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LAND USE COMMISSION
STATE OF HAWAII
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May 15, 2018

Mr. Daniel E. Orodenerker
Executive Director
Land Use Commission
State of Hawaii
Leiopapa A. Kamehameha Building
235 South Beretania Street, Room 406
Honolulu, HI 96813

Re: Docket No. DR18-61 – Petition for Declaratory Order to Designate
Important Agricultural Lands
(Tax Map Key Nos. (1) 9-2-004-006 (por.), -011, and -012 (por.))

Dear Executive Director Orodenerker:

We represent Hartung Brothers Hawaii, LLC (“Petitioner”) in the above referenced proceeding before the Land Use Commission (the “Commission”) to designate approximately 463 acres of land in Kunia, Oahu, as important agricultural lands (“IAL”). We write to respond to the comments submitted (i) by the State of Hawaii Department of Agriculture (“HDOA”) on April 20, 2018; (ii) by the City and County of Honolulu Department of Planning and Permitting (“DPP”) on April 24, 2018; and (iii) by the State of Hawaii Office of Planning (“OP”) on April 25, 2018.

We note at the outset that OP and HDOA each recommend that the Petition be granted, and DPP indicates that it has no objection to the Petition. We appreciate the thorough review of the Petition by HDOA, OP, and DPP, and we particularly appreciate HDOA’s recognition that the land proposed to be designated IAL in the Petition is “among the most productive agricultural lands on Oahu and serviced by an incomparable irrigation water system.”

Although DPP does not object to the Petition’s proposal to designate approximately 463 acres of land as IAL, and indeed DPP raises no concerns at all with regard to the land’s qualification under the statutory IAL criteria, DPP indicated a preference that the approximately 91 acres along Kunia Road not included in the Petition also be designated as IAL.

The Legislature provided for a method by which a landowner may voluntarily petition the Commission, “at any time in the designation process,” to designate land as IAL. HRS § 205-45(a). The Legislature also provided that if a landowner has voluntarily designated a

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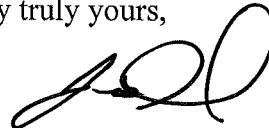
majority of its land (excluding lands in the conservation district), the remainder of the landowner's lands cannot be designated by way of the involuntary county designation process. See HRS § 205-49(a)(3). By including this "majority lands" incentive, the Legislature encouraged landowners to voluntarily petition for designation of a substantial portion of their lands (which must in any event meet the statutory criteria for IAL), thereby avoiding the conflicts and disputes that may arise in connection with involuntary designation.

It was therefore most disappointing to read DPP's recommendation that Petitioner's land along Kunia Road be "retained for future IAL designation" under the county process.¹ This recommendation is contrary to, and indeed completely ignores, the statutory incentive to landowners to voluntarily designate a majority of their land, and seems to be a suggestion that the Commission deny the Petition for the sole reason (because no other reason is given) of allowing DPP to designate all of Petitioner's land. We respectfully submit that this would be improper and without legal foundation, and we urge the Commission to disregard DPP's recommendation.

As stated in the Petition, the land along Kunia Road is zoned "AG-1" under the City and County's Land Use Ordinance. Petitioner, a bona fide agricultural producer, is using all of its land, including the land not sought to be designated IAL, in a manner consistent with its classification under applicable land use and zoning laws, and has no plans to seek any change in that classification. Petitioner has also not taken advantage of the opportunity provided by section 205-45(b) to request reclassification of any of its land to a more permissive land use district, and has agreed to waive any claim to reclassification credits under section 205-45(h). Petitioner has, however, sought to make use of the majority land incentive by voluntarily submitting over half of its land to IAL, as it is entitled to do.

We appreciate the efforts of all parties in reviewing and considering the Petition. Please contact the undersigned if you have any questions regarding the foregoing.

Very truly yours,



Joseph A. Dane

JAD:pnh

¹ The City and County of Honolulu has begun the process of identifying IAL for involuntary designation. As stated in DPP's comments, DPP's IAL map is still in the process of being "finalized", and has not yet been submitted to the City Council.