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LAND USE COMMISSION
STATE OF HAWAII
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Comm

To: Orlando Davidson
Executive Director
State Land Use Commission

From: Abbey Seth Mayer
Director

Subject: DR09-38, Petition for Declaratory Order to Designate Important Agricultural
Lands
Petitioner: Alexander & Baldwin, Inc.
Location: Wailuku and Makawao, Maui, Hawaii
Acreage: Approximately 27,133 Acres

The Office of Planning (OP) has reviewed and supports the Petition, subject to concerns regarding the inclusion of certain discrete parcels of land that are not high-value agricultural lands.

OP has weighed the relative merits of the Petition as a whole and supports the designation of the bulk of the Petition based on all of the following:

- (1) The Petition does not seek the reclassification of other lands for development;
- (2) The Petitioner waives all rights to credits that may be claimed under §205-45(h), Hawaii Revised Statutes (HRS); and
- (3) The percentage of lands that are not high-value agricultural lands is relatively small in comparison to the total lands proposed for designation as IAL.

Review and Comments on the Petition

- 1. Summary of Key Elements of the Petition. The subject Petition seeks the designation of lands as IAL pursuant to §205-45, HRS, for voluntary petitions by farmers or landowners for the designation of important agricultural lands to the State. The subject lands are owned by the Petitioner, Alexander & Baldwin, Inc.

The Petition requests designation of twenty-five tax map key (TMK) parcels and portions of seventeen tax map key parcels, totaling approximately 27,133 acres, in the Wailuku

and the Makawao districts of Maui as IAL. The TMK parcels range in size from .2 to 3,224.8 acres. All of the lands are classified in the State Agricultural District. The lands are used for cultivation of sugar cane, pineapple seed corn and for pasture. The lands underlying the agricultural irrigation system and drainage systems, defined in the Petition as inclusive of the reservoirs, streams, and gulches, are also proposed for designation as IAL. The Petitioner is voluntarily waiving all rights to any credits that may be earned under §205-45(h), HRS, if the Petition is approved, and no other lands are sought for redistricting in conjunction with the Petition.

2. Basis of Review and Comments. The Petition and public data available on the proposed lands were reviewed with respect to §§205-41 to 205-45 of Part III, Important Agricultural Lands, HRS. OP also sought comments on the Petition from the U.S. Department of Agriculture's (USDA) Natural Resource Conservation Service (NRCS), Pacific Islands Area Office, and the State Commission on Water Resources Management (CWRM), to gain additional perspectives regarding the quality of the proposed lands, as well as water resource information relevant to the agricultural irrigation system serving the lands proposed for designation. The CWRM comment letter is attached.
3. Content Needs for Petitions and Clarification of Information Provided in this Petition. It is essential that petitions contain sufficient information to facilitate the review of the resource value of the lands proposed for designation given the shorter decision-making timeframe for voluntary IAL designation. OP recommends that the Petitioner clarify or provide additional information in the following areas:
 - a. Current or planned agricultural use of the lands proposed for designation, §205-45(c)(3). An inventory of existing agricultural activity should be provided in table form that shows for each Petition parcel or defined subareas: the acreage of land proposed for IAL designation, the acreage currently cultivated by type of crop/s cultivated, the acreage of uncultivated, arable land, the acreage of uncultivated, unarable land, and current leases and lessees. This would complement the map of current agricultural uses in Figure 1 of the Petition and provide more complete information for reviewers to assess how each parcel would contribute to the IAL resource base.
 - b. Land with sufficient quantities of water to support viable agricultural production, §205-45(c)(5). The Petition should provide information with which to assess water availability for current and future agricultural use, to include:
 - (1) The identification of any restriction on use of source water for irrigation purposes, including any third-party agreements or pending water use proceedings that could affect the delivery of water from the system to the proposed lands: and

(2) The acreage of proposed arable lands that are currently unirrigated, if any, and what infrastructure improvements would be needed to irrigate these lands. Or alternatively, average annual rainfall for unirrigated parcels and crops or pasturage uses that can thrive in natural rainfall conditions.

4. Standards and criteria for the identification of important agricultural lands, §205-44(c).
The resource value of the proposed lands was reviewed with respect to:

- (1) §205-42, HRS, Important agricultural lands; definition and objectives; and
- (2) §205-44, HRS, Standards and criteria for the identification of important agricultural lands.

‘Important agricultural lands’, as defined in §205-42(a), HRS, are lands that:

- “(1) Are capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology;
- (2) Contribute to the State’s economic base and produce agricultural commodities for export or local consumption;
or
- (3) Are needed to promote the expansion of agricultural activities and income for the future, even if currently not in production.”

Explicit in the IAL definition above is an emphasis on the value of the land for cultivation or productive agricultural use. IAL is a resource overlay: it identifies those lands that have high resource value in terms of its agricultural productivity first and foremost. IAL designation of land that does not have high resource value or whose productivity is severely constrained would misrepresent its productive value and should be avoided, unless it can be explicitly shown that these lands support the function and/or protection of other agricultural lands.

The following summarizes OP’s assessment of the proposed lands with respect to the standards and criteria for the identification of IAL in §205-44(c), HRS.

- a. §205-44(c)(1), Land currently used for agricultural production. OP concurs that the lands proposed for designation meet this criterion as evidenced by the mapping of lands in cultivation in Figure 1, Exhibit A.
- b. §205-44(c)(2), Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops. OP

concur that most of the lands proposed for designation meet this criterion as evidenced by the high agricultural productivity ratings of the bulk of the lands and the history and presence of active cultivation on many of the parcels. Approximately, 76 percent of the Petition lands are classified as Prime or Unique under the Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system, and 73 percent of the lands have the highest productivity ratings ('A' and 'B') under the Land Study Bureau's overall (master) productivity rating system.

However, OP notes that some of the proposed lands may not meet this criterion due to soil and physical conditions such as steep slopes, highly erodible soils, flood hazard, or submerged lands.

Poorly-rated lands may be included for reasons of contiguity of IAL and an association with agricultural infrastructure; however, the exclusion of these same lands does not necessarily change in any material way the continued use of these lands in support of agriculture on IAL or change their use in providing essential agricultural infrastructure for IAL.

- c. §205-44(c)(3), Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the board of agriculture on January 28, 1977. OP concurs that most of the lands proposed for designation meets this criterion under the ALISH and LSB systems, as evidenced in Figures 4 and 2, respectively, of Exhibit A. Approximately 76 percent of the lands proposed for designation are classified as "Prime" Important Agricultural Lands in the State's ALISH system. Prime Agricultural Lands are the highest category of agricultural resource lands and are subject to the most stringent screening criteria in both the ALISH and the USDA-NRCS classification systems for important farmlands. The classification of Prime under both the ALISH and USDA systems supports the assertion that these are high quality agricultural lands.

Thirteen percent of the proposed lands are classified as "Other" under the ALISH system, although Figure 1 indicates that much of these lands are in cultivation. The "Other" classification was used for lands that demonstrated some kind of physical or farming constraint to conventional farming methods or was used to classify quality ranch lands. OP notes that most of the 'Other'-classified lands were also rated 'E', very poor, under the LSB system. However, the LSB system also assigns most of these 'E'-rated Petition lands a higher rating, 'A'-'C', if irrigated. The Petitioner indicates that most of these E-rated lands are now irrigated.

- d. §205-44(c)(4), Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production. This criterion is intended to recognize unique agricultural resource lands that don't support conventional farming methods or field crops, but have unique growing conditions for locally or regionally important high-value crops, such as taro, watercress, orchard crops like coffer, papayas, etc. In this respect, the Petition lands do not contain these unique land types, and this criterion does not apply except to the degree that power generation may be a by-product of sugar milling operations.
- e. §205-44(c)(5), Land with sufficient quantities of water to support viable agricultural production. OP concurs that the proposed lands meet this criterion and that there is sufficient water to support viable agriculture on these lands as evidenced by information contained in the Petition text and Figure 5, as amended. Water sources for irrigation for the Petition lands are the East Maui Irrigation System (EMI), West Maui Irrigation System and fifteen brackish water wells. The Petition states the delivery capacity of the EMI system is approximately 450 million gallons per day (mgd), and the West Maui Irrigation System approximately 120 mgd, with the wells providing an additional pump capacity of 228 mgd.

In comments provided by CWRM, the 2004 State Agricultural Water Use and Development Plan, a component of the Hawaii Water Plan, indicates the average amount of water delivered by the EMI system was 165 mgd. According to the CWRM surface water use applications filed in April 2009, the average water use by Hawaiian Commercial & Sugar Co. (HC&S), a division of the Petitioner, from the West Maui system is approximately 41 mgd.

In its comment letter, CWRM staff noted that the surface water hydrologic units of Waihee, Waiehu, Iao, and Waikapu Streams (Na Wai Eha) in the Wailuku District were designated as a Surface Water Management Areas in March 2008. Existing users were given until April 30, 2009 to file for water use permits for existing uses. The water source for the West Maui system are subject to a CWRM contested case hearing on a petition to amend the interim stream flow standards for the Na Wai Eha streams, which is not expected to be decided until later this year.

The CWRM letter states:

" The surface water from the Na Wai Eha Surface Water Management Areas are in the process of being regulated by the Commission through the issuance of water use permits and the Commission is setting new interim instream flow standards for Na Wai Eha through the contested case process. The combination of Commission actions for the Na Wai Eha may put constraints on both continued and future use of Na Wai Eha surface waters.

The Commission at its meeting in Haiku, Maui, on September 25, 2008 amended the interim instream flow standards (IIFS) for 8 of 27 Maui streams, as the first step in an integrated approach to amend IIFS for all 27 streams that are subject of petitions to amend the IIFS for the 27 streams. Amending the IIFS for the 8, and eventually all 27 of the East Maui streams may put constraints on both continued and future use of water from the East Maui Irrigation System."

So while future sufficient water source is not guaranteed and could eventually constrain agricultural activities, OP does not believe that this concern rises to the level of recommending denial of this Petition for IAL designation.

- f. §205-44(c)(6), Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county. OP concurs that most of the proposed lands meet this criterion as evidenced by Figures 6, 7A, 7B, and 7C, which show the general consistency of the proposed lands with the County of Maui's land use maps for the Wailuku-Kahului, Kihei-Makena, and Paia-Haiku Community Plans and the draft/proposed Maui Island Plan land use policy map.

A portion of the proposed lands is not consistent with the County's plan designations. The Kihei-Makena Community Plan designates the Waikapu Stream, which drains into the wetland system comprising Kealia Pond National Wildlife Refuge abutting the Petition lands on the south, and the land abutting Kealia Wildlife Refuge as "Open Space". The Maui Island Plan draft land use policy map also designates the internal gulches and the gulch abutting proposed Petition lands as "Sensitive Lands".

- g. §205-44(c)(7), Land that contributes to maintaining a critical land mass important to agricultural operating productivity. OP concurs that the proposed lands meet this criterion as evidenced by the amount of contiguous land proposed for designation and the Petition figures, showing large tracts of land, bisected by

highways and gulches, which nevertheless allow for flexibility in crop selection and management and farming operations.

- h. §205-44(c)(8), Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power. OP concurs that the proposed lands meet this criterion as evidenced by Figures 1 and 5, showing availability of water for irrigation and proximity and access to roads, markets, harbors and power.

Summary

The Petition proposes to designate lands that, for the most part, meet the criteria and definition of important agricultural lands, with the exceptions discussed below. Petition approval would result in designation of large, relatively intact blocks of productive land.

OP supports the Petition with the following recommended exceptions for the Commission's consideration:

- (1) Lands currently in pasture use, primarily a portion of TMK No. 2-5-001:008, unless it can be shown that the lands are leased to a bona fide livestock operation; and
- (2) Lands designated as "Sensitive Lands" in adopted County community plans or identified as "Sensitive Lands" in the draft County General Plan's Maui Island Plan map, such that the IAL designated lands are aligned with the County plans. OP, however, would defer to Maui County's recommendations regarding this issue.

Thank you for the opportunity to comment on the Petition. If you have any questions, please contact me at 587-2833.

Attachments

- c: Benjamin M. Matsubara, Matsubara-Kotake
Sandra Kunimoto, State Department of Agriculture
Jeffrey Hunt, Planning Department, County of Maui