

August 4, 2021

Via email to: dbedt.luc.web@hawaii.gov

State of Hawaii Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

Re: Landowner Objections to Important Agricultural Lands Designation Processes

Dear Chair Scheuer and Commissioners:

This office represents KAUKONAHUA RANCH, LLC and K VIEW, LLC (the “Landowners”). Landowners own eight parcels identified and recommended for IAL designation by the City and County of Honolulu (“the County”). Those parcels are identified by the following Tax Map Key Numbers: (1)67004001, (1)67004004, (1)67003002, (1)67003006, (1)67003007, (1)65001049, (1)65001052, and (1)65001053 (the “Parcels”) and have a combined land area of approximately 2,337 acres.

While the Landowners remain interested in exploring possible designation of portions of the Parcels as IAL, they object to the Parcels being wholly designated as IAL pursuant to HRS § 205-49, largely because the County has still not enacted incentives for IAL landowners and they still have not satisfied the statutory consultation, cooperation, notification, and consent requirements set forth by HRS § 205-47(d)(5) which states:

In formulating its final recommendations to the respective county councils, the planning departments shall report on the manner in which the important agricultural lands mapping relates to, ***supports, and is consistent with*** the
[r]epresentations or position statements of the owners whose lands are subject to the potential designations.

HRS § 205-47(d)(5) (emphasis added). In this case, Landowners and their agents met with City officials, including leaders from the Department of Planning and Permitting (“DPP”) and sent a November 9, 2017 follow up letter to DPP stating that while the Landowners agreed that the lands are an important agricultural resource, they “look[ed] forward to reviewing the proposed incentives under the City’s IAL proposal”.

Per the specific requirement of the IAL statutes (HRS §§ 205-41 – 205-52), Landowners expected DPP to cooperate and consult with them regarding possible designation of portions of their lands AFTER the City and County enacted incentives for IAL lands. More specifically, per the requirements of HRS §§ 205-46, 205-47(b), and 205-49(d), further consultation with DPP would have allowed for discussion and cooperation, not only on county enacted incentives, but also on the conditions relevant to agricultural production for various portions of the Parcels.

Instead of receiving further consultation, however, it appears the Landowner's letter has since been misconstrued as somehow providing consent to add the entirety of the Landowners' Parcels to a list of those properties being recommended by the County for IAL designation.¹

While Landowners have been and remain willing to cooperate and properly consult with DPP regarding the concept of IAL designation on various portions of the Parcels, at no time did Landowners ever want or seek full IAL designation for the entirety of their Parcels.

Neither did they ever authorize the County to report to the LUC that they agreed with the same. As such, the County's report to the LUC does not comport with HRS § 205-47(d)(5) which requires that the County's recommended designations and reporting to the LUC on the same be consistent with Landowners' representations or position statements.

Reporting Landowners' parcels being as among those that are designated voluntarily must be corrected. Moreover, Landowners must be afforded adequate time to consult with County officials and consider the IAL incentives, and pursue voluntary designation for some portions of their Parcels. As such, Landowners have filed a separate voluntary petition for declaratory order with the LUC, pursuant to HRS § 205-45/

Designating Landowners' Parcels now, without Landowners' input and cooperation, would fail to satisfy the statutory obligations to first provide all landowners with access to and ample time to consider the constitutionally and statutorily mandated incentives the County is still supposed to enact.

For the reasons stated above, we hereby respectfully submit these objections to the designation of the landowner's parcels as IAL, as proposed by the Department of Planning and Permitting of the City and County of Honolulu. Landowners seek and hereby request a hearing as to the appropriateness of proposed IAL designation for the Parcels.

Alternatively, in lieu of waiting for the County to enact long overdue incentives, or waiting for the LUC to seek clarity on proper procedures for such hearings to weigh landowner objections, Landowners see value in filing its petition pursuant to HRS § 205-45. As such,

¹ See Exhibit E to City's petition for IAL designation, beginning on page 37 here (item 7 on pg. 42 refers to the landowner's parcels): <https://luc.hawaii.gov/wp-content/uploads/2021/04/CC-39020-Part-7.pdf>

Landowners shall withdraw their objections insofar as they are able to successfully designate portions of their Parcels as IAL pursuant to their petition for declaratory order and in compliance with HRS § 205-45.

As such, please see the Landowners' petition for declaratory order, which shall be served and filed upon the LUC and related agencies pursuant to HRS § 205-45. We look forward to hearing from you regarding the scheduling for a hearing on that petition.

Very truly yours,

DURRETT LANG MORSE, LLLP



Kalani A. Morse

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Enclosure