From: Hakoda, Riley K
To: Quinones, Natasha A
Subject: FW: [EXTERNAL] Aloha from Donna Kelly
Date: Friday, May 21, 2021 11:59:59 AM

IAL

-----Original Message-----
From: Donna Kelly <djkelly65@gmail.com>
Sent: Friday, May 21, 2021 11:35 AM
To: Hakoda, Riley K <riley.k.hakoda@hawaii.gov>
Subject: [EXTERNAL] Aloha from Donna Kelly

Kelly,Donna J
87-304 St John's Rd
Waianae Hawaii 96792
TMK. 87004002

Aloha, Just spoke with you about what's going here.
I am concerned and any additional information you could send me would be great as, my husband can help me to understand.
Thank you for your time and consideration.
Sincerely, Donna Kelly

Sent from my iPad

(TESTIMONY FOR 5/26-27/2021 MEETING)

5/21/21: THIS LETTER TO HAWAII LAND USE COMMISSION, FROM M/M REX CABAHUG, AT 86-341 PUHAWAI RD. WAIANAE, HI. 96792, W/ REGARDS TO OUR (1) ACRE LAND: TMK: 86010002, ZONED AS RESIDENTIAL. NOTE: THAT THIS "IAL" DESIGNATION OF LAND, THAT YOU ARE DREAMING TO DICTATE WHAT TO DO W/ OUR TINY PROPERTY FOR FARMING IS A FANTASY TO IMAGINE BY OUR GOVERNMENT. ASIDE THAT OUR SOIL IS NOT SUITABLE FOR FARMING - WE ORDER YOU TO REMOVE US FROM YOUR LIST, SINCE WE NEVER TOLD ANYONE TO PUT OUR LAND ON THE LIST. BECAUSE WE DISAGREE W/ THIS DESIGNATION 100%, ESPECIALLY FOR OUR (1) ACRE LAND TO SUCCUMB TO GOV'T. DICTATING US WHAT TO DO W/ OUR SMALL PIECE OF LAND, OR ARE WE LIVING HERE SIMILAR TO A COMMUNIST DICTATORSHIP? COMMON SENSE TO ALLOW VOLUNTARY INVOLVEMENT, ESPECIALLY W/ SMALL PARCELS, & GOV'T. WILL TRY THEIR LUCK DICTATING THOSE HUGE LAND HOLDERS ZONED AS AGRICULTURAL. THIS FIGHT WILL NOT END & WE WILL NOT GIVE-UP OUR TITLE TILL THE END, & THE GOV'T. - NO MATTER WHAT LAWS YOU GOT, CAN NOT DICTATE SMALL LANDOWNERS TO FARM, UNLESS WE VOLUNTEER, BUT NOT DICTATE US. WE LIVE IN A DEMOCRACY - NOT A GOV'T. DICTATORIAL METHOD OF SCOOPING EVERYTHING INCLUDING TINY FISH TO THEIR NETS. JUST LIKE THE GOV'T. HAS A NEW BIG TITLE OF ALL THE PROPERTIES INVOLVED, BACK BY THEIR STUPID & CRAZY LAWS. THIS IS CRAZY THINKING BY THE GOV'T & WASTING TIME FIGHTING BECAUSE OF DISAGREEMENTS, UNLESS PEOPLE VOLUNTEER TO DO SO, AS AN ULTIMATE - END OF THE WORLD CHOICE? THIS GOV'T. MANEUVERING METHOD IS BOUND TO FAIL, & WASTE OF EVERYONE'S TIME & MONEY. HAWAII IS IN THE MIDDLE OF THE OCEAN - MORE BETTER GOV'T. WILL DIRECT THEIR EFFORT FARMING THE OCEAN W/ FISH, ETC., AS MAINLAND FARMING - HUGE LAND, AS FAR AS YOUR EYES CAN SEE, BUT NOT IN TINY HAWAII, SCOOPING A (1) ACRE TITLED LAND, ZONED AS RESIDENTIAL, TO BECOME AN "IAL"? IN THE GOV'T. FANTASY & DREAMS, OR WILD IMAGINATIONS. DON'T WASTE TIME & EFFORT ANYMORE W/ THIS CRAZINESS. LET PEOPLE VOTE & END THIS CRAZINESS ASAP FOR GOOD, AS WE ARE HEADING TOWARDS FAILURE. SEND US PAPERS FOR VOTING, A YES OR NO, TO END THIS CRAZY IDEAS BY THE GOV'T. THIS IS A WRITTEN TESTIMONY SUBMITTED BY M/M REX CABAHUG PH: 697-1970. TMK: 86010002, ZONED: RESIDENTIAL AT: 86-341 PUHAWAI RD. WAIANAE, HI. 96792

TMK: 86010002 HPR: 0000

000128
CABAHUG,REX E
86-341 PUHAWAI RD
WAIANAE HI 96792-2719

(SEE BACK)

Nancy S. Furuta
41-535 Flamingo Street
Waimanalo, HI 96795

Honorable Jonathon Scheuer
Chair
Land Use Commission
P.O. Box 2359
Honolulu, Hawaii 96814-2359

Re: Opposition to Proposal Important Agricultural Lands Designation

Dear Chair Scheuer and Members of the Commission,

My name is Nancy S. Furuta and I am a landowner/farmer in Waimanalo and own approximately 1 acre. I recently received a letter from the Land Use Commission informing me that my property has been designated by the City and County of Honolulu as Important Agricultural Lands (IAL). Further, I was informed that the Land Use Commission may be taking action to accept the City and County of Honolulu's Important Agricultural Lands designation which includes my property in Waimanalo.

I object to the designation of my property as IAL for the following reasons: the process for the IAL designation was flawed and did not fully inform landowners of the designation's impact; the LUC process did not provide adequate information as to how the acceptance of these maps would impact our property, there was not clear guidance on how I could opt out of the IAL designation, and lastly the process was rushed and has left my family and I confused and perplexed.

Please consider my concerns and reject the City and County of Honolulu's representation that it has followed all procedures with respect to state statute. The IAL designation process needs more vetting and landowners must be better informed about their options, how such designation will impact their lands, and whether or not they have the ability to "opt out" of such designation.

Thank you for your consideration.

Sincerely,

Nancy S. Furuta /5-24-2021

Nancy S. Furuta

Lot 17, situate at Kumuhau, Waimanalo,
District of Koolaupoko,
City and County of Honolulu, State of Hawaii
TMK: (1) 4-1-18-17

HANWHA ENERGY USA HOLDINGS CORPORATION
d/b/a 174 Power Global
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IRVINE, CALIFORNIA 92618
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May 21, 2021

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 May 26, 2021, Agenda Item V. - 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 V 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. 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.")

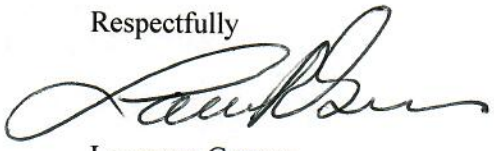
2. It is unclear what IAL designation means for landowners and renewable energy developers. While CCH's "O'ahu Important Agricultural Land Mapping Project" report dated August 2018 stated that IAL designation "does not change existing classifications or affect the range of current permitted land uses," 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

WAIHONU NORTH, LLC & WAIHONU SOUTH, LLC
745 Fort Street Suite 1800, Honolulu HI 96813

May 21, 2021

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

Subject: Meeting of May 26, 2021, Agenda Item V. - City and County of Honolulu Important Agricultural Lands ("IAL") Designation

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

Waihonu North, LLC ("Waihonu North") and Waihonu South, LLC ("Waihonu South") (collectively "Waihonu") appreciate the opportunity to provide written comments regarding the Commission's continued hearing on the City and County of Honolulu's ("County") recommendation ("Recommendation") regarding its proposed designations for Important Agricultural Lands ("IAL"). Waihonu North and South currently own and operate photovoltaic ("PV") renewable energy projects on TMK 9-5-1:86 (North) and TMK 9-5-1:87 (South) ("Solar Projects") in Mililani, Oahu. The Solar Projects include a 5,000 kilowatt ("kW") PV System (North) and a 1,500 kW PV System (South), both of which have been operational since July of 2016. The projects provide clean, renewable energy through Hawaiian Electric Company's ("HECO") Feed-In Tariff Program, which was enacted to encourage the addition of more renewable energy projects by providing an essential way for individuals, small businesses, governmental entities, and other developers to sell renewable energy to HECO to achieve the state's Renewable Portfolio Standards mandate.

We are in receipt of a notice from the Commission that parcel TMK 9-5-1:86 is included in the County's proposed IAL designations. While we do not believe that we received a similar notice for parcel TMK 9-5-1:87, we believe this second parcel is also proposed to be designated as IAL. Waihonu North and South are long-term sublessees of the land on which the Solar Projects are situated and, along with the landowner Honbushin which has already documented its objections to the Commission, have significant concerns regarding the proposed IAL designation on the Solar Projects and other renewable energy projects in the State.

The County's filings with the Commission demonstrate that the County did not consider renewable energy projects in the State and the reality that such projects are sited on agricultural land ("Ag Land") when preparing its Recommendation. This oversight could seriously hamper the State and County's efforts to fulfill their policy goals of divestment from fossil fuels for energy generation and the reduction of greenhouse gas ("GHG") emissions to combat global warming. We believe this oversight was caused, in part, through the County's truncated and insufficient

landowner consultation and public participation processes and a fundamental misunderstanding of the burdens and uncertainty that an IAL designation will cause for all landowners and, specifically, for renewable energy projects. In summary, Waihonu objects because:

- The County failed to consider the critically important need for renewable energy projects that often are allowed to be sited on Ag Land, to reach the State's mandated 100% renewable portfolio standard and carbon neutrality by 2045 and to balance these mandates with IAL designations;
- The County failed to consider and weigh each of the standards and criteria required under HRS § 205-44(c);
- The County failed to consider that the IAL designation currently imposes burdens and restrictions upon landowners and their use of their property;
- The County failed to consider that the IAL designation will very likely involve future restrictions upon landowners not yet adopted by the County;
- The County failed to meaningfully consult and cooperate with landowners and other groups under HRS § 205-47(b);
- The County's notices sent to landowners did not provide sufficient information to allow the landowner to meaningfully engage in the IAL designation process;
- The County did not send notices to all long-term lessees and did not post notices on the land proposed to be designated as IAL to notify long-term lessees of the potential IAL designation;
- The County failed to meaningfully respond to individual landowners' objections to the IAL designation; and
- The County did not include any renewable energy developer or owner in the TAC or otherwise meaningfully consult with renewable energy developers in the IAL designation process as required under HRS § 205-47(c).

The Renewable Energy Mandate in Hawaii.

The State of Hawaii has adopted ambitious and vitally important targets which direct the State to increase the amount of renewable energy in its energy portfolio with the goal of reaching a one hundred percent (100%) renewable portfolio standard ("RPS") and achieving carbon neutrality by 2045.[1] Achieving these targets requires the cooperation and coordination of the federal and state governments, counties, utilities, and the private sector. Currently, one of the primary mechanisms through which these policy objectives can be achieved are renewable energy projects like Waihonu's Solar Projects that displace traditional GHG-emitting fossil fuel energy generation.

[1] See HRS §§ 225P-5 and 269-92.

Renewable energy solar projects are vital to the State's reaching its RPS and carbon neutrality mandates. In HECO's most recent request for proposals for new renewable energy generation last year, the projects chosen were dominated by solar energy projects and included:

- On Oahu, eight solar-plus-storage projects and one standalone storage project totaling approximately 287 MW of generation and 1.8 GWh of storage;
- On Maui Island, three solar-plus-storage projects and one standalone storage project totaling approximately 100 MW of generation and 560 MWh of storage; and
- On Hawaii Island, two solar-plus-storage projects and one standalone storage project totaling approximately 72 MW of generation and 492 MWh of storage.[2]

Simply stated, Hawaii must continue to invest in and support renewable energy projects like the Waihonu projects if the State is going to achieve its RPS and carbon neutrality mandates.

Renewable energy projects are regularly, if not primarily, sited on land classified as Ag Land given the specific land attributes required to support a successful and cost-effective renewable energy project. Such projects are often large - spanning tens if not hundreds of acres - and cannot be easily sited within residential or urban land use districts. Solar projects specifically require large and relatively level parcels of land upon which to place solar panels, and they also require unobstructed access to intense sunlight. Given these and other practical constraints, Ag Land is often the best and only option for siting these important projects. The State Legislature has recognized the necessity for siting renewable projects on Ag Land in recent years, and particularly after the 2005 adoption of the IAL statute, through amendments to the permissible uses on Ag Land contained in Hawaii Revised Statutes ("HRS") § 205-4.5, which currently permits solar energy, cultivation of crops for bioenergy and biofuel processing, wind energy, geothermal, and hydroelectric facilities on Ag Land. It is undeniable, as recognized by the Legislature through its amendments to HRS § 205-4.5, that the State has a compelling interest in permitting renewable energy projects to be sited on Ag Land and that IAL designations need to be in sync with this compelling interest.

The IAL Designation and Policy Goals.

In 2005, the State Legislature created the IAL designation and processes through which such a designation could be granted or imposed upon land, which was codified at HRS Chapter 205-41, *et seq.* ("IAL Subchapter"). The intent of the IAL Subchapter is to serve the State's interest in,

> conserving the State's agricultural land resource base and assuring the long-term availability of agricultural lands for agricultural use to achieve the purposes of:
>
> (1) Conserving and protecting agricultural lands;

[2] See Hawaiian Electric selects 16 projects in largest quest for renewable energy, energy storage for 3 islands, at https://www.hawaiianelectric.com/hawaiian-electric-selects-16-projects-in-largest-quest-for-renewable-energy-energy-storage-for-3-islands (last accessed 5/20/21).

(2) Promoting diversified agriculture;

(3) Increasing agricultural self-sufficiency; and

(4) Assuring the availability of agriculturally suitable lands,

pursuant to article XI, section 3, of the Hawaii State Constitution.

HRS § 205-41. The objective of the identification of IAL 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." HRS § 205-42(b). To achieve this objective, the State must, among other things, "[p]romote agricultural development and land use planning that delineates blocks of productive agricultural land and areas of agricultural activity for protection from the encroachment of nonagricultural uses." HRS § 205-42(b)(1).

The IAL Subchapter also establishes policies which the state and counties must promote through their own "agricultural policies, tax policies, land use plans, ordinances, and rules." HRS § 205-43. The counties must adopt policies, ordinances, and rules that, among other things:

(2) <u>Discourage</u> the fragmentation of important agricultural lands and <u>the conversion of these lands to nonagricultural uses</u>;

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

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

HRS § 205-43 (emphasis added).

<u>The County's Process Failed to Recognize or Consider the Balance between the State's Interest in its RPS, Carbon Neutrality, and IAL</u>.

While secondary agricultural activities can sometimes occur on lands where renewable energy projects are sited, it is apparent that a stark tension exists between the IAL Subchapter's policy directive that IAL should be used for agricultural uses only and that nonagricultural uses and activities should be directed to other lands, on the one hand, and the State's renewable energy and carbon neutrality policies, on the other. Unfortunately, the County utilized a truncated review process to develop its Recommendation that failed to follow the process required by law and that has resulted in a Recommendation that ignores the significant interest of the State, the County and renewable energy development in siting renewable energy projects on Ag Land.

The law directs the County to "identify and 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). HRS § 205-44 establishes the standards and criteria that the County must use to identify proposed IAL. HRS § 205-44(a) states that "[t]he standards and criteria in this section shall be used to identify important agricultural lands" and "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." The standards and criteria that must be considered and weighed before the County can make its IAL recommendation include:

> (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.

HRS § 205-44(c).

The County explains in its Recommendation, without further explanation or support, that it had the discretion to deviate from the process established by the Legislature by statute. Rather than consider each of the eight criteria required by statute, the County decided to use three "priority criteria," and the existence of only one of the priority criteria was sufficient to merit an IAL designation. Recommendation at 14-16. This procedure is plainly inconsistent with what the statute requires, which is that the County must consider and weigh each of the eight criteria established by statute. The County's choice to require only one priority criteria is also contrary to the spirit and intent of the IAL Subchapter which recognizes that multiple factors are relevant and must be considered and weighed before a decision can be made to recommend land as IAL.

At the Commission's previous meeting on April 28-29, 2021 ("April Meeting"), the County appears to have indicated that it wished to cast a wide net and capture as much potential land for IAL to provide small landowners the opportunity to have their land designated as IAL without significant expense given the various incentives available to IAL. The County maintained at the April Meeting that there were only benefits and no attendant burdens associated with the IAL designation and that nothing regarding the permissible use of such land would change for the landowner as a result of the IAL designation. Respectfully, this position is untenable, directly contrary to the IAL Subchapter, and potentially very harmful to Waihonu and other renewable energy projects on Oahu.

The IAL Designation was Designed to Impose Restrictions on the Permissible Use of IAL.

The County's claim that it cast a wide net for its IAL recommendation because of the associated incentives for such a designation and the absence of any burdens upon the landowners is not supportable. The April Meeting established that there are already statutory burdens placed upon IAL through the designation itself and without further County action. These existing additional burdens include further restrictions on farm dwellings that are not currently imposed by the County's Land Use Ordinance ("LUO") (HRS § 205-45.5) and standards and criteria for reclassification or rezoning of IAL that must be performed by the Commission (HRS § 205-50).

Just as critical, there is great uncertainty regarding what future restrictions the County will impose on IAL to comply with the IAL Subchapter. Currently, insofar as Waihonu has been able to discern, the County's LUO does not specifically address IAL except for a reference in the County's AG-1 zoning classification. See LUO § 21-3.50(b).[3] As recognized in Honbushin's written comments, it is unclear whether AG-2 zoning will change to AG-1 land upon IAL classification, which would impact the permitted uses of the property.

Just as important, an IAL designation, once imposed, will subject IAL to future regulation by the County that will undoubtedly be adopted to comply with the Legislature's policy directives in HRS § 205-43. As already discussed, the policies direct the counties to avoid the use of IAL for anything but agricultural uses, to discourage the fragmentation of such lands, and limit improvements upon such lands. See HRS § 205-43. We cannot know now what future changes will occur to the County's LUO to protect IAL as directed by the Legislature. However, we must assume that the County will comply and impose further restrictions on the use of such land as indicated in the IAL Subchapter, which will only make the operation and development of renewable projects that much more difficult. The current unclarity regarding what those restrictions will be, does not negate that the IAL designation is designed to further restrict non-agricultural uses from such IAL. The polices and directives that the Legislature has instructed

[3] LUO § 21-3.50(b) states that "[t]he intent of the AG-1 restricted agricultural district is to conserve and protect important agricultural lands for the performance of agricultural functions by permitting only those uses which perpetuate the retention of these lands in the production of food, feed, forage, fiber crops and horticultural plants. Only accessory agribusiness activities which meet the above intent shall be permitted in this district."

must be applied to IAL through the County's LUO and other regulatory pathways places at risk current and future renewable energy projects sited on Ag Land.

Landowners Due Process Rights are Impacted by the IAL Designation and the Process Followed by the County Did Not Provide Reasonable Notice or a Meaningful Opportunity to be Heard.

Having established that the IAL designation currently restricts and will certainly in the future further restrict a landowner's ability to use his or her land, due process requires that the landowner be provided sufficient notice and an opportunity to be heard before any such designation may be imposed. "The basic elements of procedural due process of law require notice and an opportunity to be heard at a meaningful time and in a meaningful manner before governmental deprivation of a significant property interest." Sandy Beach Def. Fund v. City Council of City & County of Honolulu, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989).

The IAL Subchapter has thorough procedural requirements that must be followed by the County before the County can submit its proposed IAL designations to the Commission. HRS § 205-47 provides the following:

> (b) Each county shall develop maps of potential lands to be considered for designation as important agricultural lands in consultation and cooperation with landowners, the department of agriculture, agricultural interest groups, including representatives from the Hawaii Farm Bureau Federation and other agricultural organizations, the United States Department of Agriculture--Natural Resources Conservation Service, the office of planning, and other groups as necessary.
>
> (c) Each county, through its planning department, shall develop an inclusive process for public involvement in the identification of potential lands and the development of maps of lands to be recommended as important agricultural lands, including a series of public meetings throughout the identification and mapping process. The planning departments may also establish one or more citizen advisory committees on important agricultural lands to provide further public input, utilize an existing process (such as general plan, development plan, community plan), or employ appropriate existing and adopted general plan, development plan, or community plan maps.
>
> …
>
> 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.
>
> In formulating its final recommendations to the respective county councils, the planning departments shall report on the manner in which the important agricultural lands mapping relates to, supports, and is consistent with the:

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

(Emphases added). The County's consultation processes were wholly insufficient to protect the significant interest of landowners in the land use restrictions imposed upon their properties.

Consultation and Cooperation with Landowners and Public Involvement.

The County was required to draft its IAL Recommendation "in consultation and cooperation with landowners … and other groups as necessary." HRS § 205-47(b). The Commission has in its record the notices sent out by the County to affected landowners through regular US mail, which were apparently intended to satisfy this requirement. The notices include (1) Landowner Notice and map of Proposed IAL, dated December 29, 2016 ("2016 Notice");[4] (2) Final Landowner Inclusion Notice, dated November 8, 2017 ("2017 Notice");[5] and (3) Postcard Reply.[6] The 2016 Notice solicits written comments from landowners, but does not explain why the County has found that the landowner's land merits an IAL designation. The 2016 Notice does not inform landowners they can seek an exemption or how to seek an exemption. The 2017 Notice is a final notice that does not solicit comments; rather, the postcard indicates that the maps are final and implies that there is no further recourse. The postcard reply is apparently an automatic response mailed by the County if a comment from a landowner was received and does not address the landowner's specific comments or concerns. The County cannot plausibly claim that this process constitutes "consultation and cooperation with landowners" required by HRS § 205-47(b).

The landowner from which Waihonu leases its land is Religious Corporation Honbushin and Honbushin International Center ("Honbushin"). Honbushin's experience with the County is illustrative of this fundamentally flawed and inadequate process utilized by the County. Honbushin submitted its own written testimony to the Commission, dated April 27, 2021, in which Honbushin objected to the proposed IAL designation and explained its previous interactions with the County during the IAL designation process.[7] Honbushin explains in its

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[4] See https://luc.hawaii.gov/wp-content/uploads/2021/04/Landowner-Notice-and-Map-of-Proposed-IAL-12-16.pdf
[5] See https://luc.hawaii.gov/wp-content/uploads/2021/04/Final-Landowner-Incl-Notice-2.pdf
[6] See https://luc.hawaii.gov/wp-content/uploads/2021/04/2018-04-04-Postcard-Reply.pdf
[7] See Honbushin's written comments, dated April 27, 2021, at https://luc.hawaii.gov/wp-content/uploads/2021/04/IAL-public-testimony-Honbushin-Interational-Corp.pdf

written comments that it objected to the IAL designation in 2017 and was told that it would receive a response, but no response was provided by the County.

Because the County did not engage in a meaningful consultation and cooperation process required by statute, the County cannot satisfy its obligation to the Commission under HRS § 205-47(d). HRS § 205-47(d) instructs:

> In formulating its final recommendations to the respective county councils, the planning departments shall report on the manner in which the important agricultural lands mapping relates to, supports, and is consistent with the:
>
> (1) Standards and criteria set forth in section 205-44;
>
> (2) County's adopted land use plans, as applied to both the identification and exclusion of important agricultural lands from such designation;
>
> (3) Comments received from government agencies and others identified in subsection (b);
>
> (4) Viability of existing agribusinesses; and
>
> (5) Representations or position statements of the owners whose lands are subject to the potential designation.

(Emphasis added). The County's consultation processes did not adequately solicit representations or positions statements of affected landowners (or long-term lessees) of proposed IAL. Appendix E to the Recommendation is what the County claims satisfies the requirement that its Recommendation relates to, supports or is consistent with representations or positions statements of owners. See Recommendation at 12. Appendix E shows that Honbushin submitted an objection to the IAL designation because Honbushin "fears that the City will impose stricter requirements for AG use on AG properties with an IAL designation." The only response indicated in the chart is "No change; due to context and critical mass." See Appendix E at 10. It is unclear to Waihonu what this means. The County failed to engage meaningfully with Honbushin, and Honbushin never received any explanation or clarification from the County regarding its concerns and objections to the proposed IAL designation. Further, Honbushin was never afforded an opportunity to respond to the County's disagreement with its objection. At the very least, landowners had to be provided a meaningful opportunity to consult and cooperate with the County in its decision-making, which is what is required by HRS § 205-47(b), and is something that the County never provided.

In addition, to its knowledge, Waihonu never received notices from the County that the land upon which it is a long-term lessee was proposed to be designated as IAL. Waihonu's lease term for the land upon which its Solar Projects are situated began in April of 2014 and will run for at least twenty years. The first notice Waihonu received was the notice from the Commission, dated April 12, 2021, informing landowners of the Commission's April 28-29 meeting. Waihonu

submits that long-term lessees like Waihonu that have significant projects sited on agricultural land is a group with whom consultation and cooperation was necessary under HRS § 205-47(b). Similarly, to its knowledge, Waihonu never received any invitation to a public meeting regarding the County's IAL designation process. It is also unclear why Waihonu only received notice from the Commission regarding TMK 9-5-1:86 and received no such notice regarding TMK 9-5-1:87.

These oversights by the County were compounded by the County's failure to include any renewable energy project developer, owner, or operator in its Technical Advisory Committee ("TAC"), which appears to have included only one non-renewable energy landowner. See Recommendation at 5. As previously noted, renewable energy projects represent a critically important industry that uses Ag Land. The County's failure to consult with such stakeholders has resulted in a Recommendation to the Commission for designation of IAL that could have disastrous consequences for the State's renewable energy sector and that will undermine the State's carbon neutrality goals. Waihonu respectfully submits that consultation with renewable energy developers through the TAC and through other public consultation processes could have helped the County to avoid a Recommendation to the Commission that is fundamentally flawed. The Recommendation is fundamentally flawed because it was developed without significant landowner consultation and cooperation, without any input from renewable energy developers, and without sufficient opportunities for other engagement by the public, which were both required by law.

Waihonu does not believe the Commission can or should accept the County's Recommendation as the County has not satisfied the important and rigorous landowner and public consultation processes required by law. Waihonu respectfully suggests that the Commission remand this matter back to the County and instruct the County to meaningfully engage and consult with landowners and make whatever revisions necessary to its proposed IAL designations that result from this further consultation with landowners, renewable energy developers, and additional opportunities for public involvement.

Thank you for the opportunity to provide these comments.

Sincerely,

Laurent Nassif

Laurent Nassif, Senior Director Waihonu North, LLC & Waihonu South, LLC

cc: Chief Clerk Riley Hakoda (riley.k.hakoda@hawaii.gov)

HAWAII CLEAN POWER ALLIANCE

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**.

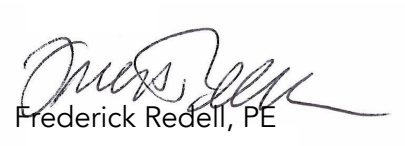
The C&C compounded this baseline failure by not considering all of the standards and criteria for IAL as required under HRS Section 205-44. The C&C must apply **all** of the standards and criteria under HRS Section 205-44 before it recommends land for IAL. This obligation is set forth in HRS Section 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,



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