

Mori, Ashley

From: [REDACTED]
Sent: Sunday, September 15, 2019 6:30 AM
To: General Plan
Subject: [REDACTED]
Attachments: County speak out Sept.doc

Please find attached our comments regarding the proposed General Plan. Our concerns are sincere. Please consider them.

[REDACTED]

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PLANNING DEPARTMENT
COUNTY OF HAWAII

127761

Sept. 15, 2019

The following are our comments regarding the proposed County General Plan re. TMK's 2-9-003; 029, 060.....

My wife and I own 3.5 acres of coastal property 14.5 miles north of Hilo. We are simply a retired couple. Our property is zoned **A20a**. The area of the property was a historic sugar cane field. We have developed a large orchard and a cultivated area for field crops as well as a potted plant nursery. There now exists a large permitted ag. use structure and a residence.

Our property is comprised of **two lots**. The area is classified as **"Prime agricultural land"** according to the State's **ALISH** classification system of land. Our property is shown as being in the **SMA** and in the **Open** area on the County's **LUPAG map**, in the State's **Conservation District**. and in the **Conservation** area in the proposed County General Plan

Other than its coastal location no particular consideration to our property's physical characteristics or ag. suitability or current use was considered when the current LUPAG or proposed General Plan maps were created.

Ag. use of our property is currently allowed by both the DLNR and the County.

We will first describe that the proposed General Plan is a **'big read'** for the average property owner. One concern that we have is that the proposed General Plan affects both County and State administrative authorities as it is usually a condition that **'consideration be given to the General Plan'** when such authorities administer various Statutes and Rules and consider land use applications etc..

The proposed General Plan is of great concern to us. It appears that **N.I.M.B.Y.ism** has occurred by special interest groups which also were involved

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in the CDP committees etc. Effectively these groups have given direction to the County that may negatively effect the uses and future value of private property increasing the benefit to some and/or their cause to the disadvantage of average property owners.

The County has rightfully held '**speak out events**' and encouraged written submissions such as this. **We greatly appreciate this!** Therefore we strongly request that the County consider this request and also represent the community's unheard voices and bring balance to the CDP(s) proposals beyond what exists in the draft General Plan. Average people do not have the know how, time, resources etc. to protect their property rights. They rely on the County to do this for them as a '**public trust**'. It is a fact that many people expressed concerns to the CDP action committees and individuals representing same that were not reflected in the CDP recommendations to the County nor the current proposed General Plan.

When I approached the County, a few months back, to state my concerns regarding our Property as it is effected by the Hamakua CDP, the County CDP representative was dismissive stating that the CDP does not change zoning of lands and therefore my concerns were unwarranted. It is a fact that if one's property is effectively "**down planned**" by the County the **down planning** may result in a reduction in allowed and allowable use and resultingly the value of the property.

Government bodies such as the DLNR, the LUC and the County are required to give consideration to the County General Plan when making decisions, issuing permits etc. for land use. If implemented the County's draft General Plan does effect **down planning** even if current uses continue to be allowed.

Many Prime Agricultural (ALISH classification) properties exist makai of the Coastal highway along the Hamakua coast. Some were first overlaid by the

State's Conservation District without recorded reasoning back in the 1960's and 70's. The properties agricultural values or agricultural uses were not considered at that time as the County had them zoned Agricultural. The County subsequently overlaid its "Open" characterization of many properties in its General Plan simply because they were already in the Conservation District. Today the Hamakua CDP and resulting update to the County's General Plan build on this continuing error.

It is clear to us that the CDP drafting committee did not actually look at properties, view their existing uses, County zoning etc. before making its recommendations to the County. The County should require same before finalizing its General Plan or ***provide language therein*** that identifies same and provides the administrative planning office with considerable discretion when considering the General Plan against past, existing, planned or applied for land uses.

The General Plan cannot just rely on what may be, in some instances, arbitrary lines on a map drawn without due diligence (consideration of every property affected) because it has a significant impact on allowed/allowable property use and value *ie. if, after on site review, it is found that only "shoreline set back" be the reason for certain district designations and not particularly preservation of views giving County administrators 'discretion' would be a reasonable 'back stop'.*

At a minimum the General Plan needs to clearly state in section 2 that **County administrative discretion is allowed** and that generally existing allowed land uses be continued to be allowed and if not clearly state same so we can take steps to protect our rights and the property's value.

County and State Rules and long term plans ought to bring clarity, simplicity and certainty to allowed and allowable land uses and not the opposite. It is incumbent now to not add further to the confusion.

The State's Constitution, HRS and HAR 15-15 all state that it is **"mandatory"** that land classified as "Prime Agricultural land be zoned agricultural. The proposed General Plan excludes properties under 5 acres in size.

The State Constitution requires.....

that it's **'agencies place a priority'** on preserving and **promoting suitable agricultural lands for agricultural uses** in its section 11.3 **Agricultural lands**

(bold and underline has been added to the quoted texts found herein).....

"The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands."

We believe that the County is a form of **agency** that is contemplated in the above quotes. Our property is **"agriculturally suitable"**. Our agricultural use of our property is for both **personal**, **"self-sufficiency"**, and intended modest **commercial** agricultural production which will add to the **State's "self-sufficiency"** in food production. Our use of our property is for **"diversified agriculture"**.

The State's LUC enabling Statute *LUC HRS 205-2 (3)* states that.....

*"In establishing of the boundaries of agricultural districts the **greatest possible protection shall be given to those lands with a high capacity** for intensive cultivation; and,"*

The word **greatest** does not need definition. Effectively the word **greatest** means that there be **no other** land zoning characteristic given **greater** priority provided in the HRS Statute or HARules which result from the Statute and resultantly by its administrative authorities. The Statute is succinct in requiring that 'in establishing district boundaries' **no other** land zoning designation than '**Agricultural**' be given to land if it has a '**high capacity for intensive cultivation.**'

The word "capacity" does not imply *volume* of production nor does it describe a current use. Volume of production is relevant to the size of a property and not its '*capacity for intensive cultivation*'. By reasonable extension neither the referenced State's Constitution nor **HRS require that only large commercial agricultural operations on large parcels of land be zoned in the State's Agricultural District** but rather '**those lands with a high capacity for intensive cultivation**'.

The Land Use Commission is required *to give consideration to the County's General Plan* when making zoning amending decisions. The Proposed General Plan needs to reflect that Prime Agricultural land, no matter the size of the property, continue to be allowed to be used for agriculture and zoned Agricultural.

We believe that HRS 205(3) makes it clear that "*the **greatest possible protection shall be given to those lands with a high capacity** for intensive cultivation*". It is a fact that while our property's districting in the State Conservation District did not initially interfere with the agricultural use of the it, the proposed General Plan will most likely effect continuing difficulties for us in

our agricultural use of our property and its value. Similarly the State's Conservation District zoning of our property has interfered with our use of our property for agriculture.

Our property has a 'high capacity for intensive cultivation' which is an established historical and current use fact . Our property is classified in the ALISH system as **"Prime Agricultural Land"**. The ALISH definition of Prime refers that it has the 'capacity for intensive cultivation'. For certain HRS 205 does not describe that State or County Conservation Districting of land effect protection for the public benefit of scenic views and coastal erosion be given a higher priority than agriculture which is to be given **the greatest protection**.

The County's General Plan ought to provide an avenue to correct our property's confusing zoning. The County's General Plan has to provide an avenue of assessing its characteristics in order that any errors may be corrected at the discretionary level of County administrative representatives. It cannot be shown in the proposed General Plan in a more restrictive zone unless corrective remedies are provided.

Our property has a 'high capacity for intensive cultivation' which is an established historical and current use fact . It is classified in the ALISH system as **"Prime Agricultural Land"**. The ALISH definition of Prime refers that it has the 'capacity for intensive cultivation'. For certain HRS 205 does not state any other districting of land have higher protection. We cannot find any reference in the above quoted Constitution and Statutes that place any districting of land to be of greater importance than agriculture when considering zoning.

The proposed General Plan ought not refer to the size of a property and whether the use is for personal agriculture or commercial agriculture as a limiting factor for its agricultural use. We believe that HRS 205(3) makes it clear that **"the**

greatest possible protection shall be given to those lands with a high capacity for intensive cultivation".

It is a fact that while our property's districting in the State Conservation District did not initially interfere with the agricultural use of it, recent administration by the DLNR has made the agricultural use and uses incidental and accessory to agricultural use **delayed, tenuous, tedious, difficult, expensive to realize, and uncertain**. The proposed General Plan adds to the problems that we are describing here.

Our property has a '**high capacity for intensive cultivation**' which is an established historical and current use fact . It is classified in the ALISH system as "***Prime Agricultural Land***". The ALISH definition of Prime refers that it has the '**capacity for intensive cultivation**'. For certain HRS 205 does not state any characteristic of lands being considered for Conservation Districting requiring that they be given **equal or greater** protection than land that has a '**high capacity for intensive cultivation be zoned in the Agricultural District**' and.....

HRS 205-2 then goes on through its subsequent section (d) '*Agricultural districts shall include:*' to describe **uses** in (d) (1) rather than the earlier described **capacity** characteristic, *ref., LUC HRS 205-2 (3)*.

"(d) Agricultural district **shall** include:

(1) Activities or **uses** as characterized by the ***cultivation of crops, crops for bioenergy, orchards, forage, and forestry,***"

We are **also** '***using***' our property for the '***cultivation of crops***' and an '***orchard***' and it has a '**high capacity for intensive cultivation**' which is a historical fact and is confirmed by its ALISH classification as 'Prime Agricultural land'. Again no reference in the Statute describes the size of a property as a

criteria for classification and it seemingly describes typical agricultural activities irrespective of the size of a property.

The LUC enabling Rule HAR §15-15-01 **Purpose Rule** confirms that the Statute is to be administered as preemptive to the Rules.....

*"This chapter governs the practice and procedure before the land use commission, and shall be construed to secure the just and efficient determination of every proceeding. This chapter shall be liberally construed to preserve, protect, and encourage the development and preservation of lands in the State for those uses **to which they are best suited** in the interest of public health and welfare of the people of the State of Hawai'i. **The rules under this chapter are promulgated pursuant to authority provided by sections 205-1 and 205-7, HRS.**"*

Particular reference is made to.....

*"shall be liberally construed to preserve, protect, and **encourage** the development and preservation of lands in the State for those uses **to which they are best suited**"*

Our property is **best suited** for agriculture. None of the values expressed in HAR 15-15-20's Conservation District apply to the Property in a more substantive way than HAR 15-15-19's expressed Agricultural District values.

The LUC enabling Rules, Rule HAR 15-15-19 and -04.....

*15-15-19 Standards for determining "A" agricultural district boundaries.
Except as otherwise provided in this chapter, in determining the boundaries for the "A" agricultural district, the following standards **shall** apply:*

(1) It **shall** include lands with a **high capacity** for agricultural production;

§15-15-04 Grammatical usage.

(c) The word "**shall**" is **always mandatory**.

(d) The word "**may**" is always **permissive**.

Throughout the above quoted.....

- State's Constitution,
- its HRStatutues and
- the Land Use Commission's HARules

it is clear to us that our property's "**capacity**" for agriculture ought to be of primary consideration and not particularly.....

- its current use,
- whether the use is for personal self sufficiency or commercial production of crops,
- intensity/volume of use or,
- the Property's size.

Our plans are to continue to expand the agricultural use of our property with additional food crops, orchard plantings and the further development of a potted plant nursery and development and propagation of plants that are well suited to the coastal environment. The food production will be for both personal use and additional production is intended to be sold in local farmer markets and donated to the Food Bank.

We apologize to the County that this may seem repetitive and unprofessional. We request patience and understanding. Our property is relatively small in size. We are very concerned that the proposed General Plan will reduce the value of

our land and continue to add to uncertainty of use. We are simply two (2) retired people trying to comply with the law, protect our property and investments therein and develop a meaningful existence in our retirement years. We cannot afford professional assistance in raising our concerns to the County. The extreme burden of regulatory administration of our property was unanticipated when we purchased it.

Our intention, when we purchased it was always to use it for agriculture. We recognized that it continued to exist in agricultural use after it was overlaid by the State's Conservation District.

The fact that our property is a '*near shoreline property*' ought not to be the predominate factor for its limiting proposed long term planning by the County. It cannot be seen from general public use areas. There is no recorded reasoning why it was zoned Conservation and then designated by the County in its General Plan as "Open". Now the new proposed General Plan builds on that error which occurred so many years ago.

A period of 50 years has expired since our property was first zoned in the State's Conservation District. During that period neither the State nor the County have identified any planned use of our property that would be beneficial to the General Public. It cannot even be seen from public use areas. Structures, including a residence and an agricultural use storage and processing structure have been approved by the DLNR and the County and already exist. These have been placed at a maximum distance from the coastal pali and well past the one hundred (100) year erosion rate.

Our property is located in a gated community of seven (7) lots. The County's zoning for the lots in the subdivision is A20-a. The State's zoning for most of the lots in the subdivision is Agriculture, but not ours. Therefore it serves very little

benefit to the general public that it remain Conservation District zoned and by extension described in the proposed General Plan to be other than agricultural.

We ask that the proposed General Plan be corrected in order that.....

- we,
- our neighbors,
- the administrative authorities,
- realtors
- the general public and
- the Professional community

will no longer suffer the existing uncertainty and confusion that has resulted from our property's zoning which has resulted in little, if any, identified public benefit.

Thank you for your patience and understanding. Sincerely



