

To: State Land Use Commission  
P.O.Box 2359  
Honolulu, Hawaii 96804

LAND USE COMMISSION  
STATE OF HAWAII  
2021 MAY 18 P 12:59

Dear Mr. Daniel Orodener,

My name is Russell Higa and I reside at 41-560 Flamingo St. in Waimanalo, Oahu. I recently received a letter from you in regard to the Land Use Commission requesting that the City identify important agricultural lands (IAL). The City has designated this property as an important agricultural land (IAL). I don't recall receiving any communication from the City informing me that my residence was being considered as IAL. After receiving your letter, I did some research and admit I'm confused on how the City determined the IAL status for the different properties on this street.

1. There are 20 properties on this street. Fifteen are being designated as IAL and the other 5 properties are not on the City's IAL list. What was the basis of determination?
  - a. One of the 5 properties: TMK 41018002 is a church which is not on the IAL list but TMK 41018008, another church is on the IAL list. A bit confusing.
  - b. Also a bit confusing: there are three plant nurseries on this street, one of them is not on the IAL list while the two other nurseries are listed to be designated as IAL. By the way, these nurseries grow their plants in pots where soil quality is irrelevant.
  - c. Also 8 of the 15 properties are in flood zones and some (including my property has a grade of 20% or more) have sloping terrains.
  - d. Thirteen of the 15 designated IAL properties are not involved in any kind of active agriculture.

Also, I'm unclear on what the benefits or restrictions are for being designated as IAL. I have tried to research this but admit being overwhelmed by technical legal language and gave up. So, I'm addressing my concerns to you and hope that you'll be able to clarify how this land designation will affect me and my heirs. I read that once a property is designated as an IAL, it will almost be impossible to reclassify it for other uses. This concerns me because I'm unaware of what are the City's criteria or conditions for owning an IAL. My concerns are as follows:

Will I have to engage in active agriculture?

This property is currently zoned AG1. All the residents on this street have 1 acre lots. We have 2 churches, 3 nurseries on our street and the majority of my neighbors are elderly residents and retired. The nurseries grow the majority of their products in pots, not soil. If I understood correctly, one of the criteria for IAL was the soil. Would this mean growing products from the soil?

Will there be income requirements for IAL?

I'm not sure how much revenue an acre of land will generate? My property is on a hill and may need a sizable investment to sustain a profitable business model. Some of my neighbors live near a stream in a flood zone which could pose other economic

disadvantages. As I mentioned above, a lot of neighbors are retired and living on fixed incomes, starting a business would cause an economic strain for them.

How will IAL designation affect property values?

If the conditions of owning an IAL are restrictive, property values may go down. If this does happen, our retired residents who cannot meet these requirements may be forced to sell their property at depressed values. But where will they be able to relocate to with the property values so high everywhere?

What will happen to my new neighbors who just bought residences on this street? They paid a premium for their lot because of the high cost for real estate. Depending on the City's IAL conditions for owning an IAL property they may have opted out of the purchase if they knew there would be conditions affecting their heirs. Personally, my heirs don't appear to be interested in farming let alone be able to financially support themselves on an acre lot.

What about water?

The residences on Flamingo street currently use City water from the Board of Water Supply. We have no access to well water, reservoir water or ditch water. If the City continues to dedicate these properties as important agricultural lands and unless we have an infrastructure to access non potable water, we will have to depend on our precious potable water supply. Since most if not all agricultural crops require access to water, will IAL status enhance our ability to obtain agricultural water at the lower rates? For example, will the Waimanalo properties with IAL status have priority to the water in the Waimanalo reservoir?

Bottom line, if the state and city wants to protect important agricultural lands then they should provide incentives for people who own them. I'm currently unaware if there are any benefits for being designated IAL This property was passed down to me by my heirs (who farmed this land along with 2 acres leased from the state), and they barely got by. I saw them struggle and work hard to survive. I wanted more financial independence and sought a career. Now I'm retired and wondering if my freedom and financial security is going to be taken away from me. I hope you consider the above concerns. Until these issues can be clarified I urge the State Land Use Commission proceed with caution with their decision to accept the City's proposal because it will impact the lives of the residents that inhabit Flamingo street.

An early reply would be greatly appreciated.

Sincerely,  
Russell Higa

A handwritten signature in black ink, appearing to read "Russell Higa", written in a cursive style.

**From:** [Hakoda, Riley K](#)  
**To:** [Quinones, Natasha A](#)  
**Subject:** Fwd: [EXTERNAL] Fwd: Questions on IAL  
**Date:** Tuesday, May 18, 2021 7:14:24 PM  
**Attachments:** [2021 03 09 Flood.png](#)

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IAL

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**From:** Nevin Gatchalian <negatchalian@gmail.com>  
**Sent:** Tuesday, May 18, 2021 3:44:07 PM  
**To:** Hakoda, Riley K <riley.k.hakoda@hawaii.gov>  
**Subject:** [EXTERNAL] Fwd: Questions on IAL

Good Afternoon Mr. Hakoda,  
I received a letter from the Land Use Commission regarding my property in Haleiwa (TMK 66020019) that has been proposed for designation as Important Agricultural Land (IAL) by the city and county. Are there any incentives to the owner for making their land an IAL?

Anyway, my land was one of the properties in Haleiwa devastated by the recent flash flood that occurred on March 9, 2021, and was three feet underwater. This is the second occurrence of a flash flood in my area since 2012. My property is adjacent to the Paukauila Stream near the river's mouth. Normally, every rainy season, my land property is inches underwater around my house. And to make my land property, an IAL is not cost-effective due it requires tons of earth poured into the property to elevate it. I attempted to plant banana trees and other crops before but were drowned by the rainwater mixed with brackish water. There is also a narrow stream or canal in my property connected to Paukauila Stream and the main canal at Waialua Beach Road, where saltwater flows in during high tide. Just for your info, I am attaching pictures of my house underwater.

Respectfully,

Nevin Gatchalian  
66-794 Haleiwa Rd.  
Haleiwa, HI 96712

Ronald and Mary Tubbs  
41-950 Kakaina St.  
Waimanalo, Hawaii 96795

May 18, 2021

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

RE: Testimony on C&C Oahu's compliance with (IAL) recommendation statutes and procedures

Dear Land Use Commission Chair Orodener and Commission Members,

**Communication to landowners from the Dept. of Planning and Permitting Honolulu (DPP), and their identification process, was flawed.** First, the DPP Honolulu made **misleading statements to us regarding property values during meetings, and left out key information that would enable landowners to understand the impact of an IAL designation.** During the Nov., 2017 Pearl City IAL info. meeting, DPP stated that there would be "No change to the value of the property." Although possibly referring to a property's present taxable value, in reality, the additional restrictions of being an IAL, will negatively impact a landowner's pool of qualified buyers thereby reducing its value to most buyers. They also omitted the fact that IAL designation would change the legal use of the Country-Residential zoned lands (which according to DPP personnel during the last LUC hearing, qualify for either residential or ag use), in that IAL lots would need to be "actively managed" by the landowner. The DPP failed to follow statutes in that **their communication was not collaborative**, as evidenced by their inability to give substantive reasons for their denial of our Request for Exclusion. **They merely gave information, solicited comments, acknowledged receipt of such, but then denied our request for exclusion without any meaningful communication concerning its content, as if they never even read it, thereby failing to collaborate.**

**DPPs communication about IAL recommendation criteria and procedures lacked clarity and transparency, and for some newer landowners was reportedly non-existent!** Their convoluted communication of IAL recommendation criteria began with their first communication *Notice to Affected Landowner*, dated 12/29/16. They cited the "legal basis" for IAL as Article XI, Sec. 3 of the State Constitution which stated that IAL lands "shall not be reclassified...without meeting the standards and **criteria established by the legislature...**" (bold added) **and developed an 8-criteria standard in the IAL Sect. 205-44- the "legal basis for IAL".** But they omitted the key introductory phrase of to the Sect. 205-44 statute in their Dec. '16 and Nov. '17 notices, which read "*The standards and criteria shall be as follows:*" prior to listing the (8) criteria which indicated they should be evaluated together (see Dec., 2016 FAQ item 4 "*What are the criteria for IAL?*") and instead followed the criteria with a sentence: "*By law, land does not have to meet all eight criteria to be considered IAL,*" however they did not state by what law. They then buried on page 3 of 9 pages of enclosures of the same Dec. notice, a statement that they were "*recommending that land meeting at least one of the three criteria below be eligible for IAL,*" eliminating Sect. 205-44's intended wholistic definition for IAL. Then, to add to confusion for landowners they then answered item 1 of the FAQs in the same notice under "*What does Important Agricultural Lands ( IAL) mean?*" using a 3-point definition- Sec. 205-42, Hawaii Revised Statutes (HRS): "IAL is defined as those lands that: (1) are capable of



*producing sustained high agricultural yields... (2) contribute to the State's economic base and produce agricultural commodities ...or (3) are needed to promote the expansion of agricultural activities and income for the future...".* Later, in the Nov. 8, 2017 "Notice to Affected Landowner," attachments in the Phase II FAQs they further altered the definition to "*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.*" (see p. 2, "What are the criteria for IAL?," (underlining mine).

**The DPP procedure of using multiple definitions to identify IALs to the landowners lacked clarity, was confusing, and disregarded its original multiple criteria aimed at identifying the best, most important ag lands. Their single IAL criteria, resulted in many lots of poor quality being recommended. 23% of the DPP's parcel recommendations are smaller than even the state and county definitions for ag lands (ie .less than one acre, or two acres per the Chair of the Hawaii land planning firm PBR Hawaii, Thomas Witten). Only during LUC hearings, when pressed as to why very small plots were included on the list, did the C&C conveniently reference criteria # 8 (ie. land with or near support infrastructure) - a criteria that was not even included in their published "minimum criteria," nor their defining statement "What IAL means!" Every data specialist knows triangulation of data (with at least 3-points) yields the best conclusions or recommendations. The DPP, as navigators of Oahu's sustainable food future, needed to use at least three criteria or "reference stars" for locating and recommending IALs.**

**The DPP's IAL identification procedure of "casting a wide net" using only one criteria, did not identify the best, most important ag lands. They basically "kicked the can down the road," calling their IAL recommendations a "*work in progress*," and stating that we could later "*refine the IAL maps when it reaches the City Council and LUC.*" (see DPP *Notice to Affected Landowner*, dated 12/29/16, p. 5, FAQ item 13).**

In sum, the C & C Honolulu's communication and procedure of defining IAL lands was convoluted, confusing, and lacked clarity. DPP's communication at meetings included misleading information and omissions regarding the impact of IAL designation on our property's use and value. Their procedure of basing recommendations on one criteria, has reduced the quality of their IAL recommendations. Their communication to owners of longer held parcels who sought exclusion was informational, not collaborative, as required in the statute, while communication for many newer landowners, was reportedly absent. **For these reasons, we ask that the LUC return the list of recommended IALs back to the City and County for reworking.**

Sincerely,

Ronald J. and Mary S. Tubbs, Jr.

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