



LAND USE COMMISSION
STATE OF HAWAII

2020 JAN 28 A 9:44

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the (Amended) Petition of
POMAIKA'I PARTNERS, LLC

For Declaratory Order to Designate Important
Agricultural Lands for approximately 689.69
acres at O'ahu, Hawai'i identified by TMK
Nos. (1) 6-4-001-001 (por.), 6-4-001-005 and
6-4-001-012

DOCKET NO. DR19-66

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, DECISION AND ORDER; EXHIBIT
A; AND CERTIFICATE OF SERVICE**

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND ORDER, EXHIBIT A,
AND
CERTIFICATE OF SERVICE**

This is to certify that this is a true and correct
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State Land Use Commission, Honolulu, Hawai'i

1/28/2020 by

Executive Officer



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**FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND ORDER, AND EXHIBIT A**

Petitioner Pomaika'i Partners, LLC ("*Pomaika'i*" or "*Petitioner*") filed a Petition for Declaratory Order to Designate Important Agricultural Lands (the "*Petition*") on June 14, 2019 with the Land Use Commission of the State of Hawai'i ("*Commission*") to designate approximately 689.69 acres of land at O'ahu, Hawai'i (collectively, the "*Petition Area*"), more particularly described below, as Important Agricultural Lands ("*IAL*") 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*"). The Commission, having heard and examined the testimony, evidence, and arguments presented during the hearing, along with the Petition and other pleadings and submission filed therein, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On May 29, 2019, the Commission mailed its Notice of Land Use Commission agenda for a site visit to the Petition Area for June 6, 2019, to the Petitioner and the Commission's Statewide and O'ahu mailing and email lists, to the Lt. Governor office, and posted to the Commission website.
2. On June 6, 2019, the Commission conducted a site visit to view the Petition Area.
3. On June 14, 2019, Pomaika'i filed the Petition and Exhibits "A" through "D", a \$1,000 declaratory order application fee to the Commission, and certificate of Service along with a copy of digital files of the Petition.
4. On June 28, 2019, the Commission sent email requests for comments on the Petition to the State of Hawai'i Office of Planning ("OP"), the State of Hawai'i Department of Agriculture ("DOA"), and to the City and County of Honolulu (the "County") Department of Planning and Permitting.
5. On July 1, 2019, the Commission published and sent its Notice of Land Use Commission Meeting and Agenda for its July 10-11, 2019 hearing on the Petition, to the Commission's Statewide and O'ahu mailing and email lists, to the Lt. Governor office, and posted to the Commission website.
6. On July 1, 2019, Petitioner notified the Commission that it could not proceed with the scheduled hearing because Petitioner was unable to secure a landowner's agreement with Dole.
7. On July 3, 2019, the County sent an email, advising the County had no objections to the Petition.
8. On July 22, 2019, the State of Hawai'i Department of Agriculture ("**DOA**") filed comments in support of the Petition with some concerns ("**DOA's Letter**").

9. On August 21, 2019, Petitioner filed an Amended Petition (“Amended Petition”) and Exhibits A through D, and a certificate of Service along with a copy of digital files of the Petition.
10. On August 30, 2019, the Commission sent Pomaika‘i a letter regarding comments submitted by the County.
11. On November 12, 2019, the Commission mailed its Notice of Land Use Commission Meeting and Agenda for its November 20-21, 2019 hearing on the Petition to the Petitioner, to the Commission’s Statewide and O‘ahu mailing and email lists, to the Lt. Governor’s office, and posted to the Commission website.
12. On November 13, 2019, Petitioner filed its 2nd Amended Petition (“2nd Amended”) and Exhibits “A” through “D”, a certificate of Service, and a copy of digital files of the Petition.
13. On November 14, 2019, **DOA** filed comments in support of the 2nd Amended Petition noting the same concerns as for the Amended Petition.
14. On November 14, 2019, Petitioner filed Errata to 2nd Amended Petition and Exhibits A through D, a certificate of Service, and a copy of digital files of the 2nd Amended Petition.
15. On November 19, 2019, **OP** filed comments in support of the 2nd Amended Petition with some concerns and recommended conditions (“**OP’s Letter**”).
16. On November 19, 2019, The County filed its comments on 2nd Amended Petition (“**County’s Letter**”).
17. On November 19, 2019, Petitioner filed Exhibit D as a second Errata to the 2nd Amended Petition.
18. On November 20, 2019, Petitioner filed a Letter of support from Dole Food Company, Inc. regarding TMK No. (1) 6-4-001-014 (Lot B).
19. On November 20, 2019, the Commission held a public hearing on the 2nd Amended Petition in the Airport conference room, on O‘ahu Hawai‘i.

20. Calvert Chipchase, Esq. and Christopher Goodin, Esq., appeared on behalf of Pomaika'i; Dawn T. Apuna, Esq. and Aaron Setogawa appeared on behalf of OP; Dina Wong, and Raymond Young appeared on behalf of the County; and, Earl Yamamoto appeared on behalf of the DOA.
21. At the meeting, the Commission admitted into evidence Petitioner's 2nd Amended Petition, including Exhibits "A" through "E", and written comments on the Petition from OP, the DOA, and the County.
22. As part of its case-in-chief, Petitioner's called Justin Alexander, Denise Albano, Jeff Overton, Paul Matsuda and Kauahi Ching as witnesses. Mr. Overton was qualified as an expert in environmental and land use planning. Mr. Matsuda was qualified as an expert in civil engineering and water infrastructure planning. Ms. Ching was qualified as an expert in cultural research and history and cultural environmental design and management.
23. OP called Aaron Setogawa as its representative. OP supported the designation of the entire Petition Area as IAL with comments and conditions.
24. DOA called Earl Yamamoto as its representative. DOA supported the designation of the entire Petition Area as IAL with comments and conditions.
25. The County called Raymond Young as its representative. The County supported the designation of the entire Petition Area as IAL with comments and conditions.
26. After discussions with the OP and the DOA, Pomaika'i verbally amended its Petition at the November 20, 2019 hearing and stated that within 270 days from the granting of the Petition, Pomaika'i will provide the Commission, DOA and OP estimates of when certain repairs to the water infrastructure will be completed, the costs of such improvements and the identification of the parties responsible for the operation and maintenance of those improvements.

27. Following the receipt of public testimony and Petitioner's case in chief; and, upon due deliberation, a motion was made and seconded to approve the Petition in its entirety subject to two conditions. There being a vote tally of six ayes, zero nays and 2 excused, the motion carried.¹

DESCRIPTION OF THE PETITION AREA

1. The Petition Area consists of approximately 689.69 acres of land on the island of O'ahu, Hawai'i, identified by TMK Nos. (1) 6-4-001-001 (por.), 6-4-001-005 and 6-4-001-012 (*See 2nd Amended Petition at Exhibit A*).

2. The Petition Area represents approximately 51 percent of all of Pomaika'i's O'ahu lands, excluding lands held in the State Conservation District. Pomaika'i currently does not own any land in the conservation district (*See 2nd Amended Petition at pg. 2, and Exhibit D at pg. 3*).

3. Pomaika'i owns and manages the Petition Area (*See 2nd Amended Petition at pg. 2 and Exhibit C*).

4. The Petition Area is comprised of lands that are currently in agricultural use or historically have been used for agricultural purposes (*See 2nd Amended Petition at pg. 3, 6 and Exhibit D at pg. 6 (Figure 2)*).

DESCRIPTION OF REQUEST

5. Pomaika'i 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.

¹ Commissioners Chang and Ohigashi were not present.

6. Pomaika'i is not seeking a reclassification of land pursuant to HRS §205-45(b) in conjunction with its Petition.

7. Pomaika'i has represented that it is voluntarily waiving any and all rights to assert, claim, or exercise any credit pursuant to HRS §205-45(h), effective as of the date of its Petition, that may be earned by Petitioner. Petitioner 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), effective as of the date of its Petition. The waiver does not apply to any other credits, incentives, rights or privileges that Pomaika'i may possess now or in the future, whether known or unknown (*See 2nd Amended Petition at pgs. 21*).

CONFORMANCE WITH STANDARDS AND CRITERIA FOR IDENTIFICATION OF IAL

HRS §205-44(c) and HAR §15-15-120(c) set out the criteria for identifying IAL.

8. Lands identified as IAL do not need to meet every criterion listed in HRS §205 44(c). Rather, lands meeting at least one criterion in HRS §205-44(c) shall be given initial consideration. The IAL designation is to be made “by weighing the standards and criteria with each other” to meet the constitutionally mandated purposes in Article XI, Section 3, of the Constitution of the State of Hawai'i and the objectives and policies for IAL identified in HRS §§205-42 and-43.

HRS §204-44(c)(1) and HAR §15-15-120(c)(1): Lands currently used for agricultural production.

9. The Petition Area includes lands that are currently in agricultural use or have historically been used for agricultural purposes (*See 2nd Amended Petition at pg. 6*).

10. Pomaika'i's current operations include various agriculture uses with two tenants, Twin Bridge Farms and Vespucci Collective.

11. The Petition Area includes fallow areas with good potential for the introduction of new agricultural uses (See 2nd Amended Petition at pg. 6).

12. Pomaika'i plans to create an agriculture park with some tenants on larger acreages as well as small and medium size farmers who need facilities. Pomaika'i plans to create common shared facilities for farmers where they can process, package and distribute their produce (Petitioner's testimony).

13. Areas with relatively gentle grades are used for agricultural production whereas areas with relatively steeper grades are within the gulches dividing the agricultural plateau areas. These areas promote land stewardship and soil conservation as well as cohesion and continuity of agricultural uses. These portions of the Petition Area also help maintain a critical land mass important to overall agricultural operation productivity (See 2nd Amended Petition at pg. 7).

14. The OP and the DOA both concluded in their respective comment letters that the Petition Area meets this criterion (See OP's Letter at pg. 2 and DOA's Letter at pg. 2).

HRS §204-44(c)(2) and HAR §15-15-120(c)(2): Land with soil quantities and growing conditions that support agricultural production for food, fiber or fuel, and energy-producing crops.

15. 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. The rating is based upon several environmental and physical qualities of the land such as soil condition, climate, surface relief and drainage. Approximately 47.2% of the Petition Area is rated "A", 11.3% is rated "B", 1.3% is rated "C" and 40.2% is rated "E". No part of the Petition Area is unrated (See 2nd Amended Petition at 8, 9)

16. According to LSB ratings on soil productivity in the area, 59 % of the lands in the Petition Area is rated as either "A" (Very Good) or "B" (Good). Approximately 1% is rated "fair", and 40% rated "very poor" (See OP's Letter at pg. 3 and DOA's Letter at pg. 3).

17. The following Table below summarizes the productivity ratings of the Petition Area
(See 2nd Amended Petition at pg. 9)

Productivity Rating	Total IAL	
	Acres	% of IAL
A	325.6	47.2%
B	78.0	11.3%
C	8.7	1.3%
D	0	0%
E	277.4	40.2%
Total	~689.7	100.0%

18. On average the Petition Area receives 205-220 watts of solar radiation per square meter per hour (See Exhibit D at Figure 7).

19. Both OP and DOA concluded in their respective comment letters that the Petition Area meets this criterion (See OP's Letter at pg. 3 and DOA's Letter at pg. 3).

HRS §204-44(c)(3) and HAR §15-15-120(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.

20. The ALISH classification system was developed in 1977 by the DOA. 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 61.7% of the Petition Area is classified under the ALISH system, all of which is Prime (See 2nd Amended Petition at pg.10).

21. The following table below summarizes the ALISH system classifications for the Petition Area. A large majority of the Petition Area, (61.7%), is rated as Prime ALISH lands and the remaining (38.3%) lands "Not in ALISH".

ALISH Classifications	Total IAL	
	Acres	% of IAL
Prime	425.8	61.7%
Unique	0	0%
Other	0	0%
Not ALISH	263.9	38.3%
Total:	689.7	100.0%

22. The OP and the DOA both concluded in their respective comment letters that the Petition Area meets this criterion (*See OP's Letter at pg. 3 and DOA's Letter at pg. 3*).

HRS §204-44(c)(4) and HAR §15-15-120(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.

23. The Petition Area has been used for a variety of agricultural uses since the closing of Waialua Sugar Company, including parent seed crop cultivation and ranching, which continue today (*See 2nd Amended Petition at pg. 12*)

24. OP concluded in their respective comment letters that the Petition Area didn't meet this criterion. OP didn't identify any known traditional Hawaiian agricultural uses (*See OP's Letter at pg.4*).

25. DOA concluded that the Petition Area satisfactorily met this criterion (*See DOA's Letter at pg. 3*).

HRS §204-44(c)(5) and HAR §15-15-120(c)(5): Land with sufficient quantities of water to support viable agricultural production.

26. The makai portion of the Petition Area receives a mean annual rainfall of less than 30 inches, while the mauka portion ranges from 35 to 45 inches annually (*See 2nd Amended Petition at pg. 12 and Exhibit D, Figure 7*).

27. The Property has been granted a water allocation of 3.5 million gallons per day (“MGD”) for Well No. 3404-001 from the State Commission on Water Resources Management. The existing 3.5 MGD is anticipated to be used for potable and nonportable use throughout the project (*See 2nd Amended Petition; Exhibit E*).

28. Irrigation water is sourced from the existing Wahiawa Irrigation System (“WIS”). Certain portions of the Petition Area are irrigated using ditch water. (*See 2nd Amended Petition at 13*)

29. Both OP and DOA concluded in their respective comment letters that the Petition Area barely met this criterion. OP and DOA requested Petitioner provide additional sources of water allocation with updated infrastructure. (*See OP’s Letter at pg. 4-5 and DOA’s Letter at pgs. 4-5*).

30. Petitioner agreed with DOA and OP that Petitioner anticipates upgrading the existing well and the WIS. Petitioner is planning to drill a new well or a combination of both to pump water out of the ground, and it would store the water in a tank and then deliver it down to the users. (Petitioner’s testimony on November 20, 2019 hearing).

HRS §204-44(c)(6): Land whose designation as IAL is consistent with general, development, and community plans of the county.

31. The Petition Area is entirely within the State Land Use Agricultural District and is consistent with the City & County of Honolulu's Proposed Revised General Plan (*See 2nd Amended Petition at pg.15*).

32. The Petition Area is located in the North Shore Sustainable Communities Plan (2011) (“NSSCP”).

33. The Petition Area is located outside the Community Growth Boundaries of the NSSCP.

34. The Petition Area is zoned AG-1 under the City's Land Use Ordinance.

35. Both OP and DOA concluded in their respective comment letters that the Petition Area meets this criterion. (*See OP's Letter at pg. 5 and DOA's Letter at pg. 4*).

HRS §204-44(c)(7) and HAR §15-15-120(c)(7): Land that contributes to maintaining a critical land mass important to agricultural operating productivity.

36. The Petition Area contributes to maintaining a critical land mass important to agricultural operating productivity (*See 2nd Amended Petition; pg. 20*).

37. The Petition Area has long and established history of agricultural use.

38. Both OP and DOA concluded in their respective comment letters that the Petition Area meets this criterion (*See OP's Letter at pg. 5 and DOA's Letter at pg. 6*).

HRS §204-44(c)(8) and HAR §15-15-120(c)(8): Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water or power.

39. The Petition Area has sufficient infrastructure to support agricultural production.

40. A network of existing agricultural roads connects the Petition Area directly to Kamehameha Highway.

41. The Petition Area contains fences, gates and vegetation barriers.

42. The OP and the DOA concluded in their respective comment letters that the Petition Area meets this criterion (*See OP's Letter at pg. 5-6 and DOA's Letter at pg. 6*).

RULINGS ON PROPOSED FINDINGS OF FACT

Any of the findings of fact submitted by Petitioner or other parties not already ruled upon by the Commission by adoption herein, or rejected by clearly contrary findings of fact herein, are hereby denied and rejected.

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.

CONCLUSIONS OF LAW

1. Lands identified as IAL do not need to meet every criterion listed in HRS §205-44(c), rather, initial consideration shall be given to lands meeting any of the criterion set forth in HRS §205-44(c).

2. The Commission has jurisdiction over the Petition pursuant to HRS §§91-8, 205-44, and 205-45 and HAR §15-15-98.

3. 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).

4. Designating the Petition Area as IAL satisfies the purposes of Article XI, section 3, of the Hawai'i State Constitution by conserving and protecting lands currently in agricultural use, promoting diversified agriculture, increasing Hawai'i's self-sufficiency regarding agricultural capacity and sustainable food production, and assuring the agricultural availability of lands capable of strong agricultural production.

5. The designation of the Petition Area as IAL meets the objectives of HRS §205-42(a)(1) because the Petition Area is capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology.

6. The designation of the Petition Area as IAL meets the objectives of HRS §205-42(a)(2) because the Petition Area contributes to the State's economic base and produces agricultural commodities for export or local consumption.

7. Designating 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 that expand agricultural income and job opportunities, and increases agricultural self-sufficiency for current and future generations in Hawai'i.

8. Designating the Petition Area as IAL satisfies the policies of HRS §205-43(1) by promoting the retention of important agricultural lands in contiguous, intact, and functional land units large enough to allow flexibility in agricultural production and management.

9. Designating the Petition Area as IAL fulfills the policies set forth in HRS §205-43(2) by discouraging the fragmentation of important agricultural lands and the conversion of those lands to non-agricultural uses.

10. Designating the Petition Area as IAL meets the policies of HRS §§205-43(6) and (7) by facilitating the long-term dedication of important agricultural lands for future agricultural use and facilitating access for farmers to important agricultural lands for long-term viable agricultural use.

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

12. The Petition Area satisfactorily meets the requirements of HRS §§205-44 and -45 for designation as IAL.

13. The Petition Area represents approximately 51 % of Pomaika'i's agricultural and urban lands on O'ahu. Pursuant to HRS §205-49(a)(3), the designation of the Petition Area as IAL equates to a majority of the landowner, Pomaika'i's, holdings being designated as IAL (excluding lands in the State Conservation District) and precludes any further designation of Pomaika'i's lands

as IAL, except by virtue of another voluntary landowner petition for designation, pursuant to HRS §205-45.

DECISION AND ORDER

The Land Use Commission of the State of Hawai‘i, having duly considered the Petition, the oral and written testimony and pleadings of Petitioner, DOA, DPP, and OP, and a motion having been made at a meeting on November 20, 2019, in the Airport Conference Room, 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 689.69 acres at O‘ahu, Hawai‘i identified by TMK No.(1) 6-4-001:001 (por.), 6-4-001:005 and 6-4-001:012, and as shown approximately on Exhibit “A” of the Petition and attached hereto and incorporated by reference herein, shall be and is hereby designated as IAL, as governed by HRS Chapter 205, as verbally amended to include the commitment that within 270 days from the granting of the Amended Petition, Pomaika‘i will provide the Commission, DOA and OP: 1) An estimate of when certain repairs to the water infrastructure will be completed; 2) the costs of such improvements; and, 3) the identification of the party (ies) responsible for the operations and maintenance of the infrastructure.

IT IS FURTHER ORDERED that designation of the Petition Area as IAL shall be subject to the following conditions:

1. Petitioner or its successors 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. Within seven (7) days of the issuance of the Commission’s Decision and Order, Petitioner shall record it with the Bureau of Conveyances of the State of Hawai‘i.

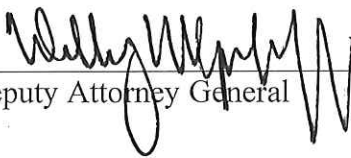
ADOPTION OF ORDER

The undersigned, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this day of 28 January 2020. 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 28, day of January, per motion on November 20, 2019.

APPROVED AS TO FORM



Deputy Attorney General

LAND USE COMMISSION
STATE OF HAWAII



JONATHAN LIKEKE SCHEUER
Chairperson and Commissioner

Filed and effective on: 1/28/2020

Certified by:



DANIEL E. ORODENKER
Executive Officer

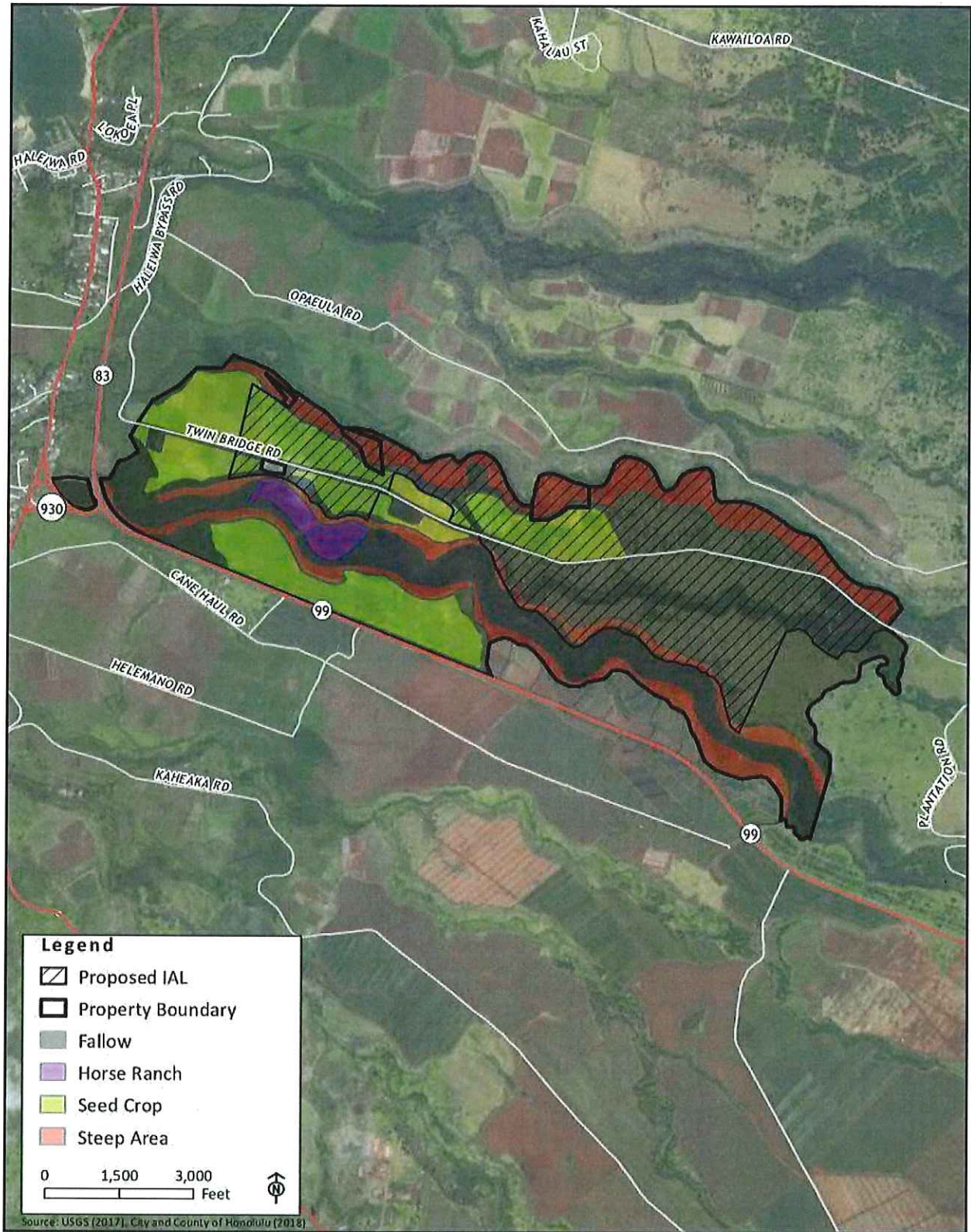
EXHIBIT A

Tax Map Key Description

A total of approximately 689.69 acres of land owned by Pomaika'i on O'ahu are designated as Important Agricultural Land (IAL).

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

TMK Number	Approximate Acreage
(1) 6-4-001:001 (por.)	668.25
(1) 6-4-001: 005	6.86
(1) 6-4-001: 012	14.58
Total	689.69





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6-4-001-012

DOCKET NO. DR19-66

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, a copy of the **FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION AND ORDER AND EXHIBIT A** was served on the following parties, by depositing a copy with the U. S. Postal Services, postage prepaid, by either regular first class or certified mail as noted to:

Regular:	CITY & COUNTY OF HONOLULU DEPT. OF PLANNING & PERMITTING 650 South King Street Honolulu, Hawai'i 96813 Attention: Acting Director Kathy Sokugawa	Regular:	DEPUTY ATTORNEY GENERAL Hale Auhau 425 Queen Street Honolulu, Hawai'i 96813 Attention: Dawn Takeuchi-Apuna
Regular:	STATE OF HAWAI'I DEPT. OF AGRICULTURE 1428 South King Street Honolulu, Hawai'i 96814 Attention: Acting Chair Phyllis Shimabukuro- Geiser	Regular:	OFFICE OF PLANNING P.O. Box 2359 Honolulu, Hawai'i 96804-2359
Certified:	CALVERT G. CHIPCHASE, ESQ. CADES SCHUTTE, LLP 1000 Bishop Street, Suite 1201 Honolulu, Hawai'i 96813	Regular:	DEPUTY CORP. COUNSEL CITY & COUNTY OF HONOLULU 530 South King Street Honolulu, Hawai'i 96813 Attention: Paul S. Aoki, Acting

DATED: Honolulu, Hawai'i,
~~January 28,~~ 2020.


DANIEL E. ORODENKER
Executive Officer