

TAKUSHI WONG LEE & YEE
A LAW CORPORATION

DAVIES PACIFIC CENTER
841 BISHOP STREET, SUITE 925
HONOLULU, HAWAII 96813
PHONE: (808) 543-9800
FAX: (808) 791-0063

DICKSON C. H. LEE
email: lee@twly.org

JAMES N. H. YEE
email: yee@twly.org

ALFRED M. K. WONG
(retired)

ROY E. TAKUSHI
(1927 - 2004)

December 29, 2021

VIA FAX: (808) 587-3827
State Land Use Commission
P.O. Box 2359
Honolulu, Hawai'i 96804

RE: Evaluation of the City and County of Honolulu's Recommendations and Compliance for Identification and Mapping of Important Agricultural Lands for the Island of Oahu

Written Public Testimony of A Charitable Foundation Corporation

Hearing Date: January 6, 2022
Time: 9:00 a.m.
Place: ZOOM Webinar 832 7179 7049

22 DEC 29 A 8:17
LAND USE COMMISSION
STATE OF HAWAII

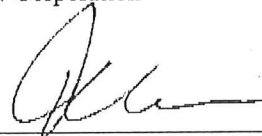
Members of the State Land Use Commission:

We are transmitting by FAX, written public testimony, which is being presented on behalf of our client A Charitable Foundation Corporation, a nonprofit corporation, in connection with the above referenced matter.

Where the above meeting will be conducted by ZOOM Webinar, please consider this letter as having signed in to present written public testimony.

Very truly yours,

TAKUSHI WONG LEE & YEE
A Law Corporation

By: 
DICKSON C.H. LEE

enclosure

cc: A Charitable Foundation Corporation

DICKSON C.H. LEE
Takushi Wong Lee & Yee - A Law Corporation
841 Bishop Street, Suite 925
Honolulu, Hawai'i 96813
Tel. No. (808) 543-9803; FAX No. (808) 791-0063

Attorney for A Charitable Foundation Corporation

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

2021 DEC 29 A 8:17
LAND USE COMMISSION
STATE OF HAWAII

Land Use Commission's Evaluation of the City)	DOCKET NO. None
and County of Honolulu's Recommendations and)	
Compliance for Identification and Mapping of)	A Charitable Foundation Corporation's
Important Agricultural Lands for the Island of)	Written Public Testimony
Oahu)	
)	Hearing Date: January 6, 2022
)	Time: 9:00 a.m.
)	Place: ZOOM Webinar
)	832 7179 7049

**A CHARITABLE FOUNDATION CORPORATION'S
WRITTEN PUBLIC TESTIMONY**

A Charitable Foundation Corporation ("ACF"), a nonprofit corporation, by its attorney Dickson C.H. Lee of Takushi Wong Lee & Yee - A Law Corporation, is responding to the Land Use Commission's ("LUC") invitation to submit public testimony regarding the LUC's evaluation of the City and County of Honolulu ("City") recommendations and consideration of the degree to which the County has complied with the standards and criteria for the identification and mapping of Important Agricultural Land ("IAL").

ACF's contact information is as follows:

A Charitable Foundation Corporation
Attention: David S. Druz
P.O. Box 909
Haleiwa, Hawai'i 96712

ACF's Interest and Standing

ACF is the owner of the following parcels of land which are among the numerous properties of real property which are affected by the City's action:

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") ¹	0.216 acre	Agriculture-2	Agriculture

(collectively "ACF's Properties")

The identification of ACF's Properties as IAL will adversely infringe on ACF's legal property rights and interests.

By letter dated July 8, 2021 to the LUC, which is not attached but of which ACF requests the LUC to take notice, ACF informed the LUC that ACF's Properties did not meet the standards and criteria for identification and mapping as IAL and requested the LUC to exclude ACF's Properties as IAL.

Executive Summary

Where each property is unique and property rights of affected landowners are at stake, due process requires that:

(a) the City be required to prepare a separate, independent and written study on a parcel-by-parcel basis which supports how each affected property in fact (and not by conclusory supposition) meets *all* eight standards and criteria for identification and mapping as IAL (emphasis supplied); and

(b) the LUC considers the interests of each affected landowner in a separate contested case proceeding.

¹ Lot D is an extension of Maulukua Road, a private road.

ACF's Public Testimony Re Protecting Affected Landowners' Due Process Rights

The City's action:

- was overly broad;
- did not involve conducting a specific study of how each affected property met the standards and criteria for identification as IAL; and
- did not provide adequate due process notice to landowners, including the opportunity to object in a proper proceeding.

Instead, City's action was based on a predisposed conclusory supposition that all lands in the agriculture zones should be identified as IAL without regard to whether such lands in fact met such standards and criteria.²

² HRS Sec. 205-44(c) provides as follows:

- (c) The standards and criteria shall be as follows:
- (1) Land currently used for agricultural production;
 - (2) Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops;
 - (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;
 - (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;
 - (5) Land with sufficient quantities of water to support viable agricultural production;
 - (6) Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county;
 - (7) Land that contributes to maintaining a critical land mass important to agricultural operating productivity; and
 - (8) Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power.

All of the affected properties, including ACF's Properties, have different, unique characteristics and features.

To provide ACF, as an affected landowner, with due process protections with respect to its property rights (and as to all other affected landowners), the LUC should consider the following.

1. **Remand the Matter Back to the City and Require the City to Conduct a Separate Study for Each Affected Property.** Although the Attorney General's letter to the LUC dated September 23, 2021 opined that:

"The City did not need to conduct this weighing on a parcel-by-parcel basis. Following the weighing of standards and criteria, the City was permitted to base its IAL recommendation on fewer than eight of those standards and criteria."

the LUC is not precluded from remanding the matter back to the City and ordering the City to prepare and submit to the LUC a separate, independent, written study on a parcel-by-parcel basis as to how each affected property in fact and specifically (and not by conclusory supposition) meets *all* of the standards and criteria for identification and mapping as IAL under HRS Sec. 205-44(c). (emphasis supplied)

ACF submits that each study be similar in format and content to what a landowner would otherwise submit in a petition for a land use district boundary amendment or change in zoning involving important agricultural lands under HRS Sec. 205-50 except that the study would specifically address and be supported by expert findings as to how each affected property meets the standards and criteria under HRS Section 205-44(c). A copy of the study for each affected property should be provided to the affected landowner thereof and affected landowners should be afforded ample opportunity to respond.

2. Conduct a Separate Contested Case Proceeding for Each Affected Property. In its

opinion, the Attorney General further opined:

"...a quasi-judicial proceeding will require the LUC to: (a) conduct an independent review of the extent to which the proposed IAL lands meet the statutory criteria and determination that IAL designation is necessary to meet the broader objectives and policies for IAL (HRS § 205-49(a)); and (b) apply a quasi-judicial proceeding to provide an appropriate degree of due process protection for the property rights of affected landowners."

Each affected property is unique. Where the Attorney General's opinion recognizes that landowners' property rights are involved and landowners are entitled to due process protections, the LUC should conduct a parcel-by-parcel contested case proceeding and consider whether the affected property in each case in fact meets all of the standards and criteria for the identification and mapping as IAL as a matter of due process where affected landowners will be aggrieved by an adverse decision. In each proceeding, the City should have the burden of proving how each affected property meets in fact (and not by conclusory supposition) all of such standards and criteria.

DATED: Honolulu, Hawai'i, December 29, 2021.



DICKSON C.H. LEE
Attorney for A Charitable Corporation, a
nonprofit corporation