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A Limited Liability Law Partnership

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January 16, 2019

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

2019 JAN 16 P 12:29  
STATE OF HAWAII  
LAND USE COMMISSION

Re: Docket No. DR 18-64 Petition for Declaratory Order  
to Designate Important Agricultural Lands  
Tax Map Key Nos. (1) 9-4-003-001 (por.) and -004, (1) 9-4-004-002 (por.),  
-003, -004 (por.), -007, -008, -010, -011, -012, -018 and -019 (por.)

Dear Executive Director Orodener:

We represent Robinson Kunia Land LLC ("Petitioner") in the above referenced proceeding before the Land Use Commission (the "LUC") to designate approximately 1,239 acres of land in Kunia, Oahu, as important agricultural lands ("IAL"). We write to respond to the comments submitted (i) by the State of Hawaii Office of Planning ("OP") dated December 26, 2018 (ii) by the State of Hawaii Department of Agriculture ("DOA") dated December 19, 2018; and (iii) by the City and County of Honolulu Department of Planning and Permitting ("DPP") dated December 31, 2018.

Petitioner appreciates the OP's recommendation for approval of the designation of the 1,239.20 acres proposed as IAL. OP's thorough review and analysis of the Petition follows the law and also recognizes that upon acceptance of the voluntary designation the law bars further designation of Petitioner's lands as IAL. Petitioner also appreciates the analysis and reasoning submitted by the DOA and DOA's strong support of the Petitioner's request to have 1,293 acres of its lands designated as IAL.

The DPP has recommended that the LUC withhold its decision until the Honolulu City Council transmits its recommendations on lands proposed by DPP for IAL designation. The present DPP Report transmitted to the Council on August 31, 2018 recommends that all of the lands owned by the Petitioner within the State Land Use Agricultural District be designated IAL, i.e., 2,279.28 acres.

It would be clearly erroneous for the Commission to follow DPP's recommendation.

A landowner is allowed by law to file an IAL petition with the Commission “at any time” in the designation process. See HRS § 205-45(a). DPP, by its recommendation to the City Council that the Petitioned Lands be designated as Important Agricultural Lands, cannot now, in good faith, dispute that the Petitioned Lands qualify for designation as important agricultural lands in accordance with section 205-44. There is no evidence that the Petitioned Lands do not qualify for designation. As such, HRS § 205-45(c) provides that “the commission shall vote, by a two-thirds majority of the members of the commission, to issue a declaratory order designating the lands as important agricultural lands.” Denying or deferring a petition based on the status of a County’s efforts in its IAL process, and requiring a landowner to wait for completion of the County’s process, is unjust and unreasonable in its consequences.

The statute also encourages landowners to submit their lands for IAL designation voluntarily by providing incentives for such designation. HRS § 205-49(a)(3) provides that if a majority of a landowner’s land (excluding lands in the conservation district) are designated as IAL, the additional lands of the landowner shall not be designated as IAL. This provision provides an incentive to many large land owners to voluntarily petition for designation of 50%+ of their lands, thereby avoiding the uncertainty, conflicts and disputes that may arise in connection with involuntary designation.

Nothing in the statute requires a landowner to defend not designating lands that are not included in its petition, and nothing in the statute requires a landowner to submit any of its additional property for IAL designation.

The DPP letter notes that the ADTF met on November 20, 2018 and discussed the need for IAL incentives and decided to continue the meeting to a future date to be determined. DPP noted that it anticipates that the ADTF will transmit its recommendations to the Council in early 2019 and that the Council could complete its review and make recommendations to the LUC by mid-2019.

At the ADTF’s November meeting, there was a rather wide-ranging discussion on IAL. It should be emphasized that there was not an agreement on whether the IAL maps should be submitted without incentives or with incentives. There was also no agreement and scant discussion on what additional incentives the County would offer on IAL lands.

It should be noted that incentives to placing land in IAL was included in Act 183, SLH 2005. The law notes that the “State and each county shall ensure that their ... incentive and protection programs shall be designed to provide a mutually supporting framework of programs and measures that enhance agricultural viability on important agricultural lands...” Although the City has submitted its mapping, issues regarding City incentives are still pending. It seems rather disingenuous to suggest that the ADTF will resolve issues regarding incentives in early 2019. More importantly, the LUC designation through the County process cannot occur until three years after enactment of County incentives. See § 205-49(d). Since the timing on possible resolution on incentives is unclear, it is simply unfair for DPP to recommend that the LUC

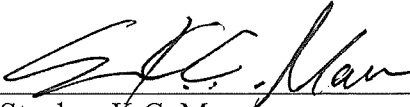
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withhold its decision on Robinson Kunia until the Honolulu City Council transmits its recommendations on land proposed for IAL designation to the LUC.

Prior to filing of the Petition, it was the Petitioner's understanding that DPP supports voluntary petitions to designate lands as IAL and urged voluntary designation. The City has identified and recommended to the City Council that the very lands which is the subject of this Petition be designated as IAL. It was therefore disappointing to read DPP's recommendation that the LUC withhold its decision until the Honolulu City Council makes its recommendations to the LUC in mid-2019. This recommendation suggests that the Commission defer the Petition to allow DPP to seek involuntary designation all of Petitioner's land. We respectfully submit that this would be improper and seeks, in complete derogation of Section 205-49, to prevent designation of a majority of Petitioner's land so that DPP can later seek to designate all of Petitioner's land as IAL.

Very truly yours,

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By   
Stephen K.C. Mau

Cc: City & County of Honolulu, Department of Planning & Permitting  
State of Hawaii, Department of Agriculture  
State of Hawaii, Office of Planning