

DURRETT LANG, LLLP

ATTORNEYS AT LAW

JONATHAN S. DURRETT (3184-0) jdurrett@dmlhawaii.com

KALANI A. MORSE (8488-0) kmorse@dmlhawaii.com

Davies Pacific Center, 841 Bishop Street, Suite 1101

Honolulu, Hawai'i 96813

Telephone: (808) 526-0892

Facsimile: (808) 533-4399

Attorneys for Petitioner

MĀLAEKAHANA HUI WEST, LLC

BEFORE THE LAND USE COMMISSION OF THE STATE OF HAWAI'I

In the Matter of the Petition of

MĀLAEKAHANA HUI WEST, LLC, an
Arizona limited liability company Authorized
to conduct Business in Hawai'i

For Declaratory Order to Designate Important
Agricultural Lands for approximately 230.33
acres at O'ahu, Hawai'i identified by TMK
No. 5-6-006:018 (por.).

DOCKET NO. DR18-63

**PETITION FOR DECLARATORY
ORDER TO DESIGNATE IMPORTANT
AGRICULTURAL LANDS**

EXHIBITS A - E

CERTIFICATE OF SERVICE

**PETITION FOR DECLARATORY ORDER
TO DESIGNATE IMPORTANT AGRICULTURAL LANDS**

Petitioner Mālaekahana Hui West, LLC ("*MHW*") hereby petitions the Land Use Commission of the State of Hawai'i ("*Commission*") to issue a Declaratory Order designating as Important Agricultural Lands ("*IAL*") approximately 230.33 acres of its Lands on O'ahu, Hawai'i (this "*Petition*"). Those Lands to be designated as IAL are located at O'ahu, Hawai'i and identified as a portion of TMK No. 5-6-006:018 are more particularly described below (collectively, referred to as the "*Property*"). MHW files this Petition pursuant to Hawai'i Revised Statutes ("*HRS*") §§ 205-44 through 45 and Hawai'i Administrative Rules ("*HAR*") §§ 15-15-98 through 99 and §§ 15-15-120 through 121 (collectively the "*IAL Laws*"). In support of this Petition, MHW presents the following evidence:

I. PETITION CONTENT REQUIREMENTS

The content requirements for Petition for Declaratory Order are set out in HAR §15-15-99, which are satisfied by the content and information provided below.

A. ***NAME, ADDRESS AND TELEPHONE NUMBER OF PETITIONER:***

MHW is an Arizona limited liability company registered to do business in the State of Hawai‘i. Originally named Serenity Park, LLC, the entity changed its name to Mālaekahana Hui West, LLC on June 22, 2006 via an amended and restated Articles of Organization which was filed with the State of Hawai‘i’s Department of Commerce and Consumer Affairs Business Registration Division on July 20, 2006. *See* page 31 of *Exhibit C*.

MHW’s mailing address is P.O. Box 129, Hau‘ula, Hawai‘i 96717. With respect to MHW’s appearance before the Commission, the law firm of DURRETT LANG, LLLP represents MHW in accordance with HAR § 15-15-35(b) and all correspondence and communication regarding this Petition shall be addressed to and served upon Kalani A. Morse, Esq. at 841 Bishop Street, Suite 1101, Honolulu, Hawai‘i 96813 (email to: kmorse@dmlhawaii.com).

B. ***STATEMENT OF PETITIONER’S INTEREST IN THE SUBJECT MATTER AND REASON FOR THE SUBMISSION.***

MHW is the fee simple owner and manager of the Property. The Property is located on a portion of TMK No. 5-6-006:018 on the island of O‘ahu in Kahuku, Hawai‘i. The Property and MHW’s Lands are more specifically identified and described in *Exhibits A, C, and D*. MHW requests that the Commission designate the Property as IAL, pursuant to a finding that the Property sufficiently meets the relevant IAL criteria set forth by the IAL Laws.

MHW’s goals and plans for the Property satisfy the criteria set forth in the IAL Laws and align with and support the majority incentive offered by HRS § 205-49(a)(3). As such, MHW currently seeks to designate a majority (50.6% or 230.33 acres) of its lands as IAL.

MHW's Lands consists of two parcels ("TMKs 1-5-6-006:004 and 1-5-6-006:018) comprising approximately 455.723 acres of agricultural lands, 99.5% of which is currently zoned AG 1, with a small portion (2.19 acres) zoned in the R-5 Residential District. Those lands were anciently known as the ahupua'a of Keana and were held by the Kingdom of Hawai'i until they were sold to the Scottish carpenter James Campbell. After his passing, the Property was owned and managed by the Campbell Trust from whom MHW acquired the Property. *See Deed at Exhibit C.*

MHW's Lands and the Property have historically been used for agricultural purposes, going back to even the pre-Contact ancient Hawaiian era. First, there is a record of agricultural terraces along the Kaukanala'au Stream, which were part of the traditional Hawaiian ahupua'a system. Thereafter, cattle ranching started in the 1850s, followed by the Kahuku sugar plantation which operated until the early 1970's. *See Exhibit D (Agricultural Land Assessment).* After the closure of the sugar plantation, active agricultural uses continued on the Property, including the existing cultivation of truck crops on farm plots leased and managed by individual farmers. *See Id.*

Currently, the Property continues to support farmers and truck crops and serves as home to educational programs that address environmental and agricultural sustainability. Agricultural techniques of the past, like Hawaiian ahupua'a principles, are blended with current sustainable farming techniques to produce strong yields of marketable crops. *See Id.*

The Property provides educational enrichment by offering unique agricultural tours of its "living farms" by utilizing a Hawaiian Aerial Transporter ("**HAT**"). The HAT provides a modern and attractive way for guests to tour the farms and gain a better understanding and appreciation of the factors that go into sustainable farming such as soil testing, irrigation and

how produce starts from seedlings and ends up on the dinner table. The HAT provides visitors with access to the subject property as an accessory use under a Conditional Use Permit –Minor issued by the City in April 2013.

Recent improvements tied to this accessory program include improved agricultural roads that enable transportation of visitors in open-air vehicles from the visitor arrival area, through the farming areas, to a high point on the land where they then travel to a series of agricultural educational stations via the HAT zip line system. In total, there are 11 agricultural education stations, three of which are situated on the Property. *See Exhibit D* at Figure 7. A tour of all the educational stations typically takes approximately 120 to 180 minutes, depending on the time spent at each station. These agricultural tours are well attended, taking place throughout the day from sunup to sundown, Monday through Saturday. At the various agricultural education stations, guides offer explanations of the agricultural history, current farming operations and crops being viewed, along with tasting samples of fresh produce from the various farms.

As a landowner, MHW is responsible for protecting and enhancing the agricultural productivity of its lands while ensuring the sustainable profitability of income-producing operations on its lands. As a part of its agricultural strategy, MHW aims to preserve and enhance the agricultural production capacities of its lands so they can continue providing food for the community. Increasing the production of fruits, vegetables, and other food products on its lands for local markets will require further investments and infrastructure, as will the anticipated addition of sustainable energy production operations.

MHW's strategy has been to bolster the sustainability of agricultural operations on its lands by leveraging income-producing agribusiness ventures to fortify the landowner's commitment to investing in sustained agricultural production.

To achieve these goals, MHW has focused on investing in agricultural education ventures, agribusiness, and agricultural markets, all of which play a critical role in supporting Hawai'i's agricultural industry and promoting food sustainability in Hawai'i. MHW anticipates that IAL designation will help ensure that its agricultural lands receive incentives and investments to help protect, manage, develop, and utilize its agricultural lands in a balanced manner. The goal is to use IAL designation to help support sustainable small-scale commercial farming, programmatic farming, family farming, and related agricultural and agribusiness activities like aquaculture and sustainable energy production.

C. DESIGNATION OF SPECIFIC STATUTORY PROVISION, RULE, OR ORDER IN QUESTION.

This Petition arises under and is filed pursuant to the statutory and regulatory authorities set forth in the IAL Laws.

D. STATEMENT OF PETITIONER'S POSITION OR CONTENTION.

The Property is appropriate for IAL designation as it sufficiently satisfies the IAL criteria outlined in HRS § 205-44 and HAR § 15-15-120. Accordingly, the Commission should issue a declaratory order designating the Property as IAL pursuant to HRS § 205-45 and HAR § 15-15-121.

E. MEMORANDUM OF AUTHORITIES, CONTAINING A FULL DESCRIPTION OF REASONS AND LEGAL AUTHORITIES IN SUPPORT OF PETITIONER'S POSITION.

The IAL Laws provides that a petition for declaratory order designating IAL shall be submitted in accordance with subchapter 14 of the Commission's rules and include the additional requirements contained in HRS § 205-45(c). These requirements are addressed in Sections 1.A through 1.H of this Petition, including the requirements in HAR § 15-15-121(b) which are addressed as follows:

a) Tax Map Key Number and Landowners' verification and authorization.

MHW seeks IAL designation for approximately 230.33 acres of its Lands on the island of O'ahu, Hawai'i. Attached hereto as *Exhibit A* and incorporated herein are documents identifying the location, the applicable tax map key number and acreage of the portion of the parcel compromising the Property.

MHW is unaware of any unresolved claims to kuleana parcels located within the Property and owns all lands comprising the Property, as specified and enumerated in *Exhibit A*.

In August of 2016, MHW created four condominium property regime units on its Lands and leased them to an energy development company for the sole purpose of developing sustainable energy generation facilities consistent with those agricultural uses permitted by state law. *See Exhibit A*. The lessees of those parcels have yet to satisfy all regulatory requirements and secure the needed entitlements and use permits. For all those CPR units located on the Property, MHW remains committed to using them for renewable energy production or other agricultural uses.

Exhibit A illustrates the proposed IAL lands within the boundaries of MHW's Lands. Attached hereto as *Exhibit B* and incorporated herein by reference is the Landowner Authorization and Affidavit of Aaron Campbell, manager of MHW, providing authorization for this Petition for IAL designation of the Property and verifying the contents of this Petition.

Attached hereto as *Exhibit C* and incorporated herein by reference is 1) a copy of the deed verifying MHW's ownership of the Property, 2) current City and County of Honolulu tax/ownership records establishing MHW's ownership of the Property and the CPR units therein, and 3) filings re-naming the company from Serenity Park, LLC to Mālaekahana Hui West, LLC.

b) Proof of Qualification for IAL Designation Under HRS § 205-44 and HAR § 15-15-120.

HRS § 205-44(c) and HAR § 15-15-120(c) set the criteria for lands that may be designated as IAL. To qualify for designation, IAL do not need to meet every criterion. Rather, lands meeting any single criteria listed in HRS § 205-44(c)/HAR § 15-15-120(c) shall be given initial consideration, and the IAL designation shall be made by weighing criteria with each other to meet the constitutionally 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. In particular, the IAL statute clarifies that IAL 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.

HRS § 205-42(a).

As illustrated in this Petition, IAL designation of the Property satisfies the constitutionally mandated purposes and policies above. Moreover, the eight requirements for a petition for declaratory order under subchapter 14 of the Commission’s rules are satisfied herein. *See* HAR § 15-15-99. Indeed, the Agricultural Land Assessment (the “*ALA*”) attached hereto as *Exhibit D* and incorporated herein further describes, illustrates, and quantifies how the uses and characteristics of the Property satisfy substantially all of the standards and criteria for IAL designation as follows:

1. *Land is currently used for agricultural production.*

The Property is located in the Ko‘olau Loa region along the mountain-side of Kamehameha Highway in the Kahuku, O‘ahu. *See Exhibits A and D.* Approximately 60% of the Property is actively involved and/or utilized for cultivation and growth of crops. While portions of the Property are constrained by topography and drainage, those lands support the agricultural

activities on the adjacent cultivated lands and agribusiness operations. Moreover, 51% of MHW's lands, including large portions of those in the Property, are subject to a covenant¹ restricting and dedicating their use to only agricultural uses, pursuant to the Revised Ordinances of Honolulu § 8-7.3, Dedication of Lands for Agricultural Use. *See Id.*

The 2015 Statewide Agricultural Land Use Baseline published by Melrose, Peroy, & Cares reported that more than 133.5 acres within the Property were in active use for diversified agricultural corps.

MHW leases agricultural land to a small handful of farmers who cultivate numerous different crops and often collectively produce over a million pounds of produce annually. *See Exhibit D* at page 4 and Figure 2. Crops vary based on farmer interest, growing cycles and market conditions and may include: banana, apple-banana, papaya, watermelon, bitter melon, lilikoi, tomato, cherry tomato, squash, bell peppers, long bean, eggplant, cucumber, asparagus, carrots, green onion, bok choy, taro, kale, lettuce, cabbage, basil, mint, string bean, baha stem, ginger, Hawaiian chili pepper, and various herbs.

These crops are sold and distributed across the State to local stores, restaurants and vendors, including Costco, Times Supermarkets, Foodland, Tamura's Market, Kokua Market, Malama Market, Alan Wong's and Down to Earth.

The farmers on the Property employ sustainable cultivation and crop management techniques that allows for year-round crop production. While the farmers prefer to keep their proprietary cultivation practices confidential, they are consistently exploring potential options to

¹ *See* Land Court Land Court Doc No T-8803258 Declaration of Restrictive Covenants (For Agricultural Preservation). This agricultural dedication renews in February 2024 and shall persist for the duration of MHW's agribusiness activities on the Land.

increase productivity via rotational production crops or other production crops that may thrive on the Property while helping to regenerate the soil quality and boost harvest capacities.

Over the years, the farmers have continually sought to manage rainwater runoff and erosion rates via agricultural practices that seek to preserve the long-term health and productivity of the soil. The balance of the Property that is not actively cultivated consists of water infrastructure, agricultural roads, soil conservation measures, stream, and gulch lands.

The Property has on-site irrigation systems consisting of pipelines and facilities that store and distribute water from the existing wells to the various tenant farmers who in turn manage their own respective irrigation systems. *See Exhibit D* at page 15 and Figure 7. Much of these non-cultivated areas are important to, and used, in relation to the agricultural uses on the Property. Areas of the Property with steeper slopes not currently cultivated are important to productivity and preservation goals for the overall Property related to: 1) land stewardship, soil conservation, cohesion, and continuity of agricultural uses; and 2) maintaining a critical land mass important to overall agricultural operation and productivity. A map depicting the general location of the wells, agricultural road, gulches, and streams is included as ALA Figure 7. *See* pages 13-14 of *Exhibit D*.

The remainder of MHW's Lands, measuring approximately 225.29 acres (49.4% of MHW's Lands) (the "***Remainder Land***") consists primarily of: MHW's other operations, agricultural storage facilities, sloped lands, non-arable lands, and other fields used for agricultural production. Remainder Land uses are consistent with and permitted under applicable land use and zoning laws.

Out of all of MHW's Lands, the Property identified in this Petition is the best situated, most productive, and most agriculturally valuable land that has been prioritized for long term

cultivation. Much of the mauka lands to the northwest of the Property is less suitable for production agriculture due to steep slopes that are prone to erosion and lack adequate access and/or non-existent irrigation infrastructure to pump water uphill to the higher elevations. Though the Remainder Land is not currently proposed for IAL designation, MHW intends to continue agricultural uses on areas of the Remainder Land that are capable of sustaining crop production, and increase such uses and cultivation to the extent they are feasible.

MHW helps sustain its agricultural operations with a city-permitted accessory agribusiness activities that reflect the purposes and goals set forth by HRS § 205-2(d)(11), the Honolulu Land Use Ordinance, and the Ko‘olau Loa Sustainable Community Plan. The accessory use, specifically the HAT used to conduct tours of the Property, increases interest and awareness of the importance and significance of diversified agriculture and the need for greater food sustainability in Hawai‘i. The HAT also provides a modern and attractive way for visitors, the community, and the general public to learn about the agricultural practices of Hawai‘i’s past, present, and future. The accessory use also protects the agricultural uses of the Property by enhancing the financial sustainability of the principal agricultural activities on the Property without disturbing or diminishing them. The HAT blends in well with the surrounding environment, has no significant environmental footprint, and has no negative impact on agricultural operations. Upon completion of the life of the HAT, it can be removed and will leave the Property in the same condition as prior to its use.

2. *Soil qualities and growing conditions support agricultural production for food, fiber, or fuel and energy-producing crops.*

The Land Study Bureau (“*LSB*”) of the University of Hawai‘i prepared an inventory and evaluation of the State’s land resources and created a five-class productivity rating system based

on the land’s overall quality in terms of agricultural productivity, taking into consideration the interaction of particular soil properties, topography, and climate.

As shown on Figure 4 of *Exhibit D* and summarized in Table 2 below, approximately 5.6 percent of the Property is rated A, 70.7 percent of the Property is rated B, 0.4 percent is rated C, 3.6 percent is rated D, 17.9 percent is rated E, and 1.8 percent is unclassified.

According to the LSB, only 5.5 percent and 9.3 percent of the agricultural land on O‘ahu is rated A and B respectively. The Property’s high percentage (76.3%) of A and B-rated lands indicate that the Property’s soil productivity is strong. Similarly, the Property’s long and continued use for active agricultural cultivation and production speak to the soil qualities on the Property meeting the soil quality criteria set forth by HRS § 205-44(c)(2) and HAR § 15-15-120(c)(2).

Table 1: LSB Productivity Rating

Productivity Rating	Total IAL	
	Acres	% of IAL
A	12.82	5.6%
B	162.94	70.7%
C	1.02	0.4%
D	8.24	3.6%
E	41.24	17.9%
Unclassified	4.08	1.8%
Total	230.33	100%

3. *Identification under agricultural productivity ratings systems, such as the agricultural lands of importance to the State of Hawai‘i (“ALISH”) system adopted by the board of agriculture.*

The State of Hawai‘i Board of Agriculture adopted the ALISH system in 1977 to classify agricultural lands of importance in the State of Hawai‘i. The ALISH classification system primarily considered soil characteristics and established criteria for classifying and identifying lands that met the criteria for each respective class. ALISH classifications are not specific land

use designations. Instead, they provide decision makers with an awareness of the long-term implications of various land use options for ALISH land that is or can be used for production of food, feed, forage, and fiber crops in Hawai‘i.

The ALISH system establishes three land classes – Prime, Unique, and Other. Prime ALISH rating is for lands: 1) best suited for the production of food, feed, forage and fiber crops, and 2) that have the soil quality, growing season, and moisture supply needed to produce sustained high yields of crops economically when treated and managed, including water management, according to modern farming methods.

The Unique ALISH rating is applied to lands that are other than Prime land but usable for production of specific high-value food crops. Such lands have the special combination of soil quality, growing season, temperature, humidity, sunlight, air drainage, elevation, aspect, moisture supply, or other conditions, like nearness to market, that favor the production of specific crops of high quality and/or high yield when the land is treated and managed according to modern farming methods.

The Other ALISH rating is for lands other than Prime or Unique that are of statewide or local importance for the production of food, feed, fiber, and forage crops. Such lands exhibit certain properties like seasonal wetness, erodibility, limited rooting zone, slope, flooding, droughtiness, or lack of current use for production of a “unique” crop. Other ALISH rated lands can be adequately farmed to produce good crop yields when managed properly. Such management may include applying greater inputs of fertilizer and other soil amendments, improving drainage and erosion control practices, and installing flood protections.

As shown on Figure 5 and summarized in Table 3 below, approximately 83 percent of the Property is classified under the ALISH system: 73.7 percent is classified as Prime and 9.3 percent is classified as Other.

Table 2: ALISH Rating

ALISH Classifications	Total IAL	
	Acres	% of IAL
Prime	169.77	73.7%
Unique	0.00	0.0%
Other	21.44	9.3%
Not ALISH	39.12	17.0%
Total:	230.33	100%

The balance of the Property not classified under the ALISH system is: 1) integral to overall agricultural use of the Property for and to MHW’s land stewardship; and 2) provides for a unified and clearly defined IAL area.

4. *Traditional native Hawaiian agricultural uses, such as taro cultivation or unique agricultural crops and uses, such as coffee, vineyards, aquaculture and energy production.*

MHW’s Lands have a long history of agricultural use dating back to the pre-Contact era. Traditional accounts and conditions indicate considerable agricultural use in the Kahuku region prior to European arrival, as part of the traditional Hawaiian ahupua‘a system. The Mālaekahana region was associated with agricultural terraces along the Kaukanala‘au Stream. MHW’s vision is to blend the past with the future through education and everyday implementation, such as the utilization of ahupua‘a principles with modern farm techniques. While taro has been cultivated on the Property in the past, market, growing, and other conditions dictate whether farmers will again cultivate taro or other unique crops on the Property.

In addition to promoting food independence for Hawai‘i, MHW also remains committed to exploring the production of sustainability energy via renewable resources. MHW’s active

exploration and partnerships with developers to promote renewable energy on the Property continue to be a part of MHW's vision for the sustainability and stewardship of its lands.

5. *Sufficient quantities of water to support viable agricultural production.*

The Property has sufficient quantities of water and infrastructure to support viable agricultural production for the foreseeable future. Figure 7 of the ALA shows the water resources and the agricultural infrastructure on the Property. *See* page 14 of *Exhibit D*.

Water Infrastructure: There are three irrigation wells located on the Property and MHW has Water Use Permits for each those wells. *See* pages 13 - 14 of Exhibits D (well map) and E (Water Use Permits). For each of the wells, the past and current water use by the farmers for irrigation has been in amounts lower than the water use permits allow, leaving excess capacity for additional water if needed for agricultural operations and/or expansions. *See Id.*

The Property also has on-site irrigation systems consisting of pipelines and facilities that store and distribute water from the existing wells to the various tenant farmers.

In addition to water from the three wells, the Property receives a mean annual rainfall of approximately 46 to 56 inches annually, providing significant water resources (Giambelluca T. Q., 2013). *Id.* The Property also receives the highest amounts of rainfall across the entire lands owned by MHW. *Id.*

Agricultural Infrastructure: The Property has adequate agricultural infrastructure, including agricultural roads. ALA Figure 7 shows the agricultural roads throughout the property. *See* page 14 of *Exhibit D*. Additionally, the Property is adjacent to and enjoys direct access to Kamehameha Highway, which provides sufficient transportation for farming equipment and direct road transportation to and from markets and vendors. *See Id.* In addition to these roads and thoroughfares, the Property contains fences, gates, dense vegetation barriers, storage

facilities, agricultural roads, and other infrastructure to facilitate agricultural production and further improve overall agricultural productivity. *See Id.* at page 15 and Figure 7.

6. *IAL Designation is consistent with general development and community plans of the Sustainable Communities Plan and the State Land Use District Boundary Map.*

i) *IAL Designation is Consistent with the State Land Use District:*

HRS § 205-2 authorizes the Commission to designate all lands in the State into one of four Districts: Urban, Rural, Agricultural and Conservation. The Property is located entirely within the Agricultural District and the current uses of the Property are either consistent with the uses permitted within the Agricultural District or supported by a conditional use permit. HRS § 205-2(d) provides that land in Agricultural Districts should include activities or uses like those occurring on the Property or readily capable of being sustained on the Property. This includes the cultivation of food and bioenergy crops, orchards, forage, forestry, wind-generated energy production for public, private, and commercial use, biofuel production for public, private and commercial use, solar energy facilities, wind machines and wind farms, aquaculture. It also includes agricultural tourism conducted on a working farm for the enjoyment, education, involvement of visitors.

Thus, designation of the Property as IAL is consistent with activities and uses occurring on the Property. IAL designation is also consistent with activities and uses that may be conducted and/or permitted within the Agricultural District and with the objective of giving the greatest possible protection to lands with a high capacity for intensive cultivation.

ii) *IAL Designation is Consistent with the City General Plan:*

The General Plan for the City and County of Honolulu (1992 edition, amended in 2002) (“**General Plan**”), sets forth the long-range objectives and policies for residents of O‘ahu and the strategies of action to achieve them. Together with the regional development plans, the General

Plan provides a direction and framework to guide the programs and activities of the City. See General Plan § Introduction. The General Plan identifies 11 areas of concern that provide the framework for guiding public policy concerning the needs of the people and the functions of government. *See Id.* at § Preamble.

Designating the Property as IAL is consistent with the General Plan’s objectives to maintain the viability of agriculture on O‘ahu and furthers important policies by (1) continuing agriculture as an important source of income and employment, (2) maintaining agricultural land along Windward and North Shore areas for diversified agriculture, and (3) encouraging more intensive use of productive agricultural lands. *See Id.* at § Economic Activity, Objective C.

The General Plan is currently going through a revision process. In February 2018, the City’s Department of Planning and Permitting (“**DPP**”) transmitted a copy of the updated draft of the General Plan (“**Proposed Revised General Plan**”) to the Planning Commission for further consideration and approval. The Planning Commission reviewed and transmitted the Proposed Revised General Plan to the City Council on April 20, 2018. As of December 2018, the city Council has yet to schedule a hearing for consideration of the draft. The Proposed Revised General Plan’s objectives include insuring the long-term viability and continued productivity of agriculture on O‘ahu. *See Proposed Revised General Plan* at § The Economy.

Designating the Property as IAL is consistent with the Proposed Revised General Plan’s objectives, including: (1) fostering a positive business climate for agricultural enterprises of all sizes and innovative approaches to farming as a business, to ensure the continuation of agriculture as an important component of O‘ahu’s economy, (2) supporting agricultural diversification to help strengthen the agricultural industry and to make more locally-grown food available for local consumption, (3) fostering market opportunities and increased consumer

demand for safe, locally-grown, fresh, and processed agricultural products, (4) providing economic incentives to encourage local food production and sustainability, and encourage agricultural occupations, (5) encouraging landowners to permanently preserve agricultural land with high productivity potential for agricultural production, (6) providing plans, incentives, and strategies to ensure the affordability of agricultural land for farmers, and (7) promoting farming as a desirable and fulfilling occupation by encouraging agricultural education and training programs and by raising public awareness and appreciation for agriculture. *See Id.* at § The Economy, Objective C.

iii) IAL Designation is Consistent with Sustainable Communities Plan:

The City's Sustainable Communities Plans are adopted by ordinances passed by the Honolulu City Council. These regional plans provide the vision and implementing policies and guidelines for each of the eight planning regions on O'ahu and guides the City's land use approvals, infrastructure improvements, and private sector investment decisions. The Property falls under the Ko'olau Loa Sustainable Communities Plan. *See* ALA Figure 9.

The Ko'olau Loa SCP (1999) contains a map for various designations within the Ko'olau Loa SCP region. The Ko'olau Loa SCP map designates the large majority of the Property as "Agricultural" with small portions designated as "Preservation" and "Military." Additionally, the Ko'olau Loa SCP map shows growth boundaries.² The Property is entirely outside the growth boundaries as shown on all the Ko'olau Loa SCP maps. ALA Figure 9 shows the Ko'olau Loa SCP (1999) land use map which illustrates land use designations across the Property. *See Id.*

² The Ko'olau Loa SCP (1999) maps refer to a "Rural Community Boundary" and the Pre-Final Revised Ko'olau Loa SCP (2012) maps refer to a "Community Growth Boundary."

The City is currently in the process of updating the Ko‘olau Loa SCP (Pre-Final Revised Ko‘olau Loa SCP) (2012). The Pre-Final Revised Ko‘olau Loa SCP (2012) land use map shows nearly identical designations on the Property, with the large majority designated “Agriculture,” a small portion designated “Military,” and a small area showing a portion of a stream. The Property is entirely outside of the established growth boundaries, consistent with the previously adopted Ko‘olau Loa SCP (1999). ALA Figure 10 shows the Pre-Final Revised Ko‘olau Loa SCP (2012) land use map, which illustrates land use designations across the Property. *See Id.*

In addition to their maps, the Ko‘olau Loa SCP (1999) and the Pre-Final Revised Ko‘olau Loa SCP (2012) include objectives and policies to preserve the rural character of the regions by retaining agricultural lands identified as “prime,” “unique,” “arable,” or “high-value for future agricultural use.” IAL designation of the Property is consistent with the maps, policies, objectives, and goals of both versions of the Ko‘olau Loa Sustainable Communities Plan.

iv) IAL Designation is Consistent with City Zoning:

The City’s zoning of the Property is Restricted Agricultural District (AG-1). *See* ALA Figure 11, page 20 of *Exhibit D*. According to the Revised Ordinances of Honolulu (ROH) § 21-3.50(b), the intent of the AG-1 District is to “conserve and protect important agricultural lands for the performance of agricultural functions by permitting only those uses which perpetuate the retention of these lands in the production of food, feed, forage, fiber crops and horticultural plants.” Current uses on the Property are consistent with this intent.

v) The City’s Pending IAL Study (still in process):

In July 2012, DPP initiated the City’s IAL Study to identify the City’s candidate lands for IAL designation (the “*Study*”). The Study consists of two phases. DPP completed Phase I in April 2014. Phase I tasks included: 1) defining the City’s IAL site selection criteria; 2)

identifying available data sets to assist in mapping the defined criteria; and 3) developing methodology for weighing or ranking the criteria. Formal public review, a comment period, and notification to affected land owners was not a part of the Phase I tasks. Although the City's proposed IAL were not defined in the Phase I study, the DPP prepared a series of criteria maps and came up with two composite maps of the City's top three and four priority criteria using a geographic information system (GIS) (City and County of Honolulu Department of Planning and Permitting, 2014).

DPP began Phase II of the Study after the completion of Phase I in 2014, with public meetings held in November 2017. In Phase II, DPP considered incentives for landowners to designate their lands as IAL and produced draft maps of proposed IAL lands on O'ahu based on the City's top three criteria: 1) land currently used for agricultural production; 2) land with soil qualities and growing conditions suitable for agricultural production; and 3) land with sufficient quantities of water to support viable agricultural production.

In September 2018, DPP forwarded their "O'ahu Important Agricultural Land Mapping Project" report to the City Council for review, comment, revision, approval, and adoption. DPP's report includes revised maps of proposed IAL lands on O'ahu, and a summary of comments received during the public engagement phase (City and County of Honolulu Department of Planning and Permitting, 2018).

As of December 2018, the City Council is still reviewing DPP's report and may adopt it as is or with revisions. Adoption must happen via resolution of the City Council. As of December 2018, the City Council has not scheduled any hearings on any related resolutions. Only after hearings, revisions, and final adoption of plan by the City Council, would DPP then

submit to the Commission the City's recommendations and maps proposing the designation of certain lands on the island of O'ahu as IAL.

Upon receipt of the City's initial submission, the Commission would then begin working with the City and DPP to ensure that the City provides a complete record of its proceedings in support of its recommendations. *See* HAR §§ 15-15-125(a-c). The Commission would then coordinate with the City to ensure that the Commission received all relevant supporting documents, including records evidencing that the City's maps designating certain lands as IAL were developed in consultation and cooperation with the State Department of Agriculture, landowners, and other agricultural interests groups as required and identified by HRS § 205-47.

Once the City has provided all required evidence to the Commission's satisfaction, the Commission may then deem the submission from the City complete, move forward with a hearing, and then elect to: 1) remand the matter back to the City for further review or clarification, 2) adopt the City's recommendations, or 3) amend and/or revise the City's recommendations to include or exclude certain lands from those the City will propose for IAL designation. *See* HAR § 15-15-125 (e).

ALA Figure 12 shows the Property in relation to the City's proposed IAL lands. As shown on Figure 12, 100% of the Property is consistent with the City's proposed IAL designation of MHW's lands. *See* page 23 of *Exhibit D*. In accordance with the intent of HRS Chapter 205 Part III, Important Agricultural Lands and the "majority incentive" in HRS Section 205-49(a)(3), MHW proposes to designate a majority (50.6 percent or 230.33 acres) of its Lands as IAL³. The land that MHW is proposing for IAL designation (i.e. the Property) is consistent

³ HRS § 205-49 provides that a majority of a landowner's landholdings include lands held in the State Agricultural District and Urban District; therefore, the calculation of the percentage of lands MHW is proposing for IAL designation is based on MHW's total Land in both the Agricultural and Urban Districts. MHW has no lands in the Conservation or Rural Districts.

with: 1) the objective and policies for IAL set forth in HRS §205-42 and HRS §205-43; and 2) a majority of the standards and criteria for the identification of important agricultural lands set forth in HRS §205-44.

7. Contribution to maintaining a critical land mass important to agricultural operating productivity.

The Property consists of a contiguous block of 230.33 acres of IAL that itself is contiguous with lands to the south which have also been identified by the City's Study as recommended for IAL designation, pending submission of the City's formal recommendations to the Commission. As discussed above and throughout this Petition, the Property has a long history of agricultural use and significance in the Ko'olau Loa region. MHW intends to continue the Property's traditional agricultural use. IAL designation of the Property will significantly contribute to the maintaining a critical land mass important to agricultural operating activity in the area.

8. Supporting infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power.

In addition to the water resources and agricultural infrastructure described above, the Property contains agricultural roads that link up and provide all fields with two direct access points to Kamehameha Highway are capable of supporting farming equipment and offer farmers direct road transportation to/from markets. See ALA Figure 7 for a map of agricultural roads through the Property. The Property and the farmers operating thereon have direct access to electrical power. This infrastructure is sufficient to support continued and future agricultural uses and ensure productive cultivation of the Property.

c) The current or planned agricultural use of area to be designated.

As more fully described above, the Property is currently in active agricultural production and MHW intends to continue actively using the Property for agricultural

production, including the cultivation of farm-to-table fruits and vegetables that appear on the shelves and tables of Hawai‘i’s local restaurants, markets, and retail stores. MHW also plans to continue to utilize accessory agribusiness activities to ensure the financial sustainability of agricultural operations and educational programs on the Property. As it looks to the future of agriculture in Hawai‘i, MHW continues to explore potential options to increase agricultural uses of the Property, consistent with the agricultural uses outlined in HRS § 205.

F. NAMES OF ANY OTHER POTENTIAL PARTIES.

Other potential parties include the Department of Planning and Permitting for the City and County of Honolulu, the State of Hawai‘i Department of Agriculture and the Office of Planning for the State of Hawai‘i.

G. SIGNATURE OF EACH PETITIONER.

This Petition is signed below by MHW’s attorney, who has been authorized to sign and file this petition on MHW’s behalf. *See Exhibit B.*

H. STATEMENT OF WHETHER THIS PETITION RELATES TO ANY COMMISSION DOCKET FOR DISTRICT BOUNDARY AMENDMENT OR SPECIAL PERMIT.

This Petition is not related to any Commission docket for a district boundary amendment or special permit.

II. WAIVER OF 85/15 RECLASSIFICATION INCENTIVE

HRS § 205-45(b) provides that a petitioner seeking IAL designation may also seek reclassification of lands in the Agricultural District to the Rural, Urban, or Conservation Districts, or some combination thereof. MHW is not seeking such reclassifications and hereby voluntarily waives any right to claim or exercise any “credits” under HRS § 205-45(h) and shall not attempt to reclassify any of MHW’s other lands as part of this Petition. 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 MHW's properties.

III. CONCLUSION

For the forgoing reasons, MHW respectfully requests that the Commission: (1) find that pursuant to this Petition, the Property sufficiently meets the standards for IAL designation, set by HRS §§ 205-44 and 45, and (2) issue a Declaratory Order designating the Property as IAL.

DATED: Honolulu, Hawai'i, December 21, 2018.



KALANI A. MORSE
JONATHAN S. DURRETT
ATTORNEYS FOR PETITIONER
MĀLAEKAHANA HUI WEST, LLC

BEFORE THE LAND USE COMMISSION OF THE STATE OF HAWAII

In the Matter of the Petition of

MALAEKAHANA HUI WEST, LLC, an
Arizona limited liability company Authorized
to conduct Business in Hawai'i
For Declaratory Order to Designate Important
Agricultural Lands for approximately 230.33
acres at O'ahu, Hawai'i identified by TMK
No. 5-6-006:018 (por.)

DOCKET NO. DR18-63

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 21, 2018 a copy of this Petition for
Declaratory Order to Designate Important Agricultural Lands was duly served on the
following parties at their last known addresses listed below, 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, Hawai'i 96813
Attention: Director Kathy Sokugawa

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

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

DATED: Honolulu, Hawai'i, December 21, 2018.



KALANI A. MORSE
JONATHAN S. DURRETT
ATTORNEYS FOR PETITIONER
MALAEKAHANA HUI WEST, LLC