Hakoda, Riley K

From: Frederick Redell <fred@hawaiicleanpower.org>
Sent: Tuesday, May 25, 2021 12:56 PM
To: DBEDT LUC
Cc: Hakoda, Riley K
Subject: [EXTERNAL] Fwd: Testimony, May 26, 2021, Agenda Item V
Attachments: HCPA Testimony to LUC re IAL.pdf

Categories: Red Category

Aloha,

I didn't see the attached testimony posted. I do see testimony from April. Can you please consider this?

Mahalo!

Get Outlook for iOS

From: Frederick Redell <fred@hawaiicleanpower.org>
Sent: Friday, May 21, 2021 16:03
To: dbedt.luc.web@hawaii.gov
Subject: Testimony, May 26, 2021, Agenda Item V

Please see attached testimony. Mahalo!

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,

Frederick Redell, PE
Executive Director
(949) 701-8249
www.hawaiicleanpoweralliance.org

Hakoda, Riley K

From: John McCauslin <john.mccauslin1960@gmail.com>
Sent: Tuesday, May 25, 2021 1:29 PM
To: Hakoda, Riley K; Quinones, Natasha A
Subject: [EXTERNAL] McCauslin's IAL Objection Request TMK: 85019054
Attachments: 20210525_130351.jpg

Riley, as a small farm owner, I don't have a computer, fax, printer or scanner therefore cell phone email is all. Please accept this 2021 Real Property Notice os Assessment as proof that my property does not qualify for the C&C IAL program therefore should be excluded. Based on how this program was administered, announced, lack of pono, the programs current design does not benefit me, my property or short and long range goals. I respectfully ask to be removed from the IAL list based on my land area, the C&C handling of this and down the road future unknowns.

I will also foward emails I sent to Natasha Quinones pertaining to my objections with intent these will be submitted as my testimony of objection that the C&C did not do a "GOOD" job but performed a "good enough"
job on they'll proposal.
I strongly believe that a farmers intent is to achieve good enough food for the public right. So why is the city soing a good enough proposal.
Should be "GOOD" as the food they expect from us farmers.

Please also send me the meeting registration links for both days as well as the actual meeting links.

Mahalo
V/r
John McCauslin
TMK 85019054
808 927-2250

Hakoda, Riley K

From: John McCauslin <john.mccauslin1960@gmail.com>
Sent: Tuesday, May 25, 2021 1:33 PM
To: Hakoda, Riley K
Subject: [EXTERNAL] Fwd: 12May21 3p IAL Q&A - TMK 85019054

Please include with my IAL Objection and Opt Out Testimony

---------- Forwarded message ---------
From: **John McCauslin** <john.mccauslin1960@gmail.com>
Date: Tue, May 11, 2021, 1:59 PM
Subject: 12May21 3p IAL Q&A - TMK 85019054
To: <admin@dmlhawaii.com>
Cc: Joanna Miranda <joanna.l.miranda@gmail.com>

Farming is not easy, more so in these ever changing times of climate change, financial downturns, unpredictable farming requirements, affordable equipment and material, costly pesticides, herbicides, fertilizers, irrigation, aging farmers, Government mandates, expenses, profits, income taxes, general taxes, resources, maintenance and property longevity. If Ag owners are to continue as this is a lifestyle, than there's gotta be more Enchourging than Discouraging incentives.

Bottom line:
NO FARMERS, NO FOOD.
Specifically since these are properties within the Hawaiian Islands provened self sufficient as the Hawaiians of old once did from ridge to reef.

Basic survival needs:
Water, food, shelter. Everthing else is luxury.

I own just about an acre in the Waianae Valley area, owned my parcial since 2017 as the previous owner was aging, had no family to help farm, lost income, had no medical insurance, required hip surgery so forced ro sell her family generationally owned property in or to seek medical attention.

Unfortunately she died 3 months after her surgery so all for nothing. Thats what she and her family earned for years of farming.

Farming is new to me but am Enchourgaged towards self Sustainability. Take care self, neighbors, kupuna and those whom cannot afford. I invested my savings into my 2017 property purchase with no assistance, although educated via talks with C&C DPP, USDA and LUC. Again, plenty talk story, little action as I the farmer walk and work my land.

2018 planted fruit trees.

2019 I was able to produce some fruits therefore able to make some income to offset little of the expenses. Far from recoverying my initial and on going daily, monthly and annual costs. Climate changes had an impact too of how the trees grew and produced.

2020 took a hugh loss due to all businesses closing. Fruits were trashed or given away.

2021 sale losses continue as vendors try to regain thier businesses in or to place orders, make purchases.

WE, meaning you, my Ag neighbors, communities, Ag resourcing businesses, our elected council members and governemrnt POC's need to step it up.
Less paper, less talking, more helping as the farmers who are doing all the labor, stressing, investing, up front funding, sacrificing, researching and self-educating while others make the rules how and when we can yet take a cut of our livelihoods and income.

Here's my two cents worth:

-Allow Ag owners the option to opt in/out IAL category.
Purpose: Consideration towards Ag owner(s), thier finances, economic, livelihood, aging kupuna, physical wellness, disabilities, potentially non-participating future family farmers, changes driven by climate change, government mandates, economy, finances, physical capacity, current and future farming requirements/outlook.

Appears that lands have changed hands since that April April testimonies, DPPs last assessment and data checks. Priorities have changed due to the pandemic although basic needs such as food consumption has not.

Lands have changed due to climate, financial turns, aging kupuna's and the generational gap of less potential farmers within the exsisting farmers communities.

-Make the Opt-in/Out option easy. More regulations, paperwork, timelines and schedules results in less time farming.

-Collaborate with and schedule regularly free n open community townhalls to include all government entities charged with responsibilities to the Ag specific lands. Each side of the island has unique Ag requirements and resources. Those seated positions were created and funded to help the farmers, not just collect a paycheck, benefits and retirement as to where Ag owners are dependent upon how thier crops do over a year or sometimes seasons.

-Reopen or redirect diverted natural running water to those Ag lands that once was dependent on those resources and it was ease to than to utilize and practice the ole Hawaiian ridge to reef farming concepts.

Add more USDA, State, C&C, Ag incentives i.e.:
-Extend the BOW Cross-Connect Annual Inspection requirement to align with the Real Property 10yr Ag Dedication requirement. Annual inspections adds another layer from an outside source to mandate and schedule owners to perform.

-Lower or cover a percent of the BOW Ag Water Rate cost as incentive and enchorage Ag owners to continue farming yet entice potential farm family members and potential Ag buyers to purchase, to farm and ultimately provide food for Hawaii.

-Cover BOW Cross connect inspectors fees as an incentive rather than provide a tax break which is really only a percentage taken.

-Utilize the State and C&C owned tree clippings made to mulch and have delivered to Ag owners free of charge to encourage farming, reduces use of herbicides which poisons soil, surrounding and edible crops, yet is a natural nutrient for farming.

-provide incentives for Ag owners utilization of Ag specific heavy, medium, lite equipment. Smaller scale owners may not have the finances, operator knowledge, laborers or equipment transport means.

-Enchourge Grow Local, Eat Local.
Not just talk it. It starts at the highest level in our government elect to back farmers with actual tangibles as I and fellow Ag owners who actually walk and invest in the lands.

-Those to old and electing not to farm should have thier lands rededicated to residential. However keeping the TMK as Ag, with exception as an
Ag-Non Active. This way should some generational gap family member decide to farm later, it would be an incentive and encouragement to rededicate the property back to Ag-Active. Of course the real property assessment and taxes would change. But least the owners have the option.

-As land become scarce and subjectively consumed to large financially backed developers and investors, considerations should be made for those Ag owners faced with having to house those extended family members to potentially reframe from potential homelessness.
I believe the real property assessment rule is 5,000 sqft is automatically declared as residential althouth the TMK identifies the entire property as Ag. If my actual farm house is 750 sqft, I believe i could extend the house not to exceed 5,000 sqft. Question arises as to how and what is the real property assessment metric used to identify what sqft specifically qualifies as residential and Ag when the entire TMK is Ag more so if the residential house is less than 5000 sqft.

Last point:

-Repeal the Joned Act. Allow entities to have an open market competition there by reducing sole entity driven high cost to the general public.

In closing, I appreciate all that my fellow farmers strive for as it is not easy but rewarding when your crops come in, your able to feed, make some income and be able to keep and work your lands for the benefit of your family, neighbors, kupuna's, those less fortunate and your community.
I only seek that our public officials would or will have the same appreciation and give the active Ag owners what they need to sustain and keep going.

V/r

Mahalo Nui Loa
John McCauslin
Waianae Valley
TMK 85019054

Hakoda, Riley K

From: John McCauslin <john.mccauslin1960@gmail.com>
Sent: Tuesday, May 25, 2021 1:31 PM
To: Hakoda, Riley K
Subject: [EXTERNAL] Fwd: LUC Meeting Agenda Subscription
Attachments: 20210525_130351.jpg

Categories: Red Category

TMK 85019054 McCauslin's IAL Objection and Opt out testimony

---------- Forwarded message ---------
From: **John McCauslin** <john.mccauslin1960@gmail.com>
Date: Tue, May 25, 2021, 1:08 PM
Subject: Re: LUC Meeting Agenda Subscription
To: Quinones, Natasha A <natasha.a.quinones@hawaii.gov>

Please include this 2021 Real Property Notice of Assessment with my objection to the C&C DPPs IAL proposal as proof that my .856 acre does not qualify for the IAL program IAW the State Law.
Favorably request receipt and acknowledgement to this submission for the 26-27May21 meetings

Mahalo
John M. McCauslin

On Tue, May 25, 2021, 12:59 PM John McCauslin <john.mccauslin1960@gmail.com> wrote:
Good afternoon. I would very much like to attend the 26th and 27May 9a zoom LUC IAL zoom meetings.
Please send the registering links as well as meeting entering links.

PLEAE ALSO NOTE THAT I WISH TO OPT OUT OF BEING IDENTIFIED AS IAL as my property is less than an acre.
Verification of property sqft is identified on the Real Property Tax Assessment statement provided bt the C&C and will be submitted along with my objections to the C&C means of improperly managing, handling and excuting this program with what I deem as a "GOOD ENOUGH" approach. IAW the State and all due respect to the hard working farmers and dedicated Ag owners, nothing should be good enough, as the food provided to our stores, farmers markets and ultimately everyones table, is GOOD and not good enough. Nothing less than good should come from those State and C&C agency than the same quality of food provided.
Again I repeat, my property size does not quality to be listed as IAL nor do I wish to be identified based on the less than quality work that was performed by the C&C, less than quality incentives the C&C is electing and the lack of GOOD recommendations involved with this process and program.

I am a small farm dwelling, do not have a computer, printer or fax in order to submit a formal grievance therefore please accept this email as my testimony.

Favorably request receipt of this submission and acknowledgement that its been entered for against what the city performed and is recommending as there wasnt full disclosure, full announcement nor full honesty in this process. Shameful that islanders would be treated this way when all should work together for the benefit and betterment of all.

Mahalo
John McCauslin

TMK 85019054

On Tue, May 18, 2021, 1:41 PM John McCauslin <john.mccauslin1960@gmail.com> wrote:
85-508 Waianae Valley Road
Waianae, HI 96792

Subscribing to receive what pertains to all islands and IAL.

On Mon, May 17, 2021, 11:47 AM Quinones, Natasha A <natasha.a.quinones@hawaii.gov> wrote:

Aloha,

Thank you for registering to receive the Land Use Commission's Agenda. We are currently updating our email and mailing list. You have indicated that you wish to receive our Agenda by Mail and Email, however we are missing some information. Please reply to this email and provide us with the following:

- Complete mailing address if you want to receive the agenda by mail
- Indication of whether your subscription is only for:
  - Statewide
  - Oahu
  - IAL matter only

Mahalo,

Natasha A. Quiñones

Program Specialist

State of Hawaii- Land Use Commission

Email: Natasha.a.quinones@hawaii.gov

Phone: 808-587-3923

Fax phone: 808 587-3827

Website: www.luc.hawaii.gov

2021 REAL PROPERTY NOTICE OF ASSESSMENT
CITY AND COUNTY OF HONOLULU
REAL PROPERTY ASSESSMENT DIVISION
TAX YEAR JULY 1, 2021 TO JUNE 30, 2022

www.realpropertyhonolulu.com

850190540000

119129 MCCAUSLIN, JOHN M TR
85-508 WAIANAE VALLEY RD
WAIANAE HI 96792-2637

Honolulu Office
842 Bethel St. Basement
Honolulu, Hawaii 96813

Kapolei Office
1000 Uluohia St. #206
Kapolei, Hawaii 96707

APPEAL HOTLINE: (808)768-7000
Only available December 15, 2020 through January 15, 2021, from 7:45 am to 4:30 pm.
Please call with any questions or concerns.

THIS IS NOT A BILL

TAX RATES ARE POSTED ON OUR WEBSITE IN JUNE 2021 AND TAX BILLS ARE SENT IN JULY 2021

ASSESSMENT OF PROPERTY: This notice contains assessment information based on property records. Real property is assessed in accordance with Revised Ordinances of Honolulu 1990 ("ROH"). "Real property shall be assessed in its entirety to the owner..." ROH Sec. 8-6.3, "In its entirety" is interpreted as **fee simple** interest. "All real property shall be subject to a tax upon **100 percent** of its fair market value..." ROH Sec. 8-6.1.

NOA 1 of 2

PARCEL ID (Tax Map Key)	SITE ADDRESS	LAND AREA
850190540000	85-508 WAIANAE VALLEY RD	.856 ACRE

FEE OWNER(S)	UNIQUE ID	LESSEE(S) / ASSIGNEE(S)	UNIQUE ID
MCCAUSLIN,JOHN M TR	85019054000000005		

EXEMPTION TYPE	EXEMPTION AMOUNT AND NAME OF CLAIMANT

2021 PROPERTY CLASS	2020 PROPERTY CLASS (IF DIFFERENT THAN 2021)	SPECIAL ASSESSMENT
AGRICULTURAL		AG DEDI - 10 YEARS

2020 PROPERTY VALUE	2020 EXEMPTION AMOUNT	2020 NET TAXABLE VALUE
79,200	0	79,200
2021 PROPERTY VALUE	**2021 EXEMPTION AMOUNT**	**2021 NET TAXABLE VALUE**
10,000	0	10,000

APPEAL DEADLINE - JANUARY 15, 2021

To dispute this assessment, file an appeal (form BFS-RP-P-51) to the Board of Review with a $50.00 cost of deposit and evidence or supporting documentation. Refer to page 2 for more information.

Website QR code

Hakoda, Riley K

From: Gina Teixeira <kinauilani@yahoo.com>
Sent: Tuesday, May 25, 2021 8:34 AM
To: DBEDT LUC
Subject: [EXTERNAL] Testimony
Attachments: scan0426.pdf

Aloha,

Please see attached document.
If any questions you can call me at 808-384-4375

Mahalo,
Gina U. Teixeira

May 24, 2021

Joseph O. Teixeira
Gina U. Teixeira
87-737 ILI ILI Road
Waianae, HI 96792
TMK:8-7-019-042

RE: Important Agricultural Land (IAL) by the City and County of Honolulu

Dear Land Use Commissioners,

Uno Family Farm LLC were the previous property owners and leased out for over 30 years to Yoshie K. Arakaki owner of YK Corp / YK Hog Farm. Uno Family sold their property and we purchased it in 2019, Yoshie was not aware or no letters was given to her regarding the IAL prior to her passing in July of 2020, then we received the letter dated April 12, 2021 from Attorneys At Law Durrett Lang Morse, LLLP in late April from Uno Family. We both are the new owners of YK Corp / YK Hog Farm and are still actively raising hogs full time. In the C&C of Honolulu recommendations, no one has contacted us or made a visit to the property to do soil quality studies and see how the land is currently being used. This 5 acre farm has 4 large sumps, pastures, 3 barns and one dwelling, lots of coral and over 30 years of pig manure. We are not changing our designation use and asking to please remove our Parcel.

Mahalo,

Joseph O Teixeira

Gina U. Teixeira

Hakoda, Riley K

From: WAA Waimanalo Agricultural_Association <waimanaloag@gmail.com>
Sent: Tuesday, May 25, 2021 12:33 AM
To: DBEDT LUC
Cc: Mark Fukui; Justin Franzmeier; Brian Boltz
Subject: [EXTERNAL] Fwd: Waimanalo Agricultural Assn Opposition to IAL Mapping by HNL Administration 5.25.2021.pdf
Attachments: Waimanalo Agricultural Assn Opposition to IAL Mapping by HNL Administration 5.25.2021.pdf

Aloha LUC,

Please accept Waimanalo Agricultural Association's letter in opposition to the City and County of Honolulu's designation of IAL lands.

Thank you,

Waimanalo Agricultural Association

Waimanalo Agricultural Association

PO Box 42
Waimanalo, HI 96795-0042
http://waimanaloag.com

Phone: (808) 343-4624
Fax: (808) 259-9813
waimanaloag@gmail.com

May 26, 2021

TESTIMONY IN OPPOSITION TO THE PROPOSED IMPORTANT AGRICULTURAL LANDS MAP DESIGNATION BY THE CITY AND COUNTY OF HONOLULU

Land Use Commission Section IV regarding Conformance of C&C of Honolulu Important Agricultural Lands Recommendation to Applicable Statutory and Procedural Requirements

Dear Chair Scheuer and Members of the Commission,

The Waimanalo Agricultural Association (WAA) is writing to express its opposition to the recently proposed Important Agricultural Lands (IAL) map designation for the City and County of Honolulu, specifically for Waimanalo. The Waimanalo Agricultural Association was formed in November 1995 to address a number of concerns in the Waimanalo neighborhood. In 1995, the main concern for Waimanalo farmers was the increasing crime rate in the farm lots. While the overall purpose of WAA is to improve the safety, security and appearance of the neighborhood; to encourage communication and fellowship among members; and to work together for long term solutions to problems, the association was originally formed because of the escalating theft in the farm areas. Recently, Waimanalo has been faced with pressures from non-agricultural related industries, including but not limited to, schools and other non-agricultural interests moving onto agricultural lands. WAA has evolved as the voice for Waimanalo farmers and landowners with an interest in preserving agricultural practices within the limited agricultural lands.

Upon learning of the recent mapping of Waimanalo agricultural lands as important agricultural lands – many landowners and farmers were perplexed and confused of how such designation would impact their lands, its value and their uses. At a recent WAA meeting, attendance was drawn in excess of forty Waimanalo Agricultural landowners and farmers who expressed confusion and dissatisfaction with the Land Use Commission's process of the IAL designation of farmlands on Oahu and Waimanalo specifically. While the IAL concept was introduced as early as 2005, it was not until 2017 that a Department of Planning and Permitting representative attended a WAA meeting and shared that when the time came to designate IAL lands, that farmers and landowners would have the option of "opting out" of such designation. It is unclear to WAA members whether that process exists and what steps one would need to take to opt out of the designation.

Furthermore, as we continue to learn about the law's intent, it appears that the IAL designation and its incentives were meant to benefit large agricultural landowners and not small agricultural lots. For example, a landowner of 2-5 acres of agricultural lands would not be allowed to "up-zone" 15% of its land for other developments. Elderly farmers and landowners are ill informed and nervous that such designation will hinder their children and grandchildren's ability to farm and live on such lands.

WAA respectfully requests the Land Use Commission take no action on the IAL designation for Oahu and request the City and County of Honolulu and the Honolulu City Council review the IAL designation process and improve its communication with impacted agricultural landowners of the impact of such designation. WAA requests that the LUC reject the current IAL maps submitted by the city and county of Honolulu.

Hakoda, Riley K

From: Savannah Miguel Botelho <sbotelho@ychawaii.com>
Sent: Tuesday, May 25, 2021 10:52 AM
To: DBEDT LUC
Cc: Hakoda, Riley K
Subject: [EXTERNAL] Ltr fr YC to LUC re IAL Designation - EE Waianae Solar 5-25-21
Attachments: Ltr fr YC to LUC re IAL Designation - EE Waianae Solar 5-25-21.pdf

Categories: Red Category

Good Morning,

Please find the attached letter from Ms. Jodi Yamamoto on behalf of EE Waianae Solar, LLC, regarding the Conformance of City and County of Honolulu's Important Agricultural Lands Recommendation to Applicable Statutory and Procedural Requirements – Hearing May 26-27, 2021, dated May 25, 2021. Thank you.

Sincerely,

Savannah Miguel-Botelho
Legal Assistant to Jodi S. Yamamoto, Esq.,
Melissa T. Marushige, Esq., and David P. Jordan, Esq.

Yamamoto Caliboso
A Limited Liability Law Company
1100 Alakea Street, Suite 3100
Honolulu, Hawaii 96813
Main: (808) 540-4500
Direct: (808) 540-4505
Fax: (808) 540-4530
Email: sbotelho@ychawaii.com
Website: www.ychawaii.com

Yamamoto Caliboso
A LIMITED LIABILITY LAW COMPANY

May 25, 2021

Via Email: dbedt.luc.web@hawaii.gov

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

Writer's Direct Dial: (808) 540-4503
Writer's Email: jyamamoto@ychawaii.com

Re: Conformance of City and County of Honolulu's Important Agricultural Lands Recommendation to Applicable Statutory and Procedural Requirements – Hearing May 26-27, 2021

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

My name is Jodi Yamamoto, and my firm represents EE Waianae Solar, LLC ("EWS"), which developed and currently owns and operates a 27.6 photovoltaic ("PV") facility in Waianae, Oahu ("Solar Facility") on land identified by Tax Map Key ("TMK") Nos. 8-5-2:22 and 8-5-3:30 ("Property"). The Solar Facility has been operational since January 2017. It generates roughly 72,900 MWH annually, which powers the equivalent of approximately 12,000 homes on Oahu every year, and offsets substantial carbon emissions and petroleum demand.

On May 19, 2021, EWS received a notice from the Commission dated May 11, 2021 ("May Notice"), informing EWS for the first time that the Commission is considering the City and County of Honolulu's ("County") recommendation ("Recommendation") for Designation of Important Agricultural Lands ("IAL") for Oahu at the Commission's May 26-27, 2021 meeting and that EWS's property is recommended for designation as IAL. For the reasons stated below, EWS respectfully requests that the Commission reject the County's Recommendation and require the County to reasonably notify and work with landowners to revise the Recommendation before the County's Recommendation is considered by the Commission.

I. The County's IAL Designation Process was Fundamentally Flawed and Fails to Protect Landowners' Due Process Rights.

With respect to the County's power to propose land to be designated as IAL, the IAL Subchapter requires, *inter alia*, the County's "consultation and cooperation with landowners" and an "inclusive process for public involvement in the identification of potential" IAL. Hawaii Revised Statutes ("HRS") §§ 205-47(b) & (c). Further, given the significant due process concerns involved in the designation of property as IAL, the IAL Subchapter requires the County 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." HRS § 205-47(d).

However, EWS never received any notice from the County regarding the IAL process, and the Commission's May Notice was the first notice that EWS received regarding the County's proposed IAL designations and was the first notice informing EWS that its Property is being proposed to be designated as IAL.

The County also failed to follow the IAL identification process outlined in Chapter 205, Part III (IAL) ("IAL Subchapter"). HRS §§ 205-44(a) and -47(a) require the County to consider and weigh eight criteria established by the Legislature at HRS § 205-44(c) for the identification of IAL. The County did not conduct this full analysis and instead considered only three "priority criteria" to justify an IAL designation. According to the County, the existence of only one of the following three criteria merited an IAL designation: (1) land currently used for agricultural production; (2) land with soil qualities and growing conditions that support agricultural production; or (3) land with sufficient quantities of water to support viable agricultural production. HRS §§ 205-44(c)(1), (2) and (5).

First, the County's abbreviated system is contrary to statute. Second, in this case, the Property meets none of these criteria and is a poor candidate for IAL. The Property is surrounded by urban uses, is not currently used for agricultural production and had been vacant for many years before EWS acquired it. The Property is also designated as low in agricultural value and is LSB Class E and Unrated. Moreover, the Property has no irrigation system and no current access to water. In short, the County's proposed designation of the Property as IAL is inappropriate, contrary to statute, and needs to be revisited.

Had the County actually conducted the robust landowner consultation process envisioned by the IAL Subchapter, EWS would have gladly worked with the County to ensure that the County's Recommendation was based on sufficient and accurate information. Instead, the County's abbreviated process, which could significantly burden landowners and affect their due process rights, has resulted in a Recommendation that includes for IAL designation land that is wholly unsuited for it. Rather than hear piecemeal the concerns of hundreds of individual landowners who were not able to participate in the initial consultation processes with the County, the Commission should reject the Recommendation and require the County to reasonably notify and work with landowners to revise the Recommendation before the County's Recommendation is taken up by the Commission.

II. The County's IAL Designation Process Undermines the State's Renewable Energy Goals.

The State is undertaking a transformative and critically important mission to reduce the State's reliance on fossil fuels through the achievement of ambitious renewable portfolio standard ("RPS") targets and through the reduction of greenhouse gas ("GHG") emissions, as recognized by statute at HRS § 269-92 (Renewable Portfolio Standard) and HRS § 225P-5 (Carbon Neutrality). The County's decision to mass designate potential IAL because only one "priority criteria" on any piece of land is presumably present could potentially undermine these clean energy goals and will make the development of renewable energy projects more difficult. The use of agricultural land to site renewable energy projects is critical given the land attributes necessary for a successful project and the limited space on Oahu. The Legislature has recognized the need for the use of agricultural land for renewable energy projects in HRS § 205-4.5, which permits different types of renewable energy activities, including solar energy projects, on agricultural land. However, the Legislature has adopted policy goals and directives for IAL that instruct that non-agricultural uses (e.g., renewable energy projects) should be diverted away from IAL, *see* HRS §

205-43, which will inject uncertainty into renewable project development and could undermine the State's clean energy goals. The County's IAL designation process runs afoul of both the explicit procedural requirements and the intent of the IAL Subchapter, while also severely undermining renewable energy policy goals.

EWS would like the County to restart the process following the landowner and public consultation required by the IAL Subchapter. The process should include renewable energy developers in the Technical Advisory Committee and other public consultation efforts. Otherwise, we are left with a piecemeal adjudication by the Commission of the propriety of the County's proposed IAL designation for the hundreds of landowners who have concerns about the County's Recommendation. EWS therefore respectfully requests that the Commission reject the Recommendation and require the County to undertake the landowner and public consultation processes required under the IAL Subchapter and to revise the maps accordingly.

Thank you for the opportunity to provide these comments regarding the County's IAL Recommendation.

Very truly yours,

Jodi S. Yamamoto
for
YAMAMOTO CALIBOSO
A Limited Liability Law Company

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

Hakoda, Riley K

From: katshardy <katshardy@gmail.com>
Sent: Tuesday, May 25, 2021 11:18 AM
To: Hakoda, Riley K
Subject: [EXTERNAL] Fwd: Agriculture Land Use

Sent from my T-Mobile 4G LTE Device

-------- Original message --------
From: katshardy <katshardy@gmail.com>
Date: 5/25/21 10:55 AM (GMT-10:00)
To: dbed.luc.web@hawaii.gov
Subject: Agriculture Land Use

To Land Use Commission,

I am late in meeting the deadline for submittal, but just wanted to get in writing our concerns. We do not know how to use zoom.

We are three sisters in our 70's who own two parcels of agriculture zone land in Kaaawa. TMK 1-5-1-009-004-0000 26,162 square feet and TMK 1-5-1-009-003-0000
20,293 square feet. Parcel 003 is suitable for taro farming, a stream runs alongside.

We are concerned that the proposed restrictions may prevent our younger family members building a home without actively taro farming. This land has been in our Padeken/ Aweau family since the 1800's.

Both parcels are surrounded by Kualoa Ranch owned land. Access to our land is difficult. Kualoa Ranch has been cordial in right-of-way access.

Thank you for considering our concerns.

Raelene K. Combs, Kathleen K. Hardy, Caroldeen K. Sampaga

Sent from my T-Mobile 4G LTE Device

Hakoda, Riley K

From: Carol Okada <pqplant@yahoo.com>
Sent: Tuesday, May 25, 2021 1:37 PM
To: DBEDT LUC
Subject: [EXTERNAL] Land Use Commission Testimony
Attachments: Land Use Commission Testimony052521.docx

To whom it may concern,

Attached is our personal testimony regarding the CONFORMANCE OF C&C OF HONOLULU IMPORTANT AGRICULTURAL LANDS (IAL) RECOMMENDATION TO APPLICABLE STATUTORY AND PROCEDURAL REQUIREMENTS.

Regards,
Jay and Carol Okada

May 25, 2021

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

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

To the Members of the Land Use Commission:

In regards to the proposal for the designation of IAL lands for the island of Oahu, we respectfully submit our testimony and **request that you deny the County's proposal**. The County's administrative process was flawed in that there was a lack of full disclosure. The County did not provide in-depth explanations to the affected landowners.

We were in attendance at the Kapolei meeting several years ago and even briefly spoke to both the County's Agricultural Liaison and the Hawaii Department of Agriculture Planner prior to the start of the meeting. Neither of these conversations nor the presentation provided informed us of how IAL laws could potentially affect our property. The meeting emphasized primarily, through their power point presentations, mapping, the IAL law, and possible incentives that could be coming through the Legislative process. As such, there was nothing to comment on.

Now, it appears, we have our last opportunity to comment. What happened to the inclusive process for public involvement? Was the strategy to keep the affected landowners in the dark so that they could breeze through the process?

Like many other affected landowners, we received a letter from Durrett Lang Morse, LLP dated April 12, 2021. Only then, did we find out that there may be potential negative consequences to the IAL designation. Upon receipt of the letter, we tried to confirm or deny the issues, but were unable to do so.

It appears that the County is determined to make this designation whether or not it is reasonable, lawful, or would be beneficial to agriculture. According to the United States Department of Agriculture, National Agricultural Statistics Service, dated February 8, 2021, it states:

"Family farms comprise 93% of all Hawaii farms, account for 55% of land in farms, and 52% of the value of all agricultural products sold and government payments.

The data show that small family farms, those farms with a GCFI of less than $350,000 per year, account for 91% of all Hawaii farms and 34% of total land in farms. Large-scale family farms (GCFI of $1 million of more) make up less than 1% of all Hawaii farms. Mid-size family (GCFI between $350,000 and $999,999) account for 1.5% of Hawaii farms and 10% of the value of all agricultural products and government payments.

Compared to producers on mid-size and large-scale family farms, small family farm producers are more likely to be women and producers age 65 or older."

The County's decision show an apparent lack of understanding of how their process, which they have deemed adequate, will be to the detriment of agriculture. The County has impacted the mass majority of the farms in the state and failed to do the process with due diligence.

The County has worked with the "big guys" and have shown little interaction with the rest of us. For many small family farms, we are not slated to receive the incentives that the "big guys" got nor the ability to designate a portion of the property. We can't even get answers to our questions. The property itself is the primary asset. When will the questions of how IAL laws will affect the property; and will the laws significantly impact and diminish our rights to use our lands be answered? What happens to the farmers 65 and older who can no longer work due to the physical demands of farming, or what happens if farmers get sick? Do farmers have to leave their home?

We reiterate that the County did not do their due diligence. In fact, the County has provided false and misleading information, which has prevented an inclusive process from happening. There was no vetting, no thorough investigation before making their decision.

If agriculture is to succeed, it will be necessary for the next generation of farmers to have flexibility to adapt to new challenges, not be hindered with more restrictions. In this regard, the County has neglected to follow the intent of the law which was to make agriculture stronger.

We respectfully request that you deny the County's proposal as they have failed to meet the applicable statutory and procedural requirements.

Jay and Carol Okada

Hakoda, Riley K

From: Stevie Whalen <swhalen@harc-hspa.com>
Sent: Tuesday, May 25, 2021 2:07 PM
To: DBEDT LUC
Subject: [EXTERNAL] IAL 9-2005-023

Kunia Village Title Holding Corporation

P O Box 100

Kunia, HI

96759

May 25, 2021

Dear Land Use Commission Chair and Members of the Commission:

I am Stephanie Whalen, Vice President of the Kunia Village Title Holding Company. Our TMK 9-2005-023 is being consider for IAL designation. The owner has no real problems with this other than to be sure it does not compromise its existing council approvals and its intended mission: to house agricultural workers, associated agricultural structures and its community facilities.

The land is zoned Ag-1. It was formerly leased by DelMonte Fresh Produce Hawaii. Being a farming operation it legally built housing for its workers and related agricultural structures. When it vacated its lease Campbell Estate, the owner, transferred the existing Kunia Camp and related structures to Hawaii Agriculture Research Center. HARC established Kunia Village Title Holding Company according to IRS regulations to hold this asset and Kunia Village Development Corporation to assist in re-development (repairs and renovations). These are not farm operations. A variance was first approved to allow the existing uses to continue. Subsequently a 201H replaced the variance to allow an expansion of the agricultural low income housing units as needed. The land has not been rezoned. The owner does not intend to have it rezoned. However, it is not used for farming as intended by the IAL designation.

KVTHC is concerned about this only because its mission is to keep this land to support agriculture's needs such as affordable rental housing and facilities for agricultural businesses and are uncertain that this can continue under a strict interpretation of IAL.

HARC and its subsidiaries are in total support of the concept of IAL but for this parcel are concerned about interpretation and enforcement.

Thank you for this opportunity to provide testimony.

Stephanie Whalen

Vice President

Kunia Village Title Holding Corporation

Executive Director of Hawaii Agriculture Research Center

Hakoda, Riley K

From: Micah D <micahmiyaki@gmail.com>
Sent: Tuesday, May 25, 2021 2:23 PM
To: DBEDT LUC
Subject: [EXTERNAL] IAL Testimony

Aloha,

My name is Micah Miyaki and I am a Fire Fighter with the City and County of Honolulu. I purchased my home at 41-986 Waikupanaha Street in February 2021. I was just informed on 5/22/2021 about the IAL program by a neighbor who brought it up in conversation due to a letter they received in April. They mentioned that this was the first time that they have heard about anything related to this IAL program and were completely blindsided. After doing some research and looking through the proposed list of TMKs I found that my property could potentially be affected by this program. I was NEVER informed about this program from the City and County and the information was never disclosed to me during the purchasing process. I didn't even know that the proposed IAL designation process existed until my neighbor brought it to my attention. I have never received any type of notification mail, e-mail or phone call informing me about the IAL program since my purchase. Does the City and County have a process in place to notify new property owners of the IAL designation process/proceedings? I am opposed to the proposed IAL program which will adversely affect my property, my family, and my livelihood.

I understand the importance of agriculture however when I purchased my property I made sure I found a property which was Zoned "Residential". I did this so that I could secure a future and housing for my Ohana in the event anything were to happen to me whether it be through the line of duty or just due to natural causes. According to the land use ordinance Table 21-3.1 an AG-1 designation has to have a minimum lot area of five acres, and an AG-2 designation has to have a minimum lot area of 3 acres for major livestock and 2 acres for all other uses. My property would not fall under either of these designations because it is only an acre. The neighboring properties next to mine are an acre or below in size and also come under the residential zoning classification. I feel that this proposal will have a huge negative impact on people, families and kupuna. Especially those with properties smaller than 2 acres where having a farming operation would not be viable.

When I'm at work people from our community call us when a situation arises where they feel like they have no one else to turn to and need help. When we respond, we always give our best effort at every call no matter how big or small the call may seem. To them it feels like it's the worst day of their life and their livelihood is at risk. I am writing this testimony and reaching out because when I found out how I could be affected by this IAL program it felt like one of the worst days of my life. I felt/feel completely helpless, anxious and feel like my livelihood and everything I've worked so hard for is at stake. I am asking for your help and am respectfully asking that my property be excused and excluded from any IAL designation or the choice should be voluntary.

Mahalo,

Micah Miyaki

Ph# 728-5471

Email: micahmiyaki@gmail.com

Hakoda, Riley K

From: Eassie Soares-haae <eassiesoareshaae@yahoo.com>
Sent: Tuesday, May 25, 2021 11:44 PM
To: Hakoda, Riley K
Subject: [EXTERNAL] "Submitting 5 Questions Mahalo"

"Aloha Riley Mahalo for allowing me to submit Questions pertaining to our property TMK 8-6-011-004. Located at 86-346 Halona Rd Wai'anae Hawai'i. My name is Eassie A. Soares-Ha'ae and I am 1 of 39 owners for this property.

1) Question: Did the Department of Planning and permitting, State Land Use Commission, City & County or any other agency came to our property and did a Survey on our soil to see if it was adequate for mass agricultural farming for 18 acres. If yes can I get a copy of the Survey.

2) Did the D.P.P, SLUC, C&C or any other agency did a survey to see if we have adequate water supply to support 18 acres of mass agricultural farming? If yes can I get a copy of the Survey.

3) Is the state of Hawai'i going to provide continuous financial support to level our land, provide top soil, purchase irrigation supplies, purchase farming equipment tractors, back hoes and what ever else is needed for Sustainability for mass agricultural production?

4) The only previous mass farming on our property was a Dairy that was sublease to Richard Freitas back in 1952 and ended in 1982. 30 years out of the 97 years for Pastoral farming. Will we be able to sublease if the opportunity arise again?

5) How and why did our property get placed on the IAL Statute? Can I receive a copy of the reasoning behind that decision?

"Mahalo once again"
Eassie A. Soares-Ha'ae

Sent from Yahoo Mail for iPhone

Hakoda, Riley K

From: EJ <ej@hawaiiantel.net>
Sent: Tuesday, May 25, 2021 3:54 PM
To: Hakoda, Riley K
Subject: [EXTERNAL] IAL Meeting

Dear Sir,

I am attending themeeting tomorrow. Can you explain how these rule changes would affect smaller land owners who are not actively practicing commercial farming on their land? Many got their land decades ago and are using it according to what the law was then and also what their preferred use is, be it extended family living, small private farms for owners use etc. A lot of people are very concerned that someone is trying to redefine how they can use their own land. Thank you.

Elaine Johnson

Hakoda, Riley K

From: Alexander Garber <alexandercgarber@gmail.com>
Sent: Tuesday, May 25, 2021 7:19 PM
To: Hakoda, Riley K
Cc: Vanessa Kaneshiro
Subject: [EXTERNAL] LUC

Aloha Riley,

It isn't clear to me if more public testimony will be allowed in the LUC meeting May 26th and 27th meeting, could you please clarify? I feel it is only fair that I be able to respond to criticism of my testimony by Ms Apuna of DPP and Ms Evans of the Office of Planning.

My wife and I did compose written testimony submitted on May 11. However it does not appear to be on the LUC website. I'm looking at the public testimony section 5/1-5/14 (I pasted Vanessa's email below). Could you confirm if this was received and was posted somewhere else on the site? Was it provided to the Commissioners?

In regard to Ms Evans testimony it was only submitted 4 days ago. Not sure when it appeared on the LUC site. It directly contradicts my testimony. Her interpretation is that only the farmer needs to be working on the land and in fact suggests that only one farmer need be working and the rest of his family can live in separate dwellings and not be working. Unfortunately she made the statement without quoting the actual language of the statute which seems clear that the family must be working, in fact even Ms Apuna agreed with my interpratation during her testimony (timecode 2:59)

Chapter205-45.5 subsection 1
"(1) The farm dwellings and employee housing units shall be used exclusively by farmers and their immediate family members who actively and currently farm on important agricultural land upon which the dwelling is situated....."

I would like to know as a representative of the state Office of planning, is Ms Evans interpretation legally binding? Can any number of related individuals live on IAL land as long as one person is actively and continuously farming (whatever that actually means, do we have to work at night? what about breaks to eat or use the restroom?)

Thanks for your work Riley. I am sure this ordeal can not by much easier for you than it is for us.

Alex

--------- Forwarded message ---------
From: **Vanessa Kaneshiro Garber** <vanessa.kaneshiro@gmail.com>
Date: Tue, May 11, 2021, 8:05 PM
Subject: Fundamental problems with IAL requirements for farmers
To: <dbedt.luc.web@hawaii.gov>
Cc: Alexander Garber <alexandercgarber@gmail.com>, Hakoda, Riley K <riley.k.hakoda@hawaii.gov>

Aloha -

We ask that the LUC decline to change the land use designation of any property with a permitted Farm Dwelling.

We would like to submit the following, very real scenarios for discussion among the commissioners regarding fundamental problems with IAL designation before the upcoming May vote:

- Envision a future 40 years from now, where my husband and I are now 80 years old. We have sold fruit from our farm to local grocery stores and food trucks on the North Shore for the past 40 years. The heavy manual labor of farming is now too much for us. As the law is currently written, we are now in violation by not actively farming. **We think there should be some kind of clause that includes a temporary lifting of all the IAL requirements of farm production due to retirement and/or disability.**

- My husband and I currently have very young children, ages 6, 4, and 1. Envision, (God forbid) that something happens to us both and we both pass away. Grandparents and very young children now reside in the home on our farmland. The farm and residence have been passed on to the children in a trust and the title of the property is now in the children's names. **We think there should be a clause that includes a temporary lifting of all the IAL requirements of farm production until children are grown adults and financially able to resume farm production.**

  ***Listen to the April 28-29 hearing at timecode 02:59 in which DPP/Dawn Apuna states: "The issue about you have to be a - the occupants, the immediate family must be currently and actively farming the land. That's much more explicit. And I think a testifier... does that mean children have to be actively currently farming the land. And based on the statue of plain reading it can certainly be interpreted that way. And I'm sure the intention was not to require children to be farming the land. But it could certainly be interpreted that way."

  *** We are currently in compliance with all Statutes and Ordinances. But when our land is designated IAL, our children living in our home can certainly be interpreted as a violation of the law, but Ms. Apuna is sure that was not the intention.

We would also like to submit evidence for problems with the recent April 28-29 hearing in which DPP continued to mislead landowners regarding the new IAL designation:

Timecode 3:04: Dawn Apuna: "Currently, the current uses requires or prohibits certain uses. So, they do align pretty much with IAL. The same restrictions. So there are a few little slight differences but generally I don't think there's a great change in the land owners ability to use their land. There's no taking - it doesn't rise to a level of taking or a change in zoning or there's no change in their entitlements in zoning. But there are some finer points as far as farm dwelling occupancy and I think they're required to provide an ag plan if it's a new farm dwelling. But I don't think it rises to a level where an IAL designation significantly interferes with the use of their land."

- **IAL designation WOULD significantly impact our family in the event of death or disability. Concerns we would NOT face in our current agricultural designation.**

Timecode 3:09: Dawn Apuna: "We're not going out there and putting people in jail for this. A lot of what we do as far as enforcement is complaint driven. If your neighbor thinks you're not doing the proper things on your land, we might get a complaint, we might investigate. But even investigations and the ability to have sufficient evidence to truly enforce is a challenge for the

county. I mean, I guess people are admitting they are not in compliance but I don't think they should fear that we are going to run out and go and site them."

- **For a representative of the DPP to imply that we should not take a law seriously is problematic, if not unethical. And even if DPP does not strictly enforce the law now, we do not know what is going to happen 20 or 30 years from now. The city, the State or even outside developers could take advantage of an IAL classification to report the old, disabled, and very young, forcing them from their homes.**

Timecode 3:10: Jonathan Scheuer: "If they are farming now, and their land is designated as IAL, does it have any meaningful effect?" Dawn Apuna: "No."

- **Based on early comments this statement from the DPP is obviously false and misleading.**

Timecode 3:11: Jonathan Scheuer: "You say slightly affected." Dawn Apuna: "I think it's just a matter of looking closely at 205.45.5 means and what is currently required or not required. I think there's some nuances there that even I haven't completely come to a determination on."

- **We think the fact that even DPP is not 100% sure of the requirements is highly problematic. No property with a permitted Farm Dwelling should be forced into the IAL designation until this is resolved.**

We think that if the city and the State of Hawaii's real goals are to protect Ag land, increase self-sufficiency, and promote diversified agriculture, this IAL designation is doing nothing to reach those goals. Instead it is wasting taxpayer money by creating more red tape and stress for current landowners.

Thank you for all your hard work in this matter and for considering our viewpoint. We appreciate it greatly.

Sincerely,

Alex & Vanessa Garber

--

Alexander C. Garber MD PhD
Island Orthopaedics, http://www.islandorthopaedics.com/
Assistant Professor University of Hawaii

Hakoda, Riley K

From: Allen Smith <allenssmith@hotmail.com>
Sent: Tuesday, May 25, 2021 6:37 PM
To: Hakoda, Riley K; repmarten@capitol.hawaii.gov
Subject: [EXTERNAL] FW: Testimony re City's proposal for designation of IAL for the Island of Oahu - In opposition

Forwarding my written testimony pursuant to Representative Marten's May 21, 2021 letter.

Thank you,
Allen Smith

Sent from Mail for Windows 10

From: Allen Smith
Sent: Monday, May 24, 2021 4:02 PM
To: dbedt.luc.web@hawaii.gov
Subject: Testimony re City's proposal for designation of IAL for the Island of Oahu - In opposition

May 24, 2021

Via email on 5/24/2020, dbedt.luc.web@hawaii.gov

State of Hawaii Land Use Commission
State Office Tower
Leiopapa A Kamehameha
235 South Beretania Street, Room 406
Honolulu, Hawai`i 96813

Re: Conformance of City and County of Honolulu Important Agricultural Lands (IAL) Recommendation to Applicable Statutory and Procedural Requirements; LUC meeting on May 26-27; Testimony in Opposition

Dear Land Use Commission Members,

My name is Allen Smith. **I am testifying in opposition to the City's proposal for designation of IAL for the Island of Oahu.**

The TMK number of my Waimanalo property, which is jointly owned by other family members, is 4-1-010-068, and the address is 41-1040 Waikupanaha Street, Waimanalo, HI 96795. I own a 1/4th interest in the property which is a total of 1.78 acres. My property has been in my family for generations. My grandfather, John Teixeira, acquired the property many decades ago, conveyed it to his children in 1973, and my mother, Lorraine Smith, conveyed to me a 1/6th interest in the property in 2014, and a 1/12th interest in 2018. I intend to convey my 1/4 interest to my children.

The first I've ever heard about the City's proposed designation of my family's property as IAL was when I received the April 12, 2021 letter from the Land Use Commission advising me of such designation, and of the

LUC meeting on April 28-29, 2021. I had no idea that my property was even being considered for an IAL designation.

The City failed to meet the process outlined in HRS § 205-47. In particular,

- HRS § 205-47(b) required the City to "develop maps of potential lands to be considered for designation as important agricultural lands **in consultation and cooperation with landowners**." I was not consulted by, nor did I cooperate with the City, in developing maps of potential IAL.

- HRS § 205-47(c) required the City, through its planning department, to develop an **inclusive process for public involvement in the identification of IAL**. Although I heard during the LUC's April 28-29th meeting that a public meetings were held, I do not recall ever hearing about such meetings, nor do I recall receiving any notice of such meetings. How could the City's process be deemed "inclusive"?

- HRS § 205-47(d) required the City 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** upon identification of potential lands to be recommended to the City Council as potential IAL. I have not received any mailed notice of any City Council meeting, nor was any notice posted on my property.

The fact that the LUC was able to provide a clear notice of its meetings to consider the City's proposed designation is evidence of the City's shortcomings. The LUC's notice informed me that my property might be affected, and gave me clear instructions on how to participate in the Zoom meeting. The City could have done, but failed to do, something similar. The City's process was not reasonable, not inclusive, not cooperative, and failed to meet even minimum statutory requirements for consultation and notice. In conclusion, the City failed to comply with requirements for designating IAL, and failed to meet proper procedural, legal, statutory and public notice requirements in developing the recommendations.

I respectfully request that the LUC deny the City's proposal for designation of IAL for the Island of Oahu, when the LUC considers this matter on May 26-27. Thank you for your consideration.

Allen Smith
PO Box 720
Waimanalo, HI 96795

Hakoda, Riley K

From: Kalani Morse <kmorse@dlmhawaii.com>
Sent: Tuesday, May 25, 2021 6:06 PM
To: Hakoda, Riley K
Subject: [EXTERNAL] Aloha Riley - Written testimony
Attachments: 210525 letter to LUC re corrections needed to County Maps and Lists.pdf; K. Morse Written Testimony to LUC re Sufficeincy of County Recommendations and Maps

Aloha Riley,
Please see the attached written testimony from our office.
Thank you,

KALANI A. MORSE, ESQ. ‖ PH: 808.792.1213
DURRETT LANG MORSE LLLP ‖ ATTORNEYS AT LAW
DAVIES PACIFIC CENTER 841 BISHOP STREET SUITE 1101 HONOLULU, HAWAI`I 96813

Hakoda, Riley K

From: Kalani Morse <kmorse@dlmhawaii.com>
Sent: Tuesday, May 25, 2021 4:39 PM
To: DBEDT LUC
Subject: [EXTERNAL] 210525 letter to LUC re corrections needed to County Maps and Lists.pdf
Attachments: 210525 letter to LUC re corrections needed to County Maps and Lists.pdf

Aloha Land Use Commissioners.
Please find the attached written testimony regarding the upcoming LUC hearings on important agricultural lands.
Thank you,

KALANI A. MORSE, ESQ. || PH: 808.792.1213
DURRETT LANG MORSE LLLP || ATTORNEYS AT LAW
DAVIES PACIFIC CENTER 841 BISHOP STREET SUITE 1101 HONOLULU, HAWAI`I 96813

ATTORNEYS AT LAW

DURRETT LANG MORSE, LLLP

Kalani A. Morse
(808)792-1213
kmorse@dmlhawaii.com

Shauna L. S. Bell
(808)792-1212
sbell@dmlhawaii.com

May 25, 2021

Via email to: dbedt.luc.web@hawaii.gov

Land Use Commission, State of Hawai`i
P.O. Box 2359
Honolulu, Hawaii 96804-2359

Re: Tax Map Key Number (1) 5-6-006-018 (por.)
Inaccurate Designation by City & County of Honolulu on Proposed IAL Map and List

Dear Chairperson Shuer and Commissioners:

This office represented Malaekahana Hui West, LLC ("MHW") in its December 21, 2018 voluntary Petition for a declaratory order designating over 50% of its property as Important Agricultural Lands pursuant to Hawai'i Revised Statutes § 205-45. The purpose of this letter is to bring to your attention the erroneous inclusion of our client's entire property in the City and County of Honolulu Department of Planning and Permitting's ("DPP") proposed IAL map and list of affected properties and to request that you direct DPP to correct its map and list of affected properties.

The Land Use Commission ("LUC") entered its Findings of Fact, Conclusions of Law, Decision and Order in Docket No. DR18-63 on March 4, 2019, wherein the LUC designated approximately 230.33 acres of our client's property, approximately 50.6% of its total acreage, as IAL. It is our understanding that the final list of properties that the County proposed to the Land Use Commission was dated May 2019 and included 449.66 of the total 451.77 acres of MHW land. The County planning department participated in the hearings for MHW's petition before the LUC in 2019 and was served with a copy of the Decision and Order on March 4, 2019. Therefore, DPP's inclusion of 449.66 acres of MHW's property in its proposed IAL map and list to the LUC is erroneous and designation of those lands as IAL would violate Hawai'i Revised Statutes § 205-49, which prohibits the designation of any additional acreage of MHW's property as IAL since a majority of MHW's property is already designated as IAL.

In addition to this error concerning the identification of MHW's property on the DPP's proposed map and list, our office has become aware of other landowners who previously voluntarily designated a majority of their lands as IAL, yet have additional lands erroneously listed in the City and County of Honolulu City Council's Resolution No. 18-233 Exhibits A and B to be designated as IAL. In reviewing these erroneous designations, we have discovered that the acreage listed on the DPP's list in Exhibit B does not match the acreage of the parcels on either the Honolulu property tax website nor the DPP's own property search website.

In our review, we have also discovered other landowners who have voluntarily designated IAL land were not identified on the DPP maps submitted as Exhibit A as existing designated IAL. The maps in the City and County's Exhibit A lack critical clarity as to which specific portions of a landowner's parcel is to be considered for IAL designation, particularly for those parcels in which a portion, but not all of the parcel is proposed for IAL designation. Such clarity is necessary for landowners to know precisely where the IAL designation is on their parcels will be, so they are able to comply with the laws associated with IAL as opposed to non-IAL agricultural lands. Our understanding is that these distinctions are critical and significantly affect occupancy rights and development opportunities and protocols. Thus, proper and accurate mapping is critical.

In sum, the County's IAL recommendation to the LUC should be remanded back to the County for correction and clarification of the following issues:

- Inclusion of more of a landowner's property after that landowner has already had over 50% of its property designated as IAL.
- Erroneous land area measurements.
- Lack of clarity in the maps as to what portions of a landowner's property are designated as IAL.
- Failure of the City and County of Honolulu to enact incentives for IAL landowners.
- Failure of the City and County of Honolulu to enact ordinances to reduce infrastructure standards for IAL.

Remanding the County's recommendations and maps of the will afford the County an opportunity to correct errors on its list, specifically clarify the areas actually proposed for designation on its proposed maps, and allow the City time to enact the necessary ordinances needed to comply with Hawaii Revised Statutes Chapters 205-41 through 205-51.

Yours truly,

DURRETT LANG MORSE, LLLP

Kalani A. Morse
Shauna Bell

KAM:sb

Hakoda, Riley K

From: Kalani Morse <kmorse@dlmhawaii.com>
Sent: Tuesday, May 25, 2021 5:37 PM
To: DBEDT LUC
Subject: [EXTERNAL] K. Morse Written Testimony to LUC re Sufficeincy of County Recommendations and Maps
Attachments: K. Morse Letter to Land Use Commissions re Sufficiency of County Maps and Recommendations.pdf

Aloha Chair Scheuer and Land Use Commissioners,

Please find attached our additional and updated testimony regarding the upcoming LUC hearings on important agricultural lands, addressing the City and County of Honolulu's compliance with HRS Chapters 205-47, 205-48, and 205-49.

Please let us know if you have any questions or would find it helpful for us to submit further documentation in support of our testimony.

Thank you,

KALANI A. MORSE, ESQ. ‖ PH: 808.792.1213
DURRETT LANG MORSE LLLP ‖ ATTORNEYS AT LAW
DAVIES PACIFIC CENTER 841 BISHOP STREET SUITE 1101 HONOLULU, HAWAI`I 96813

ATTORNEYS AT LAW
DURRETT LANG MORSE, LLLP

Kalani A. Morse
(808)792-1213
kmorse@dmlhawaii.com

Shauna L. S. Bell
(808)792-1212
sbell@dmlhawaii.com

May 25, 2021

Via email to: dbedt.luc.web@hawaii.gov

Land Use Commission, State of Hawai`i
P.O. Box 2359
Honolulu, Hawai`i 96804-2359

Re: Sufficiency of City & County of Honolulu's IAL Maps and Recommendations

Dear Chair Scheuer and Commissioners:

A number of landowners represented by our firm ("***Landowners***") recently received your May 11, 2021 letter and meeting agenda, stating that their properties have been proposed for dedication as Important Agricultural Lands ("***IAL***") by the County & County of Honolulu (the "***County***"), pursuant to the terms of Hawai`i Revised Statutes ("***HRS***") §§ 205-47 to 205-49. Your letter also stated that the State of Hawai`i's Land Use Commission ("***LUC***") is accepting written testimony with respect to:

> [W]hether the City and County of Honolulu recommendations for the designation of Important Agricultural Lands on the Island of Oahu complies with the requirements of Sections 205-47, 205-48 and 205-49 Hawaii Revised Statutes and whether the proper procedural, legal, statutory and public notice requirements were met in developing the recommendations.

On behalf of our client Landowners whose agricultural lands the County has currently recommended for IAL designation, we hereby submit the following written testimony. We hope the following provides the LUC Commissioners and their legal advisors with important analysis and perspectives regarding the extent to which the County's recommendations and processes satisfy all legal, statutory, and public notice requirements:

1. "RECEIPT" OF THE COUNTY'S MAPS AND RECOMMENDATIONS WOULD BE PREMATURE

Important statutory requirements still need to be satisfied before the LUC can properly "receive" the County's maps and IAL designation recommendations:

> **Receipt of maps of eligible important agricultural lands; land use commission.**
> (a) The land use commission shall ***receive*** the county recommendations and maps delineating those lands eligible to be designated important agricultural lands no sooner than the effective date of the ***legislative enactment*** of protection and incentive measures for important agricultural lands and agricultural viability, as provided in section 9 of Act 183, Session Laws of Hawaii 2005.

See HRS § 205-48(a) (emphases added). While the State legislature may have issued legislative enactments to fund IAL tax incentives since HRS § 205-48(a) was enacted in 2005, the Honolulu City Council ("***City Council***") has not yet

enacted any legislation to provide protections and/or incentives for IAL lands.[1] The State Legislature, by enacting this and other related provisions (see below) clearly intended for the Land Use Commission to receive the County's map and recommendations only after both the State Legislature AND the City Council enacted laws that would provide incentives and protections to lands designated as IAL.

Indeed, the specific provisions in the law regarding incentives and protections for IAL lands clearly require that both the State and the County must enact such incentives. As just one example, the statute governing the enactment of incentives specifically requires that:

> State and county incentive programs *shall* provide preference to important agricultural lands and agricultural businesses on important agricultural lands. The State *and each county shall* cooperate in program development to prevent duplication of and to streamline and consolidate access to programs and services for agricultural businesses located on important agricultural lands.

See HRS § 205-46(b)(emphases added).

In another example, another section of the IAL statutory provisions specifically requires the County to enact reduced infrastructure standards for IAL designated lands:

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

See HRS § 205-51(a) (emphases added).

The County still has an outstanding obligation to enact reduced infrastructure standards for IAL lands and must do so at least by the time other protection and incentive measures are enacted.

A plain reading of HRS § 205-48(a), HRS § 205-46(b), and HRS § 205-51(a) together establishes the requirement that the County and the State must each enact laws that, amongst other things, provide incentives and protections for IAL lands and agribusinesses on IAL lands, as well as streamlined and consolidated access to programs and services for agribusiness on IAL lands, and reduced infrastructure standards (collectively the "*Incentives*").

Landowners have been eagerly awaiting the enactment of Incentives. More than four years ago, a number of Landowners optimistically met with and wrote to County officials to discuss what kinds of Incentives the County could enact in order to satisfy the requirements in HRS § 205-46 and HRS § 205-51. Interested and affected Landowners continue to eagerly await the County's enactment of such Incentives. Until then, the LUC should comply with the requirements of HRS § 205-48(a) by informing the County that the LUC cannot yet receive the County's recommendations and maps. The LUC should also instruct the County to resubmit its IAL maps and

---

[1] See background quote from Dawn Takeuchi Apuna, Deputy Director of the City and County of Honolulu's Department of Planning and Permitting:

> Ultimately, Apuna said, the IAL designation is meant to help and not hinder owners of ag land. One challenge, she said, is that *the city hasn't yet crafted incentives, as it is supposed to do*, to benefit the landowners. In that sense, she said, the city has put the cart before the horse.

CIVIL BEAT, THE FIGHT OVER HAWAII'S 'IMPORTANT AGRICULTURAL LANDS', Stewart Yerton, 25 May 2021, available at: https://www.civilbeat.org/2021/05/the-fight-over-hawaiis-important-agricultural-lands/ (emphasis added).

recommendations once the County has legislatively enacted Incentives, as required by HRS § 205-46 and HRS § 205-51.

2. "DESIGNATION" OF ANY LANDS THE COUNTY RECOMMENDS FOR IAL WOULD BE PREMATURE

Even if the LUC were to somehow find that it can properly "receive" the County's recommendations and maps (despite the ongoing lack of statutorily-required Incentives), important statutory requirements still need to be satisfied before the LUC can properly "designate" as IAL any lands recommended by the County's maps and submittals:

> (d) The land use commission ***may designate*** lands as important agricultural lands and adopt maps for a designation pursuant to:
>
> (1) A farmer or landowner petition for declaratory ruling under section 205-45 at any time; or
>
> (2) The county process for identifying and recommending lands for important agricultural lands under section 205-47 ***no sooner than three years after the enactment of legislation*** establishing incentives and protections contemplated under section 205-46.

See HRS § 205-49(d). A plain reading of HRS § 205-49(d)(2), HRS § 205-46, and HRS § 205-51(a) together establishes the requirement that the County and the State must each enact Incentives, including preferences to IAL lands and agribusinesses on IAL lands, streamlined and consolidated access to programs and services for agribusiness on IAL lands, and reduced infrastructure standards for IAL lands.

Landowners have notified the County in writing of their anticipation of the County's forthcoming enactment of Incentives, and they should receive the full benefit of the statutorily-required three-year waiting period. That time is critical for proper consideration and weighing of whether the County's enacted Incentives warrant seeking a voluntary petition for declaratory ruling to designate portions of their lands as IAL, pursuant to HRS § 205-45 and HRS § 205-49(d)(1).

The State Legislature clearly provided this waiting period for the benefit of both the LUC and the landowners who would need to utilize that critical time-period to contemplate and prepare such petitions after having full knowledge of all enacted Incentives.

Landowners still eagerly await the County's required enactment of such Incentives. Until then, the LUC should comply with the requirements of HRS § 205-49(d)(2) and inform the County and Landowners that after proper re-submittal of the County's IAL maps and recommendations following required County enactment of Incentives, the LUC will still need to wait the required three years after enactment before designating any County recommended lands as IAL.

The LUC should also provide instructions to the County regarding critical updates and changes to the County maps and recommendations that will be needed in order for Landowners and the LUC to properly utilize the three-year waiting period required by HRS § 205-49(d)(2).

a. County Maps and Recommendations must Reflect Landowner Consent and be Properly Developed in Consultation and Cooperation with Landowners

The statute governing the County's recommendation process requires that the County "develop maps of potential [...IAL...] in consultation and cooperation with landowner<u>s</u>..." HRS § 205-47(b) (emphasis added). The County has clarified that the County's Technical Advisory Committee (*"TAC"*) used to help determine the criteria for inclusion of lands on the County's IAL maps only had a single landowner representative participating.[2] Countless landowners, farmers, and others affected by the County's designation would have loved to know about the formation and purposes of the TAC, participate in the TAC's deliberations, and affect the TAC's decision making to the extent that they felt consulted and cooperated with, as required by law.

A plain reading of HRS § 205-47(b) requires more than what has transpired thus far; the County, at a minimum, must consult and cooperate with multiple landowners. To the extent the County claims the Land Use Research Foundation (*"LURF"*) represented a handful of large landowners, LURF itself is not a landowner and LURF's participation cannot satisfy the intent of HRS § 205-47(b)'s requirement that the County consult and cooperate with multiple landowners.

Moreover, comments on the TAC's record from LURF's executive director indicate that while a landowner representative may have been consulted, LURF's expressed concerns were disregarded, evidencing a lack of cooperation on the County's part. [3]

b. Designating Lands as IAL Using Only One Criteria is not Consistent with the Statute

Under the applicable law that guides the proper application of statutory criteria to designate lands as IAL:

> [L]ands meeting any of the criteria in subsection (c) shall be given <u>initial consideration</u>; ***provided that the <u>designation</u> 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.

See HRS § 205-44(a) (emphases added). As the County is responsible for initial consideration of possible IAL lands via its role as investigator and recommender, the consideration of any one of the criteria may have been initially permissible under the statute, but the County's investigation and recommendation efforts failed to go further as

---

[2] *See* City IAL Petition p.5. available at: <u>https://luc.hawaii.gov/wp-content/uploads/2021/04/DR-CC-HNL-IAL-003.pdf</u>

[3] See quote:

> The only person on the 26-member committee representing property owners was David Arakawa, executive director of the Land Use Research Foundation, which represents Hawaii's largest landowners and developers. The committee narrowed the eight criteria down to three it considered most important. Those were whether farming was occurring, whether there was available water and whether there was other needed infrastructure. After some debate, the committee decided it was enough that the land meet one of those three criteria to be IAL. [...] Minutes show *<u>Arakawa at one point questioned using just one criterion</u>*. In a recent interview he said he came to believe using just one made sense for voluntary designations. But he said ***<u>using one criteria for an involuntary designation is not consistent with the statute</u>***.

CIVIL BEAT, THE FIGHT OVER HAWAII'S 'IMPORTANT AGRICULTURAL LANDS', Stewart Yerton, 25 May 2021, available at: <u>https://www.civilbeat.org/2021/05/the-fight-over-hawaiis-important-agricultural-lands/</u> (emphasis added).

pragmatically needed in order to enable the LUC to properly undertake the much harder job of designating lands as IAL based on a weighing of standards and criteria ***with each other***, as required by HRS § 205-44(a).[4]

Insofar as the County's IAL recommendations were created using just one of the statutory IAL criteria, the LUC should refrain from relying on the County's recommendations in their current incomplete state. Rather, the LUC should provide instructions to the County to update its recommendations and maps so as to include enough criteria about the recommended lands to pragmatically enable the LUC to satisfy its statutory obligations in ensuring its IAL designations are made by properly "***weighing the standards and criteria with each other.***" *See* HRS § 205-44(a) (emphases added).[5]

c. *The Law Requires the County to Seek and Fully Report on Landowner Consent to the County's Proposed IAL Designations*

In formulating its recommendations to the City Council, the DPP was supposed to report on the "manner in which the [IAL] mapping ***relates to, supports, and is consistent with*** the *[. . . r]epresentations or position statements of the owners* whose lands are subject to the potential designations." *See* HRS § 205-47(d)(5) (emphasis added). When read in conjunction with the "consultation and cooperation with landowners" requirement set forth by HRS § 205-47)(a), the legislature clearly intended to place on the County the obligation to seek out and report on the consent of landowners regarding IAL designation.[6]

The prospect of Imposing IAL designations on lands without Landowners' consent requires a strained reading of the applicable statutes governing designation. Particularly where Landowners are deprived of adequate notice, clear and predictable opt-out procedures, accurate information, and the ability to have clarity regarding the appropriate process whereby a landowner can exercise the right to consult and cooperate with the County and other interested agricultural stakeholders. Such a strained reading of the statutes particularly fails to withstand

---

[4] In the "DPP RECOMMENDATION AND NOTES" section of the County's submission, the County repeatedly states it retained parcels in its IAL maps because they met "one or more criteria" and thus confirming that the County's recommendations and maps do not include enough information about the recommended lands' conformance with various IAL criteria sufficient to ensure that such criteria could weighed against each other by the LUC when designating lands as IAL.

[5] *See also* HRS § 205-49(a)(1) dictating that in "designating important agricultural lands in the State, pursuant to the recommendations of individual counties, the commission shall consider the extent to which: (1) The proposed lands meet the standards and criteria under section 205-44".

[6] The legislative history of HRS chapter 205 also makes clear that the county's role is to obtain consent from landowners. In the first Senate draft of the IAL law (H.B N.O. 1640 H.D. 3 S.D. 1, available at: https://www.capitol.hawaii.gov/session2005/bills/HB1640_SD1_.htm), the Senate inserted two clauses concerning consent. First, the Senate added HRS § 205-G(c)(5), same language as HRS § 205-47(d)(5) above. Second, the Senate added language in HRS § 205-H(c)(3) stating that the state agency and LUC review shall be based on an evaluation of the degree that the affected landowners agree with the potential designation of their land. In the second Senate draft (H.B N.O. 1640 H.D. 3 S.D. 2, available at: https://www.capitol.hawaii.gov/session2005/bills/HB1640_SD2_.htm) the Senate removed HRS § 205-H(c)(3). In the final draft of the bill (H.B N.O. 1640 H.D. 3 C.D. 1, https://www.capitol.hawaii.gov/session2005/bills/HB1640_CD1_.htm), however, in the section that became HRS § 205-47(d)(5), the Senate kept the County consent requirement, mandating that the DPP report on how its designation recommendations, related, to, supported, and were consistent with the representations or position statements of the landowners. Thus, the Senate clearly placed on the counties to the burden of obtaining landowner consent, thus making subsequent LUC designation of lands as IAL more consistent with the requirements of weighing of multiple IAL criteria with landowner involvement, consultation, and cooperation.

basic due process scrutiny, particularly where DPP's communications to Landowners are analyzed for basic due process compliance.

Even if the LUC assumes a strained reading of the law to conclude that DPP was only required by statute to merely "report" on landowner representations and positions, the County's maps and recommendations still have a lot of room for improvement and clarification before it can start to satisfy even that overly-basic requirement.[7] For example, a number of Landowners initially engaged with DPP and stated that they were willing to cooperate and consult with DPP regarding the concept of potential IAL designation for a portion of their lands. Some wrote to DPP stating that they looked forward to reviewing the proposed Incentives under the County's IAL proposal, hoping to see what Incentives would be enacted and then make an informed decision.

By no means did any of these Landowners' communications provide consent to IAL designation or inclusion on the County's maps recommending the same. Expecting further consultation on this matter, Landowners were later shocked to learn that the County included their lands on the list of owners that were actually requesting IAL designation of their entire parcel! *See* Exhibit E to County's petition for IAL designation, available starting at page 37. Available at: https://luc.hawaii.gov/wp-content/uploads/2021/04/CC-39020-Part-7.pdf.[8]

Given the lack of consent and the lack of accurate reporting on the manner in which the DPP's recommendations are consistent with landowner representations and position statements, the County's recommendations and maps require significant updating before they comply with HRS § 205-47(d)(5). Until then, the LUC should comply with the requirements of HRS § 205-48(c)(2) and inform the County that its recommendations and maps must comply with HRS § 205-47(d)(5) and provide both the City Council and the LUC with more accurate reporting on the extent of Landowner's consent so that the LUC can perform its designation functions properly, pursuant to the requirements of HRS § 205-49. Indeed, the LUC should refrain from signaling to

---

[7] Claiming that this statute merely requires DPP to "report" on whether or not landowners consent does not square with a holistic reading of the law. Such a strained reading would imply that DPP would also be authorized to entirely disregarding its other duties to seek the consent, consultation, and cooperation of other state agencies and land use plans, able to comply be merely "reporting" that their maps do not relate to, undermine, and are inconsistent with the other 4 criteria as well. Such a a result would wholly defeat the purpose of having the planning and agriculture departments involved in the first instance, which is to consult and cooperate with them in order draw on their wealth of expertise and resources to help generate IAL maps that comply with spirit, intent, and letter of HRS § 205-47.

[8] Exhibit E of the County's submission to the LUC, lists some of the landowner comments DPP received. In a section titled "LANDOWNERS REQUESTING TO BE EXCLUDED AS IAL", the County lists at least 36 separate Landowner comments, covering 95 separate parcels, where a landowner requested that the County remove their land from IAL designation and the County refused and recommended the land for IAL designation anyway. DPP's retention of those parcels on its list of lands to be designated violates the statutory provision in HRS 205-47(d)(5) requiring that the County's IAL designation recommendations be "consistent with" the landowners' "representations and position statements". Simply recounting the IAL criteria that the County believed to apply to the landowners' parcels does not satisfy the statutory requirement that the County's IAL designation report on the consistency with landowner's representations and position statements.
Moreover, It is unclear from the County's Recommendations where the actual locations are for particular acreages of any one Landowner's lands, regarding which portions are included and excluded for IAL designation. Many Landowners are unaware, and the County's submission is unclear on such critical designation specifics. As such, the County must further engage in adequate consultation and cooperation with landowners and other state agencies in order to develop the county map so as to comply with HRS §§ 205-47.

Landowners that the three-year period following enactment of Incentives has begun until the LUC has confirmed that the County's re-submitted recommendations and maps are indeed accurate and compliant with all the consulting, cooperating, consent, reporting, and inclusive process requirements set forth by HRS § 205-47.

d. Community Meetings Failed to Provide Adequate Information to Landowners

The County can only provide accurate reports regarding the extent to which its recommendations and maps are consistent with landowner positions if landowners were provided with accurate information regarding the effect of the IAL law on their lands, and the County's recommendation process and the manner in which the landowner could, without significant cost or other access barriers, engage in the right to consult and cooperate with the County and other agricultural stakeholders to determine if their lands should be designated as IAL. Unfortunately, what transpired fell far short of that mark, as evidenced by the overwhelming number of landowners who reported to the LUC that either:

1) they never received any notices from the County and had no idea such meetings were even being held and that would have liked the opportunity to attend, or
2) that they did attend and were not provided an accurate picture as to the scope and impact of IAL designation.

At the public forums conducted by the County, in response to specific questions by landowners regarding how IAL designation would affect their land use, occupancy, and development rights, County officials and agents described some of the benefits of IAL designation, failed to explain additional restrictions or limitations imposed by IAL designation, and in repeated instances - provided inaccurate assurances to landowners that nothing would change with respect to their ability to occupy their own lands.[9]

In some instances, for example, presenters at these meetings went so far as to state that "[E]ven if the LUC designates land as IAL, an IAL designation does not affect existing ownership or development rights." *See* Attachment A to Appendix D to IAL Final Report answer to question "i", available at https://luc.hawaii.gov/wp-content/uploads/2021/02/IAL-Final-Appendices-C-F.pdf (PDF page 59) [10]. Such omissions and misrepresentations of critical and material facts fail to support the cooperation, consultation, consent, and reporting requirements set for

---

[9] Examples of such known restrictions include, but are not limited to:
(a) additional burdens of proof as to whether a person living on agricultural land, or members of their immediate household, are personally, actively farming the land in order to occupy the land without violation of the law, (HRS § 205-45.5(2));
(b) additional regulatory burdens to rezoning property designated as IAL to other state land use classifications, (HRS § 205-4), and
(c) Additional approvals required for accessory agribusiness uses, (HRS § 205-6(d)).

[10] As background, see comments from Deputy Director Apuna:
If city officials or consultants overstated the situation by saying there would be no effect at all, Apuna said, it might be that the officials and consultants were not fully aware of the provision concerning farm dwellings.
CIVIL BEAT, THE FIGHT OVER HAWAII'S 'IMPORTANT AGRICULTURAL LANDS', Stewart Yerton, 25 May 2021, available at: https://www.civilbeat.org/2021/05/the-fight-over-hawaiis-important-agricultural-lands/ (emphasis added).

the County by HRS § 205-47. Indeed, none of these factors support the proposition that the DPP's proceedings were an "inclusive process" as required by HRS § 205-47(c).

CONCLUSION

Given the above, the LUC should refrain from finding that the County's recommendations and maps comply with the requirements of HRS §§ 205-47, 205-48 and 205-49 and instruct the County to resubmit the same after enacting Incentives and satisfying all the other procedural, legal, statutory, and public notice requirements required by law. The LUC should proceed with caution and avoid adding its blessing to what can only be described as a "landowner beware" approach that entailed minimal, misleading, and often absent notice to landowners, waiting to see if a small percentage landowners would take notice and file objections, and then hold hearings for only those landowners and farmers who can afford to undertake such onerous and costly proceedings.

The LUC should honor and comply with its statutory obligations to ensure proper receipt of the County's maps and recommendations and instruct the County regarding the many facets of statutory compliance required, as outline above, before the LUC can properly designate any lands as IAL in accordance with the strict requirements of HRS *§ 205-49*.

Yours truly,

DURRETT LANG MORSE, LLLP

Kalani A. Morse
Shauna Bell

KAM:sb

Hakoda, Riley K

From: deborah meier <meierdeb@hotmail.com>
Sent: Tuesday, May 25, 2021 10:36 PM
To: DBEDT LUC
Cc: allyssa barlow 10; barlow steve
Subject: [EXTERNAL] non-inclusion in the IAL

via email only

May 25, 2021

Land Use Commission (LUC)
Dept of Business, Economic Development & Tourism
PO Box 2359
Honolulu, Hawaii
96814-235
dbedt.luc.web@hawaii.gov

RE: IAL Designations
TMK. 1/6/8/003/009/25

To whom it concerns,

We purchased this property in June 2018.
We were not cognizant of the IAL process and what impact this would have on our purchase.
The IAL process became an issue of note to us after receiving notification from the LUC to attend zoom meetings this past April 28/29, 2021.
We believe there was a failure to adequately notify all landowners.

At present we want to opt out of having our property designated as IAL, especially until we can further ascertain what this entails.
We need more time to review the reems of documents and videos to understand what this means to us as landowners.
The proposed incentives of IAL (205-46) are generalized and vague. It would be more beneficial to know the specifics of each potential benefit such as what percentage the property tax breaks would be, monetary value of various grants, etc. This would possibly generate greater interest in receiving the IAL designation.

The proposed section (205-45.5) on whom can reside in the farm dwelling is restrictive and dictatorial. I do not understand why this further delineation is required.

Inclusion and exclusion in the IAL should be given more thought and not worry so much about contiguous land mass.

There should be some choice dependent on the property size and other criteria, and property owners should not be financially penalized to try and join at a later date. There should be ongoing incentives to draw in more property owners as time progresses.
Once a property changes hands, the new owners may wish to be included whilst the current owner may wish to opt out. The process should be much easier to allow people to join at a later date - especially if the intent is to encourage more land with an IAL designation.

Respectfully,

Deborah Meier
Steve Barlow
Allyssa Barlow
Julian Alvarez