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Attorney for OFFICE OF PLANNING  
AND SUSTAINABLE DEVELOPMENT

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of

KEKAHA AGRICULTURE ASSOCIATION,  
a Hawai'i agricultural cooperative,

For Declaratory Order to Designate Important  
Agricultural Land for approximately 12,123  
acres at Kekaha, Kaua'i; TMK 4-1-2-002:001  
Por.

DOCKET NO. DR21-76

OFFICE OF PLANNING AND  
SUSTAINABLE DEVELOPMENT'S  
STATEMENT OF NO POSITION;  
CERTIFICATE OF SERVICE

**OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT'S  
STATEMENT OF NO POSITION**

The Office of Planning and Sustainable Development (OPSD) takes no position with respect to the highly technical questions presented by the Land Use Commission (LUC or Commission) dated February 2, 2022, and defers to the Kekaha Agriculture Association and Agribusiness Development Corporation.

OPSD, however, notes that Article XI, section 3 of the Hawaii State Constitution expressed the State's obligation to conserve and protect agricultural lands, and to identify

Important Agricultural Lands needed to fulfill these purposes. It states in relevant part as follows:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

This constitutional provision, however, was not self-executing. See Save Sunset Beach Coalition v. City and County of Honolulu, 102 Hawaii 465, 476, n.22, 78 P.3d 1, 12, n.22 (2003). Consequently, the constitutional provision adopted in the 1978 Constitutional Convention required legislation. In 2005, the Hawaii State Legislature adopted Act 183 to implement Article XI, section 3. Act 183 created what is now Part III in Chapter 205, Hawaii Revised Statutes (HRS).

Accordingly, if there are alternate reasonable constructions of the law, OPSD would urge the LUC to select that construction which effectuates the purpose of the IAL statutes and the Hawai'i Constitution, namely to "conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." See Article XI, section 3 of the Hawaii State Constitution. See also section 1-15 (2), Hawaii Revised Statutes ("The reason and spirit of the law, and the cause which induced the legislature to enact it, may be considered to discover its true meaning.").

DATED: Honolulu, Hawai'i, March 29, 2022.

  
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CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing document was duly served upon the following by U.S. Mail, postage prepaid, or hand-delivery on the date noted below:

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DATED: Honolulu, Hawai'i, March 29, 2022.

  
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