

From: [Armani De Ocampo](#)
To: [DBEDT LUC](#)
Subject: [EXTERNAL] IAL Testimony for Armani De Ocampo TMK#860070030000
Date: Wednesday, January 5, 2022 12:34:08 AM
Attachments: [1422_Armani_LUC_Testimony.doc](#)

Aloha,

Attached is my testimony against the IAL designation for my property. Please confirm with me that the file was received and that it can be opened and read properly. If it cannot, I will send it again as a different file type that can be read.

Thank you,

Armani De Ocampo

To Whom It May Concern,

My name is Armani De Ocampo, my land parcel TMK#860070030000

I am writing in firm opposition to the City and County's process which recommends the land my home rests on to be designated as IAL.

Not only did the City and County never notify me as a landowner about the IAL designation process, they never mentioned the restrictions the designation would put on my property when I finally found out about it. I only very recently gained knowledge about the IAL recommendation on my property through a letter in the mail from Durrett, Land & Morse. I soon after called the City and County to inquire about the IAL designation being proposed upon my home and they refused to give me any information about it.

The fact that my property, along with many other families properties near me, were proposed to be listed as IAL, proves the fact that the City and County DID NOT properly research whether our properties met the criteria for IAL designation. My property is too small to carry out farming activities, nor does it have adequate soil to support farming activities.

As a separate example, my mother's property just up the street on Puuhulu Road was also proposed to be listed as IAL and her property is less than a quarter acre. She has no farmable land as the house takes up most of the property; half of her property is a streambed which is impossible to farm. Her property does not have access to Ag water either. How can the City and County get away with such blasphemous recommendations?

Just the examples of me and my mothers property prove enough that the City and County did not do ANY research into whether the properties they recommended for IAL met the 8 IAL criteria. The City and County did not at all follow the proper process to accurately map recommended properties and it is crucial that the City and County be forced to do a proper study so that the LUC may properly evaluate the data to designate only eligible properties as IAL.

Along with MANY other landowners, I was never notified or informed about the City and County's Recommendation process. More so, the information they provided to the LUC about my property is grossly inadequate and inaccurate, which does not allow the LUC to do its job as required by HRS 205-44.

I live in my home and do not ever plan on leaving. I do not farm, never will farm and cannot farm because my property does not have adequate resources to do so. My property does not possess any of the 8 criteria required for it to be listed as IAL and the City and County needs to properly convey that to the LUC.

Sincerely,
Armani De Ocampo

From: [Valentino De](#)
To: [DBEDT LUC](#)
Subject: [EXTERNAL] IAL testimony for Valentino De Ocampo TMK# 860070030000
Date: Wednesday, January 5, 2022 1:02:46 AM
Attachments: [ValentinoDeOcampo_Testimony_1422.doc](#)

Aloha,

Attached is my testimony against the IAL designation for my property. Please confirm with me that the file was received and that it can be opened and read properly. If it cannot, I will send it again as a different file type that can be read.

Thank you,

Valentino De Ocampo

To Whom It May Concern,

My name is Valentino De Ocampo and I live at 86–318 Puhawai Rd. Waianae, Hawaii.

TMK # 860070030000.

I am writing this testimony in regard to the City and County of Honolulu Important Agricultural Land (IAL) designation that my property was recommended to be a part of. The City and County failed to notify me as a landowner with adequate notice and due process which is required by statute and constitution. I was also misled and was not accurately informed about the restrictions that the IAL designation would put on my basic property rights.

The City and County of Honolulu relied on inaccurate mapping and research to designate my parcel as Important Agricultural Land (IAL), along with many others. The City and County also relied on incorrect records to inaccurately describe and recommend many parcels (including my own) as satisfied IAL under the City and County of Honolulu's criteria. The City and County of Honolulu submitted its IAL recommendations to the land use commission (LUC) prior to the City and County of Honolulu incentives and protection for designated IAL lands, land owners, and farmers. The City and County of Honolulu also failed to provide the land use commission with basic information about my parcel and how it does not meet the criteria to be designated as an IAL.

I am passionately opposed to the designation of my property as IAL due to the restrictions it would put on me as a landowner, especially because my property cannot be farmed on.

Sincerely,

Valentino De Ocampo

From: [sharon kato](#)
To: [DBEDT LUC](#)
Subject: [EXTERNAL] IAL Zoom Webinar 1/6/22
Date: Wednesday, January 5, 2022 1:44:57 AM

Mordecai & Ruth Hudson Trust: TMK Nos. 8-4-004-095, -101 & -102

My brothers and I are the second generation of the above noted properties. Ruth Hudson passed away in 2005 and Mordecai Hudson passed in 2017. They started their orchid farm when they retired in 1980. They both worked 7 days a week as was the way when you own a farm, unable to take time off, much less a vacation.

The business went through many tough times: a big flood in 2009 when the new owners/lessee above our property graded the land which changed the drainage of rain to run into our properties. There was another flood in 2018 which destroyed 1-1/2 acres greenhouse and washed out the driveway and the heavy rain this past December flooded the driveway and greenhouse. There were two fires: 2016 which started from the above property that destroyed 1-1/2 acre greenhouse and in 2018 that destroyed a 2 acre greenhouse.

My father was in and out of the hospital, in rehab then in hospice during the time the City was supposedly sending out notices and having hearings and died in 2017.

We lost the use of the greenhouses that were destroyed not to mention having to keep replacing all the pipes to water the plants because of the fires and the loss of all the plants.

Did the City actually look at all these properties individually to list them for IAL?

The Commission should send this matter back to the City because it:

1. Failed to provide my father as a landowner, with adequate notice and due process, as required by the statute and the constitution;
2. Misled or failed to accurately inform landowners about the restrictions IAL designation would put on their basic property rights;
3. Relies on inaccurate mapping, shortcut methods, and other erroneous records to inaccurately describe and recommend many parcels as satisfying the IAL criteria;
4. Inappropriately submitted its IAL recommendations to the LUC prior to enacting county incentives and protections for IAL lands, landowners, and farmers; and
5. Failed to provide the Land Use Commission with enough basic information about our land and how it does or does not meet all or of the eight IAL criteria. This prevents the LUC from properly "weighing the standard and criteria with each other" as required before designating our lands as IAL.

Thank you for taking the time to consider my input.

Sharon Kato
waip69@hotmail.com

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From: [Chris & Jacque Laird](#)
To: [DBEDT LUC](#)
Cc: [Chris & Jacque Laird](#)
Subject: [EXTERNAL] IAL Lands - LUC Opposition
Date: Wednesday, January 5, 2022 5:29:46 AM

Dear Sirs:

I am writing to oppose the current push to make AG lands IAL.

We are Christopher and Jacqueline Laird. Our email is 5lairds@hawaii.rr.com
Our TMK is as follow: 1-5-7-001-041-0002-000

We believe that the city has not followed the process required by law so as to allow the LUC to properly evaluate and thus designate our land as IAL.

The following is an outline of what we have seen:

The City's IAL mapping and recommendation process:

1. Failed to provide me as a landowner, with adequate notice and due process, as require by the statute and the constitution,
2. Misled or failed to accurately inform landowners about the restrictions IAL designation would put on their basic property rights,
3. Relies on inaccurate mapping, shortcut methods, and other erroneous records to inaccurately describe and recommend many parcels as satisfying the IAL criteria,
4. Inappropriately submitted its IAL recommendations to the LUC prior to enacting county incentives and protections for IAL lands, landowners, and farmers.
5. Failed to provide the Land Use Commission with enough basic information about my land and how it does or does not meet all or of the eight IAL criteria. Thus prevents the LUC from properly "weighing the standard and criteria with each other" as required before designating my land as IAL.

Along with many other farmers and landowners, I was not properly notified or informed about the City and County's recommendation process. Moreover, the information provided to the LUC about my land is inadequate to enable the LUC to properly do its job as required by HRS 205-44.

As such, the LUC should remand the map back to the City and County with instructions for the City and County to:

- A. First enact incentives and protections for IAL lands, landowners, and farmers, as required by HRS 205-46, 205-48, and 205-49, before resubmitting the City and County's maps and recommendations to the LUC.
- B. Provide clearer and verifiable notification to, and actual cooperation and consultation with, landowners and farmers like myself regarding the fact and consequences of IAL

recommendations and designation of their specific lands as the same, as required by HRS 205-47.

- C. Gather and provide the LUC with information about how and whether parcels recommended for IAL designation meet any, some, or all of the eight IAL criteria, so as to enable the LUC to perform the proper weighing of all standards and criteria required before the designation of any lands as IAL, as required by HRS 205-44.

Please read our testimony and take it to heart. We are trying our best to make our land work for AG production and want to be able to pass it on to our children and future generations.

Aloha,
Christopher & Jacqueline Laird

Diana P. Puulei
87-1101 Ilili Road Apt. A
Waianae HI 96792
TMK: 8-7-019-026

To the Land Use Commission Chair and Members,

As the owner of the above referenced TMK, Diana P Puulei has previously provided written testimony objecting to the property being designated as an Important Agricultural Land (IAL). At this time testimony is being submitted as to why the City's maps and recommendations to the Land Use Commission (LUC) are inadequate and should not be approved.

The City IAL mapping and recommendation process:

1. Failed to provide me the owner of said property adequate notice and due process as required by statute and the constitution.
2. Failed to provide me the owner of said property with information regarding restrictions that an IAL designation puts on basic property rights.
3. Inappropriately submitted IAL recommendations prior to enacting county incentives and protections for all IAL lands and landowners.
4. The City choose to rely on generalizations and short cut methods. No consideration was given to individual property rights or how the City's IAL designations process will severely impact the owner's of agricultural property.

By doing so the City failed to provide adequate information about the said property to enable the Chair and Members of the LUC to properly do their job as required by HRS 205-44.

For the above mentioned reasons the LUC should remand the IAL Maps back to the City to do the following:

1. Enact incentives and protections for all IAL landowners required by HRS Statutes before resubmitting maps and recommendations back to the LUC.
2. To provide and gather the LUC with information on how and whether individual parcels meet any, some or all eight of IAL criteria before designating any lands as IAL.
3. Considerations should be taken of the consequences of IAL recommendations for landowner's specific lands. To actually consult with us, to work with us and to provide us clear and verifiable notification as to how IAL designation will affect each and every owner of agricultural zoned properties.

In closing, when looking at the large parcels of property that represents the City's IAL lands I ask that you stop and look and think about all the thousands of individual land owners that the City has lumped together to create them.

Respectfully,
Diana P Puulei

From: [Frederick Redell](#)
To: [DBEDT LUC](#)
Subject: [EXTERNAL] LUC Meeting of January 6, 2022, Agenda Item IV
Date: Wednesday, January 5, 2022 7:41:13 AM
Attachments: [HCPA Testimony to LUC re Evaluation of IAL Recommendations and Conformance to Applicable Statutory and Procedural Requirements.pdf](#)
[prior HCPA Testimony to LUC re IAL.pdf](#)
[prior HCPA Written Testimony - Comments re IAL for LUC 4-28-21 \(final\).pdf](#)

Dear Chair Scheuer and Members of the Land Use Commission,

Please see my attached testimony along with prior testimony for tomorrow's meeting, Agenda Item IV.

Thank you for the opportunity to provide this testimony.

Best regards,

Fred Redell
Executive Director
Hawaii Clean Power Alliance



January 5, 2022

VIA EMAIL (dbedt.luc.web@hawaii.gov)

State of Hawaii Land Use Commission

P.O. Box 2359

Honolulu, HI 96814-2359

Re: Meeting of January 6, 2022, Agenda Item IV
Evaluation of C&C of Honolulu Important Agricultural Lands Recommendations
and Conformance to Applicable Statutory and Procedural Requirements

Dear Chair Scheuer and Members of the Land Use Commission ("Commission"):

I am writing to you on behalf of Hawaii Clean Power Alliance ("HCPA"), a non-profit alliance organized to advance the development and sustainability of clean energy in Hawaii, regarding the City and County of Honolulu's ("C&C") Important Agricultural Lands ("IAL") Recommendation. HCPA previously submitted testimony on this matter dated April 28 and May 21, 2021 (collectively, "Previous Testimony"), which is attached hereto for your reference as Attachment A.

As you will be taking up this matter again at your upcoming meeting on January 6, 2022, HCPA would like to briefly summarize its position regarding the C&C Recommendation and address the additional arguments made by the C&C in its Supplemental Brief to its Recommendation of Important Agricultural Lands ("Supplemental Brief"), which was filed with the Commission on December 29, 2021.

HCPA's Previous Testimony made three primary points: (1) HCPA expressed its concern that the C&C, in the development of its Recommendation, overlooked the renewable energy community and the potential negative impact that the IAL designation could have on renewable energy development in the State; (2) HCPA explained that the C&C has never accurately informed the public of what the IAL designation means and what impacts such a designation would have on landowners; and (3) HCPA argued that much of the land recommended for IAL designation by the C&C is of questionable agricultural value given the truncated and insufficient identification process utilized to identify potential IAL. Accordingly, HCPA's Previous Testimony requested that the Commission reject the Recommendation and instruct the C&C to take action on these matters before it re-submits any subsequent proposal for involuntary IAL designation.

In its Supplemental Brief, the C&C makes a number of points that relate to HCPA's Previous Testimony, including (1) the impact of the IAL designation on landowner property rights, (2) the process followed by the C&C regarding the development of the Recommendation; and (3) the suggestion that objecting landowners should be able to opt out of the IAL designation. Unfortunately, HCPA's position remains the same – that the C&C's Recommendation should be rejected or, alternatively, the Commission should allow landowners to opt out of the IAL



designation given the due process violations that would result if the Commission were to accept the Recommendation. I will briefly address each point in turn.

I. THE IMPACT OF THE IAL DESIGNATION ON PROPERTY RIGHTS.

The IAL designation could significantly impact landowner's property rights and, as such, landowners are entitled to due process before the IAL designation may be imposed. The C&C disagrees because it claims the IAL designation would not have any impact on the landowner's current use of his or her property. The Supplemental Brief states that "[a] misconception of IAL designation is that it deprives or severely restricts a landowner's property rights."¹ The C&C states that:

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.²

HCPA welcomes the C&C's clarification that the IAL law currently does not impact uses that are already permitted under Hawaii Revised Statutes ("HRS") §§ 205-2 and 205-4.5(a). This is critical because HRS § 205-4.5(a) explicitly considers specific types of renewable energy generation as "agricultural uses" under the statute and, historically, agricultural land has often been the most viable land upon which to place such projects.

However, we respectfully submit that the C&C's Supplemental Brief fails to address two significant issues: (1) mandated future restrictions on the use of IAL and (2) future discretionary permitting decisions.

Once the IAL designation is imposed, the landowner's property will remain in the class of IAL regardless of what future regulations are adopted to regulate the use of such lands. This concern is not unwarranted or insignificant. The IAL designation is intended to create a separate class for certain special types of agricultural land that meet the standards and criteria established by the Legislature to identify important lands to sustain an agricultural base in the State. See HRS §§ 205-42(a) and 205-44. Not all agricultural land is intended to be IAL. For land that does qualify as IAL according to the standards and criteria identified by the Legislature, the Legislature has instructed that, "State and county agricultural policies, tax policies, land use plans, ordinances, and rules shall promote the long-term viability of agricultural use of important agricultural lands and shall be consistent with and implement" certain enumerated policies, including: (1) discouraging the fragmentation of IAL and the conversion of IAL to nonagricultural uses; (2) directing nonagricultural uses and activities from IAL to other areas and ensure that uses on IAL are actually agricultural uses; and (3) limiting physical improvements on IAL. See HRS § 205-43(2), (3) and (4). While the C&C maintains that there are no current IAL-specific policies that would hinder any currently permissible use on agricultural land under HRS §§ 205-2 and 205-

¹ Supplemental Brief at 2.

² Id.

4.5(a), the C&C makes no argument that such policies could not and will not be adopted in the future. The C&C can make no such argument or guaranty in light of the statutory language. Once the IAL designation is imposed, the landowner will be subject to any future restrictions on uses of such land and, to compound the difficulties, the IAL designation makes it more difficult for the landowner to reclassify or rezone his or her land in the future. See HRS § 205-50.

Further, the C&C's Brief does not specifically address whether the IAL designation now or in the future could impact discretionary permitting decisions. For example, under HRS § 205-4.5(a), certain solar energy facilities are considered permissible agricultural uses but require a special permit. It is unclear whether a permitting body could use the IAL designation to deny or further restrict renewable energy development on agricultural land. Again, the C&C wishes to impose the IAL designation on landowners before these questions, and many others, have been addressed by the C&C. These answers should have been provided before the C&C developed its Recommendation and not at the end of the process. As a result, landowners were thus unable to meaningfully engage in development of the Recommendation as required by HRS § 205-47, as discussed further below.

II. THE C&C'S PROCESS TO DEVELOP THE IAL RECOMMENDATION.

The uncertainty described above regarding the impact of the IAL designation on landowner property rights has been compounded by the insufficient process through which the C&C developed the Recommendation. The C&C's Technical Advisory Committee ("TAC") included no representatives or landowners from the renewable energy sector. The C&C only required the presence of one of three "priority criteria" to justify inclusion of agricultural lands in the Recommendation – in clear contrast and opposition to the Legislature's instruction to weigh all eight of the standards and criteria identified in HRS § 205-44 to determine whether inclusion as IAL is warranted. This truncated designation process resulted in a Recommendation that is undoubtedly over-inclusive, and which will involuntarily draw in unsuspecting landowners and subject them to current and future regulation that will unjustifiably burden them.

The C&C's Supplemental Brief does not present any additional evidence of notice to landowners or outreach during the development of the Recommendation process. The facts remain the same as they were when the Commission took up this matter in 2021. The C&C's Supplemental Brief merely argues that the C&C met the minimum required by law and, accordingly, the Commission must accept the Recommendation.³ HCPA disagrees that the minimum requirements were met to satisfy due process and respectfully suggests that the Commission does have the authority to ensure, at a minimum, that the due process rights of landowners be respected.

III. OBJECTING LANDOWNERS SHOULD BE ABLE TO OPT OUT OF IAL DESIGNATION.

The C&C's Supplemental Brief suggests that if the Commission is dissatisfied and finds that the C&C's process was not sufficient to satisfy the due process rights of landowners, the Commission can decide to remove parcels from IAL designation if the landowner objects to the IAL designation.⁴ While not ideal given the flawed process followed by the C&C in developing its

³ See Supplemental Brief at 8-12.

⁴ See Supplemental Brief at 12.

Chair Scheuer and Members of the Land Use Commission

January 5, 2022

Page 4 of 4

Recommendation, HCPA believes that this option would help protect landowners and would be an acceptable middle ground. This opt-out option would be acceptable assuming that (1) landowners receive proper notice from the Commission notifying landowners that they may object to the IAL designation, and (2) if a landowner objects, the landowner's property would be automatically removed from the C&C's proposed IAL designation. The process should be as unburdensome as possible for landowners.

HCPA believes that to achieve the State's critically important renewable energy goals in the fight against global climate change, we must work together to achieve reasonable and enduring solutions. Agriculture and renewable energy can and must co-exist, and both are critically important to the long-term health of the citizens of Hawaii and to the State's economy. HCPA looks forward to working with the Commission and the C&C so that Hawaii can achieve a successful and enduring transition to clean and renewable energy.

Thank you for the opportunity to submit this additional testimony.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Fred Redell', with a stylized, flowing script.

Frederick Redell, PE

Executive Director

(949) 701-8249

www.hawaiicleanpoweralliance.org

Enclosure



May 21, 2021

VIA EMAIL (dbedt.luc.web@hawaii.gov)

State of Hawaii Land Use Commission

P. O. Box 2359

Honolulu, HI 96814-2359

Re: Meeting of May 26, 2021, Agenda Item V
City and County of Honolulu Important Agricultural Lands Recommendation

Dear Chair Scheuer and Members of the Commission:

Hawaii Clean Power Alliance is a nonprofit alliance organized to advance the development and sustainability of clean energy in Hawaii. Our goal is to support the State of Hawaii's goal of 100% renewable energy by 2045. We advocate for utility-scale renewable energy, which is critical to meeting the State's renewable energy and carbon reduction goals. The City & County of Honolulu's Recommendation (and Errata) ("C&C Recommendation"), for the Land Use Commission to designate over 41,000 acres of land on Oahu as Important Agricultural Land ("IAL"), jeopardizes Hawaii's ability to meet its renewable energy target of 100% renewable energy by 2045.

The risks facing Hawaii have changed dramatically since the IAL provision was added to the Hawaii Constitution in 1978. The IAL law of 2005, enacted to fulfill the promise made almost 30 years earlier, in a world many of us would no longer recognize, did not benefit from our growing awareness of the acute energy/climate crisis facing Hawaii, and it therefore does not take those needs into account. In the years since 2005, Hawaii's awareness of renewable energy needs has increased, as sea level rise, erratic weather patterns, and spiking energy costs are conditions faced by the people of Hawaii every day. The IAL laws put into place in 2005 have not been amended to take these trends into account.

HCPA is very concerned that the C&C overlooked the renewable energy community in formulating its Recommendation, that the LUC, therefore, does not have the information necessary to take that issue into consideration. We are also concerned that the IAL mandate from the Legislature, which was enacted in 2005, is inconsistent with numerous later laws that were enacted to promote renewable energy projects on Agricultural District land. Because of this narrow approach taken by the C&C, without consideration for, information on, what impacts IAL designation may have on renewable energy, the Recommendation should be



rejected.

1. THE IAL LAWS FAIL TO TAKE INTO ACCOUNT NUMEROUS MORE RECENT LAWS ENACTED TO ADDRESS CARBON NEUTRALITY, CLIMATE CHANGE, AND THE STATE'S RENEWABLE ENERGY GOALS

The IAL laws were made in July 2005 (Act 183), which was almost 30 years after the enactment of Article XI, Section 3 of the Constitution in 1978 calling for the establishment of standards and criteria for IAL. Eight years later the LUC passed administrative rules to address IAL. A lot has changed in Hawaii since 1978, and a lot has changed in the 16 years since the 2005 IAL law was enacted.

Many important amendments have been made to HRS Chapter 205 in recognition of our changing environment, climate change, and Hawaii's special energy dependence vulnerability. Despite these changes, however, the IAL provisions of HRS Chapter 205 have remained the same, including policies that discourage physical improvements on IAL-designated lands and may preclude the use of IAL-designated lands for renewable energy projects. See HRS § 205-43(3)(4). These statutory IAL policies are directly contrary to the more recent amendments to HRS Chapter 205 that were made to protect Hawaii's energy and climate future.

For instance, Act 159 of 2007 broadened the permitted uses in the Agricultural District under Chapter 205 in recognition of Hawaii's dependence on petroleum and extreme vulnerability to oil embargos, supply disruptions, and international market dysfunctions. "To shape Hawaii's energy future and achieve the goal of energy self-sufficiency for the State of Hawaii, efforts must continue on all fronts, integrating new and evolving technologies, seizing upon economic opportunities to become more energy efficient and economically diversified, and providing incentives and assistance to address barriers." See Act 159 (2007).

Act 31 of 2008 further amended permitted uses within the Agricultural District to allow for solar energy facilities. This was done in recognition of the serious risks to Hawaii's economic and energy security and sustainability, and the value of increasing the use of Hawaii's abundant renewable energy resources to reduce greenhouse gas emissions, and contributions to global warming (as well as creating new job opportunities and economic diversification).¹

The Legislature continued this crucial trend toward promoting Hawaii's energy self-sufficiency in 2011 through the enactment of Act 217, which expanded the range of Agricultural District lands where solar energy facilities could be located. In explaining its rationale for this change, "The legislature further finds that allowing renewable energy facilities within the agricultural

¹ Act 97 noted that "Hawaii's trade deficit is a significant impediment to Hawaii's goal of economic and energy security and sustainability. Specifically, in 2006, Hawaii goods and services exports were only \$16,300,000,000, including visitor spending, while imports were approximately \$24,000,000,000. The legislature further finds that Hawaii's oil imports totaled \$3,400,000,000 for the year, accounting for approximately 15 per cent of the total imports. Over 93 per cent of Hawaii's energy is supplied by fossil fuel. The legislature further finds that allowing solar energy facilities to be built on marginal agricultural lands may have more beneficial effects for Hawaii's economy, environment, and energy security than leaving such lands unused."

district furthers and is consistent with the purposes, standards, and criteria for uses within agricultural lands. Renewable energy facilities increase the State's energy self-sufficiency and agricultural sustainability."

In 2015, Act 97 was enacted, requiring 100% of Hawaii's electricity sales to come from renewable resources by 2045:

The legislature finds that Hawaii's dependency on imported fuel drains the State's economy of billions of dollars each year. A stronger local economy depends on a transition away from imported fuels and toward renewable local resources that provide a secure source of affordable energy. . . . This target will ensure that Hawaii moves beyond its dependence on imported fuels and continues to grow a local renewable energy industry.

That was followed in 2018 by the passage of Act 15, requiring Hawaii to become net carbon negative "as soon as practicable, but no later than 2045." Explaining that:

The legislature finds that, according to the Hawaii Sea Level Rise Vulnerability and Adaptation Report released in December 2017, Hawaii could suffer \$19,000,000,000 in damage due to projected sea level rise. Worldwide, natural disasters are becoming more severe and frequent. In the United States alone, natural disasters inflicted a record \$306,000,000,000 worth of damage, breaking the previous record by almost \$100,000,000. Rising global temperatures threaten biodiversity in every ecosystem, and habitat loss grows as higher temperatures permanently change the life cycles of plants and animals.

The C&C did not consult with energy and climate groups in developing its proposed IAL maps. See e.g. "List of Invited Participants: Focus Groups January 2015" provided as Appendix C to the C&C's "O'ahu Important Agricultural Land Mapping Project" report dated August 2018 ("2018 IAL Report") <https://luc.hawaii.gov/wp-content/uploads/2021/02/IAL-Final-Pages-1-54.pdf>. In addition, the State Office of Planning submitted papers in support of the C&C's proposal (<https://luc.hawaii.gov/wp-content/uploads/2021/02/Citys-IAL-Recommendations-to-LUC-OP-comments-Signed.pdf>), but neglected to address the impacts of the proposed IAL designations on climate, energy, and sustainability as set forth in the Hawai'i 2050 Sustainability Plan.

Before involuntary IAL designations are pushed by the C&C and approved by the LUC, **the IAL provisions under HRS Chapter 205 need to be revisited in a comprehensive way, together with the other Agricultural District provisions in Chapter 205, so that the laws and policies are in alignment and do not foreclose Hawaii's ability to meet its 100% renewable energy and carbon neutrality mandates.** The Recommendation should be rejected.

2. THE C&C HAS NOT ACCURATELY INFORMED THE PUBLIC WHAT IAL DESIGNATION REALLY MEANS

At this point it is totally unclear what the effects of involuntary IAL designation are. The information provided by the C&C on this point appears to contradict the requirements under HRS Chapter 205. As a matter of fundamental fairness, this involuntary IAL proceeding should be stopped, at least until the State and the C&C, as required under HRS Section 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 Section 205-43, so that landowners and lessees (including renewable energy developers) are provided fair notice of the implications of IAL designation.

The C&C's 2018 IAL Report downplays the impacts of an IAL designation:

Administered by the State Land Use Commission, the IAL designation overlays existing State and county land use classifications (i.e., state land use districts, county zoning districts) and does not change existing classifications or affect the range of current permitted land uses. Contrary to popular belief, the IAL designation does not impose a higher level of permanent protection from future development, and it does not simply ensure that agricultural land is preserved in perpetuity.

2018 IAL Report at 1.

The C&C used similar language in its "Frequently Asked Questions" document dated September 2018 (see <https://luc.hawaii.gov/wp-content/uploads/2021/05/CC-HNL-IAL-FAQs.pdf>). There, on p. 5, the C&C informed the public that:

Land that is ultimately designated as IAL by the LUC does not preclude the landowner from using his or her land for purposes allowed or permitted under current LUC rules and regulations and the City's zoning requirements.

However, these statements seem contrary to the requirements under HRS Section 205-43, which mandates that State and County laws must promote IAL policies, including policies that prevent uses that are otherwise permitted within the State LUC Agricultural District.

The IAL Policies provision in HRS Section 205-43 provides in relevant part:

State and county agricultural policies, tax policies, **land use plans, ordinances, and rules** shall promote the long-term viability of agricultural use of important agricultural lands and **shall be consistent with and implement the following policies**:

* * *

(3) Direct nonagricultural uses and activities from important agricultural lands to other areas and ensure that uses on important agricultural lands are actually agricultural uses;

(4) Limit physical improvements on important agricultural lands to maintain affordability of these lands for agricultural purposes;

* * *

It is difficult to reconcile the C&C's assertions that IAL designation will not change the range of permitted uses for IAL-designated land in the Agricultural District,² with the fact that HRS Chapter 205 requires the C&C's land use plans, and its laws and rules, to promote policies that prevent non-agricultural uses on these lands. The land use plans, ordinances, and rules that the C&C will be enacting to fulfill the IAL policies must be presented to the public before any County-driven IAL designations are made.

The public has not been shown the land use plans, ordinances, and rules that the State and the C&C plan to enact in adherence with the policies under HRS Section 205-43. Proposing or establishing IAL maps now puts the cart before the horse because the public cannot understand what IAL means unless and until the required changes to State and local laws are presented and enacted. The LUC should not go forward with this IAL process until the required IAL policies are enacted and understood.

3. MUCH OF THE LAND THE C&C RECOMMENDS FOR IAL DESIGNATION IS OF QUESTIONABLE AGRICULTURAL USE

Much of the land originally placed into the Agricultural District was marginal land that nobody thought was actually suitable for agricultural production. From the initial enactment of Hawaii's land use law in 1963, it was understood that land put into the LUC Agricultural District would include marginal, non-agricultural lands.

Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities . . .

² Just a few of the currently permitted uses within the State Agricultural District that could be contrary to the policies under HRS Section 205-43 include: (i) wind-generated energy production, (ii) biofuel processing, (iii) solar energy facilities, (iv) hydroelectric facilities, (v) public and private open area recreational uses, (vi) utility lines, roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, (vii) mills, storage, and processing facilities, maintenance facilities, photovoltaic, biogas, and other small-scale renewable energy systems, and (viii) wireless communication antennas. See HRS Sections 205-2(d), 205-4.5(a).

These districts may include areas which are not used for, or which **are not suited to, agricultural** and ancillary activities by reason of topography, soils, and other related characteristics.

This language remains in HRS Section 205-2(d) and HAR Section 15-15-19 to this day.

IAL was to be the differentiating factor where actual agricultural standards and criteria were to be established and applied to the very best Agricultural District lands. However, because marginal land has been left in the Agricultural District, the C&C's starting point for IAL determination is inherently flawed because it is relying on old decisions that should have been updated on a regular basis.

HRS Section 205-18 calls for periodic reviews of State land use districts. The State Office of Planning is obligated to undertake a review of **all** lands in the State **every five years**, starting in 1990 (before this power was delegated to the Office of Planning, it was the responsibility of the LUC). The Office of Planning is also empowered to initiate boundary amendments proceedings. Yet these boundary reviews have not taken place.

Because of this inaction, decisions that were made in the 1960s, when land was first put into State LUC districts (including lands that were acknowledged as inappropriate at the time), are controlling land uses and activities to this day. **Before the C&C or any governmental agency seeks to impose IAL designations on private lands, the government should first comprehensively assess the propriety and viability of existing State Agricultural District designations to set a current and accurate baseline from which IAL considerations can then be made.**

The C&C compounded this baseline failure by not considering all of the standards and criteria for IAL as required under HRS Section 205-44. The C&C must apply **all** of the standards and criteria under HRS Section 205-44 before it recommends land for IAL. This obligation is set forth in HRS Section 205-47, which states that the counties' identification of proposed IAL must be "based on the standards and criteria in section 205-44[.]" Ignoring this requirement, the C&C, in consultation with its technical advisory committee, considered only three of the eight statutory requirements provided under HRS Section 205-44, and based its Recommendation upon that. See C&C 2018 IAL Report, Appendix G. As a result, the C&C's Recommendation is seriously flawed and should be rejected.

By law, the C&C was obligated to evaluate each of the statutory criteria when identifying lands for IAL consideration. Only after it assessed the consistency with each criteria, so that the appropriate range of information was provided and analyzed, could the C&C then engage in a ranking methodology to determine what criteria and lands were most well suited for IAL. That did not happen. **This flawed process should end now because the LUC has not been given the information it needs to exercise its statutory obligations under HRS Section 205-49(a), and confirm whether the C&C's proposal "meet with the standards and criteria under section 205-44."**

The C&C's Recommendation to involuntary designate many thousands of acres of land as IAL fails to take into account the sustainable and balanced needs of the C&C and the State - agriculture, renewable energy, carbon neutrality. We respectfully request that the Land Use Commission reject the C&C's Recommendation and instruct the C&C to take action on the matters raised in this letter before it submits any subsequent proposal for involuntary IAL designation.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Redell", with a stylized flourish extending to the right.

Frederick Redell, PE

Executive Director

(949) 701-8249

www.hawaiiicleanpoweralliance.org



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

Conformance of C&C of Honolulu Important Agricultural Lands Recommendation to Applicable
Statutory and Procedural Requirements

WRITTEN TESTIMONY - COMMENTS
Hearing, April 28, 2021, 9:00 AM

Frederick Redell
Executive Director
Hawaii Clean Power Alliance

Chair Scheuer and Members of the Commission,

My name is Frederick Redell, and I am testifying on behalf of Hawaii Clean Power Alliance (“HCPA”) and provide the following comments regarding “Conformance of C&C of Honolulu Important Agricultural Lands Recommendation to Applicable Statutory and Procedural Requirements”. HCPA has concerns regarding the Important Agricultural Lands (“IAL”) process and IAL Recommendation and respectfully requests that the Commission postpone action on this matter for the reasons noted below.

As you know, the State has made the development of renewable energy projects in Hawaii a priority and has mandated that the State achieve a 100% renewable portfolio standard and carbon neutrality goal by 2045. The LUC should note that designating lands as IAL will impose additional regulatory restrictions on landowners and will potentially negatively impact the development of renewable projects in Hawaii. Renewable energy projects are sited on lands that often overlap with lands that are zoned agricultural and are now proposed to be designated as IAL. The County’s proposed designation would classify a significant portion of land on Oahu as IAL and impose additional restrictions upon the land for uses that are not primarily agricultural in nature.

The issue of land use is more critical now than ever given that the AES Coal Plant will be closing in 2022, which the State’s Public Utilities Commission has indicated will potentially cause instability and blackouts to the electric grid, and significantly increase energy prices for customers.



HCPA believes that the State should not be making it more difficult to develop renewable energy projects to fill this void. As stewards of the land, the State must look at all of the sustainable issues holistically in relation to each other, including agriculture, economic development, housing and energy. Hawaii consumers, including farmers, already pay the highest energy bills in the nation and adding additional burdens to siting renewable energy projects will only drive prices even higher.

Hawaii Revised Statutes § 205-47(d) requires the counties, upon identification of potential lands to be recommended as potential IAL, to "take reasonable action to notify each owner of those lands by mail or posted notice on the affected lands to inform them of the potential designation of their lands." Although the County self-reports that the landowners were notified by mail on two separate occasions, (County Report, pp. 34, 54), the County's recommendation is based upon a report that is dated August 2018. The last Technical Advisory Committee meeting convened by the County occurred on June 19, 2013, over 5 years before the County's recommendation was submitted to the LUC, which is now almost 8 years ago. The County's notices to landowners that their lands could be designated as IAL were sent in December of 2016 and November of 2017. The last notices to landowners were mailed 3.5 years ago.

Of note, a total of 74 written comments were received from approximately 1,800 landowners, which constitutes a 4% return rate (County report p. 54). Ninety percent of those comments were from landowners, including farmers, who expressed dissatisfaction with the lack of notification, the lack of process and with the designated inclusion of their lands in the County's IAL recommendation. HCPA respectfully submits that too much time has passed. HCPA questions whether current landowners will have the opportunity to agree, comment or object now. Also, given that there are existing renewable energy facilities and/or PUC approved projects on some of the IAL identified parcels, why were those landowners not included in the Technical Advisory Committee? Given the 4% response rate and negative comments from landowners, will the County be required to further engage with the notification procedure and solicit meaningful feedback? In light of these concerns, HCPA respectfully requests that the LUC postpone action on this matter until further information can be gathered, and further discussion had, regarding the process and whether it conformed to statutory requirements.

Lastly, HCPA notes that the LUC's Meeting Agenda requests written testimony no later than 24 hours before the hearing. However, HCPA understands that the applicable regulations, including HAR §§ 15-15-125 and -109(e), provide HCPA 10 days after the hearing date within which to submit written testimony, as noted by the LUC staff in its February 11, 2021 presentation.

Thank you for the opportunity to provide this testimony regarding the IAL Recommendation.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Redell", with a stylized flourish extending to the right.

Frederick Redell, PE

Executive Director

(949) 701-8249

www.hawaii-clean-power-alliance.org

January 04, 2022

From:

Arnold and Jerri Lum

Email address: pikakehanako@yahoo.com

TMK: 41035020 (.38 acres)

TMK: 41035018 (2.65 acres)

Aloha,

We, (Arnold and Jerri Lum) are the current owners of the above TMK properties which are being considered for IAL designations. We are opposed to this decision for the following reasons:

The City's IAL mapping and recommendation process:

- 1) Failed to provide us as a landowner with adequate notice and due process, as required by the statute and the constitution. Our 1st notice of our lands being considered for IAL was from a law firm in the form of an "awareness letter", dated 4/12/21. Our 2nd notice, dated 5/11/21, came from the LUC identifying our 2 properties being considered as IAL lands.
- 2) Misled or failed to accurately inform us about the restrictions IAL designation would put on our basic property rights, which would impact property values and loan acquisition.
- 3) Relies on inaccurate mapping, short cut methods, and other erroneous records to inaccurately describe and recommend many parcels as satisfying the IAL criteria.
- 4) Inappropriately submitted its IAL recommendations to the LUC prior to enacting county incentives and protections for IAL lands, landowners, and farmers. It is our understanding that the City Council must enact County incentives before the LUC accepts the County maps, and 3 years before the LUC designates those lands as IAL.
- 5) Failed to provide the LUC with enough basic information about our land and how it does or does not meet all or part of the eight IAL criteria. This prevents the LUC from properly "weighing the standard and criteria with each other" as required before designating our land as IAL. It is our understanding that no one has provided the LUC with adequate information about all the possible relevant IAL criteria for each parcel recommended by the City.
- 6) Both of our properties face adverse conditions to sustain agriculture production.
 - a) TMK: 41035020 (.38 acres) It's small size makes agriculture financially and logistically infeasible.
 - b) TMK: 41035018 (2.65 acres) Approximately 1 acre of the 2.65 acres was purchased as a remnant parcel from the State of Hawaii Agricultural Park Project, which was developed in the 1980s. Being the adjacent landowner to the park, it was offered for purchase. The parcel was considered remnant because of it's irregular, steep topography, and poor and rocky soil condition. The State also constructed a 48 inch diameter water runoff system from the Ag Park which empties into our property. As a result, we experience severe ponding and erosion issues throughout our property. The State is aware of this issue and has proposed a

January 04, 2022

correction and redirection of the runoff from the Ag Park; however, the State has yet to take any corrective action.

Along with many other farmers and landowners, we were not properly notified or informed about the City and County's recommendation process. Moreover, the information provided to the LUC about our land is inadequate to enable the LUC to properly do its job as required by HRS 205-44.

As such, the LUC should remand the map back to the City and County with instructions for the City and County to:

- A) First enact incentives and protections for IAL lands, landowners, and farmers, as required by HRS 205-46, 205-48, 205-49, before resubmitting the City and County's maps and recommendations to the LUC.
- B) Provide clear and verifiable notification to, and actual cooperation and consultation with, landowners and farmers like ourselves regarding the fact and consequences of IAL recommendations and designation of their specific lands as the same, as required by HRS 205-47.
- C) Gather and provide the LUC with information about how and whether parcels recommended for IAL designation meet any, some, or all of the 8 IAL criteria, so as to enable the LUC to perform the proper weighing of all standards and criteria required before the designation of any lands as IAL, as required by HRS 205-44.

Sincerely,

Arnold and Jerri Lum
41-979 Waikupanaha St
Waimanalo HI. 96795
PH: (808) 259-8455

From: [Irons, Tim](#)
To: [DBEDT LUC](#)
Cc: [Vega, Courtney A.](#); [Alston, Paul](#)
Subject: [EXTERNAL] LUC January 6, 2022 Action on Conformance of C & C of Honolulu Important Agricultural Lands (IAL) Recommendation to Applicable Statutory and Procedural Requirements
Date: Wednesday, January 5, 2022 8:45:06 AM
Attachments: [image001.png](#)
[2022-01-05 Ltr from TIIR to Land Use re 1-6-22 Meeting.pdf](#)

Please find attached written testimony addressing the Land Use Commission's January 6, 2022 board meeting on Conformance of C&C of Honolulu Important Agricultural Lands (IAL) Recommendation to Applicable Statutory and Procedural Requirements.

Sincerely,



Tim Irons

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January 5, 2022

VIA E-MAIL

State of Hawai'i, Land Use Commission
P.O. Box 2359
Honolulu, HI 96814
E-mail: dbedt.luc.web@hawaii.gov

Re: ACTION ON CONFORMANCE OF C & C OF HONOLULU IMPORTANT AGRICULTURAL LANDS (IAL) RECOMMENDATION TO APPLICABLE STATUTORY AND PROCEDURAL REQUIREMENTS

Dear Chair Scheuer and Commissioners:

We write on behalf of The Edmund C. Olson Trust No. 2 ("Trust"), and its subsidiary, Palehua Partners Joint Venture ("Palehua Partners"), to object to the Land Use Commission's ("LUC") consideration and acceptance of the City & County of Honolulu's ("City") Important Agricultural Lands ("IAL") submittal. Confirming the City's flawed process at the January 6, 2022 LUC meeting would violate the due process rights of affected landowners by eliminating an opportunity to be heard on their legal rights, duties and privileges at a meaningful time and in a meaningful manner.

As set forth in our letters of April 26, 2021 and April 29, 2021 (attached as Exhibits 1 and 2), the City's IAL mapping submittal does not conform with state law or LUC rules. Prior to recommending IAL for designation, the City is required to weigh all of the eight (8) IAL criteria with each other and to cooperate and consult with affected landowners. Rather than follow the prescribed process, the City cherry-picked a few of the statutory criteria to maximize the amount of land identified as IAL based on perceived public sentiment that "all AG land should be IAL" and that "landowners should be required to prove that their land cannot be farmed." Exhibit 1 at 3. We request that the LUC remand the matter to the City to cure the fundamental defects in the process.

The State Attorney General's Opinion dated October 21, 2021 ("AG Opinion") seeks to legitimize the City's flawed process. The AG opines that: (1) the City's IAL recommendation does not require a weighing of the eight criteria; (2) the City need not weigh the criteria on a parcel-by-parcel basis; and (3) the Commissioners are generally immune from personal liability if they take action contrary to advice from deputy attorneys general on this matter.¹ The AG Opinion is not a formal opinion pursuant to HRS §28-3. As such, the opinion is merely advice provided to a client in an ongoing controversy and is not persuasive legal authority. The LUC is under no obligation to follow the advice given; particularly, where it is plainly contrary to the plain meaning of the law under review.

As to the first question posed, the AG Opinion states, "the 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

¹ The AG Opinion also confirms the Trust's position that due process rights are implicated by the IAL designation.

only some or even just one of those standards”. The AG Opinion misconstrues the statutory requirements. Under HRS §205-47, the City shall identify and map potential IAL within its jurisdiction based on the standards and criteria in section 205-44. The City may give “initial consideration” to lands based on fewer than all eight criteria, however, “the designation of important agricultural lands shall be made by weighing the standards and criteria with each other to meet constitutionally mandated purposes”² To fulfill this statutory requirement, the City must develop an evidentiary record supporting its recommendations for each landowner, consistent with HRS §205-44. See LUC §15-15-125(b)(5) (“The county making such recommendations to designate land important agricultural lands shall provide the commission a complete record...Evidence that the important agricultural lands mapping relates to, supports and is consistent with the (A) Standards and criteria set forth in section 205-44, HRS...”) While the City may be over-inclusive in **initially identifying** potential IAL, **it must weigh each of the eight criteria prior to recommending the lands for designation.**³ The City is not free to simply ignore any of the eight IAL criteria in its recommendations to the Commission.

Notwithstanding the AG’s flawed analysis, the City failed to weigh each of the criteria at any stage of its process. Had the City complied with section 205-44, the Trust’s Property (consisting of steep terrain, little access to water or infrastructure, poor soil and no history of productive agricultural operations) would not be mapped as IAL. It is the Commission’s role to ensure that the City “has met the minimum standards and criteria for the identification and mapping process in section 205-44 and 205-47.” HRS §205-48. By utilizing a single criteria to identify IAL (and failing to weigh all eight criteria with each other), the City process violated state law and precludes the LUC from accepting the City’s recommendations.

As to the second question posed, the AG opines that the eight standards and criteria need not be assessed for individual parcels but may be weighed on a county-wide or regional basis. This leads to an absurd result. Identifying IAL is necessarily parcel specific, otherwise, there would be no objective application (or actual weighing) of any of the criteria. A parcel could have zero agricultural value and, nevertheless, be included in IAL because—according to the AG (and the City)—no parcel specific analysis is necessary. HRS §205-47 is clear that the counties must provide notice to each affected landowner and include representations or position statements of the individual owners whose lands are impacted. This individualized notice is required because the analysis and weighing (and the impacts of the proposed designation) are parcel-specific.

Moreover, a county-wide weighing (whatever that would entail) is contrary to the legislature’s definition of IAL, which consists only of lands that (i) are capable of producing sustained high agricultural yields, (ii) contribute to the State’s economic base and produce agricultural commodities for export or local

² HRS §205-44 (a) provides:

The standards and criteria in this section shall be used to identify important agricultural lands. Lands **identified** as important agricultural lands need not meet every standard and criteria listed in subsection (c). Rather, lands meeting any of the criteria in subsection (c) shall be given **initial consideration; provided that the designation of important agricultural lands shall be made by weighing the standards and criteria with each other** to meet the constitutionally mandated purposes in article XI, section 3, of the Hawaii constitution and the objectives and policies for important agricultural lands in sections 205-42 and 205-43. (Emphasis added.)

³ Weighing means to “assess the nature or importance” of something. A criterion may have great weight or may be irrelevant, but in the context of making a recommendation it must at least be assessed with each other criteria—ignoring criteria, as suggested by the AG Opinion, is not permitted under the statute.

consumption or (iii) are needed to promote the expansion of agricultural activities. HRS §205-42. Over-including land to appease some vocal members of the public (who are not impacted by the designation) is not a substitute for establishing that the specific lands proposed for designation meet the criteria.

The AG's explanation for its radical position is that a parcel specific weighing may be burdensome on the City. The AG confirms, however, that landowner designations under HRS §205-45 necessarily require parcel specific weighing of criteria. Many of these voluntary landowner designations consist of thousands (even tens of thousands) of acres and numerous parcels requiring time-consuming and in-depth analysis done at great expense. Why the City, with its considerable resources, should not be held to the same legal standards when it is seeking to **impose** IAL designations upon unwilling private landowners is not at all obvious.

Further, the disregard for the interests of individual landowners is going to result in the state and county governments being liable for damaging private property. For example, Palehua Partners and the Trust are presently party to multiple valuable option agreements with solar farm developers. Those agreements anticipate developments that are not permitted on IAL. Thus, a ham-handed ratification of the County's flawed designation process will deprive them of the benefit of their vested rights in these agreements and cost these landowners millions of dollars in damages. This violation of rights protected by the Hawai'i Constitution is inexcusable.

With regard to the third question posed, it is troubling that Commissioners apparently were advised that they might have personal liability for taking action contrary to advice from deputy attorneys general. It is not the role of the AG's office to determine whether the City's proposed mapping complies with the LUC procedures and state law. The LUC determines whether the City has provided a complete record of the proceedings consistent with LUC §15-15-125(c), not the AG's office. This type of coercive "advice" (during a closed session) is beyond the AG's authority and undermines affected landowners' ability to receive a fair and meaningful hearing.

Ultimately, the City (and apparently the AG) would like the LUC to take up the defense of these controversial positions by accepting the City's flawed process. This would be a mistake. The City's due process violations have tainted this proceeding and any actions taken to carry-out the City's recommendations will be similarly flawed. The best course of action is to remand the matter to the City with instructions to properly weigh each of the criteria on a parcel specific basis and to perform the required outreach with affected landowners.

Sincerely,



Timothy H. Irons
Counsel

Attachments

April 26, 2021

VIA E-MAIL ONLY

State of Hawaii, Land Use Commission
P.O. Box 2359
Honolulu, HI 96814-2359
dbedt.luc.web@hawaii.gov

Dear Chair Scheuer and Commissioners:

We write on behalf of The Edmund C. Olson Trust No. 2 (the "Trust") to object to the City and County of Honolulu's ("C&C") proposed designation of certain Trust property in the West Oahu mountains above Makakilo as Important Agricultural Lands ("IAL"). The land proposed for designation consists of AG district portions of two parcels totaling approximately 2,060 acres identified as TMK Nos. (1) 9-2-045-007 and (1) 9-2-004-008 (hereafter, the "Palehua Property").

The Palehua Property consists primarily of steep slopes, ravines and rocky terrain covered by non-native Guinea grass. The land is still recovering from a large 2014 fire that burned over a thousand acres and destroyed many *Wiliwili* trees. The Trust has been working on preserving Native fauna and revitalizing the natural ecosystem through dedication of land for a Native-plant nursery. Agricultural activity (unrelated to conservation) is limited to cattle grazing for fire suppression. The topography, poor soils and lack of infrastructure make productive farming impractical and unsustainable.

Throughout this IAL designation process, the Trust has received two form letters: one letter from C&C noticing the proposed designation ("IAL Notice") and a second letter from the State Land Use Commission ("LUC") noticing this April 28-29, 2021 meeting ("LUC Notice"). See Exs. 1 & 2, attached. The Trust has never been consulted, interviewed or even asked to complete a survey to determine if sustainable productive agricultural exists, is possible, or is even desirable at the Palehua Property.

Contrary to State law requiring a "weighing" of criteria, C&C relied upon a single criterion to designate the Palehua Property, i.e., that the lands are currently in agricultural production. Even with this overly broad definition of IAL, C&C's process has not produced evidence establishing that the Palehua Property meets the criterion.¹ Rather than waste this Commission's time with dozens of meetings and hearings to analyze the C&C's flawed process, this matter should be remanded with directions to "consult and cooperate" with all affected landowners (including the Trust), to designate only those lands that meet the State law's definition and the intent of IAL and to establish an evidentiary record that is at least as robust as those for voluntary IAL petitions brought before the LUC.

¹ While limited cattle grazing—for fire suppression—is an agricultural activity, C&C's expansive redefining of State IAL would support designating all eligible Oahu AG land as IAL.

I. FACTUAL BACKGROUND

On or about April 15, 2021, the Trust received the LUC Notice for the April 28-29, 2021 meeting to consider whether C&C's recommendations for designation of IAL on the Island of Oahu complies with the requirements of Hawaii Revised Statutes ("HRS") §§ 205-47 and 205-49 and whether the proper procedural, legal, statutory and public notice requirements were met in developing the recommendations. Ex. 2. The LUC Notice stresses that the "Commission will not be considering or determining at this meeting the legal rights, duties, or privileges of specific landowners or issues relating to particular properties."² The Trust, therefore, understands that this meeting is not intended to be a hearing and that no action will be taken to impact the rights (whether substantive or procedural) of any affected land owners, including the Trust.

A. C&C's IAL Mapping Process

According to C&C's August 2018 "O'ahu Important Agricultural Land Mapping Project" Report ("Report") prepared by the Department of Planning and Permitting ("DPP"), "IAL refers to a State land use designation ... for an exclusive sub-set of high-quality farm land within the State Land Use Agricultural District." Ex. 3 (emphasis added). "The [IAL] recommendations articulate a long-term vision for the high quality farm land on O'ahu most suited for farming." *Id.*

The Report states that the IAL designation will not affect the range of permitted land uses or impose a higher level of protection from future development but, rather, will benefit landowners by granting access to incentives and support to reduce the cost of farming. Ex. 4. C&C has consistently taken the position that the IAL designation does not impact landowner property rights, despite the designation enshrining the lands within the restrictions and protections established by Article XI, Section 3 of the State Constitution and HRS, Chapter 205, which protect IAL from the encroachment of nonagricultural activities and effectively precludes any future reclassification and/or rezoning.

In determining the informational sources and weighting criteria used for C&C's mapping project, DPP set up a technical advisory committee ("TAC") comprised of a single landowner organization making up 4% of the vote of a 25-member committee. Ex. 5.³ Apparently, this was done to satisfy the requirement of "consultation and cooperation" with landowners pursuant to HRS § 205-47 even though the statute requires reporting of the "[r]epresentations or position statements of the owners whose lands are subject to the potential designation." HRS § 205-47(d)(5). Through a series of invitation only meetings and three publicly noticed community meetings (all on Oahu), C&C claims it satisfied the requirement to consult and cooperate with landowners affected by the potential designation. According to Table 2-1 of the Report, the process consisted of TAC meetings, focus group meetings, community meetings and landowner notification after lands were determined eligible and recommended to the city council for designation. Ex. 6.

In determining whether land was currently in agricultural production (Criteria 1), DPP used 2011 aerial imagery, a 2012 Ko'olau Poko Watershed Management Plan (covering windward Oahu), an Island of O'ahu Agricultural Land Use Map, 1978-1980 ("ALUM") and a 2011 Real Property Taxation Database.

² The Notice, itself includes conflicting dates (referencing a meeting on March 24-25, 2021 as well as April 28 and 29, 2021) and refers to the action as both a meeting and a hearing at which "any member of the public may provide public testimony on this matter." If the LUC intends to conduct a hearing, then the LUC Notice must be clarified and reissued.

³ The single landowner organization was the Land Use Research Foundation ("LURF"), consisting primarily of large-scale developers, some of whom voluntarily designated their lands as IAL to avoid being subject to the C&C mapping process.

Ex. 7. The 2011 imagery was compared to the ALUM to identify active and fallow agricultural lands. Any parcels receiving AG exemptions according to tax records were included in the data set as “currently used for agricultural production.” *Id.* The standards for claiming an AG exemption for tax purposes, however, have nothing to do with designating “an exclusive sub-set of high-quality farm land within the State Land Use Agricultural District.” Ex. 3 (emphasis added).

To identify IAL, the TAC determined that three of the statutory criteria should be prioritized (Criteria 1, 2 and 5) concerning current AG production, soil and growing conditions and sufficient quantities of water. Ex. 8. TAC members discussed using the Top 3 or 4 criteria and one member commented that the TAC would lose credibility if they recommended all of the AG lands for IAL, without considering the quality of the land. Ex. 9. Another member stated his preference for using the top 3 criteria because designating all AG lands would defeat the intent of the law, which is to preserve and protect the best AG lands. *Id.* Despite these initial misgivings by TAC members, C&C adopted an “inclusive” approach including land with attributes of any one of the 3 priority criteria as eligible for IAL designation. Ex. 8. Apparently, this was a result of community sentiment that “all AG land should be IAL.” Ex. 10, pp. 5-6. TAC members noted that:

Requiring 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. The community has expressed a strong opinion that “all AG land should be IAL.” It would be contradictory for the TAC to require multiple criteria be satisfied if it limits the pool of IAL-eligible lands, given the community’s sentiment...

“There is a desire to be as inclusive as possible while at the same time identifying the best candidate lands. As such, landowners should be required to prove that their land cannot be farmed. This approach requires landowners to decide that they do not want to be included in IAL, and ask to be omitted. *Id.* (emphasis added).

During the second phase of the C&C mapping project, the TAC members participated in public outreach. A comment made by the sole member representing landowners (the LURF) was that “consultation and cooperation with landowners” needed to come before public involvement as it would provide a better/fuller record for the general public. Ex. 10, pp. 1-2. It was further noted that the IAL legislation was framed around the concept of agricultural viability, not land use and preservation. *Id.* DPP staffer, Scott Ezer, confirmed that DPP intended to notify landowners before recommendations are transmitted to the city council but that budgetary restraints did not allow for individual meetings with landowners. *Id.*

At the last TAC meeting on November 14, 2017, LURF noted 10 concerns about the C&C mapping process. Ex. 11. Included in the concerns was C&C’s use of “one criteria” as a basis for IAL designation as well as the failure of C&C to consult and cooperate with landowners. *Id.* Indeed, C&C essentially adopted the approach that the burden was on landowners to object to the IAL designation rather than on the C&C to establish and present a record in support of designation.

As part of public outreach, focus groups were created by invitation only. In the focus groups, environmental interest groups outnumbered landowners even though HRS § 205-47 does not call for cooperation and consultation with environmental groups but does expressly call-out landowners. Ex. 12. Even with limited representation, it is not clear whether the landowner representatives such as the Agribusiness Development Corporation (an attached agency to the Department of Agriculture) had any

lands subject to IAL designation.⁴ *Id.* During the focus group discussions, there were many questions about restrictions placed on IAL designated lands. It was noted that “IAL will provide a hierarchy within the State’s Agricultural District to ensure that the most valuable agricultural lands are protected. Speculation to urbanize agricultural lands should disappear once lands are designated IAL, since it is more difficult to urbanize land that has an IAL designation.” Ex. 13. DPP confirmed that “[o]nce the inventory of IAL is identified, DPP is hopeful that the regulatory mechanisms that promote agricultural use of the land will follow... it should ultimately result in future regulatory mechanisms to better manage the use of lands identified as IAL.” Ex. 14 (emphasis added). This is not what was presented in the IAL Notice or during public meetings; IAL designation was presented as a way to qualify for valuable incentives.

B. C&C’s Consultation and Cooperation With The Trust

C&C mailed the Trust a single form communication dated November 8, 2017 entitled “Notice to Affected Landowner Important Agricultural Lands (IAL) Project.” Ex. 2. This letter was sent well after the TAC and Focus Groups crafted C&C’s over-inclusive definition of IAL and put the burden on landowners to prove their land cannot be farmed. This notice was also after the Community Meetings held in April 2015, January 2017 and a mere 12 days before the third and final Community Meeting on November 20, 2017. The IAL Notice states that:

Your property is recommended for inclusion in IAL based on selected state criteria defined under Chapter 205, Hawaii Revised Statutes. Enclosed is a map of proposed land to be recommended as IAL by the DPP and a “Frequently Asked Questions” handout. More detailed maps and information can be found on the project website: www.mapoahuagland.com.

We encourage you to come to the final community meeting to view the final Draft IAL Map and the IAL process on November 20, 2017, 6:00 p.m. to 8:00 p.m. at the Aiea Intermediate School Cafeteria, 99-600 Kulaweia Street, Aiea, Hawaii 96701...

Thereafter, the DPP will send the draft IAL Map to the City Council for endorsement in the spring of 2018. Additional information is available at: [www.honoluluapp.org/Planning/ImportantAgriculturalLands\(IAL\).aspx](http://www.honoluluapp.org/Planning/ImportantAgriculturalLands(IAL).aspx). Click on the link under “Documents” for the IAL Phase I Report. Should you have any questions, please contact Raymond Young of our staff, at (808) 768-8049. *Id.*

In sum, after approximately five years of planning and meetings, DPP finally got around to notifying the Trust that its approximately 2,000 acres of AG lands were part of the final Draft IAL Map being sent to the city council.

In summarizing the “Mandatory County Designation” process, the IAL Notice identifies the following steps:

1. The County Planning Department (for Oahu, it is the Department of Planning and Permitting) prepares draft IAL maps and an accompanying report and notifies affected landowners.
2. The County Council review and adopt the IAL maps via resolution.
3. The County transmits its IAL recommendations to the LUC.

⁴ Similarly, Castle and Cooke and other large owner representatives voluntarily petitioned for IAL designation thereby exempting their remaining lands from the C&C mapping process.

4. The State Department of Agriculture (DOA) and the State Office of Planning reviews the County's recommendations and provides comments to the LUC within 45 days of receipt of the County's recommendations.
5. The LUC issues a written decision to designate the County's IAL recommendations after a two-thirds majority vote by the LUC.

This is the exact process C&C followed. Absent from that process is any actual "consultation and cooperation" with affected landowners. LUC Rules § 15-15-125(b)(1). The only involvement of the Trust in this process has been receipt of the after-the-fact, vague and misleading IAL Notice.

Had C&C conducted basic outreach with the Trust, it would be apparent that the Palehua Property has never supported and is not capable of producing high agricultural yields, does not contribute to the State's economic base or produce agricultural commodities for export or consumption and is not necessary to the expansion of agricultural activities and income for the future. The Palehua Property is steeply sloped, rocky with extremely poor soil, insufficient access to water or related infrastructure and home to many historic resources that would be significantly impacted by productive agriculture.⁵ The Trust is prepared to present this evidence against the designation should a hearing go forward, however, this would reward C&C for not satisfying the most basic requirements for IAL designation. Due to C&C's noncompliance, the evidentiary record is woefully inadequate and the proper course is to remand the matter to C&C for further proceedings and actual consultation and cooperation with affected landowners. The burden is on C&C—not the affected landowners—to develop the necessary record to support IAL designation.

II. COUNTY IAL MAPPING PROCESS UNDER HRS § 205-47

HRS § 205-47 sets forth the process each county must follow in mapping IAL. Each county is directed to "map potential important agricultural lands within its jurisdiction based on the standards and criteria in section 205-44 and the intent of this part..." HRS § 205-47 (a). Under subparagraph (b), "[e]ach county shall develop maps...in consultation and cooperation with landowners..." (Emphasis added.) Upon identification of potential IAL, the counties shall take reasonable action to notify each landowner. HRS § 205-47(d). And, the planning departments shall report on the manner in which the important agricultural lands mapping relates to, supports and is consistent with "...(5) Representations or position statements of the owners whose lands are subject to the potential designation." HRS § 205-47(d)(5). Under State law, therefore, landowners are integral to the mapping process.

⁵ Soil Quality: Approximately:

- 97% of the soils are rated "Poor" (D) and "Very Poor" (E) under the Land Study Bureau (LSB) Detailed Land Classification System
- 65.5% is "Unclassified" under the Agricultural Lands of Importance to the State of Hawai'i (ALISH) classification system; 32.2% is classified as "Other;" and only 2.3% is classified as "Prime"

Topography: Over 72% of the land is comprised of slopes of 20% or greater.

Availability of Water: Approximately 90% of the land does not have a sufficient amount of water to support agricultural uses.

Current Agriculture Production: The capacity of the land to support cattle grazing is limited; the small number of cattle grazing on the land is largely for fire load suppression rather than active cattle ranching and production.

HRS § 205-44 sets forth the criteria for IAL designation which does not permit a “one criteria” approach:

(a) The standards and criteria in this section shall be used to identify important agricultural lands. Lands identified as important agricultural lands need not meet every standard and criteria listed in subsection (c). Rather, lands meeting any of the criteria in subsection (c) shall be given initial consideration; provided that the designation of important agricultural lands shall be made by weighing the standards and criteria with each other to meet the constitutionally mandated purposes in article XI, section 3, of the Hawaii constitution and the objectives and policies for important agricultural lands in sections 205-42 and 205-43...

(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. (Emphasis added.)

The clear intent of the State law is for all IAL criteria to be considered and weighed to meet the constitutional purpose and statutory objectives and policies for IAL. The intent is not to be over-inclusive to placate public sentiment but to actually identify and select high-quality AG land so that incentives can be directed to viable agribusiness.

Critical to the entire process is the definition of IAL, i.e.: (1) lands capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology; (2) lands contributing to the State’s economic base and producing agricultural commodities for export and local consumption; or (3) lands needed to promote the expansion of agricultural activities and income for the future, even if currently not in production. HRS § 205-42. The objective for identifying these important agricultural lands is “to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations. *Id.* (emphasis added). In other words, IAL is not simply land upon which agricultural activities may be conducted but the highly productive lands that can support profitable and sustainable agricultural businesses.

Over designating IAL lands to include marginal lands unsuitable for intensive agricultural operations not only misdirects incentives intended for truly productive AG lands but also prevents ancillary uses that are

best located on these lands.⁶ Once IAL are designated, statutory policies discourage nonagricultural uses and activities and direct such uses/activities to other lands. HRS § 205-43. The policies encourage development of basic infrastructure and services necessary to support agricultural uses and activities and promote the maintenance of essential agricultural infrastructure systems, including irrigation systems. *Id.* If IAL mapping is too inclusive, these policies will promote development of unproductive and unsustainable agricultural operations, contrary to State law. Landowners with marginal lands improperly designated as IAL, will face new limits on farm dwellings and employee housing (HRS § 205-45.5) as well as new restrictions on any future reclassification of rezoning (HRS § 205-50). Indeed, the maps of IAL “shall guide all decision-making on the proposed reclassification and rezoning of important agricultural lands, state agricultural development programs, and other state and county land use planning and decision-making.” HRS § 205-49 (b). And, IAL lands will be subject to heightened scrutiny because their use will be subject to Hawaii State Constitutional protection.

Accordingly, given the significant property interests at stake, the C&C mapping process must strictly adhere to the requirements of State law and LUC Rules.

A. C&C’s Mapping Process Failed To Comply With State Law And LUC Rules

As previously noted, C&C failed to comply with State law and the LUC Rules in at least two significant respects: (1) the definition of IAL was broadened to include nearly all eligible AG land on Oahu with an AG exemption and (2) the process was designed to avoid “consultation and cooperation” with affected landowners. While C&C identified three (3) criteria to be given priority in the designation, rather than actually weigh these criteria along with the others as mandated by HRS § 205-44, C&C determined that a single one of the three was sufficient to designate the land as IAL. This apparently was driven by public sentiment to include all AG land as IAL. Therefore, a property (such as the Palehua Property) with poor soil, insufficient water, steep slopes and little infrastructure is proposed as IAL because the parcel was identified on an old AG land use map and qualifies for an AG exemption.

This public sentiment driven approach presents the LUC with a very significant evidentiary problem. Unless the LUC agrees (contrary to the plain meaning of the State statute) that criteria weighing is unnecessary and that a single criterion is sufficient to designate land as IAL, the C&C record is grossly deficient. To build a complete record, the LUC will be forced to hold its own evidentiary hearings to fill-in the gaps created by C&C’s over-inclusive approach.

Compounding this evidentiary problem is the fact that C&C failed to conduct even the most basic outreach to landowners, as required by statute and LUC Rules. LUC Rule § 15-15-125 requires C&C to provide evidence of: its “cooperation with landowners” as well as “reasonable action to notify each owner of those lands by mail or posted notice.” [The only notice received by the Trust was the form IAL Notice that did not even identify the property proposed for designation.] There was no screening or “cooperation” with the Trust to determine if lands are suitable for agricultural production. Rather, based

⁶ Solar and wind projects and many other permitted uses on AG land will likely not be permitted on IAL lands as they are not an “agricultural activity” which is limited to:

- (1) Cultivation of crops, including crops for bioenergy, flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use; but ancillary uses. See HRS 205-4.5 (a)(17), Definition of “Agricultural activity”.

on the C&C's own record, DPP largely excluded landowners from the process and forced them to prove their AG lands should not be designated.

C&C is required to present a record that shows that the standards of HRS § 205-44 have been met in designating IAL, the "viability of existing agribusinesses" and representations or position statements by landowners whose lands are subject to the designation. With regard to the Palehua Property, there is no evidence that cattle grazing for fire suppression is a viable agribusiness, and C&C made no effort to cooperate or consult with the Trust. Evidence must be established for each property proposed, not wholesale conclusory analysis and statements of little evidentiary value. As such, the LUC should not accept the C&C's submission as complete and should remand the matter to the C&C for compliance with the statute and LUC Rules.

B. Due Process Requires Remanding The Matter For Compliance With The State Mandated Mapping Process

Any potential IAL designation must be based on written findings of fact and conclusions of law and a showing "by a preponderance of the evidence that the subject lands meet the standards and criteria set forth in 15-15-120." LUC § 15-15-126(c). The LUC's consideration of county identified IAL is pursuant to LUC § 15-15-109. Under the rule, a public hearing shall be conducted affording interested persons reasonable opportunity to offer testimony with respect to the matter, in order to obtain a clear and orderly record. While testimony may be given (subject to time limits in the discretion of the presiding officer), there is no right to cross-examination or rebuttal testimony and any testimony given is not reported verbatim. See LUC § 15-15-19(d)(f). This process, particularly in light of C&C's deficient process, does not meet the minimum standards of due process.

"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." (citations omitted) *DW Aina Le'a Dev., LLC v. Bridge Aina Le'a, LLC*, 134 Hawai'i 187, 218, 339 P.3d 685, 716 (2014). The specific procedures required to satisfy due process requires a balancing of several 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. *Sandy Beach Def. Fund v. City Council of Honolulu*, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989).

Here, the private interests are significant and the risk of erroneous deprivation is high because C&C failed to consult and cooperate with affected landowners prior to recommending IAL lands to the city council. The LUC's hearing procedures do not provide any mechanism to fix the flawed process short of remand. Indeed, the LUC cannot cure C&C's flawed process without improperly usurping C&C's authorities under HRS § 205-47 and carrying-out its own mapping process in consultation and cooperation with affected landowners. The governmental interest favors remand because C&C is charged with the mapping process and curing any evidentiary record defects, not the LUC.

Should the LUC proceed with hearings on the flawed C&C maps, due process requires that each landowner be afforded a hearing at a reasonable time and in a reasonable manner. Under the circumstances, each affected landowner (including the Trust) must be given a full and fair opportunity to provide evidence and testimony, be permitted to cross-examine opposing testimony and to offer rebuttal testimony. In other words, each landowner must be afforded the equivalent of a contested case hearing. Anything short will deprive landowners of a meaningful opportunity to be heard and compound C&C's errors.

C. The Hawaii Environmental Policy Act (“HEPA”) Must Be Complied With

Prior to adopting a new land use overlay over tens of thousands of acres and thereby incentivizing agricultural production with State and county resources, an Environmental Assessment (“EA”) is necessary to evaluate the impacts of the IAL project/program. As the IAL policies are to promote agricultural use through County incentives and development of infrastructure necessary for viable agribusiness, the LUC’s reclassification of AG land will likely have a significant environmental impact on the lands proposed for designation.

An environmental assessment under HEPA is required if three conditions are satisfied: (1) the proposed activity is an “action” under HRS § 343-2; (2) the action proposes one or more of the nine categories of land uses or administrative acts enumerated in HRS § 343-5(a); and (3) the action is not declared exempt pursuant to HRS § 343-6(a)(2). *Umberger v. Dep’t of Land & Nat. Res.*, 140 Hawai’i 500, 512, 403 P.3d 277, 289 (2017). An “action” is any program or project initiated by any agency or applicant. The IAL designation is an agency initiated program/project designed to incentivize agribusiness. The action proposes the use of state or county funds as part of the incentive program, a trigger under HRS § 343-5(a)(1). And, none of the exempt classes of action listed under Hawaii Administrative Rule, § 11-200-8 are applicable and, even if one were, the cumulative effects of the proposed IAL designation are significant and likely to impact particularly sensitive environments. Where all three elements of an EA are present, the LUC is required to prepare an EA of the proposed action at the earliest possible time. *Sierra Club v. Office of Planning*, 109 Hawai’i 411, 418, 126 P.3d 1098, 1105 (2006).

Under HRS § 205-46(a), “[a]gricultural operations occurring on important agricultural lands shall be eligible for incentives and protections provided by the State and counties...to promote the viability of agricultural enterprise on important agricultural lands and to assure the availability of important agricultural lands for long-term agricultural use.” Incentives include, *inter alia*, “grant assistance,” “tax incentives programs for equity investments and financing for agricultural operations, including agricultural irrigation systems,” “State funding mechanisms to fund business viability and land protection programs,” and “[o]ther measures that would ensure that state capital investments, projects, programs and rules are consistent with this part.” *Id.* All of the state and county incentives and funding is contingent upon IAL designation. Use of State and county funds to promote agribusiness on lands of marginal value will likely have significant environmental effects that require consideration prior to designation of IAL based on the C&C’s over-inclusive mapping process. And, restricting use of marginal IAL land to “agricultural activities” will push AG uses (such as wind, solar, etc.) onto non-IAL designated properties that may be better suited to agricultural production.⁷

With regard to the Palehua Property, incentivizing agribusiness with State funds (including building irrigation systems and other infrastructure necessary for productive cattle ranching) may have significant impacts on cultural resources that exist throughout the property. As the land is currently used primarily for preservation purposes with limited grazing for fire suppression, the existing cultural sites are protected and preserved. Intensive AG operations, consistent with the intent of classifying lands as IAL, may damage or destroy these cultural sites. Intensive agriculture may also have a significant impact on the neighboring community of Makakilo. Prior to holding a hearing on designating any of the C&C proposed

⁷ A considerable amount of prime AG land is protected from IAL designation as a result of voluntary petitions by landowners designating a majority (51%) of their land. The 49% that is not designated is likely land that is far superior in soil quality, water availability and current agricultural production than the Trust’s Palehua Property. And, large swaths of prime AG land in Ewa and Waipahu have already been reclassified as urban. Marginal and poor AG lands, such as the Palehua Property, are better suited for non-agricultural activities that are nevertheless permitted uses in the AG district.

lands as IAL, an EA must be prepared to analyze the potential environmental effects of designating the lands, including the Palehua Property.

III. CONCLUSION

C&C's process was flawed from the start. By developing the IAL maps without landowner "consultation and cooperation" and with the intent of being "inclusive" of all AG lands to assuage public sentiment, C&C failed to present an evidentiary record meeting the requirements of LUC Rule 15-15-125(b). This flawed process cannot (and should not be cured) by an endless series of LUC hearings to build the record necessary to support findings of fact and conclusions of law in favor of IAL designation. The proper course is to remand the matter to C&C to cure the fundamental defects in the process.

Sincerely,



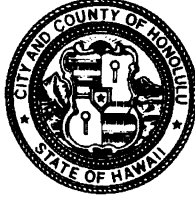
Timothy H. Irons

Enclosures

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honoluludpp.org • CITY WEB SITE: www.honolulu.gov

KIRK CALDWELL
MAYOR



KATHY K. SOKUGAWA
ACTING DIRECTOR

TIMOTHY F. T. HIU
DEPUTY DIRECTOR

November 8, 2017

**NOTICE TO AFFECTED LANDOWNER
IMPORTANT AGRICULTURAL LANDS (IAL) PROJECT**

This is to notify you that based on information available to us, the property you own is being included in the Department of Planning and Permitting's (DPP) proposed IAL Map.

Your property is recommended for inclusion in IAL based on selected State criteria defined under Chapter 205, Hawaii Revised Statutes. Enclosed is a map of proposed land to be recommended as IAL by the DPP and a "Frequently Asked Questions" handout. More detailed maps and information can be found on the project website: www.mapoahuagland.com.

We encourage you to come to the final community meeting to view the final Draft IAL Map and the IAL process on November 20, 2017, 6:00 p.m. to 8:00 p.m., at the Aiea Intermediate School Cafeteria, 99-600 Kulawea Street, Aiea, Hawaii, 96701 (see enclosed map of meeting site). Sign-in and open house is from 6:00 p.m. to 6:30 p.m. The meeting begins at 6:30 p.m.

Thereafter, the DPP will send the draft IAL Map to the City Council for endorsement in the spring of 2018. Additional information is available at: [www.honoluludpp.org/Planning/ImportantAgriculturalLands\(IAL\).aspx](http://www.honoluludpp.org/Planning/ImportantAgriculturalLands(IAL).aspx). Click on the link under "Documents" for the IAL Phase I Report. Should you have any questions, please contact Raymond Young of our staff, at (808) 768-8049.

Should you require special assistance, auxiliary aid, and/or service to participate in this event (i.e., sign language interpreter, interpreter for language other than English, or wheelchair accessibility), please call 768-8000 or email your request to info@honoluludpp.org at least three business days prior to the event.

Enclosures

EXHIBIT "1"





Important Agricultural Lands Phase II
Frequently Asked Questions
"Great Lands for Great Farms"
November 2017

What does "Important Agricultural Lands" (IAL) mean?

As defined in Section 205-42, Hawaii Revised Statutes (HRS), IAL is defined as those lands that: (1) are capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology; (2) contribute to the State's economic base and produce agricultural commodities for export or local consumption; or (3) are needed to promote the expansion of agricultural activities and income for the future, even if currently not in production.

What is the legal basis for designating IAL?

Article XI, Section 3 of the State Constitution states:

"The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing. Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions without meeting the standards and criteria established by the legislature and approved by a two-thirds vote of the body responsible for the reclassification or rezoning action."

How are lands selected as IAL?

The State Land Use Commission (LUC) applies the designation. The two main methods that the LUC can use to designate IAL are *Voluntary Designation* and *Mandatory County Designation* under Sections 205-45 and 205-47, HRS, respectively.

Voluntary Designation allows private landowners or farmers to submit a petition directly to the LUC for designation of specific lands. The LUC would issue a declaratory order to adopt the IAL designation in whole, in part, or deny the petition. With *Voluntary Designation*, the landowner or farmer chooses which lands are considered for IAL and any other agricultural lands can be exempt from being designated IAL if a majority of their land holdings has already been designated as IAL.

The *Mandatory County Designation* process under Section 205-47(a), HRS, identifies and map potential important agricultural lands based on standards and criteria under Section 205-44, HRS, excepting lands already designated by the City or the LUC for urban use. The process is as follows:

1. The County Planning Department (for Oahu, it is the Department of Planning and Permitting) prepares draft IAL maps and an accompanying report and notifies affected landowners.
2. The County Council reviews and adopts the IAL maps via resolution.
3. The County transmits its IAL recommendations to the LUC.
4. The State Department of Agriculture (DOA) and the State Office of Planning reviews the County's recommendations and provides comments to the LUC within 45 days of receipt of the County's recommendations.

5. The LUC issues a written decision to designate the County's IAL recommendations after a two-thirds majority vote by the LUC.

State Designation is a third method to designate IAL. Section 205-44.5, HRS, requires that the DOA and the State Department of Land and Natural Resources collaborate and prepare maps identifying public lands for IAL designation of State-owned lands. This State process is separate from the two methods above.

What are the criteria for IAL?

There are eight criteria listed in Section 205-44, HRS: (1) land use for agricultural production; (2) land with soil qualities and growing conditions that support agricultural production; (3) land identified under the State's Agricultural Lands of Importance to the State of Hawaii system; (4) land identified with native Hawaiian agricultural uses; (5) land with sufficient quantities of water; (6) land whose designation as IAL is consistent with county community and development plans; (7) land that contribute to maintaining a critical mass important to agricultural operating productivity; and (8) land with or near support infrastructure, such as transportation to markets, water, or power.

Minimum criteria considered by the City for inclusion into IAL include land within the State Land Use Agricultural District, availability of water, good soil quality, and in agricultural use. IAL land excludes Federal and State-owned land.

What are the incentives for IAL designation?

Section 205-46, HRS, mandates State and County incentives and protections to promote the long-term viability of agriculture. Adopted incentives so far include grant assistance, tax incentives, and agricultural education and training. Additional incentives and protections are being considered.

Voluntary designation includes an expedited land use reclassification process to either the State Urban, Rural, or Conservation Districts for up to 15 percent of the petition area, if the remaining portion of the land holding (minimum 85 percent) is designated as IAL (commonly referred to as the "85/15 incentive").

Are there any other counties conducting IAL projects?

At this time, only Oahu is conducting the *Mandatory County Designation* process.

Can "Ho'opili" or "Koa Ridge" residential developments be designated as IAL?

No. The proposed Ho'opili mixed-use project consisting of approximately 1,553 acres of land in East Kapolei and the Koa Ridge residential development in Waipio, Central Oahu, are excluded from consideration as IAL because they have been reclassified to the State Land Use Urban District, consistent with the City's land use plans for urban use. Only lands in the State Agricultural District are eligible for IAL designation.

How can the public participate?

The public can participate by reading our IAL Phase I Report which can be viewed on the Department of Planning and Permitting's website at:

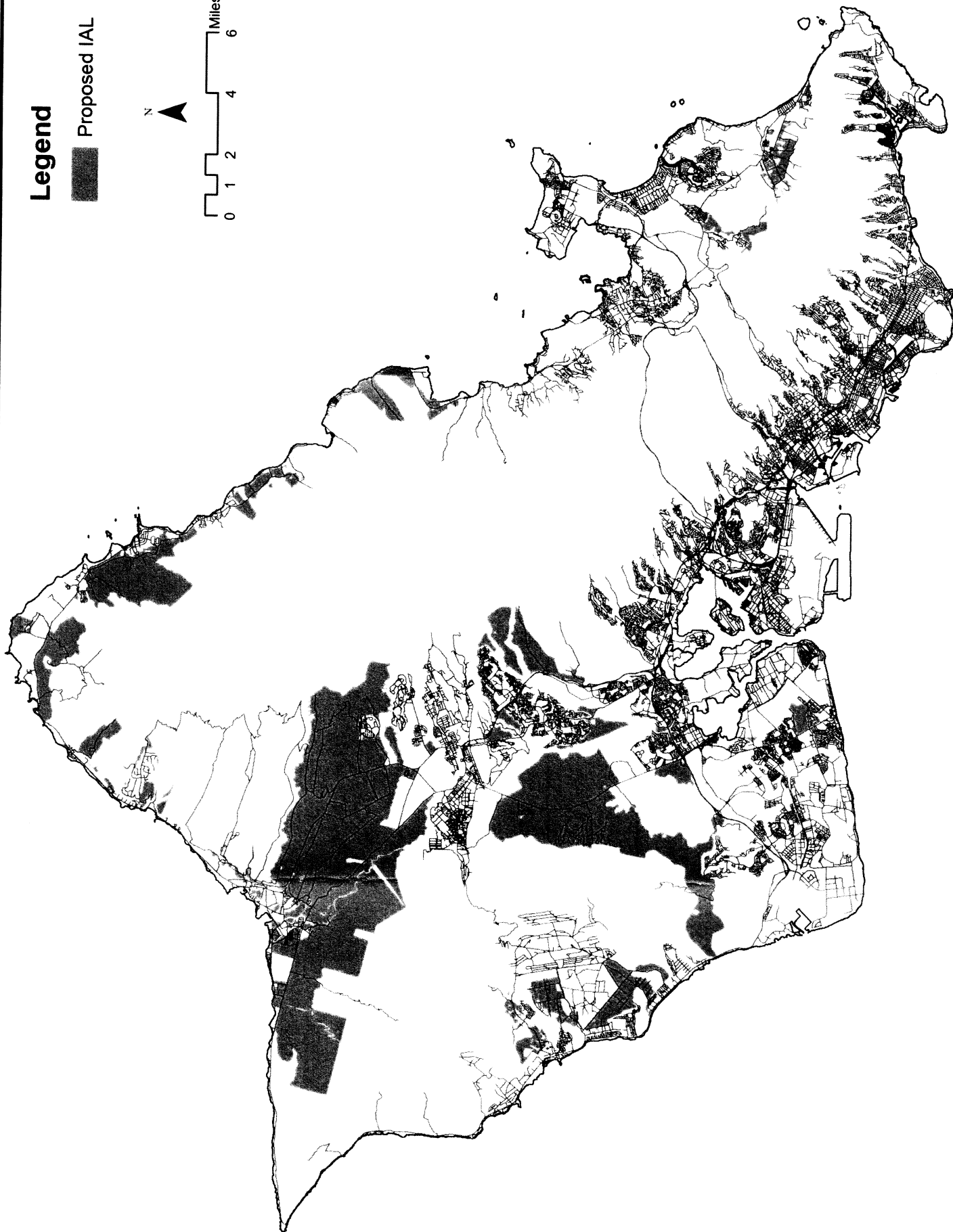
[http://www.honoluluodpp.org/Planning/ImportantAgriculturalLands\(IAL\).aspx](http://www.honoluluodpp.org/Planning/ImportantAgriculturalLands(IAL).aspx). Click on the link under "Documents." Attend the final community meeting and access our consultant's IAL website at: www.mapoahuagland.com, which will have the layers of data gathered in Phase I. For more information, or to be added to our email notification list, please contact us at: info@hhf.com.

Legend

Proposed IAL



0 1 2 4 6 Miles





MIKE McCARTNEY
Director

LAND USE COMMISSION
Department of Business, Economic Development & Tourism
State of Hawai'i

April 12, 2021

Dear Property Owner;

Our records indicate that you are the owner of one the above referenced lot(s) identified by their Tax Map Key numbers (TMKs). This letter is to advise you that pursuant to Hawaii Revised Statutes Section 205- 47 (a) your property has been proposed for designation as Important Agricultural Land (IAL) by the City and County of Honolulu.

Please be advised that the Land Use Commission will be taking up the County proposal for Designation of Important Agricultural Lands for the Island of Oahu at the Commission's March 24-25, 2021, meeting. Because your property is one of the parcels proposed for IAL designation you should attend this hearing.

Please understand that this first meeting (April 28 and 29, 2021) will be limited in scope. The first thing the Commission needs to do is understand what the County has done in connection with its designation. The Commission needs to decide whether the County has complied with legal requirements regarding the recommendation for designation. To be clear, the March meeting will not be considering or determining the legal rights, duties, or privileges of specific landowners or issues relating to particular properties. Depending on what the Commission decides, there may be a later meeting to consider specific properties and owners. If so, you will also receive notice of that meeting.

At the hearing on April 28 and 29, any member of the public may provide public testimony on this matter, but we ask that testimony be directed to general issues regarding the process used by the County. Public testimony may be limited to a specific amount of time by the Chair of the Commission at his discretion.

Because this matter is being held via Zoom virtual technology, please see our website on how to register to provide public testimony and a receive an invitation to the proceedings. Additional meeting sign-in registration and public testimony information is available at www.luc.hawaii.gov. To view the County's IAL proposal, click on the link under "Pending Dockets", then "City and County IAL". The meetings begin at 9:00 a.m.

Thank you for your understanding and attention to this matter. Please contact us at 808-587-3824 if you have any questions or concerns.

Sincerely,

Daniel Orodener
Executive Officer

EXECUTIVE SUMMARY

This report presents the recommendations of the City and County of Honolulu Department of Planning and Permitting (City) for the lands on O'ahu that meet the statutory requirements for consideration as Important Agricultural Land (IAL) designation in accordance with the county designation process set forth in Chapter 205-47, Hawai'i Revised Statutes (HRS) and Hawai'i Administrative Rules (HAR) 15-15-17. The recommendations presented by the City are to be reviewed by the Honolulu City Council and adopted by resolution with or without changes, then submitted to the LUC for final approval and adoption.

In the context of the State land use system, IAL refers to a State land use designation for a select class of farm land intended to be used in the long-term for active agricultural production. Administered by the State Land Use Commission (LUC), the IAL designation is a supplemental state land use classification for an exclusive sub-set of high-quality farm land within the State Land Use Agricultural District. By granting landowners access to incentives and supportive measures that reduce the cost of farming, the IAL designation seeks to promote the economic viability of farming and to make it possible for landowners to keep agricultural lands active, ultimately leading to the long-term preservation and protection of productive agricultural land (Chapter 205-42, HRS).

Long-Term Goals of IAL

- *Help farming be an economically viable activity*
- *Ensure that the best of O'ahu's high-quality farm land is actively used for agricultural purposes*
- *Guide decision-making in the State Agricultural District*

There are three distinct processes to designate land as IAL. The first allows farmers or landowners to voluntarily petition the LUC for a declaratory ruling (i.e., voluntary designation); the second authorizes the designation of state-owned land; and the third is a mandatory requirement for the counties to prepare recommendations for IAL and submit its findings to the LUC for decision-making.

The City's recommendations for IAL are the result of a strategic, resource-based mapping exercise that used available geographic information system (GIS) datasets to inventory land in accordance with the standards and criteria prescribed by the law. The planning process was structured with various forums for public involvement, including consultation with the project technical advisory committee, a series of focus group meetings and community meetings, two 60-

INTRODUCTION

This report presents the recommendations of the City and County of Honolulu Department of Planning and Permitting (DPP) for the lands on O'ahu that meet the statutory requirements for consideration as Important Agricultural Land (IAL) designation in accordance with the county designation process set forth in Chapter 205-47, Hawai'i Revised Statutes (HRS) and Hawai'i Administrative Rules (HAR) Title 15, Chapter 15, Subchapter 17 Important Agricultural Land Designation and Proceedings.

"IAL" is a legal term that refers to a State land use designation for a select class of farm land intended to be used in the long-term for active agricultural production. In the context of the State land use system, the IAL designation is a supplemental State land use classification for an exclusive sub-set of high-quality farm land within the State Land Use Agricultural District. Administered by the State Land Use Commission, the IAL designation overlays existing State and county land use classifications (i.e., state land use districts, county zoning districts) and does not change existing classifications or affect the range of current permitted land uses. Contrary to popular belief, the IAL designation does not impose a higher level of permanent protection from future development, and it does not simply ensure that agricultural land is preserved in perpetuity. Rather, the premise of the IAL designation is to grant landowners access to incentives and supportive measures that reduce the cost of farming, which in turn promotes the economic viability of farming and makes it possible for landowners to keep agricultural lands active, ultimately leading to the long-term preservation and protection of productive agricultural land (Chapter 205-42, HRS).

Hawai'i State law—Chapter 205, HRS—mandates that each of the four counties in Hawai'i conduct a mapping process to identify lands within their jurisdiction to be recommended to the State Land Use Commission (LUC) for designation as IAL. Upon transmittal of this report to the Honolulu City Council, the City and County of Honolulu (City) will be the first of the four counties to comply with the statutory requirement. Following the prescribed county designation process, the maps and supporting materials presented in this report are to be reviewed by the Honolulu City Council and adopted by resolution with or without changes, then submitted to the LUC for final approval and adoption.

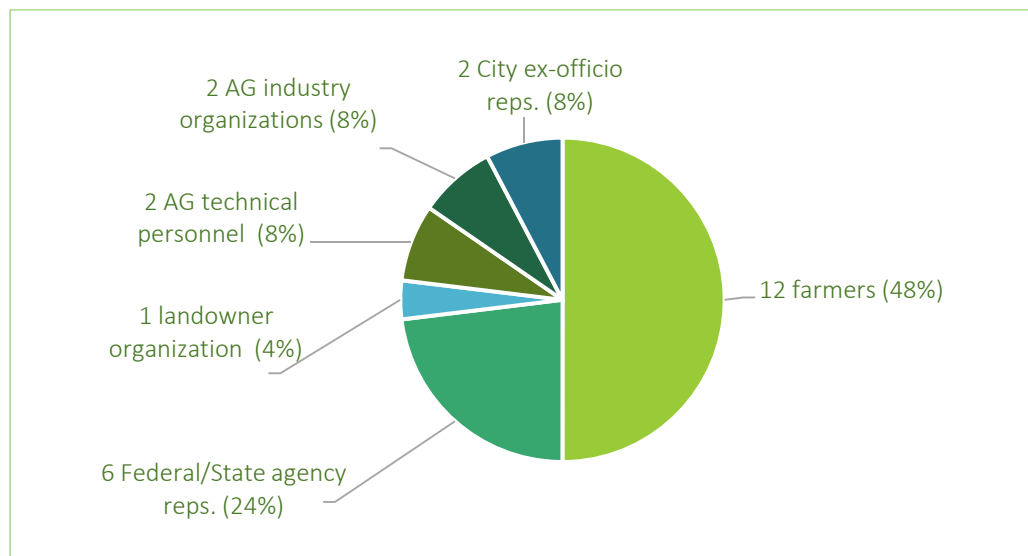
In addition to presenting the City's recommendations for county-designated IAL, this report provides background information about the City's mapping process and the methodology used to develop the recommendations. It also documents the public involvement and input received in response to the DPP's consultation

The process to develop the City's recommendations consisted of two major phases, Internal Technical Review and Community Engagement, which were each defined by distinct scopes and work products. A third phase, Policy Formation, which has not been completed and is pending future action, will involve City Council and LUC approval. Figure 2-1 presents a graphic illustration of the major tasks and the public participation program as they relate to each phase.

The first phase involved an internal technical review to define the criteria and their use in identifying lands eligible for IAL designation. Specific tasks of the technical review were to:

- identify available data sources to be used in defining the criteria
- develop resource maps based on the criteria definitions, and
- determine how to weight (i.e., rank) the criteria.

Consultation with a technical advisory committee (TAC) comprised of agricultural interests, policy makers, agency representatives, agricultural specialists and scientists, and landowner representatives (including the organizations specified in Chapter 205-47(b), HRS) was a major component of this phase. Given the specialized aspects of farming and the complex, theoretical nature of the subject matter, the ability to hold focused, technical discussions with such a small, dedicated group of agricultural experts allowed for in-depth, thorough examination of the criteria and weighting methodology (see Section 2.2 for the mapping methodology). A roster of TAC members is provided in Appendix B.



Original TAC Composition (2012)

Table 2-1: Public Participation Program Compliance with HRS, Chapter 205

ELEMENT	PURPOSE	STATUTORY COMPLIANCE
TAC meetings	Provide technical assistance in developing the community participation process and IAL maps	<ul style="list-style-type: none"> • HRS § 205-47(b). TAC members represented all of the interests specified: <i>"landowners, department of agriculture, Hawai'i Farm Bureau Federation, US Department of Agriculture Natural Resources Conservation Service, the office of planning, and other agricultural organizations and interest groups."</i> • HRS § 205-47(c). <i>"Planning departments may also establish one or more citizen advisory committees..."</i>
3 focus group meetings	Validate criteria weighting, receive input on the public outreach strategy, and gauge reactions to the discussion topics proposed for the community meetings. Meetings were designed for 12-15 participants each, with a different group of participants invited to each meeting.	<ul style="list-style-type: none"> • HRS § 205-47(b). Focus group participants represented a large cross-section of the larger community, including Neighborhood Board members, representatives of community organizations, and <i>"landowners, ...Hawai'i Farm Bureau Federation,.... and other agricultural organizations and interests groups."</i> • HRS § 205-47(c): <i>"Planning departments may also establish one or more citizen advisory committees..."</i>
<ul style="list-style-type: none"> • 3 rounds of community meetings • 2 60-day public comment periods 	Inform and seek input from interested stakeholders	<ul style="list-style-type: none"> • HRS § 205-47 (c). <i>"Each county, through its planning department, shall develop an inclusive process for public involvement,...including a series of public meetings...."</i>
Website	Provide an on-line presence to inform and seek input from interested stakeholders	<ul style="list-style-type: none"> • HRS § 205-47(c). <i>"Each county, through its planning department, shall develop an inclusive process for public involvement..."</i>
Landowner notification	Inform landowners that their land is recommended for IAL designation	<ul style="list-style-type: none"> • HRS § 205-47(d). <i>"Upon identification of potential lands to be recommended to the county council as potential important agricultural lands, the counties shall take reasonable action to notify each owner of those lands by mail or posted notice on the affected lands to inform them of the potential designation of their lands."</i>


Table 2-2: Criteria Mapping References

HRS, CHAPTER 205-44 STANDARDS AND CRITERIA	DEFINING ATTRIBUTES AND FEATURES	GIS DATA SOURCES / REFERENCES	DESCRIPTION OF DATASETS
1. Land currently used for agricultural production	Either currently being used for farming or grazing/ranching activities, or currently fallow but part of a near-term (three year or less) field rotation, or has the potential to be returned to active production which conveys the notion of historic use.	2011 aerial imagery. State Office of Planning and the U.S. Geological Survey.	2011 aerial imagery was compared to the 1980 ALUM and analyzed to identify active and fallow agricultural lands.
		Ko'olau Poko Watershed Management Plan. Prepared by Townscape for the Honolulu Board of Water Supply, September 2012.	Agricultural areas (active and fallow lands) identified as part of the Ko'olau Poko Watershed Management Plan.
		Island of O'ahu Agricultural Land Use Map (ALUM), 1978-1980. State Office of Planning, GIS data. 2011 Real Property Taxation Database. City Department of Budget and Fiscal Services Real Property Assessment Division.	To identify areas used for grazing and ranching, parcels included in the O'ahu ALUM as having current agriculture use were identified; then compared against current county tax records. Parcels receiving AG exemptions were included in this dataset.
2. Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops	Soil properties and agricultural productivity Solar radiation Slopes	Soil Survey Geographic (SSURGO) Database. USDA Natural Resources Conservation Service.	Land classifications of Irrigated and Non-Irrigated Capability (Classes I, II, and III)
3. Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system	Land Study Bureau (LSB) ratings range from "A" (Very Good) to "E" (Not Suitable), with land types/ratings based on soil and productive capabilities for certain crop types.	Overall Productivity Rating, Detailed Land Classification – Land Study Bureau, 1965 - 1972. State Office of Planning, GIS data.	Lands that met the LSB Overall Productivity Ratings of A: Very Good and B: Good

- Meet 2 of the 3 priority criteria in a specific combination
- Meet all 3 priority criteria

The scenarios represented a range of possibilities for mapping, ranging from being as inclusive as possible (i.e., land could have any one of the criteria to be eligible for the IAL designation), to selective (i.e., land had to have a defined set of criteria to be eligible), to exclusive (i.e., land had to have all three criteria to be eligible). Table 2-3 lists the range of possible scenario combinations that were considered, and also describes the variations of criteria sets associated with each scenario. The preferred scenario selected to prepare the City's preliminary map involved applying the three priority criteria in an inclusive approach, where land with the attributes of any one of the three criteria—meaning land was either currently in agricultural production, had soil qualities and growing conditions to support agricultural production, or had sufficient quantities of water—was considered eligible for IAL designation.

Table 2-3: Possible Criteria Combinations

	Scenario	Criteria Set Required for IAL Designation
	Meets any 1 of the 3 priority criteria	AG PROD or SOILS or WATER
	Meets any 2 of the 3 priority criteria in any combination	AG PROD and SOILS + AG PROD and WATER + SOILS and WATER + SOILS and AG PROD
	Meets 2 of the 3 priority criteria in a specific combination	If AG PROD is a prerequisite, then: AG PROD and SOILS + AG PROD and WATER
		If SOILS is a prerequisite, then: SOILS and WATER + SOILS and AG PROD
		If WATER is a prerequisite, then: AG PROD and WATER + SOILS and WATER
	Meets all 3 priority criteria	AG PROD and SOILS and WATER
AG PRODUCTION = Criterion 1 Currently Used for Agricultural Production SOILS = Criterion 2 Soil Qualities and Growing Conditions that Support Agricultural Production of Food, Fiber, or Fuel- or Energy-Producing Crops WATER = Criterion 5 Sufficient Quantities of Water to Support Viable Agricultural Production		

REVIEW THE TAC'S ROLE IN THE CITY'S PROCESS TO IDENTIFY IAL

Phase II. Scott presented a general overview of Phase II and explained how the criteria and associated maps developed during Phase I would be used in Phase II. The scope and funding for Phase II has not been determined yet. Funding is pending City Council approval of the FY-2014 budget. The City has not selected a consultant yet, and will negotiate the scope of work with the selected consultant. In general, Phase II will consist of a series of community meetings and landowner meetings to educate the community and landowners on the materials produced during Phase I, including presentation of the criteria maps and the process that was used to develop the maps and discussion about determining the threshold for IAL.

Tim Hata, DPP project manager, summarized the overall decision-making process to be used by DPP and the TAC's role in developing recommendations. The products resulting from Phase I - including the report, conceptual maps and TAC recommendations - provide an important foundation for Phase II. During Phase II, the work products from Phase I would be refined before the draft maps will be submitted to the City Council for review/approval, then to the LUC for final consideration.

Kathy Sokugawa clarified that the phasing will depend on how much money is given for funding. Although DPP anticipates two separate phases, additional phases may be needed to complete the work, if the necessary funding is not available. The total amount allocated in the current City budget is \$300,000, consisting of \$150,000 requested by the City Administration and an additional \$150,000 added by the City Council.

Map of Private Ownership. It was suggested that the draft report should include a map of private landownership. Scott re-emphasized that the purpose of Phase I is to establish the manner in which the criteria are operationalized and rated, and the way that the data sets are used to create the maps. Land ownership is immaterial to the recommendations of Phase I. The second phase will consider land ownership, and the size and location of the parcels. A TAC member commented that private landownership would be of interest to the general public, since the counties can only propose 50 % of a landowner's land as IAL. Due to confusion among meeting attendees about the 50% rule, the discussion was deferred for legal review.

Farms in the Urban District. A section in the report will present "lessons learned," or recommendations for minor changes to improve the existing law. This includes describing the concern that farms in the Urban District cannot qualify for incentives. Incentives that support these farms are important, if the long-term goal is to continue farming in these areas. A provision that allows farms with a dedicated AG easement to qualify for the incentives was suggested.

TAC'S CRITERIA RECOMMENDATIONS (NON-BINDING VOTE)

Kem explained the next agenda item, which involved TAC members voting on the criteria ranking. Developing the TAC's criteria recommendations will consist of a two-step decision-making process: (1) the first decision involves determining the TAC's satisfaction with the current priority criteria (Criteria #5, #1 and #2, per the original TAC vote) and the desire for a re-vote on the criteria ranking; and (2) the second decision involves identifying how the priority criteria should be combined to define the IAL threshold.

The voting process was summarized before the ballot was passed out. Kem also noted that per the group charter, two-thirds of those attending a meeting and voting by written ballot

constitutes a super-majority. Only TAC members in attendance would vote. The vote would be anonymous, and the results would be announced after a 20-minute break. The question on the ballot read: "Given the TAC discussions and review of criteria data, do you want to re-rank the 9 criteria?" If the majority voted YES in favor of a re-vote, then the meeting would be adjourned and ballots would be emailed to TAC members for additional voting on ranking. If the majority voted NO in favor of the current criteria ranking, then the meeting would continue, and a second vote would be conducted to determine which criteria would be used (e.g., Top 3, Top 4 or Top 6 priority criteria).

There was some discussion that the entire TAC process could be compromised if the criteria were changed after the preliminary criteria maps were reviewed.

The vote was taken, followed by a 20-minute break. The meeting was reconvened, and the voting results was announced (10 NO votes, 1 YES vote). Given that the majority of TAC members present indicated satisfaction with the current criteria ranking, the meeting continued and the second ballot was passed out. The second ballot presented three choices: (1) My preference is to continue with the top 3 priority criteria (Criteria #5, #1 and #2); (2) My preference is to continue with the top 4 priority criteria (Criteria #5, #1, #2 and #3). I agree that Criterion #8 is not critical for O'ahu; and (3) My preference is to continue with the top 6 priority criteria (Criteria #5, #1, #2, #3, #7 and #4).

Prior to voting, Scott reviewed the maps/acreages associated with the Top 3 and Top 4 criteria (see PowerPoint slides #21 and #22), and then opened up the meeting for questions and comments. Discussion is summarized as follows.

- One TAC member commented that even though his personal bias supports the notion of including as much land as possible to protect AG, the TAC would lose credibility if they recommended all of the AG lands for IAL, without considering the quality of the land. In reviewing the Top 3/Top 4 Criteria Maps, it appears that the areas with only 1 or 2 criteria shown are not good farmland (i.e., high elevation, along ridges, in gulches or located too high for gravity-fed irrigation). Using either 2 of the top 3 criteria or all 3 criteria would be preferred.
- A second TAC member expressed his preference for using the top 3 criteria. A recommendation that supports designating all AG lands as IAL would defeat the intent of the law, which is to preserve and protect the best AG lands. Not all AG lands are meant to be IAL. It could set precedence for future landowner petitions, if the TAC broadened the definition to include lesser-quality lands.
- A third TAC member commented that he would have difficulty adding a fourth criteria because the top 3 criteria (water, current AG use, and soil qualities) reflect the key factors that contribute to successful AG operations. In addition, the median scores show a clear separation among the top 3 criteria.
- A fourth TAC member agreed that using the top 3 criteria would be consistent with the voting results. It is unclear how to justify adding additional criteria, when only the top 3 are grouped closely together.
- It was clarified that the data used to map Criteria #5 (sufficient quantities of water) was based on existing irrigation systems, and that the criterion did not account for sustainable yield. The operational definition was based on the current availability of



MEETING SUMMARY

Date: December 8, 2015	HHF Project No. 2014120
Time: 4:30-6:30 pm	Project Name: O'ahu IAL Phase 2
Location: Pacific Guardian Center Makai Tower Conference Room	Recorded by: Corlyn Orr <i>Reviewed by DPP: January 2015</i> <i>Reviewed by TAC: January 2015</i>
Attendees: see attached	
Subject: Technical Advisory Committee Meeting #2	

The second Technical Advisory Committee (TAC) meeting for the O'ahu Important Agricultural Lands (IAL) Mapping Project was held on Monday, December 8, 2015 at the Pacific Guardian Center, Makai Tower Conference Room (733 Bishop Street, Honolulu). The meeting was scheduled from 4:30 to 6:30 pm. The purposes of the meeting were to: (1) discuss outcomes from the community outreach phase; and (2) receive the TAC's input on the methodology that will be used to prepare the draft IAL maps. Meeting materials were emailed to TAC members in advance of the meeting: (1) written summaries from the 3 focus group meetings; (2) written summary from Community Meeting 1; (3) written comments received during the 60-day public comment period; and (4) meeting agenda.

INTRODUCTIONS, PROJECT UPDATE, AND PHASE 2 OVERVIEW

The first 15 minutes of the meeting were set aside for meeting attendees to view the open house stations that were displayed during the community meeting. At roughly 4:45, Kem Lowry called the meeting to order and opened with introductions. Ten TAC members were in attendance, including two new TAC members (Amy Koch, USDA NRCS and Jeff Pearson, CWRM replacing Tony Rolfes and Bill Tam, respectively). Following the introductions, Kem reviewed the meeting agenda. Scott Ezer then presented an update of O'ahu's current IAL acreage, followed by a review of the comments received during the public outreach campaign, which involved a website, focus group meetings, three community meetings, and a 60-day public comment period. The remainder of the meeting was designated for group discussion to consider the suggested criteria refinements being proposed by DPP.

The following is a summary of the opinions expressed during the group discussion.

- Land Use Research Foundation (LURF), which represents large agricultural landowners, has four specific concerns about the City's designation process.
 - The IAL law is about agricultural viability, not land use. This was not effectively conveyed during the community outreach process, as evidenced by the community's list of concerns. (See attached testimony from LURF and Hawai'i Farm Bureau submitted during the legislative proceedings.)
 - County incentives are required, per HRS 205-46.
 - County incentives are required BEFORE the county proposes to designate land for IAL. Authors of the IAL legislation—including three individuals who are present for this meeting—foresaw state and county incentives as a motivation for landowners to seek voluntary designation of IAL before the counties proceeded to identify lands for IAL. The law provides for a three-year window between the time that the counties pass their incentives and then put forth their recommendations for county-designated IAL. This

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was meant to encourage voluntary designations, and also discourage takings lawsuits from landowners who did not want to be included in IAL.

- The county process outlined in HRS 205-47 lists "consultation and cooperation with landowners" before "public involvement." This is interpreted that landowner consultation should come before public engagement. Consulting landowners first would result in better/fuller information for the general public. Authors of the IAL legislation can attest that working with landowners to voluntarily designate land is the most important component of the law. Following the process outlined in the law is important to prevent lawsuits from unwilling landowners. Recent cases like Superferry and TMT were based strictly on following process.
- The intent, purpose and mission of IAL prescribed in the law is important, especially since it took 20+ years for the parties to find a single concept they could agree on and pass. With so many landowners and farmers, agricultural viability (i.e., farmer success and keeping farmers on the land) was the only premise that all parties agreed upon. Initial discussions about land use and preserving land were unsuccessful. Framing the issue in terms of agricultural viability was the key to passing the law. DPP should be following the law precisely as drafted; the authors spent hours debating each section of the law. It will get contentious if landowners are not on board.
- The public does not understand IAL. The project has been presented in a way that provokes certain feedback. Terminology used to define the project purpose/need in the media and community meetings focused on land use and preventing future development, which antagonized landowners and spurred public opposition (e.g., Hoopili was an issue at the Kapolei meeting, even though the law does not allow it to be considered for IAL; Star-Advertiser article on IAL played up the Malaekahana/HRI proposal.) Public outreach efforts would gain traction if agricultural viability was the premise of IAL.

The irony is that the same parties who fought against the IAL legislation are now using IAL as a tool to oppose development.
- George Atta responded that DPP would be willing to talk to major landowners about the preliminary maps before the information is presented to the general public. Community outreach efforts to date have not generated much landowner interest.
- Scott Ezer confirmed that DPP's intention is to notify landowners before recommendations are transmitted to the City Council. The criteria maps were prepared based on physical characteristics of the land, without consideration of who owned the land; the intent has always been to engage landowners after looking at the land qualities. Scott also acknowledged budgetary constraints that make it desirable for DPP to work with LURF to convene a meeting with landowners. The budget does not allow for numerous individual meetings.
- The need for county IAL incentives was discussed at the last meeting of the City Council's AG Task Force. The City could face potential lawsuits if they proceed without an incentives package.

DISCUSSION QUESTIONS

In addition to the group discussion, a blank questionnaire of these questions was passed out at the meeting and later emailed to meeting attendees. Attendees were encouraged to submit their individual responses to the questions in writing. Comments received during the meeting are summarized below. Written responses are recorded verbatim in Attachment 1.

Question 1: Should the definition and datasets used to map IAL be revised to exclude steep lands? If so, what percentage slope should be used?

This question is being raised because there were several comments that slope should have been included as a separate criterion. As a result, DPP is considering omitting lands in excess of 20% slope from the study area.

TAC members felt that the current definition and maps were satisfactory for the following reasons.

- Slope is already included in the NRCS land capability classes (LCC) which were used to map Criterion 2: Soil Qualities and Growing Conditions. The TAC has discussed this at several meetings and decided to use LCC I, II and III, which includes lands up to 15% slope. The TAC consciously chose to use LCC I, II and III as a measure of high quality farmland.
- Changing the definition at this point essentially dismisses the NRCS data. The methodology should support the NRCS and other soil classification studies.
- Ravines and gullies with steep slopes are recognized components of drainage systems within larger areas. Since the Land Use Commission assumes a contiguous approach and includes these steep areas when urbanizing lands, there should be no distinction when defining IAL.
- Criterion 1: Current AG Production includes steep slopes being used for ranching. Ranching uses provides fire control and stewardship benefits in areas too steep for crops. These areas would be omitted from Criterion 1 if slope were added as a criterion.
- Kona coffee grows on steep lands, which implies that certain crops/farmers can be productive regardless of the slope.

A suggestion was given to better label the maps so that the public can easily see that the NRCS datasets being mapped include certain slopes. If the maps are not communicating the information, then they should be tweaked accordingly. Unfortunately, nobody takes the time to read metadata.

In response to a question, the relationship between the NRCS LCC and ALISH Unique classifications was clarified. The ALISH classifications are based on the USDA's farmland inventory classification schema—that is, the soil types that USDA determines meet the federal prime classification and then locally derived soil types that meet the broad federal criteria for locally defined unique and other important agricultural classifications. The LCCs are soils classified as to categories, but the relationship of LCC to ALISH is through the soil types that meet the three broad federal criteria for agricultural lands.

Question 2: Should additional consideration be given for high solar radiation as a separate, stand-alone criteria?

This question is being raised in response to community concern that solar radiation is not considered in the identification process. Island wide, solar radiation values range from the highest measurement of 500 calories per square centimeter per day (cal/cm²/day) in Kapolei, Kahuku and Waianae, to 450 cal/cm²/day along the North Shore, to 350 cal/cm²/day in Kunia and Central O'ahu.

First, it was confirmed that solar radiation is not explicitly captured in the NRCS LCC or soil survey ratings.

TAC members felt that the current definition were satisfactory for the following reasons.

- Adding solar radiation as a criteria would be a limiting factor. There were concerns that different crops have different capabilities to utilize light, and productive land could be overlooked because of a lower solar radiation factor. It is true that the areas with the most

sunlight have the highest production of sugar cane because sugar cane needs strong sunlight to thrive; however, other crops do not require as much sunlight to be productive.

- Climate change is affecting weather and rainfall patterns. For example, the average rainfall in Waimanalo has dropped from 70 inches/year to 30 inches/year this past year.

Question 3: Should the definition and datasets used to map Criterion 1: Current AG Production be revised to recognize aquaculture as a form of agriculture?

This question is being raised because there were several comments that the definition of agriculture should be expanded to include specific production methods such as Native Hawaiian traditional growing practices and aquaculture

TAC members felt that the current definition was satisfactory for the following reasons.

- The TAC has discussed the definition of agriculture at several meetings, and each time decided against specifying certain technologies and methods as the determining factor for IAL. The methodology the City is using to qualify land for IAL is based on land characteristics. Growing practices are irrelevant, given the current methodology.
- Productive aquaculture does not require a certain soil type or soil quality. Aquaculture can be successful in areas without soil (e.g., NELHA set up tanks on lava fields in Kona).
- Aquaculture is not a distinct land use classification. It falls within the City's definition of agriculture, and is an allowable use within the City's Agricultural zoning district.
- The City's IAL designation process is not the only way for a landowner to seek IAL. A landowner omitted from DPP's proposed IAL package could ask the City Council to add their land to the City's package. Petitioning the LUC for voluntary landowner designation is another option.
- Aquaculture is already mapped as part of Criterion 4: Traditional Native Hawaiian and Unique Crops. Criterion 4 is not one of top 3 criteria, but much of the land mapped in Criteria 4 is captured by the top 3 criteria.
- The public comments reflect individuals' reactions to the maps of the priority criteria (i.e., people are responding negatively because they are concerned that the criteria that mean the most to them are being excluded). Adding a footnote to the IAL maps about the excluded criteria would help to communicate the other factors that were considered, but did not rise to the level necessary for this process.

Question 4: Do the top 3 criteria (Criteria 1: Current AG Production, 2: Soil Qualities and Growing Conditions and 5: Sufficient Quantities of Water) represent the characteristics most important for the designation process, or is there a need to add additional criteria? (e.g., Criterion 3: AG Productivity Rating Systems)

A TAC member noted that adding Criterion 3 would address concerns from those who want IAL to recognize traditional Hawaiian agriculture because the ALISH classifications map taro, coffee and other unique crops. It would not make much difference in terms of overall acreage, but it would allow DPP to respond to community concerns about productive wetland taro lands. Neither Criterion 1 which identifies current agricultural production or Criterion 2 which maps the NRCS LCC classifications adequately identifies areas used for wetland taro.

TAC members offered the following comments regarding the use of just the top 3 criteria or the addition of other criteria.

- The top 3 priority criteria were identified by the TAC based on a ranking system. A lot of thought went into the criteria definitions and the selection of the priority criteria.
- 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. The community has expressed a strong opinion that “all AG land should be IAL.” It would be contradictory for the TAC to require multiple criteria be satisfied if it limits the pool of IAL-eligible lands, given the community’s sentiment. Two of the 3 priority criteria (i.e., Criterion 3: Water and Criterion 2: Soil Qualities and Rating Systems address the factors most needed for productive farming: farmers cannot farm without water (Criterion 5) or good soils (Criterion 2). Land currently in AG production (Criterion 1) is evidence that the land can be farmed.
- The datasets used to map Criterion 3—ALISH Prime and Unique categories, and LSB A and B classifications—were clarified.
- Rob James commented that the addition of Criterion 3: AG Productivity Rating Systems would expand the inventory and add about 1,000 acres to the amount of land eligible for IAL because of the extent of overlap with the other criteria. (Much of the land in Criterion 3 is also identified in Criterion 1 and Criterion 2.)
- Bruce Plasch commented in support of using both Criterion 2 (NRCS ratings) and Criterion 3 (ALISH and LSB ratings) to include all lands having high soil ratings, regardless of the rating system. This would increase the supply of land eligible for IAL, and would avoid having to explain why some highly rated lands were omitted. In addition to including all lands that meet Criterion 1 (Current AG Production), Bruce is in support of combining Criteria 2 and 3 with Criterion 5 (water) to include only lands that are viable for agriculture (i.e., lands having both good soils and water).

Question 5: In order to be designated IAL, should a land unit meet all 3 criteria (or all 4 criteria if we add a criteria)? Or should meeting 1 or 2 of the criteria be satisfactory for IAL designation (or 3 if we add a criteria)? Alternatively, should it meet some combination of the criteria—specifically (a) land that is currently in AG production (Criterion 1) OR (b) land having both good soils and sufficient quantities of water (Criteria 2 and 5)? [NOTE: If land has to meet only one criterion to be IAL, some recommended acreage may not be high-quality farmland. For example, land could have good soils (Criterion 2) but lack sufficient quantities of water, or land could have extremely stony soils but have sufficient water (Criterion 5).]

The number of criteria used to identify IAL and how they are applied determines the acreage amount. If 3 criteria are used and land only has to meet 1 of the 3 criteria to be designated IAL, 56,000 acres of land would qualify for IAL. If land has to meet 2 of the 3 criteria, 32,000 acres of land would qualify for IAL. However, in both scenarios, some of the land considered eligible for IAL would not be viable for agricultural use, and could be difficult to justify for IAL. If land has to meet all 3 of the criteria to be IAL, 18,000 acres of land would qualify (but this would exclude some highly rated land having access to water which is not currently farmed). If a fourth criteria is added and land only has to meet 1 of the 4 criteria to be designated IAL, 57,000 acres of land would qualify for IAL (adding an additional 1,000 acres to the 1 of 3 scenario).

TAC members felt that meeting only 1 of the 3 priority criteria was satisfactory for the following reasons.

- 56,000 acres represents about 83% of the land area eligible for county-IAL designation. This number assumes that all of the land in the study area would be eligible for designation. It does not take into consideration the 50% rule, which restricts the county from designating land that

belongs to a landowner who has designated at least 50% of their land for IAL. Also, some of these lands would not be viable for agricultural use, which would be difficult to explain why they are being considered for IAL.

- There is a desire to be as inclusive as possible while at the same time identifying the best candidate lands. As such, landowners should be required to prove that their land cannot be farmed. This approach requires landowners to decide that they do not want to be included in IAL, and ask to be omitted. DPP needs to have a process to allow for open discussion with landowners.
- The process to voluntarily designate IAL typically involves hiring an attorney and is expensive, especially for small landowners. Therefore, the county designation process should include an option for landowners who are excluded from the top 3 criteria screen to add their lands to the City’s mapping inventory. The process should be simple to get included (or excluded, if lands are not viable for agriculture, such as not having water available). It could be a two-tier process: the first tier representing the best-candidate lands that qualify based on the top 3 criteria, and the second tier representing the remaining criteria (i.e., not the top 3 criteria). To be eligible for this second tier, a landowner would have to demonstrate that they meet one of the criteria.
- George Atta indicated that his personal preference would be to rely primarily on a set of specific technical criteria, while allowing for flexibility to use other criteria as well. DPP’s goal is to develop a baseline inventory for City Council and LUC review.

NEXT STEPS

- Landowner notification will be the next step in the process. The form of notification remains undetermined, pending the possibility that LURF would provide assistance to engage landowners. Following landowner notification, DPP would develop recommendations for IAL and present the recommendations at the next community meeting. There is no date set for the next community meeting. The next TAC meeting would follow Community Meeting 2.

Meeting was adjourned at about 6:35 PM.

ATTENDANCE RECORD

TAC Members: David Arakawa, Land Use Research Foundation
Ruby Edwards, State DBEDT, Office of Planning
Dan Nellis, Dole Food Company Hawai’i
Dean Okimoto, Nalo Farms
Jeff Pearson, Commission on Water Resource Management
Amy Saunders Koch, USDA-NRCS
Alan Takemoto, Monsanto
Mark Takemoto, Pioneer Hi-Bred
Earl Yamamoto, State Department of Agriculture
Larry Yamamoto, USDA-NRCS Pacific Islands Area, retired

Others: Dr. Po-Yung Lai, Mayor’s Agricultural Liaison
George Atta, DPP Director
Kathy Sokugawa, DPP Planning Division Head
Tim Hata, DPP
Scott Ezer, HHF Planners

TAC members appreciate the rigor of DPP's process and commend DPP for a good process that invited a fair amount of representation from AG interests.

The general public does not understand the legislation and its benefits for the future of the AG industry. More effort is needed to educate the public about what IAL is really about, and motivate landowners to come forward and designate their land.

Some of the resistance to IAL comes from landowners who bought AG land as an investment for non-AG purposes, and have no intention to use the land to farm.

The lack of funding from the State has been a major downfall in the process. When the legislation was written, it was assumed that the State would fund the county-level and state-level mapping efforts.

POTENTIAL LITIGATION

The County is risking litigation by not following the process as outlined in the law. Land Use Research Foundation (LURF) distributed a handout that listed 10 specific concerns about the City's designation process (see Attachment I for handout).

Meeting was adjourned at about 6:35 PM.

ATTENDANCE RECORD

TAC Members: David Arakawa, Land Use Research Foundation
Alan Gottlieb, Hawai'i Livestock Farmers Coalition
Ken Kamiya, Kamiya Gold, Inc.
Dan Nellis, Dole Food Company Hawai'i
Dean Okimoto, Nalo Farms
Jeff Pearson, Commission on Water Resource Management
Amy Saunders Koch, USDA-NRCS
Alan Takemoto, Monsanto
Stephanie Whalen, Hawai'i Agriculture Research Center
Earl Yamamoto, State Department of Agriculture

Others: Dr. Po-Yung Lai, Mayor's Agricultural Liaison
Kathy Sokugawa, DPP Acting Director
Eugene Takahashi, DPP
Raymond Young, DPP
Scott Ezer, HHF Planners
Erin Higa, HHF Planners
Corlyn Orr, HHF Planners
Kem Lowry, ACCORD3.0 Network
Bruce Plasch, Plasch Econ Pacific

OBJECTIONS TO CITY'S IAL PROCESS AND PROPOSED DESIGNATIONS

1. **NEW PARADIGM - IAL IS AN AGRICULTURAL VIABILITY INITIATIVE – IAL IS NOT A LAND USE INITIATIVE.** IAL does not change the LUC classification and county zoning ("not land use change"), but requires the state and counties to implement IAL incentives to make IAL viable, productive and profitable, thereby encouraging landowners to designate IAL for a long term.
2. **PUBLIC PRESENTATIONS BY CITY AND ITS CONSULTANTS MISREPRESENTED IAL AS "A WAY TO STOP DEVELOPMENT"**
3. **COUNTY INCENTIVES REQUIRED - NO CITY INCENTIVES YET** – Counties are required to implement IAL Incentives first; then allow a 3-year window for voluntary IAL designations. AFTER implementing county incentives and the 3-year window - - then the county planning departments can propose IAL designations and maps to the county Council (**HRS §205-46**)
4. **CITY HASN'T EVEN STARTED ON INCENTIVES?** No excuse, examples of IAL incentives are provided (**Act 183 (2005) and HRS §205-46**)
5. **NO 3-YEAR VOLUNTARY DESIGNATION WINDOW YET** (**HRS §205-49**)
6. **CITY'S "ONE CRITERIA" AS BASIS FOR IAL DESIGNATION IS UNREASONABLE**
7. **IAL LAW REQUIRES COUNTY CONSULTATION AND COOPERATION WITH LANDOWNERS BEFORE PUBLIC MEETINGS** (**HRS §205-47**) City violated the law, by starting public meetings before consultation and cooperation with landowners.
8. **CITY HAS NOT RESPONDED TO 10-PAGE AND 20-PAGE LETTERS FROM PVT LAND COMPANY AND GRACE PACIFIC AND HAS NOT RESPONDED TO REQUESTS FOR MEETINGS**
9. **CITY POSITION ON RECENT IAL PETITION TO LUC: "ALL PETITIONER'S LANDS SHOULD BE IAL"**
10. **DPP SHOULD POSTPONE ITS PROPOSED IAL DESIGNATIONS AND MAPS ON NOVEMBER 20, 2017**

LIST OF INVITED PARTICIPANTS: FOCUS GROUPS | JANUARY 2015

	Name	Affiliation
Farmers and producers	Brian Miyamoto	Hawaii Farm Bureau Federation
	Mark Suiso	Makaha Mangoes, Hawaii Tropical Fruit Growers
	Wayne Ogasawara	Mililani Agricultural Park
	Mama T. Trisha Gonsalves	Hawaii Organic Farmers Association, Down to Earth
	Clifford Migita	Waimanalo Agricultural Assn.
	Pamela Boyar	Hawai'i Farmers Union United
	Alec Sou	Aloun Farms
	Bud Gibson	Rocker G Livestock Co (Waimanalo)
	Melissa Zemen	Kunia Agricultural Park
Agricultural support and related industries	Pauline Sato	Agricultural Leadership Program
	Jean Brokish	Oahu RC&D Council
	Dave Ringuette	Windward Community College, GOFarm Hawai'i Program
	Jensen Ueda	UH-CTAHR Extension Agent
	Nathan Miranda	Windward Oahu Soil and Water Cons. District
Wholesalers and consumers	Claire Sullivan	Whole Foods , Purchasing/Public Affairs
	Russell Hata	Y. Hata
	Kacey Robello	Hawaii Farm Bureau Federation, Farmers Market Manager
	Kevin Vacarello	Sustain Hawaii, also Sweet Home Waimanalo
	Tish Uyehara	Armstrong Produce, Agribusiness Development Corporation
Environmental Interests	Steve Montgomery	Sierra Club
	Tim Vandever	Defend Oahu Coalition
	Sam Gon	Nature Conservancy
	Stephen Rafferty	Trust for Public Land
	Marti Townsend	Outdoor Circle
	Kioni Dudley	Friends of Makakilo
Community Organizations and Neighborhood Boards	Ted Radovich	UH-CTAHR Organic Farming, Waimanalo N.B.
	Jeanne Ishikawa, Chair	Wahiawa N.B.
	Antya Miller	North Shore N.B.
	Cynthia Rezentes	Nanakuli-Maili N.B, Chair
	Johnnie-Mae Perry, Chair	Waianae Coast N.B.
	Kent Fonoimoana	Koolau Loa N.B.
	Amy Leursen	Kahaluu NB
Landowners	John Morgan	Koolau Ranch
	James Nakatani	Agribusiness Development Corporation
	Bev Kaku	Castle and Cooke
	Steve Hoag	Hawaii Reserves Inc.
	Sidney Keliipuleole	Kamehameha Schools
Native Hawaiian Interests	Jeannin Jeremiah	Office of Hawaiian Affairs
	Michele Wilhelm	Kapalai Farms
	Nick Reppun	Kakoo Oihi
	Rick Barboza	Hui Ku Maoli Ola
	Trevor Atkins	Halau Ku Mana Charter School
	Puni Freitas	Kokua Kalihi Valley
Government Agencies	Sen. Russell Rudermann	Senate AG Committee Chair
	Rep. Clift Tsuji	House AG Committee Chair
	Russell Tsuji	DLNR Land Division

- The water criteria map (Criterion #5 map) should identify lands that have access to R-2 recycled water because water from the Wahiawa Wastewater Treatment Plant/Wahiawa Reservoir used for irrigation purposes has been upgraded to R-2. Scott clarified that lands irrigated by recycled water are included in the Criterion #5 map, without specifically calling out the type or quality of irrigation water. There was general agreement that this should be highlighted in future conversations.
- How much of the community outreach process will focus on educating the public about the intent of the legislature? It is important that the general public understand the background/history and purpose of the IAL legislation. Considering that it will be difficult to convey all of this information through the community meetings, the website should be used as an information-sharing tool. UH Law School (2nd year seminar project) prepared an analysis of the legislation that may be a useful resource to include on the website.

QUESTION: There will be two general types of questions: (1) from people with agricultural expertise and experience farming; and (2) from members of the general public without agricultural experience. What are the hard questions that will be asked in this process?

- Why is the Ho'opili project area excluded from this process?
- How was the TAC selected? The TAC recommendations may be questioned because of the committee composition.
- What is IAL? The general public may have basic questions about the basic definition and concept of IAL. Budgetary constraints should not be a limiting factor for education and outreach.
- How can farmers access the lands identified as IAL?
- How does IAL benefit small farmers?
- How will IAL affect the community? What about the social, economic and environmental implications for surrounding communities? Agricultural communities in Wahiawa (e.g., Whitmore, Kunia) have expressed a desire for agricultural jobs and the ability to retain their rural lifestyles.
- What is the status of the incentives? Being able to speak with more certainty about the incentives may help to convey the potential benefits of the IAL designation.
- Possible questions may concern housing:
 - What is the impact to affordable housing? (Some will feel that affordable housing is more important than preserving agricultural land.)
 - Where are agricultural workers going to live? The long-range plan needs to include farm worker housing.
- How will the IAL designation affect land use? What can a landowner no longer do with their land if their property is designated IAL?
- Is it possible to consider lands currently occupied by the military? This would provide a back-up plan for the possibility that the military reduce their footprint and vacate their lands (e.g., Lualualei, Makua Valley, Schofield). Scott indicated that the law requires the counties to conduct periodic reviews of the IAL maps, and that any excess military lands are automatically placed in the P-2 Preservation zoning district.
- What are the implications of the IAL designation for gentleman estates? How will this discourage gentlemen estates?
- How much is this initiative going to cost the taxpayers? What are the costs of IAL? A loss in potential taxes is possible. However, this would result from the cost of paying for any incentives, not from the loss of property tax revenues (assuming that these lands are currently in agricultural

use and the tax structure stays the same). It may be possible that the economic and employment benefits from increasing agricultural production may outweigh the costs.

- Would IAL include flower crops? Scott clarified that IAL is not specific to food crops. The use of the land for agricultural production is important, not the type of crop grown (flowers, landscaping, turf growing are also included).

During the discussion, it was emphasized that the IAL designation is a land use regulatory/zoning mechanism that does not impose any restrictions on the use of the land, does not require that the land be farmed, and will not resolve other agricultural issues. IAL will provide a hierarchy within the State's Agricultural District to ensure that the most valuable agricultural lands are protected. Speculation to urbanize agricultural lands should disappear once lands are designated IAL, since it is more difficult to urbanize land that has an IAL designation. (For clarification, Chapter 205-50(f), HRS requires a 2/3 vote of the Land Use Commission or the county's decision-making body when reclassifying or rezoning lands from IAL. The legislature does not have jurisdiction to reclassify IAL.) Without the prospect of urbanization overshadowing these lands, large landowners may be more willing to make a long-term commitment to agriculture and offer small farmers long-term leases.

QUESTION: What are the difficult trade-offs of the IAL designation? What is at stake to be lost?

- Landowners whose lands are designated involuntarily under the county process may have a sense of lost opportunity costs.
- The ability to reclassify lands that have been designated as IAL will get more difficult. Landbanking (waiting for future development opportunities) should no longer be an issue, as there will be clarity about which lands are to be preserved for agricultural use.
- A possible gain may be an increase in the number of people interested in agriculture. Out-of-state entrepreneurs may be attracted to O'ahu to invest in new agricultural enterprises. Small and P/T farmers may find new opportunities to farm.

QUESTION: How would you address traditional native Hawaiian agricultural uses and unique crops (Criterion #4)? Are there other considerations that were not addressed?

- The type of crop grown is not as important as the economics. Farmers will grow certain crops if they can make money. If it is not commercially viable for the farmer, farming may still be relevant as a hobby.
- The map of Criterion #4 needs to identify historic/iconic lands used for kalo because the cultural significance of these areas is important. .

QUESTION: What are your thoughts about the proposed community outreach process? Do you have any advice or ideas for how to talk to a wider range of people?

- Ground rules are critical. Control the discussion, do not allow for redundancy, and limit the time given for individual comments. Keep the discussion focused, restate the meeting purpose often.
- Post a visual reminder of the meeting purpose and refer to it often.
- Be prepared to entertain the non-farming public and those with other agendas.
- None of the meeting attendees were involved with Kauai County's IAL project.

QUESTION: Are there any other issues, ideas or concerns to be considered?

- Is there any overlap between the City's IAL project and the Trust for Public Land's GreenPrint project? Are the two projects sharing information? The general public may express some confusion and fatigue, since both projects involve mapping.



MEETING SUMMARY

Date: January 28, 2015 **HHF Project No.** 2014120

Time: 4:30-6:30 pm **Project Name:** O'ahu IAL Phase 2

Location: Pacific Guardian Center
Makai Tower Conference Room **Recorded by:** Corlyn Orr
Reviewed by DPP: February 17, 2015

Attendees: see attendance record

Subject: Small Group Discussion #2

The second of three small group discussions for the City's Important Agricultural Lands (IAL) Mapping Project was held on Wednesday, January 28, 2015 at the Pacific Guardian Center, Makai Tower Conference Room (733 Bishop Street, Honolulu). The meeting was scheduled from 4:30 to 6:30 pm. The purpose of the meeting was to provide an overview of the project and seek feedback from the group. Ten invited attendees were present (see attached attendance record). Meeting materials emailed to participants in advance of the meeting included a meeting agenda, project sheet, unofficial copy of Chapter 205 Hawai'i Revised Statutes (HRS), and an electronic link to the IAL Phase I Report. Hard copy of the PowerPoint presentation was passed out at the meeting.

WELCOME, INTRODUCTIONS, AND PROJECT BRIEFING

Scott Ezer opened the meeting at roughly 4:35 pm with introductions of the project team. Following individual introductions, Peter Adler (meeting facilitator) summarized the goals for the meeting: (1) brief attendees on work done to date; (2) gather comments and concerns for DPP consideration; and (3) prepare for the community meetings. Kathy Sokugawa, DPP Planning Division Chief, followed with opening remarks, which included thanking everyone for participating and highlighting the City's goal of preparing the IAL maps with as much community participation as possible. Scott then reviewed the legislative history and statutory requirements for the IAL designation, the preliminary criteria maps, and the proposed community outreach process (see attached PowerPoint).

After Scott completed the briefing, Peter asked if there were any questions for additional information and/or clarification. Questions and responses are summarized as follows.

- State-owned lands in Central O'ahu (i.e., former Galbraith Estate lands) have not been designated IAL.
 - State-owned lands were excluded from County consideration as provided in Chapter 205, HRS.
- Recycled water is accounted for in the map identifying lands with adequate water (Criterion #5). There should be a distinction between high-quality water and recycled R-2 water. The North Shore does not have an adequate water supply because the use of R-2 recycled water from Wahiawa Reservoir limits the types of crops that can be grown.

*O'ahu IAL Mapping Project
Small Group Discussion 2 | January 28, 2015
Page 2 of 6*

- Response indicated that the process was blind to creating hierarchy for preferred crops. R-2 water is capable of supporting agricultural irrigation, but not directly on leafy food plants.
- How did you choose farmers for the Technical Advisory Committee?
 - Recommendations from different sources—including the City's agricultural liaison, individuals familiar with the AG industry, and DPP—were considered. Chapter 205, HRS also mandates the involvement of certain organizations (e.g., Hawai'i Farmers Bureau, State Office of Planning, Dept. of Agriculture, Commission of Water Resources Management). The goal was to involve a diverse cross-section of farming interests, such as small and large farmers, food producers, ranchers, nursery crops, landscapers, flower growers, etc.
- How easy will it be to modify or change the IAL designation? How firm will the boundaries be? The concern is that the City will not utilize the IAL classification to provide long-range guidance for future land use decisions, and that landowners will be able to modify the IAL classification like the DPs/SCPs and zoning can be changed.
 - The LUC is the authorizing body with jurisdiction to designate land IAL and change the IAL designation. It will be difficult to redesignate IAL, since it requires a two-thirds vote of the LUC (requiring 6-3 votes, as opposed to the standard 5-4 votes). Once the inventory of IAL is identified, DPP is hopeful that the regulatory mechanisms that promote agricultural use of the land will follow. An anticipated benefit of IAL is that it will discourage speculative land banking practices associated with short-term farming leases while landowners wait to develop the land for housing.
- How will the IAL designation affect agricultural land subdivisions? Will it still be possible to subdivide agricultural land into two-acre parcels and create gentlemen estates?
 - The intent of this project is to identify the baseline of important agricultural lands, and distinguish between the important lands and the lesser-quality agricultural lands. This is a discreet project to identify the land base that needs to be preserved and to answer the question about where agriculture should be on O'ahu. This will not resolve all existing agricultural issues, although it should ultimately result in future regulatory mechanisms to better manage the use of lands identified as IAL.
- Is there a mechanism to add additional IAL to the inventory in the future?
 - Yes, the law requires the counties to periodically review the IAL inventory. This is an important process because the face of agriculture is constantly changing. (Consider how much has changed in the past 30 years). Private landowners are also able to petition the LUC on their own. For example, Kamehameha Schools has filed an individual petition with the LUC to designate about 10,000 acres of their North Shore lands.
- Can the criteria maps be revised to remove the Urban Boundary filter? It would be interesting to see the qualities of all the land areas, especially since much of Windward O'ahu lands that are currently in agriculture are excluded from the map.
 - Areas excluded from mapping are in the State Urban District or designated for urban use by the county, as prescribed by state law. Several areas currently in agricultural use were

April 29, 2021

VIA E-MAIL ONLY

State of Hawaii, Land Use Commission
P.O. Box 2359
Honolulu, HI 96814-2359
dbedt.luc.web@hawaii.gov

Dear Chair Scheuer and Commissioners:

This is a follow up to my April 26, 2021 letter on behalf of The Edmund C. Olson Trust No. 2 concerning the City & County of Honolulu's ("C&C") IAL mapping proposal. Your April 28-29 Meeting Notice specifically stated that the Land Use Commission ("LUC") "will not be considering or determining the legal rights, duties, or privileges of specific landowners or issues relating to particular properties." Further, the Agenda stated the LUC "...will not be considering or determining at this meeting the legal rights, duties, or privileges of specific landowners or issues relating to particular properties."

After the close of public comment, in the morning of April 29, the Chair stated that the LUC would be taking action on the C&C proposal, including whether the County IAL process mandated by State law was followed. The C&C then presented its position that all procedures had been followed and that they fully complied with the State statute. C&C asked the Commission to find that the process was complete and in compliance with State law and LUC rules.

Taking the requested action would violate the due process rights of affected landowners by eliminating a meaningful opportunity to be heard on C&C's State law compliance. Public comment at a meeting is not a substitute for a fair hearing. The process violations are critical because they resulted in an incomplete record based on a definition of IAL that does not comply with State law and excluded any meaningful cooperation and consultation with affected landowners. Any LUC confirmation that the C&C IAL process complied with State law, is an action that requires a hearing.

If the LUC does not remand the matter back to the C&C, the only other appropriate action to take is to continue the matter and to properly notice future hearing(s) to determine both: (1) whether the C&C process complied with State law and LUC rules and (2) whether individual landowner properties meet the requirements of IAL for designation.

Sincerely,



Timothy H. Irons
Dentons US LLP
On Behalf of The Edmund C. Olson Trust No. 2

From: [philip.rodgers](mailto:philip.rodgers@hawaii.rr.com)
To: [DBEDT LUC](#)
Subject: [EXTERNAL] IAL Designation Testimony
Date: Wednesday, January 5, 2022 9:38:40 AM

I, Philip J. Rodgers at rodgersp001@hawaii.rr.com, TMK # 1-6-8-013-032-0000-000 strongly object to my land being designated IAL since the City & County of Honolulu has not followed the process required by law so as to allow the LUC to properly evaluate and thus designate my land IAL for the following reasons:

The City's IAL mapping and recommendation process:

1. Failed to provide me as a landowner, with adequate notice and due process, as required by the statute and the constitution,
2. Misled or failed to accurately inform landowners about the restrictions IAL designation would put on their basic property rights,
3. Relies on inaccurate mapping, shortcut methods, and other erroneous records to inaccurately describe and recommend many parcels as satisfying the IAL criteria,
4. Inappropriately submitted its IAL recommendations to the LUC prior to enacting county incentives and protections for IAL lands, landowners, and farmers.
5. Failed to provide the Land Use Commission with enough basic information about my land and how it does or does not meet all or of the eight IAL criteria. Thus prevents the LUC from properly "weighing the standard and criteria with each other" as required before designating my land as IAL.

Along with many other farmers and landowners, I was not properly notified or informed about the City and County's recommendation process. Moreover, the information provided to the LUC about my land is inadequate to enable the LUC to properly do its job as required by HRS 205-44.

As such, the LUC should remand the map back to the City and County with instructions for the City and County to:

- A. First enact incentives and protections for IAL lands, landowners, and farmers, as required by HRS 205-46, 205-48, and 205-49, before resubmitting the City and County's maps and recommendations to the LUC.
- B. Provide clearer and verifiable notification to, and actual cooperation and consultation with, landowners and farmers like myself regarding the fact and consequences of IAL recommendations and designation of their specific lands as the same, as required by HRS 205-47.
- C. Gather and provide the LUC with information about how and whether parcels recommended for IAL designation meet any, some, or all of the eight IAL criteria, so as to enable the LUC to perform the proper weighing of all standards and criteria required before the designation of any lands as IAL, as required by HRS 205-44.

Sincerely,

Philip J. Rodgers, Trustee of the Philip J. Rodgers Trust

68-346 Oloho St. Waialua, HI 96791

(808) 223-7321

rodgersp001@hawaii.rr.com

From: [Elizabeth Piazzie](#)
To: [DBEDT LUC](#)
Subject: [EXTERNAL] Testimony for January 6, 2022
Date: Wednesday, January 5, 2022 9:54:43 AM

To whom it may concern;

This is how I feel about what's going on with the situation regarding my property.

The City's IAL mapping and recommendation process:

1. Failed to provide me as a landowner, with adequate notice and due process, as require by the statute and the constitution,
2. Misled or failed to accurately inform landowners about the restrictions IAL designation would put on their basic property rights,
3. Relies on inaccurate mapping, shortcut methods, and other erroneous records to inaccurately describe and recommend many parcels as satisfying the IAL criteria,
4. Inappropriately submitted its IAL recommendations to the LUC prior to enacting county incentives and protections for IAL lands, landowners, and farmers.
5. Failed to provide the Land Use Commission with enough basic information about my land and how it does or does not meet all or of the eight IAL criteria. Thus prevents the LUC from properly "weighing the standard and criteria with each other" as required before designating my land as IAL.

Sincerely, Elizabeth Piazzie (Bonilla)

TMK 860070280000

PS I'm very concerned because I'm not a farmer but a homeowner!

Sent from my iPhone

From: [Holly Gedeon](#)
To: [DBEDT LUC](#)
Subject: [EXTERNAL] Fwd: letter to LUC
Date: Wednesday, January 5, 2022 9:56:00 AM
Attachments: [Letter to the LUC concerning IAL designation.pdf](#)
[letter to LUC concerning IAL designation.docx](#)

Hi,

I hope I'm not too late for submitting this! Mahalo for your time and consideration.

Holly

----- Forwarded message -----

From: **Holly Kim** <www.hollykim@gmail.com>
Date: Tue, Jan 4, 2022 at 20:32
Subject: letter to LUC
To: <hollykgedeon@gmail.com>

Aloha,

I am writing today to the Land Use Commission concerning the Important Agricultural Lands designation, which is being considered with my current property in Waimanalo.

I am writing because during the IAL mapping and recommendation process, the City and County of Honolulu failed to provide me as a landowner with adequate notice and due process, as required by the statute and the constitution. The City misled and failed to accurately inform me about the restrictions IAL designation would put on their basic property rights; it is relying on inaccurate mapping, shortcut methods, and other erroneous records to inaccurately describe and recommend many parcels as satisfying the IAL criteria; and it has inappropriately submitted its IAL recommendations to the LUC prior to enacting county incentives and protections for IAL lands, landowners, and farmers. Furthermore, the City and County of Honolulu failed to provide the Land Use Commission with enough basic information about my land and how it does or does not meet all or of the eight IAL criteria, thus preventing the LUC from properly “weighing the standard and criteria with each other” as **required** before designating my land as IAL.

Along with many other farmers and landowners, I was not properly notified or informed about the City and County’s recommendation process. Moreover, the information provided to the LUC about my land is **inadequate** to enable the LUC to properly do its job as required by HRS 205-44.

As such, the LUC should remand the map back to the City and County with instructions for the City and County to:

- A. First enact incentives and protections for IAL lands, landowners, and farmers, as required by HRS 205-46, 205-48, and 205-49, before resubmitting the City and County’s maps and recommendations to the LUC.
- B. Provide clearer and verifiable notification to, and actual cooperation and consultation with, landowners and farmers like myself regarding the fact and consequences of IAL recommendations and designation of their specific lands as the same, as required by HRS 205-47.
- C. Gather and provide the LUC with information about how and whether parcels recommended for IAL designation meet any, some, or all of the eight IAL criteria, so as to enable the LUC to perform the proper weighing of all standards and criteria required before the designation of any lands as IAL, as required by HRS 205-44.

I wholeheartedly believe the City and County have not followed the process required by law so as to allow the LUC to properly evaluate and thus designate your lands as IAL.

Mahalo for your time,

Holly Gedeon
Hollykgedeon@gmail.com
TMK: 4-1-024-026

From: [Jason Leue](#)
To: [DBEDT LUC](#)
Subject: [EXTERNAL] IAL
Date: Wednesday, January 5, 2022 10:47:41 AM

Please do not pass the IAL designations. Forcing people to farm the land is not right. We've had so many of our rights as landowners taken away. Now without adequate notice you may force land owners to grow crops?

This all feels very underhanded. Most people I have told about the IAL (who's land is actually designated) have never ever heard of this IAL what to speak of having an opinion.

Here we go again with bureaucrats using the pandemic to push an unfair agenda...

We only have 1 acre of land with our home and for us to be put under this new designation we'd have to sell our place and shut down our farm because of new rules we can't afford to follow.

Please reconsider. Please help out local farmers like us keep farming.

Thanks
Jason Leue

From: [B Bright](#)
To: [DBEDT LUC](#)
Subject: [EXTERNAL] LUC evaluation/designation land as IAL
Date: Wednesday, January 5, 2022 10:46:30 AM

Good morning,

Barry Bright, Trustee for Iseke Trust
ltic2002@gmail.com
TMK 1-5-4-018-060-0000-000
TMK 1-5-4-018-062-0000-000

I am submitting this statement in response to evaluating the above parcels as IAL.

In addition to the C&C of Honolulu not following the proper process required by law, the above parcels would not be suitable for agricultural use:

TMK 1-5-4-018-060-0000-000, does not have water source and is divided by a rocky, dry stream bed with banks that prevent farm equipment from crossing. The other bordering areas are residential, which prohibit access.

TMK 1-5-4-018-062-0000-000, is too small for agricultural purposes, is partially designated as a flood zone, and has two houses on it.

The land, like the stream, is also rocky soil.

Respectfully,

Barry Bright

From: [Phyllis A. Dudoit](#)
To: [DBEDT LUC](#)
Cc: ["cd777@hawaii.rr.com"](#); ["dudoitp001@hawaii.rr.com"](#); [Phyllis A. Dudoit](#)
Subject: [EXTERNAL] AIL Written Testimony
Date: Wednesday, January 5, 2022 10:50:21 AM
Attachments: [2022-01-05 LTR to Land Use.pdf](#)

To whom it may concern,

Attached is our written testimony to NOT include our real property described in the letter as AIL.

Aloha, Phyllis

PHYLLIS A. DUDOIT
Paralegal | Carlsmith Ball LLP

Carlsmith Ball LLP
A LIMITED LIABILITY LAW PARTNERSHIP

1001 Bishop Street, Suite 2100
Honolulu, HI 96813
Tel: 808.523.2738 Fax: 808.523.0842
Honolulu · Hilo · Kona · Maui
www.carlsmith.com

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Charles V. Dudoit, Jr.
Phyllis A. Dudoit
87-256 Hookele Street
Waianae, HI 96792
(808) 392-7977
(808) 392-7976
cd777@hawaii.rr.com
dudoitp001@hawaii.rr.com

January 5, 2022

To whom it may concern,

We wish to reiterate that we do not want our property located at 87-1651 Kuualoha Road, Waianae, HI 96792, TMK: (1) 8-7-021-010 (870210100000) considered as part of the C&C of Honolulu's Important Agricultural Lands (IAL).

We also wish to call in and listen to the proceedings tomorrow, January 6, 2022.

Aloha,

Charles V. Dudoit, Jr.
Phyllis A. Dudoit

Yvonne L Alvarado
Email: sissylalvarado@gmail.com

TMK: RP 1-8-7-018-0000-000

On behalf of my parents Raynald & Dorene Cooper, who are the registered owners of parcel identified as Tax Map Key No. 187018018. In 1996, 26 years ago my parents used their life savings to purchase this property as agricultural use and under the standard set by HRS § 205-4.5, individuals and their families are free to live in their homes on agricultural land if their home is “used in connection with a farm” or “agricultural activity provides income to the family” living on the agriculturally zoned land. By changing the land to IAL, you are basically saying that my parents cannot live on their own property without actively farming. They are 71 years of age and cannot physically continue farming with the help of their children. This issue has been causing unneeded stress upon my parents and entire family.

I also believe that the city’s IAL mapping and recommendation process:

1. Failed to provide them as a landowner, with adequate notice and due process, as required by the statute and the constitution,
2. Misled or failed to accurately inform landowners about the restrictions IAL designation would put on their basic property rights,
3. Relies on inaccurate mapping, shortcut methods, and other erroneous records to inaccurately describe and recommend many parcels as satisfying the IAL criteria,
4. Inappropriately submitted its IAL recommendations to the LUC prior to enacting county incentives and protections for IAL lands, landowners, and farmers.
5. Failed to provide the Land Use Commission with enough basic information about my land and how it does or does not meet all or of the eight IAL criteria. Thus prevents the LUC from properly “weighing the standard and criteria with each other” as required before designating my land as IAL.

Along with many other farmers and landowners, I was not properly notified or informed about the City and County’s recommendation process. Moreover, the information provided to the LUC about my land is inadequate to enable the LUC to properly do its job as required by HRS 205-44.

As such, the LUC should remand the map back to the City and County with instructions for the City and County to:

- A. First, enact incentives and protections for IAL lands, landowners, and farmers, as required by HRS 205-46, 205-48, and 205-49, before submitting the City and County’s maps and recommendations to the LUC.

B. Provide clearer and verifiable notifications to, and actual cooperation and consultation with, landowners and farmers like my parents regarding the fact and consequences of IAL recommendations and designation of their specific lands as the same, as required by HRS 205-47.

C. Gather and provide the LUC with information about how and whether parcels recommended for IAL designations meet any, some or all of the eight IAL criteria, so as to enable the LUC to perform the proper weighting of all standards and criteria required before the designation of any lands as IAL, as required by HRS 205-44.

In closing, the passage of the revised LUO will create a threatening uncertainty which will loom over my parent's sincere hopes of peacefully living out their days on their own property that they have purchased 26 years ago and passing that property down to their heirs without the threat of eviction and foreclosure. With that I STRONGLY OBJECT TO THE PROPOSED CHANGES TO THE LUO.

Thank you,

Yvonne L Alvarado

Yvonne L Alvarado
Email: sissylalvarado@gmail.com

TMK: RP 1-8-7-018-0000-000

On behalf of my parents Raynald & Dorene Cooper, who are the registered owners of parcel identified as Tax Map Key No. 187018018. In 1996, 26 years ago my parents use their life savings to purchase this property as agricultural use and under the standard set by HRS § 205-4.5, individuals and their families are free to live in their homes on agricultural land if their home is “used in connection with a farm” or “agricultural activity provides income to the family” living on the agriculturally zoned land. By changing the land to IAL, you are basically saying that my parents cannot live on their own property without actively farming. They are 71 years of age and cannot physically continue farming with the help of their children. This issue has been causing unneeded stress upon my parents and entire family.

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1. Failed to provide them as a landowner, with adequate notice and due process, as required by the statute and the constitution,
2. Misled or failed to accurately inform landowners about the restrictions IAL designation would put on their basic property rights,
3. Relies on inaccurate mapping, shortcut methods, and other erroneous records to inaccurately describe and recommend many parcels as satisfying the IAL criteria,
4. Inappropriately submitted its IAL recommendations to the LUC prior to enacting county incentives and protections for IAL lands, landowners, and farmers.
5. Failed to provide the Land Use Commission with enough basic information about my land and how it does or does not meet all or of the eight IAL criteria. Thus prevents the LUC from properly “weighing the standard and criteria with each other” as required before designating my land as IAL.

Along with many other farmers and landowners, I was not properly notified or informed about the City and County’s recommendation process. Moreover, the information provided to the LUC about my land is inadequate to enable the LUC to properly do its job as required by HRS 205-44.

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- A. First, enact incentives and protections for IAL lands, landowners, and farmers, as required by HRS 205-46, 205-48, and 205-49, before submitting the City and County’s maps and recommendations to the LUC.

B. Provide clearer and verifiable notifications to, and actual cooperation and consultation with, landowners and farmers like my parents regarding the fact and consequences of IAL recommendations and designation of their specific lands as the same, as required by HRS 205-47.

C. Gather and provide the LUC with information about how and whether parcels recommended for IAL designations meet any, some or all of the eight IAL criteria, so as to enable the LUC to perform the proper weighting of all standards and criteria required before the designation of any lands as IAL, as required by HRS 205-44.

In closing, the passage of the revised LUO will create a threatening uncertainty which will loom over my parent's sincere hopes of peacefully living out their days on their own property that they have purchased 26 years ago and passing that property down to their heirs without the threat of eviction and foreclosure. With that I STRONGLY OBJECT TO THE PROPOSED CHANGES TO THE LUO.

Thank you,

Yvonne L Alvarado

From: henrysequ001@hawaii.rr.com
To: [DBEDT LUC](#)
Subject: [EXTERNAL] Testimony for 1/6/22
Date: Wednesday, January 5, 2022 12:54:17 PM
Attachments: [image001.png](#)
[IAL letter.docx](#)

Frances Kama-Silva
President



P. O. Box 4070 Waianae, Hawaii 96792 Ph: 696-2879 Fax: 696-7837
License ABC21835 PUC 107-C Operating Since 1992
Native Hawaiian, woman-owned small business

January 4, 2022

Hawaii Land Use Commission
P.O. Box 2359
Honolulu HI 96814-2359

RE: January 6, 2022 LUC Meeting Testimony regarding Oahu Important Agricultural Lands
Opposition to C&C recommended designated lands for IAL

Aloha Commissioners,

We are owners of TMK 8-6-012-016 and 017 in Lualualei valley, mokupuni o Waianae, a 2.0 and 2.8 acre parcel.

We attended the 2017 community meeting in Kapolei and the come away from that meeting was that basically there would be no changes in the currently allowed use of our properties other than added restrictions on subdividing. We received no other correspondence from the City and were **never consulted nor asked for input** while the IAG map and the HRS regarding IAG were being developed.

Concerns include; The City basically painted the entire Lualualei valley with their orange paint brush with no regard to current lot size or use. Some of these lots are as small as .5 acre. Anything less than 2.0 acres does not even meet the RPT residential size designation of 5000 sf for the IAG allowed 5% dwelling size. 205-45.5(1) Is absolutely unacceptable. Our property is zoned agriculture and we will comply with the allowed uses of that zoning. Is the City now saying that as an IAL basically everyone living in this valley has to ACTIVELY be farming? That I can't decide as a U.S. citizen whom I can have living in my home with me? That families have worked all their lives to pay off their land and homes and in their retirement years being forced off their land because they are not actively farming it, even if being leased to others? Who thought of this, I want to know as it wasn't a farmer. Our family is involved with livestock production grazed on other lands. This ancillary use is not even approved in IAL designation.

There are many problems with how this was accomplished and it needs to be thrown out. Gentlemen farm lots are a problem because it was ALLOWED to happen. Rezoning, subdividing, CPR were ALLOWED to happen on prime agricultural land in areas that used to be in cane or pine. Developers are buying large agricultural land tracts with a reasonable assurance that sometime in the future they will be able to cut up their property into smaller lots and sell off. Lualualei valley needs to be left alone and not burdened with the IAL designations.

Regards,

Henry Silva and Frances Kama-Silva

From: [Andrew Cook](#)
To: [DBEDT LUC](#)
Cc: [Larry Greene](#); [Jennifer Lim](#)
Subject: [EXTERNAL] Testimony for Hearing on January 6, 2022
Date: Wednesday, January 5, 2022 2:02:40 PM
Attachments: [image001.png](#)
[Laurence Greene Testamony 1-5-22.pdf](#)

To whom it may concern:

Please find attached for your review and consideration testimony from Laurence Greene of 174 Power Global in connection with tomorrow's hearing regarding IAL designation.

ANDREW COOK

Senior Counsel, Land Development



174 POWER GLOBAL
300 Spectrum Center Drive, Ste 1020
Irvine, CA 92618

TEL +1 949 748 5996
CELL +1 949 351-7795
EMAIL andy.cook@174powerglobal.com
WEB <http://www.174powerglobal.com>

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HANWHA ENERGY USA HOLDINGS CORPORATION

d/b/a 174 Power Global
300 SPECTRUM CENTER DRIVE, SUITE 1020
IRVINE, CALIFORNIA 92618
T+1 949 748 5970

January 5, 2022

State of Hawaii Land Use Commission
P. O. Box 2359
Honolulu, Hawaii 96814-2359

Email: dbedt.luc.web@hawaii.gov

Dear Chair Scheuer and Members of the Commission:

Subject: Meeting of January 6, 2022, Agenda Item II. - City and County of Honolulu
Important Agricultural Lands ("IAL") Designation

My name is Laurence Greene, and I am submitting this written testimony on behalf of Hanwha Energy USA Holdings Corporation d/b/a 174 Power Global, in connection with Agenda Item II of the upcoming, above-referenced Meeting. 174 Power Global is a leader in solar and renewable energy development throughout the United States, including in Hawai'i, and is committed to helping Hawai'i achieve its renewable energy goals. Subsidiaries of 174 Power Global currently lease or have an option to lease land for solar development that could potentially be designated IAL.

It is 174 Power Global's position that the recommendation ("Recommendation") for IAL designation put forth by the City and County of Honolulu ("CCH") may significantly hinder development of renewable energy and in some cases be in direct opposition to Hawai'i's renewable energy policies and goals. Since the hearing that the LUC held on May 26, 2021, CCH has not addressed or made any effort to resolve the important concerns over IAL designation related to climate change and use of such lands for solar production. As such, 174 Power Global believes that the Land Use Commission should reject the CCH's Recommendation, and instruct the CCH to address impacts to renewable energy projects and the State's 100% Renewable Portfolio Standards and Carbon Neutrality statutes before proposing any land for involuntary IAL designation.

1. CCH has not adequately considered the impact IAL designation will have on renewable energy development, yet many renewable projects are located and planned for Agricultural District lands as allowed for under Hawaii Revised Statutes Chapter 205. Nothing in the record indicates that CCH took into account current renewable energy and climate policies when making the Recommendation. In light of the major policy changes surrounding renewable energy that have been made in Hawai'i in recent years (after the IAL statute was enacted) in recognition of climate change and in pursuit of achieving sustainable energy self-sufficiency, in making any Recommendation, CCH should be required to consult with climate and renewable energy experts and to provide an analysis of the impact IAL designation will have on Hawai'i's current renewable energy and climate policies. (See HRS §205-47 that states that, in addition to landowners, the DOA, agricultural interest groups, *et al*, each county should consult with "other groups as necessary.")

2. It is unclear what IAL designation means for landowners and renewable energy developers. While CCH's "O'ahu Important Agricultural Land Mapping Project" report dated August

2018 stated that IAL designation “does not change existing classifications or affect the range of current permitted land uses,” it seems that the purpose of the IAL designation is to do just that—restrict the use of IAL designated lands to prevent non-agricultural uses. HRS Section 205-43 mandates that clear policies, land use plans, ordinances and rules must be established by the CCH to further the IAL policies. However, it does not appear that the CCH had made any such changes (in fact, the CCH told the public that IAL designation won't cause any changes to permitted uses). Thus, the picture is very unclear. The policies and rules as required under HRS Section 205-43 should be established first, before involuntarily designating thousands of parcels as IAL. Without such clear policies and rules, landowners and other interested parties can only guess at what an IAL designation actually means with respect to their ability to use the land. In addition, the lack of information prevents owners and others from making an informed decision on whether to accept or object the CCH's proposal.

3. CCH should have taken into consideration the eight criteria under HRS § 205-44, which requires that “the designation of important agricultural lands shall be made by weighing the standards and criteria [in subsection (c)] with each other to meet the constitutionally mandated purposes in article XI, section 3, of the Hawaii constitution and the objectives and policies for important agricultural lands in sections 205-42 and 205-43.” However, it appears that CCH considered only three of the criteria and disregarded the others. Furthermore, if any property satisfied one of the three criteria considered, such property was recommended for IAL designation. For the process to be in compliance with HRS §205-44, CCH must identify lands after considering all standards and criteria under HRS §205-44.

For the foregoing reasons, 174 Power Global objects to, and asks that the Land Use Commission to reject, the Recommendation. Agricultural production and renewable energy are both important needs. However, the current Recommendation, perhaps through oversight by the CCH, pits agriculture against renewable energy. Involuntary IAL designation should not move forward until the considerations of all stakeholders have been considered and the long-term impacts analyzed. Thank you for the opportunity to provide this written testimony.

Respectfully



Laurence Greene
Project Manager

From: [Mike](#)
To: [DBEDT LUC](#); [Hakoda, Riley K](#)
Subject: [EXTERNAL] LUC meeting, IAL, Michael Kam testimony
Date: Wednesday, January 5, 2022 5:31:08 PM

Committee Members,

- The Attorney General Opinion dated September 23, 2021, and addressed to Jonathan Likeke Scheuer, Ph.D. as Chair of the Hawai'i State Land Use Commission ("**AG Opinion**") is fundamentally flawed as to its legal opinion in its short answer on page one thereof that "[t]he City . . . may base its identification and recommendation of IAL land only some or even just one of those standards and criteria."
- The AG Opinion is argumentative, internally inconsistent, arbitrary and speculative, and omits any discussion of countervailing facts and factors, without any legally justifiable basis therefor, such that reliance on the legal opinions set forth in its "Conclusions" (as well as certain legal opinions ancillary thereto) would be reckless and unreasonable.
- The AG Opinion, by concluding that the LUC must weigh the standards and criteria on a county-wide or regional basis is unsupported and thus speculative, arbitrary and unreasonable.

The AG Opinion appears to correctly conclude that in its Conclusion that "the City was required to weigh all eight standards and criteria in HRS section 205-44, but it is inconsistent to conclude that "the City was permitted to base its IAL recommendation on fewer than eight of those standards and criteria." That latter opinion is flawed and inconsistent if it is construed to suggest that some or all factors other than one designated by the City may be omitted or disregarded without consideration. In other words, the City may, subject to the standards applicable to its actions, consider a factor and decide it is less compelling than another factor, but the City is not excused from failing to take such factor into consideration. The City's judgment and a proper factual record are required, and the City is not permitted to omit or exclude factors in its discretion.

The AG Opinion is argumentative, internally inconsistent, arbitrary, speculative and incomplete for the reasons described below so as to be fundamentally flawed as a reasonable basis for reliance by the LUC.

As noted above, the AG Opinion as to its apparent conclusion that the City may based its IAL recommendation upon a single factor by omitting or otherwise excluding from its consideration one or more factors (but fewer than all factors) is inconsistent with the conclusion that all eight factors must be weighed. This is important because the City's determination to not consider any factor or to arbitrarily attach zero weight to such factor is a matter for consideration and review by the LUC and otherwise.

Indeed, the AG Opinion on page 4 states that "**[t]he LUC evaluation of the City's recommendations and maps should consider the degree to which the City has weighed the eight criteria. This information will provide valuable information for the LUC in making its own assessment of the statutory criteria and ultimate designation of IAL lands.**" In other words, the AG Opinion advises that any failure by the City to consider any factor or to arbitrarily assign a zero weight to any factor is

to be independently reviewed and evaluated by the LUC. In that case, **if there is no meaningful information provided as to any such factors, the LUC is unable to properly review and evaluate the City's recommendations.**

- Note that one statutory factor is “land with sufficient quantities of water to support viable agricultural production.” HRS section 205-44(5). It is ridiculous to believe that the State Legislature intended that parcels without adequate water for agricultural production should be classified as IAL simply because on a county-wide or regional basis there is water available as to other parcels of land.
- Note that the five factors applicable to a landowner's request to declassify land as IAL differ from the eight factors to classify land as IAL and do not include the lack of sufficient available water on the particular parcel. In other words, the statute appears to presume that land designated as IAL is capable of viable agricultural production. See HRS section 205-50.
- The AG Opinion suggests improperly that the burden placed upon a City is excessive so as to be beyond the intent of the State Legislature, but such burden is far more bearable than the burden placed on an individual landowner seeking to correct an uninformed and incomplete designation of a parcel as IAL. Shifting the costs to landowners, such as by requiring them to demonstrate the relative importance of the land for agriculture based on the stock of similarly situated lands in the area and the State as a whole (and not the particular characteristics of the individual parcel itself).

The AG Opinion appears to conclude that “[t]he county, and subsequently,[sic] the LUC, therefore, must weigh the standards and criteria on a county-wide or regional is completely unsupported and recklessly incomplete so as to render such opinion to be argumentative, arbitrary and lacking a reasonable basis for reliance thereon. The eight standards and criteria applicable to the IAL designation by the City are presumably the same eight factors to be applied if any landowner seeks to of conclusion speculative by stating incomplete by failing to present any countervailing considerations to its conclusions and therefore, on its face, arbitrary and speculative.

I fully support the legislative intent of the IAL statute, but the City has dramatically failed as to its implementation of the statute, including by failing to adequately establish incentives for landowners to voluntarily dedicate land as IAL. The IAL designation is putting the cart before the horse because of the lack of support provided as to the available incentives to support the restrictive IAL designation. While the statute permits reclassification for non-agricultural use of up to 15% of IAL land, there is no formal guidance as to that precious opportunity as a quid pro quo to the restrictive IAL designation.

Please note that my testimony is submitted late because I only received notice of the LUC meeting yesterday as such notice was mailed to my NY address.

Respectfully submitted.

Kokohi LLC (doing business as Kapiko Farm)

Michael Kam

Managing Member

Sent from [Mail](#) for Windows

Kwan, Ariana L

Subject: FW: [EXTERNAL] Testimony To Opt Out Of IAL Map

From: Shon McCormack <shonmccormack@aol.com>

Sent: Thursday, January 6, 2022 2:17:02 AM

To: DBEDT LUC <dbedt.luc.web@hawaii.gov>; Hakoda, Riley K <riley.k.hakoda@hawaii.gov>

Subject: [EXTERNAL] Testimony To Opt Out Of IAL Map

January 5, 2022

To All Land Use Commissioners,

Please submit this as testimony for the Important Agricultural Land Map hearings.

I write this letter to state that we adamantly oppose being included in any and all Important Agricultural Land (IAL) maps in the state of Hawaii. Please remove TMK 4-1-025:028 from all versions of the Important Agriculture Land (IAL) map for now and all future purposes. We do not want to be included in this map.

Language that has been already signed into law in the Hawaii Revised Statutes will illegally and adversely affect all properties included in the Important Agricultural Land (IAL) map. This is an outrageous attack on private property and an obvious potential for a land grab. These amendments to the Hawaii Revised Statutes, unconstitutional by nature, will make it impossible for families to stay together on these properties, even though they were sold as residential with fee simple bundle of rights. If this is such a good thing for the people, then the people should have the right to opt out of the map no matter the size of their property in question.

I am third generation of my family to care for the land at this TMK. We revere the land as sacred and treat it so. We have been truck farmers, animal caregivers, and plant nurseries and always have struggled to make ends meet. Small farm life is a very difficult lifestyle. We don't use harsh chemicals, pesticides or herbicides with the intent of preserving the land currently and for future generations. We protect the land for sustainability while it's the big landowners who took advantage of all the incentive tax breaks and they are the ones who poison large portions of the island with herbicides and pesticides. Yet small farmer family farms who can't afford time or lawyers get punished without committing any crime at all.

What may have started with the Constitutional Convention in the late 70's with good intention to protect Hawaii farmlands from being turned into hotels has been transformed over 40 years into a weapon against Hawaii families just trying to survive and make ends meet. Our families have invested generations into these properties with the hope of sustaining family life into the future. The IAL map combined with the Hawaii Revised Statutes destroys this hope along with the families, turning us into outcasts or indentured servants.

AG 2 designated properties were sold as combination commercial and residential status. They were sold as private property with the right to build a house to have and raise a family whether or not they are all "actively farming." Is it even legal to change a person's bundle of property rights after they

have purchased it? These kind of things only used to happen in countries with dictatorships. What happened to We the People?

AG 2 properties are really “homestead” sized properties which are just big enough to provide for family, some friends and some community. Trying to truck farm never paid the bills. We have all had to get outside jobs to make ends meet and to get health insurance. These small farms have always been run by families. There are many duties to run a farm besides “actively farming.” It takes everyone’s efforts to make it work just like any family.

If the push for the IAL map is to grow food for the city population, there are problems that are being overlooked. The threat of Rat Lungworm disease makes it virtually impossible to grow food safely in the soil. The slugs that carry the disease are regularly sighted on our property. African snails are carriers too. I can’t even grow vegetables for myself. If the City and County were serious about growing food for the city, they would start vertical farms in Kakaako warehouses where there would be much less gas and oil with no transportation cost and no Rat Lungworm disease.

It seems the latest consideration for opting out was for properties one acre or less. This immediately leaves out “all” AG 2 properties as they have to be a minimum of 2 acres and are all 2 point something acres or more. These properties need to be considered for opting out as they are still small to produce much surplus to the greater market. Also, more and more acreage is being required for Fire Department access roadways and turnarounds, easements, etc. which takes away from the farmable land. There really should not be an acreage amount to determine eligibility to opt out. The past several years we have all been told we can opt out. This is our right as property owners.

Furthermore, the City and County has failed to roll out incentives. It was brought to my attention that all incentives that have been offered so far have been from the state. The City and County as part of the procedure needs to roll out their incentives before proposing the map or they have not followed procedure and have not done their job. If so, this is grounds to stop the whole process now. There really are zero incentives for us. They are either expired, totally useless, or nonexistent.

We all and the LUC need to take a good look at all the items in the Hawaii Revised Statutes that are attached to the IAL map and have them removed permanently before any action is taken on the IAL map. That is where the real problem is. Please do not overlook this. Commissioners please stop this process from going any further until the HRS is examined and cleaned up to protect We the People and not to push us off our properties.

Again, it is our intention that TMK 4-1-025:028 be removed and not included in the Important Agricultural Land (IAL) map.

Sincerely Dismayed,
Shon McCormack

Kwan, Ariana L

Subject: FW: [EXTERNAL] Written testimony

From: cari leiva <carill808@gmail.com>
Sent: Wednesday, January 5, 2022 7:22 PM
To: DBEDT LUC <dbedt.luc.web@hawaii.gov>
Subject: [EXTERNAL] Written testimony

From: Caridad Leiva & Joshua Ramos
To: DBEDT LUC
Subject: [EXTERNAL] IAL DESIGNATION
Date: January 6, 2022

Caridad Leiva & Joshua Ramos
87-1029 Ilili Road
Waianae, Hawaii 96792
TMK 870190300000

RE: Conformance of C&C of Honolulu Important Agricultural Lands (IAL) Recommendations Land Use Commission Meeting January 6, 2022

To The Land Use Commission Members,

As the owners of the above referenced TMK, we have previously provided written and verbal testimony objecting to the property being designated as Important Agricultural Land (IAL). This also is hereby registering a formal objection to being included in the IAL designation for the following reasons:

My fiancé and I purchased our land only a few years ago with no notification by anyone of the City & County's plan to include our small parcel in the IAL designation before we purchased it. Right now at present day our land is not suitable at all for planting being that it is completely under water. We are a young native Hawaiian couple working hard to survive and grow our family on our home land of Oahu, Hawaii. We have hopes and dreams that on this land we can continue to raise our children and pass down the traditional paniolo skills that are unique to Hawaiians. To teach them how to care for the land, raise animals, and grow fruit trees for our consumption along with sharing with our Ohana and friends not to be forced to sustain the state of Hawaii, we are saddened that the C&C of Honolulu would come up with their own land grabbing agenda for how we should use our land that we are working hard everyday for.

The City's IAL mapping and recommendation process:

1. Failed to provide us adequate notice and due process as required by statute and the constitution.
2. Failed to provide us with information regarding restrictions that IAL designation puts on basic property rights.
3. Inappropriately submitted IAL recommendations prior to enacting county incentives and protections for all IAL lands and landowners.
4. The City choose to rely on generalizations and short cut methods. No consideration was given to individual property rights or how the City's IAL designation process will severely impact the owner's of agricultural property. By doing so the City failed to provide adequate information about our property to enable the Chair and Members of the LUC to do your job as required by HRS 205-44.

So please we ask that you stop this unfair process from happening.

Mahalo,
Caridad Leiva & Joshua Ramos
(808) 499-5548
Carill808@gmail.com