

A handful of landowners who submitted comments (8%, 6 of 74) concurred with the preliminary IAL designation and expressed a desire to have their land designated as IAL. After reviewing the requests on a case-by-case basis, the City complied with five of the six landowner requests to be included in the City's IAL process. The only landowner request for IAL designation that was not met involved a parcel in the country zoning district, in which case the subject parcel and the entire subdivision surrounding the parcel was removed from the City's IAL recommendations because the country zoning was deemed inconsistent with the intent of the IAL designation.

The remaining comments (20%, 19 of 93) were from stakeholders who did not own land being recommended for IAL, including government agencies, community organizations, and concerned individuals. These comments were generalized and not specific to any of the individual parcels listed in the preliminary recommendations for IAL. Comments were mostly related to the City's land use and development policies, and the planning process being used to complete the mapping (see Appendix E for summary). Common themes reflected in the comments are listed as follows:

- Important to protect and preserve all land currently classified and/or zoned for agricultural use, particularly those which are not included in the City's recommendations for IAL designation
- Expand the inventory of land recommended for IAL designation to include land formerly used for agriculture that is currently in the State Urban District and planned for future development (Ho'opili and Koa Ridge project areas)
- Allow for more community outreach and opportunities for public discourse, and greater transparency, in the planning process
- Use IAL as a mechanism to promote food security and self-sufficiency
- Welcomes the City's effort to comply with the legal mandate for county-designated IAL.

Taking into consideration the input received through the public comments, the City conducted a thorough review of the preliminary recommendations and identified a number of refinements to prepare the final iteration for City Council approval. In addition to verifying the accuracy of the recommendations for consistency with the priority weighted criteria, the City's review sought to ensure that the recommendations demonstrated a critical mass—or concentration—of

agricultural land. Revisions made to the preliminary recommendations are listed as part of the summary of comments and actions presented in Appendix E. Parcels were either added or removed from the inventory of IAL recommendations based on comments from landowners or the City's identification of an inconsistency or oversight. While a handful of the revisions were parcels that were added because of contextual attributes or proximity to other IAL-designated parcels (i.e., critical mass), most of the revisions were parcels that were removed because the City agreed with the landowner's justification; the parcel was found to be currently designated/zoned or planned for uses other than agriculture; or the land did not demonstrate the priority weighted criteria or proximity to other agricultural lands to be considered IAL.

## 4.2 RELATED ISSUES AND CONCERNS

The section outlines the issues and concerns identified during the community consultations that are important considerations for the future of O'ahu's agricultural industry, and are likely to continue as topics of discussion for community members participating in the upcoming City Council and LUC proceedings related to the county designation process. These issues and concerns, while relevant to the ongoing public debate and conflicting perspectives concerning the future use of O'ahu's agricultural lands, were beyond the scope of the IAL mapping project and were not addressed as part of the City's focused effort to develop recommendations for county-designated IAL. Familiarity with these issues and concerns will be helpful in preparation for the next phase of the designation process and the public dialogue that may unfold at the City Council.



*Dendrobium sp. (Orchid)*  
SOURCE: Starr Environmental.  
[www.starrenvironmental.com/images/image/?q=24706346049](http://www.starrenvironmental.com/images/image/?q=24706346049)



*Dendrobium sp. (Orchid)* SOURCE: Starr Environmental.  
<http://www.starrenvironmental.com/images/image/?q=24778353990>

#### *4.2.1 EXISTING FARMS IN THE STATE URBAN DISTRICT*

Per Chapter 205, HRS, land must be classified in the State Agricultural District to be designated as IAL. This requirement automatically precludes existing farms situated on land in the State Urban District from being eligible for the IAL designation and the incentives that accompany the designation.

While some of the existing farms in the State Urban District are on land identified for future urbanization according to the City's current land use policies (such as lands in Central O'ahu and 'Ewa), a number of small farms are on land no longer planned for urban uses by the State or the City, on land intended for long-term agricultural and open space use (largely because previous development proposals for these areas have been dropped and the Urban classification has been retained). These pockets of agricultural areas in Kahalu'u, Hawai'i Kai, Pālolo Valley and Wai'anae are typically characterized by small, family-owned operations run by farmers who live on their land and rely on their farms as part of their livelihood. For these small farms, conformance with the state land use classification system has not been a major deterrent, since the City's land use policies and the community's sentiments generally support farming in these areas. However, considering that the purpose of IAL is to promote viable agriculture, proponents suggested that farms in the State Urban District be granted access to the IAL incentives as a means of additional financial assistance and to support the continuation of these farms.<sup>9</sup> Under the existing structure of the State land use system, farms in the Urban District that want to access the IAL incentives are required to exercise one of three actions:

- Relocate operations from land in the State Urban District to the State Agricultural District
- Petition the LUC to reclassify the land to the State Agricultural District, followed by voluntary landowner petition for IAL designation, or
- Dedicate lands for perpetual agricultural use via an agricultural or conservation easement. Although such easements provide tax relief, they do not affect a landowners' ability to qualify for IAL-related incentives.

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<sup>9</sup> The IAL incentives are not available to farms in the State Urban District because public funding mechanisms have resource limitations, and it is necessary to focus public investment (i.e., incentives that support infrastructure improvements) on "important" lands.

Proponents also suggested a need to inventory the existing farms in the State Urban District and the acreage currently used for agriculture, and conduct a survey of landowners/farmers in the State Urban District to identify how many would be interested in pursuing an IAL designation. Such a project would be a rigorous, labor-intensive effort involving extensive public outreach.

#### *4.2.2 IAL DESIGNATION OF PUBLIC LANDS*

Chapter 205-44.5, HRS assigns HDOA and DLNR joint responsibility to identify State-owned lands that should be designated IAL and to prepare maps delineating those lands (see Section 1.3.3. Designation of Public Lands). Although the law specifies a December 31, 2009 date for completion of this process, the State has been unable to comply with this requirement due to funding deficiencies and delays associated with land transfers between HDOA and DLNR.

Although there is no statutory requirement for the county's mapping process to consider or await the completion of the State's identification and designation of state-owned IAL, identification of the public lands with potential to be designated as IAL can be useful for decision-making when identifying county-designated IAL. Of the estimated 80,000 acres of public lands on O'ahu, approximately 14 percent, or 11,400 acres, is agricultural land eligible to be considered for IAL. A complete inventory of all lands on O'ahu with IAL potential (both privately-owned and public lands) would help to ensure contiguous blocks of agricultural land units that contribute to the critical mass, and also to discourage the fragmentation of IAL which is consistent with the State's policies for IAL (per Chapter 205-43, HRS).

#### *4.2.3 FOOD SELF-SUFFICIENCY AND FOOD SECURITY*

Perspectives about food self-sufficiency vary, from those who want to promote agriculture as a means to achieve island-wide (100 percent) food self-sufficiency and reduce Hawai'i's dependence on imported food, to those who argue that food self-sufficiency would be unprofitable and impractical for many crops as well as risky for food security. (If a hurricane or severe storm were to wipe out much of the supply of local products, logistics would not be in place for off-island suppliers to quickly meet the demand for imported products.)

In support of increased food self-sufficiency and food security, proponents have expressed concerns about overdevelopment and the potential impacts resulting from the conversion of agricultural land in 'Ewa and Central O'ahu for planned master-planned residential developments (i.e., Ho'opili and Koa Ridge). In general,



proponents of food self-sufficiency and food security also want to promote agricultural production that prioritizes growing food for local consumption (as opposed to export crops, ornamentals, or non-agricultural uses). Ensuring the long-term protection and availability of all lands in agricultural use—including those identified by long-range plans for urban uses and those not designated as IAL—is also viewed as a valuable strategy to improving both food self-sufficiency and food security.

In contrast, some policy analysts caution against the potential consequences of achieving significant food self-sufficiency and food security, as the economic costs may outweigh the benefits. An assessment of the benefits and risks associated with self-sufficiency and security included in a report on the situation and outlook for agricultural land on O'ahu (City and County of Honolulu Department of Planning and Permitting, February 2011) indicates that the agricultural industry would require substantial government subsidies to attain high levels of self-sufficiency and food security, which may prove to be unaffordable in the long term.

Since Kaua'i's IAL Study was structured to emphasize food self-sufficiency as a condition for decision-making, there were a number of questions about the City's willingness to follow Kaua'i's model or to shift the focus of the study to food crops. The City favored an inclusive approach that was impartial to the different types of agricultural producers and did not differentiate between food crops and other crops, largely under the assumption that land currently used for other crops may be converted to support food crops in the future. The preference for impartiality, without an emphasis on food self-sufficiency, is consistent with the objective of the IAL program *"to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities"* (Chapter 205-42(b), HRS). Accordingly, the crop type is secondary to the physical characteristics of the land when determining IAL.

Conducting an island-wide food self-sufficiency study is a complicated, research-driven task that is made difficult by the lack of available data. (Federal non-disclosure requirements limit access to the data needed for a comprehensive analysis, and some major farmers do not disclose their production data). While an island-wide study may be desirable, examining food self-sufficiency as a statewide issue may be more appropriate. Unlike an independent study, a comprehensive assessment allows for a coordinated effort that balances the needs of all the islands. More importantly, a statewide comprehensive analysis recognizes the

state's long-standing economic strategy to use O'ahu as a primary or secondary market for agricultural exports from the neighbor islands, where major changes in island food production can seriously affect farming activity, production levels, employment and the supporting industries on other islands.

#### **4.2.4 COUNTY INCENTIVES**

Chapter 205-46, HRS provides broad guidelines for incentives at both the State and county level, and a framework for state-administered incentive programs (see Section 1.3.4). To date, although the City has focused its' efforts on preparing recommendations for IAL identification, efforts are underway to explore suggestions and appropriate additional county incentives that can be applied to IAL-designated properties. The City is pragmatic about the practicality of the incentives, as much of the suggested additional City incentives could result in a loss of revenues needed for infrastructure maintenance and improvements, potentially leading to increases in fees and/or taxes affecting all taxpayers to replenish the loss revenues. The City currently has a number of programs available that benefit properties in agricultural use (e.g., lower property tax rate for agricultural land, property tax exemptions for certain infrastructure improvements, special water rate for agricultural properties). The City is currently collaborating among its agencies to devise additional benefits. Preference is being given to incentives that do not require significant financial outlays by the City.

IAL incentives are generally intended to benefit properties that have received an IAL designation. However, agricultural businesses that own or lease 50% of their land as IAL land, may also benefit from the IAL incentives (see State Tax Instructions, Form N-344). Certain classes of agricultural lands, including active agricultural lands in the State Urban District and lands being used for agricultural support functions (i.e., agricultural processing facilities and agricultural worker housing), are not able to qualify for an IAL designation because they do not meet the IAL eligibility requirements. Without the IAL designation, landowners and farmers who use these lands would not receive the benefits of the incentives unless they own or lease IAL lands in the amount which is greater than 50% of the area of their operations. Proponents suggested that the county incentives program be expanded to incorporate these unique types of scenarios, particularly because there is a need to promote the economic viability of such agricultural operations as well as to ensure that such areas are available for long-term agricultural use.

#### *4.2.5 FUTURE UNANTICIPATED CONSEQUENCES OF IAL*

Comments and questions received during the various meetings and written comment periods suggested a general sense of distrust and unfamiliarity with the IAL initiative. Despite the City's community outreach efforts to inform and educate the public about the intricacies of the designation, participants that took part in the community consultations were not certain that the IAL designation would be an effective tool to promote the agricultural industry. Concerns raised regarding the possibility for future unanticipated consequences as a result of the IAL program, including the potential for undesirable, negative impacts to land use, are summarized:

- Landowners need assurances that additional use restrictions will not be imposed on the IAL classification. Landowners are concerned that the IAL classification adds another layer of stringent regulation to Hawai'i's land use system.
- Is it possible that the IAL designation will encourage development of land not classified as IAL? What are the safeguards to ensure that developers do not find it easier to urbanize and rezone "unimportant" agricultural land?
- How will the IAL designation affect the cost of owning land (including property taxes), land values, and the future development potential of the land? Additional information about the availability of state and county agricultural initiatives that support the economic viability of IAL-designated properties is needed.

Besides the City and County of Honolulu, Kaua'i is the only other county to prepare recommendations for IAL designation. However, based on the City's understanding, Kaua'i County determined that it has fulfilled its IAL obligations, and Honolulu will be the first county to advance to the next step of the county designation process.

#### *4.2.6 PUBLIC PARTICIPATION IN THE PLANNING PROCESS*

Controversy and difficulty finding consensus are typical of public planning processes in today's modern world. Likewise, because the general public has grown to expect a high level of involvement in both planning and decision-making processes, outspoken criticism can be expected when processes do not provide for public outreach and participation at levels that satisfy the expectations of the

general public. Within this context, proponents in favor of greater participation expressed a desire for more outreach, additional opportunities for public input, and increased transparency in the decision-making process. Specifically, critics of the planning process wanted more community meetings spread out across the island, more outreach targeting small farmers, and more collaboration and consultation with landowners during the initial stages of the process before the public meetings. The dissatisfaction with the City's planning process was coupled with a fundamental distrust of government initiatives and a perception that public sentiments were not being considered.

The composition of the technical advisory committee was also a concern. Community members questioned the membership selection process, the interests represented by the TAC members, and the qualifications of the members. Concerns reflected biases against corporate farming interests, preferences to include more small farmers and organic farmers, and dissatisfaction about how individual landowners were represented. Recognizing the instrumental role that the TAC played in formulating the resource maps and the TAC's influence on the selection of the priority criteria, the City convened the TAC to include a broad cross-section of agricultural industry interests with balanced representation between small farmers, family farms and corporate farming operations. The composition of the TAC was also based on the statutory requirements established in HRS § 205-47(b), which specified representation from certain interest groups, including "landowners, department of agriculture, Hawai'i Farm Bureau Federation, US Department of Agriculture Natural Resources Conservation Service, the office of planning, and other agricultural organizations and interest groups."

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# APPENDICES

## **A**

Chapter 205, HRS  
(State Land Use Districts and IAL)

## **B**

Technical Advisory Committee  
Meetings and Roster

## **C**

Focus Group Meetings

## **D**

Community Meetings

## **E**

Landowner and Public Comments

## **F**

Criteria Maps and  
Summary Descriptions

## **G**

Criteria Weighting Methodology

## **H**

Inventory of City Recommendations for IAL  
Designation by TMK Parcel Number



# A

CHAPTER 205, HRS  
(STATE LAND USE DISTRICTS AND IAL)



**HAWAII REVISED STATUTES  
CHAPTER 205  
LAND USE COMMISSION**

*Updated to include 2007 Amendments*

**(UNOFFICIAL)**

**Part I. Generally  
Section**

205-1	Establishment of the commission
205-2	Districting and classification of lands
205-3	Retention of district boundaries
205-3.1	Amendments to district boundaries
205-4	Amendments to district boundaries involving land areas greater than fifteen acres
205-4.1	Fees
205-4.5	Permissible uses within the agricultural districts
205-4.6	Private restrictions on agricultural uses and activities; not allowed
205-5	Zoning
205-5.1	Geothermal resource subzones
205-5.2	Designation of areas as geothermal resource subzones
205-5.3	Exploratory wells
205-6	Special permit
205-7	Adoption, amendment or repeal of rules
205-8	Nonconforming uses
205-9 to 11	Repealed
205-12	Enforcement
205-13	Penalty for violation
205-14	Adjustments of assessing practices
205-15	Conflict
205-16	Compliance with the Hawaii state plan
205-16.1, 16.2	Repealed
205-17	Land use commission decision-making criteria
205-18	Periodic review of districts

**Part II. Shoreline Setbacks**

205-31 to 37	Repealed
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**Part III. Important Agricultural Lands**

205-41	Declaration of policy
205-42	Important agricultural lands; definition and objectives
205-43	Important agricultural lands; policies
205-44	Standards and criteria for the identification of important agricultural lands
205-45	Petition by farmer or landowner
205-46	Incentives for important agricultural lands
205-47	Identification of important agricultural lands; county process
205-48	Receipt of maps of eligible important agricultural lands; land use commission
205-49	Designation of important agricultural lands; adoption of important agricultural lands maps
205-50	Standards and criteria for the reclassification or rezoning of important agricultural lands
205-51	Important agricultural lands; county ordinances
205-52	Periodic review and amendment of important agricultural lands maps

**Note**

Prior law: L 1961, c 187.

**Law Journals and Reviews**

Maha'ulepu v. Land Use Commission: A Symbol of Change; Hawaii's Land Use Law Allows Golf Course Development on Prime Agricultural Land by Special Use Permit. 13 UH L. Rev. 205.

Honolulu's Ohana Zoning Law: To Ohana or Not to Ohana. 13 UH L. Rev. 505.

The Lum Court, Land Use, and the Environment: A Survey of Hawai'i Case Law 1983 to 1991. 14 UH L. Rev. 119.

Residential Use of Hawai'i's Conservation District. 14 UH L. Rev. 633.

Dolan v. City of Tigard: Individual Property Rights v. Land Management Systems. 17 UH L. Rev. 193.

Is Agricultural Land in Hawai'i "Ripe" for a Takings Analysis? 24 UH L. Rev. 121.

"Urban Type Residential Communities in the Guise of Agricultural Subdivisions:" Addressing an Impermissible Use of Hawai'i's Agricultural District. 25 UH L. Rev. 199.

Avoiding the Next Hokuli'a: The Debate over Hawai'i's Agricultural Subdivisions. 27 UH L. Rev. 441.

**Case Notes**

Religious Land Use and Institutionalized Persons Act of 2000, assuming it was constitutional, did not facially invalidate Hawaii's land use law. 229 F. Supp. 2d 1056.

Provisions of chapter provide authority to issue special use permits for golf courses on prime agricultural lands. 71 H. 332, 790 P.2d 906.

## [PART I. GENERALLY]

### Law Journals and Reviews

Avoiding the Next Hokuli'a: The Debate over Hawai'i's Agricultural Subdivisions. 27 UH L. Rev. 441.

**§205-1 Establishment of the commission.** There shall be a state land use commission, hereinafter called the commission. The commission shall consist of nine members who shall hold no other public office and shall be appointed in the manner and serve for the term set forth in section 26-34. One member shall be appointed from each of the counties and the remainder shall be appointed at large; provided that one member shall have substantial experience or expertise in traditional Hawaiian land usage and knowledge of cultural land practices. The commission shall elect its chairperson from one of its members. The members shall receive no compensation for their services on the commission, but shall be reimbursed for actual expenses incurred in the performance of their duties. Six affirmative votes shall be necessary for any boundary amendment.

The commission shall be a part of the department of business, economic development, and tourism for administration purposes, as provided for in section 26-35.

The commission may engage employees necessary to perform its duties, including administrative personnel and an executive officer. The executive officer shall be appointed by the commission and the executive officer's position shall be exempt from civil service. Departments of the state government shall make available to the commission such data, facilities, and personnel as are necessary for it to perform its duties. The commission may receive and utilize gifts and any funds from the federal or other governmental agencies. It shall adopt rules guiding its conduct, maintain a record of its activities and accomplishments, and make recommendations to the governor and to the legislature through the governor. [L 1963, c 205, pt of §2; Supp. §98H-1; HRS §205-1; am L 1975, c 193, §2; am L 1976, c 43, §1; gen ch 1985; am L 1987, c 336, §7; am L 1990, c 293, §8; gen ch 1993; am L 2006, c 296, §1]

### Note

The 2006 amendment effective on July 10, 2006, applies to next vacancy on commission. L 2006, c 296, §3.

### Cross References

Commission placed in department of business, economic development, and tourism, see §26-18.

Commissions, generally, see §26-34.

**§205-2 Districting and classification of lands.** (a) There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation. The land use commission shall group contiguous land areas suitable for inclusion in one of these four major districts. The commission shall set standards for determining the boundaries of each district, provided that:

- (1) In the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included;
- (2) In the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included, except as herein provided;
- (3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and
- (4) In the establishment of the boundaries of conservation districts, the "forest and water reserve zones" provided in Act 234, section 2, Session Laws of Hawaii 1957, are renamed "conservation districts" and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to Act 234, section 2, Session Laws of Hawaii 1957, shall constitute the boundaries of the conservation districts; provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission.

In establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county.

(b) Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.

(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than 18,500 square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot, provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics. Rural districts shall also include golf courses, golf driving ranges, and golf-related facilities.

(d) Agricultural districts shall include:



- (1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;
- (2) Farming activities or uses related to animal husbandry, and game and fish propagation;
- (3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;
- (4) Wind generated energy production for public, private, and commercial use;
- (5) Biofuel production as described in section 205-4.5(a)(15) for public, private, and commercial use;
- (6) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, whether or not conducted on the same premises as the agricultural activities to which they are accessory, including but not limited to farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, vehicle and equipment storage areas, roadside stands for the sale of products grown on the premises, and plantation community subdivisions as defined in section 205-4.5(a)(12);
- (7) Wind machines and wind farms;
- (8) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;
- (9) Agricultural parks;
- (10) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5; and
- (11) Open area recreational facilities.

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

(e) Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park lands, wilderness, and beach reserves; conserving indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other

related activities; and other permitted uses not detrimental to a multiple use conservation concept. [L 1963, c 205, pt of §2; Supp, §98H-2; HRS §205-2; am L 1969, c 182, §5; am L 1975, c 193, §3; am L 1977, c 140, §1 and c 163, §1; am L 1980, c 24, §2; am L 1985, c 298, §2; am L 1987, c 82, §3; am L 1989, c 5, §2; am L 1991, c 191, §1 and c 281, §2; am L 1995, c 69, §8; am L 2005, c 205, §2; am L 2006, c 237, §3 and c 250, §1; am L 2007, c 159, §2]

#### **Cross References**

Districts, generally, see chapter 4.

#### **Attorney General Opinions**

Uses within agricultural districts. Att. Gen. Op. 62-33, 62-38.

Dwellings permissible under this section are further defined by regulations established under §205-7. Att. Gen. Op. 75-8.

#### **Law Journals and Reviews**

Avoiding the Next Hokuli'a: The Debate over Hawai'i's Agricultural Subdivisions. 27 UH L. Rev. 441.

**§205-3 Retention of district boundaries.** Land use district boundaries existing as of June 2, 1975, shall continue in full force and effect subject to amendment as provided in this chapter or order of a court of competent jurisdiction based upon any litigation filed prior to July 1, 1975, or filed within thirty days after service of a certified copy of any final decision and order made as part of the commission's 1974 periodic boundary review, whichever occurs later. [L 1963, c 205, pt of §2; Supp, §98H-3; am L 1975, c 193, §4; HRS §205-3]

#### **Revision Note**

"June 2, 1975" substituted for "the effective date of this Act".

#### **Attorney General Opinions**

Statute contemplates and authorizes changes in classification as originally proposed and as finally adopted, and to require new notice and hearing whenever there is any change is too burdensome. Att. Gen. Op. 71-2.

**§205-3.1 Amendments to district boundaries.** (a) District boundary amendments involving lands in the conservation district, land areas greater than fifteen acres, or lands delineated as important agricultural lands shall be processed by the land use commission pursuant to section 205-4.

(b) Any department or agency of the State, and department or agency of the county in which the land is situated, or any person with a property interest in the land sought to be reclassified may petition the appropriate county land use decision-making authority of the county

in which the land is situated for a change in the boundary of a district involving lands less than fifteen acres presently in the rural and urban districts and lands less than fifteen acres in the agricultural district that are not designated as important agricultural lands.

(c) District boundary amendments involving land areas of fifteen acres or less, except as provided in subsection (b), shall be determined by the appropriate county land use decision-making authority for the district and shall not require consideration by the land use commission pursuant to section 205-4; provided that such boundary amendments and approved uses are consistent with this chapter. The appropriate county land use decision-making authority may consolidate proceedings to amend state land use district boundaries pursuant to this subsection, with county proceedings to amend the general plan, development plan, zoning of the affected land, or such other proceedings. Appropriate ordinances and rules to allow consolidation of such proceedings may be developed by the county land use decision-making authority.

(d) The county land use decision-making authority shall serve a copy of the application for a district boundary amendment to the land use commission and the department of business, economic development, and tourism and shall notify the commission and the department of the time and place of the hearing and the proposed amendments scheduled to be heard at the hearing. A change in the state land use district boundaries pursuant to this subsection shall become effective on the day designated by the county land use decision-making authority in its decision. Within sixty days of the effective date of any decision to amend state land use district boundaries by the county land use decision-making authority, the decision and the description and map of the affected property shall be transmitted to the land use commission and the department of business, economic development, and tourism by the county planning director. [L 1985, c 230, §3; am L 1987, c 336, §7; am L 1990, c 293, §8; am L 2005, c 183, §3]

#### Law Journals and Reviews

“Urban Type Residential Communities in the Guise of Agricultural Subdivisions:” Addressing an Impermissible Use of Hawai’i’s Agricultural District. 25 UH L. Rev. 199.

#### Case Notes

As section required county review of developer’s 14.5 acre change of zone request, trial court did not err in concluding that county council properly approved developer’s boundary amendment. 91 H. 94, 979 P.2d 1120.

**§205-4 Amendments to district boundaries involving land areas greater than fifteen acres.** (a) Any department or agency of the State, any department or agency of the county in which the land is situated, or any person with a property interest in the land sought to be reclassified, may petition the land use commission for a change in the boundary of a district. This section applies to all petitions for changes in district boundaries of lands within conservation districts, lands designated or sought to be designated as important agricultural lands, and lands greater than fifteen acres in the agricultural, rural, and urban districts, except as provided in section 201H-38. The land use commission shall adopt rules pursuant to chapter 91 to implement section 201H-38.

(b) Upon proper filing of a petition pursuant to subsection (a) the commission shall, within not less than sixty and not more than one hundred and eighty days, conduct a hearing on the appropriate island in accordance with the provisions of sections 91-9, 91-10, 91-11, 91-12, and 91-13, as applicable.

(c) Any other provision of law to the contrary notwithstanding, notice of the hearing together with a copy of the petition shall be served on the county planning commission and the county planning department of the county in which the land is located and all persons with a property interest in the land as recorded in the county’s real property tax records. In addition, notice of the hearing shall be mailed to all persons who have made a timely written request for advance notice of boundary amendment proceedings, and public notice shall be given at least once in the county in which the land sought to be redistricted is situated as well as once statewide at least thirty days in advance of the hearing. The notice shall comply with section 91-9, shall indicate the time and place that maps showing the proposed district boundary may be inspected, and further shall inform all interested persons of their rights under subsection (e).

(d) Any other provisions of law to the contrary notwithstanding, prior to hearing of a petition the commission and its staff may view and inspect any land which is the subject of the petition.

(e) Any other provisions of law to the contrary notwithstanding, agencies and persons may intervene in the proceedings in accordance with this subsection.

- (1) The petitioner, the office of planning, and the county planning department shall in every case appear as parties and make recommendations relative to the proposed boundary change.
- (2) All departments and agencies of the State and of the county in which the land is situated shall be admitted as parties upon timely application for intervention.
- (3) All persons who have some property interest in the land, who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application for intervention.
- (4) All other persons may apply to the commission for leave to intervene as parties. Leave to intervene shall be freely granted, provided that the commission or its hearing officer if one is appointed may deny an application to intervene when in the commission’s or hearing officer’s sound discretion it appears that: (A) the position of the applicant for intervention concerning the proposed change is substantially the same as the position of a party already admitted to the proceeding; and (B) the admission of additional parties will render the proceedings inefficient and unmanageable. A person whose application to intervene is denied may appeal such denial to the circuit court pursuant to section 91-14.
- (5) The commission shall pursuant to chapter 91 adopt rules governing the intervention of agencies and persons under this subsection. Such rules shall without limitation establish: (A) the information to be set forth in any application

for intervention; (B) time limits within which such applications shall be filed; and (C) reasonable filing fees to accompany such applications.

(f) Together with other witnesses that the commission may desire to hear at the hearing, it shall allow a representative of a citizen or a community group to testify who indicates a desire to express the view of such citizen or community group concerning the proposed boundary change.

(g) Within a period of not more than three hundred sixty- five days after the proper filing of a petition, unless otherwise ordered by a court, or unless a time extension, which shall not exceed ninety days, is established by a two-thirds vote of the members of the commission, the commission, by filing findings of fact and conclusions of law, shall act to approve the petition, deny the petition, or to modify the petition by imposing conditions necessary to uphold the intent and spirit of this chapter or the policies and criteria established pursuant to section 205-17 or to assure substantial compliance with representations made by the petitioner in seeking a boundary change. The commission may provide by condition that absent substantial commencement of use of the land in accordance with such representations, the commission shall issue and serve upon the party bound by the condition an order to show cause why the property should not revert to its former land use classification or be changed to a more appropriate classification. Such conditions, if any, shall run with the land and be recorded in the bureau of conveyances.

(h) No amendment of a land use district boundary shall be approved unless the commission finds upon the clear preponderance of the evidence that the proposed boundary is reasonable, not violative of section 205-2 and part III of this chapter, and consistent with the policies and criteria established pursuant to sections 205-16 and 205-17. Six affirmative votes of the commission shall be necessary for any boundary amendment under this section.

(i) Parties to proceedings to amend land use district boundaries may obtain judicial review thereof in the manner set forth in section 91-14, provided that the court may also reverse or modify a finding of the commission if such finding appears to be contrary to the clear preponderance of the evidence.

(j) At the hearing, all parties may enter into appropriate stipulations as to findings of fact, conclusions of law, and conditions of reclassification concerning the proposed boundary change. The commission may but shall not be required to approve such stipulations based on the evidence adduced. [L 1963, c 205, pt of §2; am L 1965, c 32, §2; Supp. §98H-4; HRS §205-4; am L 1972, c 187, §2; am L 1975, c 193, §5; am L 1976, c 4, §1; am L 1985, c 230, §4; am L 1986, c 93, §1; am L 1987, c 336, §7; am L 1988, c 352, §2; am L 1989, c 261, §10; am L 1990, c 261, §1; am L 1995, c 235, §1; am L 1996, c 299, §3; am L 1997, c 350, §15; am L 1998, c 2, §60; am L 2005, c 183, §4; am L 2007, c 249, §15]

#### Attorney General Opinions

The commission may be empowered to impose conditions on reclassifications and to impose sanctions for violation of the conditions, and the conditions may be made to run with the land. Att. Gen. Op. 72-8.

Proposal to subdivide agricultural land into agriculturally unfeasible small lots would violate intent of chapter. Att. Gen. Op. 75-8.

#### Law Journals and Reviews

“Urban Type Residential Communities in the Guise of Agricultural Subdivisions:” Addressing an Impermissible Use of Hawai’i’s Agricultural District. 25 UH L. Rev. 199.

#### Case Notes

Proceeding for amendment to boundaries challenged by adjoining landowner is a contested case within meaning of §91-1(5). 55 H. 538, 524 P.2d 84.

Provision that commission shall render decision within forty-five and ninety days after the public hearing is mandatory and decision rendered after the time period is void. 55 H. 538, 524 P.2d 84.

The adoption or amendment of boundaries is not a rule-making process within meaning of §91-1(4). 55 H. 538, 524 P.2d 84.

Person entitled under prior law to petition for change in boundary. 57 H. 84, 549 P.2d 737.

Where landlord seeks to evict tenants who exercise their rights to appear and testify at a public hearing, defense of retaliatory eviction is available. 59 H. 104, 577 P.2d 326.

Commission rules re intervention and “final order” for purposes of appeal, construed. 63 H. 529, 631 P.2d 588.

Proposal for recreational theme park on agricultural land was more properly the subject of a boundary amendment under this section, rather than a special permit. 64 H. 265, 639 P.2d 1079.

**§205-4.1 Fees.** The commission may establish reasonable fees for the filing of boundary amendment petitions and petitions for intervention to cover the cost of processing thereof and for the reproduction of maps and documents. The commission also may assess a reasonable fee or require reimbursements to be made for court reporter expenses, the inexcusable absence of a party from a boundary amendment proceeding, and any other reimbursements for hearing expenses as determined by the commission. Any fees collected shall be deposited to the credit of the general fund. [L 1983, c 49, §2; am L 1999, c 260, §1]

**§205-4.5 Permissible uses within the agricultural districts.** (a) Within the agricultural district, all lands with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including but not limited to crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including but not limited to poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;

- (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. "Farm dwelling", as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings that are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, treatment plants, corporation yards, or other similar structures;
- (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
- (9) Roadside stands for the sale of agricultural products grown on the premises;
- (10) Buildings and uses, including but not limited to mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered directly accessory to the above mentioned uses and are permitted under section 205-2(d);
- (11) Agricultural parks;
- (12) Plantation community subdivisions, which as used in this paragraph means a subdivision or cluster of employee housing, community buildings, and acreage established on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation and in residential use by employees or former employees of the plantation; provided that the employees or former employees shall have a property interest in the land;
- (13) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;
- (14) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that the wind energy facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land;
- (15) Biofuel processing facilities, including the appurtenances associated with the production and refining of biofuels that is normally considered directly accessory

and secondary to the growing of the energy feedstock; provided that biofuels processing facilities and appurtenances do not adversely impact agricultural land and other agricultural uses in the vicinity.

For the purposes of this paragraph:

"Appurtenances" means operational infrastructure of the appropriate type and scale for economic commercial storage and distribution, and other similar handling of feedstock, fuels, and other products of biofuels processing facilities.

"Biofuel processing facility" means a facility that produces liquid or gaseous fuels from organic sources such as biomass crops, agricultural residues, and oil crops, including palm, canola, soybean, and waste cooking oils; grease; food wastes; and animal residues and wastes that can be used to generate energy[; or]

- (16) Construction and operation of wireless communication antennas; provided that, for the purposes of this paragraph, "wireless communication antenna" means communications equipment that is either freestanding or placed upon or attached to an already existing structure and that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services; provided further that nothing in this paragraph shall be construed to permit the construction of any new structure that is not deemed a permitted use under this subsection.

(b) Uses not expressly permitted in subsection (a) shall be prohibited, except the uses permitted as provided in sections 205-6 and 205-8, and construction of single-family dwellings on lots existing before June 4, 1976. Any other law to the contrary notwithstanding, no subdivision of land within the agricultural district with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be approved by a county unless those A and B lands within the subdivision are made subject to the restriction on uses as prescribed in this section and to the condition that the uses shall be primarily in pursuit of an agricultural activity.

Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance covering any land within the agricultural subdivision shall expressly contain the restriction on uses and the condition, as prescribed in this section that these restrictions and conditions shall be encumbrances running with the land until such time that the land is reclassified to a land use district other than agricultural district.

If the foregoing requirement of encumbrances running with the land jeopardizes the owner or lessee in obtaining mortgage financing from any of the mortgage lending agencies set forth in the following paragraph, and the requirement is the sole reason for failure to obtain mortgage financing, then the requirement of encumbrances shall, insofar as such mortgage financing is jeopardized, be conditionally waived by the appropriate county enforcement officer; provided that the conditional waiver shall become effective only in the event that the property is subjected to foreclosure proceedings by the mortgage lender.

The mortgage lending agencies referred to in the preceding paragraph are the Federal Housing Administration, Federal National Mortgage Association, Veterans Administration,



Small Business Administration, United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any other federal, state, or private mortgage lending agency qualified to do business in Hawaii, and their respective successors and assigns.

(c) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U shall be restricted to the uses permitted for agricultural districts as set forth in section 205-5(b).

(d) Notwithstanding any other provision of this chapter to the contrary, golf courses and golf driving ranges approved by a county before July 1, 2005, for development within the agricultural district shall be permitted uses within the agricultural district.

(e) Notwithstanding any other provision of this chapter to the contrary, plantation community subdivisions as defined in this section shall be permitted uses within the agricultural district, and section 205-8 shall not apply.

(f) Notwithstanding any other law to the contrary, agricultural lands may be subdivided and leased for the agricultural uses or activities permitted in subsection (a); provided that:

- (1) The principal use of the leased land is agriculture;
- (2) No permanent or temporary dwellings or farm dwellings, including trailers and campers, are constructed on the leased area. This restriction shall not prohibit the construction of storage sheds, equipment sheds, or other structures appropriate to the agricultural activity carried on within the lot; and
- (3) The lease term for a subdivided lot shall be for at least as long as the greater of:
  - (A) The minimum real property tax agricultural dedication period of the county in which the subdivided lot is located; or
  - (B) Five years.

Lots created and leased pursuant to this section shall be legal lots of record for mortgage lending purposes and shall be exempt from county subdivision standards. [L 1976, c 199, §1; am L 1977, c 136, §1; am L 1980, c 24, §3; am L 1982, c 217, §1; am L 1991, c 281, §3; am L 1997, c 258, §11; am L 2005, c 205, §3; am L 2006, c 237, §4, c 250, §2, and c 271, §1; am L 2007, c 159, §3 and c 171, §1]

#### Law Journals and Reviews

Avoiding the Next Hokuli'a: The Debate over Hawai'i's Agricultural Subdivisions. 27 UH L. Rev. 441.

#### Case Notes

Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), assuming it was constitutional, did not facially invalidate Hawaii's land use law, where plaintiffs challenged this section and §205-6 to the extent the sections required a religious organization to obtain a special use permit, as violations of the "equal terms" and "nondiscrimination" provisions of the RLUIPA. 229 F. Supp. 2d 1056.

"Communications equipment buildings" and "utility lines" in subsection (a)(7) do not encompass "telecommunications antennas" or "transmission antennas" such as a cellular telephone tower; public utility thus had to apply for a special permit under §205-6 to place the tower in a state agricultural district. 90 H. 384, 978 P.2d 822.

Under subsection (a)(4) and (10), a chimney and garage are permitted as accessories to a farm dwelling; however, utilizing the chimney to conceal an antenna and the garage to house communication equipment were not permitted uses under either paragraph (4) or (10). 106 H. 343, 104 P.3d 930.

Under the circumstances of the case, the residence and the chimney with the concealed antenna constituted a "communications equipment building" and, thus, were permitted uses under subsection (a)(7); also, as the garage was not abnormally large and was designed specifically to store the communications equipment for the concealed antenna, utilizing the permitted garage structure to house the communications equipment for the antenna was a permitted use under subsection (a)(7). 106 H. 343, 104 P.3d 930.

#### §205-4.6 Private restrictions on agricultural uses and activities; not allowed.

Agricultural uses and activities as defined in sections 205-2(d) and 205-4.5(a) on lands classified as agricultural shall not be restricted by any private agreement contained in any deed, agreement of sale, or other conveyance of land recorded in the bureau of conveyances after July 8, 2003, that subject such agricultural lands to any servitude, including but not limited to covenants, easements, or equitable and reciprocal negative servitudes. Any such private restriction limiting or prohibiting agricultural use or activity shall be voidable, subject to special restrictions enacted by the county ordinance pursuant to section 46-4; except that restrictions taken to protect environmental or cultural resources, agricultural leases, utility easements, and access easements shall not be subject to this section.

For purposes of this section, "agricultural leases" means leases where the leased land is primarily utilized for purposes set forth in section 205-4.5(a). [L Sp 2003, c 5, §2; am L 2004, c 170, §1]

#### Law Journals and Reviews

"Urban Type Residential Communities in the Guise of Agricultural Subdivisions:" Addressing an Impermissible Use of Hawai'i's Agricultural District. 25 UH L. Rev. 199.

**§205-5 Zoning.** (a) Except as herein provided, the powers granted to counties under section 46-4 shall govern the zoning within the districts, other than in conservation districts. Conservation districts shall be governed by the department of land and natural resources pursuant to chapter 183C.

(b) Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance. Each county shall adopt ordinances setting forth procedures and requirements, including provisions for enforcement, penalties, and administrative oversight, for the review and permitting of agricultural tourism uses and activities as an accessory use on a

working farm, or farming operation as defined in section 165-2; provided that agricultural tourism activities shall not be permissible in the absence of a bona fide farming operation. Ordinances shall include but not be limited to:

- (1) Requirements for access to a farm, including road width, road surface, and parking;
- (2) Requirements and restrictions for accessory facilities connected with the farming operation, including gift shops and restaurants; provided that overnight accommodations shall not be permitted;
- (3) Activities that may be offered by the farming operation for visitors;
- (4) Days and hours of operation; and
- (5) Automatic termination of the accessory use upon the cessation of the farming operation.

Each county may require an environmental assessment under chapter 343 as a condition to any agricultural tourism use and activity. Other uses may be allowed by special permits issued pursuant to this chapter. The minimum lot size in agricultural districts shall be determined by each county by zoning ordinance, subdivision ordinance, or other lawful means; provided that the minimum lot size for any agricultural use shall not be less than one acre, except as provided herein. If the county finds that unreasonable economic hardship to the owner or lessee of land cannot otherwise be prevented or where land utilization is improved, the county may allow lot sizes of less than the minimum lot size as specified by law for lots created by a consolidation of existing lots within an agricultural district and the resubdivision thereof; provided that the consolidation and resubdivision do not result in an increase in the number of lots over the number existing prior to consolidation; and provided further that in no event shall a lot which is equal to or exceeds the minimum lot size of one acre be less than that minimum after the consolidation and resubdivision action. The county may also allow lot sizes of less than the minimum lot size as specified by law for lots created or used for plantation community subdivisions as defined in section 205-4.5(a)(12), for public, private, and quasi-public utility purposes, and for lots resulting from the subdivision of abandoned roadways and railroad easements.

(c) Unless authorized by special permit issued pursuant to this chapter, only the following uses shall be permitted within rural districts:

- (1) Low density residential uses;
- (2) Agricultural uses;
- (3) Golf courses, golf driving ranges, and golf-related facilities; and
- (4) Public, quasi-public, and public utility facilities.

In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre, except as provided for in section 205-2. [L 1963, c 205, pt of §2; Supp. §98H-5; HRS §205-5; am L 1969, c 232, §1; am L 1977, c 140, §2; am L 1978, c 165, §1; am L 1991, c 281, §4; am L 1994, c 270, §2; am L 2005, c 205, §4; am L 2006, c 237, §5 and c 250, §3]

### Attorney General Opinions

Minimum lot size in agricultural districts. Att. Gen. Op. 62-33.

Cited in opinion that enforcement of land uses in conservation districts lies with department of land and natural resources, and not with counties. Att. Gen. Op. 70-22.

### Law Journals and Reviews

“Urban Type Residential Communities in the Guise of Agricultural Subdivisions:” Addressing an Impermissible Use of Hawai‘i’s Agricultural District. 25 UH L. Rev. 199.

**§205-5.1 Geothermal resource subzones.** (a) Geothermal resource subzones may be designated within the urban, rural, agricultural, and conservation land use districts established under section 205-2. Only those areas designated as geothermal resource subzones may be utilized for geothermal development activities in addition to those uses permitted in each land use district under this chapter. Geothermal development activities may be permitted within urban, rural, agricultural, and conservation land use districts in accordance with this chapter. “Geothermal development activities” means the exploration, development, or production of electrical energy from geothermal resources and direct use applications of geothermal resources; provided that within the urban, rural, and agricultural land use districts, direct use applications of geothermal resources are permitted both within and outside of areas designated as geothermal resource subzones pursuant to section 205-5.2 if such direct use applications are in conformance with all other applicable state and county land use regulations and are in conformance with this chapter.

(b) The board of land and natural resources shall have the responsibility for designating areas as geothermal resource subzones as provided under section 205-5.2; except that the total area within an agricultural district which is the subject of a geothermal mining lease approved by the board of land and natural resources, any part or all of which area is the subject of a special use permit issued by the county for geothermal development activities, on or before May 25, 1984, is designated as a geothermal resource subzone for the duration of the lease. The designation of geothermal resource subzones shall be governed exclusively by this section and section 205-5.2, except as provided therein. The board shall adopt, amend, or repeal rules related to its authority to designate and regulate the use of geothermal resource subzones in the manner provided under chapter 91.

The authority of the board to designate geothermal resource subzones shall be an exception to those provisions of this chapter and of section 46-4 authorizing the land use commission and the counties to establish and modify land use districts and to regulate uses therein. The provisions of this section shall not abrogate nor supersede the provisions of chapters 182, 183, and 183C.

(c) The use of an area for geothermal development activities within a geothermal resource subzone shall be governed by the board within the conservation district and, except as herein provided, by state and county statutes, ordinances, and rules not inconsistent herewith within agricultural, rural, and urban districts, except that no land use commission approval or special use permit procedures under section 205-6 shall be required for the use of such subzones.

In the absence of provisions in the county general plan and zoning ordinances specifically relating to the use and location of geothermal development activities in an agricultural, rural, or urban district, the appropriate county authority may issue a geothermal resource permit to allow geothermal development activities. "Appropriate county authority" means the county planning commission unless some other agency or body is designated by ordinance of the county council. Such uses as are permitted by county general plan and zoning ordinances, by the appropriate county authority, shall be deemed to be reasonable and to promote the effectiveness and objectives of this chapter. Chapters 177, 178, 182, 183, 183C, 205A, 226, 342, and 343 shall apply as appropriate. If provisions in the county general plan and zoning ordinances specifically relate to the use and location of geothermal development activities in an agricultural, rural, or urban district, the provisions shall require the appropriate county authority to conduct a public hearing on any application for a geothermal resource permit to determine whether the use is in conformity with the criteria specified in subsection (e) for granting geothermal resource permits; provided that within the urban, rural, and agricultural land use districts, direct use applications of geothermal resources are permitted without any application for a geothermal resource permit both within and outside of areas designated as geothermal resource subzones pursuant to section 205-5.2 if such direct use applications are in conformance with all other applicable state and county land use regulations and are in conformance with this chapter.

(d) If geothermal development activities are proposed within a conservation district, with an application with all required data, the board of land and natural resources shall conduct a public hearing and, upon appropriate request for mediation from any party who submitted comment at the public hearing, the board shall appoint a mediator within five days. The board shall require the parties to participate in mediation. The mediator shall not be a member of the board or its staff. The mediation period shall not extend beyond thirty days after the date mediation started, except by order of the board. Mediation shall be confined to the issues raised at the public hearing by the party requesting mediation. The mediator will submit a written recommendation to the board, based upon any mediation agreement reached between the parties for consideration by the board in its final decision. If there is no mediation agreement, the board may have a second public hearing to receive additional comment related to the mediation issues. Within ten days after the second public hearing, the board may receive additional written comment on the issues raised at the second public hearing from any party.

The board shall consider the comments raised at the second hearing before rendering its final decision. The board shall then determine whether, pursuant to board rules, a conservation district use permit shall be granted to authorize the geothermal development activities described in the application. The board shall grant a conservation district use permit if it finds that the applicant has demonstrated that:

- (1) The desired uses would not have unreasonable adverse health, environmental, or socio-economic effects on residents or surrounding property; and
- (2) The desired uses would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection; or
- (3) There are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to above.

A decision shall be made by the board within six months of the date a complete application was filed; provided that the time limit may be extended by agreement between the applicant and the board.

(e) If geothermal development activities are proposed within agricultural, rural, or urban districts and such proposed activities are not permitted uses pursuant to county general plan and zoning ordinances, then after receipt of a properly filed and completed application, including all required supporting data, the appropriate county authority shall conduct a public hearing. Upon appropriate request for mediation from any party who submitted comment at the public hearing, the county authority shall appoint a mediator within five days. The county authority shall require the parties to participate in mediation. The mediator shall not be an employee of any county agency or its staff. The mediation period shall not extend beyond thirty days after mediation started, except by order of the county authority. Mediation shall be confined to the issues raised at the public hearing by the party requesting mediation. The mediator will submit a written recommendation to the county authority, based upon any mediation agreement reached between the parties for consideration by the county authority in its final decision. If there is no mediation agreement, the county authority may have a second public hearing to receive additional comment related to the mediation issues. Within ten days after the second public hearing, the county authority may receive additional written comment on the issues raised at the second public hearing from any party.

The county authority shall consider the comments raised at the second hearing before rendering its final decision. The county authority shall then determine whether a geothermal resource permit shall be granted to authorize the geothermal development activities described in the application. The appropriate county authority shall grant a geothermal resource permit if it finds that applicant has demonstrated that:

- (1) The desired uses would not have unreasonable adverse health, environmental, or socio-economic effects on residents or surrounding property;
- (2) The desired uses would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection; and
- (3) That there are reasonable measures available to mitigate the unreasonable adverse effects or burdens referred to above.

Unless there is a mutual agreement to extend, a decision shall be made on the application by the appropriate county authority within six months of the date a complete application was filed; provided that the time limit may be extended by agreement between the applicant and the appropriate county authority.

(f) Requests for mediation shall be received by the board or county authority within five days after the close of the initial public hearing. Within five days thereafter, the board or county authority shall appoint a mediator. Any person submitting an appropriate request for mediation shall be notified by the board or county authority of the date, time, and place of the mediation conference by depositing such notice in the mail to the return address stated on the request for mediation. The notice shall be mailed no later than ten days before the start of the mediation conference. The conference shall be held on the island where the public hearing is held.



(g) Any decision made by an appropriate county authority or the board pursuant to a public hearing or hearings under this section may be appealed directly on the record to the intermediate appellate court for final decision and shall not be subject to a contested case hearing. Sections 91-14(b) and (g) shall govern the appeal, notwithstanding the lack of a contested case hearing on the matter. The appropriate county authority or the board shall provide a court reporter to produce a transcript of the proceedings at all public hearings under this section for purposes of an appeal.

(h) For the purposes of an appeal from a decision from a public hearing, the record shall include:

- (1) The application for the permit and all accompanying supporting documents, including but not limited to: reports, studies, affidavits, statements, and exhibits.
- (2) Staff recommendations submitted to the members of the agency in consideration of the application.
- (3) Oral and written public testimony received at the public hearings.
- (4) Written transcripts of the proceedings at the public hearings.
- (5) The written recommendation received by the agency from the mediator with any mediation agreement.
- (6) A statement of relevant matters noticed by the agency members at the public hearings.
- (7) The written decision of the agency issued in connection with the application and public hearings.
- (8) Other documents required by the board or county authority. [L 1983, c 296, pt of §3; am L 1984, c 151, §2; am L 1985, c 226, §1; am L 1986, c 167, §1, c 187, §1, and c 290, §1; am L 1987, c 372, §§2, 3 and c 378, §1; am L 1995, c 69, §9; am L 2006, c 91, §1]

#### Note

Chapters 177, 178, and 342 referred to in text are repealed.

#### Case Notes

Constitutional even though not subject to a contested case hearing; purpose is to assist in the location of geothermal resources development in areas of the lowest potential environmental impact. 8 H. App. 183, 797 P.2d 59.

Satisfies the United States Constitution. 8 H. App. 203, 797 P.2d 69.

Aggrieved party was not barred by exhaustion of remedies doctrine from applying to court for relief where section's appeal provisions were inapplicable and no other administrative recourse was afforded. 9 H. App. 143, 827 P.2d 1149.

**§205-5.2 Designation of areas as geothermal resource subzones.** (a) Beginning in 1983, the board of land and natural resources shall conduct a county-by-county assessment of areas with geothermal potential for the purpose of designating geothermal resource subzones. This assessment shall be revised or updated at the discretion of the board, but at least once each five years beginning in 1988. Any property owner or person with an interest in real property wishing to have an area designated as a geothermal resource subzone may submit a petition for a geothermal resource subzone designation in the form and manner established by rules and regulations adopted by the board. An environmental impact statement as defined under chapter 343 shall not be required for the assessment of areas under this section.

(b) The board's assessment of each potential geothermal resource subzone area shall examine factors to include, but not be limited to:

- (1) The area's potential for the production of geothermal energy;
- (2) The prospects for the utilization of geothermal energy in the area;
- (3) The geologic hazards that potential geothermal projects would encounter;
- (4) Social and environmental impacts;
- (5) The compatibility of geothermal development and potential related industries with present uses of surrounding land and those uses permitted under the general plan or land use policies of the county in which the area is located;
- (6) The potential economic benefits to be derived from geothermal development and potential related industries; and
- (7) The compatibility of geothermal development and potential related industries with the uses permitted under chapter 183C and section 205-2, where the area falls within a conservation district.

In addition, the board shall consider, if applicable, objectives, policies, and guidelines set forth in part I of chapter 205A, and chapter 226.

(c) Methods for assessing the factors in subsection (b) shall be left to the discretion of the board and may be based on currently available public information.

(d) After the board has completed a county-by-county assessment of all areas with geothermal potential or after any subsequent update or review, the board shall compare all areas showing geothermal potential within each county, and shall propose areas for potential designation as geothermal resource subzones based upon a preliminary finding that the areas are those sites which best demonstrate an acceptable balance between the factors set forth in subsection (b). Once a proposal is made, the board shall conduct public hearings pursuant to this subsection, notwithstanding any contrary provision related to public hearing procedures. Contested case procedures are not applicable to these hearings.

- (1) Hearings shall be held at locations which are in close proximity to those areas proposed for designation. A public notice of hearing, including a description of the proposed areas, an invitation for public comment, and a statement of the date, time, and place where persons may be heard shall be given and mailed no less than twenty days before the hearing. The notice shall be given on three separate days statewide and in the county in which the hearing is to be held. Copies of the

notice shall be mailed to the department of business, economic development, and tourism, to the planning commission and planning department of the county in which the proposed areas are located, and to all owners of record of real estate within, and within one thousand feet of, the area being proposed for designation as a geothermal resource subzone. The notification shall be mailed to the owners and addresses as shown on the current real property tax rolls at the county real property tax office. Upon that action, the requirement for notification of owners of land is completed. For the purposes of this subsection, notice to one co-owner shall be sufficient notice to all co-owners;

- (2) The hearing shall be held before the board, and the authority to conduct hearings shall not be delegated to any agent or representative of the board. All persons and agencies shall be afforded the opportunity to submit data, views, and arguments either orally or in writing. The department of business, economic development, and tourism and the county planning department shall be permitted to appear at every hearing and make recommendations concerning each proposal by the board; and
- (3) At the close of the hearing, the board may designate areas as geothermal resource subzones or announce the date on which it will render its decision. The board may designate areas as geothermal resource subzones only upon finding that the areas are those sites which best demonstrate an acceptable balance between the factors set forth in subsection (b). Upon request, the board shall issue a concise statement of its findings and the principal reasons for its decision to designate a particular area.
- (e) The designation of any geothermal resource subzone may be withdrawn by the board of land and natural resources after proceedings conducted pursuant to chapter 91. The board shall withdraw a designation only upon finding by a preponderance of the evidence that the area is no longer suited for designation; provided that the designation shall not be withdrawn for areas in which active exploration, development, production or distribution of electrical energy from geothermal sources or direct use applications of geothermal resources are taking place.
- (f) This Act shall not apply to any active exploration, development or production of electrical energy from geothermal sources or direct use applications of geothermal resources taking place on June 14, 1983, provided that any expansion of such activities shall be carried out in compliance with its provisions. [L 1983, c 296, pt of §3; am L 1986, c 124, §1, c 187, §2, and c 290, §2; am L 1987, c 336, §7 and c 378, §2; am L 1990, c 293, §8; am L 1995, c 11, §10 and c 69, §10; am L 1998, c 2, §61]

#### Note

In subsection (f) "This Act" refers to L 1983, c 296.

#### Case Notes

Statute sufficiently clear to comport with due process. 69 H. 255, 740 P.2d 28.

**[§205-5.3] Exploratory wells.** Notwithstanding section 205-5.1(a), (d), and (e), or any other provision of law, any exploratory well drilled for scientific purposes or to determine the economic viability of a geothermal resource, may be permitted outside of a designated geothermal resource subzone, regardless of land use classification, provided that the activity is limited to exploration only. All applicable state and county permits shall be required to drill such exploratory wells which shall not be exempt from the requirements of the environmental impact statement law, chapter 343. [L 1990, c 207, §2]

**§205-6 Special permit.** (a) Subject to this section, the county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use the person's land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired. Each county may establish the appropriate fee for processing the special permit petition. Copies of the special permit petition shall be forwarded to the land use commission, the office of planning, and the department of agriculture for their review and comment.

(b) The planning commission, upon consultation with the central coordinating agency, except in counties where the planning commission is advisory only in which case the central coordinating agency, shall establish by rule or regulation, the time within which the hearing and action on petition for special permit shall occur. The county planning commission shall notify the land use commission and such persons and agencies that may have an interest in the subject matter of the time and place of the hearing.

(c) The county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter; provided that a use proposed for designated important agricultural lands shall not conflict with any part of this chapter. A decision in favor of the applicant shall require a majority vote of the total membership of the county planning commission.

(d) Special permits for land the area of which is greater than fifteen acres or for lands designated as important agricultural lands shall be subject to approval by the land use commission. The land use commission may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the applicant.

(e) A copy of the decision, together with the complete record of the proceeding before the county planning commission on all special permit requests involving a land area greater than fifteen acres or for lands designated as important agricultural lands, shall be transmitted to the land use commission within sixty days after the decision is rendered.

Within forty-five days after receipt of the complete record from the county planning commission, the land use commission shall act to approve, approve with modification, or deny the petition. A denial either by the county planning commission or by the land use commission, or a modification by the land use commission, as the case may be, of the desired use shall be

appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawaii rules of civil procedure.

(f) Land uses substantially involving or supporting educational ecotourism, related to the preservation of native Hawaiian endangered, threatened, proposed, and candidate species, that are allowed in an approved habitat conservation plan under section 195D-21 or safe harbor agreement under section 195D-22, which are not identified as permissible uses within the agricultural district under sections 205-2 and 205-4.5, may be permitted in the agricultural district by special permit under this section, on lands with soils classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U. [L 1963, c 205, pt of §2; Supp, §98H-6; HRS §205-6; am L 1970, c 136, §1; am L 1976, c 4, §2; am L 1978, c 166, §1; am L 1979, c 221, §1; gen ch 1985; am L 1998, c 237, §6; am L 2005, c 183, §5]

#### Rules of Court

Appeal to circuit court, see HRCF rule 72.

#### Attorney General Opinions

Special permits cannot be granted to authorize uses which have effect of making boundary change or creating new district. Att. Gen. Op. 63-37.

Authority of land use commission to modify permit approved by county commission discussed. Att. Gen. Op. 68-30.

Land use commission is not authorized to review county planning commission's denial of request for modification of special permit. Att. Gen. Op. 77-4.

#### Law Journals and Reviews

"Urban Type Residential Communities in the Guise of Agricultural Subdivisions:" Addressing an Impermissible Use of Hawai'i's Agricultural District. 25 UH L. Rev. 199.

#### Case Notes

Where plaintiffs alleged violations of Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and made other claims based on county planning commission's denial of a special use permit sought under this section: among other things, no Eleventh Amendment immunity for the county; RLUIPA, assuming it was constitutional, did not facially invalidate Hawaii's land use law; strict scrutiny test would apply in assessing county's past actions in further proceedings in the case. 229 F. Supp. 2d 1056.

Former provision requiring that a public hearing on an application for a special permit be held within one hundred twenty days was directory not mandatory. 62 H. 666, 619 P.2d 95.

Validity of attaching conditions for approval of special permit. 62 H. 666, 619 P.2d 95.

Recreational theme park on agricultural land was not "unusual and reasonable use" which would qualify for special permit. 64 H. 265, 639 P.2d 1079.

"Communications equipment buildings" and "utility lines" in §205-4.5(a)(7) do not encompass "telecommunications antennas" or "transmission antennas" such as a cellular telephone tower; public utility thus had to apply for a special permit under this section to place the tower in a state agricultural district. 90 H. 384, 978 P.2d 822.

**§205-7 Adoption, amendment or repeal of rules.** The land use commission shall adopt, amend or repeal rules relating to matters within its jurisdiction in the manner prescribed in chapter 91. [L 1963, c 205, pt of §2; Supp, §98H-7; HRS §205-7; am L 1975, c 193, §6]

#### Cross References

Administrative procedure, see chapter 91.

**§205-8 Nonconforming uses.** The lawful use of land or buildings existing on the date of establishment of any interim agricultural district and rural district in final form may be continued although the use, including lot size, does not conform to this chapter; provided that no nonconforming building shall be replaced, reconstructed, or enlarged or changed to another nonconforming use and no nonconforming use of land shall be expanded or changed to another nonconforming use. In addition, if any nonconforming use of land or building is discontinued or held in abeyance for a period of one year, the further continuation of such use shall be prohibited. [L 1963, c 205, pt of §2; Supp, §98H-8; HRS §205-8]

**§§205-9 to 11 REPEALED.** L 1975, c 193, §§7 to 9.

**§205-12 Enforcement.** The appropriate officer or agency charged with the administration of county zoning laws shall enforce within each county the use classification districts adopted by the land use commission and the restriction on use and the condition relating to agricultural districts under section 205-4.5 and shall report to the commission all violations. [L 1963, c 205, pt of §2; Supp, §98H-12; HRS §205-12; am L 1976, c 199, §2]

#### Attorney General Opinions

Counties' responsibility for enforcement includes taking necessary actions against violators; such enforcement covers all land use district classifications and land use district regulations, except those relating to conservation districts. Att. Gen. Op. 70-22.

#### Law Journals and Reviews

"Urban Type Residential Communities in the Guise of Agricultural Subdivisions:" Addressing an Impermissible Use of Hawai'i's Agricultural District. 25 UH L. Rev. 199.

**§205-13 Penalty for violation.** Any person who violates any provision under section 205-4.5, or any regulation established relating thereto, shall be fined not more than \$5,000, and

any person who violates any other provision of this chapter, or any regulation established relating thereto, shall be fined not more than \$1,000.

If any person cited for a violation under this chapter fails to remove such violation within six months of such citation and the violation continues to exist, such person shall be subject to a citation for a new and separate violation. There shall be a fine of not more than \$5,000 for any additional violation.

Prior to the issuance of any citation for a violation, the appropriate enforcement officer or agency shall notify the violator and the mortgagee, if any, of such violation, and the violator or the mortgagee, if any, shall have not more than sixty days to cure the violation before citation for a violation is issued. [L 1963, c 205, pt of §2; Supp, §98H-13; HRS §205-13; am L 1976, c 199, §3]

**§205-14 Adjustments of assessing practices.** Upon the adoption of district boundaries, certified copies of the classification maps showing the district boundaries shall be filed with the department of taxation. Thereafter, the department of taxation shall, when making assessments of property within a district, give consideration to the use or uses that may be made thereof as well as the uses to which it is then devoted. [L 1963, c 205, pt of §2; Supp, §98H-14; HRS §205-14]

**§205-15 Conflict.** Except as specifically provided by this chapter and the rules adopted thereto, neither the authority for the administration of chapter 183C nor the authority vested in the counties under section 46-4 shall be affected. [L 1963, c 205, pt of §2; Supp, §98H-15; HRS §205-15; am L 1995, c 11, §11 and c 69, §11]

**§205-16 Compliance with the Hawaii state plan.** No amendment to any land use district boundary nor any other action by the land use commission shall be adopted unless such amendment or other action conforms to the Hawaii state plan. [L 1975, c 193, §12; am L 1985, c 230, §5]

**§§205-16.1, 16.2 REPEALED.** L 1985, c 230, §§6, 7.

**§205-17 Land use commission decision-making criteria.** In its review of any petition for reclassification of district boundaries pursuant to this chapter, the commission shall specifically consider the following:

- (1) The extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan and relates to the applicable priority guidelines of the Hawaii state plan and the adopted functional plans;
- (2) The extent to which the proposed reclassification conforms to the applicable district standards;
- (3) The impact of the proposed reclassification on the following areas of state concern:
  - (A) Preservation or maintenance of important natural systems or habitats;
  - (B) Maintenance of valued cultural, historical, or natural resources;

- (C) Maintenance of other natural resources relevant to Hawaii's economy, including agricultural resources;
  - (D) Commitment of state funds and resources;
  - (E) Provision for employment opportunities and economic development; and
  - (F) Provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups;
- (4) The standards and criteria for the reclassification or rezoning of important agricultural lands in section 205-50; and
  - (5) The representations and commitments made by the petitioner in securing a boundary change. [L 1985, c 230, §1; am L 1990, c 261, §2; am L 2005, c 183, §6]

#### Case Notes

In order to fulfill its duty to preserve and protect customary and traditional native Hawaiian rights to the extent feasible, the land use commission, in its review of a petition for reclassification of district boundaries, must, at a minimum, make specific findings and conclusions as to the identity and scope of the valued cultural, historical, or natural resources, the extent those resources will be affected or impaired by the proposed action, and any feasible action the commission may take to reasonably protect such native Hawaiian rights if they are found to exist. 94 H. 31, 7 P.3d 1068.

Where land use commission allowed petitioner to direct the manner in which customary and traditional native Hawaiian practices would be preserved and protected by the proposed development, prior to any specific findings and conclusions by the commission as to the effect of the proposed reclassification on such practices, the commission failed to satisfy its statutory and constitutional obligations; in delegating its duty to protect native Hawaiian rights, the commission delegated a non-delegable duty and thereby acted in excess of its authority. 94 H. 31, 7 P.3d 1068.

Where land use commission failed to enter any definitive findings or conclusions as to the extent of the native Hawaiian practitioners' exercise of customary and traditional practices in the subject area nor made any specific findings or conclusions regarding the effects on or the impairment of any Hawaii constitution, article XII, §7 uses, or the feasibility of the protection of those uses, the commission, as a matter of law, failed to satisfy its statutory and constitutional obligations. 94 H. 31, 7 P.3d 1068.

**§205-18 Periodic review of districts.** The office of planning shall undertake a review of the classification and districting of all lands in the State, within five years from December 31, 1985, and every fifth year thereafter. The office, in its five-year boundary review, shall focus its efforts on reviewing the Hawaii state plan, county general plans, and county development and community plans. Upon completion of the five-year boundary review, the office shall submit a report of the findings to the commission. The office may initiate state land use boundary amendments which it deems appropriate to conform to these plans. The office may seek



assistance of appropriate state and county agencies and may employ consultants and undertake studies in making this review. [L 1985, c 230, §2; am L 1987, c 336, §7; am L 1988, c 352, §3; am L 1996, c 299, §3]

## PART II. SHORELINE SETBACKS

**§§205-31 to 37 REPEALED.** L 1986, c 258, §3.

### Cross References

For present provisions, see §§205A-41 to 49.

## [PART III.] IMPORTANT AGRICULTURAL LANDS

### Cross References

Acquisition of resource value lands, see chapter 173A.

Legacy land conservation commission, see §§173A-2.4 to 2.6.

### Law Journals and Reviews

Avoiding the Next Hokuli'a: The Debate over Hawai'i's Agricultural Subdivisions. 27 UH L. Rev. 441.

**[§205-41] Declaration of policy.** It is declared that the people of Hawaii have a substantial interest in the health and sustainability of agriculture as an industry in the State. There is a compelling state interest in conserving the State's agricultural land resource base and assuring the long-term availability of agricultural lands for agricultural use to achieve the purposes of:

- (1) Conserving and protecting agricultural lands;
- (2) Promoting diversified agriculture;
- (3) Increasing agricultural self-sufficiency; and
- (4) Assuring the availability of agriculturally suitable lands,

pursuant to article XI, section 3, of the Hawaii state constitution. [L 2005, c 183, pt of §2]

### Note

L 2005, c 183, §§9 and 10 provide:

“SECTION 9. (a) It is the intent of this Act [enacting sections 205-41 to 52 and amending sections 205-3.1, 4, 6, and 17, Hawaii Revised Statutes]:

- (1) That agricultural incentive programs to promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands for

agricultural use shall be developed concurrently with the process of identifying important agricultural lands as required under section 2 of this Act [sections 205-41 to 52]; and

- (2) That the designation of important agricultural lands and adoption of maps by the land use commission pursuant to section 2 of this Act [sections 205-41 to 52] shall take effect only upon the enactment of legislation establishing incentives and protections for important agricultural lands contemplated by section [205-46] and shall be satisfied by:
  - (A) Providing a declaration of satisfaction within the Act that establishes incentives for important agricultural lands; or
  - (B) Having the legislature adopt a concurrent resolution declaring the satisfaction of implementing incentives for important agricultural lands by identifying the specific measures or Acts that establish incentives for important agricultural lands.

(b) Pursuant to section [205-46], Hawaii Revised Statutes, the department of agriculture, with the assistance of the department of taxation, shall contract appropriate meeting facilitation and cost-benefit analysis services to develop and recommend a package of proposals for agricultural incentives and other measures that promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands.

The department of agriculture, in consultation with the department of taxation, shall use consultants to promote a facilitated meeting process and deliberation and seek the assistance and input from the Hawaii Farm Bureau Federation, landowners, affected state and county agencies, other stakeholders, and persons with relevant expertise that are necessary to develop and implement a comprehensive and integrated framework of incentives and programs that will promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands for agricultural use in Hawaii, including tax policy, agricultural business development and financing, marketing, and agricultural land use techniques. The meeting facilitators shall ensure that stakeholder discussions are inclusive and use a consistent voting procedure.

The department of agriculture shall report stakeholder findings and recommendations, including proposed legislation and a recommended minimum criteria for determining when the “enactment of legislation establishing incentives and protection” has occurred for the purposes of this Act, to the legislature no later than twenty days before the convening of the regular session of 2007. The report shall include an analysis of the impacts and benefits of its recommendations, a record of the stakeholder group's

process and deliberations, and shall provide the supporting rationale for the incentives being proposed.

(c) Incentives and other programs to promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands for agricultural use in Hawaii by farmers and landowners to be considered by the department of agriculture shall include but not be limited to the following:

- (1) Assistance in identifying federal, state, and private grant and loan resources for agricultural business planning and operations, assistance with grant and loan application processes, and the processing of grants and loans;
- (2) Real property tax systems that support the needs of agriculture, including property tax assessment of land and improvements used or held only for use in agriculture based on agricultural use value rather than fair market value;
- (3) Reduced infrastructure requirements and facilitated building permit processes for the construction of dedicated agricultural structures;
- (4) Tax incentives that include but are not limited to:
  - (A) Tax credits for the sale or donation of agricultural easements on important agricultural lands; and
  - (B) General excise tax exemption for retail sales of farm produce;
- (5) Incentives that promote investment in agricultural businesses or value-added agricultural development, and other agricultural financing mechanisms;
- (6) Incentives and programs that promote long-term or permanent agricultural land protection, and the establishment of a dedicated funding source for these programs;
- (7) Establishment of a permanent state revolving fund, escalating tax credits based on the tax revenues generated by increased investment or agricultural activities conducted on important agricultural lands, and dedicated funding sources to provide moneys for incentives and other programs;
- (8) Establishment of a means to analyze the conformity of state-funded projects with the intent and purposes of part I of this Act [sections 205-41 to 52], and a mechanism for mitigation measures when projects are not in conformance;
- (9) Institution of a requirement for the preparation of an agricultural impact statement that would include mitigation measures for adverse impacts for proposed state or county

rulemaking that may affect agricultural activities, operations, and agricultural businesses on important agricultural lands; and

- (10) Other programs to carry out the intent of part I of this Act [sections 205-41 to 52].

SECTION 10. Within one year of the adoption of maps of important agricultural lands by the land use commission for the lands within the jurisdiction of each county, all state agencies shall report to the department of agriculture on the impact of projects and programs on the designated important agricultural lands and sustained agricultural use of these lands. State agencies shall develop implementation programs, as needed, to ensure that their programs are supportive of agriculture and consistent with the intent and purposes of this Act."

**[§205-42] Important agricultural lands; definition and objectives.** (a) As used in this part, unless the context otherwise requires, "important agricultural lands" means those lands, identified pursuant to this part, 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.
- (b) The objective for the identification of important agricultural lands is to identify and plan for 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 increase agricultural self-sufficiency for current and future generations. To achieve this objective, the State shall:
- (1) Promote agricultural development and land use planning that delineates blocks of productive agricultural land and areas of agricultural activity for protection from the encroachment of nonagricultural uses; and
  - (2) Establish incentives that promote:
    - (A) Agricultural viability;
    - (B) Sustained growth of the agriculture industry; and
    - (C) The long-term agricultural use and protection of these productive agricultural lands. [L 2005, c 183, pt of §2]

**[§205-43] Important agricultural lands; policies.** State and county agricultural policies, tax policies, land use plans, ordinances, and rules shall promote the long-term viability of agricultural use of important agricultural lands and shall be consistent with and implement the following policies:

- (1) Promote the retention of important agricultural lands in blocks of contiguous, intact, and functional land units large enough to allow flexibility in agricultural production and management;
- (2) Discourage the fragmentation of important agricultural lands and the conversion of these lands to nonagricultural uses;
- (3) Direct nonagricultural uses and activities from important agricultural lands to other areas and ensure that uses on important agricultural lands are actually agricultural uses;
- (4) Limit physical improvements on important agricultural lands to maintain affordability of these lands for agricultural purposes;
- (5) Provide a basic level of infrastructure and services on important agricultural lands limited to the minimum necessary to support agricultural uses and activities;
- (6) Facilitate the long-term dedication of important agricultural lands for future agricultural use through the use of incentives;
- (7) Facilitate the access of farmers to important agricultural lands for long-term viable agricultural use; and
- (8) Promote the maintenance of essential agricultural infrastructure systems, including irrigation systems. [L 2005, c 183, pt of §2]

**[§205-44] Standards and criteria for the identification of important agricultural lands.** The standards and criteria in this section shall be used to identify important agricultural lands. Lands identified as important agricultural lands need not meet every standard and criteria listed below. Rather, lands meeting any of the criteria below shall be given initial consideration; provided 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 state constitution and the objectives and policies for important agricultural lands in sections 205-42 and 205-43. The standards and criteria shall be as follows:

- (1) Land currently used for agricultural production;
- (2) Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops;
- (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;
- (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;
- (5) Land with sufficient quantities of water to support viable agricultural production;
- (6) Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county;

- (7) Land that contributes to maintaining a critical land mass important to agricultural operating productivity; and
- (8) Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power. [L 2005, c 183, pt of §2]

**[§205-45] Petition by farmer or landowner.** (a) A farmer or landowner with lands qualifying under section 205-44 may file a petition for declaratory ruling with the commission at any time in the designation process.

(b) The petition for declaratory ruling shall be submitted in accordance with subchapter 14 of the commission's rules and shall include:

- (1) Tax map keys of the land to be designated along with verification and authorization from the applicable landowners;
- (2) Proof of qualification for designation under section 205-44, respecting a regional perspective; and
- (3) The current or planned agricultural use of the area to be designated.

(c) The commission shall review the petition and the accompanying submissions to evaluate the qualifications of the land for designation as important agricultural lands in accordance with section 205-44. If the commission, after its review and evaluation, finds that the lands qualify for designation as important agricultural lands under this part, 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.

(d) Designating important agricultural lands by the commission shall not be considered as an amendment to district boundaries under sections 205-3.1 and 205-4 or become effective prior to legislative enactment of protection and incentive measures for important agricultural land and agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.

(e) Farmers or landowners with lands qualifying under section 205-44 may file petitions for a declaratory ruling to designate lands as important agricultural lands following the legislative enactment of protection and incentive measures for important agricultural lands and agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005. [L 2005, c 183, pt of §2]

#### Note

Section 9 of Act 183, Session Laws of Hawaii 2005, is printed after section 205-41.

Designations made pursuant to this section take effect at any time after incentives and protections for important agricultural lands and agricultural viability are enacted. L 2005, c 183, §14(1).

Land use commission rules, see chapter 15-15, Hawaii Administrative Rules.



**[§205-46] Incentives for important agricultural lands.** (a) To achieve the long-term agricultural viability and use of important agricultural lands, the State and each county shall ensure that their:

- (1) Agricultural development, land use, water use, regulatory, tax, and land protection policies; and
- (2) Permitting and approval procedures,

enable and promote the economic sustainability of agriculture.

Agricultural operations occurring on important agricultural lands shall be eligible for incentives and protections provided by the State and counties pursuant to this section to promote the viability of agricultural enterprise on important agricultural lands and to assure the availability of important agricultural lands for long-term agricultural use.

(b) State and county incentive programs shall provide preference to important agricultural lands and agricultural businesses on important agricultural lands. The State and each county shall cooperate in program development to prevent duplication of and to streamline and consolidate access to programs and services for agricultural businesses located on important agricultural lands.

(c) 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, including but not limited to:

- (1) Grant assistance;
- (2) Real property tax systems that support the needs of agriculture, including property tax assessments based on agricultural use valuation;
- (3) Reduced infrastructure requirements and facilitated building permit processes for dedicated agricultural structures;
- (4) Tax incentives to offset operational costs, promote agricultural business viability, and promote the long-term protection of important agricultural lands;
- (5) Agricultural business planning, marketing, and implementation grants;
- (6) Tax incentives and programs for equity investments and financing for agricultural operations, including agricultural irrigation systems;
- (7) Other programs and mechanisms that promote investment in agricultural businesses or agricultural land protection, such as the purchase of development rights;
- (8) State funding mechanisms to fund business viability and land protection programs;
- (9) Water regulations and policies that provide farmers of important agricultural lands access to adequate and cost-effective sources of water;
- (10) Other measures that would ensure that state capital investments, projects, programs, and rules are consistent with this part; and

- (11) Agricultural education and training for new farmers; upgrading the skills of existing farmers and other agriculture-related employees through the use of mentoring, business incubators, and public or private scholarships; and increasing the returns of farming by adding value to food processing and other tools and methods.

(d) State and county agencies shall review the protection and incentive measures enacted for important agricultural lands and agricultural viability pursuant to this chapter at least every five years to:

- (1) Determine their effectiveness in sustaining agriculture in Hawaii, assuring agricultural diversification, and increasing agricultural self-sufficiency;
- (2) Determine whether the effectiveness of tax credits or incentive programs will be enhanced by creating revolving funds or increasing rates based upon the tax revenues generated by enhanced investment and agricultural activities on important agricultural lands; and
- (3) Modify measures and programs as needed.

(e) This section shall apply only to those lands designated as important agricultural lands pursuant to sections 205-45 and 205-49. [L. 2005, c 183, pt of §2]

**[§205-47] Identification of important agricultural lands; county process.** *[See note below.]* (a) Each county shall identify and map potential important agricultural lands within its jurisdiction based on the standards and criteria in section 205-44 and the intent of this part, except lands that have been designated, through the state land use, zoning, or county planning process, for urban use by the State or county.

(b) Each county shall develop maps of potential lands to be considered for designation as important agricultural lands in consultation and cooperation with landowners, the department of agriculture, agricultural interest groups, including representatives from the Hawaii Farm Bureau Federation and other agricultural organizations, the United States Department of Agriculture – Natural Resources Conservation Service, the office of planning, and other groups as necessary.

(c) Each county, through its planning department, shall develop an inclusive process for public involvement in the identification of potential lands and the development of maps of lands to be recommended as important agricultural lands, including a series of public meetings throughout the identification and mapping process. The planning departments may also establish one or more citizen advisory committees on important agricultural lands to provide further public input, utilize an existing process (such as general plan, development plan, community plan), or employ appropriate existing and adopted general plan, development plan, or community plan maps.

(d) The counties shall take notice of those lands that have already been designated as important agricultural lands by the commission.

Upon identification of potential lands to be recommended to the county council as potential important agricultural lands, the counties shall take reasonable action to notify each

owner of those lands by mail or posted notice on the affected lands to inform them of the potential designation of their lands.

In formulating its final recommendations to the respective county councils, the planning departments shall report on the manner in which the important agricultural lands mapping relates to, supports, and is consistent with the:

- (1) Standards and criteria set forth in section 205-44;
- (2) County's adopted land use plans, as applied to both the identification and exclusion of important agricultural lands from such designation;
- (3) Comments received from government agencies and others identified in subsection (b);
- (4) Viability of existing agribusinesses; and
- (5) Representations or position statements of the owners whose lands are subject to the potential designation.

(e) The important agricultural lands maps shall be submitted to the county council for decision-making. The county council shall adopt the maps, with or without changes, by resolution. The adopted maps shall be transmitted to the land use commission for further action pursuant to section 205-48. [L 2005, c 183, pt of §2]

#### Note

L 2005, c 183, §7 provides:

"SECTION 7. Each county shall submit its report and maps with recommendations for lands eligible for designation as important agricultural lands to the land use commission no later than sixty months from the date of county receipt of state funds appropriated for the identification process. Upon receipt of the county maps, the land use commission shall review and adopt maps designating important agricultural lands to the State in accordance with section [205-49]."

Designations made pursuant to this section take effect three years after incentives and protections for important agricultural lands and agricultural viability are enacted. L 2005, c 183, §14(2).

**[§205-48] Receipt of maps of eligible important agricultural lands; land use commission.** (a) The land use commission shall receive the county recommendations and maps delineating those lands eligible to be designated important agricultural lands no sooner than the effective date of the legislative enactment of protection and incentive measures for important agricultural lands and agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.

(b) The department of agriculture and the office of planning shall review the county report and recommendations and provide comments to the land use commission within forty-five days of the receipt of the report and maps by the land use commission. The land use commission may also consult with the department of agriculture and the office of planning as needed.

- (c) State agency review shall be based on an evaluation of the degree that the:
- (1) County recommendations result in an identified resource base that meets the definition of important agricultural land and the objectives and policies for important agricultural lands in sections 205-42 and 205-43; and
- (2) County has met the minimum standards and criteria for the identification and mapping process in sections 205-44 and 205-47. [L 2005, c 183, pt of §2]

#### Note

Section 9 of Act 183, Session Laws of Hawaii 2005, is printed after section 205-41.

L 2005, c 183, §8 provides:

"SECTION 8. ...The land use commission shall submit annual reports on the progress of the counties in identifying and mapping important agricultural lands to the legislature no later than twenty days before the convening of the regular sessions of 2006 through 2009."

**[§205-49] Designation of important agricultural lands; adoption of important agricultural lands maps.** (a) After receipt of the maps of eligible important agricultural lands from the counties and the recommendations of the department of agriculture and the office of planning, the commission shall then proceed to identify and designate important agricultural lands, subject to section 205-45. The decision shall consider the county maps of eligible important agricultural lands; declaratory orders issued by the commission designating important agricultural lands during the three year period following the enactment of legislation establishing incentives and protections contemplated under section 205-46, as provided in section 9 of Act 183, Session Laws of Hawaii 2005; landowner position statements and representations; and any other relevant information.

In designating important agricultural lands in the State, pursuant to the recommendations of individual counties, the commission shall consider the extent to which:

- (1) The proposed lands meet the standards and criteria under section 205-44;
- (2) The proposed designation is necessary to meet the objectives and policies for important agricultural lands in sections 205-42 and 205-43; and
- (3) The commission has designated lands as important agricultural lands, pursuant to section 205-45; provided that 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.

Any decision regarding the designation of lands as important agricultural lands and the adoption of maps of those lands pursuant to this section shall be based upon written findings of fact and conclusions of law, presented in at least one public hearing conducted in the county where the land is located in accordance with chapter 91, that the subject lands meet the standards

and criteria set forth in section 205-44 and shall be approved by two-thirds of the membership to which the commission is entitled.

(b) Copies of the maps of important agricultural lands adopted under this section shall be transmitted to each county planning department and county council, the department of agriculture, the agribusiness development corporation, the office of planning, and other state agencies involved in land use matters. The maps of important agricultural lands shall guide all decision-making on the proposed reclassification or rezoning of important agricultural lands, state agricultural development programs, and other state and county land use planning and decision-making.

(c) The land use commission shall have the sole authority to interpret the adopted map boundaries delineating the important agricultural lands.

(d) The land use commission may designate lands as important agricultural lands and adopt maps for a designation pursuant to:

- (1) A farmer or landowner petition for declaratory ruling under section 205-45 at any time; or
- (2) The county process for identifying and recommending lands for important agricultural lands under section 205-47 no sooner than three years,

after the enactment of legislation establishing incentives and protections contemplated under section 205-46, as provided in section 9 of Act 183, Session Laws of Hawaii 2005. [L 2005, c 183, pt of §2]

#### Note

Section 9 of Act 183, Session Laws of Hawaii 2005, is printed after section 205-41.

**[§205-50] Standards and criteria for the reclassification or rezoning of important agricultural lands.** (a) Any land use district boundary amendment or change in zoning involving important agricultural lands identified pursuant to this chapter shall be subject to this section.

(b) Upon acceptance by the county for processing, any application for a special permit involving important agricultural lands shall be referred to the department of agriculture and the office of planning for review and comment.

(c) Any decision by the land use commission or county pursuant to this section shall specifically consider the following standards and criteria:

- (1) The relative importance of the land for agriculture based on the stock of similarly suited lands in the area and the State as a whole;
- (2) The proposed district boundary amendment or zone change will not harm the productivity or viability of existing agricultural activity in the area, or adversely affect the viability of other agricultural activities or operations that share infrastructure, processing, marketing, or other production-related costs or facilities with the agricultural activities on the land in question;

(3) The district boundary amendment or zone change will not cause the fragmentation of or intrusion of nonagricultural uses into largely intact areas of lands identified by the State as important agricultural lands that create residual parcels of a size that would preclude viable agricultural use;

(4) The public benefit to be derived from the proposed action is justified by a need for additional lands for nonagricultural purposes; and

(5) The impact of the proposed district boundary amendment or zone change on the necessity and capacity of state and county agencies to provide and support additional agricultural infrastructure or services in the area.

(d) Any decision pursuant to this section shall be based upon a determination that:

(1) On balance, the public benefit from the proposed district boundary amendment or zone change outweighs the benefits of retaining the land for agricultural purposes; and

(2) The proposed action will have no significant impact upon the viability of agricultural operations on adjacent agricultural lands.

(e) The standards and criteria of this section shall be in addition to:

(1) The decision-making criteria of section 205-17 governing decisions of the land use commission under this chapter; and

(2) The decision-making criteria adopted by each county to govern decisions of county decision-making authorities under this chapter.

(f) Any decision of the land use commission and any decision of any county on a land use district boundary amendment or change in zoning involving important agricultural lands shall be approved by the body responsible for the decision by a two-thirds vote of the membership to which the body is entitled.

(g) A farmer or landowner with qualifying lands may also petition the land use commission to remove the "important agricultural lands" designation from lands if a sufficient supply of water is no longer available to allow profitable farming of the land due to governmental actions, acts of God, or other causes beyond the farmer's or landowner's reasonable control. [L 2005, c 183, pt of §2]

**[§205-51] Important agricultural lands; county ordinances.** (a) Each county shall adopt ordinances that reduce infrastructure standards for important agricultural lands no later than the effective date of the legislative enactment of protection and incentive measures for important agricultural lands and agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.

(b) For counties without ordinances adopted pursuant to subsection (a), important agricultural lands designated pursuant to this part may be subdivided without county processing or standards; provided that:

- (1) None of the resulting lots shall be used solely for residential occupancy; and
- (2) The leasehold lots shall return to the original lot of record upon expiration or termination of the lease. [L 2005, c 183, pt of §2]

**Note**

Section 9 of Act 183, Session Laws of Hawaii 2005, is printed after section 205-41.

**[§205-52] Periodic review and amendment of important agricultural lands maps.**

The maps delineating important agricultural lands shall be reviewed in conjunction with the county general plan and community and development plan revision process, or at least once every ten years following the adoption of the maps by the land use commission; provided that the maps shall not be reviewed more than once every five years. Any review and amendment of the maps of important agricultural lands shall be conducted in accordance with this part. In these periodic reviews or petitions by the farmers or landowners for declaratory rulings, the “important agricultural lands” designation shall be removed from those important agricultural lands where the commission has issued a declaratory order that a sufficient supply of water is no longer available to allow profitable farming of these lands due to governmental actions, acts of God, or other causes beyond the farmer’s or landowner’s reasonable control. [L 2005, c 183, pt of §2]

DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT, AND TOURISM

Amendment and Compilation of Chapter 15-15  
Hawaii Administrative Rules  
October 11, 2013

SUMMARY

1. \$15-15-02 is repealed.
2. \$15-15-03 is amended.
3. \$15-15-05 is amended.
4. \$15-15-06 is amended.
5. \$15-15-06.1 is amended.
6. \$15-15-07 is amended.
7. \$15-15-08 is amended.
8. \$15-15-09 is amended.
9. \$15-15-10 is amended.
10. \$15-15-12 is repealed.
11. \$15-15-13 is amended.
12. \$15-15-14 is amended.
13. \$15-15-15 is amended.
14. \$15-15-16 is amended.
15. \$15-15-18 is amended.
16. \$15-15-19 is amended.
17. \$15-15-20 is amended.
18. \$15-15-21 is amended.
19. \$15-15-22 is amended.
20. \$15-15-25 is amended.
21. \$15-15-27 is amended.
22. \$15-15-29 is amended.
23. \$15-15-34 is amended.
24. \$15-15-34.1 is added.
25. \$15-15-35 is amended.
26. \$15-15-36 is amended.
27. \$15-15-37 is amended.
28. \$15-15-38 is amended.
29. \$15-15-39 is amended.
30. \$15-15-40 is amended.
31. \$15-15-41 is amended.
32. \$15-15-42 is amended.
33. \$15-15-44 is amended.
34. \$15-15-45 is amended.
35. \$15-15-45.1 is added.
36. \$15-15-45.2 is added.
37. \$15-15-47 is amended.
38. \$15-15-48 is amended.

39. \$15-15-49 is repealed.
40. \$15-15-50 is amended.
41. \$15-15-50.5 is added.
42. \$15-15-50.6 is added.
43. \$15-15-51 is amended.
44. \$15-15-52 is amended.
45. \$15-15-53 is amended.
46. \$15-15-54 is amended.
47. \$15-15-55 is amended.
48. \$15-15-55.1 is amended.
49. \$15-15-56 is amended.
50. \$15-15-57 is amended.
51. \$15-15-58 is amended.
52. \$15-15-59 is amended.
53. \$15-15-60 is amended.
54. \$15-15-61 is amended.
55. \$15-15-62 is amended.
56. \$15-15-63 is amended.
57. \$15-15-64 is repealed.
58. \$15-15-66 is amended.
59. \$15-15-67 is amended.
60. \$15-15-68 is repealed.
61. \$15-15-69 is amended.
62. \$15-15-70 is amended.
63. \$15-15-70.1 is added.
64. \$15-15-74 is amended.
65. \$15-15-76 is amended.
66. \$15-15-77 is amended.
67. \$15-15-78 is amended.
68. \$15-15-79 is amended.
69. \$15-15-80 is amended.
70. \$15-15-82 is amended.
71. \$15-15-82.1 is added.
72. \$15-15-83 is amended.
73. \$15-15-84 is amended.
74. \$15-15-85 is amended.
75. \$15-15-85.1 is added.
76. \$15-15-86 is amended.
77. \$15-15-87 is amended.
78. \$15-15-88 is amended.
79. \$15-15-89 is amended.
80. \$15-15-90 is amended.
81. \$15-15-92 is amended.
82. \$15-15-93 is amended.
83. \$15-15-94 is amended.
84. \$15-15-95 is amended.
85. \$15-15-95.1 is added.
86. \$15-15-96 is amended.
87. \$15-15-96.1 is added.
88. \$15-15-97 is amended.
89. \$15-15-97.2 is added.



90. §15-15-98 is amended.
91. §15-15-99 is amended.
92. §15-15-100 is amended.
93. §15-15-101 is amended.
94. §15-15-102 is repealed.
95. §15-15-103 is amended.
96. §15-15-104 is amended.
97. §15-15-105 is amended.
98. §15-15-106 is amended.
99. §15-15-107 is amended.
100. §15-15-107.1 is added.
101. §15-15-109 is amended.
102. §15-15-110 is amended.
103. §15-15-120 is added.
104. §15-15-121 is added.
105. §15-15-122 is added.
106. §15-15-123 is added.
107. §15-15-124 is added.
108. §15-15-125 is added.
109. §15-15-126 is added.
110. §15-15-127 is added.
111. §15-15-128 is added.
112. Subchapter 18 is repealed.
113. Chapter 15 is compiled

## "HAWAII ADMINISTRATIVE RULES

### TITLE 15

#### DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

#### CHAPTER 15

#### LAND USE COMMISSION RULES

##### Subchapter 1 General Provisions

§15-15-01	Purpose
§15-15-02	Repealed
§15-15-03	Definitions
§15-15-04	Grammatical usage
§15-15-05	Office and office hours
§15-15-06	Chairperson and vice-chairperson
§15-15-06.1	Hearings officer
§15-15-07	Executive officer
§15-15-08	Chief clerk
§15-15-09	Public records
§15-15-10	Meetings; generally
§15-15-11	Executive meetings
§15-15-12	Repealed
§15-15-13	Quorum and number of votes necessary for a decision
§15-15-14	Removal of persons from meetings
§15-15-15	Minutes of meetings
§15-15-16	Computation of time

##### Subchapter 2 Establishment of State Land Use Districts

§15-15-17	Districts; district maps
§15-15-18	Standards for determining "U" urban district boundaries
§15-15-19	Standards for determining "A" agricultural district boundaries
§15-15-20	Standards for determining "C" conservation district boundaries
§15-15-21	Standards for determining "R" rural district boundaries
§15-15-22	Interpretation of district boundaries

### Subchapter 3 Permissible Land Uses

\$15-15-23	Permissible uses; generally
\$15-15-24	Permissible uses within the "U" urban district
\$15-15-25	Permissible uses within the "A" agricultural district
\$15-15-26	Permissible uses within the "C" conservation district
\$15-15-27	Permissible uses within the "R" rural district

### Subchapter 4 Non-conformance

\$15-15-28	Statement of intent
\$15-15-29	Non-conforming uses of structures and lands
\$15-15-30	Non-conforming areas and parcels
\$15-15-31	Casual or illegal use of land
\$15-15-32	Existence of non-conforming use is a question of fact
\$15-15-33	Illegal uses

### Subchapter 5 Proceedings Before the Commission

\$15-15-34	Quasi-judicial proceedings; waiver or suspension of rules
\$15-15-34.1	Verbatim transcripts
\$15-15-35	Appearance before the commission
\$15-15-36	Decisions and orders
\$15-15-37	Filing documents; place and time
\$15-15-38	Format
\$15-15-39	Verification
\$15-15-40	Copies
\$15-15-41	Defective filings
\$15-15-42	Extensions of time
\$15-15-43	Amended pleadings

\$15-15-44	Retention of documents
\$15-15-45	Service of process
\$15-15-45.1	Fees
\$15-15-45.2	Fees Not Refundable

### Subchapter 6 Application Requirements for Boundary Amendment Petitions

\$15-15-46	Standing to initiate boundary amendments
\$15-15-47	Filing
\$15-15-48	Service of petition
\$15-15-49	Repealed
\$15-15-50	Form and contents of petition
\$15-15-50.5	Dismissal of petition for failure to provide additional information or correct defects
\$15-15-50.6	Withdrawal or amendment of petition

### Subchapter 7 Agency Hearing and Post Hearing Procedures

\$15-15-51	Notice of hearing for boundary amendment petitions
\$15-15-52	Intervention in proceeding for district boundary amendments
\$15-15-53	Intervention in other than district boundary amendment proceedings or important agricultural lands designation proceedings
\$15-15-54	Consolidation
\$15-15-55	Statement of position
\$15-15-55.1	Filing of exhibits
\$15-15-56	Stipulation as to findings of fact, conclusions of law, and conditions of reclassification
\$15-15-57	Prehearing conference; exchange of exhibits; prehearing conference order
\$15-15-58	Procedure for witnesses
\$15-15-59	Conduct of hearing
\$15-15-60	Presiding officer
\$15-15-61	Disqualification
\$15-15-62	Ex parte communications
\$15-15-63	Evidence
\$15-15-64	Repealed
\$15-15-65	Limiting testimony

\$15-15-66 Removal from proceeding  
 \$15-15-67 Co-counsel  
 \$15-15-68 Repealed  
 \$15-15-69 Subpoenas  
 \$15-15-70 Motions  
 \$15-15-70.1 Protective Orders  
 \$15-15-71 Substitution of parties  
 \$15-15-72 Correction of transcript  
 \$15-15-73 Post hearing procedures  
 \$15-15-74 Decision  
 \$15-15-75 Appeals  
 \$15-15-76 Re-application by the petitioner for  
 boundary amendment

Subchapter 8 Decision-Making Criteria for  
Boundary Amendments

\$15-15-77 Decision-making criteria for boundary  
 amendments  
 \$15-15-78 Incremental districting  
 \$15-15-79 Performance time

Subchapter 9 Post Hearing Procedures for  
Hearings Before the Commission

\$15-15-80 Briefs  
 \$15-15-81 Oral argument  
 \$15-15-82 Issuance of decision and orders  
 \$15-15-82.1 Stipulation as to findings of fact,  
 conclusions of law, conditions of  
 reclassification and decision and order  
 \$15-15-83 Service of decisions and orders  
 \$15-15-84 Reconsideration of decision

Subchapter 10 Post Hearing Procedures for Hearing  
Conducted by Hearings Officer

\$15-15-85 Recommendation of hearings officer  
 \$15-15-85.1 Proposed decision  
 \$15-15-86 Exception to hearings officer's report  
 and recommendations  
 \$15-15-87 Support of hearings officer's report and  
 recommendations  
 \$15-15-88 Oral argument before the commission  
 \$15-15-89 Repealed  
 \$15-15-89.1 Final decision

Subchapter 11 Conditions: Filing, Enforcement,  
Modification, Deletion

\$15-15-90 Imposition of conditions; generally  
 \$15-15-91 Applicability  
 \$15-15-92 Filing procedure for conditions imposed  
 by the commission  
 \$15-15-93 Enforcement of conditions,  
 representations, or commitments  
 \$15-15-94 Modification or deletion of conditions  
 or orders

Subchapter 12 Special Permits

\$15-15-95 Petition before county planning  
 commission  
 \$15-15-95.1 Applicability of subchapter 5  
 \$15-15-96 Decision and order by the land use  
 commission  
 \$15-15-96.1 Modification of special permit

Subchapter 13 Government Sponsored Housing  
Projects

\$15-15-97 Procedure for processing petitions for  
 housing projects under section 201H-  
 38, HRS  
 \$15-15-97.1 Repealed

Subchapter 14 Declaratory Orders

\$15-15-98 Who may petition  
 \$15-15-99 Petition for declaratory order; form and  
 contents  
 \$15-15-100 Declaratory orders; commission action  
 \$15-15-101 Declaratory orders; dismissal of  
 petition  
 \$15-15-102 Repealed  
 \$15-15-103 Declaratory orders; request for hearing  
 \$15-15-104 Applicability of declaratory order

Subchapter 15 Rulemaking Proceedings

\$15-15-105 Initiation of rulemaking proceedings  
 \$15-15-106 Rulemaking; form and contents of



petition  
 \$15-15-107 Rulemaking; action on petition  
 \$15-15-107.1 Commission action  
 \$15-15-108 Rulemaking; notice of public hearing  
 \$15-15-109 Rulemaking; conduct of public hearing  
 \$15-15-110 Emergency rulemaking

#### Subchapter 16 Land Use District Boundaries

\$15-15-111 Land use district boundaries  
 \$15-15-112 to 15-15-119 reserved

#### Subchapter 17 Important Agricultural Lands

15-15-120 Criteria and procedures for the identification of important agricultural lands  
 15-15-121 Petition by farmer or landowner  
 15-15-122 Petition by farmer or landowner for designation of important agricultural land and urban, rural or conservation reclassification  
 15-15-123 Adherence to chapter 343, HRS  
 15-15-124 Private landowner credits in important agricultural land proceeding  
 15-15-125 County identification of important agricultural lands  
 15-15-126 Criteria for designation of lands as important agricultural lands pursuant to county recommendation  
 15-15-127 Standards and criteria for the reclassification or rezoning of important agricultural lands  
 15-15-128 Periodic review and amendment of important agricultural lands maps

#### Subchapter 18 (Repealed)

**Historical Note:** This chapter is based substantially upon Rules of Practice and Procedure, Part I of the land use commission [Eff. 4/21/62; am and ren. 8/4/69; am and ren. 1/5/75; am and ren. 12/21/75; am 3/27/77; R 10/27/86] and State Land Use District Regulations, Part II of the land use commission [Eff. 8/23/64; am and ren. 8/4/69; am and ren. 1/5/75; am and

ren. 12/21/75; R 10/27/86] and land use commission rules, chapter 15-15. [Eff 10/27/86; am 3/20/87; am 7/12/93; am 3/24/94; am 7/18/94; am and comp 8/16/97; am and comp 5/08/00; am and comp

NOV 0 2 2013

#### SUBCHAPTER 1

##### GENERAL PROVISIONS

**\$15-15-01 Purpose.** This chapter governs the practice and procedure before the land use commission, and shall be construed to secure the just and efficient determination of every proceeding. This chapter shall be liberally construed to preserve, protect, and encourage the development and preservation of lands in the State for those uses to which they are best suited in the interest of public health and welfare of the people of the State of Hawai'i. The rules under this chapter are promulgated pursuant to authority provided by sections 205-1 and 205-7, HRS. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; comp

NOV 0 2 2013

(Auth: HRS §§205-1, 205-7) (Imp: HRS §205-7)

**\$15-15-02 REPEALED.** [R 8/16/97]

**\$15-15-03 Definitions.** As used in this chapter: "Accessory building or use" means a subordinate building or use which is incidental to and customary with a permitted use of the land.

"Agency" means each state or county board, commission, department, or office authorized by law to make rules or to adjudicate contested cases, except those in legislative or judicial branches.

"Agency hearing" refers only to a hearing held by an agency immediately prior to a judicial review of a contested case as provided in section 91-14, HRS.

"Agricultural park" means the same as in section 166-2, HRS.

"Building" means any structure having a roof, including, but not limited to, attached carports and similar structures.

"Chairperson" means the chairperson of the commission.

"Chief clerk" means the person who is responsible for receiving, recording, and preserving the records of

all matters brought before the commission.

"Commission" means the land use commission of the State of Hawai'i.

"Commissioner" means a member of the commission.

"Contested case" means a proceeding in which legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.

"District" means an area of land, including lands underwater, established as an urban, agricultural, conservation, or rural district.

"Dwelling" means a building designed or used exclusively for single family residential occupancy, but not including house trailer, multi-family unit, mobile home, hotel, or motel.

"Economic feasibility" means the degree to which the market demand for the proposed project, development, or use by the petitioner is accurately estimated and appears to be substantial enough to indicate the probability of a viable endeavor to justify the boundary amendment.

"Executive officer" means the individual appointed by the commission to be the administrative officer of the commission.

"Facsimile" means a document produced by a receiver of signals transmitted over telecommunication lines, after translating the signals, to produce a duplicate of an original document.

"Farm dwelling" means a single-family dwelling located on and used in connection with a farm or where agricultural activity provides income to the family occupying the dwelling.

"Filing" means the submittal of documents with the chief clerk. A document will be considered filed at the time it is received in the chief clerk's office, as evidenced by the date and time endorsed on the document by or at the direction of the chief clerk. Unless otherwise specifically provided in these rules, electronic or facsimile transmission of documents to the chief clerk or executive officer of the commission does not constitute filing. This definition is to be distinguished from the definition for "proper filing" for petitions to amend a district boundary.

"Hearings officer" means a person or persons duly designated and authorized by the commission to conduct proceedings on matters within the jurisdiction of the commission for purposes of taking testimony and to report the person's findings and recommendations to the commission.

"HRS" means the Hawai'i Revised Statutes.

"Intervenor" means a person who properly seeks by application to intervene and is entitled to be admitted as a party in any contested case proceeding before the commission.

"Land" means all real property in the State including areas under water within the boundaries of the State.

"Landowner" means a person or party with a fee simple interest in the land.

"Lot" means a single parcel of land of record in the real property tax records of the county in which the land is located.

"Map" means the land use district boundaries maps of the commission.

"Meeting" means the convening of the commission for which a quorum is required in order to make a decision or deliberate toward a decision upon a matter over which the commission has supervision, control, jurisdiction, or advisory power.

"Party" means a person named or admitted as a party or entitled as of right to be admitted as a party in any contested case proceeding before the commission.

"Person" means any individual, corporation, firm, association, partnership, society, or other legal entity, and any federal, state, and county department or agency.

"Petitioner" means a person who seeks permission or authorization from the commission in any matter for which the commission is authorized to grant relief.

"Planning commission" means the planning commissions of the various counties, including the city and county of Honolulu.

"Presiding officer" means any commissioner or a hearings officer duly designated as such. Unless otherwise designated, the chairperson shall be the presiding officer.

"Proceeding" means any matter brought before the commission over which the commission has jurisdiction and shall include, but not be limited to:

- (1) Petitions for district boundary amendment;
- (2) Petitions for special permit;
- (3) Proceedings for the adoption, amendment, or repeal of rules under sections 91-3 and 205-7, HRS;
- (4) Petitions for declaratory orders under section 91-8, HRS;
- (5) An investigation or review instituted or requested to be initiated by the commission; and
- (6) All other matters in the administration of



chapter 205, HRS.

"Proper filing," as applied in section 205-4, HRS, means after a petition for district boundary amendment has been filed with the chief clerk, and the executive officer has made a determination that the petition conforms to the requirements of section 15-15-50 and accepts the petition for processing.

"Public records" means the same as "government records" as defined in chapter 92F, HRS.

"Public institution or building" means any institution or building being used by a federal, state, or county agency for a public purpose.

"Respondent" means a person subject to any statute, rule, or order administered by the commission and upon whom an order or notice is issued by the commission instituting an agency hearing to show cause.

"Shoreline" means the same as in section 205A-1, HRS.

"Single-family dwelling" means a dwelling occupied exclusively by one family.

"State" means the State of Hawai'i.

"Structure" means a constructed or erected material or combination of materials, which requires location on the ground, including, but not limited to, buildings, radio towers, sheds, storage bins, fences, and signs.

"Unauthorized ex parte communication" means private communications or arguments with members of the commission, or its hearings officer as to the merits of a proceeding with a view towards influencing the outcome of the petition or proceeding. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp

NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-1, 205-7)

§15-15-04 Grammatical usage. (a) Words used in the present tense include the future tense.

(b) The singular number includes the plural; and the plural, the singular.

(c) The word "shall" is always mandatory.

(d) The word "may" is always permissive.

(e) Terms not defined in this chapter shall have the meaning customarily assigned to them. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-7)

§15-15-05 Office and office hours. (a) The office of the commission is in Honolulu, Hawai'i. All

communications to the commission, including requests for information and submittals, shall be in writing and, shall be addressed to the commission's office, unless otherwise directed by the commission.

(b) The office of the commission shall be open from 7:45 a.m. to 4:30 p.m., Monday through Friday, excepting legal holidays as designated pursuant to section 8-1, HRS, and any day or any part of a day on or for which the governor has granted administrative leave in the State, unless otherwise provided by statute or executive order. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§80-1, 91-2, 205-7)

§15-15-06 Chairperson and vice-chairperson. (a) The commissioners shall annually elect a chairperson and one or more vice-chairpersons from its members.

(b) The chairperson shall have the responsibilities and duties prescribed in this chapter.

(c) In the absence of the chairperson, the vice-chairperson or vice-chairpersons shall have the responsibilities and duties of the chairperson prescribed in this chapter. In case of resignation or incapacity of the chairperson, a vice-chairperson shall perform such duties as are imposed on the chairperson until such time as the commission shall elect a new chairperson. In the event the chairperson or a vice-chairperson resigns, the commission shall elect a new chairperson or vice-chairperson, as the case may be, as soon as practicable after such resignation. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-7)

§15-15-06.1 Hearings officer. (a) The commission may appoint a hearings officer pursuant to section 92-16, HRS.

(b) If for any reason the hearings officer designated is unable to complete a hearing, the commission, without abatement of the proceedings, may assign the matter to another hearings officer. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§92-16, 205-1)

§15-15-07 Executive officer. (a) The executive

officer shall be appointed by the commission to serve as the administrative head of the commission staff and have responsibilities and duties as prescribed by the commission. The executive officer shall be directly responsible to the commission, and shall have control of and responsibility for the execution of the commission's policies, the administration of its affairs, and the employment and supervision of its personnel, subject to the commission's oversight. From time to time, or as requested, the executive officer shall furnish the commission members with such information and make such recommendations as shall be necessary to effect the purposes of the commission and for the proper administration of its affairs. The executive officer shall develop annual budgets, authorize and certify payrolls, requisitions, invoices, and other such documents essential to the proper administration of the commission.

(b) The executive officer shall prepare a hearings calendar and the agenda for all meetings and hearings, under the direction of the chairperson.

(c) The executive officer or such other person as may be authorized by the commission shall certify all decisions and orders and other actions of the commission.

(d) The executive officer may be appointed by the commission to serve as hearings officer.

(e) The executive officer may interpret land use district boundaries at the request of the public. Interpretation of district boundaries shall be done in compliance with section 15-15-22.

(f) The executive officer may conduct the prehearing conference provided under section 15-15-57. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-1)

§15-15-08 Chief clerk. (a) Under the supervision of the executive officer, the chief clerk shall have custody of the commission's official records and shall be responsible for the maintenance and custody of the docket files, including the transcripts and exhibits, the minutes of all of the commission's meetings and hearings, and all of the commission's decisions, orders, opinions, rules, and approved forms.

(b) In addition to other duties, the chief clerk shall maintain a docket file of all proceedings filed with the commission, including all petitions for district boundary amendments, all applications for

special permits, and all petitions for rule-making or declaratory ruling filed with the commission, and each docket shall be assigned a number. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: §§91-2, 205-1)

§15-15-09 Public records. All public records shall be available for inspection at the office of the commission during regular business hours. Public information on matters within the jurisdiction of the commission, but which excludes confidential information, may be obtained by inquiring in person during regular business hours, or by submitting a written request to the commission. Requests made via facsimile or electronic mail to the commission are acceptable. Commission staff may respond to any inquiry or request by making the records available at the commission office. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§92F-1, et seq.)

§15-15-10 Meetings; generally. (a) The commission may meet and exercise its power in the State of Hawai'i. Except as provided in sections 92-4 and 92-5, HRS, all of the commission meetings and hearings are open to the public. Unless waived by the chairperson, the parliamentary procedure to be utilized by the commission in the conduct of its meetings and hearings shall be based on the current edition of Robert's Rules of Order Newly Revised, but only if it does not conflict with chapters 91 and 92, HRS, or these rules.

(b) The commission shall allow all interested persons an opportunity to submit data, views, arguments or present oral testimony on any agenda item in an open meeting. The commission may provide for the recordation of all presented oral testimony. The commission may impose limitations on the submission of data, views, arguments, or oral testimony in the interest of preserving due process concerns of the contested case proceeding.

[Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 92-3, 92-7)

§15-15-11 Executive meetings. (a) The



commission may hold an executive meeting from which the public may be excluded, for those purposes permitted by section 92-4, HRS, but only if there is an affirmative vote of two-thirds of the members present at the meeting; provided the affirmative vote constitutes a majority of the members to which the commission is entitled. The reason for holding the executive meeting shall be publicly announced and the vote of the members shall be recorded and entered into the minutes of the meeting.

(b) The commission shall not make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in section 92-5(a), HRS. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; comp NOV 0 2 2013 1 (Auth: HRS §§205-1, 205-7) (Imp: HRS §§92-4, 92-5)]

**§15-15-12 REPEALED [NOV 0 2 2013]**

**§15-15-13 Quorum and number of votes necessary for a decision.** (a) Unless otherwise provided by law, a majority of all the members to which the commission is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the commission is entitled shall be necessary to make a commission decision valid; provided all approvals of petitions for boundary amendments under section 205-4, HRS, shall require six affirmative votes and approvals for special permits under section 205-6, HRS, shall require five affirmative votes. If a petition receives six affirmative votes, any subsequent vote reflecting the commission's approval of the form of the order shall require five affirmative votes.

(b) If the commission's action to approve a petition for boundary amendment under section 205-4, HRS, fails to obtain six affirmative votes, findings of fact, conclusions of law, and decision and order denying the petition shall be filed by the commission. If a petition fails to receive six affirmative votes, any subsequent vote reflecting the commission's approval of the form of the order shall require five affirmative votes.

(c) If the commission's action to approve a petition for a special permit under section 205-6, HRS, fails to obtain five affirmative votes, findings of fact, conclusions of law, and a decision and order denying the petition shall be filed by the commission. If a petition fails to receive five affirmative votes, any subsequent vote reflecting the commission's

approval of the form of the order shall require five affirmative votes.

(d) In contested cases, commission members who have not heard and examined all of the evidence may vote only after the procedures set forth in section 91-11, HRS, have been complied with. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 1 (Auth: HRS §§91-13.5, 205-1, 205-7) (Imp: HRS §§91-13.5, 92-15, 205-4, 205-6)]

**§15-15-14 Removal of persons from meetings.** The presiding officer or executive officer may remove any person who willfully disrupts a meeting or hearing or other proceeding before the commission. [Eff 10/27/86; comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 1 (Auth: HRS §§205-1, 205-7) (Imp: HRS §92-3)]

**§15-15-15 Minutes of meetings.** (a) The commission shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. The minutes shall include, but need not be limited to:

- (1) The date, time, and place of the meeting;
- (2) The members of the commission recorded as either present or absent;
- (3) The substance of all matters proposed, discussed, or decided, and a record, by individual member, of any votes taken; and
- (4) Any other information that any member of the commission requests be included or reflected in the minutes.

(b) The minutes shall be public and shall be available within thirty days after the meeting except where the disclosure would be inconsistent with section 92-5, HRS. The commission may withhold publication of the minutes of executive meetings so long as their publication would defeat the lawful purpose of the executive meeting. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 1 (Auth: HRS §§205-1, 205-7) (Imp: HRS §92-9)]

**§15-15-16 Computation of time.** In computing any period of time prescribed by this chapter, by notice, or by any order, or rule of the commission, or any

applicable statute, the time begins with the day following the act, event, or default and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday, or a day or a part of a day on or for which the governor has granted administrative leave in the State, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Unless otherwise specified in these rules, when the prescribed period of time is less than seven days, Saturdays, Sundays, or legal holidays within the designated period shall not be included in the computation. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 1 (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

## SUBCHAPTER 2

### ESTABLISHMENT OF STATE LAND USE DISTRICTS

§15-15-17 Districts; district maps. (a) In order to effectuate the purposes of chapter 205, HRS, all the lands in the State shall be divided and placed into one of the four land use districts:

- (1) "U" urban district;
- (2) "A" agricultural district;
- (3) "C" conservation district; or
- (4) "R" rural district.

(b) The boundaries of land use districts are shown on the maps entitled "Land Use District Boundaries, dated December 20, 1974," as amended, maintained and under the custody of the commission. Not all ocean areas and offshore and outlying islands of the State in the conservation district are shown when deemed unnecessary to do so. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-2)

§15-15-18 Standards for determining "U" urban district boundaries. Except as otherwise provided in this chapter, in determining the boundaries for the "U" urban district, the following standards shall be used:

- (1) It shall include lands characterized by "city-like" concentrations of people, structures, streets, urban level of services and other related land uses;
- (2) It shall take into consideration the

following specific factors:

- (A) Proximity to centers of trading and employment except where the development would generate new centers of trading and employment;
  - (B) Availability of basic services such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, and police and fire protection; and
  - (C) Sufficient reserve areas for foreseeable urban growth;
- (3) It shall include lands with satisfactory topography, drainage, and reasonably free from the danger of any flood, tsunami, unstable soil condition, and other adverse environmental effects;
  - (4) Land contiguous with existing urban areas shall be given more consideration than non-contiguous land, particularly when indicated for future urban use on state or county general plans or county community plans or development plans;
  - (5) It shall include lands in appropriate locations for new urban concentrations and shall give consideration to areas of urban growth as shown on the state and county general plans or county community plans or development plans;
  - (6) It may include lands which do not conform to the standards in paragraphs (1) to (5):
    - (A) When surrounded by or adjacent to existing urban development; and
    - (B) Only when those lands represent a minor portion of this district;
  - (7) It shall not include lands, the urbanization of which will contribute toward scattered spot urban development, necessitating unreasonable investment in public infrastructure or support services; and
  - (8) It may include lands with a general slope of twenty per cent or more if the commission finds that those lands are desirable and suitable for urban purposes and that the design and construction controls, as adopted by any federal, state, or county agency, are adequate to protect the public health, welfare and safety, and the public's interests in the aesthetic quality of the



landscape. [Eff 10/27/86; am and comp  
8/16/97; comp 5/8/00; am and comp NOV 0 2 2013  
] (Auth: HRS §§205-1, 205-2, 205-  
7) (Imp: HRS §205-2)

§15-15-19 Standards for determining "A"  
agricultural district boundaries. Except as otherwise  
provided in this chapter, in determining the boundaries  
for the "A" agricultural district, the following  
standards shall apply:

- (1) It shall include lands with a high capacity  
for agricultural production;
- (2) It may include lands with significant  
potential for grazing or for other  
agricultural uses;
- (3) It may include lands surrounded by or  
contiguous to agricultural lands or which are  
not suited to agricultural and ancillary  
activities by reason of topography, soils,  
and other related characteristics; and
- (4) It shall include all lands designated  
important agricultural lands pursuant to part  
III of chapter 205, HRS. [Eff 10/27/86; am  
and comp 8/16/97; comp 5/8/00; am and comp  
NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-2,  
205-7) (Imp: HRS §205-2)

§15-15-20 Standards for determining "C"  
conservation district boundaries. Except as otherwise  
provided in this chapter, in determining the boundaries  
for the "C" conservation district, the following  
standards shall apply:

- (1) It shall include lands necessary for  
protecting watersheds, water resources, and  
water supplies;
- (2) It may include lands susceptible to floods  
and soil erosion, lands undergoing major  
erosion damage and requiring corrective  
attention by the state and federal  
government, and lands necessary for the  
protection of the health and welfare of the  
public by reason of the land's susceptibility  
to inundation by tsunami and flooding, to  
volcanic activity, and landslides;
- (3) It may include lands used for national or  
state parks;
- (4) It shall include lands necessary for the  
conservation, preservation, and enhancement

- of scenic, cultural, historic, or  
archaeologic sites and sites of unique  
physiographic or ecologic significance;
- (5) It shall include lands necessary for  
providing and preserving parklands,  
wilderness and beach reserves, for conserving  
natural ecosystems of indigenous or endemic  
plants, fish, and wildlife, including those  
which are threatened or endangered, and for  
forestry and other related activities to  
these uses;
  - (6) It shall include lands having an elevation  
below the shoreline as stated by section  
205A-1, HRS, marine waters, fish ponds, and  
tidepools of the State, and accreted portions  
of lands pursuant to sections 501-33 and 669-  
1, HRS, unless otherwise designated on the  
land use district maps. All offshore and  
outlying islands of the State are classified  
conservation unless otherwise designated on  
the land use district maps;
  - (7) It shall include lands with topography,  
soils, climate, or other related  
environmental factors that may not be  
normally adaptable or presently needed for  
urban, rural, or agricultural use, except  
when those lands constitute areas not  
contiguous to the conservation district;
  - (8) It may include lands with a general slope of  
twenty per cent or more which provide for  
open space amenities or scenic values; and
  - (9) It may include lands suitable for farming,  
flower gardening, operation of nurseries or  
orchards, growing of commercial timber,  
grazing, hunting, and recreational uses  
including facilities accessory to those uses  
when the facilities are compatible with the  
natural physical environment. [Eff 10/27/86;  
am and comp 8/16/97; comp 5/8/00; am and comp  
NOV 0 2 2013 ] (Auth: HRS §§205-1,  
205-2, 205-7) (Imp: HRS §205-2)

§15-15-21 Standards for determining "R" rural  
district boundaries. Except as otherwise provided in  
this chapter, in determining the boundaries for the "R"  
rural district, the following standards shall apply:

- (1) Areas consisting of small farms; provided  
that the areas need not be included in this  
district if their inclusion will alter the

- general characteristics of the areas;
- (2) Activities or uses as characterized by low-density residential lots of not less than one-half acre and a density of not more than one single family dwelling per one-half acre in areas where "city-like" concentrations of people, structures, streets, and urban levels of services are absent, and where small farms are intermixed with the low-density residential lots; and
  - (3) It may also include parcels of land which are surrounded by, or contiguous to this district, and are not suited to low-density residential uses for small farm or agricultural uses. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-2, 205-7) (Imp: HRS §205-2)

§15-15-22 Interpretation of district boundaries.

- (a) Except as otherwise provided in this chapter:
  - (1) A district name or letter appearing on the land use district map applies throughout the whole area bounded by the district boundary lines;
  - (2) Land having an elevation below the shoreline as stated by section 205A-1, HRS, marine waters, fish ponds, and tidepools of the State, and accreted portions of lands pursuant to sections 501-33 and 669-1, HRS, unless otherwise designated on the land use district maps, shall be included in the conservation district;
  - (3) All offshore and outlying islands of the State are classified conservation unless otherwise designated on the land use district maps; and
  - (4) All water areas within the State are considered to be within a district and controlled by the applicable district rules.
- (b) All requests for boundary interpretations shall be in writing and include the tax map key identification of the property and a print of a map of the property. All requests for boundary interpretations involving shoreline properties shall be accompanied by a survey map showing the locations of the shoreline as provided for in section 205A-42, HRS. Any erosion or accretion through natural processes shall be reflected on the map. Further, any shoreline

structure, piers, and areas of man-made fill which were constructed or completed since the date of adoption of the state land use district boundaries existing as of the date of the request for boundary interpretation shall be reflected on the map.

(c) The executive officer may request the following information:

- (1) Additional copies of the print, including a reproducible master map of the print or an electronic copy in a recognized format of the executive officer's designation; and
- (2) Additional information such as, but not limited to, tax map key maps, topographic maps, aerial photographs, certified shoreline surveys, and subdivision maps relating to the boundary interpretation.

The executive officer may employ, or require that the party requesting the boundary interpretation employ, at its sole expense, a registered professional land surveyor to prepare a map for interpretation.

(d) The executive officer may use all applicable commission records in determining district boundaries.

(e) The following shall apply whenever uncertainty exists with respect to the boundaries of the various districts:

- (1) Whenever a district line falls within or abuts a street, alley, canal, navigable or non-navigable stream or river, it may be deemed to be in the midpoint of the foregoing. If the actual location of the street, alley, canal, navigable or non-navigable stream or river varies slightly from the location as shown on the district map, then the actual location shall be controlling;
- (2) Whenever a district line is shown as being located within a specific distance from a street line or other fixed physical feature, or from an ownership line, this distance shall be controlling; and
- (3) Unless otherwise indicated, the district lines shall be determined by the use of the scale contained on the map.

(f) Whenever subsections (a), (b), (c), (d), or (e) cannot resolve an uncertainty concerning the location of any district line, the commission, upon written application or upon its own motion, shall determine the location of those district lines. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp:



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## PERMISSIBLE LAND USES

[Eff 10/27/86; comp 8/16/97; comp 5/8/00; and comp  
0 2 2013 1 (Auth: HRS §§205-1, 205-7) (Imp: HRS  
§205-2)

[Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; comp  
NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp:  
HRS §205-2)

(b) Permissible uses within the agricultural district on land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class of C, D, E, and U shall be those uses as set forth in sections 205-2, 205-4.5, and 205-5, HRS, and also uses compatible to the activities described in 205-2(d), HRS. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§205-2, 205-4.5)

22

- (1) All agricultural related activities and uses permitted under section 15-15-25;
- (2) Low-density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), HRS;
- (3) Golf courses and golf driving ranges and golf-related facilities;
- (4) Public, quasi-public and public utility facilities; and
- (5) The commission for good cause may allow one lot of less than one-half acre, but not less than 18,500 square feet, or an equivalent residential density, provided all other lots in the subdivision have the minimum lot size of one-half acre. A petition for variance may be processed under the special permit procedure pursuant to subchapter 12. This exception shall apply to lots of record existing prior to January 1, 1977, and of not more than two acres. There shall be no more than one single-family dwelling per one-half acre, except as may be provided for in this section. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-2)

## NONCONFORMANCE

23

so as to cause unreasonable interference with established property rights. [Eff 10/27/86; comp 8/16/97; am and comp 5/8/00; comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-8)

§15-15-29 Nonconforming uses. (a) Any lawful use of lands or buildings existing prior to the establishment of a land use district, may be continued even though those uses do not conform to the provisions thereof.

(b) Except as otherwise provided, the following provisions shall apply to nonconforming uses or structures within any district:

- (1) It shall not be changed to another nonconforming use or structure;
- (2) It shall not be expanded or increased in intensity of use; and
- (3) It shall not be reestablished after discontinuance and abandonment for a continuous period of one year. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-8)

§15-15-30 Nonconforming areas and parcels. A lot of record or any proposed subdivision of land which is not in conformity with this subchapter, but which has received approval by the county having jurisdiction prior to the establishment of the land use district, shall be permitted as a nonconforming area subject to the ordinances and rules of the county. All lots within the nonconforming area shall be considered nonconforming parcels. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-8)

§15-15-31 Casual or illegal use of land. A casual, intermittent, temporary, or illegal use of lands or buildings shall not be sufficient to establish the existence of a nonconforming use. [Eff 10/27/86; comp 8/16/97; am and comp 5/8/00; comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-8)

§15-15-32 Existence of nonconforming use is a question of fact. Whether a nonconforming use exists shall be a question of fact and shall be decided by the

board, commission, or agency having jurisdiction over uses within the district. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-8)

§15-15-33 Illegal uses. An illegal use of lands or buildings shall not be validated by the adoption of this chapter. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-8)

#### SUBCHAPTER 5

#### PROCEEDINGS BEFORE THE COMMISSION

§15-15-34 Quasi-judicial proceedings; waiver or suspension of rules. (a) The intent and purpose of chapter 205, HRS, is to establish quasi-judicial procedures which would ensure the effective application of established state land use policies through an adversarial process in a hearing in which diverse interests will have an opportunity to present their views in an open and orderly manner. Accordingly, the commission expects all persons and parties to comply with this subchapter and chapter 91, HRS, so that the commission will have a full and complete record upon which it can render its decision.

(b) Unless contrary to statute, the commission may waive or suspend any rule when the commission determines that: (1) good cause exists for such waiver; and (2) strict enforcement of such procedural rule would impose a manifest injustice upon a party or person who has substantially complied with the commission's rules in good faith. No rule relating to jurisdictional matters shall be waived or suspended by the commission. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-3)

§15-15-34.1 Verbatim transcripts. Verbatim transcripts of hearings and other proceedings before the commission pursuant to chapter 91, HRS, shall be made and kept by the commission. [Eff and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-9)



§15-15-35 Appearance before the commission. (a)

Any party to a proceeding before the commission may appear on the party's own behalf. A partnership, corporation, trust, or association, or other legal entity, may be represented by a duly authorized agent.

An officer or employee of a department or agency of the State or a political subdivision may represent that department or agency in any proceeding before the commission.

(b) A party may be represented by an attorney.

The attorney who appears before the commission shall be a member in good standing of the Hawai'i state bar. A member of the bar of another jurisdiction may appear by motion or by association with a member in good standing of the Hawai'i state bar. All pleadings and documents shall be served on the member of the Hawai'i state bar.

(c) The United States or any of its agencies may be represented by an employee of the agency or any attorney who is a member in good standing of the bar of any state and who is employed as an attorney by the United States or one of its agencies.

(d) Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the commission, by such an act represents that the person is legally authorized to do so and shall comply with the laws of this State and the several counties, and the rules of the commission. Further, the person shall maintain the respect due to the commission, and shall never deceive or knowingly present any false statements of fact or law to the commission. The commission at any time may require any person appearing before the commission in a representative capacity to prove the person's authority and qualification to act in that capacity.

(e) All former employees of the State, as that term is defined in section 84-3, HRS, shall comply with the provisions of chapter 84, HRS, standards of conduct, prior to making an appearance in a representative capacity before the commission. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 11/1/01] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

§15-15-36 Decisions and orders. (a) All

decisions and orders for boundary amendment and special permit applications shall be signed by the chairperson or presiding officer (b) Unless otherwise indicated in the order, the effective date of a decision and order shall be the date it is filed by the chief clerk.

(c) Official copies of decisions and orders and other commission actions shall be effectuated under the signature of the chairperson, executive officer, or by the chief clerk. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp 11/1/01] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-12)

§15-15-37 Filing documents; place and time. All pleadings, briefs, submittals, petitions, reports, maps, exceptions, memoranda, and other legal papers required or permitted to be filed with the commission in any proceeding shall be filed at the office of the commission before or on the date prescribed by statute, rules, or order of the commission. Unless otherwise ordered and except as provided by section 15-15-50, the date on which the original papers are filed by or at the direction of the chief clerk shall be regarded as the date of filing. The commission will not accept a facsimile or electronic copy of any document for filing purposes unless otherwise permitted by the executive officer. [Eff 10/27/86; am 3/24/94; am and comp 8/16/97; comp 5/8/00; am and comp 11/1/01] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4; SLH 1992, Act 227, §1)

§15-15-38 Format. (a) All documents exceeding seventy five pages shall be placed in three-ring binders or equivalent (prongs and rubber bands are not acceptable) and be printed upon white paper 8-1/2 x 11 inches in size. Twelve point font or larger shall be used. Tables, maps, charts, exhibits, or appendices may be larger and shall be folded to that size where practical and tabbed. All pleadings shall be printed and shall be one and a half spaced or greater, except that footnotes and quotations in excess of a few lines may be single-spaced. Reproduction may be by any process, provided all copies are clear and permanently legible. Electronic copies shall be similarly formatted and bookmarked.

(b) All pleadings shall show the title of the proceeding before the commission and the case docket number assigned by the chief clerk and shall show the name, address, and telephone number of the person or attorney.

(c) The original of each pleading shall be signed by each party or the party's attorney. If the party is a corporation, association, partnership, or other legal



entity, the pleading may be signed by an officer or partner thereof or other authorized person. The title and name of the person signing shall be typed below the signature.

(d) In addition to the paper originals and one paper copy, the parties shall also submit documents and pleadings in electronic format, as directed by the executive officer. However, the filing date shall be the date the paper original is filed in the office of the commission. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

§15-15-39 Verification. (a) Petitions, amendments thereto, and other pleadings which initiate a proceeding, and amendments thereto shall be verified by at least one of the persons or officers or other authorized signatory of the party filing the same.

(b) If the party filing the pleading is a corporation, association, partnership, or other legal entity, the pleading may be verified by an officer or partner thereof or other authorized person. Evidence of such authorization shall be provided.

(c) The attorney for a party may sign and verify a pleading if the party is absent, or for some cause unable to sign and verify the pleading. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

§15-15-40 Copies. Unless otherwise required by this subchapter or the commission, all parties shall file with the commission a paper original, one paper copy and one electronic copy of each pleading or amendment thereof. Additional copies shall be promptly provided if the chairperson or the executive officer so requests. The commission, by order, may modify the number or format of copies required under this section.

[Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

§15-15-41 Defective or nonconforming documents.

(a) The mere fact that a document has been filed or been deemed a proper filing by the executive officer pursuant to section 15-15-50 (d) and (e) shall not be deemed a waiver of any failure to comply with this subchapter. Except as provided in subsection (b), if a

document filed in a proceeding governed by this chapter is defective, not in substantial conformity with the applicable rules of the commission, or is otherwise insufficient, the commission may on its own motion or on the motion of any party, strike or dismiss such document or require its amendment. If amended, the document shall be effective as of the date the amended or corrected document is deemed a proper filing by the executive officer.

(b) Notwithstanding the provisions of sections 15-15-50(e), 15-15-50(f), and 15-15-50.5, the commission may, on its own motion, or on motion by any of the parties addressing alleged deficiencies of the petition, dismiss defective or nonconforming petitions with or without prejudice. If the petition is determined by the commission to be defective or nonconforming, the date of proper filing shall be the date the commission determines that the defects are cured. If the defects are jurisdictional, including, without limitation, failure to satisfy the requirements of section 15-15-50(c)(5), the commission shall dismiss the petition without prejudice. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

§15-15-42 Extensions of time. (a) Whenever a party is required to file a pleading within a period prescribed or allowed by these rules by notice given thereunder, or by an order, the chairperson, presiding officer, or the executive officer may:

- (1) For good cause shown, with or without notice or hearing, extend such period if written request therefor is made before the expiration of the period originally prescribed or as extended by a previous order;
- (2) Pursuant to a stipulation between all of the parties, without notice or hearing, extend the period; or
- (3) Upon motion after the expiration of the specified period, permit the act to be done where the failure to act is clearly shown to be the result of excusable neglect; but may not extend the time for taking any action on jurisdictional matters.

(b) Extensions of time to file any pleading or other document required by a decision and order of the commission must be requested more than fourteen days prior to the next scheduled hearing date on the matter.

This section shall not apply to extensions of time affecting jurisdictional matters [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

**\$15-15-43 Amended pleadings.** All pleadings may be amended at any time until forty-five days prior to the hearing date set pursuant to section 15-15-51. Amendments offered prior to the hearing date shall be served on all parties and filed with the commission. All parties shall have the opportunity to provide any further response to address the amended pleading up to thirty days prior to the hearing date set pursuant to section 15-15-51. No amended pleadings shall be filed after forty-five days prior to the date of the hearing and no responses shall be filed after thirty days prior to the hearing date, unless a stipulation is reached by all parties, or good cause is shown and approval of the chairperson, presiding officer, or the chairperson's designee is obtained. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; and comp NOV 0 2 2013] (Auth: HRS §§205-1, 205-7, SLH 1995, Act 235, §2) (Imp: HRS §§91-2, 205-1, 205-7)

**\$15-15-44 Retention of documents.** The commission shall retain all documents filed with or presented to the commission in the files of the commission. However, the chairperson or presiding officer may permit a party to withdraw original documents submitted by a party upon submission of properly authenticated copies to replace the original documents. The party shall not withdraw the original documents until it has submitted the authenticated copies and it has given to the chief clerk a receipt, specifying the date and identifying the original documents withdrawn. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2)

**\$15-15-45 Service of process.** (a) The commission shall cause to be served all orders, notices, and other papers issued by it, together with any other papers that it is required by law to serve. All other papers shall be served by the parties filing them.

(b) All papers served by either the commission or

any party shall be filed and served upon all parties or their attorney and shall contain a certificate of service. Any attorney entering an appearance subsequent to the proceeding shall notify all other attorneys then of record and all parties not represented by an attorney of that fact.

(c) The final decision and order, and any other paper required to be served by the commission upon a party, shall be served upon the party's attorney of record or in the absence of an attorney, upon the party.

(d) Service of papers other than the notice of hearing and the final decision and order, shall be made personally or, unless otherwise provided by law, by first class mail. Notice of hearing shall be served as provided in section 15-15-51, and the final decision and order shall be served by certified mail.

(e) Service upon parties, other than the commission, shall be regarded as complete upon the occurrence of at least one of the following: (1) the party or its attorney is personally served; (2) the document is delivered to the party's office or its attorney's office and left with some responsible person; or (3) the document is properly stamped, addressed and mailed by first class mail to the last known address of the party on file with the commission or to the party's attorney.

(f) Whenever a party has the right to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the person, and the notice or paper is served by mail, two days shall be added to the prescribed period. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

**\$15-15-45.1 Fees.** (a) Unless otherwise provided herein, a motion for incremental districting approval, motion for amendment to a decision and order, requested rule making, a motion to release conditions, a motion for declaratory order, a motion for special permit, a motion for order to show cause, or motion for important agricultural land designation, by any person other than a state or county department or agency shall be accompanied by a filing fee by cashier's check, for \$1,000, made payable to the State of Hawai'i. State or county departments or agencies that submit such petitions, motions, or applications shall not be subject to the filing fee. Such petition, motion, or



application filed jointly by a state or county department or agency and a person who is not a state or county department or agency shall be subject to the filing fee.

(b) A petition for an amendment to a district boundary filed by any person other than a state or county department or agency shall be accompanied by a filing fee by cashier's check for \$5,000, made payable to the State of Hawai'i. State or county departments or agencies that submit a petition for amendment to a district boundary shall not be subject to the filing fee. A petition for an amendment to a district boundary filed jointly by a state or county department or agency and a person who is not a state or county department or agency shall be subject to the filing fee.

(c) A petition for intervention in any proceeding filed by any person other than a state or county department or agency shall be accompanied by a filing fee by cashier's check in the amount of \$50, made payable to the State of Hawai'i. State or county departments or agencies that submit such petitions for intervention shall not be subject to the filing fee.

(d) Except as otherwise provided by law, a copy of any public document or government record, including any map, plan diagram, photograph, or photostat, which is open to inspection by the public shall be furnished to any person requesting the same by the executive officer having charge or control thereof upon the payment of the reasonable cost of reproducing such copy, which amount shall not be less than 12 cents per page, sheet, or fraction thereof. In addition, the requestor shall be responsible to pay for labor costs for searching, reviewing, and segregating, and actual time for reproducing, and material costs, including electricity cost, equipment cost including rental cost, cost for certification, and other related costs of providing the requested public document or government record.

(e) The petitioner, movant, or applicant for any petition, motion, or application shall, unless otherwise ordered by the commission, reimburse the commission for or pay at the direction of the commission any expenses related to the publication of any required hearing notice, expenses of court reporter services, expenses of the hearing room, expenses for audio/visual services and equipment, and any other hearing-related expenses.

(f) After notice and opportunity to be heard, the commission may also assess any party to any proceeding

before the commission a reasonable fee or require reimbursements for hearing expenses as determined by the commission, including without limitation, expenses of court reporter, hearing room, and expenses for audio/visual services and equipment.

(g) The commission may assess a reasonable fee or require reimbursements to be made for inexcusable absence of a party from a contested case proceeding. The assessment may include, but not be limited to, such costs for airfare, room rental fees, and publication fees. [Eff and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-4.1, 205-7) (Imp: HRS §§91-2, 92-21, 205-4.1)

\$15-15-45.2 Fees nonrefundable. The fees set forth in this chapter shall be nonrefundable. [Eff and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-4.1, 205-7) (Imp: HRS §§91-2, 92-21, 205-4.1)

#### SUBCHAPTER 6

#### APPLICATION REQUIREMENTS FOR BOUNDARY AMENDMENT PETITIONS

\$15-15-46 Standing to initiate boundary amendments. The following persons may initiate a petition to the commission for district boundary amendment:

- (1) State departments or agencies;
- (2) County departments or agencies of the county in which the property is situated; or
- (3) Any person with a property interest in the property sought to be reclassified. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§205-3.1, 205-4)

\$15-15-47 Filing. The petitioner shall file one original, and one paper copy and one electronic copy of a petition for boundary amendment and all supporting documents and exhibits, with the commission. Additional copies shall be promptly provided if the chairperson or the executive officer so requests. The number and format of copies required under this section may be modified by order of the commission. [Eff 10/27/86; am

and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013  
] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2,  
205-4)

§15-15-48 Service of petition. (a) At the time the petition is filed with the commission, the petitioner shall serve copies of the petition and all supporting documents upon:

- (1) the county planning department and planning commission of the county within which the subject land is situated,
- (2) the appropriate island planning commission,
- (3) the state office of planning, and
- (4) all persons with a property interest in the subject property as recorded in the county's real property tax records at the time the petition is filed.

(b) The petitioner shall serve copies of the petition upon any potential intervenor upon receipt of a notice of intent to intervene pursuant to section 15-15-52(b).

(c) Copies of all documents filed by petitioner after filing of the petition shall be served upon the county planning department and the state office of planning at the same time the document is filed with the commission. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-4, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-49 REPEALED [R /2013]

§15-15-50 Form and contents of petition. (a) The form of the petition for boundary amendment shall conform to the requirements of subchapters 5 and 6. All petitions shall:

- (1) State clearly and concisely the authorization or relief sought; and
- (2) Cite by appropriate reference the statutory provision or other authority under which commission authorization or relief is sought.

(b) For petitions to reclassify properties from the conservation district to any other district, the petition shall not be deemed a proper filing unless an approved environmental impact statement or finding of no significant impact is approved or accepted by the commission for the proposed boundary amendment request.

Such approved or accepted environmental impact statement or finding of no significant impact shall be

filed with and be part of the petition for boundary amendment. Notwithstanding any rule to the contrary, the processes provided by subsections (e) and (f) shall not commence until this subsection is satisfied.

(c) The following information shall also be provided in each petition for boundary amendment:

- (1) The exact legal name of each petitioner and the location of the principal place of business and if an applicant is a corporation, trust, or association, or other legal entity, the state in which the petitioner was organized or incorporated;
- (2) The name, title, and address of the person to whom correspondence or communications in regard to the petition are to be addressed;
- (3) Description of the subject property, acreage, and tax map key number, with maps, including the tax map, that identify the area stated in the petition. If the subject property is a portion of one or more tax map key parcels, or the petition proposes incremental development of the subject property on both increments of development, the petitioner shall include a map and description of the subject property and each increment in metes and bounds prepared by a registered professional land surveyor;
- (4) The boundary amendment sought and present use of the property, including an assessment of conformity of the boundary amendment to the standards for determining the requested district boundary amendment;
- (5) The petitioner's property interest in the subject property. The petitioner shall attach as exhibits to the petition the following:
  - (A) A true copy of the deed, lease, option agreement, development agreement, or other document conveying to the petitioner a property interest in the subject property or a certified copy of a nonappealable final judgment of a court of competent jurisdiction quieting title in the petitioner;
  - (B) If the petitioner is not the owner in fee simple of the subject property, or any part thereof, written authorization of all fee owners to file the petition and a true copy of the deed to the subject property; and



- (C) An affidavit of the petitioner or its agent attesting to its compliance with section 15-15-48;
- (6) A description of any easements on the subject property, together with identification of the owners of the easements; a description of any other ownership interests shown on the tax maps;
  - (7) Type of use or development being proposed, including without limitation, a description of any planned development, residential, golf course, open space, resort, commercial, or industrial use;
  - (8) A statement of projected number of lots, lot size, number of units, densities, selling price, intended market, and development timetables;
  - (9) A statement describing the financial condition together with a current certified balance sheet and income statement as of the end of the last calendar year, or if the petitioner is on a fiscal year basis, as of the end of the petitioner's last fiscal year, and a clear description of the manner in which the petitioner proposes to finance the proposed use or development. If such information is protected from disclosure under chapter 92F, HRS, the petitioner may request a protective order to protect the confidentiality of the information pursuant to section 15-15-70.1. A petitioner which is a state or county department or agency, shall be exempt from this requirement;
  - (10) Description of the subject property and surrounding areas including the use of the property over the past two years, the present use, the soil classification, the agricultural lands of importance to the State of Hawai'i classification (ALISH), the Land Study Bureau productivity rating, the flood and drainage conditions, and the topography of the subject property;
  - (11) An assessment of the impacts of the proposed use or development upon the environment, agriculture, recreational, cultural, historic, scenic, flora and fauna, groundwater, or other resources of the area. If required by chapter 343, HRS, either a finding of no significant impact after review of an environmental assessment or an

- environmental impact statement conforming to the requirements of chapter 343, HRS, must be filed;
- (12) Availability or adequacy of public services and facilities such as schools, parks, wastewater systems, solid waste disposal, drainage, water, transportation systems, public utilities, police and fire protection, civil defense, emergency medical service and medical facilities, and to what extent any public agency would be impacted by the proposed development or boundary amendment;
  - (13) Location of the proposed use or development in relation to adjacent land use districts and any centers of trading and employment;
  - (14) Economic impacts of the proposed boundary amendment, use, or development including, without limitation, the provision of any impact on employment opportunities, and the potential impact to agricultural production in the vicinity of the subject property, and in the county and State;
  - (15) A description of the manner in which the petitioner addresses the housing needs of low income, low-moderate income, and gap groups;
  - (16) An assessment of need for the boundary amendment based upon the relationship between the use or development proposed and other projects existing or proposed for the area and consideration of other similarly designated land in the area;
  - (17) An assessment of conformity of the boundary amendment to applicable goals, objectives, and policies of the Hawai'i state plan, chapter 226, HRS, and applicable priority guidelines and functional plan policies;
  - (18) An assessment of the conformity of the boundary amendment to objectives and policies of the coastal zone management program, chapter 205A, HRS;
  - (19) An assessment of conformity of the boundary amendment to the applicable county general plans, development or community plans, zoning designations and policies, and proposed amendments required;
  - (20) Petitioners submitting petitions for boundary amendment to the urban district shall also represent that development of the subject property in accordance with the demonstrated

need therefor will be accomplished before ten years after the date of commission approval.

In the event full urban development cannot substantially be completed within such period, the petitioner shall also submit a schedule for development of the total of such project in increments together with a map identifying the location of each increment, each such increment to be completed within no more than a ten-year period;

- (21) A statement addressing Hawaiian customary and traditional rights under Article XII, section 7 of the Hawai'i State Constitution;
- (22) Any written comments received by the petitioner from governmental and non-governmental agencies, organizations, or individuals in regards to the proposed boundary amendment; and
- (23) A copy of the notification of petition filing pursuant to subsection (d).

(d) The petitioner shall send a notification of petition filing to persons included on a mailing list provided by the chief clerk. The notification of petition filing shall be in a form as prescribed by the executive officer, and shall include, but not be limited to, the following information:

- (1) Petitioner's name and mailing address;
- (2) Landowner's name;
- (3) Tax map key identification of the property requested for boundary amendment;
- (4) Location of the property;
- (5) Requested boundary amendment and approximate acreage;
- (6) Proposed use of the property;
- (7) A statement that detailed information on the petition may be obtained by reviewing the petition and maps on file at the office of the commission or the respective county planning department or at the commission's website;
- (8) A statement that informs potential intervenors on the mailing list provided by the commission that they may file a notice of intent to intervene with the commission within thirty days of the date of the notification of petition filing pursuant to section 15-15-52(b);
- (9) A statement that informs the general public to contact the office of the commission for information on participating in the hearing;

and

(10) A location map depicting the petition area.

The notification of petition filing shall be sent to all persons on the mailing list on the same day that the petition is filed with the commission. The petitioner shall submit to the commission an affidavit that the petitioner has sent the notification of petition filing pursuant to this subsection.

(e) The executive officer shall receive and complete a review of the petition for completeness within thirty days of the filing of the petition. The provisions herein, however, are subject to the requirements of subsection (b) on petitions for reclassification of conservation district lands.

(f) Upon completion of the review pursuant to subsection (e), the executive officer shall determine whether the petition is a proper filing and is accepted for processing. The petition shall be deemed a proper filing if the items required in subsections (a), (b), (c), and (d) have been submitted. The petition may be deemed defective by the executive officer if any of the items required in subsections (a), (b), (c), or (d) have not been submitted. If the petition is deemed defective, the executive officer shall notify the petitioner of the determination and the reasons for the determination. The petition may be deemed as a proper filing upon review of the additional information submitted and upon determination by the executive officer, and the date the petition will be deemed a proper filing will be the date the executive officer determines the defects have been cured. The executive officer will file a notice of proper filing and mail the notice to the petitioner, the State office of planning, the county planning agency, and to persons who have filed a notice of intent to intervene. The executive officer's determination is subject to review in accordance with section 15-15-41. The provisions herein, however, are subject to the requirements of section 15-15-50(b) on petitions for boundary amendment of conservation district lands.

(g) The petitioner has a continuing obligation to update the information submitted in the petition prior to and during the pendency of the hearing on the petition. [Eff 10/27/86; am 3/24/94; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 ]

(Auth: HRS §§205-1, 205-4, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-50.5 Dismissal of petition for failure



to provide additional information or correct defects. Where the executive officer, pursuant to section 15-15-50(f), has determined that a petition is defective or nonconforming and the petitioner has not provided additional information or cured any defects within nine (9) months after the date of issuance of the notice that the petition is defective, the executive officer shall notify the petitioner in writing that the petition is dismissed for want of prosecution unless objections thereto, showing good cause with specific reasons, are filed within ten days after the date of such notification. If objections are not filed within said ten-day period, the executive officer shall file an order of dismissal with or without prejudice. If objections are filed within said ten-day period, the commission shall hear the objections upon notice and determine whether the petition should be dismissed. [Eff and comp NOV 0 2 2013 1 (Auth: HRS §§205-1, 205-4, 205-7)]

**§15-15-50.6 Withdrawal or amendment of petition.** (a) The petitioner may withdraw or amend the petition without prejudice: (1) at any time before a petition for district boundary amendment is deemed a proper filing or, (2) any time after a petition for district boundary amendment has been deemed a proper filing but before it has been set for hearing; provided that if substantive amendments are made, the filing date for the petition shall be the date the amended petition is deemed a proper filing, and petitioner must send a notification of filing of the amended petition in conformance with the requirements of section 15-15-50(d).

(b) If a petition for district boundary amendment has been set for hearing, the petition may be withdrawn only upon the commission's granting of a motion for withdrawal filed by the petitioner. In the event the commission grants a motion to withdraw, the petitioner may not refile the petition within one year after the granting of the motion for withdrawal.

(c) If a petition for district boundary amendment has been set for hearing, the petition may be amended only in compliance with the requirements of section 15-15-43. [Eff and comp NOV 0 2 2013 1 (Auth: HRS §§205-1, 205-4, 205-7)]

#### SUBCHAPTER 7

#### AGENCY HEARING AND POST HEARING PROCEDURES

**§15-15-51 Notice of hearing for boundary amendment petitions.** (a) Not less than sixty days and not more than one hundred eighty days after the proper filing of a petition for boundary amendment, a hearing shall be conducted by the commission or a hearings officer on the island in which the subject property is situated.

(b) The notice of hearing shall be served on the office of planning, the planning commission and the planning department of the county in which the subject property is situated, the appropriate planning commission of the island on which the subject property is situated, all persons with a property interest in the subject property that is recorded in the county's real property tax records at the time the petition is submitted, all persons with an easement over, on, upon or through the subject property, and all persons who appear on the county tax map to have an interest in the subject property. In addition, notice of the hearing shall be mailed to all persons who have made a timely written request for advance notice of boundary amendment proceedings.

(c) The notice of hearing for a boundary amendment shall be published at least once in the county in which the land sought to be redistricted is situated as well as once statewide at least thirty days in advance of the hearing. The notice of hearing shall also be filed with the lieutenant governor's office at least six calendar days before the hearing.

(d) The notice of hearing of a boundary amendment shall include:

- (1) The date, time, place, and nature of the hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The particular sections of the statutes and rules involved;
- (4) An explicit statement in plain language of the issues involved;
- (5) The fact that parties may retain an attorney if they so desire and the fact that an individual may appear on the individual's own behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation, trust, or other legal entity may represent the corporation, trust, or other legal entity;
- (6) Where the map of the subject property or petition may be inspected; and

- (7) The rights of interested persons under section 205-4(e), HRS.

(e) The hearing may be continued or reopened by the commission when necessary, provided that notice is given pursuant to section 92-7, HRS, and the continued or re-opened hearing shall not extend beyond three hundred sixty-five days from the date the petition is deemed properly filed, unless an extension of time is requested by motion by any party, by stipulation, or by the commission on its own motion, so long as the commission votes affirmatively on the motion or stipulation by a two-thirds vote of the membership of the commission. The extension of time shall not exceed ninety days beyond three hundred sixty-five days from the date the petition is deemed properly filed.  
[Eff10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-4, 205-7) (Imp: HRS §§1-28.5, 91-9, 92-7, 92-41, 205-4)

§15-15-52 Intervention in proceeding for district boundary amendments, except proceedings pursuant to chapter 201H, HRS. (a) The petitioner, the state office of planning, and the planning department of the county within which the subject land is situated shall appear in every case as parties, and make recommendations relative to the proposed boundary amendment.

(b) Within thirty days of the date of the notification of petition filing pursuant to section 15-15-50(d), persons who intend to intervene may file a notice of intent to intervene with the commission. The notice of intent to intervene shall provide, but not be limited to, the following information:

- (1) The person's name and mailing address; and
- (2) The nature and extent of the person's interest in the petition.

The notice of intent to intervene shall be served upon the petitioner, the state office of planning, and the respective county planning department. Upon receipt of a notice of intent to intervene, the petitioner shall serve a copy of the petition filed with the chief clerk upon the potential intervenor. All persons who wish to formally intervene shall comply with subsections (e), (f), (g), and (h).

(c) Persons who may intervene upon timely application include:

- (1) All departments and agencies of the State and of the county in which the land is situated;

and

- (2) All persons who have a property interest in the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public.

(d) All other persons may apply for leave to intervene, which shall be freely granted, provided the commission or its hearings officer may deny an application to intervene when, in the commission's, or hearings officer's discretion it appears that:

- (1) The position of the applicant for intervention is substantially the same as the position of a party already admitted to the proceeding; and
- (2) The admission of additional parties will render the proceedings inefficient and unmanageable.

(e) In a boundary amendment proceeding, petitions to intervene and become a party shall be in conformity with subchapter 5 and filed with the commission. An original and one paper copy, plus one electronic copy, of the petition for intervention with proof of service on all parties shall be filed with the commission within fifteen calendar days after the notice of hearing is published pursuant to section 15-15-51(c). Except for good cause shown, late filing shall not be permitted. The number and format of copies required under this section may be modified by order of the commission.

(f) Petitions for intervention shall make reference to the following:

- (1) Nature of the petitioner's statutory or other right;
- (2) Nature and extent of the petitioner's interest in the matter, and if an abutting property owner, the tax map key description of the property; and
- (3) Effect of any decision in the proceeding on the petitioner's interest.

(g) Petitions for intervention pursuant to subsection (d) shall also make reference to the following:

- (1) Other means available whereby the petitioner's interest may be protected;
- (2) Extent the petitioner's interest will not be represented by or differs from that of existing parties;



- (3) Extent the petitioner's participation can assist in development of a complete record;
- (4) Extent the petitioner's participation will broaden the issues; and
- (5) How the petitioner's intervention would serve the public interest.

(h) Petitions for intervention shall be accompanied by a filing fee as provided for in section 15-15-45.1. The fee shall not apply to state and county agencies.

(i) If any party opposes the petition for intervention, the party shall file a pleading in opposition within seven days after being served.

(j) All petitions to intervene shall be heard prior to the scheduled hearing.

(k) A person whose petition to intervene has been denied may appeal the denial to the circuit court pursuant to section 91-14, HRS. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-4, 205-7, SLH 1995, Act 235, §2) (Imp: HRS §205-4, SLH 1995, Act 235, §1)

§15-15-53 Intervention in other than district boundary amendment proceeding or important agricultural lands designation proceeding. (a) In any proceeding other than a district boundary amendment proceeding or important agricultural lands designation proceeding before the commission, petitions to intervene and become a party shall conform to subchapter 5 and be filed no later than fifteen days after the date of the publication of the hearing notice.

(b) Contents of the petition shall conform to sections 15-15-52(e) and 15-15-52(f).

(c) Petitions to intervene in special permit proceedings will not be considered since the record is made by and before the county planning commission. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-4, 205-7) (Imp: HRS §§205-1, 205-4)

§15-15-54 Consolidation. The commission, upon its own initiative or upon motion by any party, may consolidate for hearing or other purposes, or may contemporaneously consider, two or more proceedings which involve substantially the same parties or issues which are the same or closely related if the commission finds that consolidation or contemporaneous

consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-55 Statements of position. No later than thirty days after the postmarked date of notice that the petition has been deemed a proper filing, the state office of planning and appropriate county planning department, and any intervenor, or person or legal entity who filed a timely notice of intent to intervene and whose intervention petition is still pending, shall file with the commission a statement of position with a summary of reasons in support or opposition, including without limitation, a statement describing the respective positions of any department within the State and county that may be impacted by the boundary amendment. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7, SLH 1995, Act 235, §2) (Imp: HRS §§91-2, 205-4, SLH 1995, Act 235, §1)

§15-15-55.1 Filing of exhibits. (a) No later than twenty-five days prior to the date set for hearing pursuant to section 15-15-51, or as specified in a prehearing order issued in accordance with section 15-15-57, all parties shall submit all exhibits to substantiate their position on the boundary amendment.

(b) No later than twenty-five days prior to the scheduled hearing pursuant to section 15-15-51, or as specified in a prehearing order issued in accordance with section 15-15-57, all intervenors granted intervention shall submit all exhibits to substantiate their position on the boundary amendment petition.

(c) Each party shall have the opportunity to provide further response to address the exhibits submitted or amended pleadings up to twenty days prior to the hearing date set pursuant to section 15-15-51 or as specified in a prehearing order issued in accordance with section 15-15-57.

(d) Any amendments to pleadings shall be submitted pursuant to section 15-15-43. [Eff and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7, SLH 1995, Act 235, §2) (Imp: HRS §§91-2, 205-4, SLH 1995, Act 235, §1)

§15-15-56 Stipulations. All parties may enter

into appropriate stipulations as to testimony, exhibits, findings of fact, conclusions of law, and conditions of reclassification concerning the proposed boundary amendment as follows:

- (1) A petitioner who desires to enter into a stipulation shall prepare a proposed stipulation as to any or all testimony, exhibits, proposed findings of fact, conclusions of law, and conditions of reclassification concerning the proposed boundary amendment;
- (2) All parties shall sign the proposed stipulation as to any or all testimony, exhibits, proposed findings of fact, conclusions of law, conditions of reclassification, and a proposed decision and order, if at all, and shall submit such stipulation to the commission at least fourteen business days prior to the hearing date;
- (3) At the hearing, the commission may approve or deny the proposed stipulation and proposed decision and order in whole or in part, or the commission may require the parties to submit additional evidence concerning the proposed stipulation and proposed decision and order;
- (4) The commission may approve the proposed decision and order by amending or adopting the proposed decision and order. The commission shall issue a decision and order pursuant to provisions of sections 15-15-36 and 15-15-74 and section 205-4(g), HRS. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-4)

§15-15-57 Prehearing conference; exchange of exhibits; prehearing conference order. (a) The chairperson, presiding officer, or the executive officer shall be authorized to hold one or more prehearing conferences with the parties for the purpose of identifying the issues, identifying the positions of the parties, arranging for the exchange of proposed exhibits or proposed written testimony, setting of schedules, exchanging names of witnesses, limitation of number of witnesses, determining the extent of agreement as to proposed findings, and such other matters as may expedite orderly conduct and disposition

of the hearing. No motions and decisions on substantive matters shall occur at the prehearing conference.

(b) The chairperson, presiding officer, or the executive officer may issue a prehearing conference order that shall establish a schedule for the mutual exchange of exhibits and identification of witnesses. The prehearing conference order shall insure that all parties will be provided an opportunity to actively participate in the hearing. No party shall be allowed to present additional exhibits or witnesses that are material or substantial and not identified within the schedule provided by the prehearing conference order, unless the presenting party provides good cause or the exhibit or witness is being presented for rebuttal purposes, or by stipulation of the parties with the permission of the commission. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-58 Procedure for witnesses. (a) The commission may subpoena witnesses as set forth in section 15-15-69.

(b) Together with other witnesses that the commission may desire to hear at the hearing, the commission shall also allow a representative of a citizen or community group to testify, who indicates a desire to express the views of those citizen or community group concerning the proposed boundary amendment. Anyone who desires to testify shall make written application to be a witness prior to the hearing and, if the person desires to express the views of a citizen or community group, shall submit written evidence to show that the person is a duly authorized representative of the citizen or community group.

(c) The presiding officer shall place witnesses under oath or affirmation prior to testifying. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-59 Conduct of hearing. (a) The hearing shall be conducted in accordance with this subchapter. Unless otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence and the burden of persuasion.

(b) The presiding officer shall convene the



hearing and summarize the proceeding.

(c) Before presenting the case, the parties shall have the opportunity to make opening statements in the order in which they present witnesses. Opening statements may be waived.

(d) Unless otherwise directed by the presiding officer, witnesses shall be called in the following order in a district boundary amendment proceeding:

- (1) Witnesses for the petitioner;
- (2) Witnesses for the county planning department;
- (3) Witnesses for the state office of planning;
- (4) Witnesses for each intervenor, in the order in which intervention was granted;
- (5) Rebuttal witnesses for the petitioner;
- (6) Additional witnesses as the presiding officer may determine.

(e) Witnesses shall be examined in the following order:

- (1) Direct examination by the party calling the witness;
- (2) Cross-examination by the other parties;
- (3) Examination by the presiding officer or any member of the commission;
- (4) Redirect examination by the party calling the witness;
- (5) Recross examination by the other parties;
- (6) Reexamination by the presiding officer or any member of the commission.

(f) After all parties have presented their cases through testimony and exhibits, all parties may provide closing statements in the order in which they presented witnesses; provided that petitioner may make a rebuttal closing statement. Closing statements may be waived.

[Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

**§15-15-60 Presiding officer.** (a) Notwithstanding section 15-15-06, in all hearings before the commission, the chairperson, a vice-chairperson, one of the other commissioners, or a hearings officer appointed by the commission shall preside at the hearing.

(b) The presiding officer shall convene the hearing and briefly state the nature of the case, control the schedule and course of the hearings, administer oaths and affirmations, receive evidence, hold appropriate conferences before and during hearings, rule upon all objections or motions which do

not involve a final determination of the proceedings, receive offers of proof, and fix the time for the filing of briefs or proposed findings of fact, conclusions of law and decisions and orders and responses or objections thereto, dispose of any other matter that normally and properly arises in the course of a hearing, and take all other actions authorized by law that are deemed necessary to the orderly and just conduct of a hearing.

(c) The presiding officer may postpone or continue any hearing upon a motion of any party without a hearing. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

**§15-15-61 Disqualification.** No commissioner or hearings officer shall sit in any proceeding in which the commissioner or hearings officer has a personal pecuniary or business interest, or one in which the commissioner or hearings officer is related within the first degree by blood or marriage to any party to the proceeding. However, if, after declaring the nature of the circumstances of the pecuniary interest or consanguinity to the parties, and the parties do not oppose the commissioner or hearings officer sitting in the proceeding, the commissioner or hearings officer may participate in the proceeding. The record shall note clearly the waiver by the parties. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

**§15-15-62 Ex parte communications.** (a) No person whether or not a party to a proceeding before the commission shall make an unauthorized ex parte communication either oral or written about the proceeding to any member of the commission or hearings officer who will be a participant in the decision-making process or the executive officer.

(b) The following classes of ex parte communications are permitted:

- (1) Communications which relate solely to matters which a commission member or hearings officer is authorized by the commission to dispose of on an ex parte basis, including communications regarding scheduling or other procedural matters regarding the course of the proceeding;



- (2) Requests for information with respect to the status of a proceeding;
- (3) Communications which all parties to the proceeding agree or which the commission has formally ruled may be made on an ex parte basis; and
- (4) Communications with representatives of any news media on matters intended to inform the general public. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-13, 205-4)

§15-15-63 Evidence. (a) In contested cases, evidentiary requirements shall be controlled by this section.

(b) Any oral or documentary evidence may be received, but the commission shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The commission shall give effect to the rules of privilege recognized by law. Neither the commission nor a hearings officer is bound by the common law rules relating to the admission or rejection of evidence.

(c) The presiding officer shall rule on the admissibility of all evidence. The rulings may be reviewed by the commission in determining the matter on its merits. In extraordinary circumstances, where prompt decision by the commission is necessary to promote justice, the presiding officer may refer the matter to the commission for determination.

(d) When objections are made to the admission or exclusion of evidence, the objecting party shall briefly state the grounds relied upon. Formal exceptions to rulings are unnecessary and need not be taken.

(e) An offer of proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained.

(f) With the approval of the presiding officer, a witness may read into the record the testimony of a witness on direct examination. Before any written testimony is read, unless excused by the presiding officer, the witness shall provide an original and one

paper copy and one electronic copy of the written testimony to the chief clerk, with a copy to each party to the proceeding. Admissibility shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial saving in time will result, a copy of the written testimony may be received into evidence without reading, provided that the witness shall be subject to proper cross-examination on matters contained in the written testimony. Any amendments to written direct and rebuttal testimony, or the introduction of totally new matters by revisions or supplements shall be accompanied by a sworn affidavit or declaration explaining why these matters were not submitted with the original written testimony.

(g) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available; provided that upon request parties shall be given an opportunity to compare the copy with the original.

(h) Exhibits shall be legible and may be prepared on paper not exceeding 8-1/2 x 11 inches in size or bound or folded to the respective approximate size, where practical. Where practicable, sheets of each exhibit shall be numbered and data and other figures shall be set forth in tabular form. When exhibits are offered in evidence, the party shall furnish the original, one paper copy and one electronic copy of the exhibits to the chief clerk with a copy to each party to the proceeding, unless copies have been previously furnished or the presiding officer directs otherwise. The number and format of copies required under this section may be modified by order of the commission.

(i) A party may use maps or other demonstrative exhibits as evidence provided the parties submit the number of legible copies as may be required by the presiding officer. The commission shall not permit the introduction of or testimony from any visual aid not introduced as evidence.

(j) If any matter contained in the petition or in a document filed as a public record with the commission is offered in evidence, unless directed otherwise by the presiding officer, the document need not be produced as an exhibit, but may be received in evidence by reference, provided that the particular portions of the document are specifically identified and are otherwise competent, relevant, and material. If testimony in proceedings other than the one being heard is offered in evidence, a copy shall be presented as an exhibit, unless otherwise ordered by the presiding

officer.

(k) The commission may take official notice of matters as may be judicially noticed by the courts of the State of Hawai'i. Official notice may also be taken of generally recognized technical or scientific facts within the commission's specialized knowledge when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

(l) At the hearing, the presiding officer may require the production of further evidence through testimony or exhibits upon any issue. The presiding officer may authorize the filing of specific documentary evidence as a part of the record after the close of the hearing, subject to the rights of the parties to request reopening of the hearing within a specified time after the receipt of such evidence, or may keep the hearing open until such time as evidence is received by the commission. Upon agreement of the parties, the presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time after submission, reserving an exhibit number therefor, but the hearing shall remain open. The presiding officer is authorized to close the hearing when the exhibit is received, provided that there is no objection from any party, and no request to cross-examine by any party or a request to answer questions by a commissioner. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-10, 205-4)

~~§15-15-64 REPEALED [NOV 0 2 2013]~~

§15-15-65 Limiting testimony. To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-66 Removal from proceeding. Any person who willfully disrupts a hearing or other proceeding may be removed from the hearing room. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ]

(Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 92-3, 205-4)

§15-15-67 Co-counsel. Where a party is represented by more than one attorney or representative, only one of the attorneys or representatives shall be permitted to make an opening statement, or to examine or cross-examine a particular witness or to state any objections or to make closing statements, unless otherwise authorized by the presiding officer. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

~~§15-15-68 REPEALED [R NOV 0 2 2013]~~

§15-15-69 Subpoenas. (a) Any party may file a written motion for the issuance of a subpoena requiring the attendance of a witness for the purpose of taking oral testimony before the commission, which motion shall not require a hearing.

(b) Motions for the issuance of subpoenas duces tecum shall:

- (1) Be in writing;
  - (2) Specify the particular document or record, or part thereof, desired to be produced;
  - (3) State the reasons why the production thereof is believed to be material and relevant to the issues involved; and
  - (4) Include a statement of the reasons why the testimony of the witness is believed to be material and relevant to the issues involved.
- (c) Three original copies of the subpoenas duces

tecum shall be submitted together with the motion filed pursuant to subsection (b).

(d) The presiding officer, chairperson, or in the chairperson's absence, any commissioner, may issue subpoenas. Subpoenas shall not be issued unless the party requesting the subpoena has complied with this section. Signed and sealed blank subpoenas shall not be issued to any person. The name and address of the witness shall be inserted in the original subpoena, a copy of which shall be filed in the proceeding. Subpoenas shall show at whose instance the subpoena is issued.



(e) A party requesting the subpoenas shall be responsible for service of the issued subpoenas, and pay the witnesses summoned the same fees and mileage as are paid witnesses in circuit courts of the State of Hawai'i, and the fees and mileage shall be paid by the party at whose instance the witness appears.

(f) Notwithstanding any rule to the contrary, the chairperson, a commissioner, or a duly-appointed hearings officer may make an oral motion to request the issuance of a subpoena. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 92-16, 205-4)

§15-15-70 Motions. (a) Any party may make motions before, during, or after the close of a hearing.

(b) All motions, other than those made during a hearing, shall:

- (1) Be in writing;
- (2) State the grounds for the motion;
- (3) Set forth the relief or order sought;
- (4) Be accompanied by a memorandum in support of the motion, if the motion involves a question of law; and
- (5) Be filed with the commission at least ten business days before the next regularly scheduled meeting of the commission.

(c) Every motion, except one entitled to be heard ex parte, shall indicate whether a hearing is requested on the motion. If a motion requires the consideration of facts not appearing of record, it shall be supported by affidavits or declarations.

(d) The moving party shall serve a copy of all motion papers on all other parties and shall file the original plus one paper copy and one electronic copy with the commission and proof of service. The number and format of copies required under this section may be modified by order of the commission.

(e) The opposing party or parties shall serve on all other parties and file counter affidavits and memorandums in opposition to the motion and of the authorities relied upon not later than seven days after being served with any written motion, or, if the hearing on the motion will occur less than seven days after the motion is served, at least forty-eight hours before the time set for hearing, unless otherwise ordered by the chairperson, chairperson's designee, or hearings officer. The chairperson, chairperson's designee, or hearings officer may order the opposing

party or parties to file its memorandum in opposition earlier than the seven day period. The opposing party shall file the original plus one paper copy and one electronic copy with the commission and proof of service. The number and format of copies required under this section may be modified by order of the commission.

(f) Any party who does not oppose a motion or who intends to support a motion or who desires a continuance shall notify the commission, through the executive officer, and the opposing counsel within seven days after being served or, if the hearing on the motion will occur less than seven days after the motion is served, within forty-eight hours before the time set for hearing.

(g) Failure to serve or file memoranda in opposition to a motion or failure to appear at the hearing may be deemed a waiver of objection to the granting or denial of the motion.

(h) Motions that do not involve the final determination of a proceeding may be heard and determined by the chairperson, commissioner, or hearings officer.

(i) If a hearing is requested, the executive officer shall set a date and time for hearing on the motion.

(j) If a hearing on the motion is not requested, the commission may decide the matter upon the pleadings, memoranda, and other documents filed with the commission.

(k) Any motion, except a motion for relief from or release of conditions submitted by the same party or parties and based upon substantially the same grounds as a previous motion that has been considered by the commission or denied by the commission shall not be again considered.

(l) After the hearing on the evidence is closed, but before the commission votes on a decision, a party for good cause shown may move to re-open the hearing to take newly discovered evidence. The motion shall specify the facts claimed to constitute good cause, including material changes of fact or of law alleged to have occurred since the closing of the hearing and shall provide a description of the proposed additional evidence and an explanation of why the newly discovered evidence was not previously adduced. The party filing the motion shall be responsible for fees and costs pursuant to section 15-15-45.1.

(m) Orders granting, denying or otherwise disposing of motions, except motions to amend decisions

and orders relating to district boundary amendments and to special permits, may be signed by the chairperson or any vice chairperson, or the presiding officer, or the hearings officer, as the case may be. Orders granting, denying, or otherwise disposing of motions relating to amendments of decisions and orders in district boundary amendment proceedings and to special permits shall be signed by the commissioners who have heard or examined the evidence relating to the motion and who have voted affirmatively on the decision. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-70.1 Protective orders. Any party or any person may move for a protective order to protect the confidentiality of information that is protected from disclosure under chapter 92F, HRS, or by other law. A motion for protective order shall specifically identify the document or information to be protected. The movant shall bear the burden of establishing that the information should be protected. Stipulations for protective order, subject to the commission's approval, may be filed in lieu of motions for protective orders. [Eff and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7)

§15-15-71 Substitution of parties. Upon motion and for good cause shown, the commission may order substitution of parties, except that in the case of death of a party, substitution may be ordered without the filing of a motion. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2, 205-4)

§15-15-72 Correction of transcript. The chairperson, presiding officer, or hearings officer shall determine any motion at the hearing to correct the transcript. Any motions after the hearing to correct the transcript shall be filed with the commission within seven days after receipt of the transcript unless otherwise directed, and shall be served on all parties. Such motions shall certify the date when the transcript was received. If no objections are received before seven days after the date of service, the transcript, upon approval of the commission, shall be changed to reflect the corrections. [Eff 10/27/86; am and comp 8/16/97;

comp 5/8/00; comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

§15-15-73 Post hearing procedures. Post hearing procedures shall conform to subchapters 9 and 10. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

§15-15-74 Decision. (a) For district boundary amendment petitions filed before December 31, 1995, within a period of not more than one hundred twenty days after the close of the hearing, unless otherwise ordered by the court, the commission, by filing findings of fact and conclusions of law, shall act to approve the petition, deny the petition, or to modify the petition by imposing conditions in accordance with subchapter 11.

(b) For district boundary amendment petitions filed on or after July 14, 1998, prior to a period of not more than three hundred sixty-five days after the petition has been deemed a proper filing by the commission or the executive officer, unless otherwise ordered by a court, or unless a time extension, not to exceed ninety days, is established by a two-thirds vote of the members of the commission, the commission, by filing findings of fact and conclusions of law, shall act to approve the petition, deny the petition, or to modify the petition by imposing conditions in accordance with subchapter 11. If the commission fails to act on the petition pursuant to section 205-4(g), HRS, the petition shall be deemed approved, subject to the provisions of section 15-15-90(e).

(c) Notwithstanding subsections (a), and (b), decisions for petitions submitted pursuant to section 201H-38, HRS, shall be made in the timeframe as provided in section 15-15-97. [Eff 10/27/86; am 3/24/94; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§91-13.5, 205-1, 205-4, 205-75) (Imp: HRS §§ 91-13.5, 201G-118, 205-4, SLH 1992, Act 227, §1, SLH 1994, Act 261, §1)

§15-15-75 Appeals. Parties to proceedings to amend land use district boundaries may obtain judicial reviews thereof in the manner set forth in section 91-14, HRS. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; comp NOV 0 2 2013 ] (Auth: HRS §§205-1,



205-7) (Imp: HRS §§91-14, 205-4)

§15-15-76 Re-application by the petitioner for boundary amendment. (a) The commission shall not accept any petition for boundary amendment covering substantially the same request for substantially the same land as had previously been denied by the commission within one year of the date of filing findings of fact and conclusions of law denying the petition unless the petitioner submits significant new data or additional reasons which substantially strengthen the petitioner's position, provided that in no event shall any new petition be accepted within six months of the date of filing of the findings of fact and conclusions of law.

(b) Additionally, the commission shall not accept any petition for boundary amendment for the same request involving the same land that was before the commission and withdrawn voluntarily by the petitioner within one year of the date of the withdrawal. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-2)

#### SUBCHAPTER 8

##### DECISION-MAKING CRITERIA FOR BOUNDARY AMENDMENTS

§15-15-77 Decision-making criteria for boundary amendments. (a) The commission shall not approve an amendment of a land use district boundary unless the commission finds upon the clear preponderance of the evidence that the proposed boundary amendment is reasonable, is not violative of section 205-2, HRS, and is consistent with the policies and criteria established pursuant to sections 205-16, 205-17, and 205A-2, HRS.

(b) In its review of any petition for amendment of district boundaries pursuant to this chapter, the commission shall specifically consider the following:

- (1) The extent to which the proposed boundary amendment conforms to the applicable goals, objectives, and policies of the Hawai'i state plan and relates to the applicable priority guidelines of the Hawai'i state plan and the adopted functional plans;
- (2) The extent to which the proposed boundary amendment conforms to the applicable

district standards;

- (3) The impact of the proposed boundary amendment on the following areas of state concern:
  - (A) Preservation or maintenance of important natural systems or habitats;
  - (B) Maintenance of valued cultural, historical, or natural resources;
  - (C) Maintenance of other natural resources relevant to Hawai'i's economy including, but not limited to agricultural resources;
  - (D) Commitment of state funds and resources;
  - (E) Provision for employment opportunities and economic development; and
  - (F) Provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups;
- (4) In establishing the boundaries of the districts in each county, the commission shall give consideration to the general plan, and community, development, or community development plans of the county in which the land is located;
- (5) The representations and commitments made by the petitioner in securing a boundary amendment, including a finding that the petitioner has the necessary economic ability to carry out the representations and commitments relating to the proposed use or development;
- (6) Lands in intensive agricultural use for two years prior to date of filing of a petition or lands with a high capacity for intensive agricultural use shall not be taken out of the agricultural district unless the commission finds either that the action:
  - (A) Will not substantially impair actual or potential agricultural production in the vicinity of the subject property or in the county or State; or
  - (B) Is reasonably necessary for urban growth; and
- (7) In considering boundary amendments for lands designated important agricultural lands pursuant to part III, chapter 205, HRS, the commission shall specifically consider the standards and criteria set forth in section 205-50, HRS.
- (c) Amendments of a land use district boundary in conservation districts involving land areas fifteen

acres or less shall be determined by the commission pursuant to this subsection and section 205-3.1, HRS.

(d) Amendments of a land use district boundary in other than conservation districts involving land areas fifteen acres or less shall be determined by the appropriate county land use decision-making authority for the district.

(e) Amendments of a land use district boundary involving land areas greater than fifteen acres shall be determined by the commission, pursuant to this subsection and section 205-3.1, HRS. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§205-3.1, 205-4, 205-16, 205-17)

§15-15-78 Incremental districting. (a) If it appears to the commission that full development of the subject property cannot substantially be completed within ten years after the date of the commission's approval and that the incremental development plan submitted by the petitioner can be substantially completed, and if the commission is satisfied that all other pertinent criteria for amending the land use boundary for the subject property or part thereof are present, then the commission may:

- (1) Grant the petitioner's request to amend the land use boundary for the entire subject property; or
- (2) Amend the land use boundary for only that portion of the subject property which the petitioner plans to develop first and upon which it appears that substantial development can be completed within ten years after the date of the commission's approval. At the same time, the commission shall indicate its approval of the future land use boundary amendment of the total subject property requested by the petitioner, or so much thereof as shall be justified as appropriate therefor by the petitioner, such approval to indicate a schedule of incremental land use boundary amendments over successive periods not to exceed ten years each. The commission may amend the land use boundary of the subject property, if it finds such an amendment is justified.

(b) In amending a land use district boundary on an incremental basis, in addition to standards in this subchapter, the commission may consider projected population growth for the area, other lands that have

received boundary amendments in the area, the availability of and impacts on resources, and the desirability of directing growth and development to the area over a long term basis.

(c) Upon receipt of an application for boundary amendment for the second and subsequent increments of property for which previous approval for incremental development has been granted by the commission, substantial completion of any offsite and onsite improvements of the development, in accordance with the approved incremental plan, of the preceding increment that received boundary amendment will be prima facie proof that the approved incremental plan complies with the requirements for boundary amendment.

(d) The following are procedures for processing incremental boundary amendment applications:

- (1) The petitioner shall file an original, one paper copy and one electronic copy of an application to approve the second or subsequent increments utilizing the same docket number as the original petition. The number and format of copies required under this section may be modified by order of the commission;
- (2) The petitioner shall serve copies of the application on all parties of record in the original proceeding;
- (3) The application shall include facts, affidavits or declarations, and other documentation, including a metes and bounds description and map, in support of the fact that the petitioner has substantially completed offsite and onsite improvements, complied with chapter 343, HRS, where applicable, and complied with conditions of the commission approval in accordance with the approved incremental plan of the preceding increment receiving a boundary amendment;
- (4) A prehearing conference may be conducted pursuant to section 15-15-57;
- (5) A notice of hearing shall be published notifying the public of the time and place the application will be considered by the commission and will provide for the admission of public witnesses;
- (6) The procedures for hearing the application will be subject to the timeframes presently existing for district boundary amendments, and the provisions of section 15-15-13; and



- (7) The petitioner shall provide notice of the application to all persons having a property interest in the increment for which a land use district boundary amendment is sought. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: §205-4)

§15-15-79 Performance time. (a) Petitioners granted district boundary amendments shall make substantial progress within a reasonable period, as specified by the commission, from the date of approval of the boundary amendment, in developing the property receiving the boundary amendment. The commission may act to amend, nullify, change, or reverse its decision and order if the petitioner fails to perform as represented to the commission within the specified period.

(b) The commission may provide by condition that absent substantial commencement of use of the subject property or substantial progress in developing the land receiving the boundary amendment in accordance with representations and commitments made by the petitioner to the commission, the commission shall issue and serve upon the party bound by the condition an order to show cause why the property should not revert to its former land use district classification or be changed to a more appropriate land use district classification. Such conditions, if any, shall run with the land and be recorded in the bureau of conveyances pursuant to section 15-15-92. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-4, 205-7) (Imp: HRS §205-4)

#### SUBCHAPTER 9

##### POST HEARING PROCEDURES FOR HEARINGS BEFORE THE COMMISSION

§15-15-80 Briefs. The presiding officer may fix the time for the filing of briefs. Exhibits may be reproduced in an appendix to a brief. A brief of more than twenty pages shall contain a subject index and table of authorities. Requests for extension of time to file briefs must be made to the commission in writing with one original, one paper copy, and one electronic copy filed with the commission, and a copy

served upon or mailed to the parties to the proceeding. Ordinarily, when a matter is to be submitted on concurrent briefs, extensions shall not be granted unless a stipulation is filed with the commission. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

§15-15-81 Oral argument. The commission or the presiding officer may direct or permit the presentation of oral argument with the petitioner opening and concluding the argument. Not more than fifteen minutes on each side of the proceeding shall be allowed for argument without special leave of the commission. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-9, 205-4)

§15-15-82 Issuance of decisions and orders. (a) A proceeding shall stand submitted for decision by the commission after the taking of evidence, and the filing of briefs or the presentation of oral argument as may have been prescribed by the presiding officer or hearings officer. Each party to the proceeding shall submit a proposed decision and order which shall include proposed findings of fact. If a party enters into a partial stipulation as authorized in section 15-15-82.1, the party shall nevertheless file a proposed decision and order indicating the findings of fact, conclusions of law and proposed conditions that are stipulated to and also set forth proposed findings of fact, conclusions of law and proposed conditions that it proposes that are different than the stipulation. A proposed decision and order shall be filed with the commission consisting of one original, one paper copy, and one electronic copy, and a copy served upon each party to the proceeding and an opportunity given to each party to comment thereon.

(b) A commission member may prepare a proposed findings of fact and conclusions of law, and serve the document upon each party not less than ten business days prior to the meeting at which the proposed findings of fact and conclusions of law shall be presented.

(c) Notwithstanding any provision of this chapter to the contrary, each party may provide its position on the commission members' proposed findings of fact and conclusions of law within five business days from the

date of service. Any party providing its position shall provide a summary of its reasons for support or objection.

(d) Every decision and order adverse to a party to the proceeding, rendered by the commission in a contested case, shall be accompanied by separate findings of fact and conclusions of law.

(e) Findings of fact, conclusions of law, and decision and order shall be issued by the commission for district boundary amendments and special permits deemed approved pursuant to section 91-13.5, HRS. The decision and order shall include mandatory conditions pursuant to section 15-15-90(e). [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013] (Auth: HRS §§91-13.5, 205-1, 205-7) (Imp: HRS §§91-2, 91-12, 205-4)

\$15-15-82.1 Stipulation as to findings of fact, conclusions of law, conditions of boundary amendment, and decision and order. After the close of the evidentiary portion of the hearing, some or all parties may enter into stipulations as to findings of fact, conclusions of law, conditions of boundary amendment, and decision and order concerning the proposed boundary amendment as follows:

- (1) A petitioner who desires to enter into a stipulation shall prepare a proposed stipulation as to any or all findings of fact, conclusions of law, conditions of boundary amendment, and decision and order concerning the proposed boundary amendment;
- (2) Parties in agreement with a stipulation shall sign the proposed stipulation as to any or all proposed findings of fact, conclusions of law, conditions of boundary amendment, and a proposed decision and order, and shall submit such stipulation to the commission within the time frame specified by the commission;
- (3) After the hearing, the commission may adopt the proposed stipulation, and if it adopts the stipulated decision and order the commission may amend, accept, modify or reject in part or in whole any of the findings of fact, conclusions of law, conditions of boundary amendment, and anything else contained in the stipulation;
- (4) The commission shall issue a decision and order pursuant to provisions of sections 15-15-36 and 15-15-74 and section 205-4(g), HRS.

[Eff and comp NOV 0 2 2013] (Auth: HRS §§205-1, 205-7)

\$15-15-83 Service of decisions and orders. The commission shall serve the decisions and orders by personal delivery or mailing certified copies to the parties of record. The effective date of the decision and order is the date certified by the executive officer. When a party to a proceeding has appeared by a representative, service upon the representative or attorney shall be deemed to be service upon the party.

[Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-12, 205-4)

\$15-15-84 Reconsideration of decision. (a) A motion for reconsideration shall be filed with the commission within seven calendar days after issuance of the commission's written decision and order. The motion for reconsideration shall clearly specify that the motion is for reconsideration.

(b) The motion for reconsideration shall state specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.

(c) In no event will the commission consider any motion for reconsideration on any petition after the period within which the commission is required to act on the petition. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

#### SUBCHAPTER 10

#### POST HEARING PROCEDURES FOR HEARING CONDUCTED BY HEARINGS OFFICER

\$15-15-85 Recommended decision. (a) Upon completion of taking of the evidence, the hearings officer may request the parties to submit a proposed findings of fact, conclusions of law, and decision and order, consisting of one original, one paper copy, and one electronic copy. Proposed decision and orders submitted shall be served upon each party to the proceeding and an opportunity given to each party to comment thereon. Upon receipt of the proposed decision and orders and any comments from the parties, the hearings officer shall prepare and submit to the



commission a recommended decision which shall include recommended findings of fact, conclusions of law and a recommended decision and order.

(b) The record shall include the petition and other pleadings, notice of hearing, motions, rulings, orders, transcript of the hearing, stipulations, documentary evidence, offers of proof, proposed findings, or other documents submitted by the parties, all matters placed in evidence, objections to the conduct of the hearing, the recommended decision of the hearings officer, and all other matters placed in evidence.

[Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7)

§15-15-85.1 Proposed decision. Upon receipt of the hearings officer's recommended decision, the commission may adopt it as its proposed decision, or may remand it to the hearings officer for any clarification or correction, or may modify or reject it and issue its own proposed decision.

A copy of any proposed decision of the commission shall be served upon each party. [Eff and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7)

§15-15-86 Exceptions; extension of time; finality of proposed decision. (a) Within fourteen calendar days after the date of mailing or personal service of a copy of the commission's proposed decision, a party may file with the commission exceptions to any part thereof and request review by the commission. Such party shall serve copies of exceptions and briefs upon each party to the proceeding.

(b) The exceptions shall:

- (1) Set forth specifically the questions of procedure, fact, law, or policy, to which exceptions are taken;
  - (2) Identify that part of the proposed decision to which objections are made;
  - (3) Designate by page citation the portions of the record relied upon and specify authorities relied upon to sustain each point; and
  - (4) State all the grounds for exceptions to a ruling, finding, or conclusion. Grounds not cited or specifically urged are waived.
- (c) Any party may apply for an extension of time

within which to file exceptions to the proposed decision by filing a written application setting forth the reason for the request. The application shall be filed before the expiration of the period prescribed for the filing of exceptions. Upon good cause shown, the executive officer may extend the time for filing exceptions for an additional period not to exceed ten (10) calendar days.

(d) If no exceptions and request for review are filed within the time specified, the proposed decision shall become final, unless the commission, on its own motion, orders further proceedings to be held. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-11, 205-4)

§15-15-87 Support of hearings officer's recommended decision. (a) Within seven days after service of the exceptions taken to the proposed decision, any party may file with the commission a brief opposing the exceptions. Such party shall serve copies of the brief in support upon each party to the proceeding

(b) The brief opposing exceptions shall:

- (1) Answer specifically the points of procedure, fact, law, or policy to which exceptions were taken;
- (2) State the facts and reasons why the proposed decision must be affirmed; and
- (3) Designate by page citation the portions of the record relied upon. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-11, 205-4)

§15-15-88 Argument on exceptions. Upon the filing of exceptions by a party adversely affected by the proposed decision, the commission shall grant such party an opportunity to present arguments to the commission. The executive officer, with direction from the chairperson, shall set the time and place of hearing of argument on exceptions and give written notice to the parties. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-10, 91-11, 205-4)

§15-15-89 Final decision. (a) When exceptions have been filed to the commission's proposed decision, the commission, within forty-five days after the hearing on exceptions, shall render its final decision.

In rendering its final decision, the commission shall consider the whole record or such portions thereof as may be cited by the parties and shall resolve all questions of fact by what it deems to be the greater weight of the evidence thereon. The final decision shall contain findings of fact and conclusions of law upon which the decision is based.

(b) After the commission has heard and examined all of the evidence, the commission, shall issue its decision within forty-five days after receiving the evidence, or filing of any memoranda or proposed findings of fact and conclusions of law upon which the decision is based. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 6 2 2013] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 92-16)

#### SUBCHAPTER 11

#### CONDITIONS: FILING, ENFORCEMENT, MODIFICATION, DELETION

##### §15-15-90 Imposition of conditions; generally.

(a) In approving a petition for boundary amendment, the commission may impose conditions necessary to uphold the general intent and spirit of chapters 205, 205A, and 226, HRS, and to assure substantial compliance with representations made by the petitioner in seeking the boundary amendment.

(b) The commission may request the appropriate state or county agency to report periodically to the commission on the petitioner's compliance with the applicable conditions imposed by the commission.

(c) The commission may require the petitioner to submit periodic reports indicating what progress has been made in complying with any conditions that may have been imposed by the commission.

(d) The commission may require the petitioner to notify the commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the property covered by the approved petition.

(e) If a boundary amendment petition filed pursuant to section 205-4, HRS, is approved pursuant to

section 91-13.5, HRS, or a petition filed pursuant to section 201H-38, HRS, is deemed approved on the forty-sixth day, the following mandatory conditions shall apply:

- (1) Petitioner shall develop the land to which the boundary amendment applies in substantial compliance with the representations made to the commission. Failure to so develop the subject property may result in reversion of the subject property to its former land use district classification, or change it to a more appropriate land use district classification;
- (2) Petitioner shall provide notice to the commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the subject property prior to or during development of the subject property, excluding, however, individual lot sales or lease in a residential or industrial development;
- (3) Petitioner shall timely provide without any prior notice, annual reports to the commission, state office of planning, and the respective county planning department in connection with the status of the project proposed for the land to which the boundary amendment applies, and petitioner's progress in complying with the conditions imposed. The annual report shall be submitted in a form prescribed by the executive officer of the commission. The annual report shall consist of one original, one paper copy, and one electronic copy, and shall be due prior to or on the anniversary date of the approval of the petition;
- (4) The commission may fully or partially release the conditions provided herein as to all or any portion of the land to which the boundary amendment applies upon timely motion and upon the provision of adequate assurance by the petitioner of satisfaction of the conditions imposed;
- (5) Within seven days of the approval date of the petition, the petitioner shall:
  - (A) Record with the bureau of conveyances a statement that the land to which the boundary amendment applies is subject to conditions imposed herein by the



- commission; and
- (B) File a certified copy of such recorded statement with the commission;
- (6) Petitioner shall record the conditions imposed herein by the commission with the bureau of conveyances pursuant to section 15-15-92;
- (7) Petitioner shall provide affordable housing opportunities for low, low-moderate, and moderate income residents of the State of Hawai'i to the satisfaction of the respective county in which the land to which the boundary amendment applies is located. The respective county shall consult with the Hawai'i housing finance and development corporation prior to its approval of the petitioner's affordable housing plan. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between the petitioner and the respective county;
- (8) Provided that the proposed land uses include residential units, petitioner shall contribute to the development, funding, and construction of public school facilities as determined by and to the satisfaction of the state department of education;
- (9) Petitioner shall participate in the funding and construction of adequate wastewater transmission and disposal facilities, on a fair-share basis, as determined by the respective county in which the land to which the boundary amendment applies is located, and the state department of health;
- (10) Petitioner shall prepare a traffic impact analysis report. The traffic impact analysis report shall identify the traffic impacts attributable to the proposed development and recommended proposed mitigation measures. The report should also reflect the latest planning efforts for transportation. The report shall be reviewed and approved by the state department of transportation, and the respective county transportation agency in which the land to which the boundary amendment applies is located. Based upon the report, the petitioner may be required to participate on a fair-share basis, in the funding and construction of local and

- regional transportation improvements and programs, including dedication of rights-of-way as determined by the state department of transportation and the respective county transportation agency in which the land to which the boundary amendment applies is located;
- (11) Petitioner shall, on a fair-share basis, fund and construct adequate civil defense measures as determined by the state civil defense agency;
- (12) Petitioner shall have an archaeological inventory survey conducted by a professional archaeologist. The findings shall be submitted to the state department of land and natural resources, state historic preservation division in report format for adequacy review and a copy shall be provided to the commission. The state historic preservation division shall verify in writing with a copy provided to the commission that the survey report is acceptable, that significance evaluations are acceptable, and that mitigation commitments are acceptable;
- (13) If significant historic sites are present, the petitioner shall submit a detailed historic preservation mitigation plan for review by the state historic preservation division and a copy shall be provided to the commission. This plan may include preservation and archaeological data recovery subplans (detailed scopes of work). The state historic preservation division shall verify in writing with a copy provided to the commission that the plan has been successfully executed;
- (14) Petitioner shall stop work in the immediate vicinity should any previously unidentified burials, archaeological or historic sites such as artifacts, marine shell concentrations, charcoal deposits, or stone platforms, pavings or walls be found. Subsequent work shall proceed upon an archaeological clearance from the state historic preservation division when it determines that mitigative measures have been implemented to its satisfaction;
- (15) Petitioner shall participate in an air quality monitoring program as specified by the state department of health;

- (16) Petitioner shall be responsible for implementing sound attenuation measures to bring noise levels from vehicular traffic in the affected properties down to a level of fifty-five decibels;
- (17) If the petition for a boundary amendment involves prime agricultural lands, petitioner shall be responsible for contributing to the protection of an equivalent amount of prime agricultural lands and related infrastructure via long-term agricultural conservation easements or other agriculturally-related assets as determined by and to the satisfaction of the state department of agriculture;
- (18) Petitioner shall notify all prospective buyers of property of the potential odor, noise, and dust pollution if there are any agricultural district lands surrounding the land to which the boundary amendment applies;
- (19) To the extent that the petition area is contiguous or adjacent to lands in the State land use agricultural district, any action that would interfere with or restrain farming operations on those lands is prohibited, provided the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices. Petitioner shall notify all prospective developers or purchasers of all or any portion of the petition area or any interest in the petition area, and shall require its purchasers to provide subsequent notification to lessees or tenants that farming operations and practices on adjacent or contiguous land in the State land use agricultural district are protected under chapter 165, HRS, the Hawai'i Right to Farm Act. This notice shall be included in any disclosure required for the sale or transfer of all or any portion of the petition area or any interest in the petition area;
- (20) Petitioner shall fund the design and construction of drainage improvements required as a result of the development of the land to which the boundary amendment applies to the satisfaction of the appropriate state and county agencies;
- (21) Petitioner shall cooperate with the state department of health and the respective

- county to conform to the program goals and objectives of chapter 342G, HRS, and the respective county's approved integrated solid waste management plans in accordance with a schedule and timeframe satisfactory to the state department of health;
- (22) To the extent required by the state department of health, petitioner shall ensure that nearshore, offshore, and deep ocean waters remain in pristine condition;
- (23) Petitioner shall participate in the funding and construction of adequate water source, storage, and transmission facilities and improvements to accommodate the proposed uses. Water transmission facilities shall be coordinated and approved by appropriate state and county agencies. The county's water use and development plan shall be amended to reflect changes in water demand forecasts and in water development plans to supply the proposed uses; and
- (24) Petitioner shall preserve and protect any established gathering and access rights of native Hawaiians who have customarily and traditionally exercised subsistence, cultural, and religious practices on the land to which to the boundary amendment applies.
- (f) If a special permit filed pursuant to section 205-6, HRS, is approved pursuant to section 91-13.5, HRS, the following mandatory conditions shall apply:
  - (1) All conditions listed under subsection (e);
  - (2) The proposed use shall be established within one year from the date that the special permit was approved pursuant to section 91-13.5, HRS; and
  - (3) The special permit shall be valid for a period of five years from the approval date pursuant to section 91-13.5, HRS.
 

[Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 ]  
 (Auth: HRS §§91-13.5, 205-1, 205-7) (Imp: HRS §§91-13.5, 205-4)

§15-15-91 Applicability. Conditions imposed by the commission shall run with the land and shall be binding upon the petitioner and each and every subsequent owner, lessee, sub-lessee, transferee, grantee, assignee, or developer. [Eff 10/27/86; comp 8/16/97; am and comp 5/8/00; comp NOV 0 2 2013 ]



\$15-15-92 Filing procedure for conditions imposed  
by the commission. (a) Within seven days of issuance  
of the decision and order pursuant to section 15-15-83,  
the petitioner shall file a notice of imposition of  
conditions, in a form prescribed by the executive  
officer, with the bureau of conveyances.

- (1) The document listing the conditions shall be submitted to the commission for review and approval by the executive officer prior to filing with the bureau of conveyances;
- (2) The petitioner shall record the conditions at the bureau of conveyances within sixty days after the receipt of the decision and order requiring the same. The timeframe for recordation of the condition may be extended pursuant to section 15-15-42;
- (3) Evidence of recordation shall be by certified copy under the signature of the registrar of conveyances. The petitioner shall forward a certified copy to the commission; and
- (4) Description of the land shall be sufficiently accurate to identify the land intended to be affected. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp 8/16/97]

NOV 0 2 2013

(Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4)

- (1) The interest of the movant;
- (2) The reasons for filing the motion;
- (3) A description and a map of the property

(e) The commission shall amend its decision and order to incorporate the order to show cause by including the reversion of the property to its former land use classification or to a more appropriate classification.



(f) Fees for a motion for order to show cause will be borne by the movant pursuant to section 15-15-45.1 herein. However, should the motion for order to show cause be granted, any further fees for proceedings arising from the motion shall be borne by the party upon which the order to show cause has been issued.

[Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 205-4, 205-12, 205-17)

§15-15-94 Modification or deletion of conditions or orders. (a) If a petitioner, pursuant to this subsection, desires to have a modification or deletion of a condition that was imposed by the commission, or imposed pursuant to section 15-15-90(e) or (f), or modification of the commission's order, the petitioner shall file a motion in accordance with section 15-15-70 and serve a copy on all parties to the boundary amendment proceeding in which the condition was imposed or in which the order was issued, and to any person that may have a property interest in the subject property as recorded in the county's real property tax records at the time that the motion is filed.

(b) For good cause shown, the commission may act to modify or delete any of the conditions imposed or modify the commission's order.

(c) Any modification or deletion of conditions or modifications to the commission's order shall follow the procedures set forth in subchapter 11. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-4)

## SUBCHAPTER 12

### SPECIAL PERMITS

§15-15-95 Petition before county planning commission. (a) Any person who desires to use land within an agricultural or rural district for other than a permissible agricultural or rural use may petition the county planning commission of the county within which the land is located for a special permit to use the land in the manner desired; provided that if the person is not the owner or sole owner in fee simple of the land, the record shall include evidence that the

person requesting the special permit has written authorization of all fee simple owners to file the petition, which authorization shall also include an acknowledgement that the owners and their successors shall be bound by the special permit and its conditions.

(b) Special permits for areas greater than fifteen acres require approval of both the county planning commission and the commission. Special permits approved by the county planning commission and which require commission approval must be forwarded to the commission within sixty days following the county planning commission's decision. The county shall assure that prior to the county hearing on the petition for special permit, copies of the special permit petition are forwarded to the land use commission, the state office of planning, and the department of agriculture for their review and comment. The decision of the county planning commission recommending approval of the special permit, together with the complete record, including maps, charts, other exhibits and other evidence, and the complete transcript of the proceeding before the county planning commission must be transmitted to the commission. Unless otherwise required by the commission, the planning commission shall file with the commission an original, one paper copy of the complete record, together with an electronic copy of the complete record. The number and format of copies required under this section may be modified by order of the commission.

(c) Certain "unusual and reasonable" uses within agricultural and rural districts other than those for which the district is classified may be permitted. The following guidelines are established in determining an "unusual and reasonable use":

- (1) The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the commission;
- (2) The proposed use would not adversely affect surrounding property;
- (3) The proposed use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage and school improvements, and police and fire protection;
- (4) Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established; and
- (5) The land upon which the proposed use is sought is unsuited for the uses permitted

within the district.

(d) Petitions for issuance of a special permit shall specify the proposed use and state concisely the nature of the petitioner's interest in the subject matter and the reasons for seeking the special permit, and shall include any facts, views, arguments, maps, plans, and relevant data in support of the petition.

(e) The petitioner shall comply with all of the rules of practice and procedure of the county planning commission in which the subject property is located.

(f) The county planning commission may impose such protective conditions as it deems necessary in the issuance of a special permit. The county planning commission shall establish, among other conditions, a reasonable time limit suited to establishing the particular use proposed, and if appropriate, a time limit for the duration of the proposed use, which shall be a condition of the special permit; provided, however, that the commission for good cause shown, may specify or change the time period of the special permit. If the permitted use is not substantially established to the satisfaction of the county planning commission within the specified time, it may revoke the permit. The county planning commission, with the concurrence of the commission, may extend the time limit if it deems that circumstances warrant the granting of the extension. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-6)

#### §15-15-95.1 Applicability of subchapter 5.

Except as otherwise provided in this subchapter, the procedural provisions of subchapter 5 shall apply to petitions for special permits. [Eff and comp NOV 0 2 2013] (Auth: HRS §§205-1, 205-7)

§15-15-96 Decision and order by the land use commission. (a) Within forty-five days after receipt of the county planning commission's decision and the complete record of the proceeding before the county planning commission, as determined by the executive officer, the commission shall act to approve, approve with modification, or deny the petition. The commission may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the petitioner. Upon determination by the commission, the petition may be remanded to the county planning

commission for further proceedings.

(b) The commission shall not consider any petition for special permit covering substantially the same request for substantially the same land as had previously been denied by the commission within one year of the date of the filing of the findings of fact, conclusions of law, and decision and order denying the petition for special permit unless the petitioner submits significant new data or additional reasons which substantially strengthen the petitioner's position, provided that in no event shall any new petition be accepted within six months of the date of the filing of the findings of fact, conclusions of law, and decision and order. Additionally, the commission shall not consider any petition for special permit for the same request involving the same land that was before the commission and withdrawn voluntarily by the petitioner within one year of the date of the withdrawal.

(c) A denial or modification of the special permit, as the case may be, of the proposed use shall be appealable to the circuit court of the circuit in which the land is situated and shall be made pursuant to the Hawai'i rules of civil procedure.

(d) If a special permit is approved pursuant to section 91-13.5, HRS, the provisions of section 15-15-82(e) and section 15-15-90(f) shall apply. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013] (Auth: HRS §§91-13.5, 205-1, 205-7) (Imp: HRS §§91-13.5, 205-6)

§15-15-96.1 Modification of special permit. Any request for modification of a special permit or modification, release, or deletion of a condition imposed on a special permit, whether imposed by the county planning commission or the commission, shall first be submitted to the appropriate county planning commission and, for special permits for land greater than fifteen acres in size, the commission, for consideration and decision.

The decision of the county planning commission with respect to modification of a special permit, or modification, release or deletion of a condition to a special permit shall comply with the requirements of section 15-15-95 and 15-15-96. [Eff and comp NOV 0 2 2013] (Auth: HRS §§205-1, 205-7)



GOVERNMENT SPONSORED HOUSING PROJECTS

§15-15-97 Procedure for processing petitions for housing projects under section 201H-38, HRS. (a) Petitions for housing projects under section 201H-38, HRS, shall be processed according to the procedures provided in this section.

(b) Not less than sixty days prior to the filing of a petition, the petitioner shall:

- (1) File an original, one paper copy, and one electronic copy of a notice of intent to file a petition with the commission according to a format provided by the commission; the number and format of copies required under this section may be modified by order of the commission;
- (2) Publish the notice of intent at least once in a newspaper of general circulation in the State as well as in a county newspaper in which the subject property is situated. The notice of intent shall include:
  - (A) The name and address of the petitioner and the petitioner's property interest in the subject property;
  - (B) Proposed boundary amendment;
  - (C) Tax map key;
  - (D) Acreage;
  - (E) Existing land use;
  - (F) Brief description of the proposed development or use;
  - (G) The date that the petitioner shall file its petition with the commission; and
  - (H) Inform the public of the rights of interested persons under section 205-4(e), HRS;
- (3) Serve copies of the notice of intent to file a petition upon the director of the state office of planning, the planning department of the county in which the subject property is situated, and persons with a property interest in the subject property that is recorded in the county's real property tax records. The notice of intent to file a petition shall also be sent to persons on a mailing list provided by the chief clerk. In proceedings related to 201H petitions, the petitioner's notice of intent shall also serve as the notice of hearing for the purposes of

intervention;

- (4) File an original and one paper copy of an affidavit of mailing the notices of intent to the persons specified in paragraph (3); and
- (5) File an affidavit of publication of the notice of intent to file a petition in compliance with paragraph (2).

(c) Persons who may intervene upon timely application include:

- (1) All departments and agencies of the State and of the county in which the land is situated; and
  - (2) All persons who have a property interest in the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public.
- (d) All other persons may apply for leave to intervene, which shall be freely granted, provided the commission or its hearings officer may deny an application to intervene when, in the commission's or hearing officer's discretion, it appears that:
- (1) The position of the applicant for intervention is substantially the same as the position of a party already admitted to the proceeding; and
  - (2) The admission of additional parties will render the proceedings inefficient and unmanageable.
- (e) Petitions to intervene and become a party shall be in conformity with subchapter 5 and filed with the commission. An original and one paper copy, together with one electronic copy of the petition for intervention with proof of service on all parties shall be filed with the commission within fifteen days after the notice of intent to file a petition is published pursuant to section 15-15-97(b)(2). Except for good cause shown, late filing shall not be permitted.
- (f) The petition for intervention shall make reference to the following:
- (1) Nature of the proposed intervenor's statutory or other right;
  - (2) Nature and extent of the proposed intervenor's interest, and if an abutting property owner, the tax map key description of the property; and
  - (3) Effect of any decision in the proceeding on the proposed intervenor's interest.



(g) If applicable, the petition shall also make reference to the following:

- (1) Other means available whereby the proposed intervenor's interest may be protected;
- (2) Extent the proposed intervenor's interest may be represented by existing parties;
- (3) Extent the proposed intervenor's interest in the proceeding differs from that of the other parties;
- (4) Extent the proposed intervenor's participation can assist in development of a complete record;
- (5) Extent the proposed intervenor's participation will broaden the issues; and
- (6) Extent the proposed intervenor's intervention would serve the public interest.

(h) Petitions for intervention shall be accompanied by a filing fee of \$50. The fee shall not apply to state and county agencies.

(i) The commission may conduct a pre-application meeting with the petitioner and proposed parties to the proceeding for the purpose of determining information requirements, possible issues, proposed stipulations, and other matters which may assist in contributing to a more orderly hearing process.

(j) If the petitioner fails to file the petition on the date stated in its notice of intent, the petitioner shall refile a notice of intent in the manner set forth in this section.

(k) The petitioner shall file a petition in conformance with subchapters 5 and 6 except that at the time of filing, the petition shall include:

- (1) A finding of no significant impact or approved environmental impact statement if conservation district lands are involved;
- (2) A proposed decision and order;
- (3) An affidavit that the petitioner has met with interested community groups to discuss the proposed project;
- (4) A clear description of the manner in which petitioner proposes to finance the proposed development, including a budget, a marketing plan, and a feasibility study; and
- (5) A certification from the Hawai'i housing finance and development corporation or county housing agency that the petition involves a section] 201H-38, HRS, housing project.

(l) Petitions that fail to comply with the requirements set forth in subsections (b) and (k) shall

be deemed defective and the date of filing of the petition shall be as of the date the defect is cured.

(m) The hearing on the application shall be conducted in accordance with subchapter 7, except that the time requirements for holding a hearing, statement of position, and decision making shall not apply.

(n) Notice of the hearing shall be published to the extent provided by law.

(o) The commission shall approve or disapprove a boundary amendment within forty-five days after the petition has been deemed a proper filing by the executive officer. If on the forty-sixth day the petition is not disapproved, it shall be deemed approved by the commission, and the provisions of section 15-15-90(e) shall apply. [Eff 3/20/87; am 7/18/94; am and comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§201G-118, 205-1, 205-4, 205-7) (Imp: HRS §§205-4, 201G-118)

\$15-15-97.1 REPEALED. [R 5/8/00]

\$15-15-97.2 Fees. The petitioner will be responsible for fees pursuant to section 15-15-45.1. [Eff and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-4.1, 205-7) (Imp: HRS §§91-2, 92-21, 205-4.1)

#### SUBCHAPTER 14

#### DECLARATORY ORDERS

\$15-15-98 Who may petition. (a) On petition of any interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission to a specific factual situation.

(b) A farmer or landowner with lands qualifying under section 205-45, HRS, may file a petition for declaratory order to designate the lands as important agricultural lands and shall file a petition that conforms to the requirements of this section and section 205-44 and 205-45, HRS.

(c) Notwithstanding the other provisions of this subchapter, the commission, on its own motion or upon request but without notice of hearing, may issue a declaratory order to terminate a controversy or to remove uncertainty. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§15-15-99 Petition for declaratory order; form and contents. The petition shall be submitted consisting of one original, one paper copy, and one electronic copy, and shall conform to the format requirements of sections 15-15-38, 15-15-39, and 15-15-40, and shall contain:

- (1) The name, address including zip code, and telephone number of each petitioner;
- (2) A statement of the petitioner's interest in the subject matter, including the reasons for submission of the petition;
- (3) A designation of the specific statutory provision, rule, or order in question, together with a complete statement of the relevant facts and a statement of the issues raised or controversy or uncertainty involved;
- (4) A statement of the petitioner's interpretation of the statute, rule or order or the petitioner's position or contention with respect thereto;
- (5) A memorandum of authorities, containing a full discussion of reasons and legal authorities in support of such position or contention. The commission may require the petitioner to file additional data or memoranda;
- (6) The names of any other potential parties;
- (7) The signature of each petitioner; and
- (8) A statement whether the petition for declaratory ruling relates to any commission docket for district boundary amendment or special permit, and if so, the docket number and identification of all parties to the docket. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ]  
(Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§15-15-100 Consideration of petition for declaratory order. (a) The commission, within ninety days after submission of a petition for declaratory order, shall:

- (1) Deny the petition where:
  - (A) The question is speculative or purely hypothetical and does not involve an existing situation or one which may

- (B) reasonably be expected to occur in the near future; or
- (B) The petitioner's interest is not of the type which confers sufficient standing to maintain an action in a court of law; or
- (C) The issuance of the declaratory order may adversely affect the interest of the State, the commission, or any of the officers or employees in any litigation which is pending or may be reasonably be expected to arise; or
- (D) The petitioner requests a ruling on a statutory provision not administered by the commission or the matter is not otherwise within the jurisdiction of the commission; or

- (2) Issue a declaratory order on the matters contained in the petition; or
- (3) Set the petition for hearing before the commission or a hearings officer in accordance with this subchapter. The procedures set forth in subchapter 7 shall be applicable.

(b) If the matter is set for hearing, the commission shall render its findings and decision within one hundred and twenty days after the close of the hearing or, if post hearing briefs are filed, forty-five days after the last brief is filed, unless a different time period is stated at the hearing. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§91-8, 205-1, 205-7)

(Imp: HRS §§91-2, 91-8)

§15-15-101 Declaratory orders; dismissal of petition. The commission, without notice or hearing, may dismiss a petition for declaratory order that fails in material respect to comply with the requirements of this subchapter. The dismissal shall be in writing and state the reasons therefor. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ]  
(Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§15-15-102 REPEALED [R NOV 0 2 2013]



§15-15-103 Declaratory orders; request for hearing. The commission may, but shall not be required to, conduct a hearing on a petition for declaratory order. Any petitioner or party in interest who desires a hearing on a petition for a declaratory order shall set forth in detail in the request the reasons why the matters alleged in the petition, together with supporting affidavits or other written briefs or memoranda of legal authorities, will not permit the fair and expeditious disposition of the petition, and to the extent that the request for a hearing is dependent upon factual assertion, shall accompany the request by affidavit establishing those facts.

[Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

§15-15-104 Applicability of declaratory order. An order disposing of a petition shall apply only to the factual situation described in the petition or set forth in the order. It shall not be applicable to different fact situations or where additional facts not considered in the order exist. The order shall have the same force and effect as other orders issued by the commission. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§91-8, 205-1, 205-7) (Imp: HRS §§91-2, 91-8)

15-15-104.1 Fees. The Petitioner shall be responsible for fees pursuant to section 15-15-45.1 herein. [Eff and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-4.1, 205-7) (Imp: HRS §§91-2, 92-21, 205-4.1)

## SUBCHAPTER 15

### RULEMAKING PROCEDURES

#### §15-15-105 Initiation of rulemaking proceedings.

(a) The commission, at any time on its own motion, may initiate proceedings for the adoption, amendment, or repeal of any rule of the commission.

(b) Any interested person may petition the commission for the adoption, amendment, or repeal of any rule of the commission. The petitioner shall file and deliver one original, one paper copy and one electronic copy of the petition to the office of the

commission. The number and format of copies required under this section may be modified by order of the commission. Petitions for rulemaking filed with the commission shall become matters of public record. [Eff 10/27/86; comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-6, 205-7)

§15-15-106 Rulemaking; form and contents of petition. Petitions for rulemaking need not be in any special form but shall conform to the requirements of this subchapter and shall contain:

- (1) The name, address (including zip code), and telephone number of each petitioner;
- (2) A statement of the petitioner's interest in the subject matter;
- (3) A statement of the reasons in support of the proposed rule, amendment, or repeal;
- (4) The authorization or relief sought;
- (5) The citation of the statutory provision or other authority under which commission authorization or relief is sought;
- (6) A draft or the substance of the proposed rule or amendment or a designation of the provisions the repeal of which is desired; and
- (7) The signature of each petitioner.

Any petition which does not conform to the foregoing requirements may be rejected by the commission. The rejection shall be in writing and shall state the reasons therefor. [Eff 10/27/86; comp 8/16/97; am and comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§91-13.5, 205-1, 205-7) (Imp: HRS §§91-13.5, 91-6, 205-7)

§15-15-107 Rulemaking; action on petition. (a) Within sixty days after the filing of a petition for rulemaking, the commission shall either deny the petition in writing, stating its reasons for its denial or initiate proceedings for the adoption, amendment, or repeal of the rule, in accordance with section 91-3, HRS.

(b) Any petition that fails in material respect to comply with the requirements of this subchapter, or that fails to disclose sufficient reasons to justify the institution of public rulemaking proceedings shall not be considered by the commission. The commission shall notify the petitioner in writing of the denial,



stating the reasons therefor. Denial of a petition shall not prevent the commission from acting on its own motion on any matter contained in the petition.

(c) If the commission determines that the petition is in order and that it discloses sufficient reasons in support of the proposed rulemaking to justify the institution of rulemaking proceedings, the procedures to be followed shall be as set forth in sections 15-15-108, 15-15-109, 15-15-110, and chapter 92, HRS. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-3, 91-6, 92-1, et seq.)

§15-15-107.1 Commission action. The commission shall consider all statements, views, comments, and documents of record before taking final action in a rulemaking proceeding. Unless otherwise provided by law, any decision rendered pursuant to this subchapter shall not be subject to a motion for reconsideration or judicial review. The adoption, amendment or repeal of a rule is subject to approval of the governor and filing with the lieutenant governor. [Eff and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §91-3)

§15-15-108 Rulemaking; notice of public hearing.

(a) When, pursuant to a petition therefor or upon its own motion, the commission proposes to adopt, amend, or repeal any rule, the notice of hearing shall be published pursuant to the requirements of sections 1-28.5 and 91-3, HRS. The notice of hearing shall also be mailed to all persons or agencies who have made timely written requests for advance notice of the commission's rulemaking proceedings at their last recorded address. The notice of hearing shall be published at least thirty days prior to the date set for public hearing. The notice of hearing shall also be filed with the lieutenant governor's office.

(b) A notice of the proposed adoption, amendment, or repeal of a rule shall include:

- (1) A statement of the date, time, and place where the public hearing will be held;
- (2) Reference to the authority under which the adoption, amendment, or repeal of a rule is proposed; and
- (3) A statement of the substance of the proposed rules. [Eff 10/27/86; am and comp 8/16/97; am and comp 5/8/00; comp NOV 0 2 2013 ]

(Auth: HRS §§205-1, 205-7) (Imp: HRS §§1-28.5, 91-3, 92-41)

§15-15-109 Rulemaking; conduct of public hearing.

(a) The chairperson of the commission or, in the chairperson's absence, another member designated by the commission, or a duly appointed hearings officer shall conduct the public hearing for the adoption, amendment, or repeal of the rules. The commission shall afford interested persons a reasonable opportunity to offer testimony with respect to the matter specified in the notice of hearing, in order to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the hearing.

(b) Each such public hearing shall be held at the time and place set in the notice of hearing but may at that time and place be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.

(c) At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.

(d) Each witness, before proceeding to testify, shall state the witness' name, address, and whom the witness represents at the hearing, and shall give any information respecting the witness' appearance as the presiding officer may request. The presiding officer shall confine the testimony to the matters for which the hearing has been called. In order to allow persons to have an equal amount of time to testify, or to prevent cumulative unnecessary testimony, the presiding officer may limit the amount of time for testimony per individual or per issue. Every witness may be subject to questioning by the members of the commission or by any other representative of the commission. Questions by other than commission members or staff shall be permitted only at the discretion of the presiding officer.

(e) All interested persons or agencies shall be afforded an opportunity to submit data, views, or arguments orally or in writing that are relevant to the matters specified in the notice of hearing. A person may submit written comments, data, views, or arguments ten days after the close of the scheduled public

hearing date. An original and one paper copy and one electronic copy of written comments, recommendations, replies, or exhibits shall be submitted.

(f) Unless otherwise specifically ordered by the commission, testimony given at the public hearing shall not be reported verbatim. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-2, 91-3) 1

§15-15-110 Emergency rulemaking. If the commission finds that an imminent peril to public health or safety requires adoption, amendment, or repeal of a rule upon less than thirty days notice of hearing, and states in writing its reasons for that finding, it may adopt emergency rules pursuant to section 91-3(b) and 91-4, HRS. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; am and comp NOV 0 2 2013] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§91-3, 91-4)

#### SUBCHAPTER 16

##### LAND USE DISTRICT BOUNDARIES

§15-15-111 Land use district boundaries. (a) The boundaries of land use districts are shown on the land use district maps, entitled "Land Use District Boundaries, dated December 20, 1974," as amended, maintained and under the custody of the commission.

(b) The official maps entitled "Land Use District Boundaries, dated December 20, 1974," as amended, are located in the commission office. [Eff 10/27/86; am and comp 8/16/97; comp 5/8/00; comp NOV 0 2 2013] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-1)

#### SUBCHAPTER 17

##### IMPORTANT AGRICULTURAL LAND DESIGNATION AND PROCEEDINGS

§15-15-120 Criteria and procedure for the identification of important agricultural lands. (a) The commission shall not approve a petition to have land designated as important agricultural land, either in whole or in part, unless the commission finds upon a clear preponderance of the evidence, that the designation is reasonable and consistent with the

policies of chapter 205 HRS and the provisions of this subchapter 17.

(b) Any petition seeking to designate lands as important agricultural lands shall adhere to the requirements of subchapter 14 of this chapter. A petition seeking to designate lands as important agricultural lands and a reclassification of lands to urban, rural or conservation under section 205-45, HRS, or a credit for reclassification of lands to urban, rural or conservation, shall be set for hearing in accordance with section 15-15-100. Any hearing set for determination of a petition for designation of important agricultural lands under this section shall be held pursuant to the procedures and requirements set forth in section 205-4, HRS, and subchapters 7 and 14 of this chapter. Petitions to intervene shall follow the procedures and requirements contained in section 15-15-52.

(c) In review of any petition seeking, in part or in whole, to have lands classified as important agricultural lands, the commission shall specifically consider the following:

- (1) Whether the land is currently used for agricultural production;
- (2) The land's soil qualities and whether the growing conditions support agricultural production of food, fiber, or fuel- and energy-producing crops;
- (3) The land's classification or identification 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;
- (4) If the land has been or is a type that has been 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;
- (5) The land shall have sufficient quantities of water to support viable agricultural production;
- (6) If the land's designation as important agricultural lands will be consistent with general, development, and community plans of



the county;

- (7) Land that contributes to maintaining a critical land mass important to agricultural operating productivity; and
- (8) Whether the land has, or is near, support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power.

(d) If a petition is limited solely to designation by a landowner of important agricultural lands, the commission shall weigh the criteria set forth in section 15-15-120(c) against each other to meet the objectives of section 205-42 HRS.

(e) The commission shall not accept any petition to designate lands as important agricultural lands covering substantially the same request for substantially the same land as had previously been denied by the commission within one year of the date of filing of findings of fact and conclusions of law denying the petition. [Eff and comp NOV 0 2 2013]  
] (Auth: HRS §§205-1, 205-7, 205-45) (Imp: HRS §205-44)

§15-15-121 Petition by farmer or landowner.

(a) A farmer or landowner seeking to have lands designated important agricultural lands may file a petition for declaratory ruling with the commission seeking to have its lands designated important agricultural lands.

(b) The petition for declaratory ruling shall be submitted in accordance with subchapter 14 and shall include:

- (1) Tax map keys of the land to be designated along with verification and authorization from the applicable landowners;
- (2) Proof of qualification for designation under section 15-15-120; and
- (3) The current or planned agricultural use of the area to be designated.

(c) The commission shall review the petition and the accompanying submissions to evaluate the qualifications of the land for designation as important agricultural lands in accordance with section 15-15-

121.

(d) A petition for declaratory order seeking designation of lands as important agricultural lands shall only be granted if a two-thirds majority of the commission finds, after its review and evaluation and based upon a preponderance of the evidence, that the subject lands qualify for designation as important agricultural lands under this subchapter and sections 205-44 and 205-45, HRS. If a petition fails to receive the affirmative votes of two-thirds of the commissioners, findings of fact, conclusions of law and a decision and order denying the petition shall be filed by the commission. [Eff and comp NOV 0 2 2013]  
] (Auth: HRS §§205-1, 205-7, 205-45) (Imp: HRS §205-45)

§15-15-122 Petition by farmer or landowner for designation of important agricultural land and urban, rural or conservation re-classification. (a) A landowner may, within the same petition for declaratory order as described in subsection 15-15-121, request the reclassification of a portion of the land which is the subject of the petition in the agricultural district to the rural, urban, or conservation district, or a combination thereof. The land sought to be reclassified as urban, rural or conservation shall:

- (1) Be within the same county as the land sought to be designated as important agricultural lands;
- (2) If the reclassification of the land is proposed to the urban district, that reclassification to urban is consistent with the relevant county general and community, development, or community development plans; and
- (3) Be no more than fifteen percent of the total acreage which is the subject of the petition such that at least eighty-five per cent of the total acreage which is the subject of the petition is sought to be designated as important agricultural land; and
- (4) Meet all of the requirements of subchapter 8 herein.

(b) In a petition for declaratory order under this section seeking to designate lands important agricultural lands in the agricultural district to the rural, conservation or urban district, the lands to be designated important agricultural lands shall be deemed



qualified for such designation only if the commission reasonably finds that the lands meet the criteria of sections 15-115-120(c)(5) and (c)(7).

(c) A petition for declaratory order under this section shall be submitted in accordance with subchapter 14 and be set for hearing in conformance with the procedures set forth in subchapter 7, and shall include:

- (1) Tax map key numbers of the land to be designated as important agricultural lands and, if applicable, the land to be reclassified from the agricultural district to the rural, urban, or conservation district;
- (2) Verification of ownership and/or authorization from the applicable landowners;
- (3) Proof of qualification for designation as important agricultural lands under this subchapter;
- (4) The current or planned agricultural use of the area sought to be designated as important agricultural lands; and
- (5) The current or planned use of the area sought to be reclassified to the rural, urban, or conservation district.

(d) An application for a declaratory order to designate important agricultural land in combination with the reclassification of agricultural land to the rural, urban, or conservation district shall not be deemed a proper filing until the petitioner has submitted a certification, issued by the state department of agriculture as to the quality of the land which is the subject of the petition.

(e) In review of any petition seeking to have lands classified as important agricultural lands in combination with a request to reclassify a portion of the agricultural land to the urban, rural or conservation designation, the commission shall review the petition and the accompanying submissions in accordance with this subchapter and section 205-44, HRS. The commission shall also specifically determine, by a preponderance of the evidence whether:

- (1) The land is suitable for the reclassification in accordance with subchapters 2 and 8; and
- (2) If the reclassification of a portion of the land is proposed to the urban district, that reclassification to urban is consistent with the relevant county general and community, development, or community development plan.

(f) Approval of a petition for designation of

important agricultural lands in conjunction with a petition for urban, rural or conservation reclassification under this section shall require approval by a vote of a two-thirds majority of the commissioners. The commission shall include reasonable conditions in its order.

(g) Should the commission find that either the designation of lands in the petition sought to be identified as important agricultural lands or the lands identified in the petition for reclassification to urban, rural, or conservation is not supported by a preponderance of the evidence and should not be approved, the commission shall deny the petition in its entirety. [Eff and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7, 205-45) (Imp: HRS §205-45)

§15-15-123 Adherence to chapter 343 HRS. A petition filed under this subsection, if applicable, shall adhere to the requirements of chapter 343, HRS. No petition under this subchapter will be deemed complete unless it has met the requirements of chapter 343, HRS. [Eff and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7, 205-45)

§15-15-124 Private landowner credits in important agricultural land proceeding. (a) The commission shall allow a petitioner for an important agricultural land designation to reserve the right to designate lands for reclassification to urban, rural, or conservation at a future proceeding. The commission shall not grant a landowner the right to reserve lands for future reclassification greater than fifteen percent of the total acreage of land which is the subject of the petition, total acreage being the land sought to be designated important agricultural land plus the land sought to be reclassified urban, rural or conservation.

(b) Where a petitioner submits a petition for designation of lands as important agricultural lands in combination with a request to reclassify lands urban, rural or conservation and the commission grants the petition under this subchapter, the petitioner may, if specifically requested in the petition, obtain credits for the difference between fifteen percent of the total amount of land requested to be reclassified as urban, rural and conservation and the amount of land set forth in the petition to be so reclassified, if the amount of land for reclassification to urban, rural or conservation set forth in the petition is less than

fifteen percent of the total land subject to the petition.

(c) In order to preserve the right to reclassify lands under this section at a future proceeding a request for future credits must be specified in any petition for designation of important agricultural lands or petition for designation of important agricultural lands in conjunction with a request to reclassify lands to the urban, rural or conservation district.

(d) If a petition fails to include a request for future credits under subsection (b) or (c), the petitioner's right to such credits shall be waived and the petitioner shall be barred from claiming the credits at a future date.

(e) Credits held by a petitioner under this section may only be applied to lands owned or held by the petitioner in the same county as the lands designated important agricultural lands in the original petition giving rise to the credits are located.

(f) In order to utilize such credits to have lands reclassified under this section the petitioner must, prior to utilization of such credits and before the credits are applied to any land to be reclassified, file a petition for declaratory order pursuant to subchapters 5 and 14 and section 15-15-123.

(g) A petition for use of credit for reclassification of land granted under this section must be filed within ten years of the effective date of the original order by which the credits were granted by the commission. Unused credits shall expire and become unusable if not used within ten years from the effective date the original order by which the credits were granted by the commission.

(h) Credits issued under this section may only be used by the petitioner awarded the credits under the original declaratory order granting the credits. Unused or unexhausted credits awarded under this section may not be transferred to another person.

(i) If a petitioner files a request for declaratory order to utilize credits held pursuant to this section the commission shall not grant such petition unless:

- (1) By a preponderance of the evidence presented, the land is suitable for reclassification in accordance with sections 205-2 and 205-3.1,

HRS;

- (2) The reclassification is consistent with the relevant county general and, development, or community development plans;
- (3) By a preponderance of the evidence presented, the land sought to be reclassified is suitable for reclassification in accordance with subchapters 2 and 8; and
- (4) The petitioner has met all of the requirements of chapter 343 HRS with regard to the subject petition. (Eff and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7, 205-45) (Imp: HRS §205-45)

§15-15-125 County identification of important agricultural lands. (a) Receipt of recommendations and maps from the planning department of a county under section 205-48, HRS, shall not be considered a petition for a declaratory order designating land within its jurisdiction as important agricultural lands. The commission shall however, designate lands within the relevant county and adopt maps designating important agricultural lands in such county within 365 days of the submission being deemed complete pursuant to subsection (b). Such time period for determination may be extended for a period of up to one hundred and eighty days by order of the chairperson of the commission. The form and content of the county recommendations shall conform to the requirements of sections 205-42, 205-43, 205-44, and 205-47, HRS.

(b) The county making such recommendations to designate land important agricultural lands shall provide the commission a complete record of its proceedings in support of its recommendation, including evidence the county has specifically adhered to the requirements of section 205-47, HRS, including records evidencing that:

- (1) Maps of potential lands to be considered for designation as important agricultural lands have been developed in consultation and cooperation with landowners, the state department of agriculture, agricultural interest groups, including representatives from the Hawai'i farm bureau federation and other agricultural organizations, the United



States department of agriculture - natural resources conservation service, the state office of planning, and other groups as necessary.

- (2) Each county, through its planning department, has utilized an inclusive process for public involvement in the identification of potential lands and the development of maps of lands to be recommended as important agricultural lands, including a series of public meetings throughout the identification and mapping process.
- (3) The county has taken notice of those lands already designated important agricultural lands by the commission.
- (4) Upon identification of potential lands to be recommended to the county council as potential important agricultural lands, each county has taken reasonable action to notify each owner of those lands by mail or posted notice on the affected lands to inform them of the potential designation of their lands.
- (5) Evidence that the important agricultural lands mapping relates to, supports, and is consistent with the:
  - (A) Standards and criteria set forth in section 205-44, HRS, and this subchapter have been met;
  - (B) County's adopted land use plans, as applied to both the identification and exclusion of important agricultural lands from such designation;
  - (C) Comments received from government agencies and others identified in section 205-47(b), HRS;
  - (D) Viability of existing agribusinesses;
  - (E) Representations or position statements of the owners whose lands are subject to the potential designation; and
  - (F) Any other relevant information.
- (6) The important agricultural lands maps have been adopted by the county council, by resolution.
- (c) A submission by a county under this section

shall not be deemed complete unless all of the evidence set forth in section 15-15-125(b) has been transmitted and accepted by the commission.

(d) Any hearing under this section shall adhere to the procedures set forth in this subchapter and subchapters 1 and 5, and shall be conducted as a rulemaking proceeding in accordance with section 15-15-109 and held in the relevant county.

(e) The commission may, under this section:

- (1) Remand the matter back to the county for further review or clarification;
- (2) Adopt the recommendations of the county in its entirety after receipt of the complete record from the county pursuant to section 15-15-126, and designate lands in such county as important agricultural lands; or
- (3) Based on evidence presented, amend or revise the county recommendation and proposal to exclude, or include, certain lands from designation as important agricultural lands.

(f) The county shall serve a file-stamped copy of the county report and maps submitted pursuant to a petition under this section on the state department of agriculture and the state office of planning within one business day of filing with the commission. The state office of planning and state department of agriculture shall review the county submittal pursuant to section 205-48, HRS, and provide comments to the commission within forty-five days of the county filing being deemed complete.

(g) Approval of maps and a designation of important agricultural lands under this section shall require the affirmative vote of two-thirds of the commission. [Eff and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §§205-47, 205-48, 205-49)

§15-15-126. Criteria for designation of lands as important agricultural lands pursuant to county recommendation. (a) In designating important agricultural lands in the state, pursuant to the recommendations of individual counties, the commission shall consider the extent to which:

- (1) The proposed lands meet the standards and criteria under section 205-44, HRS, and section 15-15-120;



(2) The proposed designation is necessary to meet the objectives and policies for important agricultural lands in sections 205-42 and 205-43, HRS; and

(3) The commission has designated lands within the county as important agricultural lands, pursuant to this subchapter.

(b) Should the commission determine that more than fifty percent of a landowners' landholdings, excluding lands held in the conservation district, are already designated as important agricultural lands, pursuant to this subchapter, the commission shall not designate any additional lands of that landowner as important agricultural lands except by a petition from the landowner pursuant to this subchapter.

(c) The designation of lands as important agricultural lands and the adoption of maps of those lands pursuant to this section shall be based upon written findings of fact and conclusions of law, and a showing by a preponderance of the evidence that the subject lands meet the standards and criteria set forth in section 15-15-120.

(d) Designation of agricultural lands as important agricultural lands under this section shall be by an affirmative vote of two-thirds of the membership to which the commission is entitled. If the petition is not approved by a vote of two-thirds majority of the commission it shall be deemed denied.

[Eff and comp NOV 02 2013 ] (Auth: HRS  
SS205-1, 205-7) (Imp: HRS SS205-47, 205-49)

§15-15-127 Standards and criteria for the reclassification or rezoning of important agricultural lands. (a) Any land use district boundary amendment or change in zoning involving important agricultural lands identified pursuant to this subchapter shall be considered as, and meet the submittal requirements for, a district boundary amendment under this chapter.

(b) An application for a special permit involving important agricultural lands shall include evidence that the request has been referred to the state department of agriculture and the state office of planning for review and comment and contain as part of the petition any comments or recommendations made by both the state department of agriculture and the state office of planning.

(c) In addition to the criteria set forth in subchapter 8, any decision by the commission or county pursuant to this section shall specifically consider, and find by a preponderance of the evidence, that:

(1) The land to be reclassified is not critical for agriculture based on the amount of similarly suited lands in the area and the State as a whole;

(2) The proposed district boundary amendment or zone change will not harm the productivity or viability of existing agricultural activity in the area, or adversely affect the viability of other agricultural activities or operations that share infrastructure, processing, marketing, or other production-related costs or facilities with the agricultural activities on the land in question;

(3) The district boundary amendment or zone change will not cause the fragmentation of or intrusion of nonagricultural uses into largely intact areas of lands identified by the State as important agricultural lands that create residual parcels of a size that would preclude viable agricultural use;

(4) The public benefit to be derived from the proposed action is justified by a need for additional lands for nonagricultural purposes;

(5) The proposed district boundary amendment or zone change will not negatively impact the ability or capacity of state and county agencies to provide and support additional agricultural infrastructure or services in the area;

(6) The public benefit from the proposed district boundary amendment or zone change outweighs the benefits of retaining the land for agricultural purposes;

(7) The proposed action will have no significant impact upon the viability of agricultural operations on adjacent agricultural lands;

(8) The decision-making criteria of subchapter 8 governing decisions of the land use commission on district boundary amendments have been met; and

(9) The decision-making criteria adopted by each county to govern decisions of county decision-making authorities under this chapter have been met.

(d) The reclassification of lands designated as important agricultural shall be based upon written findings of fact and conclusions of law pursuant to subchapters 7 and 11.

(e) A reclassification of lands designated as important agricultural lands shall be by an affirmative vote of two-thirds of the membership to which the commission is entitled.

(1) If the petition is not approved by a vote of two-thirds of the membership of the commission, it shall be deemed denied.

(2) The commission shall not accept any petition to designate lands as important agricultural lands covering substantially the same request for substantially the same land as had previously been denied by the commission within one year of the date of filing of findings of fact and conclusions of law denying the petition.

(f) The commission may, upon petition by the farmer or landowner of lands designated as important agricultural lands, remove all or a portion of those important agricultural lands from the "important agricultural lands" designation if, after a hearing held pursuant to subchapter 14, the commission finds upon a preponderance of the evidence that a sufficient supply of water is no longer available to allow profitable farming of the land due to governmental actions, acts of God, or other causes beyond the farmer's or landowner's reasonable control.

(g) The commission may only remove an important agricultural land designation on lands originally designated as important agricultural lands pursuant to a declaratory order that both designated land as important agricultural lands and reclassified land as urban, rural or conservation, or a combination thereof, with the prior authorization of the legislature as expressed by a two-thirds vote of each house of the legislature voting separately. [Eff and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7, 205-45) (Imp: HRS §205-50)

§15-15-128 Periodic review and amendment of  
102

important agricultural lands maps. (a) Amendment of the maps of important agricultural lands initiated by the county shall be conducted in accordance with section 15-15-109.

(b) In a county-initiated proceeding for an amendment of important agricultural land maps and designation under section 15-15-128(a), the "important agricultural lands" designation shall be removed from lands previously designated as important agricultural lands where the commission finds, by a preponderance of the evidence, that a sufficient supply of water is no longer available to allow profitable farming of the lands due to governmental actions, acts of God, or other causes beyond the farmer or landowner's reasonable control.

(c) The commission shall not remove the important agricultural lands designation if the lands were designated important agricultural lands by declaratory order in combination with the reclassification of land in the agricultural district to the rural, conservation or urban district pursuant to section 205-45, HRS, unless the legislature provides prior authorization by adoption of a concurrent resolution in accordance with section 205-45, HRS. [Eff and comp NOV 0 2 2013 ] (Auth: HRS §§205-1, 205-7) (Imp: HRS §205-52)

#### SUBCHAPTER 18

#### PETITIONS FOR HAWAII HOUSING AUTHORITY RENTAL HOUSING PROJECTS

Repealed

§15-15-122 REPEALED. [R 8/16/97]

103


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Amendments to and compilation of chapter 15, title 15, Hawaii Administrative Rules on the summary page dated October 4, 2013 were adopted on October 4, 2013, following public hearings held on September 5, 10, 11, 18, 24 and 25 2013 after public notice was given in the Honolulu Star Advertiser, the Maui News, West Hawaii Today, the Hawaii Tribune Herald and The Garden Isle on August 5, 2013.

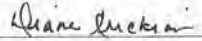
They shall take effect ten days after filing with the Office of the Lieutenant Governor

  
\_\_\_\_\_  
RONALD I. HELLER  
Chairperson

  
\_\_\_\_\_  
FOR RICHARD LIM  
Director, Department of Business,  
Economic Development and Tourism

 10.23.13  
\_\_\_\_\_  
NEIL ABERCROMBIE  
Governor  
State of Hawaii

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DIANE ERICKSON  
Deputy Attorney General

104

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# **B** **—**

## TECHNICAL ADVISORY COMMITTEE MEETINGS AND ROSTER



## IMPORTANT AGRICULTURAL LANDS TECHNICAL ADVISORY COMMITTEE

### CHARTER OF COMMITMENTS AND RESPONSIBILITIES

#### Purpose of the Charter

This document identifies the purposes and procedures of the O'ahu Important Agricultural Lands Identification Project – Phase I (IAL) Technical Advisory Committee (TAC). This group charter is intended to clarify group processes and individual responsibilities and commitments to insure that meetings are efficient, fair to all participants and productive.

#### Goal of the IAL Technical Advisory Committee Review Process

The goal of the O'ahu IAL TAC review process is to identify, analyze and set priorities among criteria to be used to identify Important Agricultural Lands for the island of O'ahu. A successful outcome of the Committee will be a set of recommended criteria that the TAC regards as technically sound, can be mapped in a relative unambiguous way and will lead to wise use of agricultural lands.

#### Membership

The members of the TAC are:

- David Arakawa
- Mike Bajinting
- Bob Cherry
- Bill Durston
- Carl Evensen, PhD
- Alan Gottlieb

- Andy Hashimoto
- Shin Ho
- Larry Jefts
- Ken Kamiya
- Melvin Matsuda
- Dan Nellis
- Brian Nishida
- Dean Okimoto
- Mark Phillipson
- Charlie Reppun
- Leon Sollenberger
- Alan Takemoto
- William Tam
- Stephanie Whalen
- Larry Yamamoto

The ex-officio, non-voting members of the TAC are:

- Alenka Remec
- Jesse Souki
- Barry Usagawa
- Earl Yamamoto

#### Process Coordinators

The firm of Helber, Hastert & Fee, Planners (HHF) is responsible for assisting the TAC in developing a set of criteria for IAL designation. HHF's responsibilities include:

1. Arranging for TAC meetings including preparation of materials that may be required for the groups review;
2. Facilitating discussions among TAC members in ways that insure that all members have an opportunity to be heard---and that no individual or perspective dominates the discussion;

3. Encouraging the broadest possible agreement among participants;
4. Preparing maps of select combinations of criteria to facilitate understanding of the options the TAC is considering;
5. Remaining impartial with regard to the substance of discussions.

#### TAC Meeting Schedule

The TAC will meet six times between September 18, 2012 and \_\_\_\_\_.

#### Roles of TAC Members

Members of the TAC have been chosen based on their technical expertise, knowledge of aspects of the agricultural industry, experience and ability to effectively participate in a group planning process. To insure an effective and productive process, we anticipate that each TAC member will:

1. Participate in at least five TAC meetings;
2. Review materials and prepare for each meeting;
3. Share technical information that is not proprietary;
4. Strive to insure the most productive process; and
5. Listen with care to each participant and refrain from personal attacks.

#### Decision Making in the TAC

While we strive for the broadest possible agreement in the TAC, there may be instances in which the group needs to test the degree of agreement either about substantive questions, such as the possible addition of new designation criteria, or process questions, such as whether to extend the time of a meeting. Group

decision-making may occur in two ways: informal, non-binding expressions of the degree of consensus and more formal voting.

#### *Informal expressions of the degree of consensus*

We may ask how participants regard a particular substantive or procedural suggestion. To find out we will ask for the "degree of consensus" by asking participants the strength of their views by holding up the number of fingers that corresponds to their position where:

- 5 = I really like this idea and can support it enthusiastically.
- 4 = I like this idea. It suffices. It's good enough.
- 3 = Not necessarily my preference but it doesn't defeat my interests. I will support it.
- 2 = I have mixed feelings, but wouldn't stand in the way of this going forward.
- 1 = I cannot support this idea. I prefer something different.

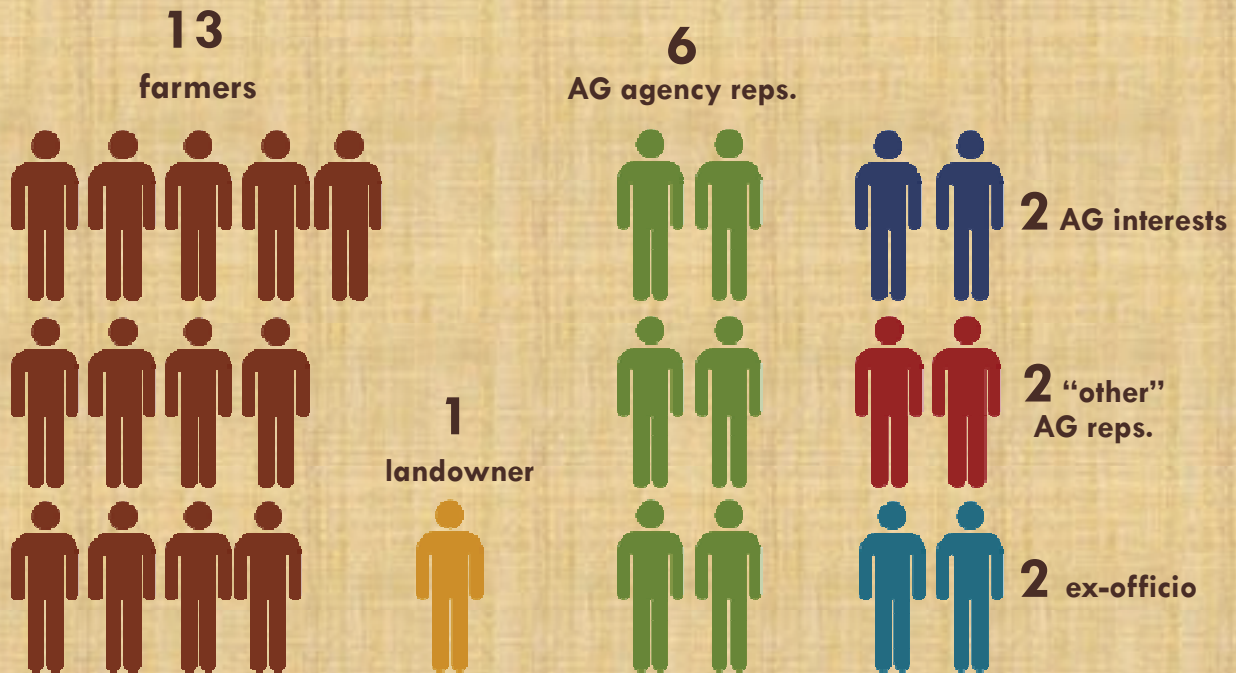
#### *Formal decision-making*

We will need to make decisions about what recommendations to make regarding IAL criteria. While we strive for the broadest possible consensus we want to insure that no individual or small group can veto a group decision. Hence, when necessary we will seek to make decisions by super-majority of those attending the meeting at which decisions are made. Super-majority means two-thirds of those attending a meeting and voting by written ballot. [In general, alternates for TAC members may attend meetings, but not vote].



# Technical Advisory Committee

11



# Technical Advisory Committee

12

## Farmers

- Bob Cherry, Flying R Livestock
- Bill Durston, Leilani Nursery
- Alan Gottlieb, HI Livestock Farmers Coalition
- Shin Ho, Ho Farms
- Larry Jefts, Sugarland
- Ken Kamiya, Kamiya Gold
- Melvin Matsuda, Kahuku Farms
- Dan Nellis, Dole Foods
- Brian Nishida, former Del Monte Fresh Produce
- Mark Phillipson, Syngenta Seeds
- Charlie Reppun, Waiahole
- Ernest Tottori, HPC Foods

## AG Agency Representatives

- Mike Bajinting, USDA NRCS
- Andy Hashimoto, UH-CTAHR
- Carl Evensen, UH-CTAHR
- Earl Yamamoto, DOA
- William Tam, CWRM
- Jesse Souki, OP

## "Other" AG Organizations

- Leon Sollenberger, consultant
- Alan Takemoto, Monsanto (MOVE TO FARMER, 9/13)
- Larry Yamamoto, retired

## AG Interest Groups

- Dean Okimoto, HFBF
- Stephanie Whalen, HARC

## Landowners

- David Arakawa, LURF

## Ex-Officio

- Alenka Remec, City Office of Economic Dvlpmt.
- Barry Usagawa, BWS



*Reviewed by DPP, 9/18/12  
Reviewed/Approved by TAC, 10/16/12*

## MEETING SUMMARY

Important Agricultural Lands Identification Project  
Technical Advisory Committee Meeting #1  
September 18, 2012, 4:00 to 5:45 pm  
Mayor's Conference Room, Honolulu Hale Room 301

Recorded by: Corlyn Orr

Attendance: see attached

The first Technical Advisory Committee (TAC) meeting for the Important Agricultural Lands (IAL) Identification Project was held on Tuesday, September 18, 2012 at the Mayor's Conference Room, Honolulu Hale. The meeting was scheduled from 4:00 to 6:30 pm. The purpose of the meeting was to familiarize TAC members with the project and the City's process for mapping the IAL criteria, introduce the draft group charter, and begin the discussion about data sources. Handouts included: (1) copy of the PowerPoint presentation; (2) draft group charter; (3) list of available GIS data sources for mapping; and (4) graphic showing the process to identify and map the IAL criteria.

## INTRODUCTIONS

Kem Lowry (Accord 3.0 Consultants) opened the meeting at 4:05 pm. He introduced Kathy Sokugawa, DPP Planning Division Chief, who welcomed and thanked attendees for participating. Duane Okamoto, the Mayor's Agricultural Liaison, also expressed his appreciation to the group and remarked on the number of talented individuals at the table. Members of the DPP-HHF project team introduced themselves. TAC attendees were then asked to introduce themselves, and share their affiliation and what they feel is the most important aspect for the group to remember in the process of designating IAL. A summary of attendees' comments follow below.

- Office of Planning represents the State at the Land Use Commission. TAC should not lose sight of the fact that the City's effort to identify IAL is a statutory requirement.
- Has a long history of involvement with State AG mapping, including the statewide LESA (Land Evaluation and Site Assessment) System to identify IAL in the 1980s. Is interested in seeing how O'ahu's IAL mapping effort will differ from Kaua'i's IAL project. The small farmer is not a criteria of Act 183. What role do small farms in rural areas have in IAL?
- HFBF helped push for the IAL legislation. Law is not perfect. Expects that there will be issues that the TAC will need to talk about and work through.
- UH-CTAHR Agricultural Working Group was involved in discussions to frame elements of the legislation. While the overall objective of the legislation is good, implementation will be key. End product needs to be rational and reasonable, and have group buy-in.

- The charge of this committee is important, given that AG lands are being threatened by development pressures. UH-CTAHR should be seen as a resource for information.
- Experience includes long career with USDA NRCS; also was involved with LESA mapping.
- Group will be successful if we honor our state's motto.
- Represents interests between the large and small farmers. Need to remember that IAL is an incentive-driven program.
- Long-time farmer of Kahuku and Haleiwa lands.
- 40+ years experience farming North Shore lands. Farmers want support for agriculture.
- Used to be farmer, but recently shut down farm because no longer physically able to farm. Currently running a business (200+ employees) that processes vegetables. 85% of vegetables processed are imported from CA. Need to ensure constant supply to maintain steady work for employees.
- Intent of IAL legislation is to encourage farming.
- Represents the small farmer. Family runs a small farm on the North Shore.
- 30+ years experience as a flower grower. Represents small farmer and nursery groups.
- Waialua/Mililani rancher. Can ranch on any type of land.
- Dole Food Company leases to both large and small farmers. Primary crops are pineapple, coffee and cacao.
- Purpose of IAL legislation is to make farming profitable. Took 30+ years for final legislation to pass. More than 80,000 acres have already been designated statewide. Three landowners have already designated more than 50% of their lands as IAL. Was involved with Kaua'i IAL process by providing information and attending meetings. Hawai'i Island will follow a different process.
- Provides tillage and irrigation services for farmers. Development pressures to urbanize AG lands on O'ahu are a major threat to the AG industry and the land area available for AG. Immediate action is needed for AG to survive.

## PROJECT OVERVIEW

Following TAC introductions, Scott Ezer (HHF) provided an overview of the project (refer to Powerpoint presentation), including "ground rules" for the TAC; a summary of the key points of Act 183 and Act 233 that establish the IAL mapping process; the City's phased approach for mapping; the scope and methodology for Phase I; and the role of the TAC to help identify data sources and define the criteria and weighting system. Questions and comments are summarized below.

- Diversified farmers historically farmed lesser quality lands not used by the sugar and pineapple plantations. They were discriminated against and pushed to inferior lands

because the sugar and pineapple industries took the prime lands. Opposition to Ho'opili and Koa Ridge is evidence that those lands should be IAL. The process to identify IAL as set forth in the legislation is too complex. TAC needs to follow a simpler process - only need to use the tax maps to show ownership, and then IAL will be all the areas that are currently used for agriculture or that are classified for agricultural use.

- Agree with the previous comment that the tax maps, current use and current classification is a good starting point, but, the law says that lands that are classified by the State and County as "Urban" cannot be considered for IAL designation. This effectively eliminates Ho'opili and Koa Ridge (City policy has designated both areas for urban use for more than 20+ years). Also, other lands that cannot be considered for IAL include lands that belong to a landowner who has already designated more than 50% of their landholdings as IAL.
- Is there a data source for landowners that have designated their lands IAL?  
*RESPONSE: Yes, this is available.*
- Of all lands designated as "AG" by the the State classification system (about 1.4 million acres), only 4% have been designated as IAL. IAL will be a sub-designation, or an overlay, of the AG designation.
- Identifying data sources, helping to find data, and defining criteria are the TAC's primary purpose. What other role does this group have? Can't the work be done in 2 meetings?  
*RESPONSE: Agree that it seems simple in theory. Kaua'i's IAL advisory committee met 14 times to discuss weighting system.*
- The maps are also important. Maps showing productive AG areas would be helpful when discussing how to define the criteria. However, using the maps to define the criteria could bias the criteria and prejudice the outcomes. Process should be as fair as possible. A better approach would be to focus on defining the criteria first, then create maps of the criteria to test if the criteria are being used in the right way. The landfill selection committee used a similar blind process, which resulted in unbiased sites.
- Will be difficult to develop standard criteria because the criteria will differ according to the AG use. For example, kalo and ranching have very different requirements, and different types of crops grow at different elevations/climates. Hydroponics differ from truck farming needs. Important that the criteria address the various forms of AG and consider the different qualities of the land.
- Monsanto should be re-categorized as a "farmer." Monsanto is an agricultural company that grows seed for corn and soy bean, similar to Syngenta which is listed in the "farmer" category.

#### TAC PROCESS AND POSSIBLE GROUP CHARTER

Kem reviewed the draft group charter. The purpose of the group charter is to clarify group processes and individual responsibilities and commitments to ensure that meetings are efficient, productive and fair to all participants. Requirements for TAC membership as proposed in the draft group charter include:

- Participation in at least 5 TAC meetings
- Review materials and come prepared for each meeting
- Share technical information (if non-proprietary)
- Strive to ensure the most productive process
- Listen carefully to each participant and refrain from personal attacks.

Two group decision-making processes – one for an informal "degree of consensus" procedure and one for formal voting by written ballot – were also presented.

Comments about the proposed group charter follow below.

- Suggest switching the order of values for the "degree of consensus" procedure. (A show of 5 fingers should indicate support, and one finger should indicate no support.)
- Should there be a quorum for voting?
- Caution that setting the super-majority too high allows the minority group (and not the majority) to be the controlling, decision-making body.

#### DISCUSSION OF IAL CRITERIA

Rob James (HHF) presented the list of available data sources compiled from the State and City websites, and reviewed the mapping process in more detail. A summary of the group discussion follows.

- If the TAC is only providing recommendations on the criteria, who is responsible for the mapping?  
*RESPONSE: TAC will be reviewing maps of the individual criteria. Once the criteria and weighting system are defined, a small, select area will be mapped for the TAC to test/validate the assumptions before final recommendations are identified. Draft IAL maps will be developed during Phase 2.*
- Understand that the mapping will evaluate the characteristics of the land and is not TMK parcel-specific. However, it would be interesting to observe how the criteria relates to TMK parcels. Will the City be using TMK parcels when identifying land for IAL designation? How will land be identified? An individual parcel can have a wide range of characteristics (e.g., topography, land use, soil quality, water source, etc.) This is expected to be a future source of contention.  
*RESPONSE: The TMK parcel boundaries will not be the basic unit for mapping. The TAC may want to address this subject when developing recommendations.*
- The "unique crop" criteria in Act 183 was established to address the unique conditions needed for crops such as coffee and kalo.
- Possible to be successful ranching on any type of land, but kalo farmer cannot grow kalo on ridgelines. May be that certain uses are given a higher weight, or certain crops are given higher weights to account for this (e.g., the watercress farm next to Pearlridge).
- Value of the commodity being grown should also be considered. A non-soil-based nursery on Hawai'i Island may earn more per acre than ranching activity.



- Is there a certain percentage of AG land that will be designated IAL? What determines how much of the land will be designated IAL (i.e., what score will be used)?  
*RESPONSE: This largely depends on the TAC's recommendations for criteria. Lands that meet the conditions for IAL will be identified as part of Phase 2. The City administration will ultimately be responsible for the draft maps and final report that will be submitted to the City Council.*
- Differentiation in the type of land use is not one of the criteria in Act 183. Some, if not most, communities will miss out on having AG land around their communities designated as IAL.

#### NEXT STEPS

Kem presented two possible dates -- either October 15 or 16 -- for the next meeting. (October 16, 2012 was subsequently announced as the meeting date for the 2nd TAC Meeting).

TAC members were asked to complete two assignments before the next meeting: (1) review the draft group charter and be prepared to discuss any proposed additions/edits; and (2) familiarize themselves with the IAL criteria and review the data sources.

**Meeting was adjourned at 5:45.**

#### TAC Meeting #1 Attendance

TAC Members: David Arakawa, LURF  
Bob Cherry, Flying R Livestock Company  
Bill Durston, Leilani Nursery  
Carl Evensen, UH-CTAHR  
Alan Gottlieb, Hawai'i Livestock Farmers Coalition  
Andy Hashimoto, UH-CTAHR  
Shin Ho, Ho Farms  
Ken Kamiya, Kamiya Gold  
Melvin Matsuda, Kahuku Farms  
Dan Nellis, Dole Foods Company Hawai'i  
Dean Okimoto, Hawai'i Farm Bureau Federation / Nalo Farms  
Mark Phillipson, Syngenta Seeds  
Alenka Remec, City Office of Economic Development (ex-officio)  
Leon Sollenberger, Agricultural Enterprises  
Jesse Souki, State Office of Planning  
Alan Takemoto, Monsanto  
William Tam, Commission on Water Resource Management  
Ernest Tottori, HPC Foods  
Barry Usagawa, Board of Water Supply (ex-officio)  
Earl Yamamoto, State Department of Agriculture  
Larry Yamamoto, USDA-NRCS Pacific Islands Area, retired

Others: Mark Takemoto, Pioneer Hi-Bred  
Duane Okamoto, Mayor's Agricultural Liaison  
Randy Hara, DPP  
Tim Hata, DPP  
Kathy Sokugawa, DPP  
Tara DePonte, HHF  
Scott Ezer, HHF  
Rob James, HHF  
Corlyn Orr, HHF  
Bruce Plasch, Plasch Econ Pacific  
Kem Lowry, Accord 3.0 Consultants  
Peter Adler, Accord 3.0 Consultants





Reviewed by DPP, 11/8/12  
Reviewed/approved by TAC, 11/13/12

## MEETING SUMMARY

Important Agricultural Lands Identification Project  
Technical Advisory Committee Meeting #2  
October 16, 2012, 4:00 to 6:30 pm  
Mayor's Conference Room, Honolulu Hale Room 301

Recorded by: Corlyn Orr

Attendance: see attached

The second Technical Advisory Committee (TAC) meeting for the Important Agricultural Lands (IAL) Identification Project was held on Tuesday, October 16, 2012 at the Mayor's Conference Room, Honolulu Hale. The meeting was scheduled from 4:00 to 6:30 pm. The purpose of the meeting was to define the IAL criteria and the specific characteristics associated with each criterion, and identify possible data sources. The draft group charter that was presented at the first meeting, and the draft written summary from the first TAC meeting were also finalized. Handouts included: (1) TAC Meeting #1 draft summary; (2) draft group charter; and (3) IAL criteria worksheet.

## WELCOME / INTRODUCTIONS

Kem Lowry (Accord 3.0 Consultants) opened the meeting at 4:10 pm, and asked meeting attendees to introduce themselves.

## REVIEW AND APPROVAL OF TAC MEETING #1 DRAFT SUMMARY

One correction was requested. On page 2, 13<sup>th</sup> bullet from the top, 2<sup>nd</sup> to the last sentence, add in "by providing info and attending meetings." after "was involved with the Kaua'i IAL process." Correction is to clarify individual's involvement was limited to attending meetings and providing a presentation about the background of IAL, and not as a member of the Kaua'i IAL Task Force.

With no other comments or revisions, and no other objections, the summary from TAC Meeting #1 was approved as corrected. (The group decided against formal adoption of meeting summaries).

## REVIEW AND APPROVAL OF DRAFT GROUP CHARTER

Kem emphasized that the group charter is intended to guide the group, and should be flexible enough to deal with new situations as they arise. Discussion about the group charter and accepted revisions are summarized as follows.

- Meeting schedule will be left blank; to be filled in as the project progresses to allow for scheduling flexibility.
- Reverse the order of voting for the formal decision-making/voting process. One finger will mean "I don't like it," and 5 fingers will mean "I like it."

- The TAC includes 21 voting members. The four non-voting, ex-officio members are BWS, City Office of Economic Development, State OP and State DOA. OP and DOA requested to be non-voting members because their agencies take part in the formal IAL approval process (e.g., reviewing LUC applications).
- Super-majority will be based on the number of TAC members in attendance at the meeting, not the total TAC membership of 25. There was group consensus that the super-majority would be two-thirds of the members present at the meeting. In the absence of a super majority, the group would probably have to continue discussions until a super majority is reached, which may mean changing recommendations. The two-thirds requirement mirrors the language in HRS Chapter 205, which specifies a two-thirds majority approval by the LUC to designate lands as IAL or to re-classify lands that are already designated IAL.
- Quorum set at 11 TAC members, based on 21 voting members. Important to have a quorum present when making major decisions, so meetings without a quorum would be rescheduled
- Minority reports would be allowed for the record.
- Draft charter language that TAC members attend "5 of 6 meetings" is an aspiration desired for the TAC. The intent of the policy was to encourage participation and attendance, as greater participation would support the group's credibility and the legitimacy of decision-making. The charter language does not mean that individuals who do not meet that requirement would be automatically disqualified from the TAC.
- The group would be asked to decide how to proceed should a TAC member only attend meetings that involved critical decision-making.

## DISCUSSION OF IAL DESIGNATION CRITERIA

TAC members were instructed that the next activity would be to review the IAL criteria worksheet and provide their suggestions for additional operational definitions and data sources. After the first round of discussion, the information would be summarized into a revised worksheet and the group would be asked to rank/weight the criteria. Assuming that the ranking would result in groupings of criteria, the weighted criteria would then be mapped as a test case to see if the screening expresses the TAC's desired outcome (not mapping all the AG lands in this project). Additional iterations would show how modifying the criteria could influence outcomes.

A TAC member reminded the group that HRS Chapter 205, Sections 42 and 43 sets forth the objectives and policies for IAL. It is important for the TAC to consider this guidance when evaluating the criteria.

### Criteria #1: Land currently used for agricultural production

Operational Definition: either in cultivation, used for grazing, or temporarily fallow (to be returned to active production)

- The operational definition assumes a "snapshot in time" approach based on a particular date that may eliminate some potentially very suitable lands from consideration. Suggest that this definition be expanded to include "historically used" or "suitable but not currently used."



The historical use of the land is important. Lands currently not being farmed may be farmed in the future, and should be preserved. While land may not be currently used because of the costs of farming, future advancements – i.e., government incentives/support, technological advances – may allow farming of these lands to be profitable.

- Caution against expanding the operational definition to recognize historic agricultural use since: (1) the language of the criteria is specific that the land is “currently used for agricultural production” and (2) practices used for sugar cane production allowed them to farm lands that cannot be farmed for other (modern-day) crops. Recommendation was made to incorporate the historical use into Criteria #2.
- The TAC agreed to make a decision about the “historical use” definition during the second round, following discussion of the other criteria.
- Suggestion was made to give a time period to the term “temporarily fallow.”
- Since cultivation narrowly means lands that are tilled, expanding the definition or using a broader term such as “in agricultural production” is preferred. Several options were suggested:
  1. Define “AG production” based on LUO Section 21-3 Master Use Table (see recognized AG uses).
  2. Use language in CH 205-42-1 for the operational definition, “are capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology.” Also recognize that the cultivation goes beyond that language, as it includes hydroponic farms on lava lands, ranching, etc.
- The following language was suggested and accepted by the group: “...has the potential to be returned to active production which conveys the notion of historic use”. This language acknowledges that land can be fallow for a longer period of time.
- Criteria is intentionally broad to be inclusive. Individuals that were involved with drafting the legislation agreed that cultivation was intended to mean AG production, including production on unique lands (e.g., coffee, flower farms on HI Island).
- ADDITIONAL DATA SOURCE: NRCS inventory of lands in current production (parcel-by-parcel inventory of land use created from aerial imagery).

**Criteria #2: Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops.**

**Operational Definition:**

1. Includes land currently used for agricultural production (see above) and past agricultural uses.
  2. Agricultural Land Use Maps (ALUM) are detailed land use maps of crop types. Commodities mapped include animal husbandry, field crops and orchards.
  3. Solar radiation
  4. Slopes
- Like criteria #1, this criteria is intentionally a broad category, since it was specifically crafted to address lands that did not meet ALISH ratings.

- Suggestion was made to add “feed and seed” to the operational definition.
- Verbiage of criteria is confusing. May be better to separate soil qualities and growing conditions into two criteria.
- ADDITIONAL DATA SOURCES:
  - OP’s Energy Division web-based TMK parcel locator map application – identifies land use, renewable energy use and LSB features
  - Historic Soil Survey air photos (1963 and forward) from NRCS and Farm Service Agency
  - NRCS Land Capability Classification (from soil survey maps)

**Criteria #3: Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawai’i (ALISH)**

**Operational Definition:**

1. Land Study Bureau (LSB) ratings range from “A” (Very Good) to “E” (Not Suitable). Soils were grouped into land types based on soil and productive capabilities for certain crop types.
  2. ALISH rating system is based on soil, climate, moisture supply, input use, slope and generalized production factors. 3 classes of agricultural lands are identified: (1) Prime is best suited for production of food, feed, forage and fiber crops; (2) “Unique” has characteristics that make it useful for production of specific high-value food crops such as coffee, taro, rice and watercress; and (3) “Other,” which does not fall into the category of prime or unique, but is farmland of statewide or local importance.
  3. National Resources Conservation Service
- Correct operational definition to “Natural” Resources Conservation Service, not “National”
  - Note similarities between Criteria #2 and #3. If group agrees that ALISH (1977) is not an accurate or current scientific measurement, the preferred approach may be to use a low weighting for this criteria.

**Criteria #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.**

**Operational Definition:**

1. Land currently in taro production or with physical features to support future taro production
  2. Land currently in production or with physical features to support unique crops
- The term “unique” in this criteria does not refer to the ALISH “Unique” category. Unique refers to the niche-market crop being grown on the land. Growing coffee is not unique, except when its growing where it may not be traditionally grown.
  - Suggestion was made to expand the operational definition with an additional sentence that describes the physical features of the land: “Land currently in production or with physical features that support unique crops. Physical features can include but not be limited to soil, rainfall, water, elevation, etc...”

- Discussion followed about limiting the operational definition to wetland taro based on the identification of the areas where it's currently and historically grown, and where it can be grown. Such a definition would recognize the difficulty of identifying areas where dryland taro or other traditional native Hawaiian crops were grown. The TAC agreed to use "currently in wetland and dryland taro production."
- Recognizing the need for the definition to be inclusive, it was suggested that "other traditional crops" be added to the operational definition. It remains unclear at this time how the other traditional crops will be identified.
- Cultural practitioners should be consulted before their lands are designated IAL.
- ADDITIONAL DATA SOURCES:
  - UH-CTAHR studies that identify various crops with economic potential and the areas where such crops may be grown on Oahu
  - OP's Agricultural Resource Lands mapping effort (2010)
  - Sam Gon, Nature Conservancy conducted GIS assessment of lands capable of growing wetland taro
- Taro is the only food crop specified in the criteria, and food-self sufficiency is not addressed by any of the criteria. Should food self-sufficiency or crops grown for food consumption be added as a criteria? Should this operational definition support food self-sufficiency by identifying places where food crops can be grown, or by identifying specific crops? This would address the concern that only about 1/3 of the fruits and vegetables consumed on Oahu are grown on-island.

After some discussion, the group agreed that the operational definition should not name specific crops. Reasons discussed are listed as follows.

1. HI's agricultural history is evidence that crops evolve with time (lands used for sugar are now being used for different crops).
  2. Do not want to limit what is grown. Farmers will grow crops that are profitable.
  3. Purpose of IAL is to support farmers, not to increase sustainability.
  4. Such an approach would place greater value on land that is being farmed for food and divide the industry between food vs. non-food crops.
  5. The IAL criteria were intended to be as inclusive as possible, to protect the resource for future agriculture.
  6. State/County could provide incentives that encourage farmers to grow food crops. This could be one of the TAC's recommendation.
- For clarification, there are two ways to designate lands as IAL: (1) the landowner can independently petition the LUC (voluntary designation); and (2) the counties are required to identify candidate IAL lands (this process). The purpose of this effort is to define and weight the criteria that will be used by the City to screen for the priority AG lands. The weighting will only be used for the county designation process on Oahu; it is not used for voluntary designations.

Landowners whose lands are designated as IAL would be eligible for incentives. Having land designated IAL is not an automatic benefit, as landowners would have to choose to acquire the incentives. The TAC will not be identifying incentives.

- Even if a landowner does not want to designate their land as IAL, the county has the authority to do so. What is open to designation under the county process? Is it possible that the City could designate all of a landowner's property as IAL if he has not already gone through voluntary designation? HRS Section 205-49(a)(3) states that the county cannot ask the LUC to designate additional acreage as IAL if a landowner has already designated the majority (51%) of their land as IAL. However, it is unclear whether the City would apply this 51% rule in cases where landowners have not yet designated IAL (i.e., limit the IAL identification to 51% of a landowner's property), as the rule was intended to encourage landowners' voluntary designation.
- One of the incentives in Act 233 allows landowners to petition the LUC to reclassify up to 15% of the IAL area into a rural, urban, or conservation district, as long as the other 85% is designated IAL and the State Land Use District is consistent with the county's existing land use map designations. The 15% incentive was intended to encourage landowners to designate more than 51% of their lands as IAL. No landowner has requested redesignation/urbanization to date because the 15% threshold doesn't provide enough incentive (20% was identified as the ideal percentage for landowner).
- To date, Kauai is the only county that has gone through the designation process. Hawaii County is getting started and bringing together landowners in informal discussions. Maui County has not begun yet. TAC members who were involved in the Kauai IAL process shared their thoughts about what could be learned from the Kauai experience.
  - Decisions made by the TAC need to be reasonable to ensure the credibility of the group's recommendations. Follow the law so that the City Council cannot reject the TAC recommendations because of a flawed process.
  - Verify the accuracy and validity of the data being used. Kauai used stream data that reviewers' had disputed.
  - Kauai's decision-making process used "clickers" to indicate preference. Reaching consensus was difficult since the Kauai advisory group was comprised of diverse interests with different goals (conflict between open space/productive AG).
  - The intent of IAL is to identify the viable, productive best lands. Not all lands will meet the criteria.

**Criteria #5: Land with sufficient quantities of water to support viable agricultural production**  
**Operational Definition:**

1. Rainfall (mostly for grazing lands, but may apply for fields having expensive water)
  2. Irrigation: currently irrigated with R-1 water or better, currently irrigated with R-2 water, planned for irrigation, formerly irrigated, or potential for irrigation, etc.
  3. Water rates, by area
- To be considered as part of the operational definition:
    - Irrigation (infrastructure and permitting)
    - Access to streams
    - Ability to take water out of the streams
    - Level/quantity of rainfall that makes grazing possible (about 50-60 inches annual rainfall, which is the evapo-transportation rate)
    - Quality of water source: not brackish, although there are salt-tolerant crops
    - Water rates
    - Operational definition needs to define the term "sufficient." The term incorporates: (1) availability; (2) adequate supply; (3) connection to supply

source (is it meter ready or requires infrastructure improvements?); (4) reliability (not affected by drought), (5) efficiency (amount of water loss, cost of getting water to the site).

- POSSIBLE DATA SOURCES:
  - Per Act 233 (see page 19, line 19), State AG Water Use Development Plan is being prepared
  - County Water Use Development Plan
  - DLNR Water Resources Management Plan
  - Hawaii Water Plan is made up of 8 components (, Water (see CWRM website) including stream flow, aquifer sustainable yields, etc.)
  - CWRM also has Drought Plan, mostly mitigation measures.

#### PROPOSED CONSTITUTIONAL AMENDMENT

The November election ballot includes a constitutional amendment about special purpose revenue bonds in support of landowners' financing of reservoirs repairs. This is necessary because the rules and regulations following the Kaloko Dam incident are making it too expensive for landowners to maintain their reservoirs (i.e., irrigation sources). A "YES" vote would be a way to repair/preserve existing reservoirs.

#### NEXT STEPS

The next TAC meeting would be scheduled for November, pending availability of the conference room. The purpose of the next meeting will be to complete discussion of the operational definitions and data sources. (November 13, 2012 was subsequently announced as the meeting date for the 2nd TAC Meeting).

**Meeting was adjourned promptly at 6:30.**

#### TAC Meeting #2 Attendance Record

TAC Members: David Arakawa, LURF  
Bill Durston, Leilani Nursery  
Carl Evensen, UH-CTAHR  
Alan Gottlieb, Hawai'i Livestock Farmers Coalition  
Andy Hashimoto, UH-CTAHR  
Shin Ho, Ho Farms  
Ken Kamiya, Kamiya Gold  
Brian Nishida, Stepstone Business Development  
Dan Nellis, Dole Foods Company Hawai'i  
Dean Okimoto, Hawai'i Farm Bureau Federation / Nalo Farms  
Charlie Reppun, Waiahole Poi Factory  
Leon Sollenberger, Agricultural Enterprises  
Jesse Souki, State Office of Planning  
Alan Takemoto, Monsanto  
Barry Usagawa, Board of Water Supply  
Stephanie Whalen, Hawai'i Agriculture Research Center  
Earl Yamamoto, State Department of Agriculture  
Larry Yamamoto, USDA-NRCS Pacific Islands Area, retired

Others: Mark Takemoto, Pioneer Hi-Bred  
Duane Okamoto, Mayor's Agricultural Liaison  
Tim Hata, DPP  
Steve Young, DPP  
Tara DePonte, HHF  
Scott Ezer, HHF  
Rob James, HHF  
Corlyn Orr, HHF  
Bruce Plasch, Plasch Econ Pacific  
Kem Lowry, Accord 3.0 Consultants



Lands under review for designation as Important Agricultural Lands are examined based upon their ability to support and encourage viable agricultural ventures. The specific criteria, per HRS Chapter 205-44, are listed in the following table.

Discussion during TAC Meeting #2 will focus on defining the criteria and the specific characteristics associated with each criterion. In preparation for the meeting, use the space below to organize your ideas about what each criterion means to you. Feel free to suggest additions or limitations to these criteria. In addition, please add other criteria that you think are especially relevant to the designation of Important Agricultural Lands. If you add a criterion, please try to suggest a data source that will help to identify land units that meet each criterion.

CRITERIA	OPERATIONAL DEFINITION	DATA SOURCES
1. Land <u>currently used</u> for agricultural production	Either in cultivation, used for grazing, or temporarily fallow (to be returned to active production)	Aerial imagery (2011) Consultations
2. Land with <u>soil qualities and growing conditions</u> that support agricultural production of food, fiber, or fuel- and energy-producing crops	Includes land currently used for agricultural production (see above) and past agricultural uses.  Agricultural Land Use Maps (ALUM) are detailed land use maps of crop types. Commodities mapped include animal husbandry, field crops and orchards.  Solar radiation  Slopes	ALUM map, Office of Planning (1980)  State GIS layer  State GIS layer
3. Land identified under <u>agricultural productivity rating systems</u> , such as the agricultural lands of importance to the State of Hawai'i (ALISH)	Land Study Bureau (LSB) ratings range from "A" (Very Good) to "E" (Not Suitable). Soils were grouped into land types based on soil and productive capabilities for certain crop types.  ALISH rating system is based on soil, climate, moisture supply, input use, slope and generalized production factors. 3 classes of agricultural lands are identified: (1) Prime is best suited for production of food, feed, forage and fiber crops; (2) "Unique" has characteristics that make it useful for production of specific high-value food crops such as coffee, taro, rice and watercress; and (3) "Other," which does not fall into the category of prime or unique, but is farmland of statewide or local importance.  National Resources Conservation Service	LSB map, Office of Planning (1972)  ALISH map, Office of Planning (1977)

CRITERIA	OPERATIONAL DEFINITION	DATA SOURCES
4. Land types associated with <u>traditional</u> native Hawaiian agricultural uses, such as taro cultivation, <u>or unique agricultural crops and uses</u> , such as coffee, vineyards, aquaculture, and energy production	Land currently in taro production or with physical features to support future taro production  Land currently in production or with physical features to support unique crops	
5. Land with <u>sufficient quantities of water</u> to support viable agricultural production	Rainfall (mostly for grazing lands, but may apply for fields having expensive water)  Irrigation: currently irrigated with R-1 water or better, currently irrigated with R-2 water, planned for irrigation, formerly irrigated, or potential for irrigation, etc.  Water rates, by area	UH Rainfall Atlas  USGS Hydrographic Data  Consultations
6. Land whose designation as IAL is <u>consistent with general, development, and community plans</u> of the county	Lands designated for Agricultural Use by the Development Plans/Sustainable Communities Plans Land Use Maps  Lands zoned either AG-1 Restricted Agricultural or AG-2 General Agricultural	To be confirmed  City and County Zoning designations. DPP (2012)
7. Land that contributes to maintaining a <u>critical land mass</u> important to agricultural operating productivity	Combined acreage of abutting and nearby fields	
8. Land with or near support <u>infrastructure</u> conducive to agricultural productivity, such as transportation to markets, water, or power.		
9. SUGGESTION FOR NEW CRITERIA and DATA SOURCE	Nuisance and theft problems: distance to urban areas, upwind from urban areas, open or controlled access, visibility, natural or man-made buffers	
10. SUGGESTION FOR NEW CRITERIA and DATA SOURCE	Livestock operations: below the no-pass line, far removed from homes, all utilities	
11. SUGGESTION FOR NEW CRITERIA and DATA SOURCE		
12. SUGGESTION FOR NEW CRITERIA and DATA SOURCE		



Reviewed by DPP 11/20/2012  
Reviewed/approved by TAC 4/8/13

## MEETING SUMMARY

Important Agricultural Lands Identification Project  
Technical Advisory Committee Meeting #3  
November 13, 2012, 4:00 to 6:30 pm  
Mayor's Conference Room, Honolulu Hale Room 301

Recorded by: Corlyn Orr

Attendance: see attached

The third Technical Advisory Committee (TAC) meeting for the Important Agricultural Lands (IAL) Identification Project was held on Tuesday, November 13, 2012 at the Mayor's Conference Room, Honolulu Hale. The meeting was scheduled from 4:00 to 6:30 pm. The purpose of the meeting was to complete the discussion from TAC Meeting #2 about defining the IAL criteria and identifying possible data sources. The TAC meeting process for remaining meetings was also presented for discussion. Handouts included a one-page outline of draft agendas for Meetings #3-5, and a draft sample voting ballot.

## WELCOME / INTRODUCTIONS

Kem Lowry (Accord 3.0 Consultants) opened the meeting at 4:15 pm. He welcomed a new TAC member (Tony Rolfes of the USDA NRCS), and asked all attendees to introduce themselves.

## REVIEW AND APPROVAL OF TAC MEETING #2 DRAFT SUMMARY

With no comments or revisions, and no other objections, the summary from TAC Meeting #2 was approved as drafted.

## DISCUSSION OF IAL DESIGNATION CRITERIA (continued from TAC Meeting #2)

Discussion about the operational definitions and possible data sources for Criteria #6-#8 followed, based on the IAL criteria worksheet that was circulated at TAC Meeting #2.

### **Criteria #6: Land whose designation as IAL is consistent with general, development, and community plans of the county**

#### **Operational Definition:**

1. Lands designated for Agricultural Use by the Development Plans/Sustainable Communities Plans Land Use Maps
  2. Lands zoned either AG-1 Restricted Agricultural or AG-2 General Agricultural
- Should this effort screen for IAL within areas that the City has designated for future urban use? (This is not an issue about Ho'opili and Koa Ridge lands which are already designated State Urban. Concern is about lands specified for urban use on the DP/SCPs which are designated State AG and would require State LUC approval for designation as State Urban). Identifying IAL could result in changes to City's future policies.
    - *DPP's Response:* Act 183 gives deference to the counties' adopted policies and plans, such that lands specified for urban use in the DP/SCPs cannot be eligible

for IAL designation. As long as land is not in an adopted plan or policy for urban use, it may be screened for IAL designation. Lands that are being proposed for future urban use as part of the City's DP/SCP 5-Year Review Program – such as Envision Laie – are eligible for IAL screening. (Under the City's current plans/policies, the Envision Laie project area is identified for Agricultural use).

- Intent of this criterion was to recognize the State's past planning efforts. There is enough acreage of good quality farm land within the State Agricultural District, without having to consider the areas planned for urban use.
- There was group consensus that the operational definition for Criteria #6 should be specific and indicate the need for consistency with adopted plans (such as DP/SCPs approved/adopted by the City Council).

### **Criteria #7: Land that contributes to maintaining a critical land mass important to agricultural operating productivity**

#### **Operational Definition: Combined acreage of abutting and nearby fields**

- The goal for this criterion is to preserve blocks of agricultural land as related to economic viability. It is not intended to identify the amount of land required to grow certain crops.
- There was consensus among group members that they did not want to use a specific acreage to define this criterion at this time. The "we'll know it when we see it" approach is preferred. It may be possible to specify a number as the mapping process continues (after data sources are mapped and the weighted criteria are being refined).
- Proximity and functionality are considered to be more important factors than acreage when defining critical land mass, for the following reasons.
  - Soil and water conservation are important ecological functions resulting from maintaining a critical mass. It was suggested that this operational definition include general guidelines for functionality by using a watershed approach (or *ahupua'a* designation) to identify critical land mass where there were no conflicting uses interspersing agricultural lands.
  - There are two different levels of critical land mass for consideration: (1) critical mass formed by having a number of farms located in close proximity to each other; and (2) overall mass of agricultural land that has inherent, intrinsic value as farm land. The advantage of farms operating in close proximity to each other creates a market for farm services to be viable (e.g., composting operation, farm suppliers).
  - An isolated 5-acre parcel is not as significant as a 5-acre parcel located in proximity to other small lots. Association with other parcels creates a compounding effect and increases its value/importance.
  - Using a specific acreage to define critical land mass does not protect agricultural areas from urban encroachment, or address the need to minimize conflicts between adjacent urban and agricultural activities (e.g., odor/noise/nuisance complaints typically result as urban uses encroach into agricultural areas).



- o Lack of contiguous agricultural lands and related road network results in increased costs and additional effort to move equipment (e.g., tractors, trailers). Recent example was given where equipment had to be transported using the State highway, because cane haul roads were no longer available.
  - o Acreage should be sufficient size to allow for crop rotation, which is a necessary function of farming.
  - o Statistics indicate that the median farm size is 5 acres, while the average farm size is 100 acres. There is uncertainty about how to define the criteria in a way that does not exclude the smaller farms, and a concern that smaller farms in Waimanalo, North Shore, Kahala'u, West O'ahu may not meet the IAL criteria.
- It was noted that: (1) small farmers typically sell their land as their retirement investment, and may not want to designate their land as IAL; (2) most small farms on the North Shore are leased; and (3) some small farms may be recreational/hobby farms, which may not be interested in IAL.

- The Kauai IAL Study was based on the acreage of land needed for food self-sufficiency. Food self-sufficiency is not one of the eight criteria, although it is an objective of Act 233 ("...to contribute to the viability of agriculture through the expansion of agricultural income and job opportunities and increase in food security for current and future generations..." (HRS 205-B)(3)(b)).

There was group consensus that this approach was not appropriate for O'ahu's IAL effort. TAC members recognized the difficulty of such a task, and agreed that such a task would be better addressed at the state-level, not on an individual county basis. Incentives that encourage food production could help to increase self-sufficiency, since food security is an objective of Act 233.

- Profitability is key for the future of the industry. For a small farmer, access to affordable water, the availability of infrastructure such as roads and electricity, and proximity to farm services/supplies are major factors affecting profitability.
- The ADC project in Wahiawā is helping to develop the infrastructure for farmers to be successful. By providing all the necessary systems for farming, the ADC project has the potential to attract new farmers to the area and create a critical mass. In the long-term, it is possible that small farms in other areas would consolidate/re-locate to Wahiawā, leaving those areas for higher-value crops (e.g., landscaping).

**Criteria #8: Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water or power**

**Operational Definition: None provided in the worksheet**

- Operational definition should include access to roads and the transportation network. Distance and difficulty of accessing an area are other factors for consideration (e.g., Kamilo Nui lands are more isolated and distant from the highway system than Kunia).
- Idea was presented that rail could be used to transport farm products during off-peak hours.

- After discussing the possible redundancy of addressing water in both Criteria #5 and #8, the group agreed that water should be addressed under both criteria. The availability of water (non-potable/irrigation water) would be addressed under Criteria #5, and access to potable water as part of an infrastructure system would be addressed under Criteria #8.

#### ADDITIONAL CRITERIA FOR CONSIDERATION

- TAC members agreed to add a 9<sup>th</sup> criterion that recognized properties with Agricultural easements, as a way for landowners to access the IAL incentives. AG easements are growing in popularity (e.g., HSPA has 100 acres, Turtle Bay Resort mauka lands, Sunset Ranch). The group agreed that this criterion would be limited to easements (other tools such as restrictive covenants or unilateral agreements would not be included).

An operational definition was proposed, "Government programs to protect AG lands in perpetuity that are recorded." Specific programs that were identified include: (1) City Natural Land and Water Reserve Fund; (2) State Legacy Lands Program; and (3) Federal Farmland Protection Program. Possible data sources include easements recorded with the Bureau of Conveyances, and the annual reports from the various programs.

- Other criteria proposed on the IAL criteria worksheet were dismissed. Specifically, there were concerns about the adding a criteria for the "no pass line for livestock operations."
- Do not understand the logic of IAL. If landowner incentives are the purpose of IAL, incentives should be made available to all farmers without having to go through the IAL designation process.
- Should the criteria include a distinction for lands that have flooding problems, since crop loss and productivity are affected by flooding? Several reasons were given for not adding this as a criteria:
  - o Periodic flooding is considered a function of agricultural land. It serves a purpose of protecting urban areas from flooding.
  - o Flooding is beneficial for soil conditions. Some of the most productive lands are flooded at times (e.g., Hanalei taro fields, Otake camp).
  - o Flooding is built into some of the soil classification rating systems.

#### PROCESS FOR REMAINING MEETINGS / DRAFT BALLOT / NEXT STEPS

- A draft agenda for future meetings and a sample voting ballot were presented. The ballot would be emailed to TAC members following TAC Meeting #3. Each TAC member would be asked to allocate 100 points among the 9 criteria (e.g., 8 criteria defined by Act 183 and 1 added by the TAC for agricultural easements), allocated based on the criteria's degree of importance according to an individual's preference. (It is possible to allocate zero points to a criterion).

Following the voting exercise, the criteria receiving the highest number of points would be mapped, with a test case (mapping of a sample site) presented at TAC Meeting #4 to see if the screening expresses the TAC's desired outcome. If necessary, additional iterations would show how modifying the criteria could influence outcomes.

Members of the project team will be contacting various TAC members to assist with obtaining data sources.

- Consistency with county plans is a requirement of the law. It is also identified as one of the eight criteria (Criteria #6).
- *DPP Response:* The immediate purpose of the IAL process is to strengthen the State Agricultural District for agricultural uses. It now includes both AG lands and "remnant" lands. The IAL process will distinguish between the lands that have value for agriculture and the lands that are not suitable for agriculture, which could be used for other purposes, including urbanization.
- How to define a landowner is an important question that needs to be answered. Is it 50% of a landowner's property islandwide? Or is it 50% of each parcel? This affects which lands can be identified for IAL.
- It was clarified that the IAL designation is limited to lands in the State Agricultural District. Lands in the State Conservation District cannot be designated IAL.
- Proposal was made to add a 10<sup>th</sup> criterion, "Agricultural land that contributes to exceptional ecological functions". This would address TAC members' concerns that none of the criteria address the ecological value that the land provides (e.g., ecological services provided by grazing on marginal lands, flood and erosion control, wetland/taro loi serves as habitat for endangered birds).

The group decided against adding this as a formal criterion at this time because of difficulty with identifying indicators and developing the operational definition/mapping sources. Possible indicators would be considered during the interim.

**Meeting was adjourned at 6:35.**

#### **TAC Meeting #3 Attendance Record**

**TAC Members:** Mike Bajinting, USDA-NRCS Pacific Islands Area  
Carl Evensen, UH-CTAHR  
Alan Gottlieb, Hawai'i Livestock Farmers Coalition  
Shin Ho, Ho Farms  
Brian Nishida, Stepstone Business Development  
Dean Okimoto, Hawai'i Farm Bureau Federation / Nalo Farms  
Mark Phillipson, Syngenta Seeds  
Alenka Remec, City Office of Economic Development  
Charlie Reppun, Waiahole Poi Factory  
Tony Rolfes, USDA-NRCS-Pacific Islands Area  
Leon Sollenberger, Agricultural Enterprises  
Jesse Souki, State Office of Planning  
Stephanie Whalen, Hawai'i Agriculture Research Center  
Earl Yamamoto, State Department of Agriculture  
Larry Yamamoto, USDA-NRCS Pacific Islands Area, retired

**Others:** Mark Takemoto, Pioneer Hi-Bred  
Duane Okamoto, Mayor's Agricultural Liaison  
Randy Hara, DPP  
Tim Hata, DPP  
Kathy Sokugawa, DPP  
Tara DePonte, HHF  
Scott Ezer, HHF  
Rob James, HHF  
Corlyn Orr, HHF  
Bruce Plasch, Plasch Econ Pacific  
Kem Lowry, Accord 3.0 Consultants

# IAL TECHNICAL ADVISORY COMMITTEE PROCESS (MEETINGS #3 - #6)

## MEETING #3 DRAFT AGENDA [November 13, 2012]

- Review criteria remaining from Meeting 2
- Opportunity for TAC-nominated criteria
- Explain procedures for establishing priorities among criteria
- Explain proposed process for reviewing priority criteria in Meeting 4
- Introduce “ballots” for weighting criteria (100-point allocation basis)

## Interim process [2-3 month period between Meeting #3 and #4]

- HHF develops operational measures for specific criteria such as “adequate water”
- HHF meets with individual experts to identify optimal data sources in order to develop draft map layers for specific criteria
- HHF develop maps for specific criteria at candidate sites to illustrate implications of specific criteria
- TAC members fill out ballots to weight criteria (could possibly include more than one round of filling out ballot)

## MEETING #4 DRAFT AGENDA [Date TBD]

- Present TAC nominations for priority criteria
- Present HHF technical process for mapping each criterion
- HHF presents preliminary maps of priority criteria for IAL test sites
- TAC analyze strengths/weaknesses of each mapped criterion

## Interim Process [1-2 month period between Meeting #4 and #5]

- HHF sends out notes summarizing TAC assessments of mapped criteria
- TAC members again allocate 100 points among criteria and return ballot to HHF (if necessary)

## MEETING #5 DRAFT AGENDA

- TAC members review results of second round of voting
- TAC members decide whether additional map analysis is required in order to make decisions on criteria
- If no additional analysis is required, TAC members make final decisions on criteria
- DPP leadership describe Phase II of IAL criteria process and solicit TAC members participation

*[If TAC members determine more mapped analysis is required, a sixth meeting will be necessary.]*

November 13, 2012

# Important Agricultural Lands Project TAC CRITERIA SCORING BALLOT

Use this ballot to indicate your preference for ranking the IAL criteria. Start with a total of 100 points, then allocate the 100 points among the criteria in the way that best reflects your opinion about the criteria's importance. The number of points given to a criteria reflects its importance. (The more points given, the more important you consider the criteria to be. Less points means less important; a value of zero points means the criteria should not be considered).

**Please email your completed form to [colsonorr@hhf.com](mailto:colsonorr@hhf.com) by November 30, 2012.**

CRITERIA	POINTS
1. Land currently used for agricultural production	
2. Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops	
3. Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawai'i (ALISH)	
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	
5. Land with sufficient quantities of water to support viable agricultural production	
6. Land whose designation as IAL is consistent with general, development, and community plans of the county	
7. Land that contributes to maintaining a critical land mass important to agricultural operating productivity	
8. Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power	
9. Government programs to protect AG lands in perpetuity that are recorded	
<b>TOTAL = 100 points</b>	<b>0</b>

November 20, 2012





Reviewed by DPP 5/6/13  
Reviewed/approved by TAC 5/9/13

## MEETING SUMMARY

Important Agricultural Lands Identification Project  
Technical Advisory Committee Meeting #4  
April 8, 2013, 4:30 to 7:00 pm  
Pacific Guardian Center, Makai Tower Conference Room

Recorded by: Corlyn Orr

Attendance: see attached

The fourth Technical Advisory Committee (TAC) meeting for the Important Agricultural Lands (IAL) Identification Project was held on Monday, April 8, 2013 at the Pacific Guardian Center, Makai Tower Conference Room (733 Bishop Street, Honolulu). The meeting was scheduled from 4:30 to 7:00 pm. The purpose of the meeting was to receive comments on the preliminary criteria maps and discuss the proposed weighting methodology. The Powerpoint presentation of the preliminary criteria maps was the only handout distributed at the meeting.

Kem Lowry (Accord 3.0 Consultants) opened the meeting at 4:40 pm.

## REVIEW AND APPROVAL OF TAC MEETING #3 DRAFT SUMMARY

With no comments or revisions, and no other objections, the written summary from TAC Meeting #3 was approved as drafted.

## REVIEW OF TAC CRITERIA VOTING PROCESS AND RESULTS

Kem reviewed the voting process that was used to rank the criteria, and presented the results of the voting process. Each TAC member was asked to vote on the 9 criteria (8 criteria established by Act 183 and a 9<sup>th</sup> one added by the TAC). Voting entailed distributing 100 points across the 9 criteria. 23 out of 25 ballots were returned, representing 92% TAC participation.

Kem presented the criteria scores resulting from the TAC voting. Using median scores, the criteria that received the most points (15 points) were:

- #5 (*Sufficient Quantities of Water*),
- #1 (*Current Use for AG*) and
- #2 (*Soil Qualities and Growing Conditions*).

*Criteria #8 (With or Near Support Infrastructure)* and #3 (*AG Productivity Rating Systems*) were both ranked in the second tier (10 points each), followed by *Criterion #7 (Critical Land Mass)*, which received a median score of 9 points.

## DISCUSSION OF PRELIMINARY CRITERIA MAPS AND PROPOSED WEIGHTING METHODOLOGY

Kem reminded the group that the TAC's role is to make recommendations to the county for IAL, and that the discussion should stay focused on the criteria. The purpose of the TAC is not to identify AG lands, but to identify what should be the priority criteria for the City to use as they designate IAL.

Rob then presented the preliminary criteria maps and provided a summary of the data used to prepare the maps. He noted that two criteria - #7 (Critical Land Mass) and #8 (With or Near Support Infrastructure) – have not been mapped yet because more guidance from the TAC is needed to clarify the operational definition. TAC members were encouraged to look critically at the maps and provide corrections, as needed.

Several TAC members – including Earl Yamamoto (DOA), Bill Tam and his staff (CWRM), Tony Rolfes (NRCS), Stephanie Whalen (HARC), Barry Usagawa (BWS) and Dan Nellis (Dole) – were recognized and thanked for supporting the data gathering effort and for sharing their information and time.

Questions and concerns are summarized as follows:

- State lands were excluded from the “qualified lands” map (i.e., Slide #7 showing 81,150 acres within the City's study area) because the State (as a collaboration of DOA and DLNR) is required to identify their own IAL for their lands.
- Suggest that a map be prepared to show Federal and State/DHHL-owned lands in the State Agricultural District and already-designated IAL. Important for the TAC to understand the island-wide AG situation. Knowing where the AG lands are located is important when addressing contiguity.
- In response to a question, Rob clarified that the white space on the Criterion #1 map between where the H-1 Freeway and Kunia Road intersects is the highway cloverleaf.
- Map of current AG production (Criterion #1 map) includes both pasture lands and crop-field farming. Ravines identified in the Criterion #1 map are related to the pasture/ranching activity. Ravines are not mapped as part of Criterion #2 because they were not identified in the NRCS land capability classifications.
- There is a possible discrepancy between the maps for Criterion #1 and #2. Need to clarify the extent of current farming activity along the upper slopes of Kunia, and the NRCS land capability classifications for Kunia. Does not appear that the maps accurately reflect topography/slope ranges.
- Would like to see a map of existing farms in the State Urban District as part of the background information on O'ahu's existing AG situation. This information could be useful to identify potential long-term AG land requirements, should farms currently operating in the Urban District need to be relocated to accommodate future urbanization.
- Hawai'i Kai's AG areas are in the State Urban District and are excluded from this study. Need to clarify the land use classifications for the Sumida watercress farm and Kamehameha Schools (KS) lands in Pearl City/Waipio Peninsula.
- Observation was made that AG lands in Aiea/Pearl City area identified in Criterion #2 do not show up in the Criterion #3 map.
- In response to a question, Rob clarified that the map of Criterion #3 includes land that meets at least one of the four classes (does not require land classes to overlap).

- Map of Criterion #4 (Native Hawaiian Use) shows lands that have the capability to support wetland taro production. Lands in Kahalu'u are not included in this map because they are in the State Urban District.
- Sustainable yield is not addressed in the definition for Criterion #5.
- Map of Criterion #5 identifies lands that have access to water for AG use (e.g., lands that have CWRM Water Use Permits, draw AG water from BWS, or have access to surface ditches). Mapping does not take into account the amount of water available for use. Current map does not include recycled water as an irrigation source.
- Lands in Kunia that are irrigated by CWRM Kunia Water Association wells and the Waiāhole Ditch System are not mapped correctly in Criterion #5 Map (refers to area on 'ewa side of Kunia Road, down to H-1 freeway). Sumida Watercress farm is irrigated by an on-site spring, and is not showing up on the map. KS lands at Waipi'o Peninsula and Pearl City Peninsula are also missing from this map.
- Suggestion was made to separate surface-water, gravity flow sources and groundwater sources because transmission can affect cost. Having access to water is meaningless if the water is too expensive to transport. There was general agreement among TAC members to include a statement in the report that the study did not look into the relative costs of providing water. This is an important point because the purpose of IAL is to make AG viable for the farmer. Even with sufficient water, if the cost of providing the water is too high, farming will not be viable.
- Important for the report to also explain that the scope of the study was limited to certain lands, and that this study does not identify all IAL on O'ahu. Lands belonging to the Federal government were excluded from this study because they are outside the county's jurisdiction. State-owned lands were excluded because State law mandates DOA and DLNR to go through their own identification process for State lands. The counties cannot designate IAL for the State.
- Per Chapter 205, the State was required to complete their IAL designation process by January 1, 2010, before the counties went through their IAL process. The State has not designated their lands yet. Knowing which lands were State-designated IAL would have been helpful in defining contiguousness (Criteria #7, Critical Land Mass). DOA started a state-wide mapping project under the previous administration, using available State GIS information to prepare an "AG Resource Lands" map in conjunction with the Office of Planning. DOA will need additional staffing and funding to complete their effort.
- Map of Criterion #6 (Consistent with County Plans) identifies lands that are consistent with both State and County plans. The lands shown on the Criterion #6 map meet all 3 conditions (e.g., in the State AG District, designated AG by the County DP/SCP, and county-zoned AG.) Comment was made that the Sumida Watercress Farm is not included in this map, while the other Pearl City AG lots are shown.
- Map of Criterion #9 (AG Easements) identifies lands that have existing AG easements, which means that they will be in AG for perpetuity. These lands are not eligible for tax incentives without the IAL designation.

- Acreages reported on the Top 3 Criteria and the Top 4 Criteria Maps (Slides 16 and 17) reflect the actual amount of land in each category. They should be considered additive, as shown on the following tables.

Map of Top 3 Criteria (Slide 16)

	Acreage Per Slide 16	Actual Acreage
Lands with All 3 Criteria	20,105 ac	20,105 ac
Lands with 2 of Top 3 Criteria	20,060 ac	40,165 ac
Lands with 1 of Top 3 Criteria	27,650 ac	67,815 ac

Map of Top 4 Criteria (Slide 17)

	Acreage Per Slide 17	Actual Acreage
Lands with All 4 Criteria	18,905 ac	18,905 ac
Lands with 3 of Top 4 Criteria	14,520 ac	33,425 ac
Lands with 2 of Top 4 Criteria	13,365 ac	46,785 ac
Lands with 1 of Top 4 Criteria	21,970 ac	68,755 ac

- Criteria #7 (Critical Land Mass) and #8 (Near or With Support Infrastructure) have not been mapped, as there was no consensus or measurable definitions given during previous TAC discussions and further TAC guidance is needed to define the two criteria.
  - The usefulness of mapping Criterion #7 was questioned. It was felt that it was more important to map State-owned AG lands in relation to the study area, as the State-owned AG lands would help identify contiguous AG acres. The lack of information about other existing AG entities distorts the City's mapping efforts.
  - Criterion #8 was deemed to be less important for O'ahu than for the neighbor islands, since transportation is not as critical for O'ahu as other islands (i.e., AG areas on Oahu are closer to major markets, whereas places like Molokai or Hawai'i Island involve barge/air shipping). Additional TAC guidance is needed to define the specific characteristics associated with infrastructure requirements for utilities such as water and electricity. It was generally agreed that developing this map would not materially change the current picture of the study area.

#### DISCUSSION ABOUT PRELIMINARY DECISION-MAKING PROCESS

The meeting was recessed at about 6:15 pm for a 20-minute break during which time meeting attendees were encouraged to review the criteria maps posted around the room and ask questions. The meeting was reconvened at about 6:35 pm, with the discussion about the need to map Criteria #7 and #8 continuing.

- Concern was raised that this study would not be in compliance with the law if the criteria maps were not prepared/ available. In response, it was clarified that the criteria were for both (1) weighting the criteria for purposes of the City's IAL designation process and (2)

applying the criteria to an individual landowner's parcel-specific IAL application. TAC members agreed that criteria which were not mapped or were not given priority weighting for this study were still important for IAL decision-making, and that IAL applicants should be required to provide written summary describing the criteria as part of their application.

- It was suggested to use the distance from paved roads as part of the definition for Criterion #8. After some discussion, the TAC agreed that this feature (i.e., transportation) could not be mapped with specificity. There was also agreement that access to roads was not truly significant because there is no place on O'ahu that is really that remote from a market. KS lands above Hale'iwa and Kahuku were identified as areas with good farmland that are associated with the greatest travel distances on O'ahu. KS lands are accessible via a good plantation road system that minimizes travel time. Kahuku is the farthest AG area from Honolulu and is known for its successful farming operations. These areas challenge the notion that areas with good farmland could not qualify for IAL because of accessibility.

Kem asked the group to consider the criteria selection process. *"Based on the maps being presented, did the group prioritize the right criteria? Is there a need to go through the criteria selection process (voting) again?"* The focus of the TAC is to identify criteria that the county will use to recommend candidate lands for IAL and to map the criteria. The second phase of the county's IAL process will focus on identifying lands for IAL.

- Although the voting process was fair, the TAC may want to reconsider and identify Criterion #4 (Native Hawaiian Use) as a key criteria. Taro lo'i are unique because the land characteristics cannot be reproduced (e.g., soils, hydrology, place in the landscape), and because they are relatively few in number. Top 3 Criteria Map appears to include most of the lo'i areas, but there is still value in prioritizing Criterion #4. Lo'i are productive as AG lands and should not be used for other kinds of purposes. Lo'i are typically wetland areas that are periodically flooded, and these lands are unsuitable for other uses/development.
- Agricultural self-sufficiency is important but the TAC agreed not to address this issue as part of this study. In the pre-contact Native Hawaiian era, taro was a valuable food source because it was an efficient crop to grow and it grew year-round (unlike *ulu* or *u'ala* which had growing seasons and required dedicated irrigation systems). Starch production is important for self-sufficiency. Taro is a starch that can be produced with minimal effort and it does not involve pumping irrigation water. Wetland taro, which requires as much as 100,000 gallons/acre/day, also represents a type of ecosystem, as water is directed from the stream through *lo'i*, returned to the stream, and then to the ocean where it supports *muliwai* (nearshore brackish ecosystems).
- Concern was expressed about identifying the sustainable yield for groundwater and streamflows. How much water will be needed to irrigate the lands designated IAL? A related concern was raised about the definition of "sufficient" water, as Criterion #5 identifies lands that HAVE water, but the amount of water needed to be sufficient depends on the crop being grown.
- There was consensus that a map showing both State-owned lands in the State AG District and lands eligible for IAL as part of this study ("Qualified Lands") would be helpful to understand the context of Oahu's AG situation, for informational purposes only. Map would be helpful for the general public to see that this study is only looking at a portion of the AG lands.

- GIS data on the State land use districts is available from the State GIS website. An inventory of Oahu includes 122,790 acres in the State AG District, 158,669 acres in Conservation and 104,232 acres in Urban.
- The TAC may want to consider the value of prioritizing the criteria. The 81,000 acres eligible for consideration as IAL is not a significant amount to begin with. Another option could be to use all 9 criteria, instead of prioritizing only the top 3 or 4 criteria.
- Ownership has not been part of this analysis because it does not affect criteria prioritization. However, ownership will affect the amount of land identified as IAL because the counties cannot identify more than 50% of a landowner's inventory.
- It was clarified that the 85%-15% rule allows a landowner to urbanize lands that are already designated for Urban use by the counties (i.e., within the county's urban growth boundaries), on the condition that the other 85% of their land will be designated for IAL. Only lands that are designated for future urbanization can be fast-tracked; lands that are eligible for IAL designation cannot be fast-tracked. Dole does not own any land within the Urban Growth Boundary.
- Suggestion was made for a comprehensive map of all the criteria. It would be useful to see if the areas identified on the Criterion #4 Map are included in the Top 3 Criteria Map. Would also be interesting to see how much of the other, lower-priority criteria were included.

Kem asked the group to identify information that was most pertinent to their decision-making process. *What would the TAC have to know and what would the TAC like to know to make recommendations?*

Necessary information (need-to-knows) includes:

- Map of State AG District in relation to the Qualified Lands
- Identifying county Urban Growth Boundaries on Criterion #6 map (supports 15% rule)
- Including gulches as part of the criteria maps. The group agreed that the gulches served an essential drainage function, and should be included in the criteria maps. Although flat areas are used for cultivation, the flat would not be usable without proper drainage. All recently-approved IAL petitions included gulches because they are recognized as part of ecosystem. The gulches are also included in the urbanization process and landowners pay property taxes on them. Excluding the gulch areas from the IAL process would devalue the land.

Desirable information (nice-to-knows) included land ownership.

The gulches are also important to contiguousness (Criterion #7). Kem suggested more time to think about measuring a critical land mass and contiguousness. The discussion about how to operational Criterion #7 was deferred until the next meeting.

**Meeting was adjourned at approximately 6:50 pm.**



**TAC Meeting #4 Attendance Record**

TAC Members: David Arakawa, Land Use Research Foundation  
Dan Nellis, Dole Food Company Hawai'i  
Katie Ersbek, Commission on Water Resource Management  
Carl Evensen, UH-CTAHR  
Alan Gottlieb, Hawai'i Livestock Farmers Coalition  
Andy Hashimoto, UH-CTAHR  
Ken Kamiya, Kamiya Gold  
Brian Nishida, Stepstone Business Development  
Dean Okimoto, Hawai'i Farm Bureau Federation / Nalo Farms  
Mark Phillipson, Syngenta Seeds  
Alenka Remec, City Office of Economic Development  
Charlie Reppun, Waiāhole farmer  
Jesse Souki, State Office of Planning  
Alan Takemoto, Monsanto  
Barry Usagawa, Board of Water Supply  
Stephanie Whalen, Hawai'i Agriculture Research Center  
Earl Yamamoto, State Department of Agriculture  
Larry Yamamoto, USDA-NRCS Pacific Islands Area, retired

Others: Mark Takemoto, Pioneer Hi-Bred  
Duane Okamoto  
Randy Hara, DPP  
Tim Hata, DPP  
Kathy Sokugawa, DPP  
Scott Ezer, HHF  
Rob James, HHF  
Corlyn Orr, HHF  
Bruce Plasch, Plasch Econ Pacific  
Kem Lowry, Accord 3.0 Consultants

**Helber Hastert & Fee**  
Planners, Inc.



6/20/13

Reviewed by DPP 5/31/13

Reviewed by TAC 6/19/13

**MEETING SUMMARY**

Important Agricultural Lands Identification Project  
Technical Advisory Committee Meeting #5  
May 9, 2013, 4:30 to 7:00 pm  
Pacific Guardian Center, Makai Tower Conference Room

Recorded by: Corlyn Orr

Attendance: see attached

The fifth Technical Advisory Committee (TAC) meeting for the Important Agricultural Lands (IAL) Identification Project was held on Thursday, May 9, 2013 at the Pacific Guardian Center, Makai Tower Conference Room (733 Bishop Street, Honolulu). The meeting was scheduled from 4:30 to 7:00 pm. The purpose of the meeting was to respond to questions and information requests from the previous TAC meeting, and determine which/how many criteria would be recommended as the priority criteria.

Kem Lowry (Accord 3.0 Consultants) opened the meeting at about 4:40 pm.

**REVIEW AND APPROVAL OF TAC MEETING #4 DRAFT SUMMARY**

With no comments, additions, or corrections, the written summary from TAC Meeting #4 was approved as drafted.

**PRESENT FOLLOW-UP MATERIALS IN RESPONSE TO QUESTIONS AND INFORMATION REQUESTS FROM TAC MEETING #4**

Scott Ezer provided responses to questions and information requests that were raised during the previous TAC meeting. Discussion items are summarized as follows (see the meeting PowerPoint for a summary list).

- All of the criteria maps have been updated to include State-owned land in the State AG district (encompasses about 11,000 acres).
- All of the criteria maps have been updated to include the county's Urban Growth Boundaries.
- There was discussion at the last TAC meeting about mapping the gulches and ravines as part of criteria maps. This topic remains unresolved at this time, as there are still outstanding questions about the value of mapping these areas and the ramifications for the identification of IAL.
- The Office of Planning provided a map of private landowners (map was posted during the meeting). The TAC's decision-making is not meant to be influenced by land ownership, and this information will not be included in the report. It is important that the TAC's decision-making process is based strictly on the merits of the criteria and the value of the land relative to the criteria. There are possible legal ramifications associated with using land ownership as a criterion.

Important Agricultural Lands Identification  
TAC Meeting #5, May 9, 2013  
Page 2

- Several TAC members (Stephanie Whalen, Earl Yamamoto and Dan Nellis) were recognized for attending and participating in HHF's informal lunchtime working session. The map of Criterion #1 was modified to correctly show current farming activity along the upper slopes of Kunia, based on the discussion at the working session.
- No mapping changes have been made regarding the use of NRSC land capability classifications (first 3 categories are still being used).

Questions about the land use classifications for Sumida Watercress Farm were brought up several times during TAC Meeting #4. The watercress farm is in the State AG District, outside the county's Urban Growth Boundary, and zoned AG. However, it is designated Preservation on the county's SCP Map, and is therefore not eligible for IAL consideration under the county's process. Concerns were raised about the soundness of the law, when Sumida Watercress Farms could not be eligible for the IAL incentives. It was noted that Sumida could petition the LUC for IAL status as a private landowner.

- Several criteria maps have been modified to include Kamehameha Schools' lands in Pearl City and Waipio Peninsula, in response to comments raised during the last TAC meeting.
- Lands that were shown as irrigated did not adequately address lands served by the Kunia Water Association Wells. Criterion #5 map was adjusted accordingly. No mapping changes have been made for Central O'ahu lands irrigated by the Waihole Ditch System (data was verified).
- Acres as reported on the maps showing the Top 3 Criteria and the Top 4 Criteria were changed to be additive.
- Existing farms in the State Urban District will not be a consideration for determining the land's qualifications for IAL. Based on the current law, lands in the State Urban District cannot be considered for IAL under the county process, and are therefore not able to qualify for incentives. However, it would be useful to include a map identifying such farms as part of the report (for informational purposes only).

Developing this map would be a rigorous, labor-intensive exercise of looking at aerial satellite photos to identify the numerous small farms scattered throughout the Urban District (i.e., landscaping nurseries, food crops and flower farms, as well as taro farms which are difficult to identify). This will most likely include small farms in Kahalu'u and Wai'anae, and larger sections in 'Ewa and Central O'ahu. Although preparing this map is outside the scope of this study, it may be included in the report, if the information can be culled from existing data sources (e.g., may be possible to use county's real property tax AG dedication database or the BWS data for AG water rates). One possible strategy to collect this information could be to ask for public input to help create a registry of existing farms in the Urban District during the second phase of the project.

If the purpose of IAL is to support agriculture and provide incentives that make it easier for farmers to farm, it doesn't seem logical that farms in the Urban District are not eligible for the incentives. Most of these farms are small operations with farmers living on their farms (e.g., Kahalu'u, Hawai'i Kai, Palolo Valley), and moving into AG areas outside the Urban District is simply not possible. The logic of the law which requires that land be designated as IAL to receive incentives was already questioned at a

previous TAC meeting. It was noted that these farmers could dedicate their lands with an AG easement for tax incentives. The IAL incentives are restricted to resource lands because public funding mechanisms have resource limitations, and it is necessary to focus public investment (i.e., incentives that support infrastructure improvements) on "important" lands.

- Criterion #8 (With or near Support Infrastructure) has not been mapped yet, and will not be mapped. This criterion addresses the relationship between a farm, the market and infrastructure. Discussion at the last TAC meeting indicated that O'ahu could be considered to be one market, as all areas have reasonable accessible to roadways, harbors, and airports. No additional comments followed, and there was general agreement from the TAC that Criterion #8 would not be mapped.
- A definition for Criterion #7 (Critical Land Mass) has not been developed yet, despite previous TAC discussion (see TAC Meeting #3 written summary, "proximity and functionality are more important factors than acreage when defining critical mass", as a concentration of farms creates a market for farm services such as shared processing facilities and farm suppliers).

TAC members who were involved in drafting Act 183 noted that the intent of this criterion was to prevent large tracts of AG lands from being broken up by urban development, as has been the case in other states where residential subdivisions have been developed in the middle of AG areas. The concept of preserving critical land mass was to minimize nuisance issues between AG and residential uses, and to limit potential urban encroachment on AG lands.

It was agreed that the language in Chapter 205, HRS does not require the definition to address "contiguousness," and that the difficulty with developing a definition is determining a metric for measurement (e.g., # of contiguous farms or acres). Several options were suggested: (1) providing a reference to O'ahu's critical land mass, in terms of the island's gross number of acres as it relates to maintaining O'ahu's agricultural industry; (2) clarifying that even though land may be separated from other AG lands, it still contributes to critical land mass because of its island-wide benefit to AG; (3) using the priority criteria map to identify AG lands aggregated together that could be considered to be O'ahu's critical land mass.

The notion that this criterion may not be quantified and may be better served as a guideline for the county mapping process than operationalized as a map was discussed. Determining critical land mass seems to involve subjective review of surrounding urban uses, which is more appropriate for evaluating private/individual landowner petitions that propose to add/remove AG lands than for the counties' IAL effort. The TAC agreed that Criteria #7 was inconsequential because the county's Urban Growth Boundaries identify where urbanization is allowed.

- Chapter 205, HRS assigns responsibility for the identification of IAL on State-owned lands to DOA and DLNR. In response to questions raised during the last TAC meeting about the extent of DOA's and DLNR's jurisdiction over "public lands", the public lands definition (Chapter 171, HRS) was distributed for reference (i.e., included in the presentation and also distributed as a separate one-page handout). A copy of Chapter 205-44.5, HRS, which is the section of the law that specifically mentions Chapter 171, HRS was also distributed as a separate handout.

## REVIEW THE TAC'S ROLE IN THE CITY'S PROCESS TO IDENTIFY IAL

Phase II. Scott presented a general overview of Phase II and explained how the criteria and associated maps developed during Phase I would be used in Phase II. The scope and funding for Phase II has not been determined yet. Funding is pending City Council approval of the FY-2014 budget. The City has not selected a consultant yet, and will negotiate the scope of work with the selected consultant. In general, Phase II will consist of a series of community meetings and landowner meetings to educate the community and landowners on the materials produced during Phase I, including presentation of the criteria maps and the process that was used to develop the maps and discussion about determining the threshold for IAL.

Tim Hata, DPP project manager, summarized the overall decision-making process to be used by DPP and the TAC's role in developing recommendations. The products resulting from Phase I - including the report, conceptual maps and TAC recommendations - provide an important foundation for Phase II. During Phase II, the work products from Phase I would be refined before the draft maps will be submitted to the City Council for review/approval, then to the LUC for final consideration.

Kathy Sokugawa clarified that the phasing will depend on how much money is given for funding. Although DPP anticipates two separate phases, additional phases may be needed to complete the work, if the necessary funding is not available. The total amount allocated in the current City budget is \$300,000, consisting of \$150,000 requested by the City Administration and an additional \$150,000 added by the City Council.

Map of Private Ownership. It was suggested that the draft report should include a map of private landownership. Scott re-emphasized that the purpose of Phase I is to establish the manner in which the criteria are operationalized and rated, and the way that the data sets are used to create the maps. Land ownership is immaterial to the recommendations of Phase I. The second phase will consider land ownership, and the size and location of the parcels. A TAC member commented that private landownership would be of interest to the general public, since the counties can only propose 50 % of a landowner's land as IAL. Due to confusion among meeting attendees about the 50% rule, the discussion was deferred for legal review.

Farms in the Urban District. A section in the report will present "lessons learned," or recommendations for minor changes to improve the existing law. This includes describing the concern that farms in the Urban District cannot qualify for incentives. Incentives that support these farms are important, if the long-term goal is to continue farming in these areas. A provision that allows farms with a dedicated AG easement to qualify for the incentives was suggested.

## TAC'S CRITERIA RECOMMENDATIONS (NON-BINDING VOTE)

Kem explained the next agenda item, which involved TAC members voting on the criteria ranking. Developing the TAC's criteria recommendations will consist of a two-step decision-making process: (1) the first decision involves determining the TAC's satisfaction with the current priority criteria (Criteria #5, #1 and #2, per the original TAC vote) and the desire for a re-vote on the criteria ranking; and (2) the second decision involves identifying how the priority criteria should be combined to define the IAL threshold.

The voting process was summarized before the ballot was passed out. Kem also noted that per the group charter, two-thirds of those attending a meeting and voting by written ballot



constitutes a super-majority. Only TAC members in attendance would vote. The vote would be anonymous, and the results would be announced after a 20-minute break. The question on the ballot read: "Given the TAC discussions and review of criteria data, do you want to re-rank the 9 criteria?" If the majority voted YES in favor of a re-vote, then the meeting would be adjourned and ballots would be emailed to TAC members for additional voting on ranking. If the majority voted NO in favor of the current criteria ranking, then the meeting would continue, and a second vote would be conducted to determine which criteria would be used (e.g., Top 3, Top 4 or Top 6 priority criteria).

There was some discussion that the entire TAC process could be compromised if the criteria were changed after the preliminary criteria maps were reviewed.

The vote was taken, followed by a 20-minute break. The meeting was reconvened, and the voting results were announced (10 NO votes, 1 YES vote). Given that the majority of TAC members present indicated satisfaction with the current criteria ranking, the meeting continued and the second ballot was passed out. The second ballot presented three choices: (1) My preference is to continue with the top 3 priority criteria (Criteria #5, #1 and #2); (2) My preference is to continue with the top 4 priority criteria (Criteria #5, #1, #2 and #3). I agree that Criterion #8 is not critical for O'ahu; and (3) My preference is to continue with the top 6 priority criteria (Criteria #5, #1, #2, #3, #7 and #4).

Prior to voting, Scott reviewed the maps/acreages associated with the Top 3 and Top 4 criteria (see PowerPoint slides #21 and #22), and then opened up the meeting for questions and comments. Discussion is summarized as follows.

- One TAC member commented that even though his personal bias supports the notion of including as much land as possible to protect AG, the TAC would lose credibility if they recommended all of the AG lands for IAL, without considering the quality of the land. In reviewing the Top 3/Top 4 Criteria Maps, it appears that the areas with only 1 or 2 criteria shown are not good farmland (i.e., high elevation, along ridges, in gulches or located too high for gravity-fed irrigation). Using either 2 of the top 3 criteria or all 3 criteria would be preferred.
- A second TAC member expressed his preference for using the top 3 criteria. A recommendation that supports designating all AG lands as IAL would defeat the intent of the law, which is to preserve and protect the best AG lands. Not all AG lands are meant to be IAL. It could set precedence for future landowner petitions, if the TAC broadened the definition to include lesser-quality lands.
- A third TAC member commented that he would have difficulty adding a fourth criteria because the top 3 criteria (water, current AG use, and soil qualities) reflect the key factors that contribute to successful AG operations. In addition, the median scores show a clear separation among the top 3 criteria.
- A fourth TAC member agreed that using the top 3 criteria would be consistent with the voting results. It is unclear how to justify adding additional criteria, when only the top 3 are grouped closely together.
- It was clarified that the data used to map Criteria #5 (sufficient quantities of water) was based on existing irrigation systems, and that the criterion did not account for sustainable yield. The operational definition was based on the current availability of

water, not the potential to irrigate in the future. It was noted that lands that do not meet this criterion at this point in time may still be designated as IAL in the future. For properties without irrigated water, landowners would have to provide their own improvements before petitioning the LUC for IAL designation.

- It has not been possible to predict the LUC's decision-making process when reviewing IAL petitions. In recent cases, it seems that each petition is being evaluated on its own merits, on a case-by-case basis, and that the LUC is not being consistent in their review of the petitions. Observers of the process sense that the decision-making process is still evolving, as individual petitions which were previously denied may now have a chance of being approved (e.g., case of reservoirs or gulch areas). The LUC has not articulated what criteria they will be using to evaluate the counties' recommendations for IAL.
- Food security and food self-sufficiency. While food self-sufficiency is recognized as an important AG consideration that is referenced in both the State Constitution and the state law, the issue is outside the scope of this project. One TAC member suggested that food self-sufficiency should be addressed in the report as background information for decision-making, and that the total acres needed to achieve island-wide self-sufficiency should be identified. The approach used in Kaua'i's IAL effort - which involved preparing food self-sufficiency scenarios that identified acreages needed to support different population projections - was cited as a possible strategy.

Discussion in response to this suggestion is summarized below.

- Food self-sufficiency requires favoring one type of AG use over another, which is counter to the law. The intent of IAL is to protect AG land, and the law is structured to recognize all different AG producers without specifically focusing on food crops. This is evidenced by the description of Criteria #2, "land with soil qualities and growing condition that support agricultural production of *food, fiber, fuel, and energy producing crops*." The IAL evaluation process is not crop-based. It is based on the characteristics of the land, as land currently used for other crops may be converted to support food crops in the future.
- Shifting the focus of IAL to food crops could increase competition among AG producers for land. Lands designated as IAL qualify for incentives which could make the land more affordable than non-IAL designated properties, which may encourage farmers to grow food crops. There are already competing interests for AG land (e.g., different types of farmers/AG producers need land priced at different points to be viable). The IAL designation is not meant to resolve differences among competing interests.
- With respect to statewide issues of food self-sufficiency/sustainability, DOA assisted the Office of Planning in their development of the "Food Security and Food Self-Sufficiency Strategy" that focuses on programs that can guide and support increasing food self-sufficiency in Hawai'i. Additionally, DOA is directing a food metrics project, funded by The Ulupono Initiative to establish food reliance metrics which is fundamental to tracking progress toward food self-sufficiency, and expanding its "Buy Local, It Matters" statewide program that encourages residents to support Hawai'i farmers by making conscious decisions to purchase locally grown produce.

- It may be more appropriate to examine food self-sufficiency as a statewide issue. Under previous administrations, the State Plan prepared by the Office of Planning identified O'ahu as the primary business-gathering place and the neighbor islands were the "bread basket." This was part of the state's economic strategy to support agricultural industries on the neighbor islands. There could be negative impacts to AG employment on the neighbor islands if O'ahu wanted to become 100% self-sufficient without imported neighbor islands produce.
- It can be argued that 100% self-sufficiency is impractical and risky. In the event of a natural disaster that wipes out the supply of local products, it would be highly unlikely that off-island suppliers would be willing to respond to the need for imports.
- Scott indicated that conducting a food self-sufficiency study was outside of the scope for this project, and that food self-sufficiency was more appropriate for discussion during Phase II. The law does not require the county to consider food self-sufficiency. Kaua'i chose to address self-sufficiency because of the local community's attitudes and opinions.
- The scenarios prepared for Kaua'i's study identified a range of about 25,000-65,000 acres of land needed to meet various levels of food self-sufficiency, based on 65,000 residents and the de facto visitor population. A TAC member who attended the final meeting of the Kaua'i County IAL advisory committee commented that individual members of Kaua'i's advisory committee were clearly biased about selecting criteria that would result in the greatest amount of IAL acreage. In contrast, landowner interests acknowledged that designating 60,000 acres for IAL was not attainable, and recommended criteria that would result in attainable IAL acreages. (Kaua'i currently has about 4,500 acres of land that have been designated IAL. This acreage reflects more than 50% of the land owned by the island's large landowners, Grove Farm and A&B.) The various interests on Kaua'i's advisory committee have been unable to agree on a recommendation.
- 50% Rule. Scott presented the language of Chapter 205-49 (3), HRS which states, "If the majority of landowners' landholdings is already designated as IAL, 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 IAL except by a petition...." This citation provides clarification that the counties are able to propose 100% of a landowner's land as IAL, if the landowner has not already voluntarily designated at least 50% of their land as IAL. The intent of the "50% Rule" was to create an incentive for voluntary designations, before the counties designated IAL.

The second vote was taken, and ballots were collected. Voting results would be announced via email. Scott thanked the TAC for attending the meeting, and expressed his appreciation for everyone's patience and willingness to consider different viewpoints.

For the record, the majority of TAC members chose to continue with the top 3 priority criteria. The record of votes is as follows:

- 10 votes in favor of continuing with the top 3 priority criteria (Criteria #5, #1 and #2)
- 0 votes for continuing with the top 4 priority criteria (Criteria #5, #1, #2 and #3)
- 1 vote for continuing with the top 6 priority criteria (Criteria #5, #1, #2, #3, #7 & #4)

## 7. WRAP-UP

TAC Meeting #6 will be the last TAC meeting, and is targeted for the first week of June. (Meeting has subsequently been scheduled for June 19, 2013). Proposed agenda items for the next meeting include the TAC's recommendation for which combination of criteria to use, and the content of the draft report.

**Meeting was adjourned at 7:01 pm.**

TAC Meeting #5 Attendance Record

TAC Members: Alan Gottlieb, Hawai'i Livestock Farmers Coalition  
Andy Hashimoto, UH-CTAHR  
Brian Nishida, Stepstone Business Development  
Charlie Reppun, Waiāhole taro farmer  
Dan Nellis, Dole Food Company Hawai'i  
David Arakawa, Land Use Research Foundation  
Dean Okimoto, Hawai'i Farm Bureau Federation / Nalo Farms  
Earl Yamamoto, State Department of Agriculture  
Leon Sollenberger,  
Mark Phillipson, Syngenta Seeds  
Stephanie Whalen, Hawai'i Agriculture Research Center

Others: Randy Hara, DPP  
Tim Hata, DPP  
Kathy Sokugawa, DPP  
Scott Ezer, HHF  
Rob James, HHF  
Corlyn Orr, HHF  
Bruce Plasch, Plasch Econ Pacific  
Kem Lowry, Accord 3.0 Consultants

1

Currently used for agricultural production

2

Soil qualities and growing conditions

3

Agricultural productivity rating systems

4

Traditional native Hawaiian uses, or unique agricultural crops and uses

5

Sufficient quantities of water

6

Consistent with county general, development, and community plans

7

Contributes to maintaining a critical land mass

8

With or near support infrastructure

9

Government programs to protect AG lands in perpetuity

4. NON-BINDING VOTE

☐ My preference is to continue with the top 3 priority criteria (Criteria #5, #1 and #2).

☐ My preference is to continue with the top 4 priority criteria (Criteria #5, #1, #2 and #3). I agree that Criterion #8 is not critical for O'ahu.

☐ My preference is to continue with the top 6 priority criteria (Criteria #5, #1, #2, #3, #7 and #4).

HA TAC #5 / May 9, 2013







7/31/13

Reviewed by DPP 7/3/13

Reviewed by TAC 7/17/13

## MEETING SUMMARY

Important Agricultural Lands Identification Project  
Technical Advisory Committee Meeting #6  
June 19, 2013, 4:30 to 7:00 pm  
Pacific Guardian Center, Makai Tower Conference Room

Recorded by: Corlyn Orr

Attendance: see attached

The sixth and final Technical Advisory Committee (TAC) meeting for the Important Agricultural Lands (IAL) Identification Project was held on Wednesday, June 19, 2013 at the Pacific Guardian Center, Makai Tower Conference Room (733 Bishop Street, Honolulu). The meeting was scheduled from 4:30 to 7:00 pm. The purpose of the meeting was to finalize the TAC recommendations for the priority criteria, discuss expectations for Phase II of the City's IAL mapping initiative, and discuss the content to be included in the draft report. Meeting handouts included the PowerPoint presentation and the draft report table of contents.

Kem Lowry (Accord 3.0 Consultants) opened the meeting at about 4:40 pm. Thirteen TAC members were in attendance.

## INTRODUCTIONS

Kem recognized and introduced the City's new AG liaison, Dr. Po-Yung Lai, and then asked TAC members to introduce themselves.

## REVIEW AND APPROVAL OF TAC MEETING #5 DRAFT SUMMARY

Earl Yamamoto requested a correction to the draft meeting summary. On page 6 of the draft, the second to the last bulleted item under "food security and food self-sufficiency" reads, "In response to a question, it was confirmed that DOA is not currently looking at statewide issues of food self-sufficiency/sustainability"). The statement is to be replaced with the following:

"With respect to statewide issues of food self-sufficiency/sustainability, DOA assisted the Office of Planning in their development of the 'Food Security and Food Self-Sufficiency Strategy' that focuses on programs that can guide and support increasing food self-sufficiency in Hawai'i. Additionally, DOA is directing a food metrics project, funded by The Ulupono Initiative to establish food reliance metrics which is fundamental to tracking progress toward food self-sufficiency, and expanding its "Buy Local, It Matters" statewide program that encourages residents to support Hawai'i farmers by making conscious decisions to purchase locally grown produce.

With no other comments, additions, or corrections, the written summary from TAC Meeting #5 was approved as drafted.

7/31/13

## REVIEW TAC CRITERIA RECOMMENDATIONS

Kem summarized the results of the vote taken during the last meeting, which indicated that the majority of TAC members present preferred to use the top 3 priority criteria. Kem also presented the map showing the top 3 priority criteria (Criteria #1: current AG production; Criteria #2: soil and growing conditions; and Criteria #5: sufficient quantities of water), and opened the floor for discussion. There were no comments or objections to the top 3 criteria being recommended to DPP.

Kem then asked for comments about the application of the criteria, and the TAC's position on the inference that lands recommended for IAL designation would need to meet all 3 of the criteria. Questions and comments are summarized as follows.

- Question was raised about the mapping of TMK parcels. How were TMK parcels with more than one type of land use mapped? This concern was raised during a previous meeting, as it is possible for a TMK parcel to have a mixture of uses (e.g., can have a working farm, gulch/stream and office complex within a single TMK parcel).

Scott Ezer responded that the TMK parcel boundaries are not reflected in this mapping effort. Scott also acknowledged that the integration of TMK parcel boundaries would be worked out during Phase II, since it will be necessary to identify which parcels are being recommended for IAL designation.

- There was confusion about what was meant by the bulleted item on Slide #5, "inference to require that all 3 criteria are present to qualify for IAL." Following discussion, the group agreed that the wording should be changed, and that that it was NOT the intent to require all 3 criteria be present to qualify for IAL designation. Lands that have all 3 criteria present should be given the highest priority for IAL. A combination of the 3 criteria was preferred, since a requirement to meet all 3 criteria would exclude some farms.

It was agreed that the report would include a statement about the criteria being specific to the City's IAL designation process, and that the City's use of the 3 criteria should not influence the LUC review of individual-landowner applications (i.e., a petition for voluntary designation should not be required to have all 3 criteria).

- A TAC member expressed concern that the criteria selected for the City's IAL designation process could set precedence for LUC decisions regarding future voluntary landowner designations on O'ahu (i.e., LUC may judge all future voluntary landowner designations against the top 3 criteria used in the City's designation process).

In response, Scott commented that none of the counties have completed/submitted their IAL packages to the LUC for review as of yet, and the LUC's decision-making process and assumptions about LUC deliberations are unknown. In light of this, it is important for the City to establish sound policies that can withstand both public and LUC scrutiny. He also stated that landowners who did not qualify for an IAL designation through the City's process could voluntarily apply for IAL designation on their own.

- Question was raised about the operational definition of Criteria #1. The current definition is limited to land currently used for agricultural production, which is of

7/31/13

concern because it automatically eliminates from consideration lands that are not currently in AG production, regardless of soil qualities or water availability.

It was noted that the current definition includes “lands in cultivation, used for grazing or temporarily fallow.” It was also noted that the map of Criteria #1 includes most of the lands that were previously used for sugar cane production, and the land that Dole currently has in fallow. A suggestion was made to change the operational definition to “land used in the last 10 years.”

Following group discussion, the TAC agreed to continue with the current definition (“currently in AG production”), since that is how the criteria is defined in the State law and veering from the language of the law could increase the risk of legal challenge from a party who objects to the City’s IAL project. In the section of the report that defines the operational definition for each criterion, a definition of “currently” should be included to minimize confusion about the timeframe being used for fallow lands.

- In response to a question about the difference in acreages reported on the maps for Criteria #1 (“currently used for agricultural production,” 49,485 acres) and Criteria #2 (“soil qualities and growing conditions,” 42,920 acres), Rob James clarified that Criteria #1 includes grazing lands, which are not by nature high quality agricultural lands. Ranching activities typically use marginal lands (i.e., poor soils, steep slopes, unirrigated), which would not be accounted for in Criteria #2.

#### DISCUSSION OF EXPECTATIONS FOR PHASE II

Kem presented a general overview of the approach used for Phase I and the approach being proposed for Phase II, which was also discussed during TAC meeting #5 (refer to Slide #5). Scott commented that the timing of Phase II is uncertain at this time, given that the City still needs to conduct the RFQ/consultant selection process and develop a scope of work. Comments and questions about Phase II are summarized as follows.

- The identification of IAL incentives is an integral part of Phase II, and needs to be included early in the process, preferably at the beginning of the public process before public hearings are scheduled and landowners are notified about potential IAL designations. According to the law, the county is required to have their incentives in place before lands can be proposed for IAL designation. The incentives are necessary to ensure compliance with the law and to minimize the risk of litigation. At its core, the law establishes an incentive-based program designed to make agriculture viable. In addition, the incentives are intended to motivate landowners to initiate voluntarily IAL designation before the county’s IAL process. Landowners are expecting that the City will proceed with the incentives before the draft IAL maps are revealed.

Kathy Sokugawa commented that DPP’s primary role in the IAL designation process is to develop a coherent set of boundaries for the State LUC, to the extent that the LUC can define important lands within the State AG District. DPP’s primary mission is to manage land use, and providing economic incentives to farmers is secondary to land use. It remains undecided how the incentives will be addressed during Phase II.

- Meeting attendees agreed to a continuing role for an advisory committee in Phase II, which could be a recommendation in the report. This TAC has had an important role in

7/31/13

the work to date. If incentives are included in Phase II, an advisory committee made up of industry professionals would be invaluable in framing and developing incentives.

- Kaua’i County has been working on their incentive package. DPP should consult with Kaua’i for information.
- The law (HRS 205) provides broad guidelines for incentives at both the State and county level, with an incentive framework for state-administered programs. While it may be possible to interpret the county’s efforts to implement the state-mandated incentives as a starting point for the county’s incentives package, the City should be introducing additional incentives. Landowners would benefit from county property tax incentives.
- Voluntary designation – where landowners petition the LUC on their own – is very costly (due to the need for consultants and attorney representation). For the most part, small landowners will not be able to afford voluntary designation. Although it would be more affordable for a landowner to designate their lands through the county’s IAL effort, a landowner gives up their ability to choose which lands will be designated and the selection becomes subject to the City Council’s political process.
- An incentives structure that ties the number of incentives to the number of criteria present (i.e., more criteria = more/better incentives) was suggested. Meeting attendees did not support this because it discriminated against farmers working with lower-quality soils or limited water availability.
- Land being used for agricultural support functions, such as processing facilities and AG worker housing, cannot be designated as IAL because the lands are not actively farmed and thus, do not fit the definition of IAL. Without an IAL designation, these landowners – whose operations provide an invaluable and fundamental function for the agricultural industry – cannot qualify for IAL incentives. Two specific examples were discussed:
  - The non-profit Hawai’i Agriculture Research Center (HARC) owns about 100 acres of AG-1 zoned land used for AG worker housing and processing infrastructure that supports small farmers (formerly Del Monte land that was auxiliary to AG). HARC has an agricultural easement that binds them to the current AG use, and the property deed restricts them to be auxiliary to AG. Despite this, HARC cannot qualify for IAL because the land is not used for active farming.
  - Castle and Cooke owns an AG processing/industrial area in Whitmore which would similarly not qualify for IAL under the current definition.

Kem commented that these particular examples suggest the difficulty of anticipating all the unique situations that can result from applying general criteria to specific land units. The report can acknowledge that there are unusual situations which need to be considered when the incentives are drafted.

- Farms in the State Urban District would not qualify for any incentives either. Many of these farmers have been farming for 30-40 years, and would benefit from the incentives. It was noted that Kahalu’u has a good number of farms in the State Urban District. Two options to the IAL incentives were discussed: (1) downzoning to the State



7/31/13

AG District followed by voluntarily applying for IAL; and (2) dedicating lands for AG use (It was noted that while an AG easement provides property tax relief, a landowner would not be able to qualify for other incentives associated with IAL).

Kem suggested that the report could include a discussion about the AG lands located in Urban District, particularly because of the significance that the Urban District has on O'ahu. Although this would be outside the scope of HRS Ch. 205, it implies that the county assumes a responsibility in recognizing that some Urban areas are intended to continue in farming. A TAC member commented that the topic was beyond the purview of this project, and suggested that the law was crafted to acknowledge areas identified for future urbanization (e.g., Central O'ahu and 'Ewa).

There was general agreement about the group's desire to add an addendum to the report – for information purposes only – that described the following:

- o number of acres within the State Urban District currently being used for agriculture (this corresponds to Criteria #1 – current AG production)
- o incentives available to farms in the State Urban District (e.g., downzoning to State AG District and AG easements)
- o suggestion to create an inventory of landowners with land in the State Urban District that would be interested in pursuing an IAL designation.

#### Discussion about Proposed Draft Report Outline

Kem asked the group to review the proposed draft report outline, and provide their observations, questions, and comments about the proposed content. Scott indicated that the draft report would be circulated via email for TAC review/comment. Comments and questions are summarized as follows.

- Suggestion was made to clarify and strengthen the discussion under Item 10.3 about the lack of information available on State-owned IAL, since this affected the TAC's understanding of contiguousness. Although the law required the DOA and DLNR to designate State-owned IAL in 2009, the State still has not completed the IAL process. The report should indicate that the TAC's ability to apply the criteria was affected by the State's lack of compliance. This could provide a safeguard against a landowner wanting to challenge the City's IAL designation (e.g., this anticipates that a dissenting landowner will challenge the process and accuse the City and TAC of flawed recommendations, on the grounds that the State has not identified their lands for IAL designation).

Meeting attendees agreed that the lack of State-generated information did not affect the outcomes of the TAC recommendations because Criteria #7 addressing contiguousness was not identified as a priority criteria. There was overall agreement that the topic is important to framing the public's perception about IAL, especially given that there are 11,000 acres of State-owned AG land under consideration. The additional acreage of State-owned AG land provides a comprehensive view of O'ahu's agricultural future, which is more accurate than considering the City's IAL process in isolation.

7/31/13

- Recommend changing the heading of Item 10 from "Recommendations to Improve the Existing Law," to "Concerns/Issues Identified through TAC Discussions." The current law took many years to pass, and involved input from many stakeholders. The heading implies that the TAC wants to amend the current law, which is not the case.
- Use correct references to HRS sections (not Act 183, SLH 2005 and Act 233, SLH 2008).
- Suggestion was made to include historical rates of urbanization of agricultural lands as part of the background. This would help describe the context for IAL, since the rate of urbanization has occurred is an important consideration that has affected land use on O'ahu. In response, Scott clarified that the content of Sections 3.1 and 3.2 would be based on information compiled from the February 2011 trend report prepared for DPP's General Plan Update Project. Some historical information about urbanization and land use on Oahu would be woven into the report, along with statistical information that describes the AG situation and a general discussion about the purpose and value of IAL. Other information that is anticipated in the report includes background/history about the law, and discussion about self-sufficiency, per the HRS language.
- Important for the report to clarify expectations about what the IAL designation provides. Assuming that the City's effort will result in about 20,000 acres of IAL-designated land, it should be pointed out that IAL will not address food self-sufficiency.
- For many small, independent farmers, their retirement income comes from selling their land. While IAL is the best method available to create a land bank of contiguous farm land and minimize the conversion of agricultural land, the IAL designation will hurt some of the independent farmers who need to sell their land upon retirement.
- Suggestion was made to add a section about diversified agriculture between Item 3.2.1: Food Self-Sufficiency and Food Security and Item 3.2.2: Urbanization of AG Lands. Diversified agriculture, like food self-sufficiency, is recognized in the State statute. Item 3.2.1 would report the percentage of food that imported, followed by the diversified agriculture section which would report the percentage of Oahu-grown products that are exported. Presented in this manner, the data would demonstrate that farmers will choose what crops to grow (and cannot be forced to grow certain crops).
- Clarification was given that the report will include the criteria maps, and that the state-owned lands in the State AG District were added to the criteria maps (shown in yellow).

#### Next Steps / Follow-on Actions

Scott presented a general overview of the next steps (see Slide #9). The next steps involved in completing Phase I consist of: (1) preparing a draft report with DPP input; (2) TAC review/comment of draft report, followed by; (3) completion of the final report anticipated by the end of the year (2013). Phase II would involve preparation of the draft IAL maps, public meetings and landowner consultations, followed by City Council review and LUC approval. Comments and questions are as follows.

- In response to a question, Kathy indicated that the timeline for Phase II is undetermined. Although the effort for Phase II will depend on funding and staffing, the

7/31/13

City Council has already appropriated \$300,000. It is DPP's responsibility to initiate the scope identification and consultant selection process.

- Concern was raised that the availability of State-owned IAL could influence the outcome of the City's IAL process and result in an IAL inventory that differs greatly from the recommendations of Phase I. Scott responded that the State-owned IAL would be added to the criteria maps, if/when the information became available. It is possible that the information could influence outcomes, although it would not be expected to have much effect since the focus of Phase I has been to establish the policy that will be used to determine IAL. Knowing that the State owns 11,000 acres in the State AG District and the State's contribution to the total acreage of IAL will be helpful for the public to understand that that the City's IAL acreage is not the only source of IAL for O'ahu.

DOA has been working on the State's IAL designation package, but lacks dedicated staff to focus on the work. DOA will complete the analysis necessary to identify potential IAL once the transfer of lands from DLNR to DOA is approved. It was noted that the process established by HRS 205 only requires LUC approval (i.e., no public review process).

Kathy asked the group for their suggestions for community input during Phase II. DPP is seeking participation techniques to engage/involve AG stakeholders. Two specific suggestions were offered: (1) hold meetings with organizations; and (2) consult with BWS for facilitation techniques and organizational strategies used in the watershed management plan meetings.

One TAC member has been involved with the other counties IAL efforts, including attending almost all of Kauai's IAL meetings and working with both Maui and Hawai'i counties. He commended DPP and the consultant team for the diligence and speed in completing Phase I, and commented that the City's effort could serve as a model for Maui and Hawaii counties (i.e., TAC formation, how to run meetings).

Meeting attendees were asked to take 5 minutes to complete a project evaluation form that was passed out. Kem thanked all attendees for their energy, commitment and expertise, and stated that the process worked well because of the way that everyone participated.

Meeting was adjourned at about 6:20 pm.

7/31/13

#### TAC Meeting #6 Attendance Record

TAC Members: Alan Gottlieb, Hawai'i Livestock Farmers Coalition  
Barry Usagawa, Board of Water Supply  
Brian Nishida, Stepstone Business Development  
Carl Evensen, UH-CTAHR  
Charlie Reppun, Wai'āhole taro farmer  
Dan Nellis, Dole Food Company Hawai'i  
David Arakawa, Land Use Research Foundation  
Dean Okimoto, Hawai'i Farm Bureau Federation / Nalo Farms  
Earl Yamamoto, State Department of Agriculture  
Larry Yamamoto, USDA-NRCS Pacific Islands Area, retired  
Leon Sollenberger, Agricultural Enterprises  
Stephanie Whalen, Hawai'i Agriculture Research Center  
Tony Rolfes, USDA-NRCS-Pacific Islands Area

Others: Dr. Po-Yung Lai, City Agricultural Liaison  
Mark Takemoto, Pioneer Hi-Bred  
Randy Hara, DPP  
Tim Hata, DPP  
Kathy Sokugawa, DPP  
Scott Ezer, HHF  
Rob James, HHF  
Corlyn Orr, HHF  
Bruce Plasch, Plasch Econ Pacific  
Kem Lowry, Accord 3.0 Consultants

# Phase II TAC Roster

14

## Farmers

- Bob Cherry, Flying R Livestock
- Alan Gottlieb, HI Livestock Farmers
- Shin Ho, Ho Farms
- Ken Kamiya, Kamiya Gold
- Dan Nellis, Dole Foods
- Dean Okimoto, Nalo Farms
- Mark Phillipson, Syngenta Seeds
- Charlie Reppun, Waianu Farm
- Alan Takemoto, Monsanto
- \*Mark Takemoto, Pioneer Hi-Bred

\* Indicates new member

## AG Agency Representatives

- Anthony Rolfes, USDA NRCS
- \*Ashley Stokes, UH-CTAHR
- Earl Yamamoto, DOA
- William Tam, CWRM
- \*Ruby Edwards, OP
- \*James Nakatani, ADC

## AG Interest Groups

- Stephanie Whalen, HARC

## "Other" AG Organizations

- Leon Sollenberger, consultant
- Larry Yamamoto, retired

## Landowners

- David Arakawa, LURF

## Ex Officio

- Barry Usugawa, BWS

Phase II  
TAC





## MEETING SUMMARY

**Date:** December 8, 2014  
**Time:** 4:30-6:15 pm  
**Location:** Pacific Guardian Center  
Makai Tower Conference Room  
**Attendees:** see attached  
**Subject:** Technical Advisory Committee Meeting #1

**HHF Project No.** 2014120  
**Project Name:** O'ahu IAL Phase 2  
**Recorded by:** Corlyn Orr  
*Reviewed by DPP:*  
*Reviewed by TAC:*

The first Technical Advisory Committee (TAC) meeting for Phase 2 of the City's Important Agricultural Lands (IAL) Mapping Project was held on Monday, December 8, 2014 at the Pacific Guardian Center, Makai Tower Conference Room (733 Bishop Street, Honolulu). The meeting was scheduled from 4:30 to 6:30 pm. The purposes of the meeting were to: (1) review the overall purpose/objective of the City's IAL project and the outcomes of Phase 1; (2) discuss the TAC's role in Phase 2; and (3) gather feedback on the public participation program proposed for Phase 2. Meeting materials were emailed to TAC members in advance of the meeting: (1) copy of the PowerPoint presentation; (2) meeting agenda; (3) Phase 1 group charter; (4) unofficial copy of HRS Chapter 205; and (5) Phase 1 Final Report.

### INTRODUCTIONS, PHASE 1 CRITERIA MAPPING SUMMARY, AND PHASE 2 OVERVIEW

Kem Lowry (Accord 3.0 Consultants) opened the meeting at roughly 4:35 pm. Thirteen TAC members were in attendance. Following introductions, Kem provided an overview of the project purpose and the City's IAL mapping process, reviewed the criteria weighting system and outcomes from Phase 1 and presented the public participation strategies planned for Phase 2 (refer to PowerPoint slides 3-18). The general intent of Phase 2 is to present the draft criteria maps to the general public, asking for input on missing/additional information that needs to be considered when putting together the draft IAL maps to be presented to the City Council.

Kem also provided an overview of the TAC's role in Phase 2, the expectations for TAC members and the operational norms governing the group. TAC members were selected because of their expertise and experience. The TAC is viewed as an advisory group to help shape and facilitate the community outreach efforts. It is hoped TAC members will help to identify individuals who should be involved in the focus groups and the larger community meetings, and use their networking capabilities to inform and engage individuals who should be involved in the designation process. The following is a summary of the group discussion.

- One TAC member asked if the map of the top 3 priority criteria includes the 5,440 acres identified in the map of Criterion #4: Traditional Native Hawaiian Uses and Unique Crops. (How much of the 5,440 acres of Criterion #4 are in the top 3 criteria?) Since Criterion #4 is the only criteria that specifies crop types, these lands should be recognized as having a special/unique value for IAL.

O'ahu IAL Phase 2  
TAC Meeting #1 | December 8, 2014  
Page 2 of 7

The question was tabled until the next TAC meeting. HHF will find out which Criterion #4 lands are mapped/omitted from the Top 3 Criteria map and bring the information to the next TAC meeting for consideration.

Other observations related to this question ensued:

- If lands are not currently in production, they would have been omitted from the map of Criterion #1: Currently Used for AG.
  - The ALISH "Unique" category was intended to capture wetland taro areas. Technically, lands used for traditional cultural agriculture would be mapped if the "Unique" category was used as a mapping dataset. However, the ALISH maps were prepared in 1977 and it is unclear what methodology was used to prepare those maps (i.e., not known if historical maps and windshield surveys were used to identify upland taro areas). Also, the ALISH "Prime" and "Unique" classifications were used to map Criterion #3: Productivity Ratings Systems (Criterion #3 was not one of the top 3 priority criteria).
  - What was recognized as "unique" by the ALISH maps in the 1970s differs from what may be considered unique today. Besides wetland taro, the ALISH "Unique" category also included coffee. When the ALISH maps were prepared in the 1970s, coffee was a unique crop specific to Kona (this was the only place in Hawai'i where coffee was being grown). The ALISH maps also identify the pineapple lands in Central Oahu as "Unique" based on growing conditions suited to a particular crop.
  - The Nature Conservancy's GIS model of pre-contact traditional agricultural areas (Ladefoged, Thegn, Kirch and Gon, 2009) was the primary dataset that HHF used to map Criterion #4: Traditional Native Hawaiian Uses and Unique Crops.
  - The TAC's recommendations for the Top 3 Criteria were the outcome of in-depth dialogue and deliberation during Phase 1. The process to prepare the criteria maps and prioritize the criteria was designed to be methodical and transparent. Private property that is not identified for IAL designation by DPP's mapping process is still eligible for IAL designation. A landowner/farmer could either (1) request that the City Council add their property to the City's Draft IAL maps being transmitted to the Land Use Commission, or (2) petition the Land Use Commission for IAL designation on their own.
- The second question sought revision to the last sentence on page 2-1 of the Final Phase 1 report, "To accommodate projected population growth and provide for future development needs..." *Accommodate* suggests that the rate of development cannot be modified or slowed, when in actuality, the State and City's policies for economic development *promote* population growth. The Final Phase 1 report should also include an expanded discussion about the differing economic development ideologies at play so people understand the underlying premise of the IAL designation. While both the State Constitution and the City's general plan call for stabilizing population growth, the State's policies promote continued growth in the construction industry. It is a fact that construction workers earn twice as much as agricultural workers.

In response, it was clarified that the Phase 1 Report has been published, and cannot be revised. If appropriate, this may be incorporated into the report to be transmitted to the City Council.

George Atta, DPP Director, and Kathy Sokugawa, DPP Planning Division Head, joined the meeting at about 5:05 pm. Following introductions by Kem, George thanked everyone for their participation and

shared his concerns that the IAL designation would compromise the long-term agricultural use of AG lands that do not qualify for the IAL designation.

TAC members asserted that IAL is not a land use regulatory (zoning) initiative. The purpose of the IAL law is to protect qualified agricultural lands by offering incentives to help farmers be successful. Twenty years after plantation agriculture, the diversified farming industry is still evolving. Independent farmers who once farmed 5-10 acres are finding it increasingly difficult to be profitable with the same size farm. New farmers will need larger farms to be profitable, and land will need to be available to accommodate them.

HRS Chapter 205 requires each county to adopt their own set of incentives to support IAL and promote agriculture. The incentives are not part of this phase, and there is no on-going or planned program to address the incentives. While the General Plan and DPs/SCPs include language to support IAL, the zoning regulations and implementing programs need to be revised accordingly. The County Council's AG Development Task Force (currently on hiatus) is an advisory group that has discussed these issues.

#### Public Participation Strategies

Corlyn reviewed the public participation strategies and the proposed meeting schedule planned for Phase 2, including the focus group meetings, community meetings and outreach methods to generate public interest and participation (refer to PowerPoint slides 20-24).

#### Focus Group Meetings

Three focus group meetings are being planned. These meetings will be helpful to prepare for the public participation process and gauge the general public's response to the Phase 1 recommendations, as well as identify issues and concerns that may arise. Focus groups will be structured to represent a cross-section of interests, with a different group of participants at each meeting. TAC members were asked to share their thoughts on possible focus group candidates. A list of individuals organized by interest (farming organizations, environmental interests, Neighborhood Boards, landowners, and others) was presented for discussion. (See Attachment 1 for the initial list and TAC comments, including suggestions for additional candidates/organizations for the focus groups.)

#### Community Meetings

Three rounds of community meetings are also planned: the first round will consist of 3 regional meetings, the second will consist of 2 regional meetings, and the third will be a single island-wide meeting. A project website will be set up to share project information and announcements, and provide a mechanism to receive public comments. Other outreach methods include e-mail communication, social media networks, press releases and media/news programming announcements. The following is a summary of the group discussion.

- One way to make people aware of the City's IAL initiative and get feedback on the work done to date is to provide copies of the Phase I report to all individuals identified as potential focus group members and ask for their comments.

- Howard Dicus is following the IAL initiative, and would be a resource for morning news programming.
- Proposed locations for the first round of community meetings are intended to target regional populations: Mililani location to serve Central Oahu, Kaena Point to Kawela Bay, Windward Community College location to serve Waimanalo to Koolau Loa, and Kapolei Hale for Ewa and West O'ahu communities. TAC members commented that the proposed locations are not close enough to the majority of farmers (i.e., make it easy for farmers to attend).
- Suggestion was made to add an additional meeting in town—perhaps at UH—to attract students and decision-makers interested in agriculture, sustainability, food security and related environmental issues. Others that might attend include chefs, developers, and anti-Kakaako interests. This could be an educational opportunity for the City to garner support for existing land use policies that promote development within the urban core to preserve AG lands. This could also be an opportunity to generate broader community support from urban Honolulu, which could be helpful when the Draft IAL maps are before the City Council. Social media may be a useful communication tool to reach this audience.
- The meeting schedule and proposed outreach strategies are a reflection of the available budget. Given the budget constraints, the first round of community meetings can only handle three community meetings. The TAC discussed their preferred meeting places: (1) Drop Kapolei Hale and replace with a Downtown meeting; or (2) Drop both Kapolei and Mililani and replace with a Waianae and Wahiawa/Haleiwa location.
- Suggestion was made to record and broadcast community meetings. OLELO TV or high school film production companies could provide services.
- The majority of people do not understand IAL. Education will be the key to mobilizing the community, as most people are not familiar with AG issues and IAL is not a popular, frequently-discussed topic. A fact sheet that provides basic information about IAL and the mapping process would be helpful to educate the public and generate interest in the project. TAC members could help to circulate the fact sheet. An informational video that explains IAL could be posted on the project website or YouTube before the community meeting. Although this is a great idea, DPP does not have the resources to produce a video.
- A short phrase that catches the public's attention and quickly explains the purpose of the project would be helpful. For example, "Farm to Table" is used in the restaurant industry. TAC members may be able to help develop such a slogan/tag line.  
*NOTE: As a follow-on to the TAC meeting, DPP and the project team is favoring Great Lands for Great Farms as a possible tag line.*

#### NEXT STEPS

HHF will be circulating the draft meeting summary for review. In addition, TAC members are asked to complete two assignments: (1) submit additional names for the focus group and contact information (email and phone numbers); and (2) submit suggestions for a project slogan/tagline.

**Meeting was adjourned at about 6:15.**

#### INITIAL LIST OF FOCUS GROUP CANDIDATES

INDIVIDUAL	AFFILIATION	TAC NOTES
<b>FARMING</b>		
1. Pam Boyer	HI Farmers Union United	
2. Jean Brokish	Oahu Resource Cons. & Dev. Council	Moved from HI; still active RC&D member
3. Mike Buck	CWRM, Waimanalo farmer	
4. Mark Fergusson	HI Organic Farming Assn.	
5. Brian Miyamoto	HI Farm Bureau Federation	
6. Wayne Ogasawara	Mililani Agricultural Park	
7. Pauline Sato	Agricultural Leadership Program	
8. Alex Sou	Aloun Farms	
9. Jari Sugano	UH-CTAHR Extension Agent	
<b>ENVIRONMENTAL INTERESTS</b>		
10. Doug Cole	North Shore Community Land Trust	
11. Kioni Dudley	Friends of Makakilo	
12. Robert Harris	Sierra Club	No longer with Sierra Club
13. Lea Hong	Trust for Public Land	TPL's GreenPrint project mapped O'ahu land resources for possible OHA/TPL acquisition
<b>NEIGHBORHOOD BOARDS</b>		
14.	Waianae Coast N.B. #24	
15.	Nanakuli-Mailii N.B. #36	
16.	Wahiawa N.B. #26	
17.	North Shore N.B. #27	
18.	Koolau Loa N.B. #28	
19.	Kahaluu N.B. #29	
20.	Waimanalo N.B. #32	
<b>LANDOWNERS</b>		
21. Neil Hannahs	Kamehameha Schools	
22. John Morgan	Koolau Ranch	
23. James Nakatani	Agribusiness Development Corp.	Good candidate, ADC is State land
24. Mark Suiso	Hawaii Tropical Fruit Growers	
<b>OTHERS</b>		
25. Murray Clay	Ulupono	
26. Kyle Datta	Ulupono	
27. Russell Hata	Y. Hata	
28. Matthew Loke	UH-CTAHR	
29. Claire Sullivan	Whole Foods	
30. Jackie Kozal Thiel	Governor's Sustainability Coordinator	
31. Tish Uyehara	Armstrong Produce	

#### TAC SUGGESTIONS FOR FOCUS GROUP CANDIDATES

INDIVIDUAL	AFFILIATION
<b>FARMERS</b>	
1. Susan Matsushima	Alluvion, North Shore Econ. Vitality Partnership Co-Chair
2. Mel Matsuda	Kahuku Farms
3. Clifford Nigita	Waimanalo Farmers Association
4. Tim and Alvin Law	Fat Law's Farm HI
5. Sharon Peterson Cheape	Petersons Upland Farm
6. Lee Bryant	May's Wonder Gardens, North Shore N.B. AG Committee
7. Ron Wiedenbach	HI Fish Co., HI Aquaponics Aquaculture Assn.

8. Gary Maunakea Forth	MAO Farms
9. Eric Enos	Kaala Farms
10. Kapua Sproat Fonoimoana	
11. Larry Jefts	Sugarland Farms, West O'ahu Soil & Water Cons. District, Chair
<b>RANCHERS</b>	
12. Bud Gibson	T&C Stables in Waimanalo
13. Greg Smith	Gunstock Ranch
<b>AG SUPPORT AND RELATED INDUSTRIES</b>	
14. Ron Kauhaahaa	Crop Protection Services (pesticides)
15. Gordon Ogi	American Machinery
16.	Farm Credit Services of HI
17. Stan Kodama	Waimanalo Feed Store
18. Jason Shitanishi	USDA Farm Service Agency, Farm Programs
19. Bernadette Luncsford	USDA NRCS Field Office, District Conservationist
20. Susan Kubo	USDA NRCS Field Office, Civil Engineer
21. Ted Radovich	UH-CTAHR Organic Farming, Waimanalo N.B.
22. Dave Ringuette	WCC Agriculture Dept, GOFarm Hawai'i Program
23. Lisa Zemen	South O'ahu Soil & Water Conservation District, Chair
<b>WHOLESALE/CONSUMERS</b>	
24. Kacey Robello	HI Farm Bureau, Farmers' Market GM
25. Kevin Vacarello	Sustain HI, Sweet Home Waimanalo Restaurant
26. Conrad Nonaka	Culinary Institute of the Pacific
27. Alan Wong	Alan Wong's Restaurants
28. Mark Noguchi	The Pili Group, Mission Restaurant
29. Ed Kenney	TOWN Restaurant
<b>LANDOWNERS</b>	
30. Carlton Ching	Castle and Cooke
31.	Hawaii Reserves Inc.
32.	US Military (Federal lands are excluded from the county mapping process, but they could participate as a landowner and consumer)
<b>ENVIRONMENTAL INTERESTS</b>	
33. Deborah Ward	Sierra Club, AG/Conservation Committee Chair
34. Sam Gon	Nature Conservancy
35. Alexandria Avery	Outdoor Circle president
36. Tim Vandever	Defend O'ahu Coalition
37. Donna Wong	Hawaii's Thousand Friends, Kailua N.B.
<b>STATE AGENCIES</b>	
38. Brian Kau	DOA AG Resource Management Division
39. Russell Tsuji	DLNR Land Division
<b>NATIVE HAWAIIAN INTERESTS (TAC felt strongly about having representation from Native Hawaiian community)</b>	
40.	UH-Hawaiian Studies
41.	Office of Hawaiian Affairs



**TAC Meeting #1 Attendance Record**

TAC Members: Ruby Edwards, State DBEDT, Office of Planning  
Alan Gottlieb, Hawai'i Livestock Farmers Coalition  
Ken Kamiya, Kamiya Gold, Inc.  
Dan Nellis, Dole Food Company Hawai'i  
Dean Okimoto, Nalo Farms  
Mark Phillipson, Syngenta Seeds  
Charlie Reppun, Wai'ahole taro farmer  
Tony Rolfes, USDA-NRCS-Pacific Islands Area  
Ashley Stokes, UH-CTAHR  
Mark Takemoto, Pioneer Hi-Bred  
Stephanie Whalen, Hawai'i Agriculture Research Center  
Earl Yamamoto, State Department of Agriculture  
Larry Yamamoto, USDA-NRCS Pacific Islands Area, retired

Others: Linda Chu-Takeyama, Mayor's Office  
George Atta, DPP Director  
Randy Hara, DPP  
Tim Hata, DPP  
Kathy Sokugawa, DPP Planning Division Head  
Scott Ezer, HHF  
Rob James, HHF  
Corlyn Orr, HHF  
Peter Adler, ACCORD3.0 Network  
Kem Lowry, ACCORD3.0 Network  
Bruce Plasch, Plasch Econ Pacific



## MEETING SUMMARY



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<b>Date:</b> December 8, 2015	<b>HHF Project No.</b> 2014120
<b>Time:</b> 4:30-6:30 pm	<b>Project Name:</b> O'ahu IAL Phase 2
<b>Location:</b> Pacific Guardian Center Makai Tower Conference Room	<b>Recorded by:</b> Corlyn Orr <i>Reviewed by DPP: January 2015</i> <i>Reviewed by TAC: January 2015</i>
<b>Attendees:</b> see attached	
<b>Subject:</b> Technical Advisory Committee Meeting #2	

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The second Technical Advisory Committee (TAC) meeting for the O'ahu Important Agricultural Lands (IAL) Mapping Project was held on Monday, December 8, 2015 at the Pacific Guardian Center, Makai Tower Conference Room (733 Bishop Street, Honolulu). The meeting was scheduled from 4:30 to 6:30 pm. The purposes of the meeting were to: (1) discuss outcomes from the community outreach phase; and (2) receive the TAC's input on the methodology that will be used to prepare the draft IAL maps. Meeting materials were emailed to TAC members in advance of the meeting: (1) written summaries from the 3 focus group meetings; (2) written summary from Community Meeting 1; (3) written comments received during the 60-day public comment period; and (4) meeting agenda.

### INTRODUCTIONS, PROJECT UPDATE, AND PHASE 2 OVERVIEW

The first 15 minutes of the meeting were set aside for meeting attendees to view the open house stations that were displayed during the community meeting. At roughly 4:45, Kem Lowry called the meeting to order and opened with introductions. Ten TAC members were in attendance, including two new TAC members (Amy Koch, USDA NRCS and Jeff Pearson, CWRM replacing Tony Rolfes and Bill Tam, respectively). Following the introductions, Kem reviewed the meeting agenda. Scott Ezer then presented an update of O'ahu's current IAL acreage, followed by a review of the comments received during the public outreach campaign, which involved a website, focus group meetings, three community meetings, and a 60-day public comment period. The remainder of the meeting was designated for group discussion to consider the suggested criteria refinements being proposed by DPP.

The following is a summary of the opinions expressed during the group discussion.

- Land Use Research Foundation (LURF), which represents large agricultural landowners, has four specific concerns about the City's designation process.
  - 1) The IAL law is about agricultural viability, not land use. This was not effectively conveyed during the community outreach process, as evidenced by the community's list of concerns. (See attached testimony from LURF and Hawai'i Farm Bureau submitted during the legislative proceedings.)
  - 2) County incentives are required, per HRS 205-46.
  - 3) County incentives are required BEFORE the county proposes to designate land for IAL. Authors of the IAL legislation—including three individuals who are present for this meeting—foresaw state and county incentives as a motivation for landowners to seek voluntary designation of IAL before the counties proceeded to identify lands for IAL. The law provides for a three-year window between the time that the counties pass their incentives and then put forth their recommendations for county-designated IAL. This

O'ahu IAL Phase 2  
TAC Meeting #2 | December 8, 2015  
Page 2 of 10

was meant to encourage voluntary designations, and also discourage takings lawsuits from landowners who did not want to be included in IAL.

- 4) The county process outlined in HRS 205-47 lists "consultation and cooperation with landowners" before "public involvement." This is interpreted that landowner consultation should come before public engagement. Consulting landowners first would result in better/fuller information for the general public. Authors of the IAL legislation can attest that working with landowners to voluntarily designate land is the most important component of the law. Following the process outlined in the law is important to prevent lawsuits from unwilling landowners. Recent cases like Superferry and TMT were based strictly on following process.
- The intent, purpose and mission of IAL prescribed in the law is important, especially since it took 20+ years for the parties to find a single concept they could agree on and pass. With so many landowners and farmers, agricultural viability (i.e., farmer success and keeping farmers on the land) was the only premise that all parties agreed upon. Initial discussions about land use and preserving land were unsuccessful. Framing the issue in terms of agricultural viability was the key to passing the law. DPP should be following the law precisely as drafted; the authors spent hours debating each section of the law. It will get contentious if landowners are not on board.
- The public does not understand IAL. The project has been presented in a way that provokes certain feedback. Terminology used to define the project purpose/need in the media and community meetings focused on land use and preventing future development, which antagonized landowners and spurred public opposition (e.g., Hoopili was an issue at the Kapolei meeting, even though the law does not allow it to be considered for IAL; Star-Advertiser article on IAL played up the Malaekahana/HRI proposal.) Public outreach efforts would gain traction if agricultural viability was the premise of IAL.

The irony is that the same parties who fought against the IAL legislation are now using IAL as a tool to oppose development.
- George Atta responded that DPP would be willing to talk to major landowners about the preliminary maps before the information is presented to the general public. Community outreach efforts to date have not generated much landowner interest.
- Scott Ezer confirmed that DPP's intention is to notify landowners before recommendations are transmitted to the City Council. The criteria maps were prepared based on physical characteristics of the land, without consideration of who owned the land; the intent has always been to engage landowners after looking at the land qualities. Scott also acknowledged budgetary constraints that make it desirable for DPP to work with LURF to convene a meeting with landowners. The budget does not allow for numerous individual meetings.
- The need for county IAL incentives was discussed at the last meeting of the City Council's AG Task Force. The City could face potential lawsuits if they proceed without an incentives package.

### DISCUSSION QUESTIONS

In addition to the group discussion, a blank questionnaire of these questions was passed out at the meeting and later emailed to meeting attendees. Attendees were encouraged to submit their individual responses to the questions in writing. Comments received during the meeting are summarized below. Written responses are recorded verbatim in Attachment 1.



**Question 1: Should the definition and datasets used to map IAL be revised to exclude steep lands? If so, what percentage slope should be used?**

This question is being raised because there were several comments that slope should have been included as a separate criterion. As a result, DPP is considering omitting lands in excess of 20% slope from the study area.

TAC members felt that the current definition and maps were satisfactory for the following reasons.

- Slope is already included in the NRCS land capability classes (LCC) which were used to map Criterion 2: Soil Qualities and Growing Conditions. The TAC has discussed this at several meetings and decided to use LCC I, II and III, which includes lands up to 15% slope. The TAC consciously chose to use LCC I, II and III as a measure of high quality farmland.
- Changing the definition at this point essentially dismisses the NRCS data. The methodology should support the NRCS and other soil classification studies.
- Ravines and gullies with steep slopes are recognized components of drainage systems within larger areas. Since the Land Use Commission assumes a contiguous approach and includes these steep areas when urbanizing lands, there should be no distinction when defining IAL.
- Criterion 1: Current AG Production includes steep slopes being used for ranching. Ranching uses provides fire control and stewardship benefits in areas too steep for crops. These areas would be omitted from Criterion 1 if slope were added as a criterion.
- Kona coffee grows on steep lands, which implies that certain crops/farmers can be productive regardless of the slope.

A suggestion was given to better label the maps so that the public can easily see that the NRCS datasets being mapped include certain slopes. If the maps are not communicating the information, then they should be tweaked accordingly. Unfortunately, nobody takes the time to read metadata.

In response to a question, the relationship between the NRCS LCC and ALISH Unique classifications was clarified. The ALISH classifications are based on the USDA's farmland inventory classification schema—that is, the soil types that USDA determines meet the federal prime classification and then locally derived soil types that meet the broad federal criteria for locally defined unique and other important agricultural classifications. The LCCs are soils classified as to categories, but the relationship of LCC to ALISH is through the soil types that meet the three broad federal criteria for agricultural lands.

**Question 2: Should additional consideration be given for high solar radiation as a separate, stand-alone criteria?**

This question is being raised in response to community concern that solar radiation is not considered in the identification process. Island wide, solar radiation values range from the highest measurement of 500 calories per square centimeter per day (cal/cm<sup>2</sup>/day) in Kapolei, Kahuku and Waianae, to 450 cal/cm<sup>2</sup>/day along the North Shore, to 350 cal/cm<sup>2</sup>/day in Kunia and Central O'ahu.

First, it was confirmed that solar radiation is not explicitly captured in the NRCS LCC or soil survey ratings.

TAC members felt that the current definition were satisfactory for the following reasons.

- Adding solar radiation as a criteria would be a limiting factor. There were concerns that different crops have different capabilities to utilize light, and productive land could be overlooked because of a lower solar radiation factor. It is true that the areas with the most

sunlight have the highest production of sugar cane because sugar cane needs strong sunlight to thrive; however, other crops do not require as much sunlight to be productive.

- Climate change is affecting weather and rainfall patterns. For example, the average rainfall in Waimanalo has dropped from 70 inches/year to 30 inches/year this past year.

**Question 3: Should the definition and datasets used to map Criterion 1: Current AG Production be revised to recognize aquaculture as a form of agriculture?**

This question is being raised because there were several comments that the definition of agriculture should be expanded to include specific production methods such as Native Hawaiian traditional growing practices and aquaculture

TAC members felt that the current definition was satisfactory for the following reasons.

- The TAC has discussed the definition of agriculture at several meetings, and each time decided against specifying certain technologies and methods as the determining factor for IAL. The methodology the City is using to qualify land for IAL is based on land characteristics. Growing practices are irrelevant, given the current methodology.
- Productive aquaculture does not require a certain soil type or soil quality. Aquaculture can be successful in areas without soil (e.g., NELHA set up tanks on lava fields in Kona).
- Aquaculture is not a distinct land use classification. It falls within the City's definition of agriculture, and is an allowable use within the City's Agricultural zoning district.
- The City's IAL designation process is not the only way for a landowner to seek IAL. A landowner omitted from DPP's proposed IAL package could ask the City Council to add their land to the City's package. Petitioning the LUC for voluntary landowner designation is another option.
- Aquaculture is already mapped as part of Criterion 4: Traditional Native Hawaiian and Unique Crops. Criterion 4 is not one of top 3 criteria, but much of the land mapped in Criteria 4 is captured by the top 3 criteria.
- The public comments reflect individuals' reactions to the maps of the priority criteria (i.e., people are responding negatively because they are concerned that the criteria that mean the most to them are being excluded). Adding a footnote to the IAL maps about the excluded criteria would help to communicate the other factors that were considered, but did not rise to the level necessary for this process.

**Question 4: Do the top 3 criteria (Criteria 1: Current AG Production, 2: Soil Qualities and Growing Conditions and 5: Sufficient Quantities of Water) represent the characteristics most important for the designation process, or is there a need to add additional criteria? (e.g., Criterion 3: AG Productivity Rating Systems)**

A TAC member noted that adding Criterion 3 would address concerns from those who want IAL to recognize traditional Hawaiian agriculture because the ALISH classifications map taro, coffee and other unique crops. It would not make much difference in terms of overall acreage, but it would allow DPP to respond to community concerns about productive wetland taro lands. Neither Criterion 1 which identifies current agricultural production or Criterion 2 which maps the NRCS LCC classifications adequately identifies areas used for wetland taro.

TAC members offered the following comments regarding the use of just the top 3 criteria or the addition of other criteria.

- The top 3 priority criteria were identified by the TAC based on a ranking system. A lot of thought went into the criteria definitions and the selection of the priority criteria.
- Requiring that multiple criteria be met could have the effect of limiting the pool of lands eligible for IAL designation, when the goal is to be inclusive as possible. The community has expressed a strong opinion that “all AG land should be IAL.” It would be contradictory for the TAC to require multiple criteria be satisfied if it limits the pool of IAL-eligible lands, given the community’s sentiment. Two of the 3 priority criteria (i.e., Criterion 3: Water and Criterion 2: Soil Qualities and Rating Systems address the factors most needed for productive farming: farmers cannot farm without water (Criterion 5) or good soils (Criterion 2). Land currently in AG production (Criterion 1) is evidence that the land can be farmed.
- The datasets used to map Criterion 3—ALISH Prime and Unique categories, and LSB A and B classifications—were clarified.
- Rob James commented that the addition of Criterion 3: AG Productivity Rating Systems would expand the inventory and add about 1,000 acres to the amount of land eligible for IAL because of the extent of overlap with the other criteria. (Much of the land in Criterion 3 is also identified in Criterion 1 and Criterion 2.)
- Bruce Plasch commented in support of using both Criterion 2 (NRCS ratings) and Criterion 3 (ALISH and LSB ratings) to include all lands having high soil ratings, regardless of the rating system. This would increase the supply of land eligible for IAL, and would avoid having to explain why some highly rated lands were omitted. In addition to including all lands that meet Criterion 1 (Current AG Production), Bruce is in support of combining Criteria 2 and 3 with Criterion 5 (water) to include only lands that are viable for agriculture (i.e., lands having both good soils and water).

**Question 5: In order to be designated IAL, should a land unit meet all 3 criteria (or all 4 criteria if we add a criteria)? Or should meeting 1 or 2 of the criteria be satisfactory for IAL designation (or 3 if we add a criteria)? Alternatively, should it meet some combination of the criteria—specifically (a) land that is currently in AG production (Criterion 1) OR (b) land having both good soils and sufficient quantities of water (Criteria 2 and 5)? [NOTE: If land has to meet only one criterion to be IAL, some recommended acreage may not be high-quality farmland. For example, land could have good soils (Criterion 2) but lack sufficient quantities of water, or land could have extremely stony soils but have sufficient water (Criterion 5).]**

The number of criteria used to identify IAL and how they are applied determines the acreage amount. If 3 criteria are used and land only has to meet 1 of the 3 criteria to be designated IAL, 56,000 acres of land would qualify for IAL. If land has to meet 2 of the 3 criteria, 32,000 acres of land would qualify for IAL. However, in both scenarios, some of the land considered eligible for IAL would not be viable for agricultural use, and could be difficult to justify for IAL. If land has to meet all 3 of the criteria to be IAL, 18,000 acres of land would qualify (but this would exclude some highly rated land having access to water which is not currently farmed). If a fourth criteria is added and land only has to meet 1 of the 4 criteria to be designated IAL, 57,000 acres of land would qualify for IAL (adding an additional 1,000 acres to the 1 of 3 scenario).

TAC members felt that meeting only 1 of the 3 priority criteria was satisfactory for the following reasons.

- 56,000 acres represents about 83% of the land area eligible for county-IAL designation. This number assumes that all of the land in the study area would be eligible for designation. It does not take into consideration the 50% rule, which restricts the county from designating land that

belongs to a landowner who has designated at least 50% of their land for IAL. Also, some of these lands would not be viable for agricultural use, which would be difficult to explain why they are being considered for IAL.

- There is a desire to be as inclusive as possible while at the same time identifying the best candidate lands. As such, landowners should be required to prove that their land cannot be farmed. This approach requires landowners to decide that they do not want to be included in IAL, and ask to be omitted. DPP needs to have a process to allow for open discussion with landowners.
- The process to voluntarily designate IAL typically involves hiring an attorney and is expensive, especially for small landowners. Therefore, the county designation process should include an option for landowners who are excluded from the top 3 criteria screen to add their lands to the City’s mapping inventory. The process should be simple to get included (or excluded, if lands are not viable for agriculture, such as not having water available). It could be a two-tier process: the first tier representing the best-candidate lands that qualify based on the top 3 criteria, and the second tier representing the remaining criteria (i.e., not the top 3 criteria). To be eligible for this second tier, a landowner would have to demonstrate that they meet one of the criteria.
- George Atta indicated that his personal preference would be to rely primarily on a set of specific technical criteria, while allowing for flexibility to use other criteria as well. DPP’s goal is to develop a baseline inventory for City Council and LUC review.

#### NEXT STEPS

- Landowner notification will be the next step in the process. The form of notification remains undetermined, pending the possibility that LURF would provide assistance to engage landowners. Following landowner notification, DPP would develop recommendations for IAL and present the recommendations at the next community meeting. There is no date set for the next community meeting. The next TAC meeting would follow Community Meeting 2.

**Meeting was adjourned at about 6:35 PM.**

#### ATTENDANCE RECORD

TAC Members: David Arakawa, Land Use Research Foundation  
Ruby Edwards, State DBEDT, Office of Planning  
Dan Nellis, Dole Food Company Hawai’i  
Dean Okimoto, Nalo Farms  
Jeff Pearson, Commission on Water Resource Management  
Amy Saunders Koch, USDA-NRCS  
Alan Takemoto, Monsanto  
Mark Takemoto, Pioneer Hi-Bred  
Earl Yamamoto, State Department of Agriculture  
Larry Yamamoto, USDA-NRCS Pacific Islands Area, retired

Others: Dr. Po-Yung Lai, Mayor’s Agricultural Liaison  
George Atta, DPP Director  
Kathy Sokugawa, DPP Planning Division Head  
Tim Hata, DPP  
Scott Ezer, HHF Planners

Erin Higa, HHF Planners  
Rob James, HHF Planners  
Corlyn Orr, HHF Planners  
Peter Adler, ACCORD3.0 Network  
Kem Lowry, ACCORD3.0 Network  
Bruce Plasch, Plasch Econ Pacific

#### ATTACHMENT 1 | QUESTIONAIRRE WRITTEN REPSONSES

A total of seven completed questionnaires were received. The questions and responses are recorded below. The responses under each question are numbered to correspond to each individual questionnaire.

##### SHOULD THE DEFINITION AND DATASETS USED TO MAP IAL BE REVISED TO EXCLUDE STEEP LANDS? IF SO, WHAT PERCENTAGE SLOPE SHOULD BE USED?

1. I support leaving the current criterion for slope unchanged.
2. No. We shouldn't revise. Gulch drainage acreage within large TMK's makes the plateau areas usable for farming. Upland steep areas are traditionally used for livestock, cattle and goats, which qualifies for "active agricultural use".
3. Yes, but may already be done sufficiently by NRCS LCC?  
At the last TAC meeting, was 15% slope the agreed-upon limit? Did we also select NRCS land capability classification III as a standard? This value incorporates slope. Do we need both?  
Got potential stumbling blocks if we use both the slope percentage and LCC – I don't know if they are important. For instance, the LCC for some soils (i.e. Lahaina silty clay 3-7%) is IVe if non-irrigated, and IIle if irrigated. In this case, while slope is OK (3-7%), the LCC of IV is not. Will this become a substantial problem (involve many acres)?
4. As discussed, since the USD LCC classes used accounts for slopes, there is no need to map separately to exclude steep slopes. However, unless captured under the other criteria used, this might exclude some coffee lands that may not be under current production. Recommend using labeling on map to communicate that classes exclude steep slopes whatever the percent is.
5. No. The LCC criteria (Criterion #2) already incorporates slope.
6. No. Already included by existing rating system NRCS.
7. No. IAL can be any lands that are productive (i.e., coffee, trees, etc.)

##### SHOULD ADDITIONAL CONSIDERATION BE GIVEN FOR HIGH SOLAR RADIATION AS A SEPARATE, STAND-ALONE CRITERION?

1. I do not support adding solar radiation as a stand-alone criterion.
2. No. Solar radiation is sufficient anywhere on this island to support agriculture, either crops or livestock.
3. No.
4. This is a more difficult question to answer. We would defer to CTAHR, DOA, or crop scientists as to appropriate cutoff or if there should even be one. AS a standalone criterion, it could produce unrealistic results by identifying land with high solar insolation, but absolutely no hope of water.
5. No. This is too variable and hard to quantify as a criterion.
6. No. You have enough criteria already.
7. No. Some of the mauka and windward lands are very productive ag land. Cloud cover varies from region to region.

##### SHOULD THE DEFINITION AND DATASETS USED TO MAP CRITERION 1: CURRENT AG PRODUCTION BE REVISED TO RECOGNIZE AQUACULTURE AS A FORM OF AGRICULTURE?

1. I believe that aquaculture is already included in the current definition of agriculture. I think it is unnecessary to recognize it separately.
2. If aquaculture is not currently recognized under the DoA as a current agricultural operation then it should be included.



3. If we do this for aquaculture, should we do the same for other Chapter 205-listed agricultural activities such as beekeeping, dairies, etc?
4. Aquaculture is defined as an ag use in Ch 205, and is certainly as form of agriculture. Depending on what datasets were used to map current ag production, factors supporting aquaculture should be mapped under the other criteria. Inclusion of aquaculture in the current ag production shouldn't result in a large increase in land mapped. If this is the case, there is no harm in including aquaculture in the mapping of this criteria.
5. No. Aquaculture is recognized in Criterion #4. This is not a practice that is tied to the land – soil, climate, etc.
6. No. Aquaculture minimal and not an issue of enough importance.
7. No. I think it already includes aquaculture as defined “ag use,” so it doesn't have to be redefined.

DO THE TOP 3 CRITERIA (CRITERIA 1: CURRENT AG PRODUCTION, 2: SOIL QUALITIES AND 5: SUFFICIENT QUANTITIES OF WATER) REPRESENT THE CHARACTERISTICS MOST IMPORTANT FOR THE DESIGNATION PROCESS, OR IS THERE A NEED TO ADD ADDITIONAL CRITERIA? (E.G., CRITERION 3: AG PRODUCTIVITY RATING SYSTEMS)

1. I support staying with the current 3 critical criteria. I do not think it is necessary to add additional criteria.
2. No need
3. As someone pointed out, adding criterion 3 (especially ALISH) may address some of the public's call for representation of culturally important crops like wetland taro without dramatically changing the mapped area. How do we address the several thousands of acres of currently “Unique” classified unirrigated pineapple to the north and south of Wahiawa that are now irrigated?
4. It would be a mistake to exclude use of the ALISH system at a minimum. ALISH accommodates taro, tree crops, watercress, ranching, unirrigated pine, etc., that might not otherwise be picked up under the other criteria. The ALUM maps might also be another source for understanding what types of crops were viable where when those maps were made. LSB is less useful for resource mapping purposes, except that it is linked to Ch 205 for permitting purposes.
5. There would not be significant additional lands added if Criterion 3 is included. However, Criterion 4 does account for some native and specialty crop areas to be accounted for that are otherwise left out of proposed IAL designation. Otherwise, the top 3 criteria capture most of the main agriculturally significant areas.
6. No need to add criteria. Current AG production likely implies good soil quality and sufficient water. Otherwise would not be “current AG production.”
7. I think we should use all of the criteria stated in the State IAL law. Selecting top 3 criteria is good or ok, but unnecessary.

IN ORDER TO BE DESIGNATED IAL, SHOULD A LAND UNIT MEET ALL 3 CRITERIA (OR ALL 4 CRITERIA IF WE ADD A CRITERIA)? OR SHOULD MEETING 1 OR 2 OF THE CRITERIA BE SATISFACTORY FOR IAL CRITERIA (OR 3 IF WE ADD A CRITERIA)? ALTERNATIVELY, SHOULD IT MEET SOME COMBINATION OF THE CRITERIA—SPECIFICALLY (A) LAND THAT IS CURRENTLY IN AG PRODUCTION (CRITERION 1) OR (B) LAND HAVING BOTH GOOD SOILS AND SUFFICIENT QUANTITIES OF WATER (CRITERIA 2 AND 5)? [NOTE: IF LAND HAS TO MEET ONLY ONE CRITERION TO BE IAL, SOME RECOMMENDED ACREAGE MAY NOT BE HIGH-QUALITY FARMLAND. FOR EXAMPLE, LAND COULD HAVE GOOD SOILS (CRITERION 2) BUT LACK SUFFICIENT QUANTITIES OF WATER, OR LAND COULD HAVE EXTREMELY STONY SOILS BUT HAVE SUFFICIENT WATER (CRITERION 5).]

1. I believe that it is in the best interest of everyone to encourage the dedication of productive farmland as IAL. As such, I support the identification of land as IAL when meeting at least one of the three critical criteria. While requiring that all three critical criteria be present for IAL designation would signify the best farmlands, other productive farmlands would be excluded if by doing so. This would limit the benefits of the program.

2. If Criterion 1, current AG production, is met then that should be enough to be included in IAL. For Criteria 2 and 5 the requirement should be that both are met. Not sufficient soil or water should exclude land from IAL. Only one of the combination is not sufficient to be IAL.
3. As someone pointed out, adding criterion 3 (especially ALISH) may address some of the public's call for representation of culturally important crops like wetland taro without dramatically changing the mapped area. How do we address the several thousands of acres of currently “Unique” classified unirrigated pineapple to the north and south of Wahiawa that are now irrigated?
4. As agriculture and the viability of ag is in large part a function of crop suitability and farmer skill and ingenuity, it's hard to exclude lands that meet any one of the key criteria. Stony soils with water would support aquaculture, hydroponics, horticulture, etc. Our preference is to retain lands that meet any one of the criteria; it's important to retain as much land base for future ag scenarios. Perhaps a second screen could be done to then determine if the lands meeting any one of the key criteria should be excluded based on an analysis of any combination of the key criteria.
5. Meeting one criteria should be sufficient for consideration. Otherwise, classification will become very complicated.
6. It should meet some level of the 3 top criteria. These are the basics. If other criteria are needed by a landowner, he can bring it up.
7. Again, we should use the existing criteria as stated in the IAL law. WE should use all of the criteria to give the best opportunity.

#### ADDITIONAL COMMENTS OR THOUGHTS?

3. IAL, once designated, offers exclusive access to incentives to those inclined to undertake agricultural production. There is no penalty for not using IAL for agricultural production. All uses permitted in Chapter 205 are possible on IAL. Reclassification of the designated IAL has to address additional considerations but is not prohibited. At this stage of the project, being constructive, seeking solutions and moving the effort forward should be the TAC's focus. How will the other counties and the Legislature view a project that stalls and/or fails at the criteria mapping stage? We owe the Agriculture Working Group participants and the State Legislature to take this effort full term.

Since the 2013 tax year, 4 of the 6 landowners (4 of which are LURF members) of agricultural land who have voluntarily identified and have received IAL designation, have taken advantage of the IAL Qualified Agricultural Cost Tax Credit (Section 235-110.93, HRS) totaling about \$1.7 million in DOA-certified tax credits. On Oahu, Castle and Cooke (679 acres, Whitmore and Mokuleia) and Kamehameha Schools (9,592 acres, Kawaiolo and Punaluu) have received IAL designation but neither has applied for the tax credits. DOA is not aware that any of the other State incentives have been sought by these landowners (farm dwellings and employee housing, loan guaranty, and priority processing of permits for agricultural processing facilities). All landowners have waived the 85%-15% simultaneous reclassification or credit. DOA has received over 30 informal inquiries from small landowners/farmers or their agents about the IAL identification and designation process, the IAL tax credit, and the farm dwellings and employee housing IAL incentives, but none have applied for IAL designation. According to the 2012 Census of Agriculture, there are 999 farms on Oahu (including the 2 with IAL status), so the “next steps” may take some time.

6. Is David Arakawa opposed to this process?
7. The County IAL process should align with the State IAL process as written. Incentives should be included as well. Need to work closely with landowners and farmers.



*"Encourage the viability of Hawaii's farmers and ranchers"*

April 15, 2008

Senate President Colleen Hanabusa  
The Honorable Clayton Hee  
The Honorable Jill N. Tokuda  
The Honorable Russell S. Kolubun  
The Honorable Carol Fukunaga  
The Honorable Rosalyn H. Baker  
The Honorable Paul Whalen  
The Honorable Sam Slom  
The State Senate  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Speaker of the House Calvin Say  
The Honorable Representative Ken Ito  
The Honorable Representative Cliff Tsuji  
The Honorable Jon Kiki Karamanui  
The Honorable Tom Booser  
The Honorable Fayre P. Hasehano  
The Honorable Colleen Rose Meyer  
The State House of Representatives  
Hawaii State Capitol  
Honolulu, Hawaii 96813

**Re: Conferences on SB 2646 HDs, relating to Important Agricultural Lands, and SB 546 SDs HDs, relating to Land Use.**

Dear Senate President Hanabusa, Speaker Say, Conference Committee Chairs and Conference Committee Members:

On behalf of the Hawaii Farm Bureau Federation (HFBBF) and the Land Use Research Foundation of Hawaii (LURF), we respectfully request your strong support for the passage of a comprehensive and meaningful **incentives package** for farmers, agribusiness operators and landowners who make a commitment—and sacrifice—to designate their agricultural lands as Important Agricultural Lands (IAL). **These bills are based on a consensus of HFBBF, LURF and other agricultural and government stakeholders, and are consistent with the goals and objectives of creating a viable agricultural industry and protecting IAL, as stated in Act 183 and the Hawaii Constitution.** Act 183 and the proposed incentive legislation are based on the following principles:

- **IAL is not an open space or land use initiative. It is an agricultural viability initiative.**
- **While land is the basic resource for agriculture, it alone will not save agriculture. The long-term viability of agriculture depends on a number of factors that affect the profitability of agriculture.**
- **The promotion of productive, viable agriculture and IAL are Constitutional and statutory mandates; keys to increasing Hawaii's food and energy self-sufficiency; and a major component in combating invasive species and thus should be of equal or a higher priority and importance to the people of Hawaii as the state tax benefits and funding support for the technology industry and funding of the preservation of open space on the North Shore and Central Oahu;**

- **State and County incentives and support are key to achieving a viable and sustainable agricultural industry in this state and thus ensuring the long-term use and protection of IAL for agricultural use;**
- **Opportunities should be made for farmers and landowners with the commitment and resources to advance and promote the long-term viability of agricultural use of lands;**
- **The more favorable the farmer incentives are, the higher the odds that there will be more farmers, and more successful farmers to maintain and grow viable agricultural operations on good agricultural lands; and**
- **The more favorable the landowner incentives are, the higher the likelihood that there will be more lands voluntarily identified by landowners—and maintained—for IAL designation.**

**Background.** The genesis for IAL was a result of the 1978 Constitutional Convention, in which voters adopted Article XI, Section 5, to the Hawaii State Constitution "to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." This Article, which was passed when sugar cane and pineapple were major industries in Hawaii, set out the framework for state policies to promote agriculture and the conservation of productive agricultural lands.

**Act 183.** In 2005, approximately 27 years later, Act 183 was passed by the Legislature—after many, many years of unsuccessful efforts—to finally implement Article XI, Section 5. Act 183 set forth the policies and procedures to identify and designate IALs. In recognition of the realities of today, **Act 183 is premised on protecting the viability of agricultural businesses rather than on protecting land uses.** Act 183 recognizes that the only real, long-term way to ensure lands remain in agricultural use is to support viable agricultural operations on these lands. Accordingly, the Act provides for the development of incentives to assist agricultural viability on good agricultural lands in Hawaii—**incentives that will help farmers farm profitably and help landowners viably make their lands available for farming activities.**

**IAL Incentives Consensus Legislation - SB 2646, HDs relating to Important Agricultural Lands, and SB 546, SDs HDs relating to Land Use.** Since the enactment of Act 183, HFBBF and LURF have been working together and with the Department of Agriculture, Office of Planning and Department of Taxation to develop consensus on a comprehensive IAL incentives package that promotes the **retention of IAL for viable agricultural use**, by offering benefits to both farmers and landowners. The elements of this comprehensive package include a wide range of incentives which address the critical areas for **long-term agricultural viability** in Hawaii and were developed over time based on many discussions among the agricultural stakeholders. These incentives include, but are not limited to, various tax credits, farm worker housing, loan guarantees, recognition of water needs, expedited processing of agriculture-related permits, and a streamlined land use approval process which is consistent with the current County land use process.

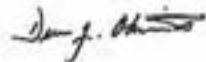
We believe that a sustainable agricultural industry needs to be nurtured and protected in our state and that the **IAL incentive package** is the perfect mechanism to both protect agriculture and agricultural lands. "A complete win-win." By passing these bills, this legislature has the opportunity to take the viable load in **promoting IAL and agricultural**

**Viability and sustainability.** As such, we urge your Conference Committee to consider retaining these bills as a basis for the comprehensive IAL incentives package you will pass this session.

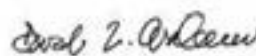
**Conclusion.** A comprehensive IAL incentive package is urgently needed, and if not passed this session, we may see a continuation of the recent closures of farms, dairies and poultry operations on a state-wide basis. The State's policy to promote and mandate diversified agriculture is a complex and challenging task in light of the ever-changing economic, environmental, and political landscape. Economic stimuli (incentives) have long been the method to promote, enhance and encourage industry to make commitments. For IAL to succeed, commitments from both agribusinesses/farmers and landowners will be key, and therefore a comprehensive incentive program is needed. Thus, we respectfully urge your strong support to include the above provisions in any final IAL package that the Legislature moves this session. In closing, we would also like to emphasize that the above-referenced bills are a result of input and consensus between the HIFBF, LURF and other agricultural stakeholders, and that the purpose of Act 183 and this IAL legislation is to perpetuate agricultural viability on a sustained basis, so as to achieve the long-term protection of important agricultural lands for agricultural use. While we all agree that open space has a place in land planning for our communities, that is not the purpose of these bills. We ask that you maintain the focus on the viability and sustained growth of agriculture as you consider the proposed incentives for both farmers and landowners.

We humbly thank you and look forward to your favorable and timely consideration.

Sincerely,



Dean Okimoto  
President  
Hawaii Farm Bureau Federation



David Z. Arakawa  
Executive Director  
Land Use Research Foundation

#### COUNTY INCENTIVES ARE REQUIRED

- HRS Sections 205-46 (a), (b) and (d) of the IAL law requires the Counties to create and implement incentives and incentive programs to enable and promote the economic sustainability of agriculture and to achieve long-term agricultural viability.
- HRS Section 205-46 (c) and (d) of the IAL law identifies numerous examples of possible county IAL incentives which could enhance agricultural viability; and encourages the counties to create additional incentives and modify current incentives.

[§205-46] Incentives for important agricultural lands. (a) To achieve the long-term agricultural viability and use of important agricultural lands, the State and each county shall ensure that their:

- (1) Agricultural development, land use, water use, regulatory, tax, and land protection policies; and
- (2) Permitting and approval procedures, enable and promote the economic sustainability of agriculture.

Agricultural operations occurring on important agricultural lands shall be eligible for incentives and protections provided by the State and counties pursuant to this section to promote the viability of agricultural enterprise on important agricultural lands and to assure the availability of important agricultural lands for long-term agricultural use.

(b) State and county incentive programs shall provide preference to important agricultural lands and agricultural businesses on important agricultural lands. The State and each county shall cooperate in program development to prevent duplication of and to streamline and consolidate access to programs and services for agricultural businesses located on important agricultural lands.

(c) 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, including but not limited to:

- (1) Grant assistance;
- (2) Real property tax systems that support the needs of agriculture, including property tax assessments based on agricultural use valuation;
- (3) Reduced infrastructure requirements and facilitated building permit processes for dedicated agricultural structures;
- (4) Tax incentives to offset operational costs, promote agricultural business viability, and promote the long-term protection of important agricultural lands;
- (5) Agricultural business planning, marketing, and implementation grants;
- (6) Tax incentives and programs for equity investments and financing for agricultural operations, including agricultural irrigation systems;
- (7) Other programs and mechanisms that promote investment in agricultural businesses or agricultural land protection, such as the purchase of development rights;
- (8) State funding mechanisms to fund business viability and land protection programs;
- (9) Water regulations and policies that provide farmers of important agricultural lands access to adequate and cost-effective sources of water;
- (10) Other measures that would ensure that state capital investments, projects, programs, and rules are consistent with this part; and
- (11) Agricultural education and training for new farmers; upgrading the skills of existing farmers and other agriculture-related employees through the use of mentoring, business incubators, and public or private scholarships; and increasing the returns of farming by adding value to food processing and other tools and methods.



(d) State and county agencies shall review the protection and incentive measures enacted for important agricultural lands and agricultural viability pursuant to this chapter at least every five years to:

(1) Determine their effectiveness in sustaining agriculture in Hawaii, assuring agricultural diversification, and increasing agricultural self-sufficiency;

(2) Determine whether the effectiveness of tax credits or incentive programs will be enhanced by creating revolving funds or increasing rates based upon the tax revenues generated by enhanced investment and agricultural activities on important agricultural lands; and

(3) Modify measures and programs as needed.

(e) This section shall apply only to those lands designated as important agricultural lands pursuant to sections 205-45 and 205-49. [L 2005, c 183, pt of §2]

**COUNTIES ARE REQUIRED TO ESTABLISH COUNTY IAL INCENTIVES FIRST.  
THE LAND USE COMMISSION MAY ONLY DESIGNATE LANDS AS IAL  
AND ADOPT THE COUNTY MAPS FOR IAL DESIGNATION  
THREE YEARS AFTER THE COUNTY INCENTIVES ARE ESTABLISHED.**

**[§205-49] Designation of important agricultural lands; adoption of important agricultural lands maps.** (a) After receipt of the maps of eligible important agricultural lands from the counties and the recommendations of the department of agriculture and the office of planning, the commission shall then proceed to identify and designate important agricultural lands, subject to section 205-45. The decision shall consider the county maps of eligible important agricultural lands; declaratory orders issued by the commission designating important agricultural lands during the three year period following the enactment of legislation establishing incentives and protections contemplated under section 205-46, as provided in section 9 of Act 183, Session Laws of Hawaii 2005; landowner position statements and representations; and any other relevant information.

In designating important agricultural lands in the State, pursuant to the recommendations of individual counties, the commission shall consider the extent to which:

(1) The proposed lands meet the standards and criteria under section 205-44;

(2) The proposed designation is necessary to meet the objectives and policies for important agricultural lands in sections 205-42 and 205-43; and

(3) The commission has designated lands as important agricultural lands, pursuant to section 205-45; provided that 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.

Any decision regarding the designation of lands as important agricultural lands and the adoption of maps of those lands pursuant to this section shall be based upon written findings of fact and conclusions of law, presented in at least one public hearing conducted in the county where the land is located in accordance with chapter 91, that the subject lands meet the standards and criteria set forth in section 205-44 and shall be approved by two-thirds of the membership to which the commission is entitled.

(b) Copies of the maps of important agricultural lands adopted under this section shall be transmitted to each county planning department and county council, the department of agriculture, the agribusiness development corporation, the office of planning, and other state agencies involved in land use matters. The maps of important agricultural lands shall guide all decision-making on the proposed reclassification or rezoning of important agricultural lands, state agricultural development programs, and other state and county land use planning and decision-making.

(c) The land use commission shall have the sole authority to interpret the adopted map boundaries delineating the important agricultural lands.

**(d) The land use commission may designate lands as important agricultural lands and adopt maps for a designation pursuant to:**

(1) A farmer or landowner petition for declaratory ruling under section 205-45 at any time; or

(2) The county process for identifying and recommending lands for important agricultural lands under section 205-47 no sooner than three years, after the enactment of legislation establishing incentives and protections contemplated under section 205-46, as provided in section 9 of Act 183, Session Laws of Hawaii 2005. [L 2005, c 183, pt of §2]

**Note**

Section 9 of Act 183, Session Laws of Hawaii 2005, is printed after section 205-41.

**COUNTY PROCESS FOR IDENTIFICATION OF IMPORTANT AGRICULTURAL LANDS  
RESPECTS THE RIGHTS OF PRIVATE PROPERTY OWNERS WHO MAY BE AFFECTED  
AND REQUIRES CONSULTATION AND COOPERATION WITH LANDOWNERS  
BEFORE PUBLIC MEETINGS  
AND COUNTY IAL DESIGNATIONS CAN ONLY TAKE EFFECT  
THREE YEARS AFTER COUNTY IAL INCENTIVES ARE ENACTED**

**[§205-47] Identification of important agricultural lands; county process.** *[See Note below.]* (a) Each county shall identify and map potential important agricultural lands within its jurisdiction based on the standards and criteria in section 205-44 and the intent of this part, except lands that have been designated, through the state land use, zoning, or county planning process, for urban use by the State or county.

(b) Each county shall develop maps of potential lands to be considered for designation as important agricultural lands in consultation and cooperation with landowners, the department of agriculture, agricultural interest groups, including representatives from the Hawaii Farm Bureau Federation and other agricultural organizations, the United States Department of Agriculture – Natural Resources Conservation Service, the office of planning, and other groups as necessary.

(c) Each county, through its planning department, shall develop an inclusive process for public involvement in the identification of potential lands and the development of maps of lands to be recommended as important agricultural lands, including a series of public meetings throughout the identification and mapping process. The planning departments may also establish one or more citizen advisory committees on important agricultural lands to provide further public input, utilize an existing process (such as general plan, development plan, community plan), or employ appropriate existing and adopted general plan, development plan, or community plan maps.

(d) The counties shall take notice of those lands that have already been designated as important agricultural lands by the commission.

Upon identification of potential lands to be recommended to the county council as potential important agricultural lands, the counties shall take reasonable action to notify each owner of those lands by mail or posted notice on the affected lands to inform them of the potential designation of their lands.

In formulating its final recommendations to the respective county councils, the planning departments shall report on the manner in which the important agricultural lands mapping relates to, supports, and is consistent with the:

- (1) Standards and criteria set forth in section 205-44;
- (2) County's adopted land use plans, as applied to both the identification and exclusion of important agricultural lands from such designation;
- (3) Comments received from government agencies and others identified in subsection (b);
- (4) Viability of existing agribusinesses; and
- (5) Representations or position statements of the owners whose lands are subject to the potential designation.

(e) The important agricultural lands maps shall be submitted to the county council for decision-making. The county council shall adopt the maps, with or without changes, by resolution. The adopted maps shall be transmitted to the land use commission for further action pursuant to section 205-48. [L 2005, c 183, pt of §2]

**Note**

L 2005, c 183, §7 provides:

"SECTION 7. Each county shall submit its report and maps with recommendations for lands eligible for designation as important agricultural lands to the land use commission no later than sixty months from the date of county receipt of state funds appropriated for the identification process. Upon receipt of the county maps, the land use commission shall review and adopt maps designating important agricultural lands to the State in accordance with section [205-49]."

Designations made pursuant to this section take effect three years after incentives and protections for important agricultural lands and agricultural viability are enacted. L 2005, c 183, §14(2).







## MEETING SUMMARY

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**Date:** November 14, 2017      **HHF Project No.** 2014120

**Time:** 4:30-6:00 pm      **Project Name:** O'ahu IAL Phase 2

**Location:** Pacific Guardian Center      **Recorded by:** Corlyn Orr  
Makai Tower Conference Room      *Reviewed by DPP: February 23, 2018*

**Attendees:** see attached

**Subject:** Technical Advisory Committee Meeting #3

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The third and final Technical Advisory Committee (TAC) meeting for the O'ahu Important Agricultural Lands (IAL) Mapping Project was held on Tuesday, November 14, 2017 at the Pacific Guardian Center, Makai Tower Conference Room (733 Bishop Street, Honolulu). The meeting was scheduled from 4:30pm to 6:00pm. Meeting objectives were to review the work done in the past two years, present DPP's map of recommendations for IAL designation, and discuss the next steps to share the map with the general public before transmittal to the City Council.

### INTRODUCTIONS AND PROJECT UPDATE

At roughly 4:40pm, Scott Ezer called the meeting to order and introduced Kathy Sokugawa, DPP's Acting Director. Following Kathy's opening remarks, Scott introduced the planning team and DPP staff, including Raymond Young, DPP's new project manager, and the 10 TAC members in attendance introduced themselves. Scott then presented an update on the input received during the latest round of community meetings and public comment phase, and provided an overview of the proposed IAL map that will be transmitted to the City Council. DPP's current recommendation includes about 50,000 acres for IAL designation. (Several landowners have voluntarily designated roughly 11,000 acres as IAL.)

### GROUP DISCUSSION

The remainder of the meeting was designated for questions and discussion. Key points from the group discussion are summarized below.

#### STATUS OF IAL MAPPING EFFORTS BY OTHER COUNTIES

Maui and Hawai'i County have not started mapping yet. Kaua'i completed their mapping, but has not transmitted the information for County Council review. Individuals have heard that the County does not intend to pursue LUC approval for county-designated IAL because the acreage of voluntary designations approved by the LUC (is close to the County's quota of 40,000+ acres that were initially specified). Major landowners with IAL landholdings include Gay & Robinson, Alexander & Baldwin, and Grove Farm.

#### STATE QUALIFIED AG COST TAX CREDIT

The State Qualified AG Cost Tax Credit provides a tax credit of up to \$1 million per taxpayer for investments in AG infrastructure, facilities, etc. The credit is refundable which means a taxpayer could receive a tax refund if the credit is larger than the tax owed, unlike a non-refundable tax credit which can only reduce a taxpayer's liability up to the amount of tax owed. Specific questions about the tax credit—such as the credit's applicability to non-profits—should be directed to the Tax Department.

The credit expires at the end of 2017 because last year's legislature did not pass the measure re-authorizing the credit. Department of Agriculture (DOA) is working on a new bill for next legislative

*O'ahu IAL Phase 2  
TAC Meeting #3 | November 14, 2017  
Page 2 of 3*

session. DOA is proposing that the credit be retroactive to cover this year. Testimony in support of the bill is needed to ensure that the measure passes.

#### COUNTY INCENTIVES

The project purpose has been to address the criteria and mapping, not develop incentives. DPP has an internal working list of incentives currently offered by the county to AG properties. There are a fair number of county incentives currently available (e.g., property tax exemptions, special water rate for AG properties, certain farm structures qualify for a State exemption from building codes and permitting). DPP welcomes suggestions for additional incentives. DPP intends to complete the mapping, and continue the conversation about the incentives during the interim before the maps are sent to Council. Suggestions that were brought up include:

- The BWS Stakeholder Advisory Group has discussed and will be recommending a reduced rate for water meter installation. A ¾-inch meter currently costs \$10,000 to install; \$40,000 for a 1.5-inch meter.
- Applying for a 10-year AG dedication is an arduous process. Giving a permanent exclusion from re-dedicating land every 10 years, or allowing for an automatic rollover, would be helpful.
- The Mayor's AG Liaison is currently funded as a half-time position. It could be funded full-time, with additional responsibilities to work directly with farmers.
- Allow farm vehicles to be exempt from paying the gasoline tax.
- Create a special AG tax rate for IAL. (Real property tax revenues generated by AG parcels on O'ahu is minimal, accounting for only 0.5% of the total tax generated for the entire island. People need to be reminded about this.)
- Community service grants for skills training or marketing assistance directed towards IAL farmers are part of the incentives listed in HRS, Chapter 205-46.
- Bill 79 currently under review by the City Council provides a property tax exemption for USDA-certified organic farms. Only a handful of farms would benefit from this measure (less than 10 certified USDA-organic farmers). The proposal could be expanded and made available to farms on IAL-designated land, and then be presented as a county incentive.

TAC members agree that the County is supportive of AG. Concern that the County identify incentives before the maps are presented to the City Council stems from the need to be in compliance with the law. If the County does not identify incentives specific to IAL, a legal challenge is possible when the maps are transmitted to the City Council because the law specifically calls for the counties to designate IAL-related incentives.

The authors of the IAL legislation crafted the incentives to give landowners who may oppose designation under the county process a reason to agree to the designation. The incentives are the cornerstone of the legislation. The incentives make IAL fair for both landowners and farmers. Land is the only asset that a farmer has, and becomes a commodity once a farmer retires. If landowners put farmers on the land to farm, they wanted a mechanism to help farmers be successful.

#### PUBLIC REACTION TO IAL

LURF commends the City and County process. Kaua'i had a different process where they had equal representation among different interests, including farmers, ag owners, business, hotels. They also used clickers, results were questionable because of clickers. Honolulu was more focused on farmer representation.

TAC members appreciate the rigor of DPP's process and commend DPP for a good process that invited a fair amount of representation from AG interests.

The general public does not understand the legislation and its benefits for the future of the AG industry. More effort is needed to educate the public about what IAL is really about, and motivate landowners to come forward and designate their land.

Some of the resistance to IAL comes from landowners who bought AG land as an investment for non-AG purposes, and have no intention to use the land to farm.

The lack of funding from the State has been a major downfall in the process. When the legislation was written, it was assumed that the State would fund the county-level and state-level mapping efforts.

#### POTENTIAL LITIGATION

The County is risking litigation by not following the process as outlined in the law. Land Use Research Foundation (LURF) distributed a handout that listed 10 specific concerns about the City's designation process (see Attachment I for handout).

**Meeting was adjourned at about 6:35 PM.**

#### **ATTENDANCE RECORD**

TAC Members: David Arakawa, Land Use Research Foundation  
Alan Gottlieb, Hawai'i Livestock Farmers Coalition  
Ken Kamiya, Kamiya Gold, Inc.  
Dan Nellis, Dole Food Company Hawai'i  
Dean Okimoto, Nalo Farms  
Jeff Pearson, Commission on Water Resource Management  
Amy Saunders Koch, USDA-NRCS  
Alan Takemoto, Monsanto  
Stephanie Whalen, Hawai'i Agriculture Research Center  
Earl Yamamoto, State Department of Agriculture

Others: Dr. Po-Yung Lai, Mayor's Agricultural Liaison  
Kathy Sokugawa, DPP Acting Director  
Eugene Takahashi, DPP  
Raymond Young, DPP  
Scott Ezer, HHF Planners  
Erin Higa, HHF Planners  
Corlyn Orr, HHF Planners  
Kem Lowry, ACCORD3.0 Network  
Bruce Plasch, Plasch Econ Pacific

#### **OBJECTIONS TO CITY'S IAL PROCESS AND PROPOSED DESIGNATIONS**

- 1. NEW PARADIGM - IAL IS AN AGRICULTURAL VIABILITY INITIATIVE – IAL IS NOT A LAND USE INITIATIVE.** IAL does not change the LUC classification and county zoning ("not land use change"), but requires the state and counties to implement IAL incentives to make IAL viable, productive and profitable, thereby encouraging landowners to designate IAL for a long term.
- 2. PUBLIC PRESENTATIONS BY CITY AND ITS CONSULTANTS MISREPRESENTED IAL AS "A WAY TO STOP DEVELOPMENT"**
- 3. COUNTY INCENTIVES REQUIRED - NO CITY INCENTIVES YET –** Counties are required to implement IAL Incentives first; then allow a 3-year window for voluntary IAL designations. **AFTER** implementing county incentives and the 3-year window - - then the county planning departments can propose IAL designations and maps to the county Council (**HRS §205-46**)
- 4. CITY HASN'T EVEN STARTED ON INCENTIVES?** No excuse, examples of IAL incentives are provided (**Act 183 (2005)** and **HRS §205-46**)
- 5. NO 3-YEAR VOLUNTARY DESIGNATION WINDOW YET (**HRS §205-49**)**
- 6. CITY'S "ONE CRITERIA" AS BASIS FOR IAL DESIGNATION IS UNREASONABLE**
- 7. IAL LAW REQUIRES COUNTY CONSULTATION AND COOPERATION WITH LANDOWNERS BEFORE PUBLIC MEETINGS (**HRS §205-47**)** City violated the law, by starting public meetings before consultation and cooperation with landowners.
- 8. CITY HAS NOT RESPONDED TO 10-PAGE AND 20-PAGE LETTERS FROM PVT LAND COMPANY AND GRACE PACIFIC AND HAS NOT RESPONDED TO REQUESTS FOR MEETINGS**
- 9. CITY POSITION ON RECENT IAL PETITION TO LUC: "ALL PETITIONER'S LANDS SHOULD BE IAL"**
- 10. DPP SHOULD POSTPONE ITS PROPOSED IAL DESIGNATIONS AND MAPS ON NOVEMBER 20, 2017**



**"Encourage the viability of Hawaii's farmers and ranchers"**

April 15, 2008

Senate President Colleen Hanabusa  
The Honorable Clayton Hee  
The Honorable Jill N. Tokuda  
The Honorable Russell S. Kokubun  
The Honorable Carol Fukunaga  
The Honorable Rosalyn H. Baker  
The Honorable Paul Whalen  
The Honorable Sam Slom  
The State Senate  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Speaker of the House Calvin Say  
The Honorable Representative Ken Ito  
The Honorable Representative Clift Tsuji  
The Honorable Jon Riki Karamatsu  
The Honorable Tom Brower  
The Honorable Paye P. Hanohano  
The Honorable Colleen Rose Meyer  
The State House of Representatives  
Hawaii State Capitol  
Honolulu, Hawaii 96813

**Re: Conferences on SB 2646 HD2, relating to Important Agricultural Lands, and SB 546 SD2 HD1, relating to Land Use.**

Dear Senate President Hanabusa, Speaker Say, Conference Committee Chairs and Conference Committee Members:

On behalf of the Hawaii Farm Bureau Federation (HFBF) and the Land Use Research Foundation of Hawaii (LURF), we respectfully request your strong support for the passage of a comprehensive and meaningful incentives package for farmers, agribusiness operators and landowners who make a commitment—and sacrifice—to designate their agricultural lands as Important Agricultural Lands (IAL). These bills are based on a consensus of HFBF, LURF and other agricultural and government stakeholders, and are consistent with the goals and objectives of creating a viable agricultural industry and protecting IAL, as stated in Act 183 and the Hawaii Constitution. Act 183 and the proposed incentive legislation are based on the following principles:

- IAL is not an open space or land use initiative. It is an agricultural viability initiative.
- While land is the basic resource for agriculture, it alone will not save agriculture. The long-term viability of agriculture depends on a number of factors that affect the profitability of agriculture;
- The promotion of productive, viable agriculture and IAL are Constitutional and statutory mandates; keys to increasing Hawaii's food and energy self-sufficiency; and a major component in combating invasive species and thus should be of equal or a higher priority and importance to the people of Hawaii as the state tax benefits and funding support for the technology industry and funding of the preservation of open space on the North Shore and Central Oahu;

- State and County incentives and support are key to achieving a viable and sustainable agricultural industry in this state and thus ensuring the long-term use and protection of IAL for agricultural use;
- Opportunities should be made for farmers and landowners with the commitment and resources to advance and promote the long-term viability of agricultural use of lands;
- The more favorable the farmer incentives are, the higher the odds that there will be more farmers, and more successful farmers to maintain and grow viable agricultural operations on good agricultural lands; and
- The more favorable the landowner incentives are, the higher the likelihood that there will be more lands voluntarily identified by landowners and maintained—for IAL designation.

**Background.** The genesis for IAL was a result of the 1978 Constitutional Convention, in which voters adopted Article XI, Section 3, to the Hawaii State Constitution "to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." This Article, which was passed when sugar cane and pineapple were major industries in Hawaii, set out the framework for state policies to promote agriculture and the conservation of productive agricultural lands.

**Act 183.** In 2005, approximately 27 years later, Act 183 was passed by the Legislature—after many, many years of unsuccessful efforts—to finally implement Article XI, Section 3. Act 183 set forth the policies and procedures to identify and designate IALs. In recognition of the realities of today, Act 183 is premised on protecting the viability of agricultural businesses rather than on protecting land uses. Act 183 recognizes that the only real, long-term way to ensure lands remain in agricultural use is to support viable agricultural operations on these lands. Accordingly, the Act provides for the development of incentives to assist agricultural viability on good agricultural lands in Hawaii incentives that will help farmers farm profitably and help landowners maintain their lands available for farming activities.

**IAL Incentives Consensus Legislation - SB 2646, HD2 relating to Important Agricultural Lands, and SB 546, SD2 HD1 relating to Land Use.** Since the enactment of Act 183, HFBF and LURF have been working together and with the Department of Agriculture, Office of Planning and Department of Taxation to develop consensus on a comprehensive IAL incentives package that promotes the retention of IAL for viable agricultural use, by offering benefits to both farmers and landowners. The elements of this comprehensive package include a wide range of incentives which address the critical areas for long-term agricultural viability in Hawaii and were developed over time based on many discussions among the agricultural stakeholders. These incentives include, but are not limited to, various tax credits, farm worker housing, loan guarantees, recognition of water needs, expedited processing of agriculture-related permits, and a streamlined land use approval process which is consistent with the current County land use process.

We believe that a sustainable agricultural industry needs to be nurtured and protected in our state and that the IAL incentive package is the perfect mechanism to both protect agriculture and agricultural lands. "A complete win-win." By passing these bills, this legislature has the opportunity to take the visible lead in promoting IAL and agricultural

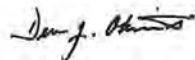


viability and sustainability. As such, we urge your Conference Committee to consider retaining these bills as a basis for the comprehensive IAL incentives package you will pass this session.

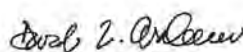
**Conclusion.** A comprehensive IAL incentive package is urgently needed, and if not passed this session, we may see a continuation of the recent closures of farms, dairies and poultry operations on a state-wide basis. The State's policy to promote and mandate diversified agriculture is a complex and challenging task in light of the ever-changing economic, environmental, and political landscape. Economic stimuli (incentives) have long been the method to promote, enhance and encourage industry to make commitments. For IAL to succeed, commitments from both agribusinesses/farmers and landowners will be key, and therefore a comprehensive incentive program is needed. Thus, we respectfully urge your strong support to include the above provisions in any final IAL package that the Legislature moves this session. In closing, we would also like to emphasize that the above-referenced bills are a result of input and consensus between the HFBF, LURF and other agricultural stakeholders, and that the purpose of Act 183 and this IAL legislation is to promote agricultural viability on a sustained basis, so as to achieve the long-term protection of important agricultural lands for agricultural use. While we all agree that open space has a place in land planning for our communities, that is not the purpose of these bills. We ask that you maintain the focus on the viability and sustained growth of agriculture as you consider the proposed incentives for both farmers and landowners.

We humbly thank you and look forward to your favorable and timely consideration.

Sincerely,



Dean Okimoto  
President  
Hawaii Farm Bureau Federation



David Z. Arakawa  
Executive Director  
Land Use Research Foundation

**[§205-46] Incentives for important agricultural lands.** (a) To achieve the long-term agricultural viability and use of important agricultural lands, the State and **each county** shall ensure that their:

- (1) Agricultural development, land use, water use, regulatory, tax, and land protection policies; and
  - (2) Permitting and approval procedures, enable and promote the economic sustainability of agriculture.
- Agricultural operations occurring on important agricultural lands shall be eligible for incentives and protections provided by the State and counties pursuant to this section to promote the viability of agricultural enterprise on important agricultural lands and to assure the availability of important agricultural lands for long-term agricultural use.
- (b) State and **county incentive programs** shall provide preference to important agricultural lands and agricultural businesses on important agricultural lands. The State and **each county** shall cooperate in program development to prevent duplication of and to streamline and consolidate access to programs and services for agricultural businesses located on important agricultural lands.
  - (c) **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, including but not limited to:
    - (1) Grant assistance;
    - (2) Real property tax systems that support the needs of agriculture, including property tax assessments based on agricultural use valuation;
    - (3) Reduced infrastructure requirements and facilitated building permit processes for dedicated agricultural structures;
    - (4) Tax incentives to offset operational costs, promote agricultural business viability, and promote the long-term protection of important agricultural lands;
    - (5) Agricultural business planning, marketing, and implementation grants;
    - (6) Tax incentives and programs for equity investments and financing for agricultural operations, including agricultural irrigation systems;
    - (7) Other programs and mechanisms that promote investment in agricultural businesses or agricultural land protection, such as the purchase of development rights;
    - (8) State funding mechanisms to fund business viability and land protection programs;
    - (9) **Water regulations and policies** that provide farmers of important agricultural lands access to adequate and cost-effective sources of water;
    - (10) Other measures that would ensure that state capital investments, projects, programs, and rules are consistent with this part; and
    - (11) Agricultural education and training for new farmers; upgrading the skills of existing farmers and other agriculture-related employees through the use of mentoring, business incubators, and public or private scholarships; and increasing the returns of farming by adding value to food processing and other tools and methods.
  - (d) State and **county agencies** shall review the protection and incentive measures enacted for important agricultural lands and agricultural viability pursuant to this chapter at least every five years to:
    - (1) Determine their effectiveness in sustaining agriculture in Hawaii, assuring agricultural diversification, and increasing agricultural self-sufficiency;
    - (2) Determine whether the effectiveness of tax credits or incentive programs will be enhanced by creating revolving funds or increasing rates based upon the tax revenues generated by enhanced investment and agricultural activities on important agricultural lands; and
    - (3) Modify measures and programs as needed.
  - (e) This section shall apply only to those lands designated as important agricultural lands pursuant to sections 205-45 and 205-49. [L 2005, c. 183, pt of §2]

L 2005, c 183, §§9 and 10 provide:

**"SECTION 9. (c)** Incentives and other programs to promote agricultural viability, sustained growth of the agricultural industry, and the long-term use and protection of important agricultural lands for agricultural use in Hawaii by farmers and landowners to be considered by the department of agriculture shall include but not be limited to the following:

- (1) Assistance in identifying federal, state, and private grant and loan resources for agricultural business planning and operations, assistance with grant and loan application processes, and the processing of grants and loans;
- (2) Real property tax systems that support the needs of agriculture, including property tax assessment of land and improvements used or held only for use in agriculture based on agricultural use value rather than fair market value;
- (3) Reduced infrastructure requirements and facilitated building permit processes for the construction of dedicated agricultural structures;
- (4) Tax incentives that include but are not limited to:
  - (A) Tax credits for the sale or donation of agricultural easements on important agricultural lands; and
  - (B) General excise tax exemption for retail sales of farm produce;
- (5) Incentives that promote investment in agricultural businesses or value-added agricultural development, and other agricultural financing mechanisms;
- (6) Incentives and programs that promote long-term or permanent agricultural land protection, and the establishment of a dedicated funding source for these programs;
- (7) Establishment of a permanent state revolving fund, escalating tax credits based on the tax revenues generated by increased investment or agricultural activities conducted on important agricultural lands, and dedicated funding sources to provide moneys for incentives and other programs;
- (8) Establishment of a means to analyze the conformity of state-funded projects with the intent and purposes of part I of this Act [sections 205-41 to 205-52], and a mechanism for mitigation measures when projects are not in conformance;
- (9) Institution of a requirement for the preparation of an agricultural impact statement that would include mitigation measures for adverse impacts for proposed state or county rulemaking that may affect agricultural activities, operations, and agricultural businesses on important agricultural lands; and
- (10) Other programs to carry out the intent of part I of this Act [sections 205-41 to 205-52].

**[§205-49] Designation of important agricultural lands; adoption of important agricultural lands maps.** (a) After receipt of the maps of eligible important agricultural lands from the counties and the recommendations of the department of agriculture and the office of planning, the commission shall then proceed to identify and designate important agricultural lands, subject to section 205-45. The decision shall consider the county maps of eligible important agricultural lands; declaratory orders issued by the commission designating important agricultural lands during the three year period following the enactment of legislation establishing incentives and protections contemplated under section 205-46, as provided in section 9 of Act 183, Session Laws of Hawaii 2005; landowner position statements and representations; and any other relevant information.

In designating important agricultural lands in the State, pursuant to the recommendations of individual counties, the commission shall consider the extent to which:

- (1) The proposed lands meet the standards and criteria under section 205-44;
- (2) The proposed designation is necessary to meet the objectives and policies for important agricultural lands in sections 205-42 and 205-43; and
- (3) The commission has designated lands as important agricultural lands, pursuant to section 205-45; provided that 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.

Any decision regarding the designation of lands as important agricultural lands and the adoption of maps of those lands pursuant to this section shall be based upon written findings of fact and conclusions of law, presented in at least one public hearing conducted in the county where the land is located in accordance with chapter 91, that the subject lands meet the standards and criteria set forth in section 205-44 and shall be approved by two-thirds of the membership to which the commission is entitled.

(b) Copies of the maps of important agricultural lands adopted under this section shall be transmitted to each county planning department and county council, the department of agriculture, the agribusiness development corporation, the office of planning, and other state agencies involved in land use matters. The maps of important agricultural lands shall guide all decision-making on the proposed reclassification or rezoning of important agricultural lands, state agricultural development programs, and other state and county land use planning and decision-making.

(c) The land use commission shall have the sole authority to interpret the adopted map boundaries delineating the important agricultural lands.

(d) The land use commission may designate lands as important agricultural lands and adopt maps for a designation pursuant to:

- (1) A farmer or landowner petition for declaratory ruling under section 205-45 at any time; or
- (2) The county process for identifying and recommending lands for important agricultural lands under section 205-47 no sooner than three years after the enactment of legislation establishing incentives and protections contemplated under section 205-46, as provided in section 9 of Act 183, Session Laws of Hawaii 2005. [L 2005, c 183, pt of §2]

#### Note

Section 9 of Act 183, Session Laws of Hawaii 2005, is printed after section 205-41.

**COUNTY PROCESS FOR IDENTIFICATION OF IMPORTANT AGRICULTURAL LANDS  
RESPECTS THE RIGHTS OF PRIVATE PROPERTY OWNERS WHO MAY BE AFFECTED  
AND REQUIRES CONSULTATION AND COOPERATION WITH LANDOWNERS  
BEFORE PUBLIC MEETINGS  
AND COUNTY IAL DESIGNATIONS CAN ONLY TAKE EFFECT  
THREE YEARS AFTER COUNTY IAL INCENTIVES ARE ENACTED**

- It took over 25 years for the final IAL law to be passed, and the HFBF and landowners worked very hard on this legislation, to make sure that it was as fair as it could be – consult landowners BEFORE public meetings.
- *Involuntary* county designation (over landowner's objection) and SLUC approval of IAL, places restrictions on the use of private property and severely restricts the ability of a landowner to amend the State land use boundary designation. It is very difficult for a land owner to remove an IAL designation and change the state land use designation to a non-agricultural use. A major concern of HFB and landowners were "takings" claims from landowners whose lands were *involuntarily* designated as IAL by county and LUC action.
- To avoid "takings" claims, HFBF and the landowners loaded the IAL law with requirements for State and county incentives to support agricultural viability, so that there could be "added value" in IAL; specifically provided for county consultation with landowners relating to the establishment of incentives, and the preparations of maps, BEFORE publicizing the proposed IAL maps to the public.
- Public input is required, AFTER county consultation with landowners
- The "order" of the paragraphs are very important, it confirms that consultation and cooperation with landowners comes FIRST (not after public meetings).
- The language of the IAL law is also important, and requires the consultation and cooperation with the landowners, BEFORE publicizing the maps at public meetings:
  - Consultation and cooperation with landowners is required as each county develops maps of potential lands to be considered for designation.
  - The IAL law also requires the planning department to develop an inclusive process for public involvement in the identification of potential lands and the development of maps of lands to be recommended as important agricultural lands, including a series of public meetings throughout the identification and mapping process. planning department, shall develop an inclusive process for public involvement in the identification of potential lands and the development of maps of lands to be recommended as important agricultural lands, including a series of public meetings throughout the identification and mapping process.
- As of the date of the last City Technical Advisory Committee meeting, the City has not done the consultation and cooperation with all affected landowners, as required by the IAL law.
- The "3-year Window" allows landowners and their financial consultants to determine whether the State and county incentives are favorable enough to voluntarily designate IAL.
- In its presentations to the public, the City has already misrepresented IAL as a land use tool to stop development. The City never explained that IAL was based on agricultural viability (providing incentives for lands that have the greatest likelihood of producing viable and sustainable agricultural operations – and convincing landowners to voluntarily designate their lands as IAL).
- The City has already made presentations that have resulted in public misunderstanding of the IAL law, and its purpose and intent. If the City attempts to designate IAL without consultation with landowners, without county incentives and without allowing landowners a "3-year window" to consider voluntary designations – we believe that landowners subject to *involuntary* designations will detail the violations of the IAL law; and if the Council approves the map designations, those designations will could be successfully challenged in court.
- One good note: DPP was working on county incentives (Tim HATA) -- if those could be discussed with, and supported by AG stakeholders and passed by the council, it would be a "big Win" for the City and start the 3-year clock ticking!

**[§205-47] Identification of important agricultural lands; county process. [See Note below.]** (a) Each county shall identify and map potential important agricultural lands within its jurisdiction based on the standards and criteria in section 205-44 **and the intent of this part**, except lands that have been designated, through the state land use, zoning, or county planning process, for urban use by the State or county.

(b) Each county shall develop maps of potential lands to be considered for designation as important agricultural lands in consultation and cooperation with landowners, the department of agriculture, agricultural interest groups, including representatives from the Hawaii Farm Bureau Federation and other agricultural organizations, the United States Department of Agriculture – Natural Resources Conservation Service, the office of planning, and other groups as necessary.

(c) Each county, through its planning department, shall develop an inclusive process for public involvement in the identification of potential lands and the development of maps of lands to be recommended as important agricultural lands, including a series of public meetings throughout the identification and mapping process. The planning departments may also establish one or more citizen advisory committees on important agricultural lands to provide further public input, utilize an existing process (such as general plan, development plan, community plan), or employ appropriate existing and adopted general plan, development plan, or community plan maps.

(d) The counties shall take notice of those lands that have already been designated as important agricultural lands by the commission.

Upon identification of potential lands to be recommended to the county council as potential important agricultural lands, the counties shall take reasonable action to notify each owner of those lands by mail or posted notice on the affected lands to inform them of the potential designation of their lands.

In formulating its final recommendations to the respective county councils, the planning departments shall report on the manner in which the important agricultural lands mapping relates to, supports, and is consistent with the:

- (1) Standards and criteria set forth in section 205-44;
- (2) County's adopted land use plans, as applied to both the identification and exclusion of important agricultural lands from such designation;
- (3) Comments received from government agencies **and others identified in subsection (b);**
- (4) Viability of existing agribusinesses; and
- (5) **Representations or position statements of the owners whose lands are subject to the potential designation.**

(e) The important agricultural lands maps shall be submitted to the county council for decision-making. The county council shall adopt the maps, with or without changes, by resolution. The adopted maps shall be transmitted to the land use commission for further action pursuant to section 205-48, [L 2005, c 183, pt of §2]

**Note**

L 2005, c 183, §7 provides:

"SECTION 7. Each county shall submit its report and maps with recommendations for lands eligible for designation as important agricultural lands to the land use commission no later than sixty months from the date of county receipt of state funds appropriated for the identification process. Upon receipt of the county maps, the land use commission shall review and adopt maps designating important agricultural lands to the State in accordance with section [205-49]."

**Designations made pursuant to this section take effect three years after incentives and protections for important agricultural lands and agricultural viability are enacted.** L 2005, c 183, §14(2).



**STATE SHALL IDENTIFY AND PREPARE MAPS OF STATE LANDS  
THAT SHOULD BE DESIGNATED AS IAL BEFORE DECEMBER 31, 2009  
AND  
BEGINNING JANUARY 1, 2010, COMMISSION SHALL DESIGNATE PUBLIC LANDS  
AS IAL AND ADOPT MAPS OF THOSE LANDS AS IAL**

**[§205-44.5] Important agricultural lands; public lands.** (a) Notwithstanding any law to the contrary, before December 31, 2009, the department of agriculture and the department of land and natural resources shall collaborate to identify public lands as defined under section 171-2 that should be designated important agricultural lands as defined in section 205-42 and shall cause to be prepared maps delineating those lands. In making the designations, the departments shall use the standards and criteria of section 205-44.

(b) The designation of important agricultural lands pursuant to this section shall not be subject to the district boundary amendment procedures of section 205-3.1 or 205-4 or declaratory order procedures of section 205-45.

(c) Notwithstanding any law to the contrary, beginning January 1, 2010, after receipt of the maps of public lands identified as important agricultural lands pursuant to subsection (a), the commission shall designate the public lands as important agricultural lands and adopt the maps of those public lands. Upon designation, the public lands shall be subject to this chapter. [L 2008, c 233, §2]





FOCUS GROUP MEETINGS





LIST OF INVITED PARTICIPANTS: FOCUS GROUPS | JANUARY 2015

	Name	Affiliation
Farmers and producers	Brian Miyamoto	Hawaii Farm Bureau Federation
	Mark Suiso	Makaha Mangoes, Hawaii Tropical Fruit Growers
	Wayne Ogasawara	Mililani Agricultural Park
	Mama T. Trisha Gonsalves	Hawaii Organic Farmers Association, Down to Earth
	Clifford Migita	Waimanalo Agricultural Assn.
	Pamela Boyar	Hawai'i Farmers Union United
	Alec Sou	Aloun Farms
	Bud Gibson	Rocker G Livestock Co (Waimanalo)
	Melissa Zemen	Kunia Agricultural Park
Agricultural support and related industries	Pauline Sato	Agricultural Leadership Program
	Jean Brokish	Oahu RC&D Council
	Dave Ringuette	Windward Community College, GOFarm Hawai'i Program
	Jensen Ueda	UH-CTAHR Extension Agent
	Nathan Miranda	Windward Oahu Soil and Water Cons. District
Wholesalers and consumers	Claire Sullivan	Whole Foods , Purchasing/Public Affairs
	Russell Hata	Y. Hata
	Kacey Robello	Hawaii Farm Bureau Federation, Farmers Market Manager
	Kevin Vacarello	Sustain Hawaii, also Sweet Home Waimanalo
	Tish Uyehara	Armstrong Produce, Agribusiness Development Corporation
Environmental Interests	Steve Montgomery	Sierra Club
	Tim Vandever	Defend Oahu Coalition
	Sam Gon	Nature Conservancy
	Stephen Rafferty	Trust for Public Land
	Marti Townsend	Outdoor Circle
	Kioni Dudley	Friends of Makakilo
Community Organizations and Neighborhood Boards	Ted Radovich	UH-CTAHR Organic Farming, Waimanalo N.B.
	Jeanne Ishikawa, Chair	Wahiawa N.B.
	Antya Miller	North Shore N.B.
	Cynthia Rezentes	Nanakuli-Maili N.B, Chair
	Johnnie-Mae Perry, Chair	Waianae Coast N.B.
	Kent Fonoimoana	Koolau Loa N.B.
	Amy Leursen	Kahaluu NB
Landowners	John Morgan	Koolau Ranch
	James Nakatani	Agribusiness Development Corporation
	Bev Kaku	Castle and Cooke
	Steve Hoag	Hawaii Reserves Inc.
	Sidney Keliipuleole	Kamehameha Schools
Native Hawaiian Interests	Jeannin Jeremiah	Office of Hawaiian Affairs
	Michele Wilhelm	Kapalai Farms
	Nick Reppun	Kakoo Oihi
	Rick Barboza	Hui Ku Maoli Ola
	Trevor Atkins	Halau Ku Mana Charter School
	Puni Freitas	Kokua Kalihi Valley
Government Agencies	Sen. Russell Rudermann	Senate AG Committee Chair
	Rep. Clift Tsuji	House AG Committee Chair
	Russell Tsuji	DLNR Land Division





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Date: December 24, 2014

To: Tim Hata, IAL Project Manager  
Department of Planning and Permitting

From: Corlyn Orr / Scott Ezer

RE: Proposed Focus Group Members

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This memorandum presents the roster of participants to be invited to the three focus group meetings (Project Scope of Work, Item C.2). This roster reflects input from TAC members, as well as consultations with DPP and the subconsultant team. Using the eight categories of agricultural interests identified during discussions with the TAC, the ideal number of participants allotted for each focus group is sixteen (see table below).

<b>Distribution Of Focus Group Participants By Category</b>	
Category	Number allotted per focus group
Farmers/producers	3
Ag support and related industry	2
Wholesalers/consumers	2
Environmental interests	2
Community organizations/NBs	2
Landowners	2
Native Hawaiian Interests	2
Government Agencies	1
<b>PARTICIPANTS PER FOCUS GROUP</b>	<b>16</b>

The process to develop the roster is summarized as follows:

1. Prepare a preliminary list of focus group candidates (31 names were presented at TAC Meeting #1)
2. Seek input from TAC members for suggestions of candidates/organizations (an additional 42 candidates were identified during TAC Meeting #1)
3. Review the candidate list with DPP and the subconsultant team (a total of 80 candidates were discussed on December 19, 2014)
4. Arrange candidates into focus groups, taking into consideration the number of interests allotted to each category and each candidates' affiliation and geographic area represented.

We are in the process of compiling contact information, and plan to call and invite focus group participants in January 2015.

		Focus Group 1	Focus Group 2	Focus Group 3	Alternates
Farmers and producers	1.	Mark Fergusson, Hawaii Organic Farming Assn.	Wayne Ogasawara, Mililani Agricultural Park	Bud Gibson, T&C Stables (Waimanalo)	1. Lee Bryant, May's Wonder Gardens, North Shore N.B. AG Committee
	2.	Brian Miyamoto, Hawaii Farm Bureau Federation	Alex Sou, Aloun Farms	Sharon Peterson Cheape, Petersons Upland Farm	2. Susan Matsushima, Alluvion, North Shore Econ. Vitality Partnership Co-
	3.	Mark Suiso, Hawaii Tropical Fruit Growers	Clifford Nigita, Waimanalo Farmers Association	Clifford Wong, Haleiwa luau leaf farmer	3. Melissa Zeman, Kunia Agricultural Park 4. Gary Maunakea Forth, MAO Farms 5. Fat Law, Fat Law's Farm HI
Ag support and related industry	4.	Pauline Sato, Agricultural Leadership Program	Kapua Sproat Fonoimoana, Windward O'ahu Soil and Water Cons. District	Dave Ringuette, WCC Agriculture Dept, GOFarm Hawai'i Program	1. Ted Tokunaga, Farm Credit Services
	5.	Jean Brokerish, Oahu RC&D Council	Jary Sugano, UH-CTAHR Extension Agent	Ron Kauhaahaa, Crop Protection Services (pesticides)	2. Stan Kodama, Waimanalo Feed Store 3. Jason Shitanishi, USDA Farm Service Agency, Farm Programs 4. Brian Kau, DOA AG Research Management Division
Wholesalers and consumers	6.	Kevin Vacarello, Sustain HI, Sweet Home Waimanalo	Conrad Nonaka, Culinary Institute of the Pacific	Ed Kenney, TOWN Restaurant	1. Mark Noguchi, The Pili Group, Mission Restaurant
	7.	Russell Hata, Y. Hata	Claire Sullivan, Whole Foods	Tish Uyehara, Armstrong Produce	
Environmental interests	8.	Deborah Ward, Sierra Club, AG/Conservation Comm.	Sam Gon, Nature Conservancy	Alexandria Avery, Outdoor Circle president	1. Doug Cole, N.S. Community Land Trust
	9.	Tim Vandever, Defend O'ahu Coalition	Lea Hong, Trust for Public Land	Kioni Dudley, Friends of Makakilo	2. Kyle Datta, Ulupono
Community organizations and NBs	10.	Ted Radovich, UH-CTAHR Organic Farming, Waimanalo N.B.	Waianae Coast N.B.	Cynthia Rezentes, Nanakuli-Maili N.B.	1. Amy Leursen, Kahaluu N.B.
	11.	Wahiawa N.B.	Antya Miller, North Shore N.B.	Koolau Loa N.B.	
Landowners	12.	John Morgan, Koolau Ranch	Carlton Ching, Castle and Cooke	Sidney Keliipuleole, Kamehameha Schools	
	13.	James Nakatani, Agribusiness Dev. Corp.	Eric Beaver, Hawaii Reserves Inc.	Neighborhood Board Rep.	
Native Hawaiian Interests	14.	Office of Hawaiian Affairs	Kanekoa Kukea-Shultz, Kakoo Oiwi	Trevor Atkins, Halau Ku Mana Charter School	
	15.	Dean Wilhelm, Kapalai Farms	Rick Barboza, Hui Ku Maoli Ola	Makahiapo Cashman, UH Ka Papa Loi o Kanewai	
Government Agencies	16.	Sen. Russell Rudermann, Senate AG Comm. Chair	Rep. Clift Tsuji, House AG Comm. Chair	Russell Tsuji, DLNR Land Division	

<b>OTHER ALTERNATES</b>
<b>FARMERS/PRODUCERS</b>
1. Pam Boyer, Hawaii Farmers Union United
2. Mike Buck, Waimanalo farmer/CWRM Board
3. Mel Matsuda, Kahuku Farms
4. Ron Wiedenbach, HI Fish Co., HI Aquaponics Aquaculture Association
5. Eric Enos, Kaala Farms
6. Greg Smith, Gunstock Ranch
7. Larry Jefts, Sugarland Farms, West O'ahu Soil & Water Conservation District Chair
<b>AG SUPPORT AND RELATED INDUSTRIES</b>
8. Lisa Zemen, South O'ahu Soil & Water Conservation District, Chair
9. Matthew Loke, UH-CTAHR Sustainability
10. Gordon Ogi, American Machinery
11. Bernadette Luncsford, USDA NRCS Field Office, District Conservationist
12. Susan Kubo, USDA NRCS Field Office, Civil Engineer
<b>WHOLESALE/CONSUMERS</b>
13. Kacey Robello, HI Farm Bureau, Farmers' Market GM
14. Alan Wong, Alan Wong's Restaurants
<b>ENVIRONMENTAL INTERESTS</b>
15. Murray Clay, Ulupono
16. Donna Wong, Hawaii's Thousand Friends, Kailua Neighborhood Board
<b>NATIVE HAWAIIAN INTERESTS</b>
17. Kihei Nahale'a, Papahana Kuaola
18. Puni Freitas, Kokua Kalihi Valley
<b>GOVERNMENT AGENCIES</b>
19. Jackie Kozal Thiel, Governor' Sustainability Coordinator







## MEETING SUMMARY

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**Date:** January 22, 2015      **HHF Project No.** 2014120

**Time:** 4:30-6:20 pm      **Project Name:** O'ahu IAL Mapping Project

**Location:** Pacific Guardian Center  
Makai Tower Conference Room      **Recorded by:** Corlyn Orr  
*Reviewed by DPP: Feb. 12, 2015*

**Attendees:** see attendance record

**Subject:** Small Group Discussion #1

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The first of three small group discussions for the City's Important Agricultural Lands (IAL) Mapping Project was held on Thursday, January 22, 2015 at the Pacific Guardian Center, Makai Tower Conference Room (733 Bishop Street, Honolulu). The meeting was scheduled from 4:30 to 6:30 pm. The purpose of the meeting was to provide an overview of the project and allow for group discussion. Fifteen invited attendees were present (see attached attendance record). Meeting materials emailed to participants in advance of the meeting included a meeting agenda, project sheet, unofficial copy of Chapter 205 Hawai'i Revised Statutes (HRS), and an electronic link to the IAL Phase I Report. Hard copy of the PowerPoint presentation was passed out at the meeting.

### WELCOME, INTRODUCTIONS, AND PROJECT BRIEFING

Scott Ezer opened the meeting at roughly 4:35 pm with introductions of the project team. Kathy Sokugawa, DPP Planning Division Chief, followed with opening remarks. On behalf of DPP, Kathy thanked everyone for participating and emphasized the City's desire for a meaningful, efficient and transparent process. Following individual introductions, Peter Adler (meeting facilitator) summarized the goals for the meeting: (1) brief attendees on work done to date (2) gather comments and concerns for DPP consideration, and (3) prepare for the community meetings. Scott then reviewed the legislative history and statutory requirements for the IAL designation, the preliminary criteria maps, and the proposed community outreach process (see attached PowerPoint).

### GROUP DISCUSSION

After Scott completed the presentation, Peter asked if there were any questions for information and/or clarification. Questions and responses are summarized as follows.

- Will this project have any influence on developing future AG policies for the City, or is this project limited to discussing the designation of AG lands? What is the link between this project and larger AG policies?
  - Although the project will focus on identifying land for IAL designation, the county is also required to address the IAL incentives. Other policy-related items discussed during the community outreach process will be documented in the final report.

*O'ahu IAL Mapping Project  
Small Group Discussion 1 | January 22, 2015  
Page 2 of 5*

- Are there any landowners on O'ahu that have already designated 50% of their land IAL and will be exempted from this process?
  - No.
- Why are State-owned lands not being considered?
  - According to State law, the State DOA and DLNR are responsible for mapping IAL for State-owned land.
- Why would the State need to designate their lands as IAL? If one purpose for IAL is to qualify for incentives, what is the benefit of the IAL designation for the State?
  - This is a question for the State.
- Areas excluded from the study area were clarified:
  - (1) Areas south of Wahiawa and Mililani are federally-owned or in the State Urban District
  - (2) Kahalu'u, Kāne'ohe and Kailua are in the State Urban District

Peter then asked a series of questions. A summary of the questions and discussion is provided below.

QUESTION: Imagine the future of O'ahu's agricultural lands. What lands do you "see" 20, 30, 50 years out? Assuming that production methods and the types of crops grown will change, what will the footprint of O'ahu's agricultural land look like? How is the land base going to change?

- Urban agriculture will multiply, with gardens in residences and food crops growing in Honolulu's office towers and high-rise residential buildings. Agriculture will be integrated into urban living, the footprint will be larger, and the boundaries between urban and agriculture will blur together.
- Lands that are currently fallow and still transitioning from sugar and pineapple production, such as the Galbraith lands, will be in use. The large chunks of agricultural land will be retained, and be in active production. Landowners are waiting to see what happens. Hopefully, options will lead to AG as the best use, and lands will not be fallow. For example, Kamehameha Schools is diligent about implementing their agricultural plan, which would leave a large agricultural footprint on the North Shore.
- Larger land parcels will be divided into smaller pieces. This will depend on tax fees and ownership structures.
- Different types of crops will be grown, with different reasons for growing. For example, algae is being grown for energy in Wahiawa on fallow land.
- The agricultural footprint will be concentrated around Central O'ahu. These lands have all the elements needed for growing (e.g., soil, sunlight, water). The next step is to see who's going to use the larger chunks of land and promote agriculture. The land will stay in agriculture as long as the infrastructure needed for residential development is not built. There had been a proposal to build housing on the Galbraith lands, but there is no infrastructure to support development. Aquaponics, home gardens and other strategies will encourage self-sufficiency, but such efforts will supplement production coming from the largest chunks of land. No matter how much is produced on other islands, O'ahu will always have a market/locational advantage over the neighbor islands.

QUESTION: What data and information is missing that needs to be considered in this process? What was not considered by the TAC that needs to be considered?

- The water criteria map (Criterion #5 map) should identify lands that have access to R-2 recycled water because water from the Wahiawa Wastewater Treatment Plant/Wahiawa Reservoir used for irrigation purposes has been upgraded to R-2. Scott clarified that lands irrigated by recycled water are included in the Criterion #5 map, without specifically calling out the type or quality of irrigation water. There was general agreement that this should be highlighted in future conversations.
- How much of the community outreach process will focus on educating the public about the intent of the legislature? It is important that the general public understand the background/history and purpose of the IAL legislation. Considering that it will be difficult to convey all of this information through the community meetings, the website should be used as an information-sharing tool. UH Law School (2<sup>nd</sup> year seminar project) prepared an analysis of the legislation that may be a useful resource to include on the website.

QUESTION: There will be two general types of questions: (1) from people with agricultural expertise and experience farming; and (2) from members of the general public without agricultural experience. What are the hard questions that will be asked in this process?

- Why is the Ho'opili project area excluded from this process?
- How was the TAC selected? The TAC recommendations may be questioned because of the committee composition.
- What is IAL? The general public may have basic questions about the basic definition and concept of IAL. Budgetary constraints should not be a limiting factor for education and outreach.
- How can farmers access the lands identified as IAL?
- How does IAL benefit small farmers?
- How will IAL affect the community? What about the social, economic and environmental implications for surrounding communities? Agricultural communities in Wahiawa (e.g., Whitmore, Kunia) have expressed a desire for agricultural jobs and the ability to retain their rural lifestyles.
- What is the status of the incentives? Being able to speak with more certainty about the incentives may help to convey the potential benefits of the IAL designation.
- Possible questions may concern housing:
  - What is the impact to affordable housing? (Some will feel that affordable housing is more important than preserving agricultural land.)
  - Where are agricultural workers going to live? The long-range plan needs to include farm worker housing.
- How will the IAL designation affect land use? What can a landowner no longer do with their land if their property is designated IAL?
- Is it possible to consider lands currently occupied by the military? This would provide a back-up plan for the possibility that the military reduce their footprint and vacate their lands (e.g., Lualualei, Makua Valley, Schofield). Scott indicated that the law requires the counties to conduct periodic reviews of the IAL maps, and that any excess military lands are automatically placed in the P-2 Preservation zoning district.
- What are the implications of the IAL designation for gentleman estates? How will this discourage gentlemen estates?
- How much is this initiative going to cost the taxpayers? What are the costs of IAL? A loss in potential taxes is possible. However, this would result from the cost of paying for any incentives, not from the loss of property tax revenues (assuming that these lands are currently in agricultural

use and the tax structure stays the same). It may be possible that the economic and employment benefits from increasing agricultural production may outweigh the costs.

- Would IAL include flower crops? Scott clarified that IAL is not specific to food crops. The use of the land for agricultural production is important, not the type of crop grown (flowers, landscaping, turf growing are also included).

During the discussion, it was emphasized that the IAL designation is a land use regulatory/zoning mechanism that does not impose any restrictions on the use of the land, does not require that the land be farmed, and will not resolve other agricultural issues. IAL will provide a hierarchy within the State's Agricultural District to ensure that the most valuable agricultural lands are protected. Speculation to urbanize agricultural lands should disappear once lands are designated IAL, since it is more difficult to urbanize land that has an IAL designation. (For clarification, Chapter 205-50(f), HRS requires a 2/3 vote of the Land Use Commission or the county's decision-making body when reclassifying or rezoning lands from IAL. The legislature does not have jurisdiction to reclassify IAL.) Without the prospect of urbanization overshadowing these lands, large landowners may be more willing to make a long-term commitment to agriculture and offer small farmers long-term leases.

QUESTION: What are the difficult trade-offs of the IAL designation? What is at stake to be lost?

- Landowners whose lands are designated involuntarily under the county process may have a sense of lost opportunity costs.
- The ability to reclassify lands that have been designated as IAL will get more difficult. Landbanking (waiting for future development opportunities) should no longer be an issue, as there will be clarity about which lands are to be preserved for agricultural use.
- A possible gain may be an increase in the number of people interested in agriculture. Out-of-state entrepreneurs may be attracted to O'ahu to invest in new agricultural enterprises. Small and P/T farmers may find new opportunities to farm.

QUESTION: How would you address traditional native Hawaiian agricultural uses and unique crops (Criterion #4)? Are there other considerations that were not addressed?

- The type of crop grown is not as important as the economics. Farmers will grow certain crops if they can make money. If it is not commercially viable for the farmer, farming may still be relevant as a hobby.
- The map of Criterion #4 needs to identify historic/iconic lands used for kalo because the cultural significance of these areas is important. .

QUESTION: What are your thoughts about the proposed community outreach process? Do you have any advice or ideas for how to talk to a wider range of people?

- Ground rules are critical. Control the discussion, do not allow for redundancy, and limit the time given for individual comments. Keep the discussion focused, restate the meeting purpose often.
- Post a visual reminder of the meeting purpose and refer to it often.
- Be prepared to entertain the non-farming public and those with other agendas.
- None of the meeting attendees were involved with Kauai County's IAL project.

QUESTION: Are there any other issues, ideas or concerns to be considered?

- Is there any overlap between the City's IAL project and the Trust for Public Land's GreenPrint project? Are the two projects sharing information? The general public may express some confusion and fatigue, since both projects involve mapping.



- Engage the membership of both the Hawai'i Farm Bureau and the Hawai'i Farmers Union.
- A report from landowners who achieved IAL status would be helpful to understand the positive and negative consequences of IAL (e.g., case studies showing improved conditions such as lands in production, long-term leases, infrastructure investments, etc.)
- The motivation for the IAL designation is different for each landowner. Castle and Cooke sought the IAL designation to access the incentives because making agriculture more economically viable was important to them. Kamehameha Schools is seeking the IAL designation to demonstrate their long-term commitment to agriculture.
- Landowners are interested in knowing what incentives are already available, and when county incentives will be available. Incentives for employee housing, infrastructure improvements, and other types of investments to make farming more affordable are needed now.

Peter thanked everyone for attending, asked them to complete a brief questionnaire, and then closed the meeting. Meeting was adjourned at about 6:20.

ATTENDANCE RECORD

Invited Participants: Jean Brokish, Oahu Resource Conservation & Development Council (via Facetime)  
Ian Hirokawa, DLNR Land Division  
Jeanne Ishikawa, Wahiawā Neighborhood Board #26  
Brian Miyamoto, Hawai'i Farm Bureau Federation  
Steve Montgomery, Sierra Club  
John Morgan, Kualoa Ranch  
James Nakatani, Agribusiness Development Corp.  
Wayne Ogasawara, Mililani Agricultural Park/Agricultural landowner  
Senator Russell Ruderman, State Senate AG Committee Chair  
Pauline Sato, Agricultural Leadership Foundation  
Mark Suiso, Hawai'i Tropical Fruit Growers  
Claire Sullivan, Whole Foods  
Russell Tsuji, DLNR Land Division  
Tim Vandever, Defend O'ahu Coalition  
Michele Wilhelm, Kapalai Farms

Others: Randy Hara, DPP  
Kathy Sokugawa, DPP Planning Division Head  
Dr. Po-Yung Lai, City's AG Liasion  
Scott Ezer, HHF Planners  
Erin Higa, HHF Planners  
Rob James, HHF Planners  
Corlyn Orr, HHF Planners  
Peter Adler, ACCORD3.0 Network  
Bruce Plasch, Plasch Econ Pacific



## MEETING SUMMARY

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**Date:** January 28, 2015      **HHF Project No.** 2014120

**Time:** 4:30-6:30 pm      **Project Name:** O'ahu IAL Phase 2

**Location:** Pacific Guardian Center  
Makai Tower Conference Room      **Recorded by:** Corlyn Orr  
*Reviewed by DPP: February 17, 2015*

**Attendees:** see attendance record

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**Subject:** Small Group Discussion #2

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The second of three small group discussions for the City's Important Agricultural Lands (IAL) Mapping Project was held on Wednesday, January 28, 2015 at the Pacific Guardian Center, Makai Tower Conference Room (733 Bishop Street, Honolulu). The meeting was scheduled from 4:30 to 6:30 pm. The purpose of the meeting was to provide an overview of the project and seek feedback from the group. Ten invited attendees were present (see attached attendance record). Meeting materials emailed to participants in advance of the meeting included a meeting agenda, project sheet, unofficial copy of Chapter 205 Hawai'i Revised Statutes (HRS), and an electronic link to the IAL Phase I Report. Hard copy of the PowerPoint presentation was passed out at the meeting.

### WELCOME, INTRODUCTIONS, AND PROJECT BRIEFING

Scott Ezer opened the meeting at roughly 4:35 pm with introductions of the project team. Following individual introductions, Peter Adler (meeting facilitator) summarized the goals for the meeting: (1) brief attendees on work done to date; (2) gather comments and concerns for DPP consideration; and (3) prepare for the community meetings. Kathy Sokugawa, DPP Planning Division Chief, followed with opening remarks, which included thanking everyone for participating and highlighting the City's goal of preparing the IAL maps with as much community participation as possible. Scott then reviewed the legislative history and statutory requirements for the IAL designation, the preliminary criteria maps, and the proposed community outreach process (see attached PowerPoint).

After Scott completed the briefing, Peter asked if there were any questions for additional information and/or clarification. Questions and responses are summarized as follows.

- State-owned lands in Central O'ahu (i.e., former Galbraith Estate lands) have not been designated IAL.
  - State-owned lands were excluded from County consideration as provided in Chapter 205, HRS.
- Recycled water is accounted for in the map identifying lands with adequate water (Criterion #5). There should be a distinction between high-quality water and recycled R-2 water. The North Shore does not have an adequate water supply because the use of R-2 recycled water from Wahiawa Reservoir limits the types of crops that can be grown.

*O'ahu IAL Mapping Project  
Small Group Discussion 2 | January 28, 2015  
Page 2 of 6*

- Response indicated that the process was blind to creating hierarchy for preferred crops. R-2 water is capable of supporting agricultural irrigation, but not directly on leafy food plants.
- How did you choose farmers for the Technical Advisory Committee?
  - Recommendations from different sources—including the City's agricultural liaison, individuals familiar with the AG industry, and DPP—were considered. Chapter 205, HRS also mandates the involvement of certain organizations (e.g., Hawai'i Farmers Bureau, State Office of Planning, Dept. of Agriculture, Commission of Water Resources Management). The goal was to involve a diverse cross-section of farming interests, such as small and large farmers, food producers, ranchers, nursery crops, landscapers, flower growers, etc.
- How easy will it be to modify or change the IAL designation? How firm will the boundaries be? The concern is that the City will not utilize the IAL classification to provide long-range guidance for future land use decisions, and that landowners will be able to modify the IAL classification like the DPs/SCPs and zoning can be changed.
  - The LUC is the authorizing body with jurisdiction to designate land IAL and change the IAL designation. It will be difficult to redesignate IAL, since it requires a two-thirds vote of the LUC (requiring 6-3 votes, as opposed to the standard 5-4 votes). Once the inventory of IAL is identified, DPP is hopeful that the regulatory mechanisms that promote agricultural use of the land will follow. An anticipated benefit of IAL is that it will discourage speculative land banking practices associated with short-term farming leases while landowners wait to develop the land for housing.
- How will the IAL designation affect agricultural land subdivisions? Will it still be possible to subdivide agricultural land into two-acre parcels and create gentlemen estates?
  - The intent of this project is to identify the baseline of important agricultural lands, and distinguish between the important lands and the lesser-quality agricultural lands. This is a discreet project to identify the land base that needs to be preserved and to answer the question about where agriculture should be on O'ahu. This will not resolve all existing agricultural issues, although it should ultimately result in future regulatory mechanisms to better manage the use of lands identified as IAL.
- Is there a mechanism to add additional IAL to the inventory in the future?
  - Yes, the law requires the counties to periodically review the IAL inventory. This is an important process because the face of agriculture is constantly changing. (Consider how much has changed in the past 30 years). Private landowners are also able to petition the LUC on their own. For example, Kamehameha Schools has filed an individual petition with the LUC to designate about 10,000 acres of their North Shore lands.
- Can the criteria maps be revised to remove the Urban Boundary filter? It would be interesting to see the qualities of all the land areas, especially since much of Windward O'ahu lands that are currently in agriculture are excluded from the map.
  - Areas excluded from mapping are in the State Urban District or designated for urban use by the county, as prescribed by state law. Several areas currently in agricultural use were

excluded from the study area because they are in the State Urban District; a large acreage in Kahalu'u was planned for urban/industrial development in the 1960s, and is in the State Urban District. Based on the current law, the State land use classification would have to be changed for land to be eligible for IAL under the county designation process.

- Including military lands in the process will be a concern. Lualualei and Mākua were active and productive agricultural areas before military occupation, and these areas represent large acreages that could be available for future agriculture, should the military decide to vacate.
- What is the timeframe for the next steps in the process?
  - The community meetings are tentatively targeted for April, followed by a written public comment period, and a second round of community meetings tentatively anticipated for Fall 2015. The goal is to complete the project within a year from now.

Peter then asked a series of questions. A summary of the questions and discussion is provided below.

QUESTION: Imagine the future of O'ahu's agricultural lands. Thinking broadly across the agricultural industry, what lands do you "see" two to three generations out? Even if production methods or the form or types of crops grown changes, what is needed for a good agricultural base on this island?

- Hawai'i Organic Farmers Association sees a substantial portion used for organic, sustainable farming to grow food to serve the island community. Even the farmers on the TAC are growing corn seed and crops for export, and not serving the needs of the island. We need a lot of land for farming. It's also profitable to support local agriculture because it creates jobs, and the money circulates in the local economy. Knowing what is being farmed on the lands designated IAL would be interesting.
- If the goal is self-sufficiency and sustainability, then the City should protect as much land as possible. Even if the industry is comprised solely of small organic farms (no large scale agriculture) and all farmers are growing edible crops, we still won't be able to grow enough food to sustain the current population, or the population 20-50 years from now. The county should use as many criteria as possible to designate as much land as possible. The additional 20,000 acres gained by using all the criteria is significant.
- Was ranching mapped in the top 3 criteria? Lands suitable for ranching may not meet the top 3 criteria. Is it necessary to add another criteria to specifically identify potential ranching land? Grazing lands are typically not high-quality agricultural lands used to grow food; they are typically found at higher elevations, without good soils and irrigation, and are not productive farmland.
  - For clarification, ranching was mapped as part of Criterion #1: Current AG Production.
- Was forestry included as current production?
  - No, most forestry activities on Oahu are in the State Conservation District, not the Agricultural District and the review precluded lands in the Conservation District, per Chapter 205, HRS. [Note: On the NIs, commercial forests are located within the Ag District.]

- The fear is that there will be lots of land for farming, but nobody to farm the land. It's not easy to be a farmer, it's even harder to be an organic farmer. We may lose farmers because the costs of production and food safety regulations are overly taxing, and it is hard to make money farming.
- The incentives are aimed at helping both landowners and farmers. Small immigrant farmers are only successful because the entire family works the farm. These farmers would especially benefit from incentives. Farmers would also benefit from longer-term leases, which would then help them qualify for loans.
- The quality of the soil is important for the overall success of agriculture. In this regard, incentives should encourage farmers to improve the health of the soil. This would provide for pest management, ensure that the soil has the proper nutrients to grow food, and also promote sustainable/organic farming. Promoting soil quality ensures that the land qualifies as IAL later.
- Climate change impacts, including sea level rise and changes in the water table, need to be considered for future generations. Taking into account sea level rise and the loss of coastal areas, the goal should be to maximize as much IAL as possible.

QUESTION: What would you do to balance the different factors involved in designating IAL? How would you balance the criteria? Are the top 3 criteria equal, or is there a balancing act to prioritize the criteria?

- The goal should be to designate as much land as possible. Make the boundaries as big as possible in case they shrink later.
- The process should identify future opportunities for lands that don't currently qualify for the IAL designation. People would benefit from a mechanism that identifies the limitations of the criteria and describes what might be necessary to add additional acreage to the inventory.

QUESTION: What are your thoughts about the proposed community outreach process? Do you have any advice or ideas for how to talk to a wider range of people? How would you structure the presentation?

- Make sure people are clear about what can be changed as a result of the community input. Ensure that people understand that their comments were received and considered; that the information and comments received through the community outreach process will be synthesized and presented to DPP for decision-making.
- It is inevitable that some groups will be upset that they were not invited to participate in the preliminary discussions to define and operationalize the criteria. Agriculture is a passion for many individuals, and people will bring their personal agendas and will want to discuss peripheral issues. Use storyboards; the presentation is overly long and technical. Be clear about the process and the constraints of the law. Start with the lands included in the study (i.e., state that military lands are not part of the discussion, identify lands not included in the study, and cite State law), explain what is covered by each criterion, be clear about what can be discussed (i.e., focus on mapping), and what's not open for discussion (i.e., not discussing GMO or pesticides).

People will want to know up front which lands are priority (i.e., start with recommendations and back into the supporting rationale). People appreciate knowing the boundaries for discussion.

- Maintain control of the meeting by keeping the discussion on topic. Listening stations are helpful to focus the discussion and encourage comments. The meeting should also include other venues where people can talk with somebody and ask questions, and leave written comments.
- Important that the message received at the community meetings is not filtered or diluted when passed up to the decision-makers.

QUESTION: How do you get balanced meeting attendance? How do we get farmers to show up?

- Farmers put in long hours during the day, and are too busy to attend night meetings. There will be other interests attending the meetings, not the actual farmers. Instead of trying to get farmers to come to meetings, go out to where the farmers are. Offer sessions that piggyback onto Hawai'i Farmers Union and Hawai'i Farm Bureau regular meetings, set up sessions at the farmers markets, and talk face-to-face with farmers. Relying on the internet/website, email and social media to communicate with farmers will not work. Old-fashioned outreach strategies, such as face-to-face communications and asking well-respected farmers to talk to other farmers about attending the meetings, are necessary. Another strategy is to ask the AG extension agents to help spread the word.
- Focus group participants can use their networks to help with meeting announcements.
- Phyllis Shimabukuro-Geyser is the newly-appointed Deputy Director for the Department of Agriculture. She runs an egg farm in Waianae, and is a good resource that should be consulted.
- The colors used on the draft maps should be adjusted. The color schemes are hard to distinguish (i.e., background colors are too similar to the polygon overlays).
- Engage young people in this process. Young people are the future of farming.
- Also engage the non-English speaking population, and be aware of the language barrier and the need for interpreters when noticing meetings and communicating at the actual meetings. The Thai Farmers Association is one of the farmers group to call upon for assistance.
- Multiple meetings in locations convenient to farm communities will make it easier for farmers to participate (e.g., West Side, North Shore).

Peter thanked everyone for attending, asked them to complete a brief questionnaire, and then closed the meeting. Meeting was adjourned at around 6:20.

Attendance Record

Invited Participants: Trisha "Mama T." Gonsalves, Down to Earth, Hawai'i Organic Farmers Assn.  
Steve Hoag, Hawai'i Reserves  
Bev Kaku, Castle & Cooke Homes Hawai'i  
Clifford Migita, Waimānalo Agricultural Association  
Antya Miller, North Shore Neighborhood Board  
Stephen Rafferty, Trust for Public Land  
Nick Reppun, Kako'o 'Ōiwi  
Cynthia Rezentes, Nānākuli-Mā'ili Neighborhood Board, Mohala I Ka Wai  
Kacey Robello, Hawai'i Farm Bureau  
Kevin Vacarello, Sustain Hawai'i, Sweet Home Waimānalo, Pakala Moon Farm

Others: Randy Hara, DPP  
Tim Hata, DPP  
Kathy Sokugawa, DPP Planning Division Head  
Scott Ezer, HHF Planners  
Corlyn Orr, HHF Planners  
Peter Adler, ACCORD3.0 Network  
Bruce Plasch, Plasch Econ Pacific





## MEETING SUMMARY

**Date:** February 4, 2015

**HHF Project No.** 2014120

**Time:** 4:30-6:30 pm

**Project Name:** O'ahu IAL Mapping Project

**Location:** Pacific Guardian Center  
Makai Tower Conference Room

**Recorded by:** Corlyn Orr  
*Reviewed by DPP: February 20, 2015*

**Attendees:** see attendance record

**Subject:** Small Group Discussion #3

The third small group discussion for the City's Important Agricultural Lands (IAL) Mapping Project was held on Wednesday, February 4, 2015 at the Pacific Guardian Center, Makai Tower Conference Room (733 Bishop Street). The meeting was scheduled from 4:30 to 6:30 pm. The meeting purpose was to provide an overview of the project and seek feedback from the group. Fourteen invited attendees were present (see attendance record). Meeting materials were emailed in advance of the meeting, including the meeting agenda, project sheet, unofficial copy of Chapter 205 Hawai'i Revised Statutes (HRS), and a link to the IAL Phase I Report. Hard copy of the PowerPoint presentation was passed out at the meeting.

### WELCOME, INTRODUCTIONS, AND PROJECT BRIEFING

Peter Adler (meeting facilitator) opened the meeting at roughly 4:35 pm with introductions of the project team. Following individual introductions of meeting attendees, Kathy Sokugawa, DPP Planning Division Chief, presented opening remarks. On behalf of DPP, Kathy thanked everyone for participating, emphasized the City's optimism about protecting agricultural lands through the IAL process, and asked the group to keep the discussion focused on the mapping exercise. Peter reviewed the meeting protocols, and summarized the goals for the meeting: (1) brief attendees on work done to date; (2) gather comments and concerns for DPP consideration; and (3) prepare for the community meetings. As part of the introductions, Peter referenced an article in the November 2014 edition of Hawai'i Business Magazine entitled "Can Hawai'i Feed Itself?"

Scott Ezer then reviewed the legislative history and statutory requirements for the IAL designation, the preliminary criteria maps, and the proposed community outreach process (see attached PowerPoint). After Scott completed the presentation, Peter asked the group if there were any questions for information and/or clarification. Questions and responses are summarized as follows.

- What does the law say about the 50% rule? Is it 50% of all landholdings (i.e., in both State Agricultural and Urban District), or is it 50% of lands strictly within the State Agricultural District?
  - The law exempts a landowner from the county's designation process if more than 50% of all their landholdings (excluding lands in the State Conservation District) has been designated IAL. Kamehameha Schools' petition that is currently pending LUC approval would meet the 50% incentive requirement.

*O'ahu IAL Mapping Project  
Small Group Discussion 3 | February 4, 2015  
Page 2 of 6*

- What if the proposed rail system goes through an agricultural parcel? Does the designation change?
  - It was clarified that the rail route runs through lands in the State Urban District. Since it does not involve lands in the State Agricultural District, this would not apply.
- Does any of the land deemed eligible for IAL consideration qualify to produce certified organic farming? Why is this not a criteria?
  - The focus of the project is to identify high-quality farmland based on the characteristics of the land to ensure that the best land is available and continues to be available for agricultural use. The project is not interested in the type of products growing on the land (i.e., not discriminating against any type of farming activity or favoring one kind of farming over another).
- If the IAL designation is a planning tool, is it possible for this process to consider military lands that may be released in the future?
  - The law is specific that lands under Federal jurisdiction are not eligible for IAL designation under the county process. The law also states that the counties are required to conduct periodic reviews of the IAL maps, should military lands become available in the future they could be considered during subsequent IAL evaluations. In the interim, the City DP/SCPs would provide guidance for military lands returned to the community. There is also a provision in the zoning ordinance that any excess military lands are automatically placed in the P-2 Preservation zoning district once they leave federal ownership. This puts a check on possible redevelopment on the property without consideration by the City Council.
- How do landfills fit into IAL? The lands under PVT and Tropic Lands used to be productive agricultural lands.
  - The characteristics of the land in relation to the criteria are being considered. The mapping is not taking into account property ownership or the current use of the land.
- Although the law prohibits the counties from considering land in the State Urban District for IAL, lands in Kahalu'u that are in the State Urban District are currently being farmed and are zoned for agricultural use by the county. What process is available to designate these lands IAL?
  - The State's land use designation for Kahalu'u dates back to the 1960s when the City's long-range plans for Kahalu'u called for development of a deep-draft harbor, industrial, resort and residential uses. Considering that the City's DP/SCPs do not consider Kahalu'u as an area for future development, it might be timely to look at the possibility of redesignating this area to the State Agricultural District. However, this is outside the scope of this project.
- Why is land designated for urban use by the county—such as those lands under Ho'opili—not being considered? The City Council passed a resolution (City Resolution 12-23) requiring the IAL mapping process to consider "agriculturally productive lands within the urban growth boundary that are classified as prime agricultural lands, provided that adequate water supply is available."
  - The parameters for this technical mapping exercise are based on the requirements established by the state law. There will be other opportunities to raise this question, including before the City Council.

(After the meeting, the specific reference in Chapter 205, HRS was identified as Section 205-47, and reads as follows:

**"[§205-47] Identification of important agricultural lands; county process. (a) Each county shall identify and map potential important agricultural lands within its jurisdiction based on the standards and criteria in section 205-44 and the intent of this part, *except* lands that have been designated, through the state land use, zoning, or county planning process, for urban use by the State or county.)**

Peter then asked a series of questions. A summary of the questions and discussion is provided below.

QUESTION: What data and information is missing that needs to be considered in this process? What other information is needed?

- Piggeries and chicken farms are a part of agriculture that also needs protection. Livestock production needs a place in the future.
  - It was clarified that lands used for livestock production were included in the map of current agricultural production (Criterion #1 map). More specifically, the maps do not preclude piggeries and chicken farms.
- Lands at Mālaekahana are proposed for urbanization (Envision Lā'ie). It would be good to know the timing of the City's plans and policies regarding Envision Lā'ie. Bill 47/Ko'olau Loa SCP is pending City Council hearing, the General Plan Update is pending DPP review, and now the IAL mapping project is running concurrently.
  - It was noted that DPP does not control when bills are processed by the City Council.
- What LSB ratings are used in the map of Criterion #3: Productivity Rating Systems?
  - LSB Overall Productivity Ratings range from "A" Very Good to "E" Very Poor/Not Suitable. The A and B ratings were used to map Criterion #3.

QUESTION: Are there any questions or comments looking at this process from the Native Hawaiian perspective?

- The process seems appropriate at this time. May be possible to use the OHA newsletter *Ka Wai Ola* as a vehicle for community outreach.
- Was kalo the only traditional crop mapped? What about other traditional Native Hawaiian crops, such as sweet potato? In addition to traditional crops, consideration should be given to mapping lands known for traditional ways of farming, such as terraces, wetland crops, and gulches.
  - It was clarified that kalo was the only crop mapped based off the availability of data. Other crops were too difficult to map because data was not available.
- Has dryland kalo farming been mapped?
  - No, although mapping different Native Hawaiian crops was discussed by the TAC. With the exception of water-oriented crops such as wetland taro, traditional Hawaiian crops would be found on land with qualities that could support a number of other crop types.

- The TAC's low ranking of Criterion #4 is a reflection of the TAC's composition. This should be taken into consideration when looking at the priority criteria.
- The practice of gathering salt is both a cultural practice and an agricultural practice. Depending on how one chooses to define agriculture, salt can be viewed as a traditional Hawaiian crop.

QUESTION: Imagine the future of O'ahu's agricultural lands. What lands do you "see" two to three generations out? Even if production methods or the form or types of crops grown changes, what is needed for a good agricultural base on this island?

- Ranching provides benefits of land stewardship and fire control, and can make use of rocky, steep land with no water or value for growing crops or housing. In essence, the definition of a rancher is a grass farmer. Ranching fills a void and uses land that is not good for crop farming. There is room in IAL for ranching.
- Designating the land is vital to create a land base for future farmers. Less than 1% of college graduates currently pursue agricultural degrees. There are more people attending college today who are pursuing degrees in agriculture, but the majority of young people still do not want to be farmers.
- Who is providing funding for this project? It's concerning that there's an effort being made to map IAL now, almost 40 years after the initial concept of IAL was introduced.
  - IAL was added to the State Constitution as a result of the 1978 Constitutional Convention. In the early 1980s, the Department of Agriculture undertook the Land Evaluation and Site Assessment system (LESA) in an attempt to inventory IAL, however the LESA system was extremely complicated and was not accepted by the Legislature. This current mapping effort is funded by the City and County. The Legislature passed new laws in 2005/2008 which mandated the counties map IAL, without allocating any funding to the counties. Each county has to find their own funding.
- One approach is to designate as many acres as possible by applying all the criteria to get the maximum amount of land designated IAL. A second approach is more realistic and recognizes that while it may be desirable to designate as much acreage as possible, there are competing uses for the land. Within this context, it makes sense to honor the TAC's recommendations and take a liberal approach to applying the three priority criteria (i.e., Use any one of the three criteria; this seems to be a defensible way to maximize acreage).
- The phenomenon of using prime agricultural land for non-agricultural uses needs to be addressed. Wai'anae is losing prime agricultural land to solar farms because landowners are looking for ways to generate additional revenues. In response, it was noted that solar farms are currently permitted in the State Agricultural District, according to Chapter 205, HRS.
- Developing the county's incentives package is not part of this process at this time.
- Dr. James Brewbaker conducted a study of growing conditions and production yields that showed crops thrive in hot, lowland areas like 'Ewa/Ho'opili. The inventory of IAL should address environmental factors like rainfall, temperature, sunshine and cloud cover that affect growing

conditions. We need to have enough land within the low-lying coastal plains to balance where good crops grow.

- Address climate change considerations, including sea level rise, coastal inundation, higher salinity in the aquifer, changes in the water table, higher temperatures, changes in rainfall patterns, increased drought conditions, etc. Land will become more valuable as coastal areas are inundated.

QUESTION: In taking this conversation out to the community, what advice do you have for constructing the community meetings?

- Night meetings are easier because most people work during the day (e.g., Wai'anae Neighborhood Board starts at 7 pm). Fridays are bad days for meetings; afternoon meetings are also not convenient for working people. Have OLELO film the community meetings.
- Ask for assistance to notice meetings and spread the word. Use the project website, email lists and Neighborhood Boards to share information.
- Be sensitive and prepared for attacks. Criticism is inevitable.
- Education is key. Give people the tools to understand the project. Storyboards, definitions, examples and case studies are helpful, otherwise people will fall back on their own agenda. Keep meetings simple and use tangible examples; the presentation is too intellectual for a community meeting. Use a questionnaire to keep people engaged during the meeting.
- The TAC criteria mapping is logical and makes sense. However, the community will want to know how much they can weigh in on the criteria. When structuring the meetings, be up front with people about what the intent of the discussion is, what they can have input on, and what is not open for discussion. Frame the questions, and be clear on expectations for the community. Don't go into the meeting with the attitude that decisions are already made. People don't want to participate if they don't feel that their input is meaningful.
- People may want to talk about use considerations for lands designated IAL. The question could be structured around how the land should be used.
- Consider involving other groups in these conversations: small farming huis, Hawai'i Island Land Trust, North Shore Land Trust, Hawai'i Farmers Union, USDA NRCS, O'ahu Resource Conservation and Development Council.
- An in-depth news article published before the community meetings would be beneficial to generate interest in the project and educate the public.
- DPP's final report will be a set of recommendations for the City Council. Ideally, the final report will be a record of discussion and will summarize differing opinions and areas of conflict (e.g., state the recommendation, describe the process used to develop the recommendation, and summarize any opposing viewpoints). This may help the community feel like their opinions have been heard, even if it did not affect the outcome of the recommendations.

- Farmers will want to know how IAL will affect them, so it is important to highlight both the positive and negative impacts of IAL for farmers. Be mindful to structure the public campaign to gain supporters for the City Council and LUC processes.
- Considering the two separate requests to widen the scope of this study (to include lands in the State Urban District and military lands), there should be a place in the meeting to make suggestions about other subjects that need to be studied/addressed.
- The fear is that the IAL designation will promote urbanization on the non-IAL lands. Lands not designated IAL should not be deemed fair game for non-agricultural uses.

Before closing, Kathy asked meeting attendees to help keep the program on track and help manage community expectations. DPP cannot afford to delay or extend the process or have meetings hijacked by unrelated agendas. Everyone's help is needed to maintain focus on the mapping exercise.

Peter thanked everyone for attending, asked them to complete a brief questionnaire, and then closed the meeting. Meeting was adjourned at about 6:20.

#### **Attendance Record**

Invited Participants: Trevor Atkins, Hālau Kū Māna Charter School  
Rick Barboza, Hui Kū Maoli Ola  
Pamela Boyar, Hawai'i Farmers Union United  
Kioni Dudley, Friends of Makakilo  
Kent Fonoimoana, Ko'olau Loa Neighborhood Board  
Bud Gibson, Rocker G Livestock Company  
Jeannin Jeremiah, Office of Hawaiian Affairs  
Sidney Keliipuleole, Kamehameha Schools  
Amy Leursen, Kahalu'u Neighborhood Board  
Nathan Miranda, Windward O'ahu Soil and Water Conservation District  
Johnnie-Mae Perry, Wai'anae Coast Neighborhood Board  
Ted Radovich, UH-CTAHR Organic Farming, Waimānalo Neighborhood Board  
Marti Townsend, Outdoor Circle  
Melissa Zemen, Kunia Agricultural Park

Others: Randy Hara, DPP  
Kathy Sokugawa, DPP Planning Division Head  
Scott Ezer, HHF Planners  
Corlyn Orr, HHF Planners  
Peter Adler, ACCORD3.0 Network  
Bruce Plasch, Plasch Econ Pacific





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COMMUNITY MEETINGS





## MEETING SUMMARY

**Date:** April 8, 2015

**Time:** 5:30-8:30 PM

**Location:** Mililani Mauka Middle School Cafeteria

**Project Name:** O'ahu IAL Mapping Project

**Recorded by:** Corlyn Orr

*Reviewed by DPP: May 7, 2015*

**Attendees:** see attendance record

**Subject:** Community Meeting

The first of three community meetings for the City's Important Agricultural Lands (IAL) Mapping Project was held on Wednesday, April 8, 2015 at Mililani Mauka Middle School Cafeteria. This was the first meeting in a series of three (the second would be in Kaneohe at Windward Community College on April 15, 2015 and the third in Kapolei on April 29, 2015). The meeting was scheduled from 5:30—8:30 PM, with an open house from 5:30—6:30 and a formal presentation and discussion session from 6:30—8:30. The meeting purpose was to present an overview of the project, answer questions and gather public input.

### WELCOME, INTRODUCTIONS, AND PROJECT BRIEFING

Peter Adler, meeting facilitator, called the meeting to order at roughly 6:35 pm. George Atta, Department of Planning and Permitting (DPP) Director, introduced Mayor Kirk Caldwell. Mayor Caldwell provided opening remarks, which included thanking attendees for taking time to attend the meeting and noting his personal commitment to IAL and his hopes that IAL will lead to more locally-grown food.

Following introductions of DPP staff and the planning team, Peter then reviewed the meeting agenda and the goal of the project to identify high-quality farmland for use by future generations. Scott Ezer, principal with HHF Planners, provided a 30-minute briefing that included an overview of the IAL mapping process and a summary of the criteria weighting methodology and the proposed highest-ranked criteria.

### OPEN QUESTIONS

The briefing was completed at about 7:15 PM, and was followed by an open question-and-answer session. The following summarizes the main points of the discussion.

- What will happen on properties that are designated IAL? Will these lands be used for farming? Although the intent of the IAL initiative is to encourage farming and to make farming viable, designation cannot guarantee that the land will be farmed. IAL is a State land use designation; it does not affect the permitted uses allowed by the State land use law or County zoning.
- Small landowners may find pursuing IAL designation through the county process to be simpler and less costly than petitioning the Land Use Commission (LUC) as an independent landowner.
- Does the IAL designation prevent re-zoning or prohibit future development? IAL does not protect land to be held in agriculture for perpetuity. It makes land more difficult to urbanize (because more votes are required for the LUC to re-designate/urbanize).
- Why is the Planning Commission not shown in the process to review and approve the IAL maps? The state-mandated process only requires review by the City Council. Planning Commission review is not specified.

*O'ahu IAL Mapping Project  
Community Meeting No. 1, Mililani Mauka | April 8, 2015  
Page 2 of 6*

- Will the County's zoning regulations be revised to encourage agricultural use of IAL? Will non-agricultural uses that are currently allowed on AG land such as churches and landfills be prohibited from IAL? DPP will be looking at the Land Use Ordinance (LUO) once the inventory of IAL is established. Because the State Agricultural district has been comprised of both high-quality AG lands and marginal lands that were not suitable for either the Urban or Conservation District, the IAL designation will define which areas will be primarily for agriculture. DPP anticipates changes to the land use rules at the State level, and would follow the direction of the LUC.
- What kind of outreach is being done to include small farmers in these discussions? It is extremely difficult to draw farmers into the process. Farmers are not willing to attend public meetings for a number of reasons, including the long hours worked, the language barrier when English is their second language, and that most small farmers do not own their land. In an ideal situation, outreach would include farm visits to engage farmers in the field. Following preparation of the draft IAL maps, DPP will be sending formal notice to landowners whose land is recommended for IAL. More small farmers may become involved in the process once the draft IAL maps are published.
- Will the property value of land with an IAL designation increase or decrease? IAL is a powerful policy statement about which lands should be considered for future development potential. Because the IAL designation does not affect State land use or County zoning or the permitted uses in those land use categories, land values should not change. However, because IAL-designated land will be more difficult to urbanize, these lands may not be as desired or highly-valued by potential developers. The IAL incentives may contribute to the affordability of owning and actively using AG land.
- Most of the land in Kāhala'u has been in the State Urban District since the 1960s when the City's plans called for major development in Kāhala'u. Although the City's policy for the second city was changed in the 1970s when growth was directed to Kapolei/Ewa, the land in Kāhala'u has not been taken out of the Urban District. Kāhala'u will remain in the Urban District until an effort is made to change it.
- The Department of Agriculture (DOA) and Department of Land and Natural Resources (DLNR) are responsible for designating IAL on State-owned land in the State AG District. The intent of the legislature was to have the State complete IAL mapping by 2010, then the individual counties would use the methodology provided by the State to complete the county mapping initiatives. Without adequate resources and staffing, the State has been unable to meet the mandate.
- What is the process to keep IAL in agricultural use, so that agricultural subdivisions on these lands do not become gentlemen estates? DPP is looking for a better enforcement model that provides for a higher level of scrutiny on IAL. The first step to developing that model is to know which lands need better regulations and enforcement.
- Community members concerned about protecting AG land want to know what kinds of controls will be in place to keep IAL as IAL, and to keep IAL actively used for agriculture.
- The transition from sugar and pineapple plantations to diversified AG has been slow. The potential for a prosperous AG industry is there, but developing the farmers with the entrepreneurial skills to farm independently is taking time. Programs that provide education and training to develop new farmers are in place and are helping to keep the AG industry alive, even though the process has been slow. Additional AG supports will follow once the industry

starts progressing. There is approximately 30,000 acres of usable AG land on O'ahu that is currently not being farmed. For the City, IAL is a necessary step towards ensuring that land is available for future farmers to farm.

- Is the Kunia Loa project included in the City's IAL designation process? Portions of it could be included, depending on how the criteria are used in the preparation of the draft IAL maps.
- Kamehameha Schools has taken a pro-active approach to position their Haleiwa lands to ensure that their lands are used for agriculture, which has included investing in planning and infrastructure improvements to support active agriculture.
- There are different interests wanting to protect agricultural land for aesthetic reasons: the Outdoor Circle promotes clean, green, beautiful spaces; the City protects scenic views; and the Trust for Public Land values open space. Consideration should be given to adding a new criteria that recognizes the aesthetic/open space value of agricultural land. This would be important for the visitor industry, since some agricultural activities can be industrial in nature (i.e., ugly) and not compatible with the visitor industry.

#### GROUP DISCUSSION

The original meeting agenda planned for small break out groups of between 10-15 people to encourage deeper conversations. Due to the small attendance and the relaxed atmosphere among meeting attendees, the discussion was conducted as one group. Peter facilitated the group discussion, and asked a series of questions. The following summarizes the main points of the discussion.

##### 1. What are your highest hopes once IALs have been designated?

- Land will be used to produce food for our families.
- Land will be retained for open space value. It will look "nice," not developed. There will be a balance between greenery and housing/urban sprawl.
- IAL will be an on-ramp for new farmers to get on the land and establish farms.
- Agriculture will be sustainable and ecologically balanced. IAL will serve as the basis for a sustainable AG industry.
- AG interests will have a stronger voice in the community.
- Farmers will be financially successful.
- Soils will be healthy, lands will be thriving. Organically-based farming—not poison-based or chemically-dependent practices—will be the norm.
- Hydroponics will use marginal lands and will have adequate water supply.
- The younger generation will become more involved in farming. (The average age of the current farmer is roughly 60 years old.)

##### 2. What challenges are uppermost in your mind?

- An economic structure that supports the industry needs to be in place.
- AG lands are being mis-used (e.g. gentlemen farms, non-agricultural uses like churches being allowed on AG land). Measures are needed to ensure that AG lands are used for AG.
- Definitions for mutually-supportive or potentially-compatible uses are lacking (e.g., sheep on solar farm)

- Need to address what will happen to marginal AG lands excluded from IAL.
- Need to address land use compatibility issues. What will happen on land adjacent to IAL parcels?
- If a property is not included in the draft IAL maps but is adjacent to a property that has been identified for IAL in the draft IAL maps, can that landowner ask DPP to add their property to the inventory of properties being considered for IAL?
- Developers have always found loopholes to use AG land for non-AG uses. Important that any loopholes in the law are closed law to ensure that the IAL process is not mis-used
- Politics involved in the designation process is a risk. Decision-making process needs to be structured to withstand political changes.

##### 3. Looking ahead 3 generations (75 years), what lands will be needed for different kinds of agriculture?

- Hope is that a variety of crops will be planted, and that permaculture will be widely practiced.
- Take a broad, inclusive approach to IAL and expand the acreage as much as possible to include even the marginal lands. Goal is to preserve as much land as possible so that we do not foreclose on any unknown or unrecognized future opportunities.
- Buffer zones will be needed to address incompatible adjacent uses (e.g. piggeries and small livestock farms located next to residential areas). Such uses can negatively affect agricultural productivity.
- The possibility of future droughts and water shortages are concerning. Land should be set aside for additional water reservoirs to accommodate possible water shortages.
- AG lands should be used for food crops. Other uses (such as wind or solar farms) should only be allowed if they are compatible/secondary to food crops. Solar farms are seen as a convenient revenue-generating source for landowners, but should be considered a temporary (20+year) use that does not preclude active AG.
- Agriculture will need to be economically feasible for landowners and farmers.
- Accommodate the popularity of rooftop and backyard farming, even if they are not directly related to IAL.
- Address the cost of providing water. Water costs can make agriculture economically unfeasible.
- Fearful that AG land not designated as IAL will be urbanized and no longer available for future agricultural use. Is it possible to add additional criteria to include all of the study area as IAL?
- The City's challenge is to balance the demand to develop land for housing with the need to preserve agricultural land.

#### DOT RANKING

Each attendee was given three colored ½-inch "dots" when they signed in. Attendees were asked to place the dots next to the individual criteria they felt were the most important for IAL mapping. According to the results of the dot ranking exercise, the top 3 priority criteria were: Criteria 5-- Sufficient Water (13 dots), Criteria 1—Current AG production (8 dots); and Criteria 2—Soil qualities and growing



conditions (7 dots). These results, which are presented as follows, coincide with the 3 highest ranked criteria as recommended by the Technical Advisory Committee.

#### Dot Ranking Results

CRITERIA	NUMBER OF DOTS
1. Current AG production	8
2. Soil qualities and growing conditions	7
3. Productivity rating systems	1
4. Traditional or unique crops	3
5. Sufficient water	13
6. Consistency with county policies	0
7. Critical land mass	3
8. Proximity to infrastructure	1
9. Agricultural easements	0

#### ADJOURNMENT

In closing, Peter thanked everyone for attending, reviewed the different ways to participate in the process (i.e., project website and on-line map viewer, project email address to send comments and questions), and asked attendees to complete a short questionnaire. The meeting was adjourned at about 8:10 PM.

#### WRITTEN COMMENTS

No written comments were received.

#### ATTENDANCE RECORD

1. Donald Bunnell, Hale'iwa
2. Nicky Davison, Mililani
3. Rebecca Gonzales, Waialua
4. Elson Gushiken, ITC Water Management
5. Darrell Hamamura, Kamehameha Schools
6. Robert Hiromasa, Mililani
7. Bob Leinau, Hale'iwa
8. Makena Mason, West O'ahu Soil and Water Conservation District
9. Wayne Ogasawara, Mililani AG Park LLC
10. Kathleen Pahinui, North Shore Neighborhood Board No. 27
11. Stephen Rafferty, Trust for Public Land
12. Edith Ramiscal, Waialua Farmers' Co-op
13. Cynthia Rezentes, Nānākuli-Mā'ili No. 36 Neighborhood Board
14. Alice Rogers, Mililani
15. Tim Tybuszewski, North Shore Community Land Trust
16. Jensen Uyeda, UH-CTAHR Agricultural Extension
17. Cruz Vina , Pearl City Neighborhood Board No. 21
18. Steve Wendel, IPC

Mayor Kirk Caldwell  
Ray Soon, Chief of Staff  
Dr. Po Lai Yung, City's Agricultural Liaison  
George Atta, DPP Director  
Tim Hata, DPP Planner  
Curtis Lum, DPP Public Information Officer  
Kathy Sokugawa, DPP Planning Division Head  
Tara DePonte, HHF Planners  
Scott Ezer, HHF Planners  
Erin Higa, HHF Planners  
Rob James, HHF Planners  
Corlyn Orr, HHF Planners  
Joe Tamburello, HHF Planners  
Peter Adler, ACCORD3.0 Network  
Bruce Plasch, Plasch Econ Pacific



## MEETING SUMMARY

**Date:** April 15, 2015

**Time:** 5:30-8:30 PM

**Location:** Windward Community College  
Hale Akoakoa, Rooms 102-105

**Project Name:** O'ahu IAL Mapping Project

**Recorded by:** Corlyn Orr

*Reviewed by DPP: May 7, 2015*

**Attendees:** see attendance record

**Subject:** Community Meeting

The second of three community meetings for the City's Important Agricultural Lands (IAL) Mapping Project was held at Windward Community College on April 15, 2015. This was the second meeting in a series of three (the first was held on April 8, 2015 at Mililani Mauka Middle School Cafeteria and the third is scheduled for April 29, 2015 at Kapolei Hale). The meeting was scheduled from 5:30—8:30 PM, with an open house from 5:30—6:30 and a formal presentation and discussion session from 6:30—8:30. The meeting purpose was to present an overview of the project, answer questions and gather public input.

### WELCOME, INTRODUCTIONS, AND PROJECT BRIEFING

Peter Adler, meeting facilitator, called the meeting to order sharply at 6:30 PM. Art Challacombe, Department of Planning and Permitting (DPP) Deputy Director welcomed everyone and offered opening remarks, which included thanking attendees for taking time to attend the meeting, his personal affinity for on-going agricultural restoration efforts in He'eia, and a general statement about the importance of IAL. Following introductions of DPP staff and the planning team, Peter then reviewed the meeting agenda and the project goal to identify high-quality farmland for use by future generations. Scott Ezer, principal with HHF Planners, provided a 30-minute briefing that included an overview of the IAL mapping process and a summary of the criteria weighting methodology and the proposed highest-ranked criteria.

### OPEN QUESTIONS

The briefing was completed at about 7:15 PM, and was followed by an open question-and-answer session facilitated by Peter. The scheduled agenda called for the second half of the meeting to be allotted to small group discussions (breakout sessions). Due to the volume of people wanting to ask questions, the majority of attendees indicated their preference to forego the small group discussion and instead use the time to continue the question-and-answer session. The following summarizes the main points of the discussion.

- The "51-49 rule" provides landowners who designate more than 50 percent of their landholdings island-wide (excluding lands in the State Conservation District) an exemption from the county IAL-designation process. The rule was intended to be an incentive for landowners to pursue IAL on their own, in advance of the county-designation process. For clarification, a landowner who voluntarily designates more than 50 percent of their landholdings as IAL could theoretically seek to urbanize the remaining 49 percent not designated IAL. The proposed Mālaekahana development is currently outside the City's Urban Growth Boundary, in which case Hawaii Reserves, Inc. (HRI) would have to get approvals for a number of different land use entitlements before being able to develop their lands. The first step would be move the Urban Growth Boundary so the project area is inside the UGB. If the project area remains outside the UGB, the existing agricultural designations would continue and no further land use permits could be

*O'ahu IAL Mapping Project  
Community Meeting 1, Windward Community College | April 15, 2015  
Page 2 of 8*

pursued. If the project area is inside the UGB, the next step would be to petition the State Land Use Commission to change the land use designation from Agricultural to Urban, followed by a zone change at the county level.

- The "85/15 rule" is a process in the State law that allows a landowner to urbanize some land that would be included in the same petition submitted to designate lands for IAL. Following the 85/15 rule, a landowner with 100 acres of land could designate 85 acres (85 percent) for IAL, and the remaining 15 acres (15 percent) could be simultaneously reclassified from the State Agricultural District to Urban, provided the land was consistent with the county general plan and the sustainable communities plan (SCP) or development plan (DP) on O'ahu.
- Only land in the State Agricultural District is eligible for IAL. Most of Kāhala'u is being used for agriculture, but has been in the State Urban District since the 1960s when the City's policy called for developing Kāhala'u as the second city. Although the City's policy has changed and Kapolei/Ewa is now the second city, Kāhala'u remains designated for urban use. Petitioning the LUC is the only way to change the designation.
- There is no process for an individual or community group to petition the LUC for IAL designation on a parcel of land they do not own. The county-initiated process is how the community provides input about which lands they think should be considered for IAL.
- Since the 1977 General Plan, growth has been directed to Kapolei/Ewa, Central O'ahu, and the Primary Urban Center. Because the General Plan does not include maps that specify where urbanization should occur, the maps and growth boundaries in the sustainable communities plans (SCPs) and development plans (DPs) are being used to define the extent of O'ahu's urbanized areas. This project is consistent with the General Plan and the subsequent plans; land identified in the SCPs/DPs for urban use (i.e., land inside the Urban Growth Boundary) is not being considered in the IAL mapping. The project scope is limited to considering the criteria and standards established by the legislature; any discussion about the growth boundary relative to Mālaekahana is unrelated to this project.
- HRI will be destroying heiau and taking kuleana lands to access the proposed Mālaekahana development. The traditional practices and rights of Native Hawaiians are being threatened and violated. How is the IAL process protecting konohiki and kuleana lands? What is being done to help ensure the rights of Native Hawaiians, including konohiki and kuleana landowners, are protected? The IAL designation is focused on which lands to be secured for future agriculture, and is an additional layer of protection for AG uses. IAL will not take away land from a landowner, change the use of the land, or change a landowner's right to use their land. The state/county land use system treats kuleana lands like all other lands on the island, and these lands are not exempt from state land use classification or county zoning. Kuleana lands would be included in the IAL study area if they are in the State AG District.
- A landowner that identifies 51 percent of his property as IAL and wants to develop the non-IAL portion would still need to go through the permitting process before being able to develop. The 51-49 rule does not automatically give development rights for the non-IAL portion. Any development on the portion not designated IAL would need to be consistent with State and County land use plans, including: (1) approval from the LUC to change the State land use designation from the Agricultural District to the Urban District; (2) consistency with the General Plan; (3) designated for urban use in the County SCPs/DPs; and (4) zone change approval for urban use.

- There are two ways to change the Urban Growth Boundary in the SCPs/DPs: the first is during the City's five-year review process, and the second is for a landowner to submit an individual application. The City Council has the power to change/adopt the General Plan, the SCPs/DPs and zoning changes. Both the Ko'olau Loa SCP and Ko'olau Poko SCP five-year reviews are currently underway. To clarify, Ko'olau Loa SCP Revised Plan passed out of City Council Zoning and Planning Committee, and is waiting full hearing by the City Council (pending the General Plan Update). There are no growth boundaries in the General Plan, only growth policies. The growth boundaries are established in the SCPs/DPs.
- DPP is in the process of updating the General Plan. There is no growth policy under consideration in the General Plan Update that would create a loop hole for affordable housing. However, there is a standing state law that allows affordable housing projects approved by City Council to bypass the SCPs/DPs and zoning reviews in the name of affordable housing.
- DPP is aware of the landowner in Mālaekahana that is bulldozing wetlands. DPP has met with the U.S. Army Corps of Engineers to address the situation. The landowner was cited and told to remediate and restore the wetland, pending the threat of fines. This is a violation of Federal law.
- The reference to "75 years" in our discussion about the land agriculture will need in the future is for discussion purposes only. Although the standard is to plan and care for the land thinking about seven generations out, the 75-year horizon is being used because it is easier to visualize the future in the context of three generations.
- This is the only meeting scheduled for Windward O'ahu. It was suggested that Ko'olau Loa and Ko'olau Poko have separate meetings; there should be another meeting held just for Ko'olau Loa.
- The selection of TAC members seems to be biased towards individuals who require high soil quality, which may have influenced the outcome of the highest ranked criteria (e.g., soil quality was selected by the TAC as one of the important criteria). Soil quality is immaterial for hydroponics/aquaponics and aquaculture. These industries require a different set of criteria than traditional agriculture. For example, solar radiation is one of the important criteria for hydroponics, but the areas being considered by this process are in the less sunny areas of the island. Likewise, brackish water and sea water, which are useful for aquaculture, are not addressed by the criteria and have not been mapped.
- The TAC members were selected in consultation with DPP and the City's AG liaison. Criteria were not pre-determined, other than involvement in the AG industry, being a farmer or a landowner of AG land. Several of the organizations represented on the TAC were specified in the state law.
- Land designated for urban use by the State or County—such as the Ho'opili project which is within the City's UGB—cannot be considered for IAL. This is clearly stated in the state law. Although the City Council passed Resolution 12-23 to include agriculturally productive lands within urban growth boundaries, considering Ho'opili for IAL would be in violation of state law.
- Conscious effort was made to include representatives of different types of farming activities on both the TAC and focus groups. The TAC included both small and large farmers, taro farmers, nurseries, ranchers and landowners. Organic farmers were included in the focus group meetings.
- The process to incorporate lands designated as IAL and the other, non-designated agricultural lands into the General Plan and SCPs/DPs will follow after the county's IAL identification process is completed. The IAL inventory needs to be approved before DPP can consider revisions to the City's plans (i.e., the General Plan, SCPs/DPs) and policies (i.e., zoning, permit regulations). DPP

originally wanted to include the IAL designation process in the SCP/DP five-year reviews. Funding constraints, the level of detail required to apply the IAL standards and criteria, and a lack of community interest led to IAL being implemented separately from the SCP/DP revisions. DPP is not fast-tracking the IAL process to accommodate the SCP/DP revision schedules.

- There are a number of systemic flaws with the process: (1) the selection of individuals and organizations involved in discussions about the criteria (different organizations would have chosen different information to come with different outcomes); (2) kuleana lands and Native Hawaiian issues are not addressed; and (3) DPP is taking a disjointed approach to revising the General Plan, SCPs/DPs and IAL. There is no integration in the planning, and the community is unsure about how to give input into the different processes and also unsure about how decision-makers are using the community's input.
- During the time that passed between the 1978 Constitutional Convention and this current effort, a lot of the valuable agricultural lands on O'ahu has been developed. In excluding Ho'opili from consideration, DPP is cherry-picking and operating just to move the process along. There is no recognition in the process about what is needed for the community to be sustainable or the importance of agricultural productivity. DPP should be more pro-active in its recommendation to the City Council, and acknowledge the value of Ho'opili (e.g., lands are actively farmed, has good soil and solar conditions).
- The county is mandated with two responsibilities for IAL: mapping and developing incentives for farming. DPP will start on the incentives when resources are made available for such an effort.
- Planning for agriculture in Punalu'u with Kamehameha Schools was done with a number of different agencies and interests, including USGS, USACE, Board of Water Supply and Native Hawaiian farmers. The health of the underlying aquifer and the effects of chemicals and pesticides on the health of the land were primary objectives for the plan. Recommendations included opening up 'auwai, protecting the aquifer, and protecting submerged lands. Native Hawaiian traditions and practices, water quality and protection for submerged lands should be considered in the process to identify IAL. Cultural practitioners, as well as kuleana and konohiki landowners, should also be consulted and included in the IAL process.
- There are no AG-1 and AG-2 zoning designations that come out of this process. This project will not change zoning or allow for development; all this project will do is specify which lands should be set aside for agriculture and protected from urban development. Not being designated IAL does not mean that the land will be developed.
- Issue is that all AG land is important.
- If IAL does not get identified, the status quo will continue, and there will be no resolution for management of the State AG district. Without IAL, there will be no differentiating between good and poor AG land in the State AG district, and all lands will continue to be treated the same. In addition, there will be no state or county incentives for farming.
- The social expectation is that IALs will be used for food crops, not energy-producing crops (e.g., wind farms, solar farms). However, the law is silent on what kind of crops are grown and the type of agriculture the land is used for. While the intent of IAL is farming, there are no regulatory mechanisms to require that the land is used for food crops. This process is limited to specifying which lands need to be set aside. Changes to the state land use law and county zoning ordinance would be necessary to differentiate between energy-generating crops and non-food consumption AG.

- This process is flawed, and needs better integration with the county's other plans. More time is needed to develop a plan that can be supported by the community.
- The IAL designation provides an additional layer of protection for AG land because a super majority vote of the LUC is required to take IALs out of the State AG Land Use District.
- The effort to restore lo'i in He'eia is expanding agriculture from mauka to makai, and is utilizing the estuary. A new criteria should be added to recognize the estuary, if used to support agriculture. (Note: taro production is one of the criteria).
- A private landowner who does not want their property to be designated as IAL by the City's process would have to present their case to DPP and/or the City Council.
- The questions from the breakout sessions will be posted on the project website. Meeting attendees were encouraged to review the website and submit written comments via the project email address.

#### DOT RANKING

Each attendee was given three colored ½-inch "dots" when they signed in. Attendees were asked to place the dots next to the individual criteria they felt were the most important for IAL mapping. According to the results of the dot ranking exercise, two criteria that were written in by meeting attendees received more than half of all the dots:

- Hawaiian—Kuleana lands. All land important AG land (26 dots)
- All lands are important (13 dots)

Of the nine criteria that were reviewed by the project's technical advisory committee (TAC), the 3 criteria that received the most dots were: Criteria 1—Current AG production (15 dots); Criteria 5-- Sufficient Water (6 dots); and Criteria 2—Soil qualities and growing conditions (5 dots). These results, which are presented as follows, coincide with the 3 highest ranked criteria as recommended by the TAC.

#### Dot Ranking Results

CRITERIA	DOTS
1. Current AG production	15
2. Soil qualities and growing conditions	5
3. Productivity rating systems	2
4. Traditional or unique crops	1
5. Sufficient water	6
6. Consistency with county policies	1
7. Critical land mass	0
8. Proximity to infrastructure	0
9. Agricultural easements	0
10. Hawaiian—Kuleana lands. All land important AG land	26
11. All AG lands are important	13

#### ADJOURNMENT

In closing, Peter thanked everyone for attending, reviewed the different ways to participate in the process (i.e., project website and on-line map viewer, project email address to send comments and questions), and asked attendees to complete a short questionnaire. The meeting was adjourned at 8:30 PM.

#### WRITTEN COMMENTS

Written comments that were submitted during the meeting are documented below.

1. The City process ignores the laws established in 1978, 2005 and 2008. The slow process ignores AG land and production. Address the accuracies of timeline and criteria. IAL must take into account the historic process and uses.
2. The information is too ambiguous and extensive to appeal to the average person. The impact to this process eliminates average individuals to understand the impact social, cultural, political, economic. This process appears to be fair and informative, which it is not.
3. Land that meets any of the top criteria should be included. Access to infrastructure should be mapped/qualified somehow; lands without any could, while important, be far less likely to be brought into production. Some clearer discussion and diagrams of the planning layers across the state and what this discussion is about could help bound the range of discussion and keep things on track and in focus.
4. Hawaiian kuleana lands. All AG land is important. Coast=limu=Hawaiian icebox.
5. All AG lands are important. We all need more food as this island gets more populated, not less. We are boxing ourselves through "semantic interpretation" of "important" AG lands. We have problems with the list of technical group, especially LURF and lots of agriculture groups.
6. What is the real purpose and intent of IAL? Who benefits? State, corporations, US mainland developers—all except the citizens or general population. Why should landowners, farmers, kuleana landowners adopt IAL? How do they benefit long-term? Why this designation and who made up these laws? What and how do they benefit?
7. While I understand the law discludes all lands within the urban use boundary, I HIGHLY recommend that in the reports it be noted that lands within the urban use boundary should be eligible for consideration. For one, promoting agriculture within the urban area is important because it places the products in immediate proximity to consumers; this aids farmers by reducing transportation costs in the face of rising energy costs. Furthermore, AG within the urban area creates a feasibility for part-time farmers to exist, as they can live and work close together. From a farm-labor standpoint, this would hopefully foster an environment where more people can be involved in the production of their food, whether they are full-time, part-time or volunteers.



**Attendance Record**

1. Andrea Anixt, Ka'a'awa
2. Joseph Blanco, Honolulu
3. Jean Carroll, Kailua
4. Carleton Ching, Castle & Cooke
5. K.C. Connors, Ko'olau Loa
6. Robert Kealoha Domingo, Ka'a'awa Community Association
7. Ruby Edwards, Office of Planning
8. Kent Fonoimoana, Kahuku
9. Ken Furukawa, Hau'ula
10. Burt Greene, Hau'ula Community Association
11. Nama Hara, Kāne'ohe
12. Hunter Heavilin, APCRD
13. Didi Herron, Kahuku
14. Suzi Horan, Kāne'ohe
15. Choon James, Lā'ie
16. Rocky Kaluhiwa, Ko'olaupoko Hawaiian Civic Club
17. Jerry Kaluhiwa, Kako'o OIwi, Ko'olaupoko Hawaiian Civic Club
18. Sydney Keliipuleole, Kamehameha Schools
19. Dotty Kelly-Paddock, Hau'ula
20. Donna Kohls, Kāne'ohe
21. Crystal Kua, SunEdison
22. Ron Kubo, Kāne'ohe
23. Russell Lake, Kāne'ohe
24. C.N. Lee, UH-CTAHR
25. Diane Ley, USDA Farm Service Agency
26. Jenn Linton
27. Pauline MacNeil, Kailua
28. Ieti Maushau, Lā'ie
29. Fred Mencher, Mokulē'ia
30. Clifford Migita, Waimānalo
31. John Morgan, Kualoa Ranch
32. David Mulinix, Wai'anae Coast Comprehensive Health Center
33. Joshua Noga, Hau'ula
34. Liz Nelson, Kāne'ohe
35. Yvonne Nelson, Kāne'ohe
36. Flora Obayashi, Kahalu'u
37. Paula Ogami, Kāne'ohe
38. Christian Palmer, Windward Community College
39. Sherry Pollack
40. Bill Quinlan, Hale'iwa
41. Stephen Rafferty, Trust for Public Land
42. Nick Reppun, Kako'o OIwi
43. Brew Rudd, Hau'ula
44. Dan Taram, Friends of Mālaekahana

45. Siosifa Tiueti, TriFormYard Service
46. Dawn Wassson, Lā'ie
47. Harry Wassson, Lā'ie
48. Joe Wilson, Hale'iwa
49. Donna Wong, Hawai'i's Thousand Friends
50. Jane Yamashiro, Honolulu

Art Challacombe, DPP Deputy Director  
Tim Hata, DPP  
Kathy Sokugawa, DPP Planning Division Head  
Tina Bushnell, HHF Planners  
Tara DePonte, HHF Planners  
Scott Ezer, HHF Planners  
Rob James, HHF Planners  
Corlyn Orr, HHF Planners  
Joe Tamburello, HHF Planners  
Peter Adler, ACCORD3.0 Network  
Kem Lowry, ACCORD3.0 Network  
Bruce Plasch, Plasch Econ Pacific



## MEETING SUMMARY

**Date:** April 29, 2015

**Time:** 5:30-8:30 PM

**Location:** Kapolei Hale Conference Rooms A-C

**Project Name:** O'ahu IAL Mapping Project

**Recorded by:** Corlyn Orr

*Reviewed by DPP: May 29, 2015*

**Attendees:** see attendance record

**Subject:** Community Meeting

The third community meeting for the City's Important Agricultural Lands (IAL) Mapping Project was held at Kapolei Hale on April 29, 2015. This was the third and final meeting in a series of three (the first meeting was held on April 8<sup>th</sup> at Mililani Mauka Middle School Cafeteria; the second was held on April 15<sup>th</sup> at Windward Community College). The meeting purpose was to present an overview of the project, answer questions and gather public input.

Like the other two meetings, the Kapolei meeting was scheduled from 5:30—8:30 PM, with an open house from 5:30—6:30 and a formal presentation and discussion session from 6:30—8:30. Before the start of the meeting, a group organized outside Kapolei Hale on Ulu'ohia Street to demonstrate their opposition to the Ho'opili development proposal and the resulting loss of agricultural land. Since a number of individuals had received inaccurate information that Ho'opili would be on the meeting agenda, members of the planning team began explaining during informal conversations before and during the open house session that Ho'opili was not included in the study area because it was outside the State Agricultural District and that the meeting to discuss Ho'opili would be before the City Council Planning and Zoning Committee the following morning.

### WELCOME, INTRODUCTIONS, AND OPEN COMMENTS

Peter Adler, meeting facilitator, called the meeting to order sharply at 6:30 PM. He asked the group to indicate by a show of hands who came to talk only about the Ho'opili proposal and who came to talk about all of O'ahu's agricultural lands. Of the 40 people in attendance at the time the question was asked, the majority of attendees indicated they were there because of Ho'opili.

George Atta, Department of Planning and Permitting (DPP) Director, then welcomed everyone and offered opening remarks, which included thanking attendees for taking time to attend the meeting, stating his personal commitment to completing the IAL mapping, and noting the importance of the IAL designation to the overall structure of land use policy and agriculture on O'ahu.

Following introductions of DPP staff and the planning team, Peter reviewed the house rules and opened the floor for comments about Ho'opili. Roughly 30 minutes were allotted for comments, in place of the formal presentation that was originally scheduled for the first part of the meeting. The following summarizes the main points of the speakers' comments. Although summarized, the record reflects as accurately as possible the comments expressed during the meeting.

- DPP's argument that this process cannot include lands designated for urban use (such as the Ho'opili project area) is incorrect. Ho'opili is the best AG land in the state (e.g., has the most sunshine, good growing conditions) and should be designated IAL. Resolution 12-23, passed by the City Council in 2012, directs DPP to consider lands within the urban growth boundary (UGB) that are classified as prime agricultural lands for IAL designation, provided that water is available. This policy established by the City Council overrides the State law.

*O'ahu IAL Mapping Project  
Community Meeting 1, Kapolei Hale | April 29, 2015  
Page 2 of 10*

- The red ilima, which was once considered to be extinct, came back to life on the land being planned for Ho'opili. Protecting the Ho'opili project area from urban development preserves land for native species and wildlife, which runs far deeper than preserving agricultural land. The draft criteria maps do not take into account providing potential habitat for endangered species.
- Anywhere there is land available to grow food needs to be used to grow food because the island needs to be sustainable. The pre-fab sprawl needs to be stopped because every town looks the same. Development needs to get creative, and include art.
- Kanahili Cultural Hui is organized to research the history and culture of 'Ewa, and has written testimony in opposition to Ho'opili. Based on personal research with attorneys and state employees, the IAL process violates the State Constitution. The county's interest in completing the IAL mapping is to "check the box" so rail construction and the Ho'opili project can be expedited. The county should follow the process in the law: map the Ho'opili project area as IAL, and then have the developer petition the LUC to remove the IAL designation. Laura Thielen, the City's former AG liaison, said mapping would be easy since both ALISH and LSB maps show the Ho'opili project area as prime agricultural lands. The county's actions are unconstitutional, and need to be stopped in court like Sierra Club challenged the Koa Ridge project. IAL is a political process, not a scientific legal process like it is being presented.
- Besides the State Constitution and county's resolution, the process should recognize the right thing to do based on soil conditions, food security, health. There is a nation of people who are still here and have never been conquered. Listen to those people before you decide what to do.
- We talk about land being sacred. The aina feeds us. There was a time when food didn't have to be brought in from somewhere else. The more houses built, the less land there is for food.
- My goal for my life is to feed everyone. How am I supposed to do that when I can't even feed the people on the beaches or my family? We need this land.
- It seems that Ho'opili has been purposefully taken out of the inventory. DPP's job is to map IAL so the City Council has information to make good decisions. DPP needs to tell the City Council that Ho'opili land is good AG land. If the City Council knew that the land was good quality AG land, they may decide against developing Ho'opili.

RESPONSE: DPP has told the City Council that Ho'opili occupies good AG land. The quality of the land is not in question. There are other reasons for supporting Ho'opili.

- Thank you for taking action. People have come to this meeting because the process has taken too long. Designating IAL was added to the Constitution in the 1970s because development was rampant, and the Hawaiian voice came forward to preserve what was there. Waikiki was built on AG land; Kapahulu and Waikiki were lo'i before. IAL was supposed to be designated before anything was zoned for urban use. We wouldn't have this conflict now if urban development was planned around IAL.

DPP has to take care of this issue and complete the mapping before moving forward with new development like Ho'opili. If DPP acknowledges that Ho'opili should be mapped IAL and follows through with the constitutional mandate, everyone could move forward and support this project.

- The bottom line is to stop development and feed the people. My people have been here a long time; we need what we grow and we have to take care of our people. If we keep building, there won't be land for growing, we won't have food, we will die. Too much planning doesn't make sense. Grow food, not houses. Grow houses in Waikiki or grow upward. We want to stay here for the rest of our life, my children after me want to be here.

- Everything we say is falling on deaf ears. Decisions have already been made about Ho'opili. Our political leaders are putting profits ahead of the people they represent. Our political system is no longer the will of the people, but the will of the corporation where the bottom line is everything and people don't matter. The land under Ho'opili is sacred because this is the only land that turns four crops a year. Greedy corporations are going to destroy land that took thousands of years to create and give our kids a future that we don't want. We import too much of our food. Tell the powers to stop, back up, rethink, and give us back our land.
- The land they are considering paving over for housing is a gift of nature. We can't get prime agricultural land back once homes are built. A UH professor who specializes in soil quality said that the Ho'opili land is the best in the nation. Corporations will pay top dollar for the land because it has good sunshine, good quality water, and can grow four crops a year, unlike the mainland. Our politicians are going to throw it away for housing that local people cannot afford. O'ahu already has the worst traffic in the county; new houses will just make the traffic worse.
- We're importing food, and importing people and building houses to import those people. The problem is that the people being imported are not supporting local people. Redesignating this land for Ho'opili and paving it over only adds to our existing problems. We're not trying to add to the problem, we're trying to solve the problem. Who is going to listen to our opinions? It's up to us to inform other people and find a representative who is willing to listen and support us.
- By a show of hands, there are about 20 farmers in attendance.
- The majority of society's health problems stems from people's connection with food. My work at an organic farm is to affect change and help people live healthier, longer lives. Everyone needs to get their hands in the dirt and feel the land, which can't happen without land.
- The hypocrisy is that the project purpose is to identify high-quality farm land, yet prime agricultural land in central O'ahu is being left out. DPP will report that the process included community consultations, but the recommendations will not reflect people's opinion. Ho'opili would be included and mapped as IAL if the people's opinion mattered. City Council members need to hear the people's opinion to change Ho'opili.
- This former councilmember would be a direct witness in a lawsuit. The City Council adopted Resolution 12-23 by a unanimous vote based on agreement from DPP's then-director to map the land and agreement from Laura Thielen, the City's AG liaison at the time, that mapping could be done within one year. In 2011, the DPP director also indicated that the O'ahu General Plan would be completed within a year. Video recordings confirm these statements. The difference between the previous and current administrations is problematic.

#### PROJECT BRIEFING AND OPEN QUESTIONS

Peter summarized the project goals: to develop an island-wide inventory of agricultural resources to be preserved for future agriculture and to develop criteria to be used in the mapping process. Peter also reviewed the meeting agenda for the remainder of the meeting, which included a project briefing followed by a question-and-answer session. Meeting attendees were encouraged to stay and learn about the project and participate in the discussion about the island-wide inventory and the criteria.

At 7:20 PM, Scott Ezer, principal with HHF Planners, conducted the briefing. The presentation included an overview of the IAL mapping process, a summary of the criteria weighting methodology and a review of the highest-ranked criteria. The briefing was completed at about 7:45 PM, and was followed by a question-and-answer session facilitated by Peter. The following summarizes the main points of the discussion, and reflects as accurately as possible the speakers' comments as stated during the meeting.

- Ho'opili is part of Honouliuli, which has historically produced food and was one of the biggest lo'i on this side of the island. Historically, Kualoa and Honouliuli were the two places on O'ahu that were sought after and fought over because they were important areas for food production. If the purpose is to identify high-quality farm land like Ho'opili, it should logically be mapped. From an islandwide perspective, Ho'opili is the only land in danger of development and should be first to be mapped IAL. Other agricultural lands on O'ahu are not endangered. Why avoid it?

RESPONSE: The process to map IAL is driven by a legal mandate that does not allow for mapping lands already designated for urban use. Unfortunately, decision making about Ho'opili is beyond the scope of this project. The final report can only document the community's sentiments about where the high-quality farm land is located.

- This project has been done well. DPP has been thorough; all the pieces make sense. If everyone agrees that Ho'opili is high-quality farmland, why isn't anyone willing to stand up and map it?

RESPONSE: This is due to a basic difference in how people are interpreting the law. For DPP, the law says that land designated for urban use cannot be mapped. Legal policies at both the state and county level which already designate the land for urban use (i.e., State Land Use Districts and county Development Plans/Sustainable Communities Plans) need to be changed for this area to be included.

- Who is responsible for the decision to urbanize Ho'opili? Who does this group need to see to stop Ho'opili and have it included in the IAL mapping?

RESPONSE: The City's policies for how development has occurred on O'ahu date back to 1977 when the City Council adopted the General Plan (GP). In the 1960s, the GP identified Kahalu'u as the area to be urbanized first. In 1977, the City Council approved the policy to direct growth to 'Ewa and Central O'ahu. By the early 1980s, the first development plans were adopted, with Kapolei, 'Ewa and Central O'ahu identified for future urban use. The City Council continues to follow these policies when deciding what areas should be urbanized and granted zone changes. To be able to include Ho'opili in the IAL mapping process, approvals from both the State Land Use Commission and City Council to change the land use classification/zoning would be necessary.

- What is the basis for the urban growth boundary (UGB)?

RESPONSE: The UGB is established by the 'Ewa Development Plan, which was adopted in 1997. Changing the UGB requires community action to push for City Council approval.

- The Development Plans are supposed to be updated every five years. The 'Ewa Development Plan should have been reviewed every five years, and the UGB should have been moved to adjust for conditions at the time. How does excluding Ho'opili meet the stated project objective to "frame the long-term vision of high quality farmland that will be protected from future development and used for productive agriculture?"

RESPONSE: The eligibility requirements for IAL do not allow for including Ho'opili in this process. The stated project objective takes a broader, islandwide perspective and applies to areas that meet the eligibility requirements (i.e., within the State Agricultural District).

- All AG land should be looked at as part of the broader picture. Ho'opili is part of the larger broader picture. The City is trying to divert the public's attention away from the big picture by not addressing Ho'opili. We import most of our food, and what is grown is primarily for export (e.g., mac nuts and coffee). We should be tearing down developments to add more AG land.

- People making decisions about whether these lands are worth giving up don't have farming experience. How are the decision makers qualified to make good decisions?
- We implore you—the City's consultant—to recommend that this process include Ho'opili. This would avoid a future lawsuit and save the City a lot of money, as well as be extremely effective to raise food and help fulfill the stated project objective.

Peter then asked the group to respond to a question: What is the additional data or information that needs to come forward because the City finalizes its plan?

- When Aloun Farms relocated to 'Ewa, they had to experiment with different crops to find out which crops grew well and which didn't. Different plants need different conditions to grow well. Solar radiation (weather) and weather's effect on the types of crops that can be grown should be added as a criteria. As drafted, the current set of criteria maps do not take into account the growing conditions that are currently found among the warm, sunny areas with low-lying farmland along the 'Ewa plain. Growing conditions in Waimānalo, North Shore and the central slopes are different from 'Ewa. This is the only hot weather area to grow crops.
- The inference of designating certain land as IAL is that the other lands are not important and are vulnerable to future development.
- One of my childhood memories is of my father taking us to the cane fields and visiting the gardens cared for by the plantation workers. It was the best-tasting fruits and vegetables. Farmers should be farming that land because its good land.
- How can the City Council, the mayor and agricultural liaison be wrong about the legality of mapping IAL within the UGB? Is there a legal opinion that determined mapping IAL inside the UGB is unconstitutional? How can you assert it's against the law without a judicial order?
- There are other items that need to be included: cultural significance, spiritual value, and historical use of land (prior to its 20<sup>th</sup> century use for AG). The impact of this report on the future also needs to be considered because if this report does not look at Ho'opili, it does not matter. Make this project worth the time.
- What is the definition of "productive agriculture?" What types of crops are included? Does it include seed crops that are exported and grown using farming methods that pollute the water supply and soil? Does it address self-sufficiency and sustainable agriculture? National chemical corporations sat on the technical advisory committee, and are guiding this process.

RESPONSE: This process is looking at the physical conditions of the land and the qualifications of the land when the criteria are applied, not the types of crops being grown on the land. The goal for the IAL designation is to ensure that land is available for farming so farmers have land to farm. The law is not meant to control how the land is used or what farmers choose to grow.

- Land currently in production is one of the draft criteria. There are lands that are being held/banked (not currently in agriculture) that should be in production and used for diversified crops; these lands also need to be included in the mapping.

RESPONSE: We are asking for input on how the criteria should be applied. There are two approaches: apply the criteria strictly (e.g., land has to meet all of the priority criteria to be IAL) or take a broad approach with the criteria to designate as much land as possible.

- Who were the farmers on the technical advisory committee? Where are their farms? What is their relation to the areas being recommended for IAL designation?

RESPONSE: The "farmer" category included producers who used the land to grow. Small and large farmers were involved, including seed corn producers. It was not possible to have every farmer on the committee. (Note: The advisory committee roster is presented in the April 2014 Phase I Report posted on the project website).

- GMO fields are not agriculture. They are food-like substances that use registered pesticides. Soil contamination (resulting from pesticide use) should be added as a criteria. The goal should be locally-grown food. If farmers who served on the advisory committee use pesticides, their perspective is very narrow and different from what we want. We support a different form of agriculture: a future with healthy people and healthy land, organic food, no spraying. We want agriculture to grow food on live soil using water from healthy watersheds. Information about organic farming and the systemic changes needed to promote organic farming is missing from the study. Korea is a model for organic farming. The current approach is not holistic.
- The meeting coordinators are contracted by the City for a specific job. They have no authority to include Ho'opili and other urban lands in the mapping. The City Council has decision-making power to move the UGB and map Ho'opili as IAL. Meeting attendees need to organize and carry the momentum forward to the City Council. An upsurge of people can make a difference.
- By a show of hands, none of the meeting attendees support the mapping process as proposed. About three-fourths would support the process if Ho'opili were eligible for mapping as IAL.
- All properties zoned AG-1 should be designated IAL so land cannot be rezoned for churches or other non-farm activities. (County zoning is not currently a criteria.)
- All land in the State AG District should be included as IAL. Developers should be required to prove the land is not important instead of designating certain lands as important at the front end. All agricultural land should be included, regardless of the location of the UGB.
- This process is flawed because it clearly excludes some good AG land. Regardless of the flaws, delaying the entire process because of a single parcel is harmful for the future of the remaining AG land across the island. In weighing the consequences, it would be more productive to focus on enriching the process and expanding the inventory to include as much good, productive land as possible (i.e., focus the fight on things that can be controlled; do not throw this process out and end up with nothing protected). The best thing to do is to go to the source—the City Council or the legislature—to change the process. AG land in Wai'anae is being threatened. There are less farms in Wai'anae, and what remains needs to be protected from future urbanization.

#### DOT RANKING

Each attendee was given three colored ½-inch "dots" when they signed in. Attendees were asked to place the dots next to the individual criteria they felt were the most important for IAL mapping. According to the results of the dot ranking exercise, the one criteria that was written in by meeting attendees received almost 95% of the dots: Regenerative agriculture/organic (47 dots). The only other criteria that received dots was: Criteria 1—Current AG production (3 dots). The results of the dot voting are presented in the following table.



#### Dot Ranking Results

CRITERIA	DOTS
1. Current AG production	3
2. Soil qualities and growing conditions	0
3. Productivity rating systems	0
4. Traditional or unique crops	0
5. Sufficient water	0
6. Consistency with county policies	0
7. Critical land mass	0
8. Proximity to infrastructure	0
9. Agricultural easements	0
10. Regenerative agriculture (organic)	47

#### COMMENT STATION

Meeting attendees were encouraged to write their written comments on post-it notes and place them on a display board. Written comments are documented as follows.

- Buy local
- Less people, more food
- Import less
- Keep AG land AG land
- Keep the AG land in AG. DUH!
- Eat fresh local
- By giving them a chance to bring back the ahupua'a system in this present day!
- Grow food not houses
- Visit yo' farmers
- Befriend a farmer
- Politicians, stop taking bribes!
- Shop at farmer's markets
- Don't shop for can food!
- Be intentional with what you eat. Food = Medicine
- Grow
- Go to Kahumana's Farm Festival May 16<sup>th</sup>
- Help farmers, especially small farms to gain certification as organic (expensive)
- Help small farms to acquire food insurance in order to sell food to food markets (Foodland, Whole Foods)
- Eat smart. Whole organic food is the best medicine.

#### ADJOURNMENT

In closing, Peter thanked everyone for attending, reviewed the different ways to participate in the process (i.e., project website and on-line map viewer, project email address to send comments and questions, comment sheet, and meeting questionnaire). The meeting was adjourned at roughly 8:35 PM.

#### WRITTEN COMMENTS (Questionnaire)

Written comments that were submitted via the questionnaire during the meeting are documented as follows.

1. The island is one of the most densely populated places on the planet. If the government is "for the people" it would be an obvious decision to keep what little agriculture land that is left AGRICULTURAL. This bill is about money and development. This state should be about its people and its aina. Make the right decision.

IAL has been represented as a turmoil of indecision and lack of knowledge. The overabundant amount of plants that can grow in limitless varieties of climates cannot be deemed important or not. All plants are more important than urban development. High quality farmers can grow something in any situation, climate or location.

2. The State Condition Article II.3 details what are IALs = soils of A and B. This is exactly the soils out at Honouliuli which is in grave danger of being paved over by the project Ho'opili. This is a tragedy.

All AG land is IAL.

The particular land at Honouliuli is highest productivity category and should be protected both by the state Land Use Commission and the City and County of Honolulu.

Include Ho'opili in this map. City and County already told you to include it.

3. Mahalo for this meeting. Thank you for opening up for community mana'o and thank you for explaining this process.
4. I am writing as a citizen, kama'aina, mother, human. I am very saddened to know, that understand that the decision to build on our AG land has already been predetermined, even before we began this meeting. I have 2 children and we have visited Aloun farms, which is where Ho'opili housing is supposed to be built. We have visited this place even before my children were born, years before. Yes, I am saddened because we will no longer be able to visit this farm when Ho'opili is just housing. It seems to me that our county no longer cares about its people. What are businesses going to do when we can no longer support ourselves here on O'ahu when there is no longer agricultural land? How will my children survive? That is my question to you. How will my children survive? My grandchildren, your grandchildren. How will you sleep at night when this happens? The government will not support us. Please give us our AG lands back. I am sick of just sitting and listening. That's why I am here. I am here to make a difference as should everyone. Please reconsider using our precious AG land in 'Ewa. You will be destroying 40% of our agricultural land. Some of the best in the world, and you know it. Please reconsider building on this land and give it back to the farmers, my children, family descendants, and friends. Thank you.

**Attendance Record**

1. Kalani (Kahumana Farm) Wai'anāe
2. Claire Baldry (Kahumana Farm) Wai'anāe
3. Pat Beekman, 'Aiea
4. Charles Begeal, Wai'anāe
5. Tom Berg, 'Ewa Beach
6. John Bond, Kapolei
7. Donald Bunnell, Hale'iwa
8. Victoria Cannon, Makakilo
9. Miles Dawson (Kahumana Farm) Wai'anāe
10. Anthony Deluze, Ho'ola Hou ia Kalauoa
11. Michael Dennison (Kahumana Farm) Wai'anāe
12. Dr. Kioni Dudley, Kapolei
13. Ruby Edwards, State Office of Planning
14. Al Frenzel, Makaha
15. Danny Fulford (Kahumana Farm) Wai'anāe
16. Kelii Gannet (Kahumana Farm) Wai'anāe
17. Matt Gerkin, Hale'iwa
18. Kaipo Gora (Pae 'Āina Landscaping) Hale'iwa
19. Gina Hara, Kāne'ohe
20. Sanoë Iaca, Wai'anāe
21. Jeanne Ishikawa, Wahiawā Neighborhood Board No. 26
22. Chanel Kaleikini (Kahumana Farm) Wai'anāe
23. Sam Kapoi, Wai'anāe
24. Talyor Kellernan, Kunia
25. W. Ken Koike, Wai'anāe
26. Kristalena Lamore (Kahumana Farm) Wai'anāe
27. Noe Lopes, Wai'anāe
28. David Lopes, Wai'anāe
29. John Henry Martin, Wai'anāe
30. Summer Maunakea, Kunia
31. Catherine Page, 'Ewa Beach
32. Peter McDonald (Kahumana Farm) Wai'anāe
33. Joshua Morimoto (Kahumana Farm) Wai'anāe
34. David Mulinix, Kāne'ohe
35. Kaina Nakanealoha, Wai'anāe
36. Evan Paul (Kahumana Farm) Wai'anāe
37. Shari Quartero, Waipahu
38. Jebson Quartero, Waipahu
39. Marci Ramos
40. Travis Renshaw, Kapolei
41. Cynthia Rezentes, Nānākuli-Mā'ili Neighborhood Board No. 36
42. Charleen Salazar, Wai'anāe
43. Keanu Sanders (Pae 'Āina Landscaping) Wai'anāe
44. Jeanmarie Smith, Wai'anāe
45. Kymberly Sparrow
46. Thad Spreg, Makakilo-Kapolei-Honokai Hale Neighborhood Board No. 34
47. Diana Stefano, Wai'anāe
48. Mark Torreano, Waikiki

49. Jennifer Uphoff (Kahumana Farm) Wai'anāe
50. Victor Villanueva, Kahuku
51. Joycelee Walther
52. Earl Yamamoto, State Department of Agriculture
53. Christian Zukerman (Kahumana Farm) Wai'anāe

George Atta, DPP Director  
Dr. Po-Yung Lai, Mayor's Agricultural Liaison  
Tim Hata, DPP  
Curtis Lum, DPP  
Kathy Sokugawa, DPP Planning Division Head  
Tara DePonte, HHF Planners  
Scott Ezer, HHF Planners  
Erin Higa, HHF Planners  
Rob James, HHF Planners  
Corlyn Orr, HHF Planners  
Joe Tamburello, HHF Planners  
Peter Adler, ACCORD3.0 Network  
Bruce Plasch, Plasch Econ Pacific



## MEETING SUMMARY

**Meeting Date:** Tuesday, January 10, 2017

**Meeting Time:** 6:00-8:30 PM

**Location:** Kapolei Middle School Cafeteria

**Project Name:** O'ahu IAL Mapping Project

**Recorded by:** Corlyn Orr

*Reviewed by DPP Feb 16, 2017*

**Attendees:** see attendance record

**Subject:** Community Meeting 2

This community meetings for the City's Important Agricultural Lands (IAL) Mapping Project was held at Kapolei Middle School on Tuesday, January 10, 2017. This was the first of two meetings to present the Draft IAL maps and explain the project.

### WELCOME, INTRODUCTIONS, AND PROJECT BRIEFING

Scott Ezer, meeting facilitator, called the meeting to order sharply at 6:30 PM. Following welcoming remarks and introductions of DPP staff and the planning team, Scott provided a project briefing.

### QUESTION AND ANSWER SESSION

Meeting participants were asked to submit their questions in writing. Scott read each of the following questions out loud and provided a response. Both the questions and responses have been documented nearly verbatim to maintain both the accuracy and authenticity of the statement.

1. **Is this process about inventorying all AG land on O'ahu or just the prime or best soil AG being lands?**

*RESPONSE: The process is beyond inventory. It's trying to identify parcels that meet the criteria that have been selected as the most important ones, as I went through in the presentation.*

2. **What if my farm has already been professionally determined to be of poor quality soil? Will it still be included in this inventory?**

*RESPONSE: I'll be the first one to tell you that our data is not perfect. There will be some errors and mistakes, and that's part of the purpose of making this a public process. If you feel that your land has been identified for IAL designation in error, we encourage you to let us know and let us know why you think that. Even to the point that if you want to remove your land from IAL designation, you should let the City know that as well.*

3. **What are the benefits of having our land designated IAL?**

*RESPONSE: As I mentioned earlier, the biggest advantage to a landowner is being able to take advantage of the incentives that have been already identified and adopted by the State Department of Agriculture (DOA). There is no harm in being designated IAL, other than if at some point in the future, if you want to urbanize your land, the required vote at the State Land Use Commission (LUC) would be 6 to 3 instead of 5 to 4.*

4. **Is the money given to begin farming come as a loan or a grant?**

*RESPONSE: I suggest you call the State DOA and ask them. I believe that information is available on our FAQs, and see how you might take advantage of those incentives.*

*O'ahu IAL Mapping Project  
Community Meeting 2, Kapolei Middle School | January 10, 2017  
Page 2 of 15*

5. **What would our taxes be if our land is designated IAL? Will they go up?**

*RESPONSE: I cannot answer that question specifically because I don't know. I doubt that taxes would go up. If you keep your land in agricultural designation, the County tax office will continue to tax you at an agricultural rate. There's also an opportunity--if you dedicate your land for agricultural purposes independent of any IAL designation--to get a reduction in your taxes.*

6. **How do we say no to having our land designated IAL, and what happens if we do?**

*RESPONSE: I think I provided you the opportunity and information necessary to contact the City and provide us comments if you don't want to be designated IAL. Even if you come up here tonight and you speak and you don't want your land IAL, that's wonderful, but because of the process involved, it's really important that you provide us with written request so that there's a record of what you asked for.*

7. **Define "sufficient quantities of water."**

*RESPONSE: When we were looking at land, if land was irrigated--there was a ditch, if the land had a well on it, if it there are many agricultural properties that use Board of Water Supply water with an agricultural rate and there's a record of those parcels with the BWS, that's how we determined "sufficient quantities of water."*

8. **What is the timeline for the entire process? Would it be months or years?**

*RESPONSE: I would hope that we are able a year from now to have maps before the City Council, if not sooner. I can't predict how long it would take for the City Council to consider everything, and then move it up to the State Land Use Commission (SLUC), or even for the SLUC to complete its' deliberations. This hasn't been done before. No county has come before us to do this. So we don't have a template, we don't have an outline. We're all learning as we go. It's a very complicated process, and I just can't answer that question.*

Scott introduced Kathy Sokugawa, the Acting Director of DPP, and asked her to answer a question on accessory dwelling units (ADUs).

*K. SOKUGAWA: Good evening everybody. Thank you so much for coming. I know everybody has very busy lives but you took the time to come out, and I'm so happy that you did because all of us in this room care about agriculture. Those of us at the city and at the state level are very anxious to formally, officially, finally adopt what we consider to be IAL on O'ahu. This is a 1978 state constitutional-- as you heard earlier--a 1978 constitutional mandate and here it is, 2016, and we just have draft maps now. We would like to totally get your feedback and listen to your comments. We are implementing the state law. We are not making up the rules by ourselves. We do have to--as Scott mentioned-- comply with the State parameters, and so that's what we are trying to do as part of this process. The question that I'm asked is about ADUs.*

9. **If designated IAL, what happens if we want to remodel or improve the land specifically for ADUs?**

*RESPONSE (K. SOKUGAWA): The mayor is very supportive of ADUs. Currently the law only provides that they be allowed in areas zoned residential. By definition, if your zoned agriculture you are not eligible for ADU. If your property is bigger than the minimum, and it's big enough for second dwelling, then of course you can build a second or third dwelling depending on your lot size. For now, the ADU program is only available in residential areas. I think there are a couple questions on this issue.*

*I have another question here that I hope I can put Department of Agriculture on the spot and ask for Earl Yamamoto to come up and answer this question about tax credits. In the meantime Scott will answer other questions.*

**10. What actions or data, if any, are the proposed landowners for IAL required to take before and after the designation process?**

*RESPONSE: If you're part of this process and your land is being recommended for designation as IAL, you don't have to do anything else. Your land will become part of the IAL process.*

**11. What was your process to determine what land is and should be IAL?**

*RESPONSE: I think I covered that in the presentation.*

**12. Are you saying that IAL protects land from big development?**

*RESPONSE: That's a very complicated question. There are a lot of different land use policies that come into play that are supposed to protect land from development. Part of that has to do with what's the land designated by County land use policies. County land use policies include the development plans, the sustainable communities plans, the General Plan, and also at the State level, whether the land is in Agricultural or urban. In order to get from AG to Urban, a landowner, a big developer, has to spend years going through the process to get some of those designations changed. In many cases, land has been designated for Urban use of one kind or another--could be residential, commercial, or industrial--on County policy maps for many, many years without that land ever being developed, but the long-range policy is for development. I know a lot of you have questions about that particular process, but the fact that the land is already designated or being proposed for designation for IAL already indicates that all of the land use policies at the county and state level require that that land be for agricultural purposes. Having the IAL designation is like putting a period at the end of that comment.*

*Scott introduced Earl Yamamoto, land use planner from the State DOA, to answer a couple of questions.*

**13. Your report to the 24th legislature indicates the tax credits expiring December 31st, 2017. Is there any plan to continue or extend the tax credits?**

*RESPONSE (E. YAMAMOTO): The IAL qualifying agricultural cost tax credits--otherwise known shorthand as the "tax credits"--does expire in the current tax year, which is 2017. By the year 2018, if the Legislature does not extend the tax credit, the last year for anyone to make claims with their qualified costs that are the expenditures made on their designated IAL, that comes to an end with the current year. There is legislation to extend it, I believe 10 years. It's an Administration proposal. As far as I know, it will be brought forward and be part of the administrative package from the Governor.*

**14. Will financing be through HDOA which provides 85% guarantee?**

*RESPONSE (E. YAMAMOTO): I believe this question has to do with the loan guarantee program. Basically the State DOA's agricultural loan program can, although we have not to my knowledge, we can guarantee a loan made by a commercial lending institution like a bank, to basically reduce their risk and encourage commercial lending activity on land designated IAL. I believe that's what the question is.*

**15. What mechanism was used to reduce the original eight criteria from 8 to 3?**

*RESPONSE: The language in the State law that identifies the criteria says that the counties must consider the eight criteria, but they don't have to be uniformly applied. In discussions within our Technical Advisory Committee, we went through a lengthy discussion process on which of the criteria were the most important. How do you even go about trying to apply those criteria to land? After many weeks and months of conversation, the advisory committee voted and went through an exercise that identified the three criteria that they thought were the most important. They had an opportunity--after that process--we went back to the advisory committee and asked them if they were sure about their findings, and they were. So that's how we went from eight to three.*

**16. Does this process go against the 1978 ConCon?**

*RESPONSE: The answer to this question is no.*

**17. If the new designation won't change/affect how I do things on my land, then why change the designation? Leave it as it is.**

*RESPONSE: The legislature felt that first of all they had to do something to comply with the Constitutional Amendment which required the counties to do something, which required the State to take some action. This is the implementation of that policy. The IAL process is really an opportunity for landowners to take advantage of some incentives to make improvements to their land. The position and the policy of the County is that this is a good thing, and it's a good agricultural policy.*

**18. Once land is designated IAL, can that designation be reversed?**

*RESPONSE: Yes it can. You have to go back to the LUC and have it taken out of the IAL designation.*

**19. I'm a landowner and hope to pass my property to my children. They will need to enlarge our existing home and possibly build an ADU to accommodate them. Would they be able to do this in the future?**

*RESPONSE: Kathy just answered a question on ADUs. ADUs are not allowed in the State Agricultural or the County agricultural districts. A farm dwelling on an agricultural-zoned lot in the City and County of Honolulu is allowed to have a footprint of 5,000 square feet. That means the house, garage, and any accessory uses or buildings to the house need to be limited to a footprint of 5,000 square feet. They can go up to 25 feet, which would be about two stories. There is no limitation on the floor area of the dwelling, it's just limited to a footprint.*

**20. What is the current and long-term future of the Waipi'o farms across from Costco Waipi'o, Koa Ridge?**

*RESPONSE: Koa Ridge has received an Urban Designation by the State LUC and has been zoned for residential and other uses by the City and County of Honolulu. The lawsuit in court, I can't predict what the court will make of that.*

**21. How does a landowner change the designation of the property as AG-2 if it is believed that it does not meet the criteria?**

*RESPONSE: Again, I recommend that you contact the City. Send us an email or call Tim, but we will ask you to provide some written documentation of why you feel your property should not be in IAL or why you want to pull it out of the process. A phone call or conversation will not be sufficient.*

**22. If I own one acre of land, can I designate a portion to IAL but not the entire property?**

*RESPONSE: It's possible. If you went in as an individual landowner, there's nothing in the law that has a limit or minimum size for designation as IAL. Any landowner can go in and petition the State LUC to be in IAL.*

**23. Can I refuse IAL designation as an individual landowner?**

*RESPONSE: You can ask to refuse, and I think it will be up the City and County DPP to consider your rationale for not. It's certainly your right to request that.*

**24. If I refuse, will I find myself subjected to higher taxes?**

*RESPONSE: That should not affect your tax rate.*



**25. How does this process protect konohiki, kuleana and DHHL land?**

*RESPONSE: Our process did not consider DHHL land because it's owned by the State of Hawai'i, and by law, the County is not allowed to consider DHHL land as part of this process. With respect to konohiki and kuleana lands, if the lands meet the requirements of any one of the three criteria, they are included as part of the IAL designation. I went through the maps in some detail, and there are a number of kuleana parcels that are included in the IAL designation.*

**26. Some properties in the 96792 Mā'ili area are not conducive for agricultural. They are only coral land. How is this to be resolved?**

*RESPONSE: Please let us know if you feel that lands have been designated in error. Again, I've provided multiple ways to go about doing that.*

**27. Are there any penalties for opting out of the IAL designation?**

*RESPONSE: No penalties. If you request to have your land pulled out and it's granted, it's a straight transaction.*

**28. I already have access to grants and farming classes, which I am taking advantage of. I also do all the good stewardship practices. Therefore, why should I add additional layers of government rules and regulations where I am already have the benefits IAL designation offers?**

*RESPONSE: Again, if you feel you don't want the IAL designation, please ask to be taken out.*

**29. You say no changes will be made to allowable uses. Is this a permanent promise that is in writing?**

*RESPONSE: I can promise you that as long as the land is designated Agriculture, the rules that apply to agricultural land will apply to your land. I can't predict what the City Council or the LUC will do 15 or 20 years from now with respect to land use policies. I can only tell you what I know is the practice today, and there is no intent to change what you're allowed to do.*

**30. It seems to me if farming was enforced in AG land with houses on it, IAL would not be needed.**

*RESPONSE: There's certainly an argument in favor of stricter enforcement of agriculture rules on agricultural land.*

**31. If a landowner submits comments to DPP regarding the draft IAL designations, what can be expected in response to the comments?**

*RESPONSE: You will receive a written response to your comment. First of all, all of the comments, all of these questions, all of these cards will eventually appear online. This will be a transparent process. Everything--my answers to those questions included--will be recorded online as well, so if you make a choice to contact DPP and submit comments to them about your land, then the Department will respond to your request or to your question.*

**32. Will this initiate a dialogue between the City and the landowner prior to DPP making its final recommendations to the Planning Commission and City Council?**

*RESPONSE: First of all, the Planning Commission is not involved. It would go directly to the City Council, and yes, this would initiate a dialogue.*

**33. For lands that have been identified as potential IAL based only on this soil type, as identified on the USDA Soil maps, if a landowner has information that the soil map is incorrect and unsuitable for agriculture, will the City consider that information in its final recommendation regarding IAL?**

*RESPONSE: Yes.*

**34. Why was Ho'opili not designated under HRS Chapter 205-44?**

*RESPONSE: I already covered that. I will repeat myself, and that is because Ho'opili had been designated for urban and residential uses on the County 'Ewa Development Plan and therefore it is not consistent with the determination of IAL under State law.*

**35. Why is Monsanto land designated when it's poisoned already?**

*RESPONSE: I don't have enough information on that one.*

**36. My property has mixed zoning. Will the portion not AG be affected?**

*RESPONSE: No. If you think it is, and you think an error has been made, I encourage you to contact DPP.*

**37. What is the significant difference in IAL vs. agricultural land designated AG-1 or AG-2 now?**

*RESPONSE: The basic difference is that the designation of IAL opens up opportunities to take advantage of incentives.*

**38. With IAL designation, will current laws regarding AG land be upheld and enforced?**

*RESPONSE: I can't promise what the City or DPP will do. I know they take agricultural policies very seriously, and they will do everything they can to ensure that AG land rules are upheld.*

**39. Who benefits from IAL designation, regarding legislation and the State DOA? Is there an IAL designation quota (in terms of the number of acres, I assume)?**

*RESPONSE: We tried to again be as inclusive as possible, and we let the chips fall where they may in terms of how the land was identified.*

**40. How will it be more difficult to get permits and redesignation of State land use?**

*RESPONSE: I already identified that it would take a 6 to 3 majority in the State LUC, instead of a 5 to 4 vote.*

**41. Can you give examples of what uses will be more difficult to get permission for?**

*RESPONSE: The only difficulty really would be to try and urbanize your land. If your land is zoned AG at the county level--again I repeat myself--but you are entitled to take advantage of all the benefits that agricultural zoning allows you. As long as you are pursuing a legal use or a use that's identified in the zoning code, you're good to go.*

**42. What uses are permitted on lands designated as IAL?**

*RESPONSE: The same uses that are currently allowed by County zoning or under the State Chapter 205.*

**43. What was the frequency noted in State law for review of IAL?**

*RESPONSE: I believe the language in the law says that the incentives are supposed to be reviewed every five years. I don't know if there's a requirement for the law itself to be reviewed.*

**44. Are you familiar with the letter to the Governor from FEMA to repeal the law on AG dwellings?**

*RESPONSE: I am not. We will get an answer to that, and it will be posted to the website.*

**45. The City and State expressed the need for sustainability yet they don't even know the amount of food and produce that is grown in the State of Hawai'i yearly.**

*RESPONSE: I don't understand the question.*

**The individual who submitted the written question gave an oral explanation and repeated the question: We talk about sustainability for the entire state of Hawai'i, yet we don't know how much produce and food all these farmers produce every year. How do we get accurate counts? Does the State have data that identifies how much of the food that we consume in Hawai'i is produced locally?**

*RESPONSE: We don't have the numbers. In past years, the rule of thumb has been that we import 90% of our food. We produce somewhere in the neighborhood of 30-35% of our produce, but a lot of the other food products--beef, milk, chicken, dairy, all of that stuff--is imported, so those are pretty rough numbers.*

**46. The findings of the advisory committee on what scientific studies are based? UH scientific studies? Are the source of the findings available to the public?**

*RESPONSE: The people that were on the advisory committee came from a pretty broad group of people. It included soil scientists, it included people from UH, farmers, it included a lot of different people, and the basis of the conversation was based on the collective knowledge of all of the members of the advisory committee. All of the minutes and findings from those conversations are posted on the website. We actually have a report from the Phase I part of this study that documents that question and it's all online. You're invited to go read that.*

**47. Is there a possibility that parcels zoned preservation that have been CPRed and been sold be designated as IAL?**

*RESPONSE: Probably not. If it's zoned preservation and/or it's in the State Conservation District, the law says we have to exclude those from consideration for IAL.*

**48. Is an IAL designation considered a "taking" in terms of limiting the use of one's lands?**

*RESPONSE: I would say not. I'm not an attorney, but I don't believe so.*

**49. Could you please list again what are the benefits to the landowner of having the land designated IAL and how these benefits differ from having AG land not designated IAL?**

*RESPONSE: The benefits are basically access to the incentives that have already been adopted by the State, and you suffer no other consequence.*

**50. What impact will IAL have on legally, non-conforming improvements on AG land?**

*RESPONSE: If they're legally non-conforming improvements, the IAL designation will have no effect.*

**51. I currently own a 5-acre zoned AG-1 lot and have been trying to get a permit for a barn for the past six months. Will voluntarily designating it IAL fast track getting my permit?**

*RESPONSE (K. SOKUGAWA): There's lots of answers to this one. Hopefully, you should get a permit before you even get the IAL because it's going to take a lot of months before we get to formalization of IAL. Off-line, after this, come and see me because I don't why you're having a difficulty. And actually, you might not even need a building permit. The State in its wisdom, chose to eliminate building permit requirements and building code requirements for certain agricultural structures. So if you qualify under those criteria, you may not even need a building permit. But I don't know the specific circumstances, so come see me after this and we can talk about it.*

**52. Who is responsible for giving the ok for all four of the major solar farms in Waianae that are on Prime farmlands?**

*RESPONSE (K. SOKUGAWA): That is partly the Legislature's decision by amending the State land use law on what is permitted on agricultural lands. It was felt that solar farms were a legitimate use for agricultural lands. Again, that was something the Legislature chose to do.*

## OPEN FORUM

1. Renee Ing: Thank you for allowing me to speak. My name is Renee Ing and I would like to give my comments about the IAL designation for Ho'opili and Koa Ridge. Climate change is causing ice to melt faster than we could imagine. The latest data is that in Antarctica, an iceberg the size of Delaware is poised to drop into the ocean, beginning to trigger the dropping of massive amounts of ice into the ocean, making climate change worse. Climate change is causing floods, water shortages, droughts, climate catastrophes worldwide, and is already making food production more difficult, raising our food prices, and in the future, they're predicting it will cause mass starvation and wars over resources. The military has been planning for these problems and their consequences for decades. In the olden days, Hawai'i fed our million people here from food grown on Hawai'i's lands and now 90% is imported? You know, as food shortages worldwide occur, that will affect us and Ho'opili and Koa Ridge produce 45% of our fresh fruit and vegetables. You are making a decision that affects whether our young people and future generations will be able to survive here with food to sustain them, or also because refugees from Hawai'i who can no longer afford to live here. With all due respect, in my opinion, like the military that has been planning for decades, you must now face the fact that we will have food problems in the future like the rest of the world. We want you to make a decision to keep Ho'opili and Koa Ridge lands that grow 45% of our fresh food in AG and give them IAL designation, making it possible for us to continue to grow our food into the future, instead of making a decision that in effect will drive more of us out of Hawai'i. Thank you.
2. Jim Brewer: Aloha. My name is Jim Brewer, and I have a television program called "Full Democracy" for 23 years on 'Ōlelo. On the show what we do is we look at the big picture and the long view. Tonight, I was hoping that this wasn't déjà vu all over again with Rail, because I came to Rail things and they said it wasn't a done deal yet, but we could tell, by the way they had all the pile of stuff, that it was a done deal. And we see something, that from \$1.3 billion dollars has turned into \$9.5 billion already. We predicted that, but we got no response. I hope we can get a response on saving Ho'opili. Ho'opili, it is just an abomination. I can't understand how the City and County can override the State by just doing an overlay, a planning overlay over it, and just change the law. That you have to her preserve the best of the best. Anyway. I came here first time in the 50s as a teenager in the Navy. I left the Navy in 1969 here in Hawai'i. I was on the USS Kamehameha, a fleet ballistic missile submarine, and I got out because....I really love this place. I have 34 great-grandchildren and I speak here as a great-grandfather of those grandchildren and their future. Thank you.
3. Jeff Cadavona: I own a parcel of 1.3 acres in Pūpūkea, and I came here with no knowledge of your process. Being here, I'm impressed by the presentation and you've given me the knowledge I need to go and present my information to submit to your office so I can get this issue settled, hopefully to my satisfaction. Again, I want to thank you again for making me well aware of what I can do to help myself to be a good citizen of Hawai'i. Aloha.
4. Al Frenzel: Aloha. My name is Al Frenzel. I come here to defend that Ho'opili should be designated as important agricultural land. As many people here state so far, do as well. This has been a long process that you are involved in, in this designation of IAL lands. It started as you know in '78. Unfortunately, nothing substantial occurred until 2014. Between '78 and 2014, all kinds of shenanigans were occurring at the Land Use Commission, politicians, Legislature, unions and developers. And so, the results of that, we end up seeing what is the best agricultural lands on O'ahu wind up being designated as urban use. Now, my opinion is that the State law does not prevent you from considering all lands on O'ahu to be designated IAL. It does not say you cannot assess and re-inventory urban land use back into IAL land. And that's what I ask you to do. I ask you to consider, I

ask you to have a section, instead of showing me time and time again, I want you to listen and have a point in their study that represents the large majority of akamai individuals here, that it is not too late for Ho'opili, the best agricultural land—that fits all those eight criteria and all your new three criteria—than any other land on O'ahu. Because some of you aren't going to have the opportunity to come up and speak, I would like everyone that supports Ho'opili as being designated IAL to please stand up and be recognized. Please stand up. Because you may not get a chance. Stand up and be noticed that you are here to save important agricultural lands on O'ahu. Thank you.

5. Dr. Kioni Dudley: Aloha everybody. My name is Dr. Kioni Dudley. I'd like you to know that some of what you've heard tonight is bullsh\*\*. OK. The problem is that what you've been told is that Ho'opili cannot be considered. You know very good and well, that Resolution 23 given in 2012 by the City Council said, you must study Ho'opili and Koa Ridge in this process. You guys, you gotta get at it. Tonight I'm not here to really talk about that though. I'm here to tell you we still have possibilities to overturn the decision by the City to approve Ho'opili. And that's in the process right now. We have three different initiatives going on. We want you guys to hold off the completion of this study until we can get completely exhausted with all of our possibilities. We do think, we do think that we can overturn the decision which would then put us back into agricultural land rather than urban land, and then you could consider and put Ho'opili into the IAL inventory. We're just going to say, if you're going to be honest, hold off, damn it, until we get done.
6. Evelyn Souza: Good evening everybody. I'm so glad to see all of you here. My name is Evelyn Souza. I lived in the community for about 43 years, seeing this place as sugar cane and now it's beautiful. But there's a scar, and that's in the likes of Ho'opili. I have never sat in a meeting, and I thought this was kind of funny, and of course I'm Portuguese. My mother's pure Portuguese, my father Hawaiian/Chinese, and I'm proud of that. But she always used to have these kinds of tidbits, that I'll share with you. She told me, you know Evelyn, you have to have an open mind. OK. But not so open, girl, that your brains fall out. People. Our brains are not falling out, it's those others. And you know, Kathy Sokugawa is a real good friend of mine. She will go according to the letter of the law. The law says urban is what's proper for that piece of property, and I'm talking about Ho'opili. I could be talking about Koa Ridge, but Ho'opili is in our backyard. If the letter of the law says it has to be Urban, fine. But when you come to this meeting and they say you have identify the IAL, it's out of context. My notes say, to help farming be economically...and it's about activity. It's there, and it's to ensure that the best of O'ahu's high-quality farmland is protected and preserved for long-term agriculture. DUH. It's been there for years and years. OK. Here's another one, this is good. And this comes straight from the presenter. I don't mean to demean you, Mr. Ezer. The criteria. Fast tracking to the three that they've come down to—it's currently being used for agricultural produce, production, and has soil qualities, and then sufficient water. DUH. Again. So you know what, if we eliminated Ho'opili, you've just broken every criteria it is that identifies an IAL, don't you think. And you know what, you cannot tell this Portuguese lady who has not had her brains fall on the ground, that it cannot be reversed. Has anybody ever heard of eminent domain? We take the land back, we pay the people that have bought it in good faith. They wanted to build houses, but the land is more important, and that's where we should go. Eminent domain.
7. Michelle Hawes-Tomas: My name is Michelle Hawes-Tomas, and I have been an outspoken advocate against Ho'opili from almost the beginning, and I speak out for the future of my grandchildren and all the ancestors that come after me because that is the breadbasket of where they will be fed. In this basket is produce that is grown out on Ho'opili. If they had their way, this is what we will have left to gnaw on to feed our families. Bricks. I've been to many of these informational meetings, and that is

exactly what it is. I have also learned when they have the informational meetings, it's to tell you what is going to be done and not what you want done. So you need to understand that. Our City Council made it perfectly clear when they voted on Koa Ridge and also on Ho'opili what their plan is. What we want does not matter. This is already a done deal. Keoni said it, we're not going to say the word 'cause we all heard it loud and proud. It is what he said. This is the time we still have to say no because you know what, Ho'opili and Koa Ridge set the precedent for all the AG lands on this island. OK. They can take it, and they did, or they're going to try, but you know what? They say it ain't over until the fat lady sings, and I'm not singing tonight so it is NOT over. God bless everybody here and pray for the land because we need to be prayed for and we need that land to be prayed for. And I'm sorry, it's not your fault, you're just the messenger, but take a look at what the land represents, like it has been said. It meets all that criteria, every single, solitary thing, and this decision to tear that land up and turn it into that instead of that was made long before any of us was made aware of it. It has been bought and sold to the highest bidder by the greedy. Thank you.

8. Kaukaohu Wahiiani: Aloha mai kākou. Pehea 'oukou? Maika'i? A'ole? Nuha? For all you guys don't know where's Pu'e'a, that's Wai'anae Valley. I'm a kalo farmer with all my 'ohana over here. But I stand for all this mapping, O'ahu, important agricultural lands, OK, everybody says Ho'opili but before I go on the record, the next meeting at Hale'iwa, maybe you can have the testimonies come up first because the house was full. The house was full of people, now we gotta talk for two minutes, just like DOI, it's just like DOI rules already. So anyway, mapping O'ahu's important agricultural lands. To me, every agricultural land is important. But now we calling Ho'opili. But the word Ho'opili, it means to come together, to be pili. However, everybody calling that Ho'opili. It's Honouliuli everybody. It's Honouliuli. Like Michelle said, we cannot eat cement. We need to be sustainable, OK. Thank you. We need to be sustainable over here. We get almost 1 million people live on this 'āina already, ya, and we import almost 90% of our mea'ai from the mainland? We have a source that was one of our phrases in our culture, "nānā i ke kumu," to look to the source. Our ancestors, this is one of my kupuna right here, Auntie Dawn Wasson, and she going come up and she going kākou me. Anyway people, we got to stand fearless. We cannot be activists anymore. We gotta think sustainability. Profit, and this was one of my notes. We all learning as we go, since 1978. Come on. Why only now they implementing the laws from ConCon '78? The practice today is profit over people. Profit over people. If the people rise, they cannot stop us. So e ala. Mahalo Nui.
9. Dawn Wasson: Aloha kākou. My name is Dawn Wasson. I'm a kupuna from Ko'olau Loa, from the ahupua'a of Lā'ie. I live on kuleana land, 13.20 acres. My family has been on this land since 1804. 212 years about. It has been a struggle but you struggling since 1978. I support you folks. I think what you should do is, you should go back and look at the original land that was owned under a lonely old title. These people who bought it and sold it, whatever, they never owned the land. So that's one way you can go get it back. So go look. But I'm here tonight because of this thing called mapping by DPP. All of a sudden they say we're following the Constitution. The thing about this land is that this land is all of us. We—all of you and me—have a vested interest in Hawai'i, and to do that we must protect it from outsiders who come to look at one thing and that is money. We have to be self-sufficient and your land that was taken away from you has taken away the breadbasket of our survival and we must all stand together. Honouliuli, Ko'olau Loa. Mālama ka 'āina. Mahalo.
10. John Bond: Aloha. My name is John Bond. I'm a member of Kanehili Cultural Hui, and we're interested in the cultural history of the area. Things come in threes. I just like to quickly summarize what she was talking about, which is originally the land out here, Honouliuli, was highly farmed for kalo, and other properties—Kalo'i Gulch, Honouliuli Gulch—supported the largest population on

O'ahu of the native Hawaiians. It was THE place to live and be, and it was fabulous place in its day. Unfortunately the next phase happened, which was the Western culture came and it became 'Ewa Plantation. That same land was the richest plantation in the Hawaiian Islands, that's how fertile it was. Then the third phase happened, where the land is still farmed today, Aloun Farms and other contractors, still use the same water systems, aqueducts, flumes, the same parcels that were there from the plantation. 1939, I have the maps, It's all in place, everything. It's all turnkey, diversified agriculture today. You could not ask for a better location to have fresh vegetables coming to all the homes that people live in, the restaurants. It's the perfect concept, and they're going to destroy it. Now, the next three is that the soil is rich volcanic soil. Kona coffee, all the things you can think of, macadamia nuts. The Hawaiian island volcanoes spewed out all this super rich soil creating that environment. The next thing was that all the water springs that come out of the Waianae range all pop up there creating an ideal spring water environment. The third thing is the vast amount of sunshine we have out here. It is a perfect growing place. It's insanity to destroy a turnkey, totally set-up, perfect growing place. The markets are right next to the farmlands. It's just insanely stupid. OK. The reason why they picked those three criteria that they're talking about is that the farmers on that committee and people, rejected the idea that a political criteria should be involved in determining what is valuable farmland. So they picked the three, which is what the State Constitution Convention in 1978 was all about, and why they cleared up this idea when the City said we're going to develop the Western area. They wanted to make sure that you do not split the important agricultural land. That's what the '78 convention did. The people of that committee picked the top three criteria, and it was not political boundaries. It was what is truly the most important land. They're not following the Constitution and what the people on the committee said. To wrap it up, I will say that in 1975 when West Beach was the big development scheme, they never intended all of this to be developed. Tom Coffman, among other people, and Campbell Estate had decided that this was going to be open space and farmland out here. You could develop Kapolei, Kalaeloa going to be developed 8000 homes, Gentry's putting in another 11,000 homes. There's going to be another gigantic development next to Makakilo. Up here, you're going to have another 50 to 60,000 homes, not even counting what Ho'opili's going to do. It's insanity. OK, so this makes sense. It's a fraudulent process, and the resolution that was passed in 2012, and the City Council said you could have development and open farmland. You can have both. So we're not saying people shouldn't build homes out here. You need the farmland. Thank you.

11. Pat Beekman. Hi, I'm Pat Beekman. Just a resident, a life-long resident, born and raised in Hawai'i. My grandparents had a farm in Hilo so I know what farming is like. A University of Hawai'i professor who was a soil analyst specialist told me that the farmland at Ho'opili is the best land in the country. I think he said the world, but at least the country. And we're going to build houses over it? That's insanity. What we're seeing is government corruption in action. A developer comes over, he buys land that's zoned AG land, and he knows that by paying off the politicians, he's going to get it zoned urban and make a lot of money at our expense. We have to remember that Hawai'i is the most isolated land mass in the world for this size population. If we don't have enough farmland, what's going to happen if oil goes sky high like we've seen? Or this country is continually aggravating other foreign countries. We're the most warlike nation in the world. What's going to happen if we get nuclear war or the ships aren't able to come to Hawai'i? We won't have enough land to sustain ourselves with these current politicians that are selling off our rights. We're building housing that appeal to foreigners. We should be looking out for the people here, not somebody that wants to come and live in Hawai'i. The visas have been structured so that if a foreigner buys a condo or a house that's \$1 million dollars or more, I think that's the price, then they get a visa to stay here in Hawai'i. That's something else that we need to be aware of. The government should be looking out

for the people that are already here. Not for people that would like to be here. Basically I'd like to say that the land—only God can make the land. It was not made by humans. Once this is built over, we'll never get it back. It's a crying shame what's taking place right now.

12. Elaine Kam: Aloha everyone. I'm Elaine Kam. I brought my friend here who made a sign that I think is very meaningful. I made this sign. Yes, my grandchildren have motivated me to come here, all the way from East O'ahu. It took so much longer than we thought on the handi-van, but I'm really happy to have made it, and I thank my friend for accompanying me and helping me carry these four signs that Keoni Dudley motivated me to continue to do. This one says, "Don't let the foxes defend our hen houses," and you know what that means. How many of you agree? This one I thought was very good. My friend thought of this just within a second, "Can you eat a house? Not so well." Anyway, I just think that this land Ho'opili and Koa Ridge is a blessed, magical land with the sun shining and the terrain being such that we could have for crops a year. My goodness. We are so blessed. Why should we destroy something that was given to us? It's a very special precious gift, and I hope that everyone will come out and keep it as wonderfully sustainable that we need for our O'ahu residents. Thank you for your time. God bless.
13. Michelle Freitas: Good evening residents. I'm a proud citizen of this state, this beautiful state of Hawai'i. So you folks don't take a hold of what's happening to us right now? Remember people, we the ones that make the decisions. We the ones went vote to put all these people into office. They are not doing their job. They designate what they like. They take away what they like. I used to be a proud pig farmer. I had a big farm, but when I try sell my pigs, the State Weights Division had to investigate for us, because every time I take a delivery of pigs out there, it weighs the same weight. No way the truck, the gas, the air in the tires. They been ripping us off all the way to 1980. So when they tell you that they change laws and they have stuff set in stone, they've been screwing everybody over from long time ago. So if you guys all look upon what's happening to you, don't wait because this is going to get a whole lot worse. Because if they take that beautiful Ho'opili land, you guys, you never going to come out of Waianae. Or Kapolei, or Ewa. You best believe. Because they sucked us out for that Rail Project, everybody in this room knows that. So everybody got to take a stand and fight and help Ho'opili. That's all I got to say. Thank you.
14. Dr. Kioni Dudley: (2nd time). You know, one of the most important points about how Ho'opili is the full sun. We have to realize that you go to buy plants at Lowes, or Home Depot, there are plants that grow in the shade, and there are plants that grow in the sun. Plants that grow in the sun don't grow in the shade, and plants that grow in the shade don't grow in the sun. Now our problem here is that Ho'opili is the last piece of full sun land on this island. And its farmland. It's producing one-third of the crops for our local market. One-third of all the crops on O'ahu. When you put it together with Koa Ridge, that's 45% of all the crop land on O'ahu for our local market. That's what we're getting rid of. And that's what we can't afford to. When we get rid of this last piece of full sun land, we will never, ever, on this island be able to feed our million people an entire diet of food because we won't be able to grow the plants that grow in Ho'opili up higher in the rainy cloud covered lands near Wahiawa and on the North Shore. And everybody knows that. And they're lying to us about not knowing that. You know, I asked the head of the Department of Agriculture about a week ago, "am I crazy?" He said, "No Keoni, you are telling the truth." OK. We've got to hold on to Ho'opili. Do you realize climate change is changing the world? It's drying up crops everywhere. They are predicting, the United Nations is predicting, that we are going to have mass starvation in the world. There's going to be wars for food. We import 90% of our food. 90%. When there's no food for anybody, what are we going to do? How are we going to feed our million people? That's a real problem folks.



And these people who are taking away Ho'opili need to stop and realize what the hell they're doing to our people, now and future generations. Thank you.

15. Poka Laenui: I didn't sign up but after hearing this man speak, I'd like to speak. Aloha. My name is Poka Laenui. It was not my intention to come to speak, and I must say that this is the first time that I've come to a meeting where we have some public discussion about Ho'opili and at the same time we have this very important question about these very important areas to be designated. It seems like we have an elephant sitting in the room. On one side, the City folks will not see the elephant because you have already heard Scott say that Ho'opili is out of the question, as they have determined it. And then they have stolen this essentially public discourse by limiting speakers for only two minutes without really getting to the heart and soul of what this audience is looking for. The issue that they bring is very important, and we come here wanting to hear that issue. But they have not come to hear the issue of Ho'opili. This public discourse has essentially been hijacked by the waving of the sign for two minutes. Now, I can be persuaded one way or the other way. That's not what's important. What is important is that this has been a failure in the consultation of the general public and I wish, Scott, that you would take these words back to your office as well as to the City Council. This has not been a public process. We have been hijacked from being able to speak, to hear, to reason, to work through these things. You have already said Ho'opili and Koa Ridge are out of the question. I beg to differ, and I think this whole matter should be reconsidered. I've said essentially what I have to say. I'm sorry for having been interruptive. It's just that I couldn't not say anything and let this take place. Thank you.
16. Deborah Castro: I wasn't going to speak because I knew nothing was going on, but I know you. And I wish that they would have let you speak first, so I would have known what I was sitting through. But I am a little upset because what I think is going on. We are being designated under this plan. We don't want it, but they're making us designate it so they can take away the good stuff. This is wrong. What they are doing is to make it look good. Our land is not even agricultural, we don't have any of these criteria that they need. So why are we even being put in this? So something really needs to be done, and everybody that I heard speak says something has to be done, something has to be done. But nobody said what. What do you want us to do? What do you want us to do to make the change? How are we going to get the City Council out? Just a snap? Rise up? We're just a little bit. So somebody has to organize and say how are you going to do the rise up. We need some direction. Everybody's got good ideas but nobody's got a real plan, and that's why what's going to happen is they're going to win, because we are all talking now but we're all going home to our lives. That's all I want to say. I feel hijacked too.

#### ADJOURNMENT

The meeting was adjourned at roughly 8:25 PM.

#### Attendance Record

1. Ernest Adaniya, Wai'anae	2. Tomi Adaniya, Wai'anae
3. Mark Afuso, Mililani	4. Ralph Aona, Wai'anae
5. L. Gary Bautista, 'Ewa Beach	6. Pat Beekman, 'Aiea
7. J. Bennett, Waialua	8. John Bond, Kapolei
9. Pamela Boyar, Kailua	10. Jim Brewer
11. Leo Bright, Kapolei	12. Puanani Burgess, Wai'anae
13. Rex Cabahug, Wai'anae	14. Eugene C. Cabana, Waipahu
15. Jeff Cadanova, Wai'anae	16. Steve Camello, Kapolei
17. Deborah Castro, Wai'anae	18. Monte Castro, 'Aiea
19. Miriam Chang, Hale'iwa	20. Albert S. Chiappetta, Wai'anae
21. Alonza Cobbin, Wai'anae	22. Tamera Cobbin, Wai'anae
23. Raymond Cook, Wai'anae	24. Carla Cottrell, Wai'anae
25. Donna M. Costa, Wai'anae	26. Cathy Cozzens, Wai'anae
27. Deann Dano, Wai'anae	28. Pedro Dano, Wai'anae
29. Mike Dau, Waipahu	30. Laverne DeCoito, Wai'anae
31. Andy Dewees, Mililani	32. John Domen Jr., Wai'anae
33. John Dubiel, Hale'iwa	34. Mary Dubiel, Hale'iwa
35. Dr. Kioni Dudley, Kapolei	36. Bruse Eckmann, Honolulu
37. Ruby Edwards, State Office of Planning	38. Gilbert Egami, Wai'anae
39. Raymar H. Egami, Wai'anae	40. Rayleen Egami, Wai'anae
41. Ralph Ehni, Hale'iwa	42. Renee Ehni, Hale'iwa
43. David Figueira, Kapolei	44. Anne Figueira, Kapolei
45. Sophie Flores, Wai'anae	46. Jesse Foster, Wai'anae
47. Margaret Isaacs, Waianae	48. Mr. Byron Fujieki, Honolulu
49. Mrs. Byron Fujieki, Honolulu	50. Michelle Freitas, Wai'anae
51. Al Frenzel, Makaha	52. Raymond Galderia, Waipahu
53. Tony Gill, Honolulu	54. Andrew Gomes, Honolulu
55. Michelle Gorham, Kailua	56. Colleen Griffith, Wai'anae
57. Dustin Griffith, Wai'anae	58. HC&S Farm, Wai'anae
59. Bruce Hanohano, 'Aiea	60. Piilani Hanohano, 'Aiea
61. Craig Hara, Mililani	62. Michelle Hawes-Tomas, 'Ewa Beach
63. Mitsuko Hayakawa, Pearl City	64. Hattal Henry, Wai'anae
65. Hong Fang Gan, Wai'anae	66. Prasong Hsu, Kailua
67. Sunny Hsu, Kailua	68. Leslie Imaoka, Wai'anae
69. Renee Ing	70. John Ioane, Kapolei
71. James Jones, Wai'anae	72. Steve Joseph, Wai'anae
73. Frances Kama-Silva, Wai'anae	74. John Keawe, Kapolei
75. Amelia Kelly, Waipahu	76. Jonah Keohokapu
77. Bobbi-Lynn Kupihea-Char, Mililani	78. Poka Laenui, Wai'anae
79. G. Lee, 'Ewa Beach	80. Paula Lee, Honolulu
81. David Lopes, Hui Ku Like Kakou	82. Noe Lopes, Hui Ku Like Kakou
83. Catalina Lorenzo, Wai'anae	84. Jimmy Lorenzo, Wai'anae
85. Mary Lorenzo, Wai'anae	86. Stephen Lorenzo, Wai'anae
87. William Lyon, Wai'anae	88. Renato M., Wai'anae
89. Agnes Malate, Honolulu	90. Henry Mandac, Wai'anae
91. Jon Mano, 'Ewa Beach	92. Noe Mano, Wai'anae

93. Alvin S. Masuda, Wai'anae	94. James McCoy, Honolulu
95. Dean Minakami, Honolulu	96. Keevin Minami, 'Aiea
97. W.G. Minami, 'Aiea	98. Luciano Minerbi, Honolulu
99. Lisa Munger, Honolulu	100. Kailana Moa-Eli, Wai'anae
101. Akeo Nakazawa, Kailua	102. Jim Niermann, R.M. Towill
103. Lauro Nilo, Waipahu	104. Pacita Nilo, Waipahu
105. Faye Nishimura, 'Aiea	106. Francis Nitta, Waimanalo
107. Steven M. Nitta, Wai'anae	108. Jay Okada, Wai'anae
109. Owen K. Kaneshiro Farms LLC, Mililani	110. Marjorie L. Perreira, Wai'anae
111. D. Perry, Mililani	112. Doug Philpotts
113. Diana P. Puulei, Wai'anae	114. Joann Rapoza, Wai'anae
115. Julian Rapoza, Wai'anae	116. Jocelyn Rasquero, 'Ewa Beach
117. Dennis Sakuoka, Mililani	118. Pauline Sato, Honolulu
119. Sara Schnabel, Kapolei	120. Joseph Shacat, Honolulu
121. Phyllis Shimabukuro-Geiser, State Dept. of AG	122. Michael Shuman, Waipahu
123. Teresita Shuman, Waipahu	124. Sarah Simmons, Honolulu
125. Henry Silva, Wai'anae	126. J. Soares, Wai'anae
127. Faustino Somera, 'Ewa Beach	128. Patricia Sottile, Kapolei
129. Evelyn Souza, Kapolei	130. Allen Stack Jr., Honolulu
131. Elizabeth Stack	132. Mark Suiso, Makaha
133. David Tamala, Kapolei	134. Bernadette Tebia, Wai'anae
135. Gina U. Teixeira, Wai'anae	136. A. Timbreza, Wai'anae
137. Ronald Timbreza, Kapolei	138. Eustaquio Tubania, Wai'anae
139. Veronica Tubania, Wai'anae	140. Tony Turner, 'Ewa Beach
141. John Tussey, Wahiawā	142. E. Uno, Mililani
143. J. Valderama, 'Ewa Beach	144. Marilyn Valderama, 'Ewa Beach
145. Sheila Valdez, Waipahu	146. Kaukaohu Wahilani, Wai'anae
147. Terry Walden, Wai'anae	148. Carmela Watanabe, Wai'anae
149. Stanley Watanabe, Wai'anae	150. Steve Wendel
151. Ron Wise, Kapolei	152. Andrew Yamaguchi, Kailua
153. Earl Yamamoto, State Dept. of AG	154. Dole Yi, Wai'anae
Dr. Po-Yung Lai, Mayor's Agricultural Liaison	Kathy Sokugawa, DPP Acting Director
Curtis Lum, DPP	Tim Hata, DPP
Scott Ezer, HHF Planners	Eugene Takahashi, DPP
Rob James, HHF Planners	Erin Higa, HHF Planners
Bruce Plasch, Plasch Econ Pacific	Corlyn Orr, HHF Planners