HAWAII CLEAN POWER ALLIANCE

May 21, 2021

VIA EMAIL (dbedt.luc.web@hawaii.gov)
State of Hawaii Land Use Commission
P. O. Box 2359
Honolulu, HI 96814-2359

Re: Meeting of May 26, 2021, Agenda Item V
City and County of Honolulu Important Agricultural Lands Recommendation

Dear Chair Scheuer and Members of the Commission:

Hawaii Clean Power Alliance is a nonprofit alliance organized to advance the development and sustainability of clean energy in Hawaii. Our goal is to support the State of Hawaii's goal of 100% renewable energy by 2045. We advocate for utility-scale renewable energy, which is critical to meeting the State's renewable energy and carbon reduction goals. The City & County of Honolulu's Recommendation (and Errata) ("C&C Recommendation"), for the Land Use Commission to designate over 41,000 acres of land on Oahu as Important Agricultural Land ("IAL"), jeopardizes Hawaii's ability to meet its renewable energy target of 100% renewable energy by 2045.

The risks facing Hawaii have changed dramatically since the IAL provision was added to the Hawaii Constitution in 1978. The IAL law of 2005, enacted to fulfill the promise made almost 30 years earlier, in a world many of us would no longer recognize, did not benefit from our growing awareness of the acute energy/climate crisis facing Hawaii, and it therefore does not take those needs into account. In the years since 2005, Hawaii's awareness of renewable energy needs has increased, as sea level rise, erratic weather patterns, and spiking energy costs are conditions faced by the people of Hawaii every day. The IAL laws put into place in 2005 have not been amended to take these trends into account.

HCPA is very concerned that the C&C overlooked the renewable energy community in formulating its Recommendation, that the LUC, therefore, does not have the information necessary to take that issue into consideration. We are also concerned that the IAL mandate from the Legislature, which was enacted in 2005, is inconsistent with numerous later laws that were enacted to promote renewable energy projects on Agricultural District land. Because of this narrow approach taken by the C&C, without consideration for, information on, what impacts IAL designation may have on renewable energy, the Recommendation should be

rejected.

1. THE IAL LAWS FAIL TO TAKE INTO ACCOUNT NUMEROUS MORE RECENT LAWS ENACTED TO ADDRESS CARBON NEUTRALITY, CLIMATE CHANGE, AND THE STATE'S RENEWABLE ENERGY GOALS

The IAL laws were made in July 2005 (Act 183), which was almost 30 years after the enactment of Article XI, Section 3 of the Constitution in 1978 calling for the establishment of standards and criteria for IAL. Eight years later the LUC passed administrative rules to address IAL. A lot has changed in Hawaii since 1978, and a lot has changed in the 16 years since the 2005 IAL law was enacted.

Many important amendments have been made to HRS Chapter 205 in recognition of our changing environment, climate change, and Hawaii's special energy dependence vulnerability. Despite these changes, however, the IAL provisions of HRS Chapter 205 have remained the same, including policies that discourage physical improvements on IAL-designated lands and may preclude the use of IAL-designated lands for renewable energy projects. *See* HRS § 205-43(3)(4). These statutory IAL policies are directly contrary to the more recent amendments to HRS Chapter 205 that were made to protect Hawaii's energy and climate future.

For instance, Act 159 of 2007 broadened the permitted uses in the Agricultural District under Chapter 205 in recognition of Hawaii's dependence on petroleum and extreme vulnerability to oil embargos, supply disruptions, and international market dysfunctions. "To shape Hawaii's energy future and achieve the goal of energy self-sufficiency for the State of Hawaii, efforts must continue on all fronts, integrating new and evolving technologies, seizing upon economic opportunities to become more energy efficient and economically diversified, and providing incentives and assistance to address barriers." *See* Act 159 (2007).

Act 31 of 2008 further amended permitted uses within the Agricultural District to allow for solar energy facilities. This was done in recognition of the serious risks to Hawaii's economic and energy security and sustainability, and the value of increasing the use of Hawaii's abundant renewable energy resources to reduce greenhouse gas emissions, and contributions to global warming (as well as creating new job opportunities and economic diversification).[1]

The Legislature continued this crucial trend toward promoting Hawaii's energy self-sufficiency in 2011 through the enactment of Act 217, which expanded the range of Agricultural District lands where solar energy facilities could be located. In explaining its rationale for this change, "The legislature further finds that allowing renewable energy facilities within the agricultural

[1] Act 97 noted that "Hawaii's trade deficit is a significant impediment to Hawaii's goal of economic and energy security and sustainability. Specifically, in 2006, Hawaii goods and services exports were only $16,300,000,000, including visitor spending, while imports were approximately $24,000,000,000. The legislature further finds that Hawaii's oil imports totaled $3,400,000,000 for the year, accounting for approximately 15 per cent of the total imports. Over 93 per cent of Hawaii's energy is supplied by fossil fuel. The legislature further finds that allowing solar energy facilities to be built on marginal agricultural lands may have more beneficial effects for Hawaii's economy, environment, and energy security than leaving such lands unused."

district furthers and is consistent with the purposes, standards, and criteria for uses within agricultural lands. Renewable energy facilities increase the State's energy self-sufficiency and agricultural sustainability."

In 2015, Act 97 was enacted, requiring 100% of Hawaii's electricity sales to come from renewable resources by 2045:

> The legislature finds that Hawaii's dependency on imported fuel drains the State's economy of billions of dollars each year. A stronger local economy depends on a transition away from imported fuels and toward renewable local resources that provide a secure source of affordable energy. . . . This target will ensure that Hawaii moves beyond its dependence on imported fuels and continues to grow a local renewable energy industry.

That was followed in 2018 by the passage of Act 15, requiring Hawaii to become net carbon negative "as soon as practicable, but no later than 2045." Explaining that:

> The legislature finds that, according to the Hawaii Sea Level Rise Vulnerability and Adaptation Report released in December 2017, Hawaii could suffer $19,000,000,000 in damage due to projected sea level rise. Worldwide, natural disasters are becoming more severe and frequent. In the United States alone, natural disasters inflicted a record $306,000,000,000 worth of damage, breaking the previous record by almost $100,000,000. Rising global temperatures threaten biodiversity in every ecosystem, and habitat loss grows as higher temperatures permanently change the life cycles of plants and animals.

The C&C did not consult with energy and climate groups in developing its proposed IAL maps. *See e.g.* "List of Invited Participants: Focus Groups January 2015" provided as Appendix C to the C&C's "O'ahu Important Agricultural Land Mapping Project" report dated August 2018 ("2018 IAL Report") https://luc.hawaii.gov/wp-content/uploads/2021/02/IAL-Final-Pages-1-54.pdf. In addition, the State Office of Planning submitted papers in support of the C&C's proposal (https://luc.hawaii.gov/wp-content/uploads/2021/02/Citys-IAL-Recommendations-to-LUC-OP-comments-Signed.pdf), but neglected to address the impacts of the proposed IAL designations on climate, energy, and sustainability as set forth in the Hawai'i 2050 Sustainability Plan.

Before involuntary IAL designations are pushed by the C&C and approved by the LUC, **the IAL provisions under HRS Chapter 205 need to be revisited in a comprehensive way, together with the other Agricultural District provisions in Chapter 205, so that the laws and policies are in alignment and do not foreclose Hawaii's ability to meet its 100% renewable energy and carbon neutrality mandates**. The Recommendation should be rejected.

2. THE C&C HAS NOT ACCURATELY INFORMED THE PUBLIC WHAT IAL DESIGNATION REALLY MEANS

At this point it is totally unclear what the effects of involuntary IAL designation are. The information provided by the C&C on this point appears to contradict the requirements under HRS Chapter 205. As a matter of fundamental fairness, this involuntary IAL proceeding should be stopped, at least until the State and the C&C, as required under HRS Section 205-43, disclose to the public what changes to policies, land use plans, ordinances, and rules they will be enacting to pursue the IAL policies under HRS Section 205-43, so that landowners and lessees (including renewable energy developers) are provided fair notice of the implications of IAL designation.

The C&C's 2018 IAL Report downplays the impacts of an IAL designation:

> Administered by the State Land Use Commission, the IAL designation overlays existing State and county land use classifications (i.e., state land use districts, county zoning districts) and does not change existing classifications or affect the range of current permitted land uses. Contrary to popular belief, the IAL designation does not impose a higher level of permanent protection from future development, and it does not simply ensure that agricultural land is preserved in perpetuity.

2018 IAL Report at 1.

The C&C used similar language in its "Frequently Asked Questions" document dated September 2018 (see https://luc.hawaii.gov/wp-content/uploads/2021/05/CC-HNL-IAL-FAQs.pdf). There, on p. 5, the C&C informed the public that:

> Land that is ultimately designated as IAL by the LUC does not preclude the landowner from using his or her land for purposes allowed or permitted under current LUC rules and regulations and the City's zoning requirements.

However, these statements seem contrary to the requirements under HRS Section 205-43, which mandates that State and County laws must promote IAL policies, including policies that prevent uses that are otherwise permitted within the State LUC Agricultural District.

The IAL Policies provision in HRS Section 205-43 provides in relevant part:

> 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:

> * * *
>
> (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;
>
> * * *

It is difficult to reconcile the C&C's assertions that IAL designation will not change the range of permitted uses for IAL-designated land in the Agricultural District,[2] with the fact that HRS Chapter 205 requires the C&C's land use plans, and its laws and rules, to promote policies that prevent non-agricultural uses on these lands. The land use plans, ordinances, and rules that the C&C will be enacting to fulfill the IAL policies must be presented to the public before any County-driven IAL designations are made.

The public has not been shown the land use plans, ordinances, and rules that the State and the C&C plan to enact in adherence with the policies under HRS Section 205-43. Proposing or establishing IAL maps now puts the cart before the horse because the public cannot understand what IAL means unless and until the required changes to State and local laws are presented and enacted. The LUC should not go forward with this IAL process until the required IAL policies are enacted and understood.

3. MUCH OF THE LAND THE C&C RECOMMENDS FOR IAL DESIGNATION IS OF QUESTIONABLE AGRICULTURAL USE

Much of the land originally placed into the Agricultural District was marginal land that nobody thought was actually suitable for agricultural production. From the initial enactment of Hawaii's land use law in 1963, it was understood that land put into the LUC Agricultural District would include marginal, non-agricultural lands.

> Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities . . .

[2] Just a few of the currently permitted uses within the State Agricultural District that could be contrary to the policies under HRS Section 205-43 include: (i) wind-generated energy production, (ii) biofuel processing, (iii) solar energy facilities, (iv) hydroelectric facilities, (v) public and private open area recreational uses, (vi) utility lines, roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, (vii) mills, storage, and processing facilities, maintenance facilities, photovoltaic, biogas, and other small-scale renewable energy systems, and (viii) wireless communication antennas. *See* HRS Sections 205-2(d), 205-4.5(a).

> These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

This language remains in HRS Section 205-2(d) and HAR Section 15-15-19 to this day.

IAL was to be the differentiating factor where actual agricultural standards and criteria were to be established and applied to the very best Agricultural District lands. However, because marginal land has been left in the Agricultural District, the C&C's starting point for IAL determination is inherently flawed because it is relying on old decisions that should have been updated on a regular basis.

HRS Section 205-18 calls for periodic reviews of State land use districts. The State Office of Planning is obligated to undertake a review of **all** lands in the State **every five years**, starting in 1990 (before this power was delegated to the Office of Planning, it was the responsibility of the LUC). The Office of Planning is also empowered to initiate boundary amendments proceedings. Yet these boundary reviews have not taken place.

Because of this inaction, decisions that were made in the 1960s, when land was first put into State LUC districts (including lands that were acknowledged as inappropriate at the time), are controlling land uses and activities to this day. **Before the C&C or any governmental agency seeks to impose IAL designations on private lands, the government should first comprehensively assess the propriety and viability of existing State Agricultural District designations to set a current and accurate baseline from which IAL considerations can then be made**.

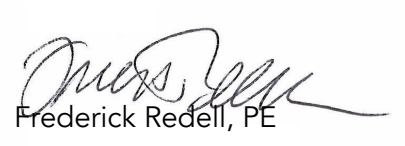
The C&C compounded this baseline failure by not considering all of the standards and criteria for IAL as required under HRS Section 205-44. The C&C must apply **all** of the standards and criteria under HRS Section 205-44 before it recommends land for IAL. This obligation is set forth in HRS Section 205-47, which states that the counties' identification of proposed IAL must be "based on the standards and criteria in section 205-44[.]" Ignoring this requirement, the C&C, in consultation with its technical advisory committee, considered only three of the eight statutory requirements provided under HRS Section 205-44, and based its Recommendation upon that. *See* C&C 2018 IAL Report, Appendix G. As a result, the C&C's Recommendation is seriously flawed and should be rejected.

By law, the C&C was obligated to evaluate each of the statutory criteria when identifying lands for IAL consideration. Only after it assessed the consistency with each criteria, so that the appropriate range of information was provided and analyzed, could the C&C then engage in a ranking methodology to determine what criteria and lands were most well suited for IAL. That did not happen. **This flawed process should end now because the LUC has not been given the information it needs to exercise its statutory obligations under HRS Section 205-49(a), and confirm whether the C&C's proposal "meet with the standards and criteria under section 205-44."**

The C&C's Recommendation to involuntary designate many thousands of acres of land as IAL fails to take into account the sustainable and balanced needs of the C&C and the State - agriculture, renewable energy, carbon neutrality. We respectfully request that the Land Use Commission reject the C&C's Recommendation and instruct the C&C to take action on the matters raised in this letter before it submits any subsequent proposal for involuntary IAL designation.

Thank you for the opportunity to testify.

Sincerely,



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