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DTS 201901181523AA

January 18, 2019

To: Daniel Orodenker, Executive Officer
State Land Use Commission

From: Rodney Y. Funakoshi, Planning Program Administrator I

Subject: DR18-63 Petition for Declaratory Order to
Designate Important Agricultural Lands
Petitioner: Malaekahana Hui West, LLC
Location: Kahuku, Oahu, Hawaii
Petition Area: Approximately 230.33 acres

2019 JAN 18 P 3:56
LAND USE COMMISSION
STATE OF HAWAII

The Office of Planning (“OP”) appreciates Malaekahana Hui West, LLC’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 230.33 acres in the Petition Area as IAL. The following is provided in support of this recommendation.

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 Constitution 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 Commission issue a declaratory order designating approximately 230.33 acres of land at Kahuku, Oahu (“Petition Area”) as IAL. Petitioner owns a total of 455.62 acres on Oahu. 453.43 acres of this total is within the State Land Use Agricultural District, including the lands proposed for IAL designation, and the remaining 2.19 acres are within the State Land Use Urban District. *See* Petition Exhibit D, p. 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 on Oahu, such that further involuntary IAL designation of Petitioner’s land holdings would be precluded, as provided for in HRS § 205-49(a)(3)¹. 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	Proposed for IAL	% IAL
Oahu	455.62 acres	230.33 acres	50.6%

Basis of review and comments. OP’s review is based on the Petition, Petition exhibits, public data available on the proposed lands, and the site visit for the Commission held on January 10, 2019.

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 largely meets this criterion although some areas are not used for agricultural production. According to the Petitioner, the entire Petition Area is currently in active agricultural production or contains accessory uses or is supportive of agriculture. Approximately 139.55 acres (60%) of the Petition area is actively involved and/or used for the cultivation of crops. The 139.55 acres are currently leased to five tenant farmers. A variety of diversified crops are grown depending on growing cycles and market conditions including: Thai basil, cucumber, apple-bananas, papaya, watermelon, bitter melon, lilikoi, tomato, squash, bell peppers, long bean, eggplant, asparagus, carrots, green onion, bok choy, taro, kale, lettuce, cabbage, mint, Hawaiian chili pepper, and various herbs. The leases are on a month-to-month basis, but all five tenants have been leasing

¹ 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.”

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lands for over 12 years, and the Petitioner states its intention to continue those leases for the foreseeable future. *See* Petition Exhibit D, p. 4 and Figure 2.

The remainder of the Petition Area contain water infrastructure, roads, and permitted accessory uses that support agricultural activity on the cultivated lands. Petitioner acknowledges that portions of the Petition Area with steeper slopes are not currently cultivated but maintains that these lands are “important to productivity and preservation goals for the overall [Petition Area].” *See* Petition, p. 9. However, the Petition fails to provide specific information on how the steep portions of the Petition Area enhance land stewardship, soil conservation, cohesion, and continuity of agricultural uses or the maintenance of a critical land mass for agricultural operations.

The Petitioner states that the Statewide Agricultural Land Use Baseline 2015 (Melrose, Peroy, & Cares) reported more than 133.5 acres of the Petition Area were in active use for diversified crops.

Petitioner states that large portions of the Petition Area “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.” The footnote refers to Land Court Doc No T-8803258 Declaration of Restrictive Covenants (For Agricultural Preservation), and states that “This agricultural dedication renews in February 2024 and shall persist for the duration of [Petitioner’s] agribusiness activities on the Land.” *See* Petition, p. 8. However, Chapter 8 of the Revised Ordinances of Honolulu (“ROH”) deals with the City and County of Honolulu’s (“C&C”) real property tax and does not pertain to restrictive covenants.

Petition Exhibit D, p. 6, appears to clarify this discrepancy by distinguishing between the restrictive covenant for agricultural production “for at least 10 years (beginning in 2014)²” and an agricultural use dedication pursuant to ROH § 8-7.3 that “comes up for renewal in February 2024 but shall persist for the duration of [Petitioner’s] agribusiness activities on the Land.”

ROH § 8-7.3(b) (2) provides that lands dedicated for agricultural use for a period of five years be assessed at “three percent of its fair market value” and lands dedicated for a period of ten years be assessed at “one percent of its fair market value”. C&C Real Property Assessment Division records for Petitioner’s lands, including the Petition Area (TMK 5-6-006: 018 (0001) indicates a five-year, 3% agricultural assessment. Furthermore, the C&C, 2019 Real Property Tax Dedication List for agriculture shows the end year of the dedication for TMK 5-6-006: 018 (0001) as 2020. *See* OP Exhibit 1.

The existence of tax dedications for agricultural use is strong evidence of current agricultural use. Petitioner should clarify whether the duration of the dedication of lands for agricultural use pursuant to ROH § 8-7.3 is five- or ten-years, and the end date of the dedication.

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. The Petition Area meets this criterion. Based on the Land Study Bureau (“LSB”) ratings, the soil productivity ratings of the Petition Area are generally favorable for agricultural production with about 76.3% rated “very good” or “good”. Approximately 21.9% is rated “fair”, “poor”, but mostly “very poor”. Table 2 below summarizes the productivity ratings of the Petition Area.

TABLE 2		
Productivity Rating	Total IAL	
	Acres	% of IAL
A (Very good)	12.82	5.6%
B (Good)	162.94	70.7%
C (Fair)	1.02	0.4%
D (Poor)	8.24	3.6%
E (Very Poor)	41.24	17.9%
Unclassified	4.08	1.8%
Total:	230.33	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. Petitioner’s Exhibit D, Table 2, p. 6, and Figure 3 illustrates the land slope associated with the Petition Area. Of the 230.33-acre Petition Area, 51.06 acres, or 22.2%, is at a slope gradient equal to or greater than 20%. Most of areas with very steep gradients are concentrated within the southwestern portion of the Petition Area.

Steep slope gradients typically hinder machinery and labor operations due to geographic features such as steep terrain as well as soil quality. The steeper slope areas are not currently or have not been known to be used for agricultural activities. Furthermore, a comparison of the topography of the Petition Area (Exhibit D, Table 3) and LSB ratings (Exhibit D, Table 4) shows that the practical use of several LSB B-rated lands in the Petition Area is constrained by the extremely steep slopes.

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 largely meets this criterion. The table below summarizes the ALISH system classifications for the Petition Area. The majority of the Petition Area, 73.7%, is rated Prime, and 9.3% is rated “Other” Important Agricultural Lands.

The Petitioner represents the remaining 17.0% lands “Not in ALISH” as integral to the overall agricultural use of the Petition Area for Petitioner’s land stewardship and for providing a unified and clearly defined IAL area. However, lands within the Petition Area rated “Not in ALISH”

tend to correspond with areas with steep slopes, and the Petition fails to explain how these lands relate to Petitioner's land stewardship or a unified, clearly defined IAL area.

ALISH Rating	Acres	% of IAL
Prime	169.77	73.7%
Unique	0.00	0.0%
Other	21.44	9.3%
Not in ALISH	39.12	17.0%
Total:	230.33	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. The Petition Area does not meet this criterion. Although the Petition Area may have been used for traditional native Hawaiian agricultural practices in the pre-Contact era, the Petitioner acknowledges that this ended around the time of the initial Contact period due to major population decline. *See* Exhibit D, p. 4. Taro is listed as one of many crops that may be cultivated by tenants under Petitioner's ownership, depending on farmer interest, growing cycles and market conditions. However, this occasional and scattered practice is not sufficient to associate the Petition Area with traditional native Hawaiian agricultural uses or unique agricultural crops and 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 has access to water from four irrigation wells, three of which are within the Petition Area, and Petitioner has water use permits (WUP), issued in 2006 by the State Commission on Water Resource Management, for the wells. WUP No. 780 allows withdrawal of 1.244 million gallons per day (mgd) of water on a 12-month moving average basis from Well Nos. 3957-01 and 3957-03, located in the southern portion of the Petition Area. WUP No. 782 allows withdrawal of 0.300 mgd of water on a 12-month moving average from Well No. 4057-07, located in the central portion of the Petition Area. WUP No. 781 allows withdrawal of 0.670 mgd on a 12-month moving average basis from Well No. 4057-06. The northern portion of the Petition Area has access to water from Well No. 4057-06, but the well is located outside the Petition Area. *See* Petition Exhibit D, p. 13, Figure 7, and Exhibit E.

The Petition Area is also naturally irrigated by rainfall. The Petition Area receives a mean annual rainfall of approximately 46-56 inches of rain. *See* Petition, p. 14 and Exhibit D, Figure 7.

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 C&C's Proposed Revised General Plan. The Petition Area is in the Koolau Loa Sustainable Communities Plan (1999) ("KLSCP") and in the Pre-Final Revised KLSCP (2012). The Petition Area is located outside of the Community Growth Boundaries of both KLSCPs. A large majority of the Petition Area is designated as Agricultural with small portions designated Preservation and Military areas. The Petition Area is zoned AG-1 under the C&C's Land Use Ordinance.

According to the C&C IAL Study determination process, the entirety of the Petition Area was included within the IAL area.

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 Petition Area is generally contiguous over 230.33 acres as a seemingly self-sufficient operation. Petitioner states that approximately 60% of the land is currently in crop production, and that the remainder of the Petition Area, while constrained by topography and drainage, support the agricultural activities on the adjacent cultivated lands and agricultural operations. Furthermore, adjacent lands to the east of the Petition Area are within the State Agricultural District (some of which is rated B by the LSB), classified as Agricultural in the KLSCP, zoned AG-1 and AG-2 by the C&C, and included within the IAL area by the C&C IAL Study. Designation of the Petition Area as State IAL will contribute to maintaining a critical land mass important to agricultural activity in the region.
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. A network of agricultural roads connects the Petition Area to Kamehameha Highway. An irrigation system of pipelines and facilities that store and distribute water connect the Petition Area to existing wells. The Petition Area contains fences, gates, vegetation barriers and storage facilities, and tenant farmers have direct access to electrical power.

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.

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Certain areas of the Petition Area are considered less productive agricultural lands due to steep land slopes over 20% (Petition Exhibit D, Table 2 and Figure3) and areas of poor soil qualities as indicated by ALISH and LSB (Tables 2 and 3). However, based on the presence of active crop production, as well as the Petitioner's representations that sufficient water supplies are available, OP believes the Petition Area sufficiently meets seven of the eight IAL criteria. Also, consistent with the meaning of "IAL" under HRS § 205-42(a)(2), one of the farm tenants currently produces an agricultural commodity for export and therefore contributes to the State's economic base.

The Petition Area constitutes approximately 50.6% of the all the land owned by the Petitioner that lies within the State Agricultural and Urban 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 C&C for designation as IAL under Section 205-49, HRS.

Thank you for the opportunity to comment on the Petition. If you have any questions, please contact Aaron Setogawa of our Land Use Division at 587-2883.

Sincerely,



Rodney Funaksohi
Planning Program Administrator I

Enclosure

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

**DR 18-63 Malaekahana IAL
Office of Planning Exhibit 1**



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Owner and Parcel Information [Print Owner Info](#)

Parcel Number	560060180001	Data current as of	January 14, 2019
Owner Name	MALAEKAHANA HUI WEST LLC Fee Owner	Project Name	
Location Address	56-452 KAMEHAMEHA HWY	Plat Map	Plat Map PDF
Property Class	AGRICULTURAL	Parcel Map	GIS Parcel Map
Land Area (approximate sq ft)	19,371,398	Legal Information	
Land Area (acres)	444.7061	UNIT 1 "MALAEKAHANA HUI WEST" CONDO MAP 2330 UND INT IN ALL COMMON ELEMENTS	

Any ownership changes after assessment date of October 1 will be reflected on website after assessment roll certification on or after January 31.

Assessment Information [Show Historical Assessments](#) [Print Assessment Info](#)

Assessment Year	Property Class	Assessed Land Value	Dedicated Use Value	Land Exemption	Net Taxable Land Value	Assessed Building Value	Building Exemption	Net Taxable Building Value	Total Property Assessed Value	Total Property Exemption	Total Net Taxable Value
2019	AGRICULTURAL	\$ 8,426,900	\$ 438,000	\$ 0	\$ 438,000	\$ 0	\$ 0	\$ 0	\$ 438,000	\$ 0	\$ 438,000

Appeal Information [Print Appeal Info](#)

No appeal information on parcel.

Land Information [Department of Planning and Permitting \(DPP\)](#) [Print Land](#)

Property Class	Square Footage	Acreage	Agricultural Use Indicator
AGRICULTURAL	608,533	13.97	Yes
AGRICULTURAL	457,380	10.5	Yes
AGRICULTURAL	497,107	11.412	Yes
AGRICULTURAL	8,314,210	190.868	Yes
AGRICULTURAL	892,980	20.5	Yes
AGRICULTURAL	8,236,412	189.082	
AGRICULTURAL	364,776	8.3741	

Agricultural Assessment Information

Acres in Production	Agricultural Type	Agricultural Value
13.97	5Y-3%	\$6,827
10.5	5Y-3%	\$5,132
11.412	5Y-3%	\$5,577
190.868	5Y-3%	\$93,281
20.5	5Y-3%	\$10,019
189.082		\$283,620
8.3741		\$33,500

This parcel has land in agricultural usage and therefore agricultural usage assessments have been made.

Improvement Information

No improvement information available for this parcel.

Other Building and Yard Improvements

Description	Quantity	Year Built	Area
No information associated with this parcel.			

Sales Information [Print Sales Info](#)

Sale Date	Sale Amount	Instrument #	Instrument Type	Instrument Description	Date of Recording	Land Court Document Number	Cert #	Book/Page
06/14/2017			FEE CONVEYANCE	Amendment of CPR, HPR or Declaration	06/19/2017	T-10031079	808717	
04/19/2017			FEE CONVEYANCE	Amendment of CPR, HPR or Declaration	04/28/2017	T-9979443	808717	
08/22/2016			FEE CONVEYANCE	Declaration of CPR, HPR, or Condo	09/09/2016	T9748315	808717	

Current Tax Bill Information [2018 Tax Payments](#) [Show Historical Taxes](#) [Treasury Division](#) [Current Bill](#)

Tax Period	Description	Original Due Date	Taxes Assessment	Tax Credits	Net Tax	Penalty	Interest	Other	Amount Due
2018-2	Property Tax	02/20/2019	\$ 1,273.09	\$ 0.00	\$ 1,273.09	\$ 0.00	\$ 0.00	\$ 0.00	\$ 1,273.09
									\$ 1,273.09

Tax bill is computed to 01/31/2019 Or pay online at www.hnipay.com Other Payment Options Click [Here](#)

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2019 Dedicated Agricultural List

12/15/2018

Parcel ID (TMK)	Petition Number	Site Address	End Year
560050190000	A10190184	56-1030 KAMEHAMEHA HWY	2028
560050200000	A10180069	56-1150 KAMEHAMEHA HWY	2027
560060020000	AV10160016	KAMEHAMEHA HWY	2025
560060040000	A05160137	56-156 KAMEHAMEHA HWY	2020
560060060000	A10190206	56-350 KAMEHAMEHA HWY	2028
560060060000	A10190207	56-350 KAMEHAMEHA HWY	2028
560060060000	A10190208	56-350 KAMEHAMEHA HWY	2028
560060060000	A10190209	56-350 KAMEHAMEHA HWY	2028
560060060000	A10190217	56-350 KAMEHAMEHA HWY	2028
560060060000	AV10190015	56-350 KAMEHAMEHA HWY	2028
560060180001	A05160111	56-452 KAMEHAMEHA HWY	2020
560060180001	A05160112	56-452 KAMEHAMEHA HWY	2020
560060180001	A05160113	56-452 KAMEHAMEHA HWY	2020
560060180001	A05160114	56-452 KAMEHAMEHA HWY	2020
560060180001	A05160115	56-452 KAMEHAMEHA HWY	2020
560060280000	A10100109	KAMEHAMEHA HWY	2019
560060290000	A10180013	PLANTATION RD	2027
560060300000	A10170043	PLANTATION RD	2026
560060310000	A10180095	PLANTATION RD	2022
560060320000	A20020595	PLANTATION RD	2021
560060330000	A20040904	PLANTATION RD	2023
560060340000	A10190162	PLANTATION RD	2028
560060350000	A20030609	PLANTATION RD	2022
560060360000	A10150237	PLANTATION RD	2024
560060370000	A20030605	PLANTATION RD	2022
560060380000	A20040105	PLANTATION RD	2023
560060390000	A20040172	PLANTATION RD	2023
560060400000	A20030607	PLANTATION RD	2022
560060410000	A20030608	PLANTATION RD	2022
560060420000	A10160094	PLANTATION RD	2025
560060430000	A20030612	PLANTATION RD	2022
560060440000	A20030598	PLANTATION RD	2022
560060450000	A20020599	PLANTATION RD	2021
560060460000	A20020600	PLANTATION RD	2021
560060470000	A10160163	PLANTATION RD	2025
560060480000	A20030611	PLANTATION RD	2022
560060490000	A20030613	PLANTATION RD	2022
560060510000	A10170050	PLANTATION RD	2026
560060520000	A20030606	PLANTATION RD	2022
560060560000	A10140202	KAMEHAMEHA HWY	2023
560060580000	AV10170025	56-340 KAMEHAMEHA HWY	2026
560060580000	A10190212	56-340 KAMEHAMEHA HWY	2028
560060580000	A10190213	56-340 KAMEHAMEHA HWY	2028