is no shortage of farmers willing to farm”, suggest that there is great opportunity to craft solutions to the many issues being addressed by the Agriculture Working Group. But, while in many other states these two pieces would complete the puzzle, in Hawaii at the moment these are two pieces from two different puzzles. Tools and techniques to address farmland issues in Hawaii will need to accommodate both landowner and farmer concerns.

Hawaii’s unique land use system with state and local involvement in land use decisions is yet another consideration when reviewing and analyzing the experiences of other states. Primarily the programs on the mainland that were highlighted in the presentations are enabled by the respective states but implemented and administered at the local level. However, the range of alternative arrangements is great from locally-run purchase of development rights programs with no state involvement as in Kane County, Illinois, to the state-only run purchase of development rights and ag viability programs in Massachusetts, to the state-created Pinelands Commission in New Jersey that administers a transfer of development rights program for this environmentally-sensitive, multi-jurisdiction region.
Below are the main issues in Hawaii that were raised or highlighted at the workshops and meetings:

**Landowner Options:** It should come as no surprise that many of the landowner representatives wish to retain as many options for the future use of land in their ownership as possible, including continuing to farm it. Consideration of options that might involve land protection and/or transfer to another party for agricultural use was discussed. The key will be what incentives will be offered to consider such options as alternatives to development. The cash return on developing land is in effect the incentive to develop it. Similarly, there needs to be a “return” from protecting land.

Other states and localities around the country are using Purchase of Development Rights (PDR) or Transfer of Development Rights (TDR) programs to provide an attractive return for protecting land. A singular problem for PDR in Hawaii is its expense, particularly for a cash-strapped state with equally lean county budgets. However, it should not be rejected out of hand. Further inquiry into established PDR programs in areas with high land values, such as California and New Jersey, may be of value to the Ag Working Group. Furthermore, votes last November in Maui and Kauai counties to establish land preservation funds suggest that there may be more public sentiment for paying for targeted land protection than is generally assumed.

The TDR idea generated a great deal of discussion and variations on the traditional model were placed on the table. For large landowners with land suitable for urban development along with agricultural land, the notion of a “transfer of development credits” approach that would allow one landowner to concentrate development in one area of their ownership in return for protecting land in another area under their ownership is one possibility.

It was pointed out that any TDR-type program would probably have to consider offering a menu of incentives to encourage its application. Traditional density bonuses in the development area, for example, might not be enough in Hawaii where allowable density in some areas is already high and many developments right now are not built to the full density allowed. Therefore, other creative bonuses will need to be explored. There are examples already of communities targeting incentives and bonuses to greater floor space or lot-coverage in commercial zones, or reducing the number of parking spaces required by new businesses. Tying the bonus, thus the incentive to protect farmland, to a “limiting” resource could be considered, for example, access to water, sewer capacity allocation, tax forgiveness, reduced requirements for public amenities, fast-tracking of permitting.

**Access to farmland:** Access to farmland on a long-term lease basis with arrangements that attract financing for farm operations and improvements is in high demand. Farmers and farm representatives generally spoke of wanting minimum lease terms of 25 years, with some pushing for terms in the 35-50 year range. Providing incentives for landowners to offer farmland on such terms was discussed.
The California Williamson Act offers one possible model to consider. While Hawaii currently has an agricultural property tax program, tying the leasing of farmland to a “term easement” such as those found in the Williamson Act in return for additional property tax benefits, either on the property in question or on other lands owned by the landowner, may provide an inducement to opening up farmland on a long-term basis.

One mechanical issue that was raised is the administrative challenges of a trust or company managing multiple leases of various terms, start dates, etc. with a number of different farmers. One possible solution to this concern that was offered was having a third-party entity be the primary lessee of a large block of land from one or a number of parties and that group then manage and coordinate subleases to farmers. A nonprofit organization expressly setup for this purpose could be one possible agent. There was also some discussion about what role the Hawaii Agribusiness Development Corporation could play in such an arrangement.

State infrastructure planning: Coordinating state decisions on financing and constructing new infrastructure, especially new roads and highways, with county plans and strategies was a concern, especially on Maui.

In the context of addressing the impacts of such decisions on agriculture and farmland, examples of state overarching review processes of permits, financing and construction projects that affect farmland or designated farming areas were discussed. California, for example, has built review of the impact of projects on prime farmland into its Environmental Quality Act review process. Similarly, Massachusetts, Vermont and Pennsylvania have incorporated procedures that require an extra layer of review of state actions that impact agricultural lands.

While all the issues in this memo are ultimately related to each other, the next three in particular share a close kinship:

Agricultural subdivisions: Ag subdivisions in a number of the counties amount to residential subdivisions within agricultural areas, rather than subdivisions designed to promote small agricultural operations. The net effect is to drive up the value of land in agricultural zones well beyond an affordable value for agriculture and in some respects call into question the status of “agricultural zoning” in the state.

There was widespread agreement that the ag subdivision phenomenon and the price effect of non-farm uses on agricultural land need to be addressed. TDR and cluster, or open space, subdivisions are typically used to permit development in agricultural areas in other parts of the country. Allowing subdivisions in a rural area in conjunction with the permanent protection of a separate block of farmland might be considered as part of a TDR-type program. Or, the clustered, open space, development option might work to limit the home sites to just a fraction of the overall area, while leaving a larger block of farmland protected under an easement and available for sale or lease on a long-term basis to a real farmer. Major concerns with these approaches are how to promote active
agricultural use on the protected land and how to buffer agricultural activity from nonfarm uses.

The clustered, open space development idea could be incorporated into an expansion of the areas in the state designated as “Rural.” Expansion of this designation could be tied to a requirement that these areas be developed in a clustered/open space development fashion. By accommodating this market segment and in this configuration, these districts could serve as a transition zone between more urban settlement patterns and areas that are truly agricultural or conservation-oriented. Moving appropriate lands to Rural and requiring that they be developed in this fashion would remove the temptation to view the agricultural district as a de facto residential district.

Right-to-Farm: Further contributing to the impression that ag subdivisions are really just large-lot housing tracts within agricultural zones is the creation of CC&Rs (covenants, conditions and restrictions) governing the subdivisions, which in some cases restrict what otherwise would be normal agricultural practices and reducing the potential for real agriculture to take place within a subdivision. Buffering these subdivisions from adjacent full-time agricultural operations is also an issue. Finally, the existence of the state’s Right-to-Farm Law, as has been the experience of other states with growing nonfarm populations in agricultural areas, does not in of itself stop people from complaining about normal agricultural practices or inoculate farmers from the site inspections and psychological drain that comes from such complaints.

Eliminating restrictions on normal agricultural practices within agricultural zones, regardless of any approved nonfarm development within the zone, will help prevent the ironic situation of having agriculture being viewed as a nuisance within an agricultural zone. To reinforce the notion of farming as a primary use, Delaware for example provides that farmers within agricultural districts are re-paid legal costs by the plaintiff in frivolous lawsuits.

Identification of agricultural lands: In the end, this may be the core issue raised during the week of workshops and meetings. By many accounts and from a variety of different points of view along the position spectrum, the state’s 1961 Land Use Law over-designated land as “Agricultural.” The result being that today there are insufficient areas in the state to site and develop “rural developments” and by having so much land designated as “Agricultural”, including land that may have little agricultural value, the whole notion of zoning land for agriculture is open for criticism and abuse, thus threatening the whole concept. One unintended consequence of the large amount of land in agricultural districts is the creation of ag subdivisions that as noted above further diminish the validity of agricultural zoning and contribute to scattered residential developments within agricultural areas. This is indeed one of the most sensitive issues before the AWG, and if past debate over the identification of important agricultural lands is any indication, one not easily resolved.

Many of the farmland protection techniques discussed during the workshops as they are applied successfully around the country rely on targeting the incentives of such programs
to specific areas designated/identified as strategically important for long-term agricultural use. Criteria that reflect the important values associated with farmland guide decisions on designation and distribution of incentives. These criteria may include soil quality, microclimates; proximity to other protected lands; distance from existing services; other overlapping resources values, such as wildlife habitat and aquifer recharge areas; and, community commitment to agriculture. Some of the most successful purchase of development rights programs in the country, Pennsylvania, New Jersey and Maryland, all rely on criteria for the selection of farms that are based on state-mandated overarching guidelines with more detailed criteria developed at the local government level to reflect local priorities and nuances in agricultural resources and needs.

Interest in Agricultural Districts or Agricultural Security Areas as they are administered in states like Pennsylvania, California, New York and New Jersey centered around applying a similar idea as an overlay to “zero-in” on the most important farmland within Hawai‘i’s agricultural areas for the purposes of targeting and directing incentives and long-term protection programs. It was suggested that perhaps state incentives and/or funding could be tied to the counties taking certain steps to plan and develop programs in support of agriculture. The Pennsylvania approach to state and local government coordination on farmland protection was highlighted as one such example in the workshop presentations.

Attachments:
Attachment 1, AWG presentation outline with selected items from the AWG workbook highlighted.
Attachment 2, Slides from the AWG PowerPoint presentation.
Attachment 3, Farm tour itineraries.

Funding for the seminars was provided by the Hawaii Coastal Zone Management Program, Office of Planning, Department of Business, Economic Development and Tourism, State of Hawaii, pursuant to National Oceanic and Atmospheric Administration (NOAA) Award No. NA170Z1121, and the State Department of Agriculture.