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BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of THE CITY AND COUNTY OF HONOLULU'S Recommendation of Important Agricultural Lands for the City and County of Honolulu, State of Hawai'i.	THE CITY AND COUNTY OF HONOLULU'S SUPPLEMENTAL BRIEF TO ITS RECOMMENDATION OF IMPORTANT AGRICULTURAL LANDS; CERTIFICATE OF SERVICE

THE CITY AND COUNTY OF HONOLULU'S SUPPLEMENTAL BRIEF TO ITS RECOMMENDATION OF IMPORTANT AGRICULTURAL LANDS

The Department of Planning and Permitting ("DPP") of the City and County of Honolulu ("City"), hereby provides the Land Use Commission, State of Hawaii ("LUC"/ "Commission"), this Supplemental Brief to its Recommendation of Important Agricultural Lands ("Brief") to clarify questions and concerns raised by public testimony and Commissioners during public hearings conducted on April 28, 29, and May 26, 2021. Specifically, this Brief discusses the following:

I. The City's IAL recommendation has minimal to no effect on property rights;
II. The City's IAL Recommendation meets procedural due process requirements;
III. The City properly applied the eight IAL standards and criteria of Hawaii Revised Statutes ("HRS") §205-44;

IV. The City's inclusion of certain types of parcels in its IAL recommendation was proper and reasonable; and
V. Based on the IAL Statute, the Commission must accept the City's IAL Recommendation.

I. IAL HAS MINIMAL TO NO IMPACT ON PROPERTY RIGHTS.

A misconception of IAL designation is that it deprives or severely restricts a landowner's property rights. In fact, IAL designation creates little if any changes in a landowner's use of their property, and rather, is intended to provide opportunities and benefits for landowners.

A. Current Agricultural Uses Remain Unaffected.

The City's recommendation of IAL is made strictly from currently zoned or classified State Agricultural District lands. That means that all lands currently being considered for IAL designation are already classified, zoned, and intended for agricultural uses that are expressly permitted under HRS §§ 205-2 and 205-4.5(a). The right of a landowner to use their land for agriculturally permitted purposes as allowed under the statute, remains unaffected by an IAL designation. The agricultural use of the land is *not* changed or restricted once the land is designated IAL.

Notably, lands currently without IAL designation are generally limited to those uses expressly permitted under HRS §§ 205-2(d) and 205-4.5(a), otherwise, uses not expressly permitted are prohibited. A farm dwelling is an expressly permitted use under HRS §§ 205-2(d) and 205-4.5(a) so long as the farm dwelling is located on and is accessory to a farm. Therefore, if a farm dwelling is used for purely residential uses and not accessory to a farm, such use is prohibited. Therefore, any suggestion that IAL designation will *cause* a landowner, who is residing on their property without actively farming their land, to be in violation of the law and subject to removal or citation, is inaccurate and misplaced. A landowner, who is currently residing on their property without actively farming their land, is likely in violation of HRS §§

205-2(d) and 205-4.5(a) if they are residing in a farm dwelling that is not accessory to a farm. In other words, any potential citation for violation of not actively farming one's property while residing on the property, is based on current statutory law, not the proposed designation of IAL.

B. HRS §205-45.5 Farm Dwelling & Employee Housing

In comparing the allowance and use of farm dwellings and employee housing as currently permitted for the Agricultural District under HRS §205-4.5, to IAL designated lands under HRS §205-45.5, there does not appear to be a substantial or significant difference in the rights and restrictions of a landowner. HRS §205-45.5 was intended as an incentive or benefit to landowners or users of IAL designation, and not as a restriction or deprivation of a property right. HRS §205-45.5 states in part:

> A landowner whose lands are designated as [IAL] may develop, construct, and maintain farm dwellings and employee housing for farmers, employees, and their immediate family members on these lands…

The statute is intended to be prospective such that it applies to the new development and construction of farm dwellings and employee housing once the IAL designation is made. The Conference Committee Report for the final bill that established HRS §205-45.5, states that the statute "[a]llows landowners who have designated their agricultural lands as IAL to *construct* residential dwellings for farmers, employees, and their families on the IAL…" The proposed use, occupancy, and requirements on farm dwellings and employee housing under HRS §205-45.5 only applies to newly constructed farm dwellings on IAL, not to existing farm dwellings. Therefore, there is no change in one's current right to use their existing farm dwelling. Any new farm dwelling on IAL designated land would be subject to the requirements of HRS §205-45.5, separate from any current rights to use or occupy an existing, pre-IAL farm dwelling.

1. HRS §205-45.5(1) – Farm Dwelling & Employee Housing Occupancy.

In any case, the occupancy of an IAL farm dwelling or employee housing is generally the same if not less restrictive to a landowner than existing farm dwelling or employee housing requirements in the State Agricultural District. The definition of "farm dwelling" as currently applied throughout the State Agricultural District under HRS §205-4.5(a)(4) states that a farm dwelling means "a single-family dwelling located on and accessory to a farm… or where agricultural activity provides income to the family occupying the dwelling." *(Emphasis added).* HRS §205-2(d)(7) further states that a farm dwelling or employee housing must be a bona fide agricultural use that supports the agricultural activities and be accessory to the agricultural activities.

In comparison, under HRS §205-45.5, an IAL farm dwelling that requires use "exclusively by farmers and their immediate family members who actively and currently farm on IAL upon which the dwelling is situated," is basically a different way of stating the same – that the single-family dwelling be occupied by the family farming the land. The following table provides a side-by-side comparison of the current HRS definition and use of a farm dwelling with the IAL use of a farm dwelling.

FARM DWELLING DEFINTION, USE & OCCUPANCY		
HRS §205-4.5(a)(4) Definition of Farm Dwelling	**HRS §205-2(d)(7) Use of Farm Dwelling**	**HRS §205-45.5 Use of Farm Dwelling on IAL**

"Farm dwelling… means a single-family dwelling located on and accessory to a farm… or where agricultural activity provides income to the family occupying the dwelling."	"Bona fide agricultural services and uses that support the agricultural activities of the … owner of the property and accessory to any of the above [agricultural] activities, … including farm dwellings as defined in section 205-4.5(a)(4), employee housing… solely for use in the agricultural activities of the… owner of the property…"	"shall be used exclusively by farmers and their immediate family members who actively and currently farm on IAL upon which the dwelling is situated; provided further that the immediate family members of a farmer may live in separate dwelling units situated on the same designated land"

Furthermore, rather than a detriment, HRS §205-45.5 may provide an additional benefit or right to an IAL landowner: Whereas, currently, HRS §205-4.5(a) generally permits farm dwellings accessory to a farm in the State Agricultural District, which the counties may limit the number of farm dwellings per lot of a particular size; on IAL, HRS §205-45.5 expressly permits immediate family members to occupy *additional separate dwelling units* on the same IAL designated land. Therefore, the HRS §205-45.5 could allow multiple dwelling units on IAL designated land for the same immediate family, which may be more generous than the currently allowed number of farm dwellings on non-IAL agricultural lands.

2. HRS §205-45.5(3) – Farm Dwelling Total Land Area

The land area limitation of HRS §205-45.5(3) for all farm dwellings and employee housing units, is not necessarily more restrictive than currently allowed. HRS §205-45.5 states for IAL lands that:

> The total land area upon which the farm dwellings and employee housing units and all appurtenances are situated shall not occupy more than five per cent of the total [IAL] area controlled by the farmer or the employee's employer or fifty acres, whichever is less.

The City's Land Use Ordinance Section 21-5.250, Revised Ordinances of Honolulu, states that for lands with AG-1 zoning, "each farm dwelling and any accessory uses shall be

contained within an area not to exceed 5,000 square feet of the lot." The counties are currently authorized to more restrictively regulate the accessory agricultural uses provided under HRS §§ 205-2(d) and 205-4.5(a). HRS §205-5 states, "Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance." Thus, if the IAL designated portion of a parcel is more than 2.3 acres, the LUO regulation is *more* restrictive. Furthermore, County policy is more restrictive in that the farm dwellings and accessory uses must be contained within a 5,000 square foot polygon area, while HRS §205-45.5 does not limit the 5% to a single area.

3. HRS §205-45.5(4), (5) and (6) – Building Codes, Residential Subdivision, and Cluster Development.

HRS §205-45.5 requires that farm dwellings and employee housing meet applicable housing code requirements, shall not be part of a residential subdivision, and may be part of consideration of a cluster development to maximize the land area available for agricultural production. *HRS §205-45.5(4), (5) and (6).* These three requirements are the same as for currently permitted farm dwellings and employee housing under HRS §205-4.5, and therefore no more restrictive than current requirements.

4. HRS §205-45.5(7) – Supported by Ag Plans.

HRS §205-45.5(7) requires that plans for IAL farm dwellings and employee housing units shall be supported by agricultural plans that are approved by the Department of Agriculture. Again, because HRS §205-45.5 applies prospectively to the new development and construction of farm dwellings and employee housing once the IAL designation is made, there is no interference or change in one's use of their current farm dwelling. Additionally, the

requirement of an agricultural plan approved by the State Department of Agriculture is a procedural requirement that does not necessarily change or restrict a landowner's ability to use their land.

C. Reclassification & Rezoning of IAL.

Once land is designated IAL by the Commission, HRS §205-50 serves to protect and preserve the IAL. If the landowner of IAL-designated land wishes to propose the IAL designated land for reclassification or rezoning from agricultural use to urban, rural or conservation, the Commission or the county from which the reclassification or rezoning is sought, must consider additional standards and criteria, including the following of HRS §205-50(c):

> (1) The relative importance of the land for agriculture based on the stock of similarly suited lands in the area and the State as a whole;
> (2) The proposed district boundary amendment or zone change will not harm the productivity or viability of existing agricultural activity in the area, or adversely affect the viability of other agricultural activities or operations that share infrastructure, processing, marketing, or other production-related costs or facilities with the agricultural activities on the land in question;
> (3) The district boundary amendment or zone change will not cause the fragmentation of or intrusion of nonagricultural uses into largely intact areas of lands identified by the State as [IAL] that create residual parcels of a size that would preclude viable agricultural use;
> (4) The public benefit to be derived from the proposed action is justified by a need for additional lands for nonagricultural purposes; and
> (5) The impact of the proposed district boundary amendment or zone change on the necessity and capacity of state and county agencies to provide and support additional agricultural infrastructure or services in the area.

Additionally, the proposed reclassification or rezoning shall be based upon a determination that the public benefit of the reclassification or rezoning outweighs the benefits of retaining the land for agricultural purposes, and the proposed action will have no significant impact upon the viability of agricultural operations on adjacent agricultural lands. *HRS §205-50(d).*

These additional criteria for a rezoning or district boundary amendment out of IAL may impact one's ability to reclassify or rezone land but they do not directly impact one's ability or right to use their land as currently classified or zoned. They do not restrict one's right to use their property currently. The additional layer of review to reclassify or rezone one's property is another procedural requirement, not a change in one's property rights.

HRS §205-50(f) requires a two-thirds vote of the membership of the Commission or the county, as applicable, to reclassify or rezone IAL lands, which is no different than the currently required vote by the membership of the Commission or the City to reclassify or rezone lands.

In sum, the designation of IAL has no effect on a landowner's ability to use their land for currently permitted agricultural purposes, but may provide opportunities for additional farm dwellings and employee housing to landowners as an incentive to landowners to farm their land consistent with IAL purposes. Although an IAL landowner's ability to rezone their land would come with greater scrutiny for the protection of agricultural lands, a landowner's right to the rezoning or district boundary process, as applicable, remains.

II. THE IAL PROCESS MEET PROCEDURAL DUE PROCESS REQUIREMENTS.

A. The IAL Process Provides Sufficient Notice and Opportunity to Be Heard.

The basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest. *Sandy Beach Def. Fund v. City Council of City & Cnty. of Honolulu, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989) (citing Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)).* "Due process is not a fixed concept requiring a specific procedural course in every situation. '[D]ue process is flexible and calls for such procedural protections as the particular situation demands.'" *Medeiros v. Hawaii County*

Planning Com'n, 797 P.2d Haw. App. 183 (Haw. App. 1990) (citing Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484, 494 (1972)("Medeiros").

Determination of the specific procedures required to satisfy due process requires a balancing of the following factors: (1) the private interest which will be affected; (2) the risk of an erroneous deprivation of such interest through the procedures actually used, and the probable value, if any, of additional or alternative procedural safeguards; and (3) the governmental interest, including the burden that additional procedural safeguards would entail. *DW Aina Le'a Dev., LLC v. Bridge Aina Le'a, LLC., 134 Hawai'i 187, 339 P.3d 685 (Haw. 2014).*

(1) The private interest which will be affected.

As discussed in Part I, the designation of IAL has little if any impact on a landowner's ability to use their land for currently permitted uses and purposes, and therefore, no significant property interest will be deprived. "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Board of Regents v. Roth, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548, 561 (1972).* Public concerns that landowners will have a more difficult time reclassifying or rezoning their properties for other uses under HRS §205-50 are merely landowners' abstract desires or a unilateral expectation, and not an entitlement to those aspirational uses.

(2) The risk of an erroneous deprivation of such interest through the procedures actually used, and the probable value, if any, of additional or alternative procedural safeguards.

Considering the factors to determine the specific procedures for due process, even assuming landowners have a property interest requiring protection under the due process clause, the procedures established by the IAL statute are sufficient to protect landowners from erroneous

deprivation. The IAL statute provides ample notice and public hearings and meetings on the IAL process, and the City has more than sufficiently met these statutory requirements.

HRS §205-47(c) requires that "[e]ach county, through its planning department, shall develop an inclusive process for public involvement... including a series of public meetings throughout the identification and mapping process." The City held three focus group meetings, and three rounds of community meetings noticed by newspaper advertisements. HRS §205-47(d) requires that "[u]pon identification of potential lands to be recommended to the county council as potential [IAL], the counties shall take reasonable action to notify each owner of those lands by mail..." Upon the identification of potential IAL land for recommendation, the City mailed notices to the 1,800 landowners of potential IAL land designation, as well as a second mail out.

HRS §205-47(e) requires the county to submit the IAL maps to the county council for decision-making, which also entails public notices. The City Council issued public notices and held public hearings on the IAL maps on February 7, 2019 and June 5, 2019. The IAL maps were adopted as Resolution 18-233, CD1, FD1 and were transferred to the Commission for designation. The Commission scheduled a series of public hearings in April, May of 2021, and January 2022.

In preparation for these hearings, the Commission mailed out public notices to landowners as well as hearing agendas to interested parties. HRS §205-49(a) requires that, following the Commission's acceptance of the City's IAL recommendation, the Commission's decision in the designation of IAL "shall consider... landowner position statements and representations...", and "shall be based upon written findings of fact and conclusions of law, presented in at least one public hearing conducted in the county where the land is located..."

Suggestions that "reasonable action to notify" meant that the City should have sent notifications by certified mail rather than regular mail are not reasonable, not practical, and are not required under the plain language of the statute. As an unfunded mandate, certified mail is significantly costlier than regular mail. The Commission itself has determined of its own accord that notification of these hearings by regular mail is required as opposed to delivery by certified mail. Had the Commission thought that certified mail was necessary, it should have required it through its administrative rules for IAL, HAR Subchapter 17 of Chapter 15-15, similar to its requirement of certified mail for orders to show cause under Hawaii Administrative Rules 15-15-93(b).

(3) The governmental interest, including the burden that additional procedural safeguards would entail.

Based on Article XI, Section 3 of the Hawaii State Constitution, the State is keenly interested in conserving and protecting agricultural lands, promoting diversified agriculture, increasing agricultural self-sufficiency and assuring the availability of agriculturally suitable lands through the State's identification and designation of IAL. Based on the IAL statute, which does not require contested cases, the legislature has decided that IAL should not be delayed by protracted contested case hearings. However, mindful of the potential adverse impact of IAL designation, the legislature has required the counties and the Commission to provide notice, an opportunity to be heard, and a record of the proceedings for appellate review.

In *Medeiros*, the court recognized that "a geothermal permit proceeding is essentially a zoning matter. Historically, and universally, such matters have been decided after notice and a public hearing. We are not aware of any precedent for holding that the constitution requires a contested case hearing on a zoning change application." *Medeiros at 797 P.2d 59, 67, 8 Haw.App. 183, 197.* IAL designation is similar but less restrictive than a zoning matter in which

lands are designated for certain benefits and enhanced uses, and similarly should not require contested case hearings.

Moreover, if the Commission remains unpersuaded that sufficient due process of public notice and hearing has been achieved thus far, the Commission may seek consultation with its Attorney General for further analysis, it may provide additional public notice and hearing, including contested case hearings for individual landowners, and/or it could remove parcels from IAL designation that its landowners have objected to IAL designation. However, again, the IAL statute and rules do not require any greater due process, and there is no significant property interest that is deprived by IAL designation, which would require additional notice and hearing.

III. The City Properly Applied the Eight IAL Standards and Criteria of HRS §205-44.

The LUC requested Attorney General's opinion, dated September 23, 2021, determined that "[t]he City must weigh all eight standards and criteria in its process of identifying IAL lands but may base its identification and recommendation of IAL lands on only some or even just one of those standards and criteria."

In other words, the plain language of HRS §205-44(a) requires:

(A) The eight standards and criteria shall be used to identify IAL; and

(B) Designation of IAL shall be made by weighing the standards and criteria with each other.

Consistent with these two requirements, the City's identification of IAL included the following steps in fulfilling the requirements of HRS §205-44(a):

(1) The City used all eight standards and criteria by evaluating each of the eight standards and criteria, plus an additional criterion, to create definitions of each criterion of the physical attributes and defining features of each criterion. The TAC, who are

technical agricultural experts, along with DPP and its consultant, carefully considered and deliberated at length all eight standards and criteria to determine the operational definition of each criterion. (*See pages 2-9 of Appendices F "Criteria Maps and Summary Descriptions" provides the data sources and evaluation for each criterion*).

(2) The City used geographic information system (GIS) spatial datasets to create a series of resource maps that identified the geographic extent associated with each of the eight criterion to provide a visual geographic representation and comparison of each criterion. Mapping of the criteria relied heavily on existing datasets (*see page 10-15 of Appendix F provides the mapping of each of the criterion*).

Steps (1) and (2) above fulfill the requirement of the City under HRS §205-44(a) to use all eight standards and criteria to identify IAL.

(3) The TAC members carefully studied and evaluated each of the criteria definitions and resource maps to value and rank their preference of each criterion.

(4) Once the criteria were ranked, the TAC members determined that the three highest-ranked criteria, as opposed to the four highest-ranked, or six highest ranked criteria, should be used. This was based in part on the fact that the top three-ranked criteria established a tier well above in scoring and value than the lower two tiers of criteria.

(5) Having determined that the three highest-ranked criteria would be used as the priority criteria, the TAC analyzed and compared composite criteria maps to determine how the three highest criteria would be applied, i.e., lands must satisfy one of the three, two of the three, or all three criteria to qualify for recommendation as IAL. After considering the implications of these three scenarios, the TAC recommended an inclusive approach that allowed for a larger acreage of land to qualify for IAL

recommendation by requiring that only one of the three criteria need be met to qualify for IAL recommendation.

Step (3), (4) and (5) above fulfill the requirement of the City under HRS §205-44(a) to "[weigh] the standards and criteria with each other." This approach to proceed where land that satisfies any one of the three highest-ranked criteria qualifies for recommendation of IAL was presented at the first community meeting (March-April 2015), and carried through to the final map of recommendations.

Based on these steps, the City fully complied with the requirements of HRS §205-44(a) to use all eight standards and criteria, and to weigh each standard and criteria with each other.

✓ PRIORITY	1. Currently used for agricultural production
✓ PRIORITY	2. Soil qualities and growing conditions
	3. Agricultural productivity rating systems such as ALISH
	4. Traditional native Hawaiian agricultural uses or unique crops and uses
✓ PRIORITY	5. Sufficient quantities of water
	6. Consistent with county general, development, and community plans
	7. Contributes to a critical land mass
	8. With or near support infrastructure conducive to AG productivity

Looking more closely at how the City used and evaluated each of the eight standards and criteria, and weighed the standards and criteria against each other, the TAC and City consultants carefully analyzed each. For example:

Criteria #3 -- *agricultural productivity rating systems such as ALISH* -- TAC discussions included noting similarities between Criteria #2 -- soil qualities and growing conditions -- and

#3, and that the ALISH system is not an accurate or current scientific measurement of soil qualities and growing conditions. *Appendix B - Page 4, TAC Meeting #2, October 16, 2012.*

Criteria #4 -- *traditional native Hawaiian agricultural uses or unique crops* -- the TAC agreed that the operational definition should not name specific crops for several reasons, including that crops evolve with time, they do not want to limit what is grown, and to align with the intent to be as inclusive as possible. *Appendix B – Page 5, TAC Meeting #2, October 16, 2012.*

Criteria #6 -- *consistency with county general, development, and community plans* – the TAC discussed how the IAL statute requires that the counties not include lands designated urban through the county planning process, which include general, development and community plans. *Appendix B – Page 1-2, TAC Meeting #3, November 13, 2012.*

Criteria #7 – *contributes to a critical land mass* – the consensus of the TAC was that they did not want to use a specific acreage to define this criterion. Proximity and functionality were considered to be more important factors than acreage when defining critical land mass, and the concept of proximity could not be quantified as a numeric value for mapping purposes. *Appendix B – Page 2, TAC Meeting #3, November 13, 2012.*

Criteria #8 – *with or near support infrastructure conducive to Ag productivity* – the TAC determined that water infrastructure could be addressed under Criteria #5, and that transportation was not as critical for Oahu than neighbor islands because of its proximities to market. The entire island of Oahu was determined to have equal status with regard to access to transportation, markets, and infrastructure systems. All of these TAC discussions are found in the minutes of the TAC meetings. *Appendix B – Page 3, TAC Meeting #5, May 9, 2013.*

With regard to Commissioner Giovanni's question of why or how the TAC went from requiring all of the top three criteria to be applied to requiring only one of the three criteria be applied for IAL recommendation, the TAC discussed how the number of criteria used to identify IAL would determine the total IAL acreage amount. To achieve the purposes of IAL designation to be inclusive as possible, "requiring that multiple criteria be met could have the effect of limiting the pool of lands eligible for IAL designation, when the goal is to be inclusive as possible." *Appendix B – Page 5, TAC Meeting #2.*

The TAC determined that using one of three criteria would amount to 56,000 acres, using two of three criteria would be 32,000 acres, and using three of three criteria would reduce the qualified lands to 18,000 acres. The chart below demonstrates that the goal to be as inclusive as possible would be undermined by requiring more than one of the three criteria for IAL recommendation by substantial decreases in the percentage of the State Agricultural District that would be recommended for IAL designation.

Number of Criteria Used	IAL Qualified Lands	% of State Ag District (128,000 acres)
1 of the 3 criteria	56,000 acres	43%
2 of the 3 criteria	32,000 acres	25%
3 of the 3 criteria	18,000 acres	14%

IV. The City's Inclusion of Certain Types of Parcels in Its IAL Recommendation Was Proper and Reasonable.

Commissioners questioned how small parcels, steep slopes, and lava could be included in the City's IAL recommendation. IAL is a long-term, forward looking policy that is meant to identify current as well as *potential* agricultural lands for protection that can sustain a diversity of farming and the potential for evolving agricultural methods and technology. In "[promoting]

the retention of [IAL] in blocks of contiguous, intact, and functional land units large enough to allow flexibility in agricultural production and management," (HRS §205-43(1) IAL Policies) some smaller parcels have been included in the City's recommendation.

For steep slopes and gulches, the TAC took notice of Kona coffee and cattle ranching on steep slopes. Crops can be grown on slopes using various contouring techniques, and there have been successful hydroponic farms built on lava rock. The TAC agreed that gulches serve an essential drainage function, and should be included in the criteria maps. Although flat areas are used for cultivation, the flat areas would not be usable without proper drainage. Notably, the Commission approved various voluntary IAL petitions with topographic extremes.

V. Based on the IAL Statute, the Commission Must Accept the City's Recommendation of IAL.

A. The City Has Met Its Obligations Under the IAL Statute, and Therefore the Commission Must Accept the City's Recommendation.

The City has met its obligations under the IAL statute. The City has properly followed the county process of HRS §205-47 and applied the standards and criteria of HRS §205-44. While Commissioners may feel the City could have done more, we have yet to hear how the City did not meet the statutory standards or pertinent administrative rules, including providing "reasonable action to notify" landowners. The City also properly evaluated and weighed all eight of the standards and criteria against each other to properly apply the top three most valued criteria, as analyzed and endorsed by the Attorney General.

Having met the requirements of the IAL statute, the Commission must move to accept the City's recommendation for IAL. Even though Commissioners may *want* more outreach, the Commission does not have the authority to require more of the City than the statute and the Commission's rules require. To require more would require legislative action, which cannot be

achieved through executive authority. Any dissatisfaction or frustration in the outcome of the county IAL process should be directed at the IAL statute that created the process, not at the City that properly implemented the process.

B. The Commission's Remand of its Recommendation of IAL May Further Set Back the Protection and Conservation of Agricultural Lands.

A remand would set the State and the counties further back on a constitutional directive that was set 43 years ago in 1978 to preserve and protect agricultural lands. A remand of this unfunded mandate that took twelve years for the City to get to this point may take several years before the City can return. The City lacks the resources and staff to re-do the IAL process. And, because the City has complied with the requirements of the IAL statute, the City, as well as the other counties, have no obligation to do more. Anything more would require legislative amendments to the IAL statute, which would create further delay. More importantly, small farmers may be deprived of current and potential IAL incentives and support if this process is further delayed.

By accepting the City's recommendation for IAL, we can move forward in protecting agricultural lands, plan for better land use throughout the City and State, and help to make farmers successful. The Commission has the authority, to which the City will defer to, to further address concerns of due process and to exclude specific parcels as it sees fit in officially designating IAL.

The Commission should not lose site of the overall objective to identify and plan for a strategic agricultural land resource base for today and future generations. We have moved on from the big plantations and must be proactive in transitioning to a viable agricultural industry, while fending off development pressures and nonagricultural uses that are diminishing our agricultural lands and goals. This is not a land grab, additional burden or restriction on

landowners. Ultimately, it is intended as a benefit to and expansion of opportunities for farmers and agriculture on ʻOahu.

VI. Conclusion.

Based on the foregoing, the City respectfully asks this Commission to accept its recommendation of IAL.

DATED: Honolulu, Hawaiʻi, December 29, 2021.

DEPARMENT OF PLANNING AND PERMITTING,

By _____
DEAN UCHIDA
Director

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of	)	CERTIFICATE OF SERVICE
	)	
CITY AND COUNTY OF HONOLULU'S	)	
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Recommendation of Important Agricultural Lands for the City and County of Honolulu, State of Hawai'i.	)	
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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2021, a copy of the City and County of Honolulu's Supplemental Brief to Its Recommendation of Important Agricultural Lands was duly served on the following parties at their last known addresses listed below, by depositing a copy with the U.S. Postal Service, postage prepaid, first class mail:

STATE OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT
P.O. Box 2359
Honolulu, HI 96804-2359
Attention: Director Mary Alice Evans

STATE OF HAWAII
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, HI 96814
Attention: Chairperson Phyllis Shimabukuro-Geiser

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

DEPARMENT OF PLANNING AND PERMITTING,

By _____
DEAN UCHIDA
Director