REPORT TO THE LEGISLATURE
STATE OF HAWAII
2006 REGULAR SESSION

PRELIMINARY REPORT ON THE IMPLEMENTATION OF ACT 183

INCENTIVES FOR IMPORTANT AGRICULTURAL LANDS

PREPARED BY:

DEPARTMENT OF AGRICULTURE

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Executive Summary

Purpose of the Preliminary Report

HDOA began internal discussions about the incentive development process as soon as it became evident that HB 1640 would pass. While there was no requirement that a preliminary report be prepared, HDOA decided that as the lead organization, it would prepare a special report for the legislature in the 2006 session in order to build momentum for the development of incentive legislation to be included in the 2007 legislative report.

The primary purpose of this preliminary report is to provide legislators with a status report on HDOA's organizational efforts to date, preliminary research findings and HDOA's planned activities for 2006.

Organization

HDOA designated a core group of twelve organizations under the title of Forum on Agriculture-Related Matters (F.A.R.M.), otherwise referred to as the Forum.

HDOA chairs the Forum and has six representatives (Chairperson BOA; Deputy; Planner; Executive Director, Agribusiness Development Corp.; Administrator, Agricultural Loan division; Engineering Program Manager, Agricultural Resource Management division).

The Hawaii Farm Bureau Federation (HFBF), and the Land Use Research Foundation (LURF) are each allocated six members and selection of representatives is at their discretion.

Other organizations and their number of representatives for decision-making purposes are:

- Department of Taxation (DoTax) (2)
- University of Hawaii College of Tropical Agriculture and Human Resources (CTAHR) (1)
- Department of Business Economic Development & Tourism (DBEDT) (1)
- Office of State Planning (1)
- Hawaii Agriculture Research Center (HARC) (1)
- City & County of Honolulu Planning Department (1)
- County of Maui Planning Department (1) *
- County of Kauai Planning Department (1)*
- County of Hawaii Planning Department (1)*

*Neighbor Island planning directors were asked to participate in the Forum meetings and were sent resource materials compiled by HDOA. Directors of the Hawaii and Maui Planning departments were briefed on the process by which the incentives will be developed in August 2005. To allow them to focus on the IAL mapping portions of Act 183, they suggested that it would be a more efficient use of their time if they gave input in the development of specific proposals which will occur in 2006 rather than be actively involved in the initial phase of research, brainstorming, and finding models from other states that have enacted incentives. The HDOA Deputy is meeting with the Kauai Planning department in January 2006.

In order to disseminate information quickly and efficiently to Forum members, farmers, landowners and other interested parties, HDOA has created a link to IAL incentive related information and materials on its official website. Viewers can access the link at www.hawaiiag.org/hdoa/ial.htm.

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Potential Incentives

Forum members have expressed interest in exploring the potential for the following incentives:

1. PACE – Purchase of Agriculture Conservation Easements

PACE is a program that pays farmers to keep their land available for agriculture. Landowners sell an agricultural conservation easement to a government agency or private conservation organization that is responsible for preventing development. Landowners retain full ownership and use of their land for agricultural purposes. Value of a conservation easement is equal to the fair market value minus the farmland value. PACE is also known as purchase of development rights (PDR).

2. Transfer of Development Rights (TDR)

Transfer of Development Rights is a program that allows individuals to purchase and sell development rights from lands that provide a public benefit such as agricultural use of prime agricultural land. Landowners receive financial compensation without developing or selling their land and the public receives permanent preservation of the land. Transferred development rights can be used to build additional houses or increased development density on parcels in targeted "receiving" areas.

3. Right to Farm

Right-to-farm laws are important because they create a sense of security for farmers. Farmers will not invest in their operations or decide to protect their land if they don't believe there is a future for farming. Right to farm laws and protections signal whether communities support farming or not.

Hawaii's existing statewide right to farm statutes, Chapter 165, HRS, could be further strengthened through the adoption or modification of existing laws and ordinances currently in place on the mainland.

4. Business Management Assistance Programs for Farmers

The Massachusetts Farm Viability Enhancement program has two components: a business planning assistance phase, and grants to implement the business plan. Farmers may apply for grants of $20,000 or $40,000 in exchange for five or ten year covenants not to develop or use the property for non-agricultural purposes. Grants of up to $60,000 are available to farms placing 135 acres or more under covenant and implementing plans that will increase net income and agricultural employment. The program looks to other sources of federal and state funding to finance any recommended environmental improvements.

The Minnesota Dairy Development and Profitability Enhancement program offers two different kinds of assistance: individual farm diagnostic assistance from a team of consultants and service providers, and business planning grants. The program's 2005 Annual Report indicates increases in annual farm profitability are on the order of a 7.3:1 return on the program's investment.

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Dairy Profitability Enhancement Teams. The goal of the dairy profitability enhancement teams is to provide dairy farms with appropriate new technologies, including rotational grazing and other sustainable agriculture methods to enhance their financial success and long-term sustainability.

Cortland County (NY) Business Development Corporation (CcBDC) supports all aspects of business development within Cortland County and works to create new employment opportunities and enhance existing jobs within the county. The majority of its agribusiness efforts are designed to retain and develop established farm operations, rather than to attract new farmers.

5. Agricultural Enterprise Zones

Agricultural enterprise zone (AEZ) programs are an outgrowth of the enterprise zone (EZ) programs that are designed to improve the economic conditions of geographically specified underdeveloped areas and communities. Over 40 states have EZs and about 20 have AEZ programs. Some AEZ programs are integrated with other programs such as agricultural land use protection, environmental impact mitigation, and farm viability. The foci of AEZ programs vary. AEZ programs in Virginia, Michigan, Colorado, and Minnesota target agricultural product processing and manufacturing businesses that add value to the state's agricultural products. The AEZ program in Massachusetts is directed specifically to agricultural production. The annual operating and grant funding cost of the Virginia AEZ program is estimated to be $2 million.

6. Agricultural Tax Credits

Agricultural tax credits will be explored in greater detail in Phase II. They may include but are not limited to:

- Credit for improvements or repair of new or existing agriculture-related infrastructure;
- Real property tax;
- Exclusion from capital gains taxation for the sale of a conservation easement;
- A transferable credit against income, gift, and estate taxes equal to the value of an agricultural conservation easement donated or sold for less than fair market value to a qualified public or private charitable entity;
- Estate tax relief;
- Tax exemptions/exclusions for investments based on new revenues from agriculture.

7. Other Types of Incentives under Consideration

- Expedited permitting process
- Flexibility in County and State Land Use Commission Conditions for Approval
- Ag. tourism as an allowed activity on ag. land

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- Dedicated financing mechanisms for ag incentives
- Farm transition services, e.g. Virginia's farm matching program
- Estate planning

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SECTION I

Background

A. Act 183

The identification and designation of Important Agricultural Lands (IAL) was proposed at the 1978 Constitutional Convention and subsequently approved by voters in the same year. Enacted as Article XI, Section 3, of the Constitution of the State of Hawaii, the State is required to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.

Act 183 is the fulfillment of the constitutional mandate. After decades of debate, farmers and landowners formed a historic alliance and joined with supporters in the Department of Agriculture, State Land Use Commission, Office of State Planning and with bi-partisan members of the legislature to pass what is rightfully described as "landmark" legislation for Hawaii's agricultural industry.

Hawaii's people can be very proud of this Act, not only for the protection and support of agriculture that it embodies but also for the dedication of numerous individuals that saw the "greater good" for agriculture and Hawaii and persevered through the years to see its passage.

B. Designation of Important Agricultural Lands

The Act provides for lands to be classified IAL either through declaratory ruling or through a county mapping process. Farmers or landowners may file a petition for declaratory ruling with the Land Use Commission (LUC) at any time beginning July 1, 2005, the effective date of the Act. The Commission shall review the petition to evaluate the qualifications of the land for designation as IAL. If 2/3rds of the Commission finds that the lands qualify for IAL designation, the Commission will issue a declaratory order designating the lands as IAL.

The county mapping process led by each county's planning department will bring together state and federal agencies, landowners and farmers to identify IAL. Within five years of county receipt of state funds appropriated for mapping of IAL, each county shall identify and map potential important agricultural lands within its jurisdiction and submit the maps to the LUC for approval.

The designation of IAL and adoption of maps submitted by the county for approval to the LUC shall take effect only after the passage of a minimum of three years following the enactment of legislation establishing incentives for important agricultural lands. Incentives must be approved by the legislature through a declaration of satisfaction or a concurrent resolution.

C. Development of Important Agricultural Lands Incentives

The Hawaii Department of Agriculture (HDOA) with the assistance of the Department of Taxation is directly or indirectly involved in the implementation of the entire Act. HDOA's primary responsibility is in the development of incentives.

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The HDOA is responsible for submitting a report to the legislature no later than twenty days before the convening of the regular session of 2007. The report shall include proposed legislation for incentives supported by an analysis of the costs, benefits and expected outcomes, a justification for their inclusion, and a description of the process through which the incentives were identified, selected, and approved for inclusion in the report.

D. Other Agricultural Land Related Activities

HDOA is also involved in establishing a non-agricultural park lands program from agricultural lands transferred from the Department of Land and Natural Resources and is working with the Office of State Planning and the State Land Use Commission in the implementation of Act 205, for the expansion and enhancement of rural districts. The concurrent development of new agricultural land programs along with the existing agricultural park program provides an opportunity to create a broad range of choices tailored for differing needs of agriculturists.

E. Purpose of the Preliminary Report

HDOA began internal discussions about the incentive development process as soon as it became evident that HB 1640 would pass. It was decided that HDOA, as the lead organization, would prepare a special report for the legislature in the 2006 session in order to build momentum for the development of incentive legislation to be included in the 2007 legislative report. This start-up period would be used to organize a stakeholders group, conduct outreach and education to create an awareness of Act 183, collect data about incentive programs on the US mainland, and identify specific incentives concepts that have high potential for development into incentive legislation.

The primary purpose of this preliminary report is to provide legislators with a status report on HDOA's organizational efforts to date, preliminary research findings and HDOA's planned activities for 2006.

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SECTION II

Process and Deliberations

A. Incentive Development Process

A two-phase process was designed by HDOA. The first phase was to encompass the period of July 1, 2005-December 31, 2005 and the goal was to establish an organizational and informational foundation for Phase II. Ideally, the Phase I process would have led to the development of 2-3 legislative proposals for incentives that were easily agreed upon, have widespread application and support, and do not require extensive research. Any controversial incentives or ones that require further research and discussion would be deferred for consideration to Phase II. While the Forum did not develop any proposals for legislation, it did identify a number of promising areas for further research.

Phase II will begin January 1, 2006 and conclude with the legislature providing a declaration of satisfaction or adopting a concurrent resolution declaring satisfaction with the incentives for important agricultural lands. A report including legislative proposals for incentives and a description of their impact and development will be presented to the legislature no later than twenty days before the convening of the regular session of 2007.

B. Incentive Development Activities

1. Organizational

Act 183 requires that stakeholder discussions be inclusive and use a consistent voting procedure. HDOA believes that inclusiveness and fairness are crucial to the successful development of incentives legislation. We have designed the composition and guidelines of the decision-making group accordingly.

HDOA designated a core group of twelve organizations under the title of Forum on Agriculture-Related Matters (F.A.R.M.), otherwise referred to as the Forum.

HDOA chairs the Forum and has six representatives (Chairperson BOA; Deputy; Planner; Executive Director, Agribusiness Development Corp.; Administrator, Agricultural Loan division; Engineering Program Manager, Agricultural Resource Management division).

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The Forum met three times in Phase I. The HDOA Chair, Deputy and Planner met numerous times with various members of the Forum throughout the period.

In response to Forum members' interest in transfer of development rights (TDR) and purchase of development rights (PDR), HDOA organized a teleconference with Mr. Bob Wagner of American Farmland Trust (AFT), speaking to members about transfer of development rights programs throughout the mainland and Mr. John Zawitowski, describing the specifics of Montgomery County, Maryland's TDR program.

In 2006, when outreach to the Neighbor Islands intensifies, the Forum will actively involve the directors of the Maui, Kauai, and Hawaii planning departments and include them in our decision-making process.

County of Maui Planning Department (1)
County of Kauai Planning Department (1)
County of Hawaii Planning Department (1)

2. Procedural

a. Decision-Making Process

In order to maintain a fair and consistent voting procedure, HDOA will limit the decision making group to those organizations and their representatives listed above. However, ideas for incentives from as broad a spectrum of individuals and organizations as possible will be solicited.

One of the strengths of the Forum is that several of its members participated in the efforts of the Agricultural Working Group and the network of contacts developed and maintained will be invaluable. HDOA will lead an effort to identify and include other individuals and groups that might not have participated previously. We are committed to ensuring that all interested parties from across the state are heard equally.

The Forum will operate collegially and to the extent possible, make decisions based upon consensus. Ultimately, HDOA has the responsibility to compile the final report to the legislature and will do so after listening to and considering the opinions of the Forum as well as input from other members of the agricultural community and the general public.

The guidelines that HDOA has developed for IAL incentives proposals are provided below. The review process that will be used to evaluate incentive proposals is described on the following page. Copies of the incentive concept and proposal forms can be found in Appendix A and B.

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Incentive Proposal Guidelines

- Incentives must be clearly linked to one or more of the following purposes: "Promote long-term use and protection of important agricultural lands for agricultural use", "Promote agriculture viability" or "Sustain growth of agriculture industry".

- Incentives that are "revenue neutral", i.e. tax credits or income exemptions for new revenue derived from agricultural operations on IAL, will be favorably considered.

- Incentives should be for the primary purpose of building and strengthening Hawaii agriculture on IAL.

- Incentives should be developed for various segments (beneficiaries) of the agricultural community to promote its overall viability.

- Expected outcomes from incentives must be measurable.

- Principal party (ies) responsible for "championing" and writing legislation must be identified.

- Proposals must include estimated cost/savings and assumptions in sufficient detail that an independent analyst can examine and provide an opinion on the accuracy and validity of the estimate.

- Proposals must be limited to 10 pages not including a one page executive summary and attachments or exhibits.

- Must specify the length of time in which incentive(s) is available.

- Proposals will become public documents. Proposal must not contain confidential or restricted information.

- Proposals may be submitted by any individual or organization.

b. Proposal Review

i. Proposals will be classified by type of beneficiary of the proposed incentive.

ii. Initial proposal review will be conducted by HDOA and Do Tax to ensure that proposals meet the minimum requirements. Proposals not meeting all of the minimum requirements will be returned.

iii. Proposals meeting minimum requirements will be referred by HDOA and DoTax following review to all Forum members. If necessary, HDOA will convene a sub-committee of members and consultants/other resources with specialized knowledge to provide detailed analysis and recommendations for specific proposals. Findings and recommendations of the sub-committee will be provided to the entire Forum and posted on the HDOA website.

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iv. HDOA will survey the Forum members and community using the Proposal Review Guide (see Appendix C) and determine if the proposal(s) deserves further consideration. If yes, the proposal writers will make an oral presentation to the Forum and members of the community;

v. HDOA will again survey the Forum members and make a final decision for inclusion or exclusion from the report to the legislature.

c. Community Input

i. Community outreach meetings to create awareness of the incentive process will be organized whenever possible by a county committee comprised of one Forum member from HDOA, HFBF, LURF, and the county planning officer.

ii. Background information about the IAL incentive process, proposal requirements and format will be posted on the HDOA website.

iii. Notes from community outreach meetings will be posted on the website.

iv. Approved proposals will be posted on HDOA website. Organizations/individuals that provide identification will be allowed to rank and comment on each proposal.

v. Recommendations from community ranking and comments will be considered in the final proposal review.

3. Phase I Outreach

HDOA and Forum members, particularly HFBF and LURF, have been active in creating awareness within the agricultural community and the general public of the promise and implications of Act 183. Dean Okimoto, President of HFBF and Dean Uchida, Executive Director of LURF have authored editorials and letters printed in the Honolulu newspapers and spoken to their membership about the importance of Act 183.

HDOA's Deputy, Duane Okamoto, has made presentations to farmer groups in Hilo, Kona, Pahala, and Waimanalo about Act 183. HDOA's Chairperson, Sandra Lee Kunimoto and Dean Uchida spoke to the Hawaii State Bar Association's annual convention and Duane Okamoto and Dean Uchida spoke about IAL incentives to the assembled delegates of HFBF's annual convention. Dean Okimoto emphatically stressed the importance of the incentive process at the convention and delegates' need to be involved. Prior to the HFBF convention, Mr. Okamoto met with the respective county Farm Bureau presidents to provide an overview of the incentive development process and to encourage their participation.

HDOA has created a link to IAL incentive related information and materials on its official website. Viewers can access the link at www.hawaiiag.org/hdoa/ial.htm
The link will include regularly updated information about incentives, comments about proposed incentives, and schedules of incentive meetings around the state.

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4. Phase I Research

HDOA and American Farmland Trust (AFT)

HDOA has been working with Mr. Bob Wagner of the American Farmland Trust (AFT) and conducting its own research in order to identify existing laws and programs that have potential for adoption in Hawaii. AFT has an extensive library of materials on subjects related to agriculture. A large amount of information from AFT was previously compiled by the Agricultural Working Group and this information was reviewed, sorted, and updated.

Following one of the Forum meetings, Mr. Wagner was requested to provide information about TDR, PDRs and agricultural enterprise zones. HDOA reviewed an extensive list of materials on the AFT website consisting of over 1,000 pages and sent out the web addresses of pertinent documents with specific pages to read to the Forum members.

Mr. Wagner has been assisting HDOA for a number of years. He made significant contributions to the Agricultural Working Group and is currently conducting research on HDOA's behalf.

Mr. Wagner will be coming to Hawaii in January 2006 to work with the department on developing incentives. We expect to have him return to Hawaii in the spring or summer of 2006 and use his expertise on the Neighbor Islands as well as Oahu.
HDOA framed three questions that directed its research in Phase I.

1. *What are the characteristics of Hawaii agriculture that should be understood by members of the Forum in order to make an informed decision about IAL incentives?*

2. *What are some examples of incentives that have been implemented on the US mainland?*

3. *Are there any significant differences between incentive programs on the US mainland and Act 183?*

Research Findings

What are the characteristics of Hawaii agriculture that should be understood by members of the Forum in order to make an informed decision about IAL incentives?

The following information is from a report compiled by HDOA and distributed to the Forum.

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RECENT TRENDS IN AGRICULTURE BY COUNTY 1999-2003

Note: "⇑" indicates increase in later value from earlier value
"⇓" indicates decrease in later value from earlier value

TABLE 1 ACREAGE AND CROP PRODUCTION

	Kauai	Oahu	Maui, Molokai, Lanai	Big Island
Land acreage (2003 Data Book)	353,900	386,188	722,100	2,573,400
Acres in State Ag District (2003 Data Book)	139,320	128,839	404,043	1,214,527
Acres in ag production excluding pasture, (2003 Statistics of HI. Agriculture)	14,100 ⇓ *(26,000 in 1999)*	17,300 ⇓ *(28,400 in 1999)*	46,000 ⇓ *(55,600 in 1999)*	11,800 ⇓ *(12,300 in 1999)*

Areas in agricultural production have declined due to sugar plantation closures on Kauai and Maui and termination of forage crop and alternative crop experiments on Oahu.

TABLE 2 VALUE OF AGRICULTURAL PRODUCTION

	Kauai	Oahu	Maui, Molokai, Lanai	Big Island
Value of crop, livestock, aquaculture sales* (2003 Statistics of HI. Agriculture)	$49,230,000 ⇓ *($59,731,000 in 1999)*	$187,003,000 ⇑ *($181,657,000 in 1999)*	$136,748,000 ⇑ *($131,859,000 in 1999)*	$179, 659,000 ⇑ *($157,847,000 in 1999)*
Top 3 valued crops (2003 Statistics of HI. Agriculture)	Sugar; Flowers/nursery; Vegetables/melons *(Sugar, fruits, taro in 1999)*	Pineapple, Vegetables/melons; Flowers/nursery *Pineapple, vegetables/melons, milk in 1999)*	Sugar; Pineapple; Flowers/nursery *(Same ranking in 1999)*	Flowers/nursery; Fruits; Aquaculture *(Flowers/nursery, vegetables/melons, fruits in 1999)*
Agricultural value as a percent of estimated gross county product* *(2003 statistics applied to projected 2005 GCP from DBEDT)*	2.3%	0.5%	2.6%	4.1%

**Value of agricultural sales does not include value added.*

- With the exception of Kauai which lost 2 major sugar plantations between 1999-2003, the increase in the values of non-sugar related crops clearly offset the decline in production acreage seen in the previous table.

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TABLE 3 NUMBER, SIZE OF FARMS, AND AGE OF FARMERS

	Kauai	Oahu	Maui, Molokai, Lanai	Big Island
Number of farms (2003 Statistics of HI. Agriculture)	600 ⇑ *(500 in 1999)*	800 ⇓ *(900 in 1999)*	850 ⇑ *(800 in 1999)*	3,250 ⇓ *(3,300 in 1999)*
Median farm size/acres	5	4	5	6
Average age of farmer	56.3 ⇑ *(55.7 in 1997)*	57.1 ⇑ *(56.5 in 1997)*	55 ⇑ *(53 in 1997)*	56.5 ⇑ *(55 in 1997)*

- Overall, total number of farms (defined as $1,000 or more of agricultural sales) has remained fairly stable.
- The median size of a Hawaii farm is 5 acres and the average age of farmer operators is about 56 years.

TABLE 4 FARMS BY INCOME FROM AGRICULTURAL PRODUCTION

	Kauai	Oahu	Maui, Molokai, Lanai	Big Island
Less than $2,500	201 ⇑ *(188 in 1997)*	143 ⇓ *(158 in 1997)*	228 ⇓ *(313 in 1997)*	835 ⇓ *(979 in 1997)*
$2,500 to $4,999	25 ⇓ *(68 in 1997)*	74 ⇓ *(89 in 1997)*	103 ⇑ *(96 in 1997)*	458 ⇓ *(490 in 1997)*
$5,000 to $9,999	87 ⇑ *(68 in 1997)*	115 ⇓ *(127 in 1997)*	115 ⇑ *(104 in 1997)*	578 ⇑ *(498 in 1997)*
$10,000 to $24,999	93 ⇑ *(75 in 1997)*	165 ⇓ *(191 in 1997)*	157 ⇑ *(118 in 1997)*	641 ⇑ *(605 in 1997)*
$25,000 to $49,000	46 ⇑ *(22 in 1997)*	107 ⇓ *(120 in 1997)*	71 ⇑ *(52 in 1997)*	282 ⇓ *(341 in 1997)*
$50,000 to $99,000	25 ⇑ *(24 in 1997)*	54 ⇓ *(67 in 1997)*	50 ⇑ *(40 in 1997)*	185 ⇓ *(192 in 1997)*
$100,000 or more **(All above from 2002 Census of Ag.)**	34 ⇑ *(23 in 1997)*	136 ⇑ *(128 in 1997)*	78 ⇓ *(83 in 1997)*	237 ⇑ *(214 in 1997)*

- Kauai and Maui experienced increases in nearly every income category, the Big Island was mixed, and Oahu suffered a decline in every category but $100,000 and over.
- The less-than-$2,500 category has seen declines on all but Kauai, while the $100,000-and-over category saw increases in all but Maui County.

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TABLE 5 FARM SIZE DISTRIBUTION

	Kauai	Oahu	Maui, Molokai, Lanai	Big Island
1 to 9 acres	352 ⇑ *(262 in 1997)*	574 ⇓ *(664 in 1997)*	505 ⇑ *(468 in 1997)*	2,009 ⇓ *(2,062 in 1997)*
10 to 49 acres	127 ⇓ *(135 in 1997)*	152 ⇓ *(156 in 1997)*	212 ⇓ *(233 in 1997)*	818 ⇓ *(893 in 1997)*
50 to 179 acres	38 ⇑ *(35 in 1997)*	34 ⇑ *(28 in 1997)*	56 ⇑ *(48 in 1997)*	207 *(207 in 1997)*
180 to 499 acres	21 ⇓ *(22 in 1997)*	15 ⇓ *(17 in 1997)*	20 ⇓ *(29 in 1997)*	90 ⇑ *(71 in 1997)*
500 to 999 acres	11 ⇑ *(3 in 1997)*	5 ⇑ *(3 in 1997)*	7 ⇑ *(5 in 1997)*	38 ⇑ *32 in 1997)*
1,000 or more acres **(All above from 2002 Census of Ag.)**	16 ⇑ *(11 in 1997)*	14 ⇑ *(12 in 1997)*	23 *(23 in 1997)*	54 *(54 in 1997)*

- More than 80% of farms in each county are 50 acres or less in size.
- The greatest percentage increases occurred in the 500-999 acre farm size in each county, particularly Kauai.

TABLE 6 PROPERTY TAX RATES, TAXES PAID ON AG LAND, AND NUMBER OF AG PARCELS (2004)

	Kauai	Oahu	Maui, Molokai, Lanai	Big Island
Property tax rates	$7.60	$9.57	$4.93	$9.85
Agricultural property taxes paid and % of total taxes collected	$8.2 million, or 14.6% of total taxes collected	$13.2 million, or 2.6% of total taxes collected	$7.1 million, or 5.3% of total taxes collected	$16.7 million, or 13.1% of total taxes collected
Number of agricultural tax parcels and % of total number of tax parcels (2003)	3,699, or 13% of total number of tax parcels	2,389, or 1% of total number of tax parcels	8,241, or 14% of total number of tax parcels	71,499, or 53% of total number of tax parcels

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TABLE 7 FARM LAND TENURE: 2002

	Kauai	Oahu	Maui, Molokai, Lanai	Big Island
Full ownership Number of farms/acres (2002 Census of Ag.)	325 farmers ⇑ on undisclosed acres *(245 farmers, undisclosed acres in 1997)*	402 farmers ⇓ on undisclosed acres *(416 farmers, undisclosed acres in 1997)*	529 farmers ⇑ on 82,274 acres ⇑ *(460 farmers on 81,616 acres in 1997)*	1,946 farmers ⇑ on 98,905 acres ⇑ *(1,859 farmers on 68, 306 acres in 1997)*
Part ownership Number of farms/acres (2002 Census of Ag.)	80 farmers on 75,416 acres (undisclosed fee/lease breakdown) *(69 farmers on undisclosed acres (undisclosed fee/lease breakdown) in 1997)*	56 farmers on undisclosed acres (undisclosed fee/lease breakdown) *(56 farmers on undisclosed acres (undisclosed fee/lease breakdown) in 1997)*	115 farmers ⇓ on 135,661 acres ⇓ (102,342 fee/33,319 lease) *(137 farmers on 188,649 acres (140,909 fee/47,740 lease) in 2002*	338 farmers ⇓ on 520,822 acres ⇑ (308,400 fee/212,422 lease) *(445 farmers on 638,486 acres (326,689 fee/311,797 lease) in 2002)*
Tenant only Number of farms/acres (2002 Census of Ag.)	160 farmers ⇑ on undisclosed acres *(154 farmers on 12,415 acres in 1997)*	336 farmers ⇓ on undisclosed acres *(408 farmers on 27,126 acres in 1997)*	179 farmers ⇓ on 38,755 acres ⇓ *(209 farmers on 21,825 acres in 1997)*	932 farmers ⇑ on 201,549 acres ⇓ *(1,015 farmers on 163,220 acres)*

- At least 50% and up to 66% of the total number of farmers in each county own their farmed lands.
- The number of lease-only farmers has declined (with exception of Kauai), however, the acreage of lease-only farms has increased on Maui and Big Island.
- On Kauai, the number of farmers in two categories (fee, lease only) has increased.
- On Oahu, the number of landowner farmers has declined slightly, the number of mixed fee/lease farms has remained stable and the number of lease-only farmers has declined by 18%.

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TABLE 8 ESTIMATED MARKET VALUE OF LAND AND BUILDINGS: **2002**

	Kauai	Oahu	Maui, Molokai, Lanai	Big Island
Average per farm (2002 Census of Ag.)	$1,068,439 ⇑ *($847,704 in 1997)*	$738,577 ⇑ *($565,361 in 1997)*	$1,251,598 ⇑ *($818,342 in 1997)*	$724,308 ⇑ *($574,464 in 1997)*
Average per acre (2002 Census of Ag.)	$3,989 ⇑ *($2,013 in 1997)*	$8,358 ⇑ *($6,255 in 1997)*	$4,112 ⇑ *($2,258 in 1997)*	$2,822 ⇑ *($2,192 in 1997)*

- These values are from a sampling of landowners' estimates of fair market value of land and buildings if they were sold in the 2002 market. **These values are not the result of professional appraisals.** Separate estimates for land and buildings were completed. In comparison, the City and County valuations for agricultural lands in 2004 varied from $30,000 per acre in the North Shore area to over $135,000 per acre in Waimanalo.

TABLE 9 USE OF IRRIGATION

	Kauai	Oahu	Maui, Molokai, Lanai	Big Island
Farms with irrigation (2002 Census of Ag.)	316 ⇑ *(275 in 1997)*	545 ⇓ *(629 in 1997)*	482 ⇑ *(480 in 1997)*	908 ⇑ *(857 in 1997)*
Irrigated acreage (2002 Census of Ag.)	19,595 ⇑ *(18,212 in 1997)*	13,703 ⇓ *(16,303 in 1997)*	26,855 ⇓ *(35,031 in 1997)*	9,041 ⇑ *(7,425 in 1997)*

- The number of farms using irrigation increased in all counties but Oahu.
- Irrigated acreage increased on Kauai and the Big Island and declined considerably in Maui County and Oahu.

TABLE 10 SOURCE OF IRRIGATION WATER 2000

	Kauai	Oahu	Maui, Molokai, Lanai	Big Island
Ground water and %age of total groundwater use (2003 Data Book)	10.62 MGD, or 41% of total groundwater use	31.1 MGD, or 15% of total groundwater use	115.6 MGD, or 78% of total groundwater use	13.35 MGD, or 30% of total groundwater use
Surface water and %age of total surface water use (2003 Data Book)	19.37 MGD, or 100% of total surface water use	8.07 MGD, or 100% of total surface water use	159.03 MGD, or 97% of total surface water use	6.36 MGD, or 72% of total surface water use

- Maui county farmers consume the most irrigation water in the State, more than 3 times the combined total of the other 3 counties.
- There is no breakdown by public/private water supply systems.

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TABLE 11 IRRIGATION WATER RATES 2005

	Kauai	Oahu	Maui, Molokai, Lanai	Big Island
0 – 10,000 gallons	$2.10	$2.17 (up to 13,000 gallons)	$1.42	$0.85
10,001 – 25,000 gallons	$2.10	$0.81	$2.16	$0.85
Over 25,000 gallons	$0.70	$0.81	$0.80	$0.85

- Kauai and Big Island do not have non-potable water rates.
- Oahu non-potable water rate is $1.39/1,000 gallons, Maui is $0.80/1,000 gallons.
- There is no breakdown of the amount of county water used for irrigation.

TABLE 12 AGRI-TOURISM: 2003

	Kauai	Oahu	Maui, Molokai, Lanai	Big Island
Number of farms with agri-tourism activities, (HI. Ag. Stat. Service, 2004)	24 ⇑ *(16 in 2000)*	31 ⇑ *(19 in 2000)*	31 ⇓ *(43 in 2000)*	89 ⇑ *(60 in 2000)*
Value of agri-tourism (HI. Ag. Stat. Service, 2004)	$5,949,000 ⇑ *($2,103,000 in 2000)*	$8,586,000 ⇑ *($7,777,000 in 2000)*	$6,772,000 ⇓ *($7,288,000 in 2000)*	$12,562,000 ⇑ *($8,875,000 in 2000)*

- With the exception of Maui County, all counties have increased numbers of farms with agri-tourism activities and values of these activities.
- The Big Island experienced the largest increase in number of farms (48%) and value (42%) from agri-tourism.

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What are some examples of incentives that have been implemented on the U.S. mainland?

HDOA searched websites and printed materials and identified several agricultural laws and programs that will be further explored in Phase II. Table 13 depicts the distribution of programs by state.

Table 13

Agricultural Incentive	Description	State
CONSERVATION EASEMENTS		
Tax Credit for Donation of Land	Credit = 50% of value of gift against state income tax. Carry forward available for up to 10 years. Credit = value of gift, up to $33,000/tax year. Any amount of credit not used to offset tax liability is returned as a refund. $10 million cap on applications per year per district.	Connecticut Arizona
Conservation Easement Tax Credit	Credit = value of easement, up to $260,000. Credit/refund received limited to $50,000/year. Any amount over annual limit may be carried forward or transferred to another party.	Colorado
Agricultural Security Area	To promote more permanent and viable farming operations by strengthening the farming community's sense of security in land use and the right to farm.	Pennsylvania Florida
Purchase of Agricultural Conservation Easement Programs (PACE) or Purchase of Development Rights (PDR)	Compensates property owners for restricting the future use of their land.	California, Colorado Connecticut, Delaware, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, Pennsylvania, Rhode Island & Vermont
Transfer of Development Rights Program	Gives landowners the option of selling development rights to their land.	California, Colorado, Connecticut, Florida, Idaho, Maryland, Massachusetts, New York, Pennsylvania, Utah, Vermont, Washington
Local Tax Reduction	10-20% additional tax reduction in return for 15-25 term easement.	New York

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AGRICULTURAL ENTERPRISE ZONES		
Agricultural Enterprise Zone Act (proposal)	Tied to existing ag districts, covers new and existing ag operations. Tax credit = 80% of state tax in year 1, 60% of tax due in years 2-10. State sales tax exemptions for 5 years. Authorization for local incentives.	Virginia
BUSINESS INCENTIVES		
Beginning Farmer Tax Credit	Credit = 5% of gross rental income of ag assets leased to qualified beginning farmer. Credit = full rental income of ag assets leased &/or proceeds of sale of farmland to qualified beginning farmer. $50,000 cap. Unused credit carried over for up to 5 subsequent years.	Nebraska Massachusetts
Investment Tax Credit Program	Credit up to 10% of investment. Unused balance carried forward for up to 7 years. Refund option for value-added ag projects. Credit = 50% of investment up to $15,000. Unused balance can be applied to previous 3 tax years or next 5 tax years, or transferred. Credit = 30% of investment up to $20,000. No more than 50% of credit can be used in any one year and credit may not exceed 50% of tax liability. Carry forward – 15 years. Credit = 50% of investment in a project up to $15,000. No carry forward. Credit = 100% of contributions to ag value-added fund. Full return in credit or refund.	Iowa Missouri North Dakota Colorado
Producers Tax Credit	30% investment tax credit with a 7 year carry forward.	Oklahoma
Value-Added Agriculture Investment Tax Credit	Allows value-added ag businesses a 10% corporate tax credit for new investment. Provides individual members of value-added ethanol cooperatives with an individual tax credit which can be used on individual tax returns.	Iowa
BUSINESS INCENTIVES		
New Generation Cooperative Incentive	Investment tax credit for members of incorporated cooperatives that process ag products or produce renewable fuels. Lesser of 50% of the member's cash investment or $15,000.	Missouri
Agriculture Value-Added Development	Investment tax credit for value-added ag processing co-ops, very similar to Missouri.	Colorado
Agricultural Cooperative Income Tax Credit	Investment tax credit for value-added ag processing co-ops, another one very similar to Missouri.	North Dakota

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Sales Tax Exemptions	Eliminates retail sales taxes on electricity for ag farming and aquaculture businesses.	Maine Nebraska
AG TAX PROGRAMS		
Income Tax Credit Breaker	Farmland and open space preservation contract (min. 10 years), credit = all property taxes paid > 3.5% of household income, no cap.	Michigan
Differential Assessment	Taxes agricultural land at agricultural value, rather than its fair market value. There are three types of differential assessment programs: preferential assessment, deferred taxation and restrictive agreements.	Every state except Michigan
California Land Conservation Act (Williamson Act)	Preserves ag land and open space and promote efficient urban growth patterns.	California
PROPERTY TAX BENEFITS		
Circuit Breaker Tax Relief Credits	Allow farmers to claim state income tax credits to offset local property taxes that exceed a certain percentage of their income.	Michigan, New York and Wisconsin
Farm and Open Space Tax Law	Provides property tax relief to owners of farmland and open space. Property enrolled in the program is to be assessed at current use value rather than fair market value.	Maine
Tree Growth Tax Law	Provides property tax relief to owners of woodlots and forest lands.	Maine
Forest Management Planning Tax Credit	Provides small woodlot owners up to $200 in tax credits every 10 years to offset the cost of a forest management plan.	Maine
Land for Maine's Future Program	Acquire land and interests in lands, including conservation, water access, outdoor recreation, fish and wildlife habitat, and farmland.	Maine
Farm Viability Program	Requires developers pay into a protection fund in order to receive development bonuses	Massachusetts
MISCELLANEOUS		
Internship and Training	Gather information about existence of farm internship and training programs, persons interested in training, farmers retiring or ceasing farming operations, persons desiring to enter farming.	Maine
Farms for the Future	Assistance in developing a detailed business plan to increase vitality and attract investment. Review panel formed to review plan and assist in attracting investment.	Maine
Agricultural Development Act	Allows industrial commission to make loans to lending institutions which must, in turn, make loans to agricultural enterprises.	North Dakota
Growth Through Agricultural Act	Establishes a public-private partnership that encourages agribusiness through seed capital and export assistance programs.	Montana
Nonresidential Farm Buildings	Exempts any nonresidential farm building from state, county or municipal building code.	Florida

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In Phase II, AFT will be assisting HDOA in identifying potential incentives in other countries. HDOA has already gathered information from New Zealand and completed a web search of Canadian farm programs. AFT will be initially examining selected European countries and Caribbean countries experiencing pressure from resort development on agricultural lands. Upon completion of the research, HDOA and the Forum will have a comprehensive understanding of domestic and international incentive and protection programs for agriculture.

Are there any significant differences between incentive programs on the U.S. mainland and Act 183?

Information received from the AFT research department indicates that most of the incentive programs on the mainland are concerned with protecting active lands, primarily because most programs involve the allocation of public dollars. With public dollars being scarce and demand for the programs high, the programs naturally focus on the active lands as opposed to fallow ground, although many of the land protection programs, like Purchase of Development Rights, are soils-based. Incentive program managers will judge a parcel of land first on its soil quality and then will look at use. If the land has gone back to forest, they will likely pass on the parcel. However, if the land is recently idled or only in pasture or hay but could support much more intensive agriculture, these factors will not likely disqualify the land from protection. Zoning programs or district programs are usually based more on the resource base than current use. Nevertheless, such programs do recognize that not all prime farmland would be appropriate to include in protection. For example, programs would look at adjacent land uses and the land mass of the resource area in an effort to remove the “holes in the donut” from inclusion in the protected area.

The business planning and implementation grants programs, like the Massachusetts Agricultural Viability Program, are designed to encourage the expansion or value-added nature of existing agricultural operations. In the urban-fringe regions of the country, there is very little uncultivated prime agricultural land. Generally, if it is available to be farmed, someone is using it for some kind of agriculture. If prime agricultural soils are not farmed, it’s because there is no appropriate farm use, e.g. if the land is surrounded by urban development or the land is being held out of agriculture anticipating development. The programs may not specifically target uncultivated land, but may more appropriately be characterized as promoting the “stepped-up” use of the land or the profit potential of the operation. For example, taking hay land to row crops, or moving from growing tomatoes for the wholesale market to the production and marketing of a sauce or salsa.

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SECTION III

Potential Important Agricultural Lands Incentives

A. Incentive Concepts

Forum members expressed interest in further exploring the applicability of the following potential incentives:

1. PACE – Purchase of Agriculture Conservation Easements

PACE is a program that pays farmers to keep their land available for agriculture. Landowners sell an agricultural conservation easement to a government agency or private conservation organization that is responsible for preventing development. Landowners retain full ownership and use of their land for agricultural purposes. Value of a conservation easement is equal to the fair market value minus the farmland value. PACE is also known as purchase of development rights (PDR).

In *New Jersey*, the State Agricultural Development Committee (SADC) administers the state's farmland preservation program. Many SADC-funded easements include houses and buildings. The SADC easement permits subdivision, but requires prior joint, written approval from the grantee (e.g., counties and land trusts) and the Committee. They must find that the division is for an agricultural purpose and will result in agriculturally viable parcels.

Applicants may decide to exclude portions of the property, like the farmhouse and the surrounding acre, when they apply to sell an easement. Excluded areas are called "exceptions." Landowners must provide detailed information about proposed exceptions during the application process including total acreage, the reason for the exception, whether the exception can be severed from the premises, how many house lots could be carved out, whether the applicant is willing to restrict the number of future residential units, and whether the applicant is willing to include right-to-farm language in the deed of the excepted area.

The program's application guidelines explain how the answers to these questions impact the applicant's ranking score. For example, if the exception can be severed from the land proposed for protection and is not dedicated to agricultural use or open space purposes, two points will be subtracted from the ranking score.

Alternatively, applicants may request residual dwelling site opportunities (RDSOs). In general, county boards allocate RDSOs only if the overall density will not exceed one residential unit per 100 acres. Boards consider existing residential buildings and proposed residential buildings that have received approval from the municipality. RDSOs give SADC and other grantees more control over future residential dwelling units than exceptions. Program regulations specify that when RDSOs are executed the residential unit must be used for agricultural purposes (i.e., one person living in the house must be engaged in farm activities on the premises).

Increasingly, the SADC has been experimenting with bare land transactions through their fee acquisition program. SADC has the right to allocate RDSOs, but the program has elected to sell smaller parcels, subject to an easement, without any future housing opportunities. This has enabled area farmers to acquire more land for their operation at a reasonable price.

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SADC does not include a right of first refusal in its deed of easement, but the program does include a right of first refusal and option to purchase in their district agreements.

Pennsylvania enables counties to determine whether to include farmsteads in the easement or not. If the farmstead is covered by the easement it is subject to the program's subdivision regulations. Originally the program allowed subdivision of land subject to an easement if it did not harm the agricultural viability of the resulting tracts. In 1994, the program tightened up its requirements. Now subdivision cannot result in parcels that do not meet the program's eligibility criteria (i.e., the resulting parcels must be at least 50 acres). In addition, the change authorized counties to adopt more stringent criteria than the state's standard. Some counties prohibit subdivision of protected farms.

Some Pennsylvania counties routinely exclude the farmstead. According to state program staff, excluding farmhouses and buildings gives farmers additional flexibility and makes it easier for county administrators to enforce easements. Land and buildings excluded from the easement are not subject to the program's restrictions on subdivision and may be divided from the protected land in accordance with local land use regulations.

One reason state and local program managers are inclined to exclude the farmstead is because the program permits the construction of one additional residential structure on protected farms by right if:

- The structure is used as the landowner's principal residence or for housing farm labor;
- No other residential structure has been constructed on the restricted land after the date of granting the easement; and
- The structure occupies no more than 2 acres.

If the property is subdivided, the landowner must specify which parcel reserves the right to build an additional residential structure. The program's deed of easement does not include a right of first refusal at resale and has not considered an option at agricultural value to maintain affordability.

Oregon has adopted a state level approach to land use planning through its Statewide Planning Program (SPP). The state Department of Land Conservation and Development (LCDC) oversees the SPP and administers it through 19 Statewide Planning Goals (SPGs), codified as administrative rules. Goal 3 requires counties to inventory agricultural lands and "preserve and maintain" them though exclusive farm use (EFU) zoning. Chapter 215 of the Oregon Revised Statutes (O.R.S.) and LCDC's administrative rules establish the standards regulating EFU zones. Oregon's cities and counties in turn apply the EFU zoning standards through comprehensive plans and local land use ordinances.

In general, state law prohibits non-farm residential dwellings within the EFU zone. However, in 1993, Oregon's legislature amended the state law to permit landowners in EFU zones to build one non-farm dwelling on lots of record. Notably, this change did not extend to "high value farmland" within EFU zones. The legislature targeted the most restrictive land use limits to the state's most productive lands. Farmland is considered "high value" based on soil type (O.R.S. § 215.700 to 215.710). Most "high value" farmland is located in the Willamette Valley. This approach protects the state's most valuable agricultural land while allowing some development.

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In addition, the maximum allowable density for farm and allowed non-farm residences in an EFU zone is one dwelling per 80 acres for land not designated as rangeland, one dwelling per 160 acres for land designated as rangeland, and one dwelling per 80 acres for land designated as forestland.

Oregon Revised Statutes § 215.780(2) allows counties some flexibility to adopt less restrictive allowable densities for farm dwellings. To do so, a county must demonstrate to the LCDC that the less restrictive standards are still consistent with the requirements established by Oregon's SPGs and the Agricultural Land Use Policy established under O.R.S. § 215.243. If a county permits a landowner to subdivide under O.R.S. § 215.780(2), the landowner must sign a statement that is recorded with the county clerk declaring the landowner and his successors will not complain about farm practices on nearby land devoted to farm use. O.R.S. § 215.780(7).

Any division of land within an EFU must be reviewed and approved by the county in which the land is situated subject to the requirements of O.R.S. § 215.263, which incorporates regionally based approval criteria. Oregon Revised Statutes § 215.263(4) describes the approval criteria for land in western Oregon, but not the Willamette Valley, while O.R.S. § 215.263(5) establishes the criteria for land in eastern Oregon.

Skagit County, Washington, limits residential subdivision within agricultural areas through zoning ordinances. Section 14 of the Skagit County Code (SCC) contains the countywide zoning ordinances. Land that is designated for exclusive agricultural are referred to within the code as Agricultural-Natural Resource Lands (Ag-NRL) and are regulated under SCC § 14.16.400. This section lists 17 permitted uses for land in an Ag-NRL zone. It also lists eleven permitted uses requiring administrative approval and eleven others permitted after a favorable hearing.

The maximum allowable density within the Ag-NRL zone is one dwelling per 1/16th of a section of land or one dwelling per 40 acres. Smaller lot sizes are permissible if the landowner develops using Conservation and Reserve Development (CaRD) procedures outlined in SCC § 14.18.300 to 14.18.330. Landowners in Ag-NRL zones may also create substandard lots through subdivision "in cases involving one lot of record or by means of a boundary line adjustment in cases involving multiple lots of record where the net number of lots will not be increased." Landowners selecting to subdivide in this manner must restrict the remainder of the property from development through an agricultural use covenant granted to the county. In lieu of granting an agricultural use covenant to the county, the property owner may convey a "substantially similar" conservation easement to a Skagit County-based land trust or other qualified conservation organization (SCC § 14.16.860).

In addition, the SCC requires residential structures in an Ag-NRL zone to be setback a *maximum* distance of 200 feet from a public road. The provision is intended to keep large blocks of land intact. The maximum setback requirement can only be waived if the county planning office determines: 1) the property has critical areas within the 200 foot setback distance that would prevent the placement of a house or; 2) there is non-floodplain or nonprime agricultural land outside the setback area that would be a more appropriate site for a house (SCC § 14.16.860(5)(a)). Critical areas include: wetlands; areas with a critical recharging effect on aquifers used for potable water; fish and wildlife conservation areas; frequently flooded areas; and geologically hazardous areas (SCC § 14.04.020).

All structures located within the Ag-NRL should be sited in a way that minimizes potential impacts on agriculture. The county code describes how structures should be located to achieve this goal (SCC § 14.16.860(6)).

Maryland has a well-established PDR program which has served as a model for others around the country. A formal evaluation of Maryland's PDR program resulted in the following recommendations:

- Encourage participation in purchase of ag easement program by allowing farming-related supplemental income opportunities, including home occupations, that use existing structures, are compatible with the surroundings, and do not compromise the production potential of the land and will not interfere with the agricultural production.

- Strictly limit family-only subdivision of farms under ag easement so as not to undermine the investment of the easement.

- Easement costs can approach fair-market value near urban areas, so consider capping easement values at 70% of FMV.

- Need to restore program funding by selling bonds (Maryland Agricultural Land Preservation Program needs $26 million/year over next 19 years to acquire about 400,000 additional acres of land under easement agreements).

- Increase funding for and use of Landowner Incentive Grants (grants to landowners in addition to easement value), but limit their availability to counties with "certified" Priority Preservation Areas (akin to IAL?) and landowners with Priority Preservation Plans.

- Ranking of landowners' competing bids should reflect the "agricultural value" of the properties and the importance of the site for protecting large and un-fragmented ag lands and not be biased by the amount of discount from the asking price of the land, which is overly responsive to higher priced properties under urban development pressure.

  These recommendations will be considered if the Forum decides to adopt a modified version of Maryland's PDR program.

<u>Pace-Natural Resource Easement</u>

Fremont County, Idaho's Comprehensive Plan and Development Code requires buyers who purchase land or request building permits in agricultural areas to sign a "natural resource easement." The natural resource easement was created and implemented to reduce nuisance suits filed against farmers by their neighbors. The natural resource easement expressly and specifically acknowledges the rights of neighboring farmers to use their land for agricultural purposes. The easement must be recorded with the county and is binding on all subsequent purchasers of the property.

According to the administrator for Fremont County's Planning and Building Department, the department has only had one case in the last nine years where a property owner objected to signing the easement. The county attorney is responsible for enforcing the easement and is currently reviewing the case.

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2. Transfer of Development Rights (TDR)

Transfer of Development Rights is a program that allows individuals to purchase and sell development rights from lands that provide a public benefit such as agricultural use of prime agricultural land. Landowners receive financial compensation without developing or selling their land and the public receives permanent preservation of the land. Transferred development rights can be used to build additional houses or increased development density on parcels in targeted "receiving" areas.

State and local governments around the country continue to experience demand for both development and the protection of open space, agricultural land, and historic sites. Numerous municipalities have enacted transfer of development rights (TDR) programs to address both the need for growth and environmental concerns. In recent years, states have started to recognize the success of these programs in lowering administrative costs and relieving the burden of current zoning regulations.

The State Environmental Resource Center, located in Madison, Wisconsin has conducted numerous evaluations of TDR programs across the country. The Center has concluded that in general, the protection of open space and agricultural lands by land use regulation alone has been largely ineffective and does not in itself promote agricultural activities. Many states have enacted TDR enabling legislation as a way to compensate owners for putative losses with payments from those who obtain the transferred rights. TDR programs are effective tools in creating smart growth plans, balancing development, and protection of land for future public enjoyment. Employment of TDR appears to be targeted mostly for those areas surrounding, rather than within, extensive agricultural areas.

Descriptions of TDR and PACE programs across the mainland can be found in Appendix D.

3. Right to Farm

Right-to-farm laws are important because they create a sense of security for farmers. Farmers will not invest in their operations or decide to protect their land if they don't believe there is a future for farming. Right to farm laws and protections signal whether communities support farming or not.

Hawaii's existing statewide right to farm statutes, Chapter 165, HRS, could be further strengthened through the adoption or modification of existing laws and ordinances currently in place on the mainland.

Pennsylvania's "Agricultural Area Security Law" (3 Pa. Cons. Stat. §§ 901-914) includes a right to farm component (§ 911) that protects landowners enrolled in an agricultural security area (ASA). This law offers stronger protections than Hawaii's current right to farm statutes because it prohibits localities from enacting ordinances that "unreasonably restrict farm structures or farm practices" unless they directly impact public health and safety. Section 165-4 of Hawaii's Revised Statutes (H.R.S.) prohibits courts and public officials from declaring agricultural operations to be nuisances, but does not address this in the specific context of local ordinances.

In July 2005 Pennsylvania's Legislature passed and Governor Edward Rendell signed House Bill 1646, commonly known as the "ACRE" legislation. ACRE expands Pennsylvania's existing right to farm protections by creating a process for farmers who believe they are being subjected

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to unlawfully restrictive local ordinances to have the ordinances reviewed by the Pennsylvania Attorney General. The legislation applies to farmers within and outside ASAs. The Attorney General also has independent authority to review and challenge local ordinances that conflict with state level right to farm laws. Under the new law, Pennsylvania Courts may award attorneys' fees to a farmer who successfully challenges illegal local ordinances. The farmer must show that the township negligently disregarded the legality of the local ordinance when it was enacted. H.R.S. § 165-5 provides a means for farmers who are subject to "frivolous" nuisance lawsuits to recover attorneys' fees and costs pursuant to H.R.S. §607-14.5, but the current statutes do not address illegal local ordinances and policies. Pennsylvania's Farm Bureau created a fact sheet detailing the key provisions of House Bill 1646 which is included in the Appendix.

H.R.S. § 165-4 provides farmers protection from a nuisance judgment if their operations are "conducted in a manner consistent with generally accepted agricultural and management practices." Ohio Rev. Code § 929.04 offers more comprehensive protection by providing farmers in agricultural districts a complete defense against nuisance claims brought against agricultural operations if: 1) the agricultural activities upon which the claim is based occurred within the agricultural district; 2) the agricultural operation is established prior to the establishment of the complainant's interest; 3) the complainant is not involved in agricultural production; and 4) the agricultural activities do not conflict with federal, state and local laws relating to the nuisance or "were conducted in accordance with generally accepted agriculture practices."

Section 308 of *New York's* agricultural districts statute, N.Y. Agriculture & Markets Law §§ 300-310, creates a detailed procedure by which the Commissioner of the Department of Agriculture and Markets can issue opinions determining whether a specific agricultural practice is "sound." A practice designated as "sound" may not be the basis of a private nuisance action. Although Hawaii's statute offers protection for farm operations using "generally accepted agricultural and management practices," it does not provide statutory guidance for how to determine whether a particular practice falls under this category.

Section 308-a of New York's agricultural districts statute ties recovery of "fees and other expenses" for prevailing defendant farm operators if a nuisance claim is based on a practice that is deemed "sound" under the procedure outlined in §308. "Fees and other expenses" are defined as "the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, consultation with experts, and like expenses, and reasonable attorney fees…" It is unclear whether H.R.S. § 607-14.5, which allows farmers "a reasonable sum for attorneys' fees and costs," would provide a prevailing defendant farmer the same access to recovery of fees that New York's statute offers.

Maryland's Farm Sense program is a USDA-certified mediation program. Mediation is a low cost, voluntary and confidential dispute resolution system in which a neutral party assists disputing parties to reach a mutually agreeable solution. The program is funded through matching grants Farm Service Agency's (FSA) Agricultural Mediation Program (see below for full description). This program allows farmers involved in conflicts with other citizens that could affect the profitability of their enterprises, such as a nuisance dispute, access to mediation. Mediation generally resolves disputes faster than traditional litigation. Farm Sense offers farmers a free initial consultation and can partially or in some cases totally waive program fees based on the parties' income. A program fact sheet and summary can be found in Appendix E and F respectively.

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The Agricultural Credit Act of 1987 (P.L. 100-233) authorizes USDA to assist states in developing certified mediation programs to settle agricultural disputes. USDA fulfills this mandate through the FSA's Agricultural Mediation Program. The program's regulations are codified at 7 C.F.R. § 785. Thirty-two states participate in this program, including Maryland through Farm Sense, but Hawaii does not. According to Chester Bailey, FSA's program coordinator, a certified state mediation program can be used to resolve cases where producers are subject to nuisance claims from neighboring landowners, if an extended dispute would cause financial hardship to the producer and impact his ability to pay or obtain credit necessary to finance the farm. States meeting the conditions established by FSA are eligible to receive matching federal grant funds to operate and administer agricultural mediation programs.

The Maryland Farm Bureau and the Maryland Department of Agriculture conducted a recent discussion on strategies to reform Right to Farm measures. Recommendations arising from that discussion include:

Education

- Develop Right to Farm courses for attorneys and realtors that would fulfill their continuing education/certification requirements; and
- Create articles and educational materials for farmers that could be distributed by county government, farm bureau, trade organizations, etc.

Notification

- Mandate notification at the front end of real estate transactions. For example, state law could require realtors to include standard language in real estate listings for parcels within X feet of an agricultural property (as defined for property tax purposes) and to disclose this information when the property is shown (like termite and lead paint disclosures).

Mediation

- Authorize and encourage all counties to create agricultural reconciliation boards (ARBs);
- Give ARBs standard responsibilities that are outlined in detail by state regulation;
- Expand the Farm Sense program (by providing state matching funds) so that Maryland Department of Agriculture can adequately support counties that choose to create ARBs with training and expert mediators;
- Create a state-level board to mediate cases in counties that elect not to create a county-level board and/or to handle more complicated cases; and
- Require aggrieved parties to go through mediation before a suit can be filed.

Planning Tools

- Develop a state guide to planning for agriculture that includes mechanisms for heading off land use conflicts;
- Develop a model Right to Farm ordinance with guidelines for county officials.

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4. Business Management Assistance Programs for Farmers

The Massachusetts Farm Viability Enhancement program was created in 1994 to improve the economic productivity and environmental integrity of participating farms. The state Department of Agricultural Resources administers the program.

The Massachusetts program has two components: a business planning assistance phase, and grants to implement the business plan. The planning phase is a prerequisite for the implementation grants. Business planning is provided through a planning team selected for each farm depending on the farm's location and type of commodity produced. The planning team analyzes the current operation and recommends ways to improve efficiency and increase on-farm income through improved management practices, diversification, direct marketing, value-added initiatives and agri-tourism. For farms with identified natural resource concerns, environmental assessments also are conducted.

The second phase provides grants to selected participants to implement the changes recommended in the business plan. Farmers may apply for grants of $20,000 or $40,000 in exchange for five or ten year covenants not to develop or use the property for non-agricultural purposes. Grants of up to $60,000 are available to farms placing 135 acres or more under covenant and implementing plans that will increase net income and agricultural employment. The program looks to other sources of federal and state funding to finance any recommended environmental improvements.

One full time Department of Agriculture employee administers the program. A network of consultants located throughout the state make up the planning teams. The consultants are paid on an hourly basis and include farmers, commodity experts, financial analysts, builders, natural resource managers and other individuals with relevant expertise from universities, private businesses and federal and state government.

Farms with land enrolled in the state's farmland protection program – the Agricultural Preservation Restriction (APR) program -- may apply to the first phase of the program (and are given priority for business planning assistance), but are not eligible for implementation grants, unless the farm has non-APR program land that qualifies for the covenant. While to date the Department has focused on enrolling first-time farms in the program, in 2003 it began to allow early program participants to apply for "renewals."

Renewal applicants tend to be program participants whose covenants have expired or are due to expire in the near future. They receive updated business plans, a grant, and a renewed covenant for an additional five or ten year period.

A pilot round of the program was completed in 1996 using funds from the APR program. In 1996, the program was officially launched with a five-year, $5 million allocation from a $150 million statewide open space bond bill. In 2000, the program received an additional two-year, $2 million appropriation. In 2002, the program received $14.5 million to be used over a three to five year period.

As of June 30, 2005, 294 farms have received business planning assistance, and 246 farms have received implementation grants. More than 23,000 acres of farmland have been placed under covenant, and the profitability of an additional 19,641 acres of rented and permanently

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protected farmland has been enhanced through the business plans. The program estimates an average per farm net income increase of roughly $19,000 per year, based on business plan projections. The Department is not aware of any covenant violations, but has not instituted a monitoring program.

The Minnesota Dairy Development and Profitability Enhancement program is designed specifically for dairy farmers, and offers two different kinds of assistance: individual farm diagnostic assistance from a team of consultants and service providers, and business planning grants. Conceived by the University of Minnesota in 1991 as a farm-friendly, hands-on model for transferring new technology and research into farm practices, the diagnostic team concept was authorized and funded on a pilot basis by the state legislature in 1995. The program was expanded in 1997 and now provides grants to regional and statewide organizations that coordinate the teams. In 2002, the dairy business planning grants were added to the program. The grants are designed to assist dairy farmers contemplating major changes in their operations, by underwriting the planning process. Participation in the diagnostic process is not a prerequisite for eligibility for the business planning grants.

Since the initial appropriation of $1,000,000 in 1996, the program has received an additional $4,905,000 through FY 2004. The program's 2005 Annual Report indicates increases in annual farm profitability are on the order of a 7.3:1 return on the program's investment.

Dairy Profitability Enhancement Teams. The goal of the dairy profitability enhancement teams is to provide dairy farms with appropriate new technologies, including rotational grazing and other sustainable agriculture methods, to enhance their financial success and long-term sustainability. Diagnostic teams make recommendations on issues relating to milk quality, financial management, risk management, enhanced milk marketing tools and technologies, and business planning.

Unlike the Massachusetts program, the Minnesota program does not hire individual team coordinators, but provides competitive grants to regional and statewide organizations to hire team coordinators and organize the diagnostic teams. There are currently about ten team coordinators, each of whom oversees up to 35 teams at a time. Although some team coordinators do the work as part of other duties or on a volunteer basis, most are paid out of program funds. The other team members, most of them agricultural service providers, are generally not paid by the program, but may be hired on a per diem basis as needed.

Each diagnostic team typically includes an extension educator, a lender, a Minnesota State Colleges and Universities (MnSCU) farm business management instructor, a nutritionist, a successful dairy farmer, a milk processor, an AI technician and a veterinarian. One member of the team, usually the extension educator, is identified as the team facilitator who bears responsibility for maintaining momentum and reporting on progress.

The farmer pays a modest annual registration fee ($200) to participate in the program, and the state provides $600 to $800 per year for any service-related costs recommended by the team, such as milk, feed and herd health testing; business instruction; computer software and training; and necessary consultations. Team meetings are typically held every two to three months and farms typically remain in the program for two to three years. The program is exploring increasing the registration fee for the second and third year of the farm's participation.

Dairy Business Planning Grants. In addition to the dairy diagnostic teams, the Dairy Development and Profitability Enhancement Program also offers dairy business planning grants.

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While the diagnostic teams are intended to help farmers identify and implement incremental improvements to their current operations, the dairy business planning grants are targeted to producers who want more involved planning assistance to make more significant, long-term changes to their operations.

The grants are administered by a Department of Agriculture employee, and are competitively awarded through a Request for Proposals process. The application criteria are more extensive than those required for the diagnostics team assistance. They require information on the applicant's farm-related education and experience and a summary of the current farm operation; documentation of the consultant's proposed fees, scope of work and qualifications; and a financial statement from the applicant and any other partners in the farm's ownership. The maximum grant award is $5,000, and must be matched dollar for dollar by the farmer. Planning grants can be used to pay for any services associated with pre-engineering, marketing and feasibility studies and analyses. Typically only 50 percent of the grant funds are provided up front, with the remainder reimbursed upon delivery of the completed business plan.

Typically there are 30 to 40 grants distributed annually, due to limited funding. Approximately 25 to 30 percent of these farms have participated in the diagnostic team process.

C. Cortland County (NY) Business Development Corporation (CcBDC). The CCBDC is a private, nonprofit economic development agency. Although it is a private organization, it is funded publicly. CCBDC supports all aspects of business development within Cortland County and works to create new employment opportunities and enhance existing jobs within the county. The majority of its agribusiness efforts are designed to retain and develop established farm operations, rather than to attract new farmers. To this end, CCBDC has assembled a collection of technical resources to assist farmers currently in business in the county. The County offers an on-line assistance guide called "The Roadmap for Growth: Step by Step." This assists businesses with strategic planning and business plan development, and provides resources to assist with growth, capitalize facilities or for equipment investment. CCBDC encourages the farmers it works with to follow the guidelines set forth in its "Road Map for Growth" but provides also a specialized assistance program for agribusinesses in its "Cortland County Agribusiness Resource Guide." The Agribusiness Resource Guide provides information and contacts for local and state agribusiness assistance programs, farmland protection programs and programs specializing in financing agricultural operations.

5. Agricultural Enterprise Zones

Agricultural enterprise zone (AEZ) programs are an outgrowth of the enterprise zone (EZ) programs that are designed to improve the economic conditions of geographically specified underdeveloped areas and communities. Over 40 states have EZs and about 20 have AEZ programs. Some AEZ programs are integrated with other programs such as agricultural land use protection, environmental impact mitigation, and farm viability. The foci of AEZ programs vary. AEZ programs in Virginia, Michigan, Colorado, and Minnesota target agricultural product processing and manufacturing businesses that add value to the state's agricultural products. The AEZ program in Massachusetts is directed specifically to agricultural production. The annual operating and grant funding cost of the Virginia AEZ program is estimated to be $2 million.

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Tax benefits

The tax benefits in AEZ programs on the mainland generally include income tax credits, job creation tax credits, sales and use tax exclusions, direct state loans, property tax relief, investment tax credits, tax increment financing, and improvements on infrastructure and services. Other incentives include venture capital funds, employee income tax credits, and other general reductions of regulatory burdens. The most common requirements for continued participation are meeting capital investment employment creation and retention thresholds.

The Virginia program establishes 20 agricultural enterprise zone districts to promote and support the development of value-added agricultural and farm businesses in designated areas throughout the state. This is not a program to establish farms. Qualified agricultural and farm businesses may apply to the Virginia Department of Agriculture and Consumer Services for assistance in developing business plans and grant funding for implementation of the business plans, varying from 50 percent of the investment cost up to a maximum of $500,000. The Virginia program will incorporate a purchase of development rights program to support agriculture production and resource protection.

Wisconsin's program includes farm production, processing operations, and activities in distribution, marketing and retail sales.

Michigan provides a standard exemption from all state and local taxes for up to 15 years to expanding or new agricultural processing businesses.

The Massachusetts program is structured along the lines of a farmland preservation incentive program, providing cash payments ranging from $20,000 - $60,000 to put the land resources into 5-10 year agricultural covenant. This incentive program does not have any job creation or investment qualifiers.

Hawaii's experience

In Hawaii, the 2004 and 2005 Legislature considered but did not pass amendments to Hawaii's EZ law (Chapter 209E, HRS) to encourage agricultural activity. The amendments sought to allow participating farmers to continue receiving EZ state and county tax benefits during and after catastrophic natural disasters and pest/disease events, and to allow flexibility regarding the EZ program's full-time employee requirement. Remaining unamended are the tax benefits that are provided over a period of seven consecutive years:

1. 100% exemption from the General Excise Tax (0.05%) and Use Tax every year.
2. An 80% reduction of state income tax the first year. (This reduction goes down 10% each year for 6 more years.)
3. An additional income tax reduction equal to 80% of annual Unemployment Insurance premiums the first year. (This reduction goes down 10% each year for 6 more years.)
4. Priority permit processing.
5. Zoning or building permit waivers or variances.
6. Property tax adjustments.
7. Priority consideration for federal job training or community development funds.

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The Enterprise Zone (EZ) program is a joint state-county effort intended to stimulate—via tax and other incentives—certain types of business activity, job preservation, and job creation in areas where they are most appropriate or most needed. Up to six zones can be designated per county. There are 19 designated zones.

Eligible agricultural businesses include those engaged in producing agricultural products where the business is a producer as defined in Section 237-5, or those engaged in research, development, sale, or production of all types of genetically-engineered medical, agricultural, or maritime biotechnology products.

To enroll in the EZ program, at least half of a firm's annual gross income in an EZ must be from agricultural production or processing. All eligible businesses must also increase their average annual number of full-time employees. All businesses must already employ at least one full-time worker at their EZ establishment before beginning participation (Full-time = 20 or more hours per week). The specific requirements that must be satisfied by existing and new businesses are described as follows:

"Existing" businesses: Businesses already in an EZ must increase their average annual number of full-time employees by at least 10% by the end of the first year. The average annual number of full-time employees must also increase by at least 10% annually in years 2 to 7.

"New" businesses: Businesses that start up in or move to an EZ must increase their average annual number of full-time employees by at least 10% by the end of the first year. The average annual number of full-time employees at the end of years 2 to 7 can fluctuate, but cannot be less than the number of employees required at the end of the first year. (Note: "New" businesses will be considered new throughout their seven years of eligibility.)

6. Agricultural Tax Credits

Agricultural tax credits will be explored in greater detail in Phase II. They may include but are not limited to:

- Credit for improvements or repair of new or existing agriculture-related infrastructure;
- Real property tax;
- Exclusion from capital gains taxation for the sale of a conservation easement;
- A transferable credit against income, gift, and estate taxes equal to the value of an agricultural conservation easement donated or sold for less than fair market value to a qualified public or private charitable entity;
- Estate tax relief;
- Tax exemptions/exclusions for investments based on new revenues from agriculture.

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7. Other Types of Incentives Under Consideration

- Expedited permitting process
- Flexibility in County and State Land Use Commission Conditions for Approval
- Ag. tourism as an allowed activity on ag. land
- Dedicated financing mechanisms for ag incentives
- Farm transition services, e.g. Virginia's farm matching program
- Estate planning

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SECTION IV

2006 Schedule of Activities

A. Forum Meetings

The Forum will meet periodically throughout the first quarter during the legislative session and monthly thereafter. Meeting dates are subject to change.

Schedule 1

Month	Discussion Topics	Date
January	Incentives with Bob Wagner of AFT	Jan. 9, 2006
February	To Be Determined	TBD
March	TBD	March 2006
April	TBD	TBD
May	Incentives Progress Discussion	May 2006
June	Incentives Progress Discussion	June 2006
July	Incentives Progress Discussion*	July 2006
August	Discussion and Preliminary Ranking of Incentives*	August 2006
September	Discussion and Finalization of Incentives*	September 2006
October	TBD	TBD
November	Review of preliminary draft*	November 2006
December	Review of final report	December 2006

*Meeting facilitated by contractor.

B. County Council Meetings

The Hawaii Farm Bureau suggested that HDOA meet with each of the county councils in 2006 to explain the IAL incentives process and purpose. The Kona County Farm Bureau President will be contacting the respective counties to organize this effort. HDOA will work with the State Land Use Commission in order to provide each of the mayors and county councils with a comprehensive understanding of both the incentives and mapping process.

C. Community Meetings

A series of meetings will be held throughout the state in 2006 to develop ideas for incentives. HDOA will work closely with the HFBF to organize the meetings and will hold the meetings in close proximity to the HFBF county bureaus (Central Oahu, North Shore, Kohala, Hamakua, Kula, Honolulu, Kahului, Kapaa, Waimea (Kauai), Kona, Hilo, Waimanalo, Waianae, Kaunakakai, and Lanai City. All of the Forum members will work together to publicize the meetings.

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