

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of
KUALOA RANCH, INC., a Hawai'i
corporation

For Declaratory Order to Designate
Important Agricultural Lands for ap-
proximately 761.55 acres at O'ahu,
Hawai'i identified by TMK Nos. (1) 4-9-
002-001 (por.), 4-9-004-002 (por.), 4-9-
005-001 (por.), 5-1-001-001 (por.), 5-1-
001-016 (por.), 5-1-001-025, 5-1-004-001
(por.) and 5-1-007-001 (por.)

DOCKET NO. DR18-62

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

CERTIFICATE OF SERVICE

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

Petitioner KUALOA RANCH, INC. ("**Kualoa Ranch**") filed a Petition for De-
claratory Order to Designate Important Agricultural Lands ("**Petition**") on June
29, 2018, pursuant to §§ 205-44 and -45 of the Hawai'i Revised Statutes ("**HRS**")
and §§ 15-15-98, -99, -120 and -121 of the Hawai'i Administrative Rules ("**HAR**"), to
designate as Important Agricultural Lands ("**IAL**") approximately 761.55 acres of
land at O'ahu, Hawai'i (collectively, the "**Petition Area**").

The State of Hawai'i Land Use Commission (“**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 June 20, 2018, the Commission sent its Notice of Land Use Commission Meeting and Agenda for its June 28, 2018 site visit.
2. On June 28, 2018, the Commission conducted a site visit to view the Petition Area.
3. On June 29, 2018, Kualoa Ranch filed the Petition and Exhibits A through D with the Commission.
4. On June 29, 2018, Kualoa Ranch filed a compact disc containing digital files of the Petition with the Commission.
5. On July 27, 2018, Kualoa Ranch submitted a supplement of Exhibit C with the Commission.
6. On July 27, 2018, Kualoa Ranch submitted a compact disc containing digital files of the Petition and exhibits A through D, including a signed copy of Exhibit C.
7. On July 31, 2018, the Commission sent its Notice of Land Use Commission Meeting and Agenda for its August 8, 2018 hearing on the Petition.

8. On August 2, 2018, the State of Hawai'i Office of Planning ("OP") submitted comments on the Petition ("OP's Ltr."). On August 8, 2018, OP submitted revised comments on the Petition.

9. On August 3, 2018, the State of Hawai'i Department of Agriculture ("DOA") submitted comments on the Petition to the Commission ("DOA's Ltr.>").

10. On August 8, 2018, the Commission held a meeting on the Petition in Honolulu, Hawai'i.

11. Calvert G. Chipchase, Esq. and Jacob L. Garner, Esq. appeared on behalf of Kualoa Ranch.

12. XXX, Esq. appeared on behalf of OP.

13. XXX, Esq. appeared on behalf of the City and County of Honolulu (the "City").

14. At the meeting, the Commission admitted into evidence Kualoa Ranch's Petition, including Exhibits A through D; Kualoa Ranch's PowerPoint; Mr. Thomas Schnell's resume; and the written comments on the Petition from the DOA and OP.

15. Kualoa Ranch called John Morgan, David Morgan, Taylor Kellerman and Thomas Schnell. Mr. Schnell was qualified as an expert in land planning and environmental planning.

16. OP called XXX.

17. OP supported the designation of the entire Petition Area as IAL. OP's Ltr. at 1.

18. The DOA supported the designation of the entire Petition Area as IAL. DOA's Ltr. at 1.

19. The City had no objections to the designation of the entire Petition Area as IAL.

20. Following Petitioner's case-in-chief and the receipt of public testimony and upon due deliberation, a motion to approve the Petition in its entirety was made by Commissioner XXX and seconded by Commissioner XXX. There being a vote tally of XXX ayes, XXX nays, and XXX excused, the motion carried.

DESCRIPTION OF THE PETITION AREA

21. The Petition Area consists of approximately 761.55 acres of land on the island of O'ahu, Hawai'i, identified by TMK Nos. (1) 5-1-001:001 (por.), 5-1-001:025, 5-1-001:016 (por.), 4-9-005:001 (por.), 4-9-004:002 (por.), 4-9-002:001, 5-1-004:001(por.), 5-1-007:001 (por.). Exhibit A to Petition.

22. The Petition Area represents approximately 51.5 percent of all of Kualoa Ranch's O'ahu lands, excluding lands held in the conservation district. Petition at 2.

23. Kualoa Ranch owns and manages the Petition Area. Id.

24. Kualoa Ranch owns and manages the Petition Area in active agricultural use and supports those agricultural operations through environmentally-friendly and sustainable accessory activities. Petition at 3.

DESCRIPTION OF REQUEST

25. Kualoa Ranch seeks a determination from the Commission that the Petition Area should be designated as IAL pursuant to HRS §§ 205-44 and -45 and HAR §§ 15-15-98, -99, -120, and -121. Petition at 2.

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

27. Kualoa Ranch has represented that it is voluntarily waiving any and all rights to assert, claim or exercise any credit pursuant to HRS § 205-45(h), as effective as of the date of its Petition, that may be earned by Kualoa Ranch. Kualoa Ranch has represented that this waiver is limited to the use of credits for the sole purpose of reclassifying other lands that are not the subject of the Petition pursuant to HRS § 205-45(h), as effective as of the date of its Petition. The waiver does not apply to any other credits, incentives, rights or privileges that Kualoa Ranch may possess now or in the future, whether known or unknown.

CONFORMANCE WITH THE STANDARDS AND CRITERIA FOR THE IDENTIFICATION OF IAL

28. HRS § 205-44(c) and HAR § 15-15-120(c) set out the criteria for identifying IAL. Lands identified as IAL do not need to meet every criterion listed in HRS § 205-44(c). Rather, lands meeting any criterion in HRS § 205-44(c) shall be given initial consideration, and the designation of IAL shall be made by weighing criteria with each other to meet the constitutional mandated purposes in article XI, section 3, of the Hawai'i Constitution and the objectives and policies for IAL identified in HRS §§ 205-42 and -43.

29. HRS § 205-44(c)(1): Lands currently used for agricultural production.

The Petition Area is comprised of lands that are currently in agricultural use and have historically been in agricultural use. Petition at 6. Current agricultural operations by Kualoa Ranch continue Kualoa Ranch's agricultural heritage. Kualoa Ranch's operations range from livestock production to diversified agriculture and aquaculture. The majority of the Petition Area is devoted to pasture for the production of livestock, but the Petition area also features several aquaculture ponds as well as areas for diversified food crops. Id. With approximately 500 head of cattle between the Petition Area and the rest of its lands, Kualoa Ranch operates one of the largest ranches on O'ahu. The majority of the agricultural use on the Petition Area is devoted to livestock grazing on pasturelands, including large areas within the Hakipu'u, Kualoa and Ka'a'awa ahupua'a. Kualoa Ranch exclusively raises grass fed, grass finished cattle and works with a local slaughterhouse and processing market to offer its beef to the community. Id. at 6-7. Kualoa Ranch is also expanding its livestock operation to include a piggery and a sheep herd. PowerPoint at Slides 20-21. In addition to its cattle operation, Kualoa Ranch maintains diversified agriculture on the Petition Area, of which approximately 18 are devoted to food crops. These agricultural uses are conducted on land within the Ka'a'awa Valley, which is committed to diversified agriculture. Production crops include papaya, banana, taro, breadfruit, pineapple, sugar cane, coffee, jack fruit, macadamia nuts and cacao. Petition at 7. Approximately four acres of the Petition Area are devoted to aquaculture, where Kualoa Ranch harvests prawns and Chinese catfish. Id. OP

and DOA both concluded in their respective comment letters that the Petition Area meets this criterion. OP’s Ltr. at 4, DOA’s Ltr. at 3.

30. HRS § 205-44(c)(2): Land with soil qualities and growing conditions that support agricultural production for food, fiber or fuel, and energy-producing crops. The Detailed Land Classification System and Agricultural Land Productivity Ratings by the Land Study Bureau (“LSB”), University of Hawai‘i, are based on a five-class productivity rating system using the letters A, B, C, D, and E, with A representing the class of highest productivity and E the lowest productivity rating. Petition at 10. Approximately 2.7% of the Petition Area is rated B, 19.0% is rated C, 8.2% is rated D, and 70.1% is rated E. None of the Petition Area is unrated. Petition at 7. OP and DOA agree that the Petition Area meets this criterion. OP’s Ltr. at 6, DOA’s Ltr. at 4.

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

Productivity Rating	Total IAL	
	Acres	% of IAL
A	0.00	0%
B	20.17	2.7%
C	144.96	19.0%
D	62.40	8.2%
E	534.02	70.1%
Total	761.55	100.0%

32. Based on the February 2014 Evapotranspiration of Hawai‘i Final Report by University of Hawai‘i’s Department of Geography for U.S. Army Corps of

Engineers Honolulu District and State of Hawai'i Commission on Water Resource Management (Giambelluca, et al., 2014), the Petition Area's mean annual solar radiation ranges from 196 to 163 watts per square meter per hour. Petition at 10.

33. HRS § 205-44(c)(3): Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawai'i ("ALISH") system adopted by the board of agriculture on January 28, 1977. The ALISH classification system was developed in 1977 by DOA. Petition at 10. The system was primarily, but not exclusively, based on the soil characteristics of lands and existing cultivation. There are three classes of ALISH land—Prime, Unique and Other. Approximately 83.6% of the Petition Area is classified under the ALISH system, 20.7% being classified as Prime and 62.9 percent being classified as Other. Id. at 11. OP and DOA both concluded in their respective comment letters that the Petition Area meets this criterion. OP's Ltr. at 6, DOA's Ltr. at 4.

34. The following table summarizes the ALISH classifications for the Petition Area:

ALISH Classifications	Total IAL	
	Acres	% of IAL
Prime	157.41	20.7%
Unique	0.00	0.0%
Other	479.19	62.9%
Not ALISH	124.95	16.4%
Total:	761.55	100.0%

35. 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. Agriculture has long been a part of the history of the Petition Area, with extensive taro cultivation in the area before the mid-1800s. Petition at 12. Today, Kualoa Ranch cultivates a number of traditional and unique agricultural crops including taro, ‘ulu (bread-fruit), papaya, ma‘i (banana), and cacao. Id. at 12-13. DOA concluded in its comment letter that this criterion is satisfactorily met from the perspective of historical crops and Kualoa Ranch’s taro cultivation. DOA’s Ltr. at 5.

36. HRS § 205-44(c)(5): Land with sufficient quantities of water to support viable agricultural production. The Petition Area has sufficient quantities of water and infrastructure to support viable agricultural production. Petition at 13. The Petition Area receives potable water from the City Board of Water Supply and contains sources of non-potable water from streams and wells. Id. at 13-14. OP and DOA agree the Petition Area meets this criterion. OP’s Ltr. at 7, DOA’s Ltr. at 5.

37. HRS § 205-44(c)(6): Land whose designation as IAL is consistent with general, development, and community plans of the county. The Petition Area’s agricultural classification is consistent with the General Plan for the City and County of Honolulu (“**General Plan**”). Petition at 15. The Petition Area is situated within the State Land Use Agricultural District. Id. The Petition Area is consistent with both the City’s Ko‘olau Loa Sustainable Communities Plan and the Ko‘olau Poko Sustainable Communities Plan. Id. at 17-18. In addition, the Petition Area is consistent with the City’s top three and top four priority criteria for the designation

of land as IAL. Id. at 18-20. OP and DOA agree that the Petition Area meets this criterion. OP's Ltr. at 7, DOA's Ltr. at 6.

38. HRS § 205-44(c)(7): Land that contributes to maintaining a critical land mass important to agricultural operating productivity. The Petition Area contributes to maintaining a critical land mass important to agricultural operating productivity. Petition at 21. Kualoa Ranch has continuously operated agricultural production in the Petition Area for more than 150 years. Id. OP and DOA agree that the Petition Area meets this criterion. OP's Ltr. at 8, DOA's Ltr. at 6.

39. 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 has sufficient support infrastructure conducive to agricultural production. Petition at 21. In addition to the extensive network of existing infrastructure serving the Petition Area including wells, water tanks, streams, a composting facility and a network of farm roads, the Petition Area is located near Kamehameha Highway, which is capable of supporting farming equipment and direct road transportation to and from markets. Id. OP and DOA agree that the Petition Area meets this criterion. OP's Ltr. at 8, DOA Ltr. at 7.

40. The current or planned agricultural use of the area sought to be designated as IAL. Kualoa Ranch plans to continue to raise cattle on the Petition Area and conduct other diverse agricultural activities, including fruits and vegetables and aquaculture activities such as raising assorted fish and shellfish. Petition at 21.

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 § 205-44(a), the Commission has the authority to designate lands as IAL in accordance with the criteria set forth in HRS § 205-44(c).
3. The Petition Area is currently used for agricultural production in accordance with HRS § 205-44(c)(1).
4. The Petition Area has soil qualities and growing conditions that support agricultural production in accordance with HRS § 205-44(c)(2).
5. The Petition Area includes substantial lands identified under agricultural productivity rating systems, such as the ALISH system adopted by the Board of Agriculture on January 28, 1977, in accordance with HRS § 205-44(c)(3).
6. The Petition Area has been used for traditional native Hawaiian agricultural uses. The Petition Area currently includes cultivation of traditional native Hawaiian agricultural uses, such as taro cultivation, in accordance with HRS § 205-44(c)(4).
7. The Petition Area has sufficient quantities of water to support viable agricultural production in accordance with HRS § 205-44(c)(5).
8. The Petition Area's designation as IAL is consistent with the State District Boundaries and the State Plan, the General Plan, and the City's Ko'olau Loa and Ko'olau Poko Sustainable Communities Plans in accordance with HRS § 205-44(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).

10. The Petition Area is within close proximity to or is near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power in accordance with HRS § 205-44(c)(8).

11. The designation of the Petition Area as IAL meets the purposes of Article XI, section 3, of the Hawai'i State Constitution 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(b) by contributing to the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities to expand agricultural income and job opportunities and increase agricultural sufficiency for current and future generations.

13. The designation of the Petition Area as IAL meets 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.

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

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

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

17. Under HRS § 205-49(a)(3), if a majority of a landowner's holdings are approved for designation as IAL (excluding lands in the State Conservation District), the county is precluded from designating additional acreage of that landowner as IAL except by a voluntary petition pursuant to section 205-45. Since the Petition Area represents approximately 51.5% of Kualoa Ranch's agriculture and urban lands on O'ahu, the City is precluded from designating additional agricultural lands of Kualoa Ranch as IAL.

18. 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 written testimony of Kualoa Ranch, DOA, and OP, and a motion having been made at a meeting on August 8, 2018, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by HAR §§ 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 761.55 acres at O‘ahu, Hawai‘i identified by TMK Nos. (1) 4-9-002-001 (por.), 4-9-004-002 (por.), 4-9-005-001 (por.), 5-1-001-001 (por.), 5-1-001-016 (por.), 5-1-001-025, 5-1-004-001 (por.) and 5-1-007-001 (por.), and shown approximately 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 designation of the Petition Area as IAL shall be subject to the following conditions:

1. Kualoa Ranch 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. Any Special Permit application or modification thereto for lands within or adjacent to the Petition Area shall be provided to the State Office of Planning and the Department of Agriculture for review and recommendations to impacts and consistency with the objectives and policies of Hawai‘i Revised Statutes, Chapter 205, Part III Important Agricultural Lands.

3. Within seven (7) days of the issuance of the Commission’s Decision and Order, Petitioner shall record it with the Bureau of Conveyances.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this _____ day of _____, 2018. This ORDER may be executed in counterparts.

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

Done at Honolulu, Hawai'i, this _____, day of _____, per motion on August 8, 2018.

APPROVED AS TO FORM

LAND USE COMMISSION
STATE OF HAWAII

Deputy Attorney General

By Jonathan Scheuer
Chairperson and Commissioner

Filed and effective on:

Certified by:

DANIEL E. ORODENKER
Executive Officer

EXHIBIT A

Tax Map Key Description

A total of approximately 761.55 acres of land owned by Kualoa Ranch on O‘ahu are proposed to be designated as Important Agricultural Land (IAL).

The following table shows a summary of TMK parcels and approximate acreage for the proposed IAL lands:

TMK Number	Approximate Acreage
(1) 5-1-001:001 (Por.)	60.01
(1) 5-1-001: 025	0.50
(1) 5-1-001: 016 (Por.)	0.17
(1) 4-9-005:001 (Por.)	98.63
(1) 4-9-004:002 (Por.)	73.48
(1) 4-9-002:001	53.92
(1) 5-1-004:001 (Por.)	465.44
(1) 5-1-007:001 (Por.)	9.40
<i>TOTAL</i>	761.55

Exhibit A illustrates the proposed IAL and the related Tax Map Key parcels.

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001-016 (por.), 5-1-001-025, 5-1-004-001
(por.) and 5-1-007-001 (por.)

DOCKET NO. DR18-62

CERTIFICATE OF SERVICE

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I hereby certify that on this date a copy of the **Findings of Fact, Conclusions of Law and Decision and Order** was served on the following parties, by depositing a copy with the U.S. Postal Service, postage prepaid, first class mail:

CITY & COUNTY OF HONOLULU
DEPARTMENT OF PLANNING & PERMITTING
650 South King Street
Honolulu, HI 96813
Attention: Director Kathy Sokugawa

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, HI 96814
Attention: Chairperson Scott E. Enright

STATE OF HAWAII
OFFICE OF PLANNING
P.O. Box 2359
Honolulu, HI 96804-2359
Attention: Acting Director Leo R. Asuncion, Jr.

XXX, ESQ.
Deputy Corporation Counsel
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XXX, ESQ.
Deputy Attorney General
Hale Auhau
425 Queen Street
Honolulu, HI 96813

DATED: Honolulu, Hawai'i, _____, 2018.

DANIEL ORODENKER
Executive Officer