

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. DR 18-61
)	
HARTUNG BROTHERS HAWAII, LLC,)	FINDINGS OF FACT, CONCLUSIONS OF
a Hawaii limited liability company,)	LAW, AND DECISION AND ORDER
)	
For Declaratory Order to Designate)	
Important Agricultural Lands for)	
approximately 463 acres at Kunia, O’ahu;)	
TMK (1) 9-2-004-006 (por.), -011, and -012)	
(por.))	
_____)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER**

Petitioner HARTUNG BROTHERS HAWAII, LLC, a Hawaii limited liability company (“Petitioner”), filed a Petition for Declaratory Order to Designate Important Agricultural Lands (“Petition”) on March 21, 2018, pursuant to §§ 205-44 and -45 of the Hawaii Revised Statutes (“HRS”) and §§ 15-15-98, -99, -120, and -121 of the Hawaii Administrative Rules (“HAR”) to designate approximately 463 acres of land situated at Kunia, O’ahu (the “Petition Area”), consisting of Tax Map Key No. (1) 9-2-004:011 and portions of Tax Map Key Nos. (1) 9-2-004:006 and :012, as Important Agricultural Lands (“IAL”).

The Land Use Commission of the State of Hawaii (the “Commission”), having heard and examined the testimony, evidence, and argument of counsel presented during the hearings, along

with the pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On March 21, 2018, Petitioner filed the Petition, Verification, and Exhibits “A” through “F” with the Commission, and submitted the \$1,000 application fee and electronic copy of the Petition, Verification, and Exhibits to the Commission.

2. *[Insert FOFs on comment process and LUC meeting].*

DESCRIPTION OF PETITION AREA

3. Petitioner is the fee simple owner of four (4) contiguous parcels located in Kunia, O’ahu, State of Hawaii and identified by Tax Map Keys (1) 9-2-004:003, :006, :011, and :012, measuring approximately 849 acres (“Petitioner’s Land”).

4. The Petition Area consists of approximately 463 acres of Petitioner’s Land.

5. The Petition Area represents approximately 54.6% of Petitioner’s Land.

6. All of the Petition Area is currently in active agricultural use.

7. Approximately 302 acres, or 65% of the Petition Area, is in active crop production, approximately 299 acres of which are planted in seed corn and the remaining three acres are planted with sorghum.

8. The balance of the Petition Area (approximately 161 acres, or 35% of the Petition Area) consists of water infrastructure (such as a reservoir, detention basins, berms, and filter strips), roads, soil conservation measures, and gulch land, all of which is important to, and used, in relation to the agricultural uses on the Petition Area.

9. Petitioner has no tenants, and no other private party has an interest in this matter.

DESCRIPTION OF REQUEST

10. Petitioner asks that the Commission designate the Petition Area as IAL pursuant to HRS §§ 205-44 and -45 and HAR §§ 15-15-98, -99, -120, and -121.

11. Petitioner is not seeking a reclassification of land pursuant to HRS § 205-45(b) in conjunction with its Petition.

12. Petitioner represents that it is voluntarily waiving any and all right to assert, claim, or exercise any credits pursuant to HRS § 205-45(h), effective as of the date of its Petition, that may be earned by Petitioner. Petitioner has represented that this waiver is limited to the aforesaid credits and shall not apply to any other right, credit, entitlement, or privilege held now or in the future with respect to any of Petitioner's property.

CONFORMANCE WITH THE STANDARDS AND CRITERIA FOR THE IDENTIFICATION OF IMPORTANT AGRICULTURAL LANDS

13. HRS § 205-44(c) and HAR § 15-15-120(c) set forth the standards and criteria for identifying IAL. Lands identified as IAL do not need to meet every standard and criterion listed in HRS § 205-44(c). Rather, lands meeting any of the criteria in HRS § 205-44(c) shall be given initial consideration, and the designation of IAL shall be made by weighing standards and criteria to meet the constitutionally mandated purposes in Article XI, Section 3, of the Constitution of the State of Hawaii and the objectives and policies for IAL identified in HRS §§ 205-42 and -43.

14. Land currently used for agricultural production (HRS § 205-44(c)(1) and HAR § 15-15-120(c)(1)).

The Petition Area has been in agricultural use for over 120 years, first in sugar operations, then pineapple production, and then for research, development, and production of seed corn. Currently, most of the Petition Area is in active year-round agricultural production.

Approximately 302 acres, or 65% of the Petition Area, is in active crop production, with

approximately 299 acres planted in seed corn and the remaining three acres planted in sorghum. The other portion of the Petition Area, consisting of approximately 161 acres, or 35%, includes water infrastructure, roads, soil conservation measures, and gulch land, all of which are used in connection with the ongoing agricultural uses on the Petition Area. Petitioner intends to keep the Petition Area in these uses for the foreseeable future.

15. Land with favorable soil qualities and growing conditions (HRS § 205-44(c)(2) and HAR § 15-15-120(c)(2)).

The Detailed Land Classification System and Agricultural Land Productivity Ratings by the University of Hawai‘i Land Study Bureau (LSB) (1972) is a five-tiered productivity rating system using the letters A, B, C, D, and E, with A representing the class of highest productivity and E the lowest. Approximately 75 percent of the Petition Area is rated A or B; approximately 62 percent is rated A, and approximately 13 percent is rated B. The remaining approximately 25 percent of the Petition Area is rated C, D, or E. The soil productivity ratings of the Petition Area are high, and this high-productivity land has been and continues to be used for active agriculture.

16. The following table summarizes the productivity rating of the Petition Area:

Productivity Rating	Total IAL	
	Acres	% of IAL
A	284.672	61.5%
B	61.906	13.4%
C	56.490	12.2%
D	24.295	5.2%
E	35.604	7.7%
Unclassified	0.000	0.0%
Total	462.967	100%

17. The mean annual solar radiation on the Petition Area ranges from 186 to 188 watts per square meter per hour, based on information from the *Evapotranspiration of Hawai‘i*

Final Report prepared in February 2014 for the U.S. Army Corps of Engineers, Honolulu District and the State of Hawai‘i’s Commission on Water Resource Management by the Department of Geography at the University of Hawai‘i at Mānoa.

18. Land identified under agricultural productivity rating systems, e.g. ALISH (HRS § 205-44(c)(3) and HAR § 15-15-120(c)(3)).

The Agricultural Lands of Importance to the State of Hawai‘i (ALISH) classification system was developed in 1977 by the State Department of Agriculture (Hawaii State Department of Agriculture, 1977). The system was primarily, but not exclusively, based on the soil characteristics of lands and existing cultivation. There are three classes of land under the ALISH system: Prime, Unique, and Other.

19. Approximately 96.3 percent of the Petition Area is assigned a classification rating under the ALISH system: 66.8 percent is classified as Prime, 0.5 percent is classified as Unique, and 29.0 percent is classified as Other (Hawaii State Department of Agriculture, 1977). The balance of the Petition Area (3.7 percent) is not classified under the ALISH system but includes essential elements for active agricultural operations, such as drainage ways, water system infrastructure, roadways, or areas for soil conservation.

20. The table below summarizes the ALISH classification of the Petition Area:

ALISH Classifications	Total IAL	
	Acres	% of IAL
Prime	309.308	66.8%
Unique	2.449	0.5%
Other	134.210	29.0%
Not ALISH	17.000	3.7%
Total:	462.967	100%

21. Land types associated with traditional native Hawaii agricultural uses (HRS § 205-44(c)(4) and HAR § 15-15-120(c)(4)).

The Petition Area is not associated with traditional native Hawaiian agricultural uses or unique agricultural crops and uses.

22. Land with sufficient quantities of water to support viable agricultural production. (HRS § 205-44(c)(5) and HAR § 15-15-120(c)(5)).

A majority of the Petition Area is irrigated by a plantation-era, on-site irrigation system, portions of which were installed by O‘ahu Sugar Company, Ltd., Del Monte Fresh Produce (Hawaii), Inc., and Syngenta Hawaii, LLC. The system includes one on-site reservoir, two reservoirs on neighboring land, three water pumps, and two booster pumps.

23. The on-site irrigation system draws water from Reservoirs #155, #23, and #90. Reservoir #155 was built in 1927 to store irrigation water for the previous sugarcane cultivation operations on the Petition Area and in the region. Reservoirs #155 and #90 lie on an adjacent parcel, currently owned by Monsanto Company, to which Petitioner has access over various easements, and Reservoir #23 is a new addition recently built on Petitioner’s Land. Each of these reservoirs receive water from the Waiāhole Ditch, the western most portion of which is located on the makai boundary of the Petition Area, and which serves as the primary source of irrigation water for the Petition Area.

24. Petitioner is permitted to withdraw Waiāhole Ditch water pursuant to Water Use Permit No. 1052, issued by the Commission on Water Resource Management, State of Hawai‘i, which allows the withdrawal of 0.590 million gallons per day (mgd) of water on a 12-month moving average basis for use on Petitioner’s Land. Since June 2017, when Petitioner was acquired by Hartung Brothers, Inc., a Wisconsin corporation, the 12-month moving average collective water use by Petitioner has ranged from 0.560 mgd to 0.475 mgd. Approximately 80 percent of this water is used for crops on the Petition Area. Petitioner’s current allocation of

water from the Waiāhole Ditch is sufficient to meet crop irrigation needs within the Petition Area.

25. Petitioner is a member of the Kunia Water Association (the “KWA”), in connection with which Petitioner’s Land has been allocated 3.82% of the total water available from the KWA. The actual amount of water (i.e., a specific number of gallons per day) that is available to Petitioner under this allocation is not set and can vary based on KWA well capacities and pump systems. Currently, Petitioner does not use any water from Petitioner’s KWA allocation, and water from the KWA allocation does not play a critical role in meeting Petitioner’s irrigation needs. Petitioner’s KWA allocation provides a backup source of water in the event of a disruption of water availability from the Waiāhole Ditch system.

26. In addition to water from the Waiāhole Ditch system, the Petition Area receives a mean annual rainfall of approximately 30 to 40 inches annually.

27. Consistency with general, development, and community plans (HRS § 205-44(c)(6) and HAR § 15-15-120(c)(6)).

Designation of the Petition Area as IAL is consistent with the State Land Use Agricultural District designation, the General Plan for the City and County of Honolulu (2002) (“General Plan”), applicable community plans, and the zoning designation for the Petition Area.

28. All of the Petition Area is within the State Agricultural Land Use District and designation of the Petition Area as IAL will be consistent with such land use designation.

29. Designation of the Petition Area as IAL is consistent with the General Plan by maintaining the viability of agriculture on O‘ahu, particularly by preserving land in ‘Ewa and Central O‘ahu for continued agricultural uses and contributing toward the continuation of agriculture as an important source of income and employment.

30. The Petition Area is located mostly within the Central O‘ahu Sustainable Communities Plan (2002) (“Central O‘ahu SCP”) region, with a small portion in the ‘Ewa Development Plan (2013) (“‘Ewa DP”) region. The Petition Area is not within the growth boundaries on any of the Central O‘ahu SCP and ‘Ewa DP maps. In the Central O‘ahu SCP Proposed Revised Plan (2016), the maps continue to designate the area of the Petition Area that is in the Central O‘ahu SCP area as “Agricultural Areas” of some type. The designation of the Petition Area as IAL would support the applicable community plans.

31. The entire Petition Area has an AG-1 Restricted Agricultural District designation under the Land Use Ordinance of the City and County of Honolulu. The designation of the Petition Area as IAL will be consistent with such designation.

32. Land that contributes to maintaining critical agricultural land mass (HRS § 205-44(c)(7) and HAR § 15-15-120(c)(7)).

The Petition Area, consisting of a contiguous block of 463 acres of important agricultural land, in and of itself contributes to maintaining a critical land mass important to agricultural operating productivity. Furthermore, the Petitioner’s Land itself is contiguous with land to the South owned by Monsanto Company which has been designated as IAL pursuant to the Decision and Order adopted by the Commission pertaining to Monsanto’s Kunia land (Docket No. DR17-59).

33. Land with or near agricultural support infrastructure. (HRS § 205-44(c)(8) and HAR § 15-15-120(c)(8)).

The Petition Area is near support infrastructure conducive to agricultural productivity. In addition to on-site infrastructure, the Petitioner’s Land contains agricultural roads between fields and Kunia Road is capable of supporting farming equipment and direct road transportation to/from markets. The Petition Area has direct access to electrical power, either through land owned by Petitioner or via easements running to the south over Monsanto’s property.

Petitioner's own processing facility is located on land immediately adjacent to the Petition Area. The Petition Area also has fences, gates, berms, and windbreaks to improve agricultural productivity and protect the environment.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Petition pursuant to HRS §§ 91-8, 205-44 and 205-45, and HAR § 15-15-98.
2. Pursuant to HRS §§ 205-45(e) and 205-44(b), the Commission has the authority to designate lands as IAL as long as any of the criteria in HRS § 205-44(c) are met.
3. The Petition Area is currently used for agricultural production in accordance with HRS § 205-44(c)(1) and HAR § 15-15-120(c)(1).
4. The Petition Area has soil qualities and growing conditions that support agricultural production in accordance with HRS § 205-44(c)(2) and HAR § 15-15-120(c)(2).
5. A majority (66.8%) of the Petition Area consists of prime agricultural lands identified under agricultural productivity rating systems, such as the ALISH system, in accordance with HRS § 205-44(c)(3) and HAR § 15-15-120(c)(3).
6. The Petition Area is not associated with traditional native Hawaiian agricultural uses or unique agricultural crops and uses, and therefore does not satisfy HRS § 205-44(c)(4) or and HAR § 15-15-120(c)(4).
7. The Petition Area has sufficient quantities of water to support viable agricultural production in accordance with HRS § 205-44(c)(5) and HAR § 15-15-120(c)(5).
8. Designation of the Petition Area as IAL is consistent with the General Plan for the City and County of Honolulu, the Central O'ahu Sustainable Communities Plan, and the 'Ewa Development Plan in accordance with HRS § 205-44(c)(6) and HAR § 15-15-120(c)(6).

9. The Petition Area contributes to maintaining a critical land mass that is important to agricultural operating productivity in accordance with HRS § 205-44(c)(7) and HAR § 15-15-120(c)(7).

10. The Petition Area is near support infrastructure conducive to agricultural productivity, such a transportation to markets, water, and power in accordance with HRS § 205-44(c)(8) and HAR § 15-15-120(c)(8).

11. The designation of the Petition Area as IAL generally meets the purposes of Article XI, Section 3, of the Constitution of the State of Hawaii by conserving and protecting agricultural lands, promoting diversified agriculture, increasing agricultural self-sufficiency, and assuring the availability of agriculturally suitable lands.

12. The designation of the Petition Area as IAL meets the objectives of HRS § 205-42(a)(1) because the Petition Area is capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology.

13. The designation of the Petition Area as IAL meets the objectives of HRS § 205-42(a)(2) because the Petition Area contributes to the State's economic base and produces agricultural commodities for export or local consumption.

14. The designation of the Petition Area as IAL meets the objectives of HRS § 205-42(b) by contributing to the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural sufficiency for current and future generations.

15. The designation of the Petition Area as IAL furthers the policies of HRS § 205-43(1) by promoting the retention of IAL in blocks of contiguous, intact, and functional land units large enough to allow flexibility in agricultural production and management.

16. The designation of the Petition Area as IAL furthers the policies of HRS § 205-43(2) by discouraging the fragmentation of important agricultural lands and the conversion of these land to non-agricultural uses.

17. The designation of the Petition Area as IAL furthers the policies of HRS § 205-43(8) by promoting the maintenance of essential agricultural infrastructure systems, including irrigation systems.

18. The Petition Area meets the requirements of HRS § 205-44 and -45 for designation as IAL.

19. Any conclusion of law herein improperly designated as a finding of fact should be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

DECISION AND ORDER

This Commission, having duly considered the Petition, the oral and/or written testimony of _____, and a motion having been made at a meeting on _____, in _____, and the motion having received the affirmative votes required by HRS §§ 15-15-98 and -99 and HRS §§ 205-44 and -45, and there being good cause for the motion,

HEREBY ORDERS that the Petition Area, consisting of approximately 463 acres of land situated at Kunia, O`ahu, consisting of Tax Map Key No. (1) 9-2-004:011, and portions of Tax Map Keys Nos. (1) 9-2-004:006 and :012, as shown on Exhibit “A” attached hereto and

incorporated by reference herein, shall be and is hereby designated as IAL as governed by HRS Chapter 205.

IT IS FURTHER ORDERED that the designation of the Petition Area as IAL shall be subject to the following conditions:

1. Petitioner shall comply with the representations made to the Commission with respect to disclaiming any credits described in HRS § 205-45(h) with respect to the Petition Area.

2. Within seven days of the issuance of the Commission's Decision and Order, Petitioner shall record it with the Bureau of Conveyances.

ADOPTION OF ORDER

This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at _____, this _____ day of _____, per motion on _____.

APPROVED AS TO FORM:

LAND USE COMMISSION,
STATE OF HAWAII

Deputy Attorney General

By: _____
Name: _____
Its: _____