

January 3, 2022

To: Hawaii State Land Use Commission

Re: Oahu Important Agricultural Lands Hearing on January 6, 2022 at 9 am

From: Alicia Maluafiti, Property Owner

Aloha,

My name is Alicia Maluafiti. I own land zoned Ag 2 in Nanakuli and am opposed to the City's arbitrary designation of my land as Important Ag Land or IAL. The IAL statute was intended to protect and preserve in perpetuity **large tracts** of high-quality agricultural lands to help ensure our island's food security and sustainability. The agricultural use of these lands has dwindled as a result of housing development and the proliferation of gentlemen estates with million-dollar homes and a few coffee trees.

I question whether the City understands the meaning of viable agricultural lands. With respect to the two parcels (2.3 acres each) of Ag 2 land that I own, they are not considered large parcels and therefore immediately do not address the spirit and intent of the IAL legislation. My property also has a number of challenges which make this land less viable for agricultural use. I have approximately 40,000 square feet of barns which were previously used for poultry farming more than 30 years ago. Therefore, the amount of arable land that could be used for growing produce is limited. These structures are dilapidated, rusted, and missing roofing, side panels and screens. One estimate to repair the roof on only one structure was \$70,000. There are four barns. Currently, unless the structures are repaired, there is very little use for them.

The property is also covered in thorny kiawe. I already spent \$6500 just to trim back some trees that were blocking our driveway with limbs that were so low that they hit vehicles. One estimate to clear cut the kiawe and haole koa and grub just one acre for possible production was \$38,000. Instead, I have California grass that is now about 6 feet high. Two years ago, I paid \$12,000 for a contractor to come in and just cut the high grass so that we could move around the property. It took only 6 months for the grass to come back and I don't have another \$12,000 to do it again.

For agricultural land to be viable, there are a number of factors that need to be addressed. How does the City (and state) arbitrarily designate "IAL" without providing the resources to ensure that those lands can actually be used for agricultural use? Per the City - just to get a permit to add electricity and a septic tank to my property requires a civil engineer, electrical engineer and mechanical engineer. How can I even consider leasing my property for any use if I don't have power and a toilet? The cost for ALL these engineers along with the architectural drawings is over \$30,000. To prepare the property for any type of agricultural use will cost hundreds of thousands of dollars. So what exactly is the point of designating my property as IAL? So it can sit fallow in perpetuity?

The city and state bureaucracy is the biggest burden to agriculture. Farmers need a lot more than just land to be viable.

From: [Lore Aiwahi](#)
To: [DBEDT LUC](#)
Subject: [EXTERNAL] Testimony for Jan 6 2022 LUC Meeting
Date: Monday, January 3, 2022 6:49:38 PM

To: Land Use Commission

RE: IAL for TMK 62002019 in Haleiwa

Testimony for Jan 6, 2022 Meeting

My name is Hannalore (Lore) Aiwahi and my husband, Darren, and I own .41 acres in Haleiwa designated as IAL. I appreciate the recommendation that all parcels under 2 acres be exempt from IAL designation because the small size prevents economic viability. I support this recommendation and would like to be on record requesting to have our property removed from the list of IAL designated lands due to the small size.

In addition to size, I would like to ask you to consider exempting any parcel that is also a Kuleana lot. Our lot is a Kuleana lot and has unbroken title since the Kuleana Act of 1850. I have a copy of the original Kuleana letter written in Hawaiian. Although there are no artifacts or features of historical significance on our lot, the fact that it has unbroken title since the great Mahele should be respected. We have a large enough lot to grow food for ourselves and our extended family within the Haleiwa community. If we are fortunate, our small farm will produce a small income for us to supplement our later years. Please consider the history of Kuleana land and exempt all lots with that designation as we are stewards of small family farms first and foremost.

Another point for consideration in our lot is access to utilities. We are not supported by Hawaiian Electric, Hawaiian Telcom, BWS or Spectrum. We have 12 solar panels for electricity and a well for water. The solar panels and filtration equipment for the well take up a significant portion of land (and surrounding land because nothing can grow taller than the panels or cast shadows on the panels). Lack of Electric, BWS water and fire hydrants and Internet connectivity should make our property exempt from IAL. BWS rejected our request for water connectivity because it would cause a negative experience for the surrounding properties connected to the main. We were told we would have to pay to extend and enlarge the main along Joseph P. Leong Hwy and install a fire hydrant. The cost to a small farmer is prohibitive. If designating any property as IAL, please work with BWS to provide water and Hawaiian Electric for basic infrastructure. Farmers should not have to pay.

Thank you for reviewing this testimony and for your consideration in this matter.

Respectfully,

Hannalore (Lore) and Darren Aiwohi

Owners TMK 62002019

Lore Aiwohi
'Uko'a Farms LLC
62-370 Joseph P. Leong Hwy.
Haleiwa, HI 96712
808-373-0912

From: [Stephen Mau](#)
To: [DBEDT LUC](#)
Cc: [Cheryl Nakamura](#); [Jackie Ariola](#)
Subject: [EXTERNAL] RE: LUC Agenda for January 5-6, 2022 - ZOOM Webinar Meeting
Date: Monday, January 3, 2022 3:50:57 PM
Attachments: [Rush Moore Comments to LUC 1 3 22.pdf](#)

Attached is written testimony submitted to the Land Use Commission with regards Item II on the January 6, 2022 agenda.

Stephen K.C. Mau
Rush Moore LLP
A Limited Liability Law Partnership
Pacific Guardian Center, Mauka Tower
737 Bishop Street, Suite 2400
Honolulu, HI 96813
Tel. (808) 521-0408
Email: smau@rmhawaii.com

CONFIDENTIALITY: The information contained in this email message is confidential and is intended only for the intended recipient(s). This email message may be an attorney-client communication and, as such, is privileged and confidential. If the reader of this email message is not the intended recipient (or the person responsible for the delivery of this email message to an intended recipient), you are hereby notified that you have received this document in error, and that any reuse, review, printing, dissemination, distribution or copying of this message is strictly prohibited. If you have received this email message in error, please reply to the sender that you have received the message in error and delete it without printing it or making any copies of it. Thank you.

RUSH MOORE LLP

A Limited Liability Law Partnership

Attorneys at Law

Offices in Honolulu and Kona

Honolulu Office: 737 Bishop Street, Suite 2400, Honolulu, Hawaii 96813 / Tel. (808) 521-0400 / Fax (808) 521-0497

Direct dial number: (808) 521-0408

Email: smau@rmhawaii.com

January 3, 2022

State of Hawaii Land Use Commission

P. O. Box 2359

Honolulu, Hawaii 96804-2359

Email: dbedt.luc.web@hawaii.gov

Dear Chair Scheuer and Members of the Commission:

Subject: Meeting of January 6, 2022, Agenda Item II. – Conformance of C & C of Honolulu Important Agricultural Lands (IAL) Recommendation to Applicable Statutory and Procedural Requirements City and County of Honolulu

We are submitting comments on behalf of Robinson Kunia Land LLC (“RKL”) as to whether the City and County of Honolulu (“City”) has complied with legal requirements regarding its Recommendation of Important Agricultural Lands filed on April 21, 2021 (“Recommendation”) for the Island of Oahu. These comments supplement the comments submitted by RKL on this issue on May 19, 2021, for the LUC’s May 26, 2021 meeting.

In connection with the LUC’s consideration of whether the City has complied with applicable statutory and procedural requirements, a legal opinion was requested from the State Attorney General. The State Attorney General’s opinion dated September 23, 2021 (“AG’s Opinion”) concluded that (a) the City was required to weigh all eight standards and criteria in HRS §205-44(c) on a county-wide or regional basis, (b) the City did not need to conduct this weighing on a parcel-by-parcel basis and (c) the City was permitted to base its IAL recommendation on fewer than eight of those standards and criteria.

However, eight standards and criteria in HRS §205-44(c) are not the only applicable statutory and procedural requirements for the City. The City has failed to comply with other requirement of Chapter 205 and the AG’s Opinion does not excuse the City’s noncompliance with other sections of Chapter 205.

The proceedings on the City’s Recommendation should not go forward to the extent they attempt to make recommendations which do not comply with the statutory and procedural requirements of HRS Chapter 205:

1. The City’s Recommendation failed to take notice of those lands that have already been designated

2. as important agricultural lands by the LUC. Lands included in the designation are lands which cannot be involuntarily designated under Chapter 205, including lands owned by RKL. See HRS §205-47.¹
3. Prior to the involuntary designation of IAL, the City is required, but has failed, to offer incentives. The City cannot designate lands for designation until three years after the City offers incentives. See HRS §205-46² and §205-49³.
4. In formulating its final recommendations to the City Council, the planning department failed to report on the manner in which the IAL mapping relates to, supports and is consistent with RKL's position on involuntary designation. See HRS §205-47(d).⁴

¹ **[§205-47] Identification of important agricultural lands; county process.**

* * *

(d) The counties shall take notice of those lands that have already been designated as important agricultural lands by the commission.

²**[§205-46] Incentives for important agricultural lands.**

(a) To achieve the long-term agricultural viability and use of important agricultural lands, the State and each county shall ensure that their:

- (1) Agricultural development, land use, water use, regulatory, tax, and land protection policies; and
- (2) Permitting and approval procedures,

enable and promote the economic sustainability of agriculture.

Agricultural operations occurring on important agricultural lands shall be eligible for incentives and protections provided by the State and counties pursuant to this section. . . (emphasis supplied).

³ **[§205-49] Designation of important agricultural lands; adoption of important agricultural lands maps.**

* * *

(d) The land use commission may designate lands as important agricultural lands and adopt maps for a designation pursuant to:

- (1) A farmer or landowner petition for declaratory ruling under section 205-45 at any time; or
- (2) The county process for identifying and recommending lands for important agricultural lands under section 205-47 no sooner than three years,

after the enactment of legislation establishing incentives and protections contemplated under section 205-46, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.

⁴ **[§205-47] Identification of important agricultural lands; county process.**

* * *

(d) 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:

- (1) Standards and criteria set forth in section 205-44;
- (2) County's adopted land use plans, as applied to both the identification and exclusion of important agricultural lands from such designation;
- (3) Comments received from government agencies and others identified in subsection (b);
- (4) Viability of existing agribusinesses; and
- (5) Representations or position statements of the owners whose lands are subject to the potential designation.

5. City has failed to adopt ordinances that reduce infrastructure standards for Important Agricultural Lands. See HRS §205-51.⁵

6. No involuntary proceedings should go forward until the State and the City, as required under HRS §205-43, disclose to the public what changes to policies, land use plans, ordinances, and rules they will be enacting to pursue the IAL policies under HRS §205-43, so that landowners are provided notice of the implications of IAL designation.

The City's Recommendation should be dismissed, and thereafter resubmitted at such time the City has fully complied with all legal requirements under Chapter 205.

Very truly yours,

RUSH MOORE LLP
A Limited Liability Law Partnership

By 
Stephen K.C. Mau

⁵ **§205-51 Important agricultural lands; county ordinances.** (a) Each county shall adopt ordinances that reduce infrastructure standards for important agricultural lands no later than the effective date of the legislative enactment of protection and incentive measures for important agricultural lands and agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.

From: [Tom Witten](#)
To: [DBEDT LUC](#)
Cc: jl.witten@gmail.com
Subject: [EXTERNAL] Thomas and Janet Witten- Written Testimony Regarding Evaluation of C&C of Honolulu Important Agricultural Land (IAL): Recommendations and Conformance to Applicable Statutory and Procedural Requirements (January 6, 2022)
Date: Monday, January 3, 2022 6:18:53 PM

Land Use Commission
Department of Business, Economic Development & Tourism
State of Hawaii

**SUBJECT: Thomas and Janet Witten Written-
Testimony Regarding IAL Recommendations and Conformance to Applicable
Statutory and Procedural Requirements (January 6, 2022)**

Aloha LUC Chair and Commissioners,
We are landowners of a very small Kuleana agricultural parcel which is only 6,534 sq. ft. (TMK: 5-7-01:007, Royal Patent 360, LC Award 2836) and has been recommended to be classified as IAL by the City and County of Honolulu (City). Having provided previous testimony in opposition to this recommendation (April 26, 2021), we will focus this testimony on the subject of the LUC's agenda for this and the scheduled Feb. 2022 hearings. Our conclusion remains the same as our prior testimony: The LUC should remand the IAL recommendations back to the City to address landowner and State agency testimony provided to the LUC along with the LUC member's expressed concerns regarding the adequacy of the City's IAL process related to conformance with applicable statutory and procedural requirements.

Regarding the scope of the agenda for this meeting, we offer the following additional testimony:

City's Recommendations and Maps for Lands Eligible to be Designated IAL

As noted in prior testimony, including the testimony of the State Office of Planning (OP) and the Department of Agriculture (DOA), individual parcels of less than 1 acre (State minimum) and 2 acres (City minimum) should not be included as IAL. As specifically noted by the DOA, "These small mapped areas

appear inconsistent with the IAL policy of promoting...*the retention of important agricultural lands in blocks of contiguous, intact, and functional land units large enough to allow flexibility in agricultural production and management (Section 205-43(1)).*” The OP also recommended that “the designation of small parcels of land less than one acre in size” should not be designated IAL.

Considering the State and County minimum lot sizes (not including parcels created prior to June 1976) within the agricultural district, we recommend all parcels less than 2 acres not be designated as IAL. The City’s proposed IAL map for currently includes approximately 725 parcels (40% of the parcels) that are less than 2 acres. All these parcels should be removed based on parcel size. And the City should also re-evaluate their procedure to select and recommend IAL more consistently with the standards and criteria the LUC has utilized in their past review of voluntary IAL declaratory rulings.

Degree to which the City has complied with the Minimum Standards and Criteria for the Identification and Mapping of IAL Lands

-

In numerous declaratory ruling petitions by landowners for the voluntary designation of IAL lands in accordance with the State law, the LUC has consistently done a very thorough review of all eight of the IAL criteria to make its determination of designating IAL. We feel that the City’s IAL overly simplified methodology utilized to identify lands was inadequate. In addition, the information presented to the public during the City’s limited community outreach and notifications to landowners was not complete to address the impacts to landowners regarding IAL land use regulations. This concern was expressed by numerous landowners at the prior IAL hearings.

The lack of the City offering any incentives for IAL designated lands is also a glaring deficiency in the City’s IAL process under the State law. Should the City provide IAL incentives, we support providing a mechanism under a modified IAL law that would offer a relatively simple process for landowners to voluntarily have their lands be designated IAL by the LUC, with City concurrence.

CONCLUSIONS

-

The LUC should remand the IAL recommendations back to the City to address the deficiencies in the process and procedures that, if addressed, would result in a more comprehensive and complete evaluation to make IAL recommendations to the LUC. In remanding this effort back to the City, we recommend the City consider the following:

- 1) Address testimony provided by both State agencies and individual landowners that highlighted the deficiencies in the methodology and resultant recommendations for lands to be designated IAL. Modify the City's IAL methodology and process to address the testimony provided to the LUC. Specifically, as noted above, parcels less than 2 acres in size should not be considered for IAL designation.
- 2) Inform landowners being recommended to be designate IAL of the impacts of having their lands designated IAL. Provide landowners the opportunity to opt out of being designated IAL.
- 3) Require that the City offer incentives to landowners for consideration in being designated IAL. When incentives are offered by the City, provide for a simplified process for landowners to voluntarily have their lands designated IAL by the LUC to take advantage of incentives.
- 4) Consult with landowners regarding the quality of their lands to be considered IAL. As noted in prior testimony, many landowners did not agree with the City's recommendation to be designated IAL. On a limited number of cases, when landowners were allowed the opportunity to consulted with the City regarding the lack of IAL criteria related to their lands, the City removed those parcels from further consideration during the IAL process.

Mahalo for your consideration of our testimony and the continued opportunity to provide additional testimony during your deliberations on this petition.

Sincerely,

Thomas S. Witten and Janet L. Witten (TMK: 5-7-01:007)
2277 Halakau Street

Honolulu, HI 96821

Email: twitten@pbrhawaii.com