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May 19, 2021

State of Hawaii Land Use Commission

P. O. Box 2359

Honolulu, Hawaii 96814-2359

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Dear Chair Scheuer and Members of the Commission:

Subject: Meeting of May 26, 2021, Agenda Item V. - City and County of Honolulu Important Agricultural Lands (“IAL”) Designation

We are submitting comments on behalf of Robinson Kunia Land LLC (“RKL”) as to whether the City and County of Honolulu (“City”) has complied with legal requirement regarding its Recommendation of Important Agricultural Lands filed on April 21, 2021 (“Recommendation”) for the Island of Oahu.

The Recommendation seems to have been developed on a mass and generalized basis and without specific consideration to the legal rights, duties, or privileges of specific landowners or issues relating to particular properties. RKL has already designated over 50% of its lands as of January 2019 as IAL. Yet the Recommendation seeks to have all RKL agricultural land designated as IAL, as discussed in more detail below. The City should not proceed with its Recommendation until such time as they have updated and excluded lands which cannot and should not be considered for IAL designation. Furthermore, landowners, prior to the LUC’s consideration of involuntarily designation all of that landowner’s property as IAL, should be given the opportunity to designate more than 50% of their land as IAL, without that landowner having to incur the enormous costs that come with seeking a voluntary designation under HRS Section 205-45.

In considering whether the City should be allowed to proceed with its current Recommendation, consideration should be given to the following:

1. It is unclear from the Recommendation whether the maps and Tax Map Key (“TMK”) parcels for which approval is sought utilizes the map and TMKs from the City’s October 2018 Report (2018 Report), or the map and TMKs set forth in the May 2019 City Council resolution (“2019 Resolution”), or the LUC’s updated list of TMKs used for LUC’s mail notifications (“LUC list”).
2. All RKL lands are contained in both the 2018 Report (containing 1,800 TMKs), the 2019 Resolution (containing 1,767 TMKs) and the LUC list (containing 2,388 TMKs).

3. It is unclear from the Recommendation the location of the acres of RKL lands included and excluded in the City's Recommendation for involuntary designation of IAL.
4. With more than 50% of RKL voluntarily designated as IAL in January 2019, any recommendation to designate more RKL land is a mistake, is not made in good faith, and/or cannot legally be considered by the LUC. The fact that the City's Resolution states that its maps and TMK listings "do not reflect State Land Use Commission declaratory rulings for voluntary designation of important agricultural land issued after August 31, 2018" is improper. The City's Resolution was passed on June 5, 2019. The maps and TMK listings approved by the City Council should have been current as of that date, so that accurate information could be provided to the LUC.
5. Even, for the sake of argument, if the attempt to designate additional RKL lands could be legally considered, it is unreasonable and overly burdensome to require a landowner to participate in a proceeding that involves and includes hundreds of other landowners and properties.
6. The City, the Department of Agriculture, and the Office of State Planning all participated in RKL's Land Use Commission proceeding to designate RKL lands as IAL. The City and the Department of Agriculture, nevertheless, recommend support of the current City Recommendation. The Office of State Planning recognizes that certain large landowners have designated IAL lands since 2016, but their Figure 2 (Lands Designated as IAL and Lands Proposed for Designation as IAL) does not recognize the RKL designated IAL lands as Lands designated as IAL pursuant to HRS Section 205-45 by the State LUC. The proceedings on the City's Recommendation should not go forward to the extent they attempt to make recommendations which violate HRS Chapter 205. It should not be left to the LUC to sort through conflicting documents provided by the City to determine exactly what lands the City is proposing for IAL designation.
7. The City failed to take notice of those lands that have already been designed as important agricultural lands by the LUC. See HRS Section 205-47.
8. Prior to the involuntary designation of IAL, the City is required, but has failed, to offer incentives. See HRS Section 205-46.
9. In formulating its final recommendations to the City Council, the planning department failed to report on the manner in which the IAL mapping relates to, supports and is consistent with RKL's position on involuntary designation. See HRS Section 205-47(d).
10. The City has failed to adopt ordinances that reduce infrastructure standards for Important Agricultural Lands. See HRS Section 205-51.

11. No involuntary proceedings should go forward until the State and the City, 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 are provided notice of the implications of IAL designation.

The City's Recommendation should be dismissed, and thereafter amended and corrected to exclude attempts to designate lands which cannot be supported under current law. Moreover, the City in pursuing future recommendations for designation, should take notice of landowners who have designated a majority of its property as IAL, offer incentives, adopt ordinances that reduce infrastructure standards for IAL, disclose changes in policies, land use plans, ordinances and rules to pursue IAL policies, inform and facilitate voluntary designation prior to seeking involuntary designation of IAL and fully comply with all legal requirements under Chapter 205.

Very truly yours,

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By   
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