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April 27, 2021

Via email

Land Use Commission
Department of Business, Economic Development & Tourism
235 South Beretania Street
Suite 406
Honolulu, HI 96813

Re: IAL Designations
TMK #s: 87021014 and 94005052

Dear Members of the Land Use Commission:

I write on behalf of Dairy Co., Inc., owner of TMK# 94005052 (approximately 4.5 acres) and Hawaii Tractor, Ltd. owner of TMK# 87021014 (approximately 4.93 acres). Both parcels were identified as Important Agricultural Lands (IAL) by the City and County of Honolulu in Council Resolution 18-233 CD1 FD1, enacted on June 15, 2019.

This written testimony is submitted for the Zoom meeting of the Land Use Commission (LUC) scheduled for April 28-29, 2021. It is my understanding that this meeting, identified as a “first meeting” is “limited in scope.” The purpose of this first meeting and the testimony you will receiving today is to assess whether the City and County has complied with the legal requirements in the designation of these lands as IAL.

It is my clients’ position that the City and County of Honolulu has not complied with the legal requirements in the designation of their lands as IAL. To ensure no confusion as to my clients’ position, they believe their land was improperly identified by the City and County of Honolulu as IAL for the following reasons:

Background of IAL: IAL is found in Article XI section 3 of the ***Constitution of the State of Hawai'i, (Constitution)***. The provision was a result of the 1978 Constitutional Convention and voted by the people of the State of Hawai'i to stand for the proposition that:

Section 3. The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions without meeting the standards and criteria established by the legislature and approved by a two-thirds vote of the body responsible for the reclassification or rezoning action. [Add Const Con 1978 and election Nov 7, 1978]

The Delegates to the Constitutional Convention believed that due to the shifting from an agricultural economic base, the State needed a strong policy for what we call today, sustainability. The emphasis was to conserve and preserve agricultural lands to ensure its availability to promote the diversification from the large plantations.

The Legislature was mandated to provide the standards and criteria to effect this policy. Unfortunately, it was not until 2005 and 2008 that major legislation was enacted to fulfill the requirements of Article XI section 3. I am in the position to speak to this in that I served in the Legislature as the Majority Leader of the Senate and Chair of Judiciary and Hawaiian Affairs in 2005 and as President of the Senate in 2008.

As members of the LUC are well aware, there has been conflict in the past as to whether the LUC was a necessary step in the planning and designation of lands. The Counties have believed that they best understand their lands and as a result the LUC is an unnecessary obstacle to land designation process. What this IAL process has shown is the importance of the LUC to ensure continuity throughout the State on policies which affect all the people of the State of Hawai'i.

HB 1640 CD1 became Act 183 of the Session Laws of 2005. SB 2646 CD1 became Act 233 of the Session Laws of 2008. These two Acts for most part amended *Hawai'i Revised Statutes* §§ 205-1, *et seq.* (the LUC law). These were the laws that defined the criteria for the IAL and roles of the Counties and the LUC. What was forwarded to the LUC as Council Resolution 18-233 CD1 FD1 (June 15, 2019), is the City's compliance with the *Constitution* and the relevant sections of the *Hawai'i Revised Statutes*.

In my discussion with a representative of the City, I have come to the understanding that in order to be designated IAL, the land at issue must meet one of the following criteria: availability of water, in Agricultural use, and soil quality. A simplification of the criteria set forth in the laws.

Application to the Parcels at Issue. As stated above, this Zoom meeting is not to contest the designation; however, permit me to address why these two TMKs should not be IAL as an example of how the City failed to fulfill its role in this important Constitutional mandate. Taking each parcel separately.

TMK # 94005052. In the May 2019 List of IAL, this parcel is identified as 50.24 acres of which 20.25 are to be designated as IAL. For ease of reference, it is identified as parcel no. 1772. My client's parcel is approximately 4.5 acres. It is assumed that the 4.5 acres is part of the 20.25 which is not owned by my client. Moreover, this parcel is in what is commonly called the Kipapa Gulch. The land which borders the 4.5 acres across Kamehameha Highway towards Pearl Harbor is held by the military. Land mauka of the 4.5 acres is also held by the military. Though it has not been used in agriculture for at least two generations of my client's family, there is recollection of sentries and possibly, fuel storage tanks mauka of the property. It was significant enough so that my client recalls posted military sentries near the subject property at some time in the past. The property has not been used in agriculture, there is no independent water source and the soil conditions do not qualify as prime agricultural lands.

It is understood that the City may have looked at large tracks of land, irrespective of whether there were in fact now held by small land owners to designate the total area as IAL. It is difficult to believe that the City did not pay heed to the lands use by the military and the fact that this land has not been in agricultural use for generations.

TMK # 87021014. In the May 2019 List of IAL, this parcel is identified as parcel No. 1586 of approximately 4.93 acres. The land is located in the Waianae Coast off of Hakimo Road. Prior to the purchase of the land by Hawaii Tractor, Ltd. this land was used for housing. Today one house is occupied. The land has not been used for agriculture to the best of my client's knowledge. It is believed there is no independent water source and the soil is coral based. Yet, this land is classified as IAL. It may be the City's position that lots like this were sold by the dairies in the Wai'anāe area and "could be" consolidated for the agricultural use. This is not a criteria for IAL.

CONCLUSION. For purposes of this Zoom meeting, this testimony is submitted for the proposition that my clients do not believe the City complied with the legal requirements of what fulfills the designation of the IAL. Now that landowners have become more aware of this process and what the potential consequences may be to their existing land use, it is recommended that the LUC determine that the City did not comply with the legal requirements; and it be remanded to the City to revisit its identification.

The concept of IAL is a serious constitutional issue. It should not be treated in a perfunctory manner with no consideration for the lands present use.

Thank you very much for considering this testimony on behalf of the above identified TMKs. If you have any questions, please do not hesitate to contact me at (808) 595-3388, by email at hanac841@yahoo.com or at the above stated address.

Very truly yours,

/s/ ***Colleen Hanabusa***

Colleen Hanabusa, AAL LLC