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To: [DBEDT LUC](#)
Cc: [Janet Witten](#)
Subject: [EXTERNAL] Thomas S. Witten - Written Testimony - Regarding C&C of Honolulu IAL Recommendations- Process and Procedural Requirements, 4/28/21 Agenda Item
Date: Monday, April 26, 2021 5:54:24 PM

Land Use Commission
Department of Business, Economic Development & Tourism
State of Hawaii

Subject: Thomas S. Witten and Janet L. Witten - Written Testimony: Regarding Conformance of C&C of Honolulu IAL Recommendations- Process and Procedure Requirements

Landowner: TMK 5-7-01:007 (Royal Patent 360, LC Award 2836), Koolauloa, Oahu

Aloha LUC Chair and Commissioners:

As a new landowner of the subject referenced small agricultural kuleana lot (0.15 acres/ 6,534 Sq. Ft.) that is recommended to be classified as IAL, I appreciate the LUC's efforts to notify us of the pending LUC's consideration of the City and County of Honolulu's (City's) IAL recommendations. As highlighted in the Aprils 12, 2021 notice to impacted property owners, the LUC hearing this week will only be focused on the process and procedures used by the County to formulate the IAL recommendations.

With my knowledge and experience of having prepared agricultural land assessments and/or providing expert witness testimony before the LUC on eight (8) prior petitions for declaratory rulings regarding IAL voluntary designations, I offer the following observations and comments on the City's IAL process in relationship to Chapter 205 HRS:

1. Identify and map potential lands based on the criteria contained in Ch. 205-44 HRS. Although the eight (8) standards for IAL should all contribute to determining the identification of IAL, there is not a specific criteria related to parcel size. However, criteria number seven

does address “lands that contribute to maintaining a critical land mass to agricultural operating productivity” and this criteria should be considered when identifying parcel sizes for IAL. In examining the Inventory of the City Recommendations for IAL Designation by TMK Parcel Number, I noted 418 parcels that are less than the State’s minimum 1 acre lot size for agricultural lands. Many parcels that are less than 5,000 sq. ft. And an additional 308 parcels that are less than 2 acres which is the City’s minimum lot size under Ag-2 zoning. Of the total number of parcels proposed to be IAL, this equates to over 40% of the proposed parcels being existing non-conforming ag. zoned parcels. Why include these parcels?

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Based on my review of the City’s petition information and attendance at one of the Community Meetings during the IAL community outreach process in 2017 (almost 4 years ago), I would anticipate that a brief survey of these 726 small landowners (and the balance of the 1800 parcels) would clearly demonstrate that the landowners are not aware of the impacts of their lands being classified by the LUC as IAL. These landowners should be better informed of what the IAL designation would add to the land use regulations affecting their lands and have an opportunity to provide informed comments, including a written response from the City during the consultation process. The individual landowners know their lands best and should be informed about IAL before the LUC takes action on the City’s proposed IAL.

2. IAL standards and criteria. The City’s methodology resulted in narrowing the identification of IAL lands to only three (3) of the eight (8) criteria. Of those 3 key criteria, any parcel (or portion of parcel) was included in the IAL recommendation if it met only 1 of the 3 criteria. The City’s approach and methodology resulted in a flawed process of mapping lands that should be considered for IAL designation. And, the subject landowners, unless they had the resources to retain legal or professional planning services to formally object to the City’s conclusions, were not given an adequate opportunity or information regarding how the proposed IAL

designation may impact their lands. And, as noted below in comment 5., the City was not accurately representing the legal encumbrances that being designated IAL would add to the subject lands.

3. Viability of existing agribusinesses. With over 40% of the parcels proposed to be included in IAL being existing non-conforming parcels that allow the construction of a single-family dwelling (on lots existing before June 4, 1974) or farm dwellings under City zoning, these small farms would more likely contribute to subsistence agriculture vs. a viable agribusiness. Why include these parcels in IAL?
4. Notice to all landowners. I have confirmed that the prior owner of my kuleana lot was notified by mail regarding the IAL process. However, the information provided under the notification process and subsequent public outreach did not provide adequate information as to how the lands proposed to be classified as IAL could impact future land uses and/or approvals related to the use of the property. In this case, the owner provided a response that requested that the subject parcel not be considered for IAL. The City never provided a written response other than a second notification letter stating that the subject parcel was being recommended for IAL. I do not consider that reasonable due process for such an important land use designation.
5. Public outreach program. Out of interest and to better understand the City's IAL process, I attended Community Meeting 3 at Aiea Intermediate School. At that meeting, questions were asked of the City regarding what the impact of being classified IAL would be. The response, in general terms was something like: "no impact...this is just an overlay district and there are some incentives offer by the State...no changes to land use regulations affecting agricultural lands". Another question asked: As provided for in the IAL law, was the City going to offer any incentives? The City's general response was: "No proposed incentives being offered by the City...we already offer low property tax rates for ag. lands".

The information presented to the public and the responses to questions was not accurate and/or complete and could have provided many concerned landowners with the impression that they should have no concerns regarding IAL. If a more complete assessment and presentation of what IAL designation means to a landowner were provided, I am certain more landowners would be expressing their opposition to being classified IAL.

Conclusion

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The LUC should, upon the evidence presented and testimony provided by impacted landowners, remand the IAL recommendations back to the C&C of Honolulu. The City should consider the testimony presented to the LUC and conduct a much more informed and robust community outreach process and make subsequent refinements to the IAL methodology and resultant recommendations for Oahu before requesting the LUC's formal review and consideration.

Mahalo for the opportunity to provide testimony and your consideration. Unfortunately, I will not be available to attend the LUC hearings this week but will be following the process and, as necessary, providing additional testimony to the LUC and/or the City in the future.

Sincerely,

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