

July 8, 2021

2021 JUL 15 A 9:35

Mr. Daniel E. Orodenker  
Executive Officer  
State of Hawai'i Land Use Commission  
Department of Business, Economic Development & Tourism  
P.O. Box 2359  
Honolulu, Hawai'i 96804-2359

RE: Request to Exclude Tax Map Key Nos. (1) 5-9-033-002 and -003  
from City & County of Honolulu's Designation as Important Agricultural Lands  
Protest Re Procedure Designating Lands as Important Agricultural Lands

Dear Mr. Orodenker:

This letter refers to the request of A Charitable Foundation Corporation ("ACF"), a nonprofit corporation, to exclude the following parcels of land, of which ACF is the fee simple owner, from inclusion in the City and County of Honolulu's ("City") initiative to designate over 2,388 acres of land as "Important Agricultural Lands" ("IALs"):

TMK No.	Area	Zoning	Land Use District Boundary
(1) 5-9-033-002 ("Lot B")	9.237 acres	Agriculture-2	Agriculture
(1) 5-9-033-003 ("Lot C")	5.691 acres	Agriculture-2	Agriculture
(2) 5-9-033-004 (Lot "D") <sup>1</sup>	0.216 acre	Agriculture-2	Agriculture

(collectively "ACF's Properties")

ACF's Properties are situated on the Pupukea Ridge on the North Shore of Oahu. They are narrow oblong shaped "slivers" of land which are adjacent to a residential subdivision and are part of or surrounded by gulches. See: Subdivision Map bearing an approval date of May 5, 2017 which is attached hereto as Exhibit "1" and incorporated by reference. Lot B forms the upper part of a gulch. See: Pupukea Highlands Aerial View, which is attached hereto as Exhibit "2" and incorporated by reference.

**Discussion**

It is evident that the City broadly included ACF's Properties as IALs without taking into consideration their physical, topographical limitations and whether they are, in fact, capable of producing sustained high agricultural under the standards and criteria set forth in HRS Section 205-44.

<sup>1</sup> Lot D is an extension of Maulukua Road, a private road.

# TAKUSHI WONG LEE YEE

A LAW CORPORATION

Mr. Daniel E. Orodenker  
Executive Officer  
Land Use Commission of the State of Hawaii  
RE: Request to Exclude Tax Map Key Nos. (1) 5-9-033-002 and -003  
from Designation as Important Agriculture Lands  
July 8, 2021  
Page 2

In 2003 and after consultation with the Department of Land and Natural Resources of the State of Hawaii, ACF purchased 94.174 acres of land on the Pupukea Ridge on the North Shore from the developer of the adjacent residential subdivision in furtherance of the charitable purpose of subdividing out a 79.031-acre parcel (now Lot "A" as shown in the Subdivision Map - Exhibit "1") and donating it to the State of Hawaii for a State Park Reserve. The land/Lot A is in close proximity to the *Puu O Mahuka Heiau*, the largest *heiau* on Oahu, which is situated on land owned by State of Hawaii. Acquiring the land (now Lot A) and donating it to the State of Hawaii would be in furtherance of not only preserving the open space along the northern rim of Waimea Valley but also the historical landscape of the *heiau*.

ACF filed a Petition to amend the land use district boundary of 28.759 acres from the Agriculture Land Use District to the Conservation Land Use District and 5.129 acres in the Conservation Land Use District to the Agricultural Land Use District in Docket No. A05-758.<sup>2</sup>

In its Findings of Fact, Conclusions of Law and Decision and Order ("D & O") entered April 21, 2006, the Land Use Commission ("LUC") granted the Petition, which, among other conditions, required that the 94.174 be legally subdivided. It took ACF over 11 years and at considerable cost to subdivide the 94.174 acres into Lot A (79.031 acres), Lot B, Lot C and Lot D. The LUC is requested to take administrative notice of the record filed in Docket No. A05-758.

On January 24, 2019, almost 16 years after purchasing the property, ACF was able to convey Lot A to the to the State of Hawaii

In connection with a Petition for Land Use District Boundary Amendment, which ACF filed in Docket No. A05-758, Decision Analysts Hawaii, Inc. prepared a report involving ACF's Properties, now Lots B and C, entitled "Agricultural Suitability of Lands Proposed for Redistricting to Agriculture" (April 2005). The report made the following findings.

- ACF's Properties are situated on the Pupukea mountain ridge, which are densely vegetated and almost entirely forested. Roots penetrate to a depth of 5 feet or more.
- Where they follow the contour of the Pupukea Ridge, they have steep slopes of over 40-50% and upwards of 90%. Lot B is the upper part of a gulch. See: Slope Map, which is attached as Exhibit "3" and incorporated by reference.
- Under the University of Hawaii Land Study Bureau's Overall Productive Rating, the rating of the soils range from "C" to "E" (the lowest). Due to the slope, workability is difficult and runoff ranges from medium to very rapid and the erosion hazard is severe to very severe.

---

<sup>2</sup> The County participated in the proceedings before the LUC and supported the granting of the Petition.



**TAKUSHI WONG LEE  YEE**

**A LAW CORPORATION**

Mr. Daniel E. Orodener  
Executive Officer  
Land Use Commission of the State of Hawaii  
RE: Request to Exclude Tax Map Key Nos. (1) 5-9-033-002 and -003  
from Designation as Important Agriculture Lands  
July 8, 2021  
Page 3

- There is no source of agricultural water. Irrigation water would presumably be provided by the Board of Water Supply, which is more expensive.
- ACF's Properties have a potential for raising flowers and nursery products. They could be used for grazing cattle but the acreage is too small to support a commercial ranch where it could support only about two cow-and -calf units. The land would be suitable for a small number of domestic farm animals such as horses, chickens, ducks and goats. However, where there is a residential subdivision adjacent, including residences adjacent to Lot B, nuisance issues (e.g., odors and/or noise) would limit such uses. See: Subdivision Map - Exhibit "1" and Pupukea Highlands Aerial View - Exhibit "2".
- Access is through Maulukua Road, which is privately owned. There are no roads over Lot B and Lot C.

Against the foregoing, in its D & O, the LUC made, inter alia, the following findings:

42. Petitioner currently has no specific plans for the development of the approximately 15.344 acres of land it will retain. Petitioner has represented that if Petition Area B is reclassified from the State Land Use Conservation District to the State Land Use Agricultural District, Petitioner will seek to consolidate and resubdivide the 15.144 acres of land into two Agricultural District parcels that will be limited to agricultural uses with the potential development of farm dwellings. Potential agricultural uses include low elevation crops that are grown commercially on small farms in Hawai'i, or which are grown in support of a country lifestyle. Such crops would include those that do well in the surrounding area, such as flowers and nursery products. In addition, the land would be suitable for a small number of domestic farm animals, such as horses, chickens, ducks, and goats.

44. In the absence of an agricultural plan, the OP (Office of Planning) believes that Petition Area B would be more appropriate for the State Land Use Rural District where residential uses are allowed with agricultural activity.

Mr. Daniel E. Orodener  
Executive Officer  
Land Use Commission of the State of Hawaii  
RE: Request to Exclude Tax Map Key Nos. (1) 5-9-033-002 and -003  
from Designation as Important Agriculture Lands  
July 8, 2021  
Page 4

**ACF's Standing**

ACF will be aggrieved where its rights and interests in ACF's Properties will be adversely affected if included as IALs where they are not capable of producing sustained high agricultural yields and do not meet the standards and criteria to be classified IALs. ACF protests the broad procedure, including manner of notice to ACF, pursuant to which the City designated lands as IALs without taking into consideration whether they in fact meet all of the standards and criteria for such designation.

**ACF's Properties Do Not Meet the Standards and Criteria to be Classified IAL**

The standards and criteria of for classification under HRS Section 205-44 are as follows:

- (1) Land currently used for agricultural production;

**Response:** ACF's Properties are unoccupied, undeveloped, densely vegetated and almost entirely forested. Any probable historical use was primarily as scrub "ranchland" in the early 1900s.

- (2) Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops;

**Response:** Lot B and Lot C are not suitable for agricultural production of food, fiber, or fuel-and energy-producing crops. Crops would include those that do well in the surrounding area, such as flowers and nursery products. The land would be suitable for a small number of domestic farm animals, such as horses, chickens, ducks, and goats. However, where the closest residences are on adjacent properties, nuisance issues (e.g., odors and/or noise) would limit livestock uses.

- (3) Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the board of agriculture on January 28, 1977;

**Response:** The topography of ACF's Properties is shown in the Slope Map - Exhibit "3".

Regardless of soils ratings, Lot B forms the upper part of a gulch, has steep slopes and severe erosions problems.

Not all of Lot C can be used for cultivation where Lot C also has steep slopes and related erosion problems which limit its use for agriculture purposes and certainly will not produce sustained high agricultural yields.



**TAKUSHI WONG LEE & YEE**

**A LAW CORPORATION**

Mr. Daniel E. Orodener  
Executive Officer  
Land Use Commission of the State of Hawaii  
RE: Request to Exclude Tax Map Key Nos. (1) 5-9-033-002 and -003  
from Designation as Important Agriculture Lands  
July 8, 2021  
Page 5

Under USDA Natural Resources Conservation Service Soil Classification, the soils within Lot C are described as follows:

- 3.3 acres has adequate (but not good) soils and are rated IIIe (severe limitations that reduce the choice of plants, require special conservation practices, or both).
- 1.5 acres has soils are rated "VIe" (severe limitations that make them generally unsuitable for cultivation and limit use largely to pasture or range, woodland, or wildlife habitat).
- 0.4 acre has soils rated "VIIe" (very severe limitations that make them unsuitable for cultivation and restrict their agricultural use largely to pasture).

("e" indicates that the soils are subject to severe erosion if they are cultivated and not protected.)

Under the University of Hawaii Land Study Bureau Overall Productivity Rating, which classifies soils according to five levels, with "A" representing the class of highest productivity and "E" the lowest, about 4 acres of Lot C soils are rated "C" and the remaining 1.2 acres are rated "E." However, these lands have slopes that range up to 25% and are subject to erosion.

Under the State of Hawaii (ALISH) system, nearly all of Lot C is rated "Prime" based on former use of land in the area to the West, which ACF donated to the State of Hawaii for a State Park Reserve.

- (4) Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production;

**Response:** The area was vacant pre-Contact and not associated with traditional Hawaiian agriculture or unique agricultural crops and uses. In the early 1900s, the area was most likely used to pasture cattle if at all where the terrain has steep slopes.

ACF's Properties may be suitable for flowers and nursery products. In addition, the land would be suitable for a small number of domestic farm animals, such as horses, chickens, ducks, and goats.

- (5) Land with sufficient quantities of water to support viable agricultural production;

**Response:** There is no source of agricultural irrigation water. (Potable) water for irrigation would presumably be provided by the Honolulu Board of Water Supply water, the cost of which would be substantially higher.