

Ronald and Mary Tubbs  
41-950 Kakaina St.  
Waimanalo, Hawaii 96795

May 18, 2021

Land Use Commission  
P.O. Box 2359  
Honolulu, Hawaii 96814-2359

RE: Testimony on C&C Oahu's compliance with (IAL) recommendation statutes and procedures

Dear Land Use Commission Chair Orodener and Commission Members,

**Communication to landowners from the Dept. of Planning and Permitting Honolulu (DPP), and their identification process, was flawed.** First, the DPP Honolulu made **misleading statements to us regarding property values during meetings, and left out key information that would enable landowners to understand the impact of an IAL designation.** During the Nov., 2017 Pearl City IAL info. meeting, DPP stated that there would be "No change to the value of the property." Although possibly referring to a property's present taxable value, in reality, the additional restrictions of being an IAL, will negatively impact a landowner's pool of qualified buyers thereby reducing its value to most buyers. They also omitted the fact that IAL designation would change the legal use of the Country-Residential zoned lands (which according to DPP personnel during the last LUC hearing, qualify for either residential or ag use), in that IAL lots would need to be "actively managed" by the landowner. The DPP failed to follow statutes in that **their communication was not collaborative**, as evidenced by their inability to give substantive reasons for their denial of our Request for Exclusion. **They merely gave information, solicited comments, acknowledged receipt of such, but then denied our request for exclusion without any meaningful communication concerning its content, as if they never even read it, thereby failing to collaborate.**

**DPPs communication about IAL recommendation criteria and procedures lacked clarity and transparency, and for some newer landowners was reportedly non-existent!** Their convoluted communication of IAL recommendation criteria began with their first communication *Notice to Affected Landowner*, dated 12/29/16. They cited the "legal basis" for IAL as Article XI, Sec. 3 of the State Constitution which stated that IAL lands "shall not be reclassified...without meeting the standards and **criteria established by the legislature...**" (bold added) **and developed an 8-criteria standard in the IAL Sect. 205-44- the "legal basis for IAL"**. But they omitted the key introductory phrase of to the Sect. 205-44 statute in their Dec. '16 and Nov. '17 notices, which read "*The standards and criteria shall be as follows:*" prior to listing the (8) criteria which indicated they should be evaluated together (see Dec., 2016 FAQ item 4 "*What are the criteria for IAL?*") and instead followed the criteria with a sentence: "*By law, land does not have to meet all eight criteria to be considered IAL,*" however they did not state by what law. They then buried on page 3 of 9 pages of enclosures of the same Dec. notice, a statement that they were "*recommending that land meeting at least one of the three criteria below be eligible for IAL,*" eliminating Sect. 205-44's intended wholistic definition for IAL. Then, to add to confusion for landowners they then answered item 1 of the FAQs in the same notice under "*What does Important Agricultural Lands ( IAL) mean?*" using a 3-point definition- Sec. 205-42, Hawaii Revised Statutes (HRS): "IAL is defined as those lands that: (1) are capable of

*producing sustained high agricultural yields... (2) contribute to the State's economic base and produce agricultural commodities ...or (3) are needed to promote the expansion of agricultural activities and income for the future...".* Later, in the Nov. 8, 2017 "Notice to Affected Landowner," attachments in the Phase II FAQs they further altered the definition to "*Minimum criteria considered by the City for inclusion into IAL include land within the State Land Use Agricultural District, availability of water, good soil quality, AND in agricultural use.*" (see p. 2, "What are the criteria for IAL?," (underlining mine).

**The DPP procedure of using multiple definitions to identify IALs to the landowners lacked clarity, was confusing, and disregarded its original multiple criteria aimed at identifying the best, most important ag lands. Their single IAL criteria, resulted in many lots of poor quality being recommended. 23% of the DPP's parcel recommendations are smaller than even the state and county definitions for ag lands (ie .less than one acre, or two acres per the Chair of the Hawaii land planning firm PBR Hawaii, Thomas Witten). Only during LUC hearings, when pressed as to why very small plots were included on the list, did the C&C conveniently reference criteria # 8 (ie. land with or near support infrastructure) - a criteria that was not even included in their published "minimum criteria," nor their defining statement "What IAL means!" Every data specialist knows triangulation of data (with at least 3-points) yields the best conclusions or recommendations. The DPP, as navigators of Oahu's sustainable food future, needed to use at least three criteria or "reference stars" for locating and recommending IALs.**

**The DPP's IAL identification procedure of "casting a wide net" using only one criteria, did not identify the best, most important ag lands. They basically "kicked the can down the road," calling their IAL recommendations a "work in progress," and stating that we could later "refine the IAL maps when it reaches the City Council and LUC." (see DPP Notice to Affected Landowner, dated 12/29/16, p. 5, FAQ item 13).**

In sum, the C & C Honolulu's communication and procedure of defining IAL lands was convoluted, confusing, and lacked clarity. DPP's communication at meetings included misleading information and omissions regarding the impact of IAL designation on our property's use and value. Their procedure of basing recommendations on one criteria, has reduced the quality of their IAL recommendations. Their communication to owners of longer held parcels who sought exclusion was informational, not collaborative, as required in the statute, while communication for many newer landowners, was reportedly absent. **For these reasons, we ask that the LUC return the list of recommended IALs back to the City and County for reworking.**

Sincerely,

Ronald J. and Mary S. Tubbs, Jr.

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