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**DOCKET NO. DR14-52**  
**TRUSTEES OF THE ESTATE OF**  
**BERNICE PAUAHI BISHOP dba**  
**KAMEHAMEHA SCHOOLS**

**PETITION FOR DECLARATORY**  
**ORDER TO DESIGNATE**  
**IMPORTANT AGRICULTURAL**  
**LANDS**

*STAFF REPORT*

**ACTION MEETING**

**February 18, 2015**



**Daniel Orodener, Executive Officer**

**Submitted: February 13, 2015**

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## 1. PROCEDURAL MATTERS

On December 12, 2014, the Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools ("Petitioner") filed a Petition for Declaratory Order to Designate Important Agricultural Lands ("Petition").

Petitioner also served copies of the Petition on the State Department of Agriculture ("DOA"), State Office of Planning ("OP"), and the City and County of Honolulu ("C&C") Department of Planning and Permitting ("DPP").

On February 2, 2015, the DOA filed comments on the Petition.

On February 10, 2015, OP filed comments on the Petition.<sup>1</sup>

As of this writing, the DPP has not filed comments on the Petition.

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<sup>1</sup> OP also included the comments of the State Commission on Water Resource Management ("CWRM") and the U.S. Department of Agriculture Natural Resource Conservation Service ("USDA-NRCS"), Pacific Islands Area Office.

## 2. BACKGROUND OF THE PETITION

On December 12, 2014, Petitioner filed the Petition to designate (1) approximately 9,171.161 acres of land within the State Land Use Agricultural District at Kawailoa, O`ahu, Hawai`i, identified as Tax Map Keys ("TMKs"): 6-1-05: por. 1; 6-1-06: por. 1; 6-1-07: 1; 6-2-09: por. 1; 6-2-10: por. 1; and 6-2-11: por. 1 and 21 ("Kawailoa")<sup>2</sup>; and (2) approximately 420.887 acres of land within the State Land Use Agricultural District at Punalu`u, O`ahu, Hawai`i, identified as TMKs: 5-3-01: por. 41; 5-3-03: por. 1; 5-3-04: 5, 7, 13, por. 18, and 19; and 5-3-07: por. 23 ("Punalu`u") (collectively 9,592.048 acres and hereinafter referred to as "Petition Area") (see attached Petitioner's Exhibits A-1 and A-2),<sup>3</sup> as Important Agricultural Lands ("IAL"), pursuant to §§205-44 and 205-45, Hawai`i Revised Statutes ("HRS"). Petitioner owns and manages the Petition Area.

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<sup>2</sup> Kawailoa is actually comprised of two geographic areas : Kawailoa (6,488.497 acres) and Ōpae`ula (2,682.664 acres). The two areas are separated by Anahulu Valley.

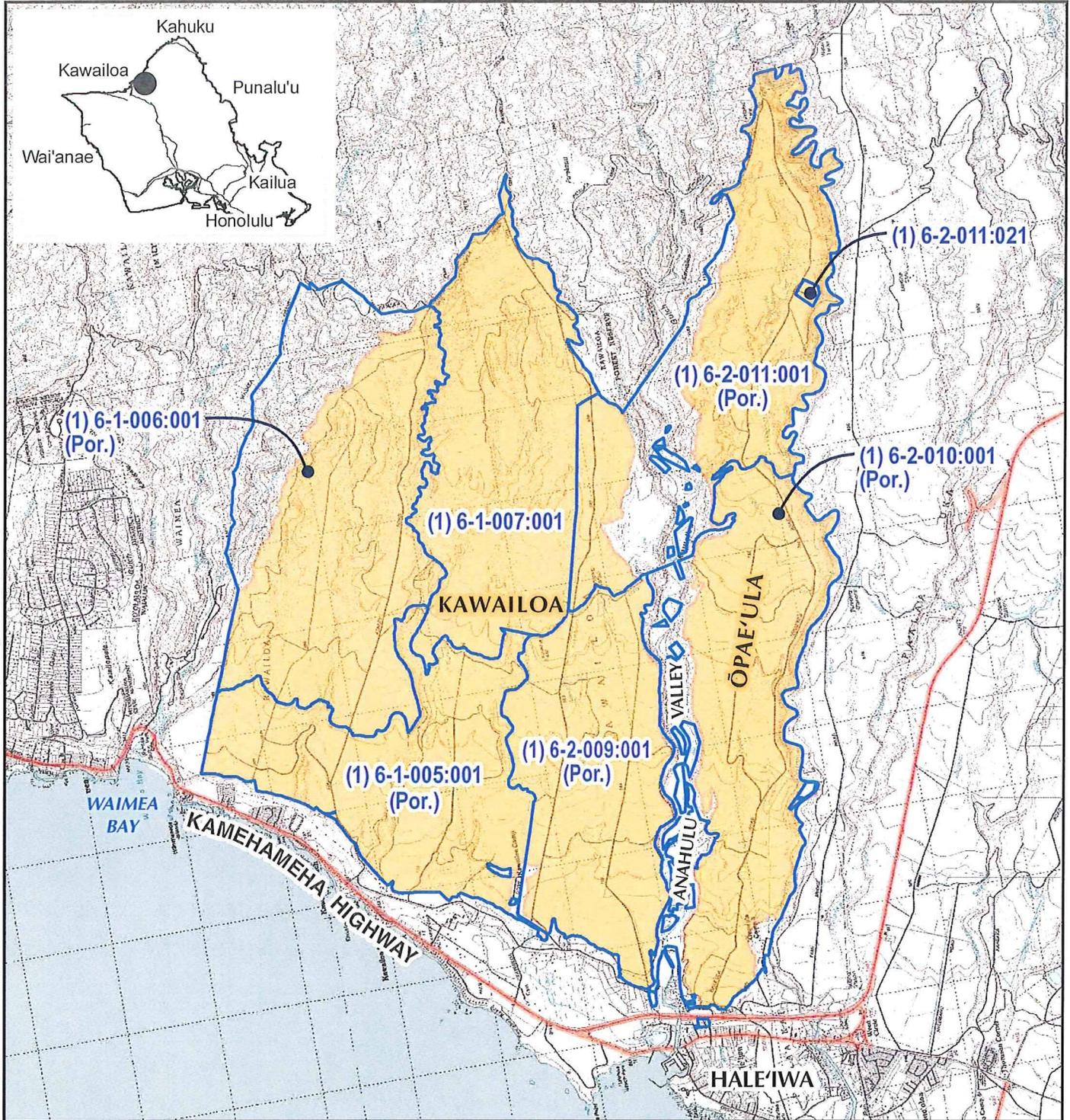
<sup>3</sup> In a letter dated February 10, 2015, Petitioner provided additional information of its lands in response to the inquiries of OP. Among other things, Petitioner noted that it has approximately 13,404 acres of agriculture lands, 4,834 acres of urban lands, and 30,364 acres of conservation lands on O`ahu.

The Petition Area represents approximately 52 percent of Petitioner's agricultural and urban lands on O`ahu and approximately 72 percent of Petitioner's agricultural lands on O`ahu. Staff notes that pursuant to §205-49(a)(3), HRS, if a majority of a landowner's landholdings is already designated as IAL, excluding lands within the State Land Use Conservation District, any additional lands of that landowner cannot be designated IAL except by a petition initiated or authorized by the landowner pursuant to §205-45, HRS.

According to Petitioner, it has approximately 3,478 acres of land designated by the Land Study Bureau's ("LSB") Detailed Land Classification Overall (Master) Productivity Rating Class as "A" and 1,883 acres of land designated as "B" in the State Land Use Agricultural District on O`ahu. The Petition Area represents approximately 3,035 acres of LSB A lands and 1,672 acres of LSB B lands (see Table 1 below).

Similarly, approximately 7,503 acres of Petitioner's lands in the State Land Use Agricultural District on O`ahu are classified under the Agricultural Lands of Importance to the State of Hawai`i ("ALISH") system, with approximately 6,642 acres classified as "Prime" and 861 acres as "Other Important Agricultural Land" ("Other"). The Petition Area represents approximately 5,878 acres of Prime lands and 461 acres of Other lands (see Table 2 below).

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DATE: 12/9/2014

**LEGEND**

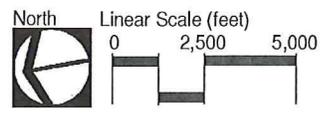
-  IAL Lands Related TMK Parcels
-  Proposed IAL Designation

**EXHIBIT A-1  
Kawailoa**

**TMK Parcels - Key Map**

**KS IAL O'AHU**

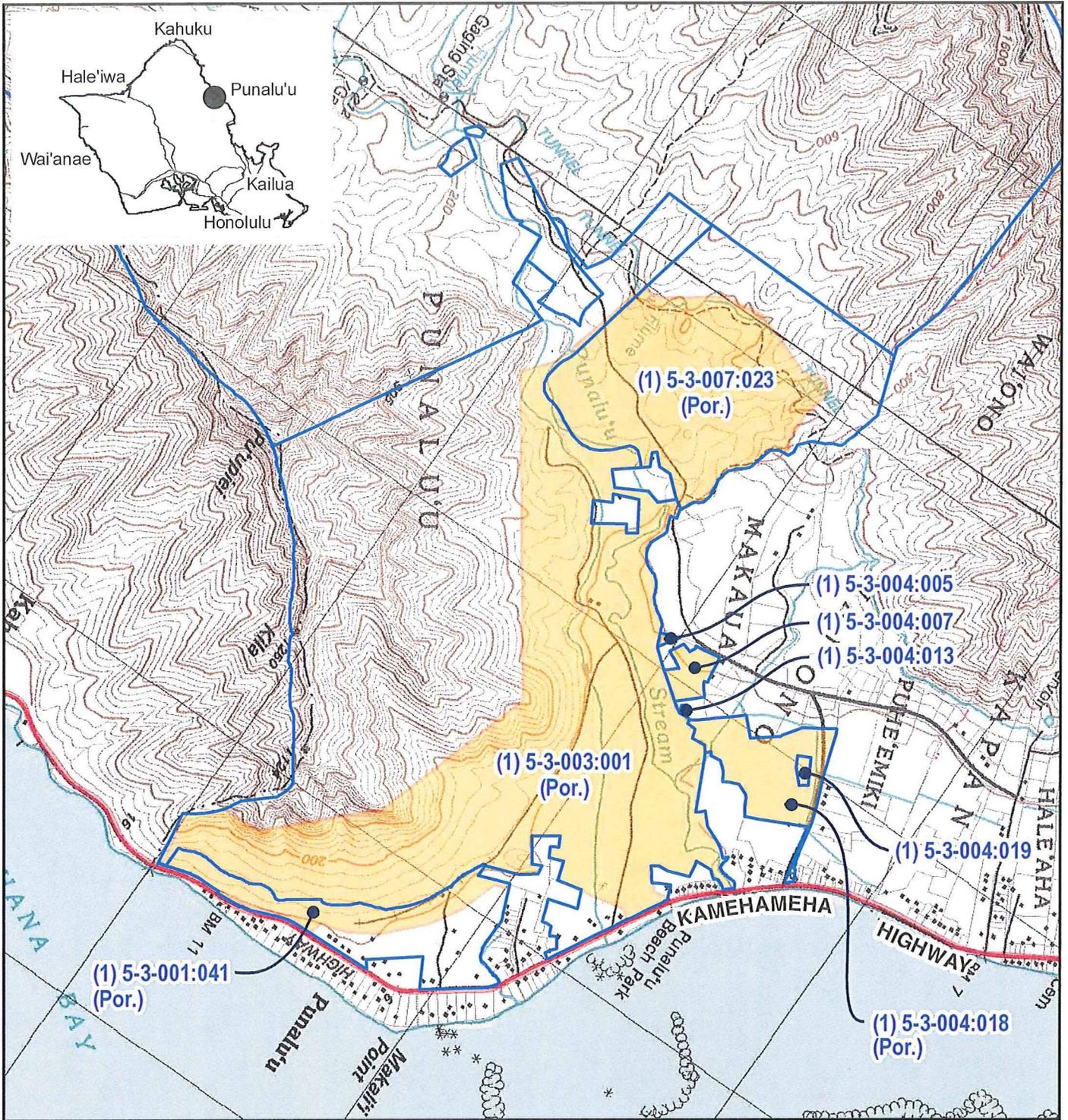
Island of O'ahu



Source: Kamehameha Schools (2014), Oahu TMK (2014), U.S. Geological Survey  
Disclaimer: This graphic has been prepared for general planning purposes only.



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DATE: 12/9/2014

### LEGEND

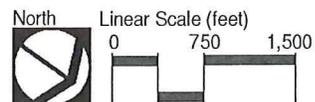
-  IAL Lands Related TMK Parcels
-  Proposed IAL Designation

### EXHIBIT A-2 Punaluu

### TMK Parcels - Key Map

## KS IAL O'AHU

Island of O'ahu



Source: Kamehameha Schools (2014), Oahu TMK (2014), U.S. Geological Survey  
Disclaimer: This graphic has been prepared for general planning purposes only.

As defined by §205-42(a), HRS, IAL:

- (1) Are capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology;
- (2) Contribute to the State's economic base and produce agricultural commodities for export or local consumption; or
- (3) Are needed to promote the expansion of agricultural activities and income for the future, even if currently not in production.

Under §205-42(b), HRS, "[t]he objective for the identification of [IAL] is to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities that expand agricultural income and job opportunities and increase agricultural self-sufficiency for current and future generations." §205-42(b), HRS, further provides that the State shall undertake the following to achieve this objective:

- (1) Promote agricultural development and land use planning that delineates blocks of productive agricultural land and areas of agricultural activity for protection from the encroachment of nonagricultural uses; and
- (2) Establish incentives that promote:
  - (A) Agricultural viability;
  - (B) Sustained growth of the agriculture industry; and
  - (C) The long-term agricultural use and protection of these productive agricultural lands.

§205-44(c), HRS, provides the standards and criteria to identify IAL. §205-44(a), HRS, provides that "[I]ands identified as IAL need not meet every standard and criteria listed in subsection (c). Rather, lands meeting any of the criteria in subsection (c) shall be given initial consideration; provided that the designation of [IAL] 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 Hawai`i Constitution and the objectives and policies for [IAL] in sections 205-42 and 205-43.”

Petitioner is not seeking a reclassification of land pursuant to §205-45(b), HRS, in conjunction with the Petition. Petitioner is also voluntarily waiving any and all rights to assert, claim, or exercise any credits pursuant to §205-45(h), HRS, as effective as of the date of the Petition, which may be earned by Petitioner if the Petition is granted.

Petitioner’s assessment of the Petition within the context of the standards and criteria for identifying IAL pursuant to §205-44(c), HRS, is summarized below:

(1) Land currently used for agricultural production.<sup>4</sup>

*Kawailoa:* Most of the agricultural activities are located below the 600-foot elevation, where the existing irrigation system is operating and in good condition. Diversified agriculture occurs on approximately 722 acres and includes crops such as seed corn, banana, taro, papaya, mango, and hydroponic lettuce. Approximately 297 acres are devoted to livestock and 0.7 acres are comprised by koa windbreak.

The mauka unirrigated portions of the Kawailoa lands consist of livestock, orchard, forestry, and renewable energy uses.

*Punalu`u:* Approximately 120 acres are in diversified agriculture, with crops such as banana, papaya, mango, cucumber, mixed vegetables, taro, and cacao in cultivation. Livestock occupies approximately 22 acres and aquaculture encompasses 11 acres.

(2) Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops.

According to the LSB’s Detailed Land Classification Overall (Master) Productivity Rating Class, the Petition Area is classified as follows:

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<sup>4</sup> Based on its review of the Petition, OP is unclear as to how many tenants are currently leasing the Kawailoa and Punalu`u sites for agricultural purposes.

Table 1

Productivity Rating	Kawailoa		Punalu`u		Total IAL	
	Acres	% IAL	Acres	% IAL	Acres	% IAL
A	3,034.663	33.1	-	-	3,034.663	31.6
B	1,632.211	17.8	39.440	9.4	1,671.651	17.4
C	1,134.423	12.4	146.313	34.7	1,280.736	13.3
D	241.536	2.6	51.859	12.3	293.395	3.1
E	3,054.790	33.3	183.257	43.5	3,238.047	33.8
Not LSB	73.538	0.8	0.018	0.1	73.556	0.8
<b>Total</b>	<b>9,171.161</b>	<b>100</b>	<b>420.887</b>	<b>100</b>	<b>9,592.048</b>	<b>100</b>

*Kawailoa:* Approximately 33.1 percent of the lands are rated A, 17.8 percent are rated B, 12.4 percent are rated C, 2.6 percent are rated D, 33.3 percent are rated E, and 0.8 percent are unrated.

The Kawailoa lands receive an annual average of 400 to 450 calories of solar energy per square centimeter per day.

*Punalu`u:* There are no A rated lands. Approximately 9.4 percent are rated B, 34.7 percent are rated C, 12.3 percent are rated D, 43.5 percent are rated E, and 0.1 percent are unrated.

The Punalu`u lands receive an annual average of 300 to 350 calories of solar energy per square centimeter per day.

- (3) Land identified under agricultural productivity ratings systems, such as the agricultural lands of importance to the State of Hawai`i (ALISH) system adopted by the board of agriculture on January 28, 1977.

Table 2

ALISH Classification	Kawailoa		Punalu`u		Total IAL	
	Acres	% IAL	Acres	% IAL	Acres	% IAL
Prime	5,852.319	63.8	25.243	6.0	5,877.562	61.3
Unique	-	-	-	-	-	-
Other	198.572	2.2	262.547	62.4	461.119	4.8
Not ALISH	3,120.270	34.0	133.097	31.6	3,253.367	33.9
<b>Total</b>	<b>9,171.161</b>	<b>100</b>	<b>420.887</b>	<b>100</b>	<b>9,592.048</b>	<b>100</b>

*Kawailoa:* Approximately 66 percent of the lands are classified as Prime and 2.2 percent as Other. The remaining 34 percent of the lands are unclassified and includes streams, drainageways, water systems, and roadways.

*Punalu`u:* Approximately 6 percent of the lands are classified as Prime and 62.4 percent as Other. The remaining 31.6 percent of the lands are unclassified, most of which are used for diversified agriculture and pasture.

- (4) Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crop and uses, such as coffee, vineyards, aquaculture, and energy production.

*Kawailoa:* The lower lands were utilized for two types of agricultural production: rain-fed dryland agriculture on the lower slope and colluvial slope cultivation on the upper slope. Both systems were reliant on seasonal rainfall rather than irrigation systems. Taro cultivation continues today as part of the ongoing diversified agricultural activities undertaken at Kawailoa.

Kawailoa also features 30 wind turbines that are currently in operation. In addition, 500 acres are planned for a 50 MW photovoltaic energy farm that will include sheep grazing as a dual use.<sup>5</sup>

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<sup>5</sup> First Wind (dba Kawailoa Solar, LLC) recently filed a special use permit application with the DPP for a solar farm project on an approximately 384.1-acre portion of the Kawailoa area (2014/SUP-6). It is unclear when the City and County of Honolulu Planning Commission will

*Punalu`u*: During pre-contact times, the land supported lo`i kalo terraces along the valley floor and dryland agricultural features along the slopes of the valley. Aquaculture and diversified agriculture, including the cultivation of taro and cacao, are among the current agricultural uses at Punalu`u.

(5) Lands with sufficient quantities of water to support viable agriculture production.

*Kawailoa*: The lands are served by an extensive irrigation system constructed by Castle & Cooke more than 100 years ago. The system connects Waimea River, Ka`alaea Stream, Kawailoa Stream, Laniākea Stream, and Anahulu River with ditches, pipelines, and reservoirs. According to Petitioner, the diverted water from the streams amounts to approximately 3.5 to 5.0 million gallons per day (“mgd”). There are also two groundwater wells that have a permitted pump capacity to deliver an additional 3 mgd. Most of the water can be distributed to the agricultural uses by the aging infrastructure. Efforts to restore and repair the infrastructure are ongoing and Petitioner commits to continuing to make the necessary improvements to the irrigation system. Petitioner has already invested approximately \$13 million within Kawailoa to improve the agricultural water sources and the storage and distribution system to support existing and planned agricultural uses.

In addition to the existing irrigation system, the Kawailoa lands receive an annual average of 35 to 80 inches of rain.

*Punalu`u*: Punalu`u Stream and ditches that are connected to the stream currently provide for the irrigation needs of the lands. As with Kawailoa, Petitioner already has commenced with upgrading the existing agricultural irrigation water sources and distribution system within Punalu`u. Approximately \$1.5 million has already been invested. Upgrades have included piping more than 5,000 linear feet of the former Punalu`u irrigation ditch and Petitioner intends to construct storage for agricultural machinery, tools, and

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conduct its hearing on the matter, but it will be after the Land Use Commission (“Commission”) acts on the Petition.

equipment in the near future. Petitioner also plans to commit approximately \$5 million to undertake restoration work of Punalu`u Stream involving approximately 87 acres. Restoration of the stream is intended to mitigate flood impacts on riparian and coastal ecosystem; minimize disruptions to agricultural activities; enhance the use of the stream for educational, community, and cultural initiatives; incorporate secondary feeder drainage ditches; and relocate the farm access road. Completion of this work is tentatively scheduled for 2017-2018.

In addition to the existing irrigation system, the Punalu`u lands receive an annual average of 65 to 120 inches of rain.

- (6) Land whose designation as Important Agricultural Lands is consistent with general, development and community plans of the County.

*Kawailoa:* The North Shore Sustainable Communities Plan Land Use Map designates the majority of the Kawailoa lands as Agriculture, with some edges of the gulches designated as Preservation.

*Punalu`u:* The Ko`olaupua Sustainable Communities Plan Land Use Map designates most of the Punalu`u lands as Agricultural, with streams and fringes of the streams designated as Preservation.

In July 2012, the C&C commenced with its IAL study to identify lands for IAL designation on O`ahu. The study consists of two phases. Phase 1, which was completed in April 2014, involved defining the IAL site selection criteria, identifying available data sets to assist in mapping the defined criteria, and developing methodology for weighing or ranking the criteria. The site selection criteria were defined as follows: (1) currently used for agricultural production; (2) soil qualities and growing conditions; (3) sufficient quantities of water to support viable agricultural production; and (4) agricultural productivity rating systems. The C&C then prepared two composite maps of these priority criteria by utilizing the geographic information system.

Based on these maps, most of the Kawaihoa and Punalu`u lands meet one or more of the priority criteria.

- (7) Land that contributes to maintaining a critical land mass important to agricultural operating productivity.

*Kawaihoa:* The lands consist of approximately 9,171.161 acres.

*Punalu`u:* The lands consist of approximately 420.887 acres.

Both areas have a long history of agricultural use on O`ahu.

- (8) Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power.

*Kawaihoa:* The lands are served by an extensive irrigation system that is undergoing restoration and repair.

*Punalu`u:* The lands are irrigated by Punalu`u Stream and ditches that are connected to the stream. Improvements to the existing agricultural irrigation water sources and distribution system is ongoing. In addition, Petitioner plans to establish a farmer's market to provide a venue for local produce and agricultural support.

### 3. AGENCY COMMENTS ON THE PETITION

On February 2, 2015, the DOA provided comments on the Petition. On February 10, 2015, OP provided comments on the Petition.

The following summarizes their respective comments:

#### DOA

The DOA supports the IAL designation for the majority of the lands comprised by the Kawaihoa site. However, with respect to the 500 acres planned for a 50 MW photovoltaic energy farm, the DOA notes that if Petitioner confirms and commits to using a substantial portion of the energy generated by the proposed solar energy facility directly for agricultural purposes and/or confirms and commits to using a substantial portion of the income derived from the selling of electricity to the utility for agricultural activities within the Petition Area, the DOA would support the IAL designation of the area proposed for the solar energy facility.

With respect to the Punalu`u site, the DOA supports the designation in its entirety as it appears to have abundant irrigation water supply, fairly productive soils, and 120 acres of existing diversified agricultural activities.

The DOA also notes that Petitioner may need to obtain from the CWRM an amendment of the interim instream flow standard for any new or expanded diversions of surface water.

Finally, the DOA requests that Petitioner provide the Commission with information demonstrating that for the Kawaihoa site, the irrigation water system and improvements will provide water in sufficient quantities to maintain plant and animal health during dry periods.<sup>6</sup>

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<sup>6</sup> In its February 10, 2015, letter referenced above, Petitioner explained that the current water demand at Kawaihoa ranges from 1.0 mgd to 1.5 mgd, and that the water system for the irrigated area (below Ditch B) has a capacity of 6.0 mgd with the ability to service approximately 2,400 acres of planned cultivated lands. Petitioner further noted that there is sufficient annual rainfall to support pasture, orchards, and forestry uses for the unirrigated areas above Ditch B, and that irrigation water could be pumped to higher elevations to service portions of these areas if necessary. By e-mail dated February 13, 2015, to staff, the DOA pointed out that notwithstanding

OP

In its analysis of the Petition, OP notes that the Kawaiiloa site appears to meet the following standards and criteria for identifying IAL pursuant to §205-44(c), HRS:

§205-44(c)(3): Land identified under agricultural productivity ratings systems, such as the agricultural lands of importance to the State of Hawai'i (ALISH) system adopted by the board of agriculture on January 28, 1977.

§205-44(c)(5): Lands with sufficient quantities of water to support viable agriculture production.

§205-44(c)(6): Land whose designation as Important Agricultural Lands is consistent with general, development and community plans of the County.

§205-44(c)(8): Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power.

OP also notes that the Kawaiiloa site *partially* meets the following standards and criteria for identifying IAL pursuant to §205-44(c), HRS:

§205-44(c)(1): Land currently used for agricultural production.

§205-44(c)(2): Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops.

§205-44(c)(4): Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crop and uses, such as coffee, vineyards, aquaculture, and energy production.

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Petitioner's responses, there may be certain crops such as leafy vegetables that may not thrive during the dry months of June and September and to a lesser extent May, July, and August at the Kawaiiloa site. The DOA also expressed concern that the available irrigation and rainfall at the site may prove to be insufficient during extended dry spells, even assuming that the delivery system is stable.

§205-44(c)(7): Land that contributes to maintaining a critical land mass important to agricultural operating productivity.

OP supports the designation of the Kawaihoa site in its entirety. The lower portions of the site below 600 feet in elevation contain prime agricultural lands under ALISH and are served by the existing ditch system. OP acknowledges that although the upper portions of the site are more fragmented and contain slopes over 20 percent, they do contain prime agricultural lands and there are sufficient quantities of water available via natural rainfall and pumped water to support viable agricultural production on these lands. According to OP, it would not typically recommend IAL designation for lands with similar terrain as the mauka lands (i.e., steep gulches and ravines). OP notes that under §205-42(a)(1), HRS, IAL is defined in part as being "... capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology." However, OP has discussed the matter with Petitioner who has represented that the upper lands will be leased for pasture.<sup>7</sup>

In its analysis of the Petition, OP notes that the Punalu`u site appears to meet the following standards and criteria for identifying IAL pursuant to §205-44(c), HRS:

§205-44(c)(6): Land whose designation as Important Agricultural Lands is consistent with general, development and community plans of the County.

§205-44(c)(7): Land that contributes to maintaining a critical land mass important to agricultural operating productivity.

OP also notes that the Punalu`u site *partially* meets the following standards and criteria for identifying IAL pursuant to §205-44(c), HRS:

§205-44(c)(1): Land currently used for agricultural production.

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<sup>7</sup> Despite its support for the IAL designation of the Kawaihoa site in its entirety, OP believes that the existing wind turbines and the planned solar energy facility at Kawaihoa do not further the State's objective for the identification of IAL, because they represent non-agricultural activities that do not promote agricultural development nor the incentives to foster such development.

§205-44(c)(2): Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops.

§205-44(c)(3): Land identified under agricultural productivity ratings systems, such as the agricultural lands of importance to the State of Hawai`i (ALISH) system adopted by the board of agriculture on January 28, 1977.

§205-44(c)(4): Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crop and uses, such as coffee, vineyards, aquaculture, and energy production.

§205-44(c)(5): Lands with sufficient quantities of water to support viable agriculture production.

§205-44(c)(8): Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power.<sup>8</sup>

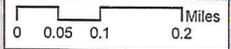
OP supports the designation of approximately 290 acres, or 69 percent, of the proposed 420.887 acres comprised by the Punalu`u site (see attached OP's Figure 2). Specifically, OP recommends that the acreage that is located west and north of the 200-foot contour line be designated IAL. According to OP, these lands consist mostly of lands with slopes of 20 percent or less. OP believes that not only do these lands contain the majority of the better rated agricultural lands (i.e., ALISH Other Lands, higher LSB ratings), but they are served by the Punalu`u Stream and irrigation ditch. OP also included a small area of land in the western portion of the site that has slopes less than 20 percent, fair soil quality, and appears to be actively farmed. By contrast, the acreage that OP recommends not be designated IAL consists of lands with slopes greater than 20 percent and generally poorer soil characteristics under the ALISH and LSB classification systems. OP believes that these lands would not be capable of producing sustained high agricultural yields based on their terrain and soil quality.

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<sup>8</sup> OP notes that the Punalu`u site partially meets this criterion with respect to water only; the site appears to meet the criterion with respect to roads and power.

**LUC Docket DR14-52  
IAL Kamehameha Schools  
Punaluu Petition Area  
200 ft. Contour and  
OP's Recommended IAL Boundary  
Figure 2**

-  Proposed IAL - Punaluu
-  200 ft. Contour
-  OP's Recommended Boundary Area (290.02 acres)
-  Perennial Streams
-  Non-Perennial Streams



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroX, Geomatics, AeroGRID, IGN, IGF, swisstopo, and the GIS User Community

### CWRM

The CWRM would like information regarding the ultimate quantity of water needed for the Petition Area, the delivery capacity of the existing irrigation systems, and the amount of water diverted from area streams to the irrigation systems.

### USDA-NRCS

The USDA-NRCS acknowledges that the Petition Area does not meet the State of Hawai'i ALISH or federal (USDA Prime Farmland) criteria for IAL. However, the USDA-NRCS recognizes the potential benefits of preserving the Petition Area as a large block of contiguous land area as it may be conducive to environmental protection and healthy integrated resource management.

#### 4. COURSE OF ACTION

§15-15-100(a), Hawai'i Administrative Rules ("HAR"), provides the alternative actions required of the Commission for a petition for declaratory order:

The [C]ommission, within ninety days after submission of a petition for declaratory order,<sup>9</sup> shall:

- (1) Deny the petition where:
  - (A) The question is speculative or purely hypothetical and does not involve an existing situation or one which may reasonably be expected to occur in the near future; or
  - (B) The petitioner's interest is not of the type which confers sufficient standing to maintain an action in a court of law; or
  - (C) The issuance of the declaratory order may adversely affect the interest of the State, the [C]ommission, or any of the officers or employees in any litigation which is pending or may be reasonably be expected to arise; or
  - (D) The petitioner requests a ruling on a statutory provision not administered by the [C]ommission or the matter is not otherwise within the jurisdiction of the [C]ommission; or
- (2) Issue a declaratory order on the matters contained in the petition; or
- (3) Set the petition for hearing before the [C]ommission or a hearings officer in accordance with this subchapter. The procedures set forth in subchapter 7 shall be applicable.

If the matter is set for hearing, the [C]ommission shall render its findings and decision within one hundred twenty days after the close of the hearing, or if post hearing briefs are filed, forty-five

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<sup>9</sup> The Petition was filed on December 12, 2014. Therefore, the 90-day timeframe in which the Commission is required to act on the Petition, including the *issuance* of a written declaratory order, expires on March 12, 2015.

days after the last brief is filed, unless a different time period is stated at the hearing.

The Commission is required to decide at this time (1) whether it will deny the Petition, (2) issue a declaratory order granting the IAL designation for the Petition Area, or (3) set the matter for hearing.

Pursuant to §15-15-101, HAR, the Commission may also dismiss the Petition, without notice or hearing, if it deems that the Petition fails in material respect to comply with the declaratory order requirements of subchapter 14, HAR.

Staff believes that the Petition meets the declaratory order requirements of subchapter 14, HAR.

Upon review of the Petition, staff believes that the Petition Area satisfies the threshold for initial IAL consideration as it meets at least one of the eight standards and criteria pursuant to §205-44(c) HRS. This subsection also provides the Commission with considerable discretion as to whether to actually designate the land as IAL.

As discussed above, the DOA and OP differ with respect to their recommendation to the Commission on the Petition. The DOA supports the IAL designation of the Punalu`u site in its entirety, while it has reservations about the Kawaihoa site as it specifically pertains to the proposed solar energy facility location until Petitioner confirms and commits to using a substantial portion of the energy generated by the facility directly for agricultural purposes, and/or confirms and commits to using a substantial portion of the income derived from the selling of electricity to the utility for agricultural activities within the Petition Area.

OP, on the other hand, supports the IAL designation of the Kawaihoa site in its entirety, but supports only 290 acres of the proposed 420.887 acres of the Punalu`u site.

Before the Commission renders a decision on the Petition, staff recommends that Petitioner respond on the record to (1) the comments of OP regarding the number of tenants that are currently leasing the land for agricultural purposes on both Kawaihoa and Punalu`u; (2) the comments of the DOA as to whether Petitioner confirms and commits to using a

substantial portion of the energy generated by the facility directly for agricultural purposes, and/or confirms and commits to using a substantial portion of the income derived from the selling of electricity to the utility for agricultural activities within the Petition Area;<sup>10</sup> and (3) the extent to which any remaining agricultural lands may or may not be appropriate for designation as IAL.

If the Commission is inclined to issue a ruling on the Petition designating the Petition Area, in whole or in part, as IAL, it should be subject to the following conditions:<sup>11</sup>

- 1) Petitioner shall comply with representations made to the Commission with respect to not claiming any credits described in §205-45(h), HRS, with respect to the Petition Area.<sup>12</sup>
- 2) Within seven days of the issuance of the Commission's Decision and Order, Petitioner shall record it with the Bureau of Conveyances.

Given the limited amount of land Petitioner owns on O`ahu that is not subject to this Petition, staff cannot see any substantive reason why the DOA's recommendation that the entire Punalu`u site and the majority of the Kawaihoa site be granted IAL designation. The designation of the remaining approximately 384.1 acres comprised by the proposed solar energy facility should depend on Petitioner's commitment to dedicating the energy generated for agricultural purposes.

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<sup>10</sup> As noted above, OP is of the position that the existing wind turbines and the proposed solar energy facility on the Kawaihoa site do not further the State's objective for the identification of IAL.

<sup>11</sup> These conditions were imposed in seven of the petitions to be filed under Part III of Chapter 205, HRS, and approved by the Commission for IAL designation: Docket Nos. DR08-37/Alexander & Baldwin, Inc. (Kaua`i); DR09-38/Alexander & Baldwin, Inc. (Maui); DR10-42/Castle & Cooke Homes Hawaii, Inc. (O`ahu); DR11-43/Māhā`ulepū Farm LLC (Kaua`i); DR11-45/Parker Ranch, Inc. (Hawai`i); DR12-48/Grove Farm Company, Incorporated (Kaua`i); and DR13-50/Trustees of the Estate of Bernice Pauahi Bishop dba Kamehameha Schools (Kaua`i).

<sup>12</sup> OP also recommends that a condition be imposed requiring Petitioner to waive any and all rights to credits under §205-45(h), HRS.