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August 2, 2018

To: Daniel Orodener, Executive Officer
State Land Use Commission

From: Leo R. Asuncion, Director
Office of Planning 

Subject: DR18-62 Petition for Declaratory Order to
Designate Important Agricultural Lands
Petitioner: Kualoa Ranch, Inc.
Location: Kualoa, Oahu, Hawaii
Petition Area: Approximately 761.55 acres

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LAND USE COMMISSION
STATE OF HAWAII

The Office of Planning (OP) appreciates Kualoa Ranch, Inc.'s (Petitioner) voluntary participation in the process for the designation of important agricultural lands (IAL). The designation of the most productive agricultural lands in Hawaii will help to realize the goals of sustainability and food security for the State of Hawaii.

Having reviewed the Petition and evaluated all available information pursuant to applicable IAL law, OP recommends that the Land Use Commission (Commission) approve the designation of all 761.55 acres in the Petition Area as IAL, with conditions to mitigate impacts that may result from the existing and proposed modification to the Petitioner's State Special Permit. The following is provided in support of this recommendation.

Background and State Special Permit. It is noted that in December 2017, the City Department of Planning and Permitting submitted a Draft Environmental Assessment (DEA) and Anticipated Finding of No Significant Impact for the Kualoa Ranch Improvements at Kualoa Ranch in Kualoa, Koolaupoko District, Oahu to the Office of Environmental Quality Control.

The DEA is not mentioned or discussed in the IAL petition. The DEA was prepared in support of the expansion of an existing Special Use Permit (SUP) which may encompass unpermitted uses within the proposed IAL area. The DEA indicates that the Petitioners have an existing State Special Permit (SP) (85/SUP-2) and a Conditional Use Permit (CUP), approved in 1985, which allowed up to 100 visitors per day with the following uses. The DEA description and Figure 1.8 indicates the following current uses and areas.

- a. ATV tour road (4-wheel all-terrain vehicles)

- b. Target shooting range (.22 caliber rifle and pistol) currently discontinued
- c. Maintenance storage shed
- d. Helipad
- e. Minor modification from 2012 to the current year for a "temporary" Farm Fair event.

The DEA also indicates that the hours of operation are from 10:00 am to 3:00 pm Monday to Friday. The CUP also included uses such as paintball, target shooting, horse-drawn wagon and helicopter rides, and ocean-oriented activities. The continuing outdoor recreational activities include a catamaran sailing tour and ATV tour of agricultural lands. According to the DEA, from 1987 to 2001, minor modifications to the CUP included a new storage shed near the ATV storage building, conversion of an existing equipment garage to office space and conference room, a horse barn, scheduling annual music events and construction of a visitor center. In 2013, another minor modification was to allow a Challenge Course and Forest Canopy Tour.

The DEA indicates that Petitioners will be applying for a major modification to the SP and CUPs to allow for the following:

1. Expanded hours of operation from the current hours of 10:00 am to 3:00 pm, Monday to Friday.
2. Expansion of Ranch Headquarters.
3. Expansion of visitor and support buildings and facilities.
4. Allow for Agricultural and other tours, with no limit on trails.
5. Increase the number of guests per day, from the current limit of 100-people per day.
6. Increase the number of recreational vehicles.
7. Allow film production.
8. Allow weddings.
9. Remove the shooting range.

We understand that the Petitioner has not yet submitted an application for the amendment to the State Special Permit to the Department of Planning and Permitting.

As part of the subject IAL petition, Petitioner has not included any information, discussion or maps showing the existing and proposed modifications to the Petitioner's State Special Permit and Conditional Use Permits within the Petitioner's IAL Petition. A significant increase in the number, intensity and types of uses, may significantly increase the potential impacts to public facilities and traffic within the Petition Area, and in the vicinity of the Petition Area. OP is concerned that these other uses, which require a State Special Permit and CUP approval, may conflict with bona-fide agricultural uses for the proposed IAL areas. The Petitioner should clarify the extent of unpermitted uses within the proposed IAL which will be part of the Special Permit.

Applicable Law. The State law for IAL is found at Hawaii Revised Statutes (HRS) §§ 205-41 through 205-44. Lands being considered for IAL designation must meet the definition of IAL pursuant to HRS § 205-42(a), which provides that IAL lands:

- (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.

HRS § 205-44(c) lists eight standards and criteria for the identification of IAL which were assessed as part of OP's review. OP recognizes that lands identified as IAL need not meet every standard and criteria listed, but that "the designation of important agricultural lands shall be made by weighing the standards and criteria with each other to meet the constitutionally mandated purposes in article XI, section 3, of the Hawaii Constitution¹ and the objectives, policies, standards, and criteria for important agricultural lands in sections 205-42 and 205-43." HRS § 205-44(a).

Summary of key elements of the Petition. The Petitioner is requesting that the LUC issue a declaratory order designating 761.55 acres of land at Kualoa, Oahu (Petition Area) as IAL. See OP Exhibit 1. The Petitioner represents that if the Petition is approved, it is waiving all rights to any credits that may be earned under HRS § 205-45(h).

Also, if this Petition is approved by the Commission, the Petition Area would constitute a voluntary designation of a majority of all of Petitioner's land holdings within the State Agricultural and Urban Land Use Districts, such that further involuntary IAL designation of Petitioner's land holdings would be precluded. We also note that approximately 2,302.32 acres of land owned by Petitioner are within the State Conservation District, which, as provided for in HRS § 205-49(a)(3)² is also excluded. Only lands within the State Agricultural and Urban Land

¹ Article XI, Section 3 of the Hawaii State Constitution states in part, "The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing."

² HRS § 205-49(a)(3) states in part, "...if the majority of landowners' landholdings is already designated as important agricultural lands, excluding lands held in the conservation district, pursuant to section 205-45 or any other provision of this part, the commission shall not designate any additional lands of that landowner as important agricultural lands except by a petition pursuant to section 205-45."

Use Districts would be included. Table 1 below describes the Petitioner's approximate land holdings on Oahu, and the majority percentage sought for IAL designation.

TABLE 1			
	Petitioner's Land Holdings in the State Agricultural and Urban Land Use Districts	Proposed for IAL	% IAL
Oahu	1,479.32 Acres (1,468.53 acres Agricultural 10.79 acres Urban)	761.55 acres	51.48%

Basis of review and comments. OP's review is based on the Petition, Petition exhibits, public data available on the proposed lands, and information gathered at the site visit for the Commission held on June 28, 2018.

Assessment of Petition lands. The following assesses the proposed IAL areas relative to the eight standards and criteria for the identification of IAL established in HRS § 205-44(c).

1. HRS §205-44(c)(1) - Land currently used for agricultural production. The Petition Area meets this criterion. According to the Petitioner, all of the Petition Area is currently in active agricultural production. Table 2 below summarizes the current uses as provided by the Petition.

TABLE 2		
Agricultural Use	Acres	Percent
Diversified Agriculture	17.67	02.3%
Aquaculture	4.37	00.6%
Pasture –livestock production, including cattle ranching and horse grazing, land stewardship, soil conservation, and cohesion and continuity of agricultural uses	739.51	97.1%
Total:	761.55	

According to the Petition, Petitioner utilizes the approximately 740 acres of pasture land to raise about 500 head of grass fed cattle, and also for horses that the Petitioner uses for ranching and horseback tours of the Ranch. Petitioner works with a local slaughterhouse and processing market to offer its beef to the market.

Diversified agriculture is conducted on a year-round basis on approximately 18 acres, which include papaya, banana, taro, breadfruit, sugar cane, coffee, jack fruit, macadamia nuts and cacao. This area also includes a piggery.

The Petition Area also contains approximately four (4) acres of aquaculture ponds in the Kaaawa area. There are six (6) ponds in which are raised an assortment of fish and shellfish such as catfish, shrimp, prawns and tilapia. Tilapia and fresh water prawns are also harvested and sold to local markets.

The balance of the Petition Area consists of water infrastructure, roads, and soil conservation measures.

The Petition Area has been in agricultural production since the initial purchase of about 622 acres from King Kamehameha III in 1850, and the subsequent purchase of the remainder of land from Queen Kalama, for the total current area of 3,782 acres. Historically, Kualoa Ranch has been used for ranching, taro farming, sugarcane production, aquaculture through Moli Pond (not part of Petition Area), and other diversified agricultural uses.

Petitioner states that “Kualoa Ranch helps sustain its agricultural operations through accessory uses that are consistent with HRS § 205-2(d)(11) and the Honolulu Land Use Ordinance...” (page 8 of the Petition). HRS § 205-2(d)(11) permits within the State Agricultural District, agricultural tourism on a farming operation for the enjoyment, education, or involvement of visitors, “provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and *provided further that such use shall apply only to a county that has adopted ordinances regulating agricultural tourism...*” (Emphasis added). It is our understanding that the City and County of Honolulu has not adopted ordinances regulating agricultural tourism. Therefore, Petitioner’s “accessory uses” are not consistent with HRS § 205-2(d)(11). And, if Petitioner’s “accessory uses” were consistent with HRS § 205-2(d), they would not require a SP.

2. HRS §205-44(c)(2) - Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops. According to the Agricultural Land Assessment Study, Petitioner’s Exhibit D, the Petition Area has since 1850 been used for agricultural and the production of livestock, diversified agriculture,

aquaculture, a piggery, and nurseries. The Petition Area meets this criterion, with consideration for the historic usage of the proposed IAL area. Based on the Land Study Bureau (LSB) ratings, the soil productivity ratings of the Petition Area are mostly rated as “very poor” (70.%) , and 19 % as “fair”. Table 3 below summarizes the productivity ratings of the Petition Area.

TABLE 3		
Productivity Rating	Total IAL	
	Acres	% of IAL
A (Very good)	0	0
B (Good)	20.17	2.7%
C (Fair)	144.96	19.0%
D (Poor)	62.4	8.2%
E (Very Poor)	534.02	70.1%
Total:	761.55	100%

Petitioner’s Exhibit D, Figure 4 illustrates the LSB ratings across the Petition Area. The lower quality rated lands are generally consistent with steeper land slope ratings. OP’s Exhibit 1 illustrates the land slope associated with the Petition Area. Of the 761.55-acre Petition Area, 253 acres, or 33%, is at a slope gradient equal to or greater than 20%. Steep slope gradients typically hinder machinery and labor operations due to geographic features such as ravines, gulches and steep terrain as well as soil quality. However, 435 acres or 67% are at a slope gradient less than 20%, or would be relatively level or gently sloping lands.

3. HRS §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. The Petition Area meets this criterion. The table below summarizes the ALISH system classifications for the Petition Area. The majority of the property of 20.7%, is rated Prime, and 62.9% is rated as “Other” Important Agricultural Lands. The remaining 16.4% lands “Not in ALISH” includes essential elements for active agricultural operations, such as streams and drainage ways, water system infrastructure, roadways, and areas for soil conservation and land stewardship.

TABLE 4		
ALISH Rating	Acres	% of IAL
Prime	157.41	20.7%
Unique	0	0%
Other	479.19	62.9%
Not in ALISH	124.95	16.4%
Total:	761.55	100%

4. HRS §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. A relatively small portion of the Petition Area meets this criterion, since Taro is cultivated within the Petitioner's diversified agricultural area. The Petition Area has been in active agricultural production both under Petitioner's ownership since 1850, but only a small portion of the Petition lands would be considered unique agricultural lands under this criterion. The Petition Area has not been associated with traditional native Hawaiian agricultural uses or unique agricultural crops and uses. However, we note that other areas of the Kualoa Ranch, such as Molii Fishpond have been and are currently being used for traditional native Hawaiian agricultural uses
5. HRS §205-44(c)(5), Land with sufficient quantities of water to support viable agricultural production. The Petition Area meets this criterion. The Petition Area is irrigated by the Board of Water Supply, on-site non-potable water system and wells, and rainfall. Petitioner also plans to drill a new well within Kaaawa Valley for future agricultural operations.

According to the Petition, the majority of agricultural operations is serviced by the Board of Water Supply (BWS). There is a 6-inch water main that runs parallel to the Kamehameha Highway that connects within the Petitioner's property through a 4-inch line. An existing on-site non-potable water system from Hakipuu Stream provides water for livestock in the Hakipuu Valley. This water is collected and stored in a private water tank on the Petition Area, mauka of the Ranch Headquarters. In addition, there are two wells in Kaaawa Valley. One is currently used for aquaculture operations, and one is not currently in use.

The Petition Area is also naturally irrigated by rainfall. The Petition Area receives between 51 to 78 inches of rain. Rainfall supplies water to the portions of the Petition Area that are not currently serviced by existing irrigation systems.

6. HRS §205-44(c)(6), Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county. The Petition Area meets this criterion. The Petition Area is appropriately and entirely within the State Land Use Agricultural District, and is consistent with the City and County of Honolulu's (City) General

Plan. The Petition Area is within both the Koolauloa Sustainable Communities Plan and the Koolaupoko Sustainable Communities Plan. Within both plans the Petition Area is designated as Agricultural Area, with some Preservation along the streams. The Petition Area is outside of the growth boundaries on both plans. Within the Pre-final Revised Koolauloa Plans and Land Use Map, the Petition Area is designated as Agricultural. All of the Petition Area is zoned AG-2 under the City's Land Use Ordinance.

Through the C&C's IAL Land Study, the City proposed that most of the Petition Area be designated as IAL. Petitioner participated in the City's process, and indicated to the City that it did not agree with the City's proposed designation.

7. HRS §205-44(c)(7), Land that contributes to maintaining a critical land mass important to agricultural operating productivity. The Petition Area appears to meet this criterion. The 761.55 acres in the Petition Area has been connected through its ownership since 1850 and of many years of continuous agricultural activity, as a seemingly self-sufficient operation. Petitioner indicated that approximately 97% of the land is currently in pasture and livestock, 3% for diversified agriculture and aquaculture.
8. HRS §205-44(c)(8), Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power. The Petition Area meets this criterion with respect to the ongoing availability of water for irrigation and applicable utilities. Kamehameha Highway is the major adjacent access way with proximity to roads, major markets and harbors.

Summary and Recommendation

Based on the above analysis that includes review of all available information and Petitioner's representations, and weighing the IAL standards and criteria, OP recommends that the Commission approve Petitioner's proposed IAL in its entirety. OP further recommends that a condition of approval be imposed waiving any and all rights to credits under HRS § 205-45(h), as represented by the Petitioner.

- 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.

OP remains concerned that, during the forthcoming Special Permit process, the Petitioner's non-agricultural activities may conflict with and adversely affect the Important Agricultural Lands uses and/or designation. Accordingly, OP recommends the following condition also be imposed:

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- Any Special Permit application involving designated Important Agricultural Land areas shall be subject to review and approval by the State Office of Planning and the Department of Agriculture relative to consistency with the objectives and policies in Hawaii Revised Statutes, Chapter 205 Part III Important Agricultural Lands.

Particular areas of the Petition Area are considered less productive agricultural lands due to steep land slopes over 33% (OP Exhibit 1) and areas of poor soil qualities as indicated by LSB (Table 2). However, based on the presence of active cattle and livestock ranching, as well as the Petitioner's representations that sufficient water supplies are available, OP believes the Property sufficiently meets most of the IAL criteria.



The Petition Area constitutes approximately 51% of the all the land owned by the Petitioner that lies within the State Agricultural Land Use District. Thus, under HRS § 205-49(a)(3), the Commission is barred from designating any additional land owned by the Petitioner that may be identified by the City for designation as IAL under Section 205-49, HRS. *See* Table 1 above for a summary of the Petitioner's land holdings.

Thank you for the opportunity to comment on the Petition. If you have any questions, please contact Lorene Maki of our Land Use Division at 587-2888.




Exhibit

cc: Department of Agriculture
Department of Planning and Permitting, City and County of Honolulu

**LUC Docket DR18-62
Kualoa Ranch
Petition Area**

-  Proposed IAL (773 ac)
-  100 ft Elevation Contours

Slope Pct.

-  0 - 20 % (no color) (435 ac)
-  20 - 40 % (253 ac)
-  40 - 60 % (62 ac)
-  60 - 80 % (19 ac)
-  > 80 % (4 ac)

