



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 202
HONOLULU, HAWAII 96813-3065
TELEPHONE: (808) 768-5010 • FAX: (808) 768-5011

TOMMY WATERS
CHAIR AND PRESIDING OFFICER
DISTRICT 4
TELEPHONE: (808) 768-5004
FAX: (808) 768-1220
EMAIL: tommy.waters@honolulu.gov

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TO: Mayor Rick Blangiardi
Managing Director Michael Formby
Director Andrew Kawano, Department of Budget and Fiscal Services

CC: Budget Chair Calvin Say

FROM: Council Chair Tommy Waters *[Signature]*
Council Vice-Chair Esther Kia'aina *[Signature]*

RE: Solar Facilities Real Property Tax Classification

21 NOV 5 PM 2:13 CITY CLERK

Thank you for your administration and the Department of Budget and Fiscal Services' (BFS) diligence in looking to maintain consistency and bringing awareness to the lack of policy clarity regarding the classification of certain renewable energy uses of agricultural land. The City Council appreciates your initiative in seeking to ensure that all land in the City and County of Honolulu is consistently and properly classified regarding its appropriate use in our real property tax classification system, but also consistent with broader policy priorities.

This letter regards the recent Departmental reclassification from agricultural to industrial classification of certain parcels of agricultural land being utilized for both agricultural and renewable energy production, including solar energy projects at Waipio (45MW), Mililani (39MW), and Kawaihoa (49MW). Public testimony by Clearway Energy Group, which operates these projects under existing contracts approved by the Public Utilities Commission, indicated they received real property tax bills 345 times the prior year's tax liability resulting from this change, raising one parcel's annual property tax bill by \$437,000 and another by \$371,000. While the internal reclassification decision was made with the understandable intent to recognize additional use on the parcels and provide more revenue to the City, the unintended consequences are far-reaching and potentially undermine critical policy priorities of the City Council.

Given the limited time Council has been aware and working to address the issue and the crucial impact it has on our secure energy future, we request that the Department restore the previous designation of "agricultural" classification for these parcels, retain that designation for other renewable energy projects on agricultural lands moving forward, and provide the time and space for a more systemic and long-term solution to be enacted by the Council. It is our position that in this situation where the policy guidance from Council has not been clarified, that the City and BFS should not change the property classification unilaterally until the policy can be clearly articulated. We believe that the "highest and best use" of these particular parcels are for local

agriculture and local energy production, are not “industrial” in nature per se, and that a new classification or revenue mechanism should be designed that is more equitable, predictable, and aligned with our stated public policy goals supporting local clean energy production. This could include a PILOT (payment in lieu of taxes) model like that deployed on Kaua’i, or the creation of a new specific property classification that is clearly aligned with renewable energy production on agricultural lands as specifically authorized under state law.

We understand that the Revised Ordinances of Honolulu (ROH) does not explicitly clarify in its Land Use Ordinance (LUO) the definition of or the proper classification of solar energy and other forms of renewable energy. We also understand that wind machines up to 100kW are authorized to obtain conditional use permits and were previously classified as industrial use on agricultural parcels—although the footprint of the “industrial use” are limited to the base of the turbines and quite small. As the administration has noted, this situation creates a certain degree of ambiguity in assessing real property classifications and values. However, it is clear that the passive collection of energy on agricultural lands is not equivalent to the traditional “industrial” classification utilized in mass valuation for lands zoned and intensively used for warehouse operations, refineries, chemical production, and other on-going industrial activities.

Fortunately, the Hawaii Revised Statutes (HRS) is clearer in its designation and classification of renewable energy. §205-2 (d) reads as follows:

§205-2 Districting and classification of lands.

(d) Agricultural districts shall include:

- (1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;
- (2) Farming activities or uses related to animal husbandry and game and fish propagation;
- (3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;
- (4) Wind-generated energy production for public, private, and commercial use;
- (5) Biofuel production, as described in section 205-4.5(a)(16), for public, private, and commercial use;
- (6) Solar energy facilities; provided that:
 - (A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E; and
 - (B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser, unless a special use permit is granted pursuant to section 205-6...

Under this definition, all lands zoned as agricultural that include solar energy facilities and other forms of renewable energy are designated as permissible land uses. In the interest of uniformity and compliance with state definition, we believe it is prudent and more consistent with state law and Council policy to rescind the classification change and restore the original “agricultural” property tax classification for these parcels, and define agricultural land in its assessment of real property taxes consistent with HRS §205-2 and permitted uses. For the purposes of this assessment deadline on December 15, 2021, this should include agricultural land currently being used for renewable energy. While we understand that Bill 39 is proposed as

a mechanism to offset the massive cost increases to renewable energy production and avoid the passing on of rate increases to local residents' utility bills, we do not believe it fully addresses the underlying issue of mischaracterizing these projects as "industrial use" and will continue to cause turbulence and anxiety in the renewable energy sector—as well as potential rate raises for our local utility payers. We are in strong support of the City and state policy to achieve 100% clean energy on our island by 2045, the creation of green jobs, and the resilience that results from local energy production. Only the administration can act immediately to restore the status quo, which represented a property classification more in line with the Council's policy preferences and expectations.

Following this immediate restoration of classification to avoid grave potential disruptions of the renewable energy progress made to date on our island, I would invite the administration to join a working group of stakeholders and Council staff to craft a suitable long-term solution that recognizes the clear policy preference to use all tools available at the local government level for the support of local food and local energy production, and provides clarity to BFS as well as the renewable energy sector for classifications going forward. We appreciate BFS and the Real Property Assessment Division's efforts to date on this issue.

If you have any questions or would like to discuss further please contact us directly or you can have your staff contact Council Chair's Chief of Staff Davin Aoyagi. Mahalo.