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A Limited Liability Law Partnership

LAND USE COMMISSION  
STATE OF HAWAII

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HARTUNG BROTHERS HAWAII, LLC,  
a Hawaii limited liability company

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. DR 18-61
	)	
HARTUNG BROTHERS HAWAII, LLC,	)	PETITION FOR DECLARATORY ORDER
a Hawaii limited liability company,	)	TO DESIGNATE IMPORTANT
	)	AGRICULTURAL LANDS;
For Declaratory Order to Designate	)	VERIFICATION; EXHIBITS "A" – "F";
Important Agricultural Lands for	)	CERTIFICATE OF SERVICE
approximately 463 acres at Kunia, O'ahu;	)	
TMK (1) 9-2-004-006 (por.), -011, and -012	)	
(por.)	)	
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**PETITION FOR DECLARATORY ORDER TO DESIGNATE  
IMPORTANT AGRICULTURAL LANDS**

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**PETITION FOR DECLARATORY ORDER TO DESIGNATE  
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Petitioner HARTUNG BROTHERS HAWAII, LLC, a Hawaii limited liability company ("Petitioner"), by and through its attorneys Chun Kerr LLP, respectfully petitions the Land Use Commission of the State of Hawaii (the "Commission") to issue a declaratory order designating approximately 463 acres of land at Kunia, O'ahu (the "Property"), more particularly described below, as Important Agricultural Lands ("IAL") pursuant to §§ 205-44 and -45 of the Hawaii

Revised Statutes (“HRS”) and §§ 15-15-98, -99, -120, and -121 of the Hawaii Administrative Rules (“HAR”).

**I. SATISFACTION OF PETITION CONTENT REQUIREMENTS**

Pursuant to and in satisfaction of the formal requirements set forth in HAR § 15-15-99, Petitioner alleges and avers as follows:

**A. Name, Address, and Telephone Number of Petitioner**

Petitioner is Hartung Brothers Hawaii, LLC, a Hawaii limited liability company. Petitioner’s primary business address is 7050 Kaumualii Highway, Kekaha, Hawaii 96752. Petitioner’s address on Oahu is 94-960 Kunia Road, Kunia, Hawaii 96759. Petitioner’s telephone number is (808) 337-1408.

**B. Statement of Petitioner’s Interest in the Subject Matter and Reason for the Submission**

Petitioner is the fee simple owner of four (4) contiguous parcels of land in Kunia, Oahu, identified by Tax Map Keys (1) 9-2-004-003, -006, -011, and -012 (collectively, “Petitioner’s Land”). The Property sought to be designated IAL is a portion of Petitioner’s Land. The Property is actively used by Petitioner for agricultural purposes. The reason for the submission is to obtain a declaratory order designating the Property as IAL. Such designation is appropriate under the applicable constitutional, statutory, and regulatory frameworks. Consistent with those frameworks, Petitioner, as the owner and agricultural user of the Property, desires IAL designation to secure the Property’s agricultural use in the future and to enable Petitioner to take advantage of incentives offered now or in the future in connection with its ownership and use of IAL.

**C. Designation of Specific Statutory Provision, Rule, or Order in Question**

This Petition is made pursuant to HRS §§ 205-44 and -45, and HAR §§ 15-15-98, -99, -120 and -121. The relevant facts in connection with the Petition are set forth herein, and in the Exhibits attached hereto. The issue to be decided is whether the Property meets the criteria to be designated IAL under the authorities cited above.

**D. Statement of Petitioner's Position or Contention**

Petitioner's position is that the Property meets the criteria to be designated IAL, is appropriate for designation under the authorities cited herein, and that the Commission should issue a declaratory order designating the Property as IAL.

**E. Memorandum of Authorities, Containing a Full Description of Reasons and Legal Authorities in Support of Petitioner's Position**

The generally applicable formal requirements for a petition for declaratory order are set forth in HAR § 15-15-99, and are addressed in Sections I.A through I.H of this Petition. Furthermore, the specific requirements for a petition for declaratory order designating land as IAL are set forth in in HAR § 15-15-121(b), and are addressed as follows:

**1. Tax Map Keys of the land to be designated, and verification and authorization from the landowner**

The Property consists of Tax Map Key (1) 9-2-004-011 and portions of Tax Map Keys (1) 9-2-004-006 and -012, as more particularly depicted on the map attached to this Petition as Exhibit "A." The table below shows the approximate area of each parcel of Petitioner's Land, the area of each parcel proposed to be designated IAL, and the area of each parcel that is not proposed to be designated IAL at this time:

<b>TMK No.</b>	<b>Total Acres (Petitioner's Land)</b>	<b>IAL Acres (the Property)</b>	<b>Non-IAL Acres (the Remainder Land)</b>
(1) 9-2-004-003	19.296	0.000	19.296
(1) 9-2-004-006	724.893	394.538	330.355
(1) 9-2-004-011	11.129	11.129	0.000
(1) 9-2-004-012	93.309	57.300	36.009
<b>Total acres</b>	<b>848.627</b>	<b>462.967</b>	<b>385.660</b>
<b>Percentage of total</b>	<b>100%</b>	<b>54.6%</b>	<b>45.4%</b>

A letter from Title Guaranty of Hawaii, Inc., confirming fee simple ownership of the Property by the Petitioner, is attached hereto as Exhibit "B." A letter authorizing the firm of Chun Kerr LLC to file and process this Petition on Petitioner's behalf is attached hereto as Exhibit "C."

## **2. Proof of qualification for designation as IAL under HAR § 15-15-120**

The standards and criteria for designating land as IAL are set forth in HAR § 15-15-120(c), which substantially restates the statutory criteria set forth in HRS § 205-44(c). Not every criteria need be met for land to be designated as IAL. Rather, the standards and criteria must be weighed in light of the constitutional and statutory purposes, objectives, and policies. In particular, the statute provides that IAL are lands that:

- (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.

HRS § 205-42(a).

As set forth below and in the Agricultural Land Assessment attached hereto as Exhibit “D” (the “ALA”), the Property satisfies substantially all of the standards and criteria for designation as IAL.

*a. Whether the land is currently used for agricultural production*

**Current agricultural use**

All of the Property is currently in active agricultural use. Approximately 302 acres, or 65% of the Property, is in active crop production in the current year, which is similar in magnitude to prior years. Of this, approximately 299 acres are planted in seed corn and the remaining three acres are planted with sorghum. Any particular field area is currently used to produce one crop per year. Approximately one-half of the field areas on the Property can be planted at any given time. This allows for year-round crop production of up to two crops per year under Petitioner’s current practice (which requires crop isolation [i.e. corn crops must be isolated from each other by buffer areas] and soil re-generation/fallow fields between corn crops). Petitioner is exploring potential options to increase productivity via rotational production crops such as alfalfa or other production crops that may thrive on the Property.

Petitioner’s agricultural operations utilize a comprehensive conservation plan developed in conjunction with the United States Department of Agriculture’s Natural Resource Conservation Service, with a goal of soil and water conservation. This plan includes the use of vegetative barriers established across slopes to slow and divert rain water runoff, grassed waterways to channel rain water runoff and slow its flow rate, and sediment basins. In addition, the plan includes use of drip irrigation, cover crops, windbreaks and other tillage and dust mitigation measures. Petitioner’s agricultural practices emphasize impact minimization and sustainability of the long-term health and productivity of the soil and water. A copy of Petitioner’s conservation plan is attached hereto as Exhibit “E.”

The balance of the Property (approximately 161 acres, or 35% of the Property) consists of water infrastructure (such as a reservoir, detention basins, berms, and filter strips), roads, soil conservation measures, and gulch land. All of this area is important to, and used, in relation to the agricultural uses on the Property. A map depicting the general location of the fields, drainage gulches, and agricultural infrastructure is included as Figure 2 in the ALA.

The remainder of Petitioner's Land, measuring approximately 386 acres (45.4% of Petitioner's Land) (the "Remainder Land") consists primarily of: (a) Petitioner's processing facilities and offices along Kunia Road within Tax Map Key 1-9-2-004:003; (b) other fields used for seed corn production adjacent to Kunia Road (an approximately 72.049-acre portion of Tax Map Key 1-9-2-004:006); and (c) mauka land to the west of the Property (an approximately 258.306-acre portion of Tax Map Key 1-9-2-004:006 and an approximately 36.009-acre portion of Tax Map Key 1-9-2-004:012). The uses on the Remainder Land are consistent with and permitted under applicable land use and zoning laws.

The primary reason for not seeking designation of the Remainder Land is Petitioner's determination that the quantity of Petitioner's current irrigation water allocation, and the current state of the irrigation infrastructure, is not sufficient to service all of Petitioner's Land in active production at the same time. Although limited agricultural uses are possible on essentially all of Petitioner's Land (excluding drainage gulches, roads, and the like), Petitioner's existing water allocations, which are described in greater detail in Section I.E.2.e below, would significantly constrain cropping and production if all of Petitioner's Land were attempted to be farmed simultaneously. Out of all of Petitioner's Land, the Property is the best situated, most productive, and most agriculturally valuable land, and is the portion that should be (and is in fact) prioritized for cultivation.

The mauka land to the west of the Property is currently much less suitable for production agriculture than is the Property, because this land (i) has steeper slopes compared to the Property; (ii) is more prone to erosion; (iii) is further from the processing facility, thus presenting logistical challenges for transporting crops and equipment; (iv) is more prone to pests due to proximity to the Honouliuli Forest Reserve and unmanaged or minimally-managed properties bordering the fields; and (v) is not evenly supplied with functional irrigation infrastructure, and for the portions that do have irrigation, the increased elevation results in higher operational costs due to having to pump water further uphill. Although the mauka land to the west of the Property is not currently proposed to be designated IAL, Petitioner intends to continue agricultural use on this land to the extent feasible.

Petitioner fully intends to continue using Petitioner's processing facilities and other fields used for seed corn production (and all of the Remainder Land) as part of its agricultural operations. However, in light of the current limitations on irrigation water, the intended long-term and potentially further restricted nature of IAL designated lands for current and future generations, and to preserve flexibility for future uses that are consistent and compatible with ongoing agricultural production both on the Remainder Land and on the Property, Petitioner is not seeking IAL designation for these portions of Petitioner's Land at this time.

#### **Prior land use**

The Property has been in agricultural use for over 120 years. In 1877, James Campbell purchased 41,000 acres of land on Oahu in Ewa and Honouliuli (the Property is in the Honouliuli ahupua'a). In 1889, Campbell leased his Honouliuli land to Benjamin Dillingham,



who formed the Oahu Sugar Company (predecessor to Del Monte) and began sugar operations in 1897.

Oahu Sugar Company operations continued until 1995, when all sugar cultivation ceased. In 1995, the Property was leased by the Estate of James Campbell to Del Monte Fresh Produce (Hawaii), Inc. (“Del Monte”) for pineapple production. In 2008, the Property was purchased by Syngenta Hawaii, LLC, a wholly owned subsidiary of Syngenta Seeds, Inc., which itself is an indirect subsidiary of Syngenta AG, the multinational agricultural company based in Switzerland.<sup>1</sup> The Property was used by Syngenta primarily for research, development, and production of seed corn.

In June 2017, Syngenta Seeds, Inc. divested itself of all of its Hawaii assets by way of a sale of Syngenta Hawaii, LLC to Hartung Brothers, Inc., a Wisconsin corporation, after which the name of Syngenta Hawaii, LLC was changed to Hartung Brothers Hawaii, LLC. Since the sale, Hartung Brothers, Inc. has managed Petitioner, although Petitioner’s operational staff has remained largely unchanged. Unlike Syngenta, Hartung Brothers, Inc. has expertise in the production of a broad variety of crops, including beets, carrots, cucumbers, lima beans, peas, snapbeans, sweet corn, and seed corn. Since the sale, Petitioner has been actively exploring expanding the range of crops produced on its Hawaii land (including the Property and other property leased by Petitioner on Kauai).

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<sup>1</sup> Syngenta AG and its various affiliates will be referred to in this Petition generally as “Syngenta.” Note that at the time the Property was purchased in 2008 from the James Campbell Company, LLC (the successor to the Estate of James Campbell), Syngenta (or its predecessor in interest) had been leasing land adjacent to the Property, now owned by Monsanto Company, since at least the mid-1990s.

***b. The land's soil qualities and whether the growing conditions support agricultural production of food, fiber, or fuel- and energy-producing crops***

The Detailed Land Classification System and Agricultural Land Productivity Ratings by the University of Hawai'i Land Study Bureau (LSB) (1972) is a five-tiered productivity rating system using the letters A, B, C, D, and E, with A representing the class of highest productivity and E the lowest. The rating is based upon several environmental and physical qualities of the land such as soil condition, climate, surface relief, and drainage.

As shown in Figure 4 of the ALA, approximately 75 percent of the Property is rated A or B; approximately 62 percent is rated A, and approximately 13 percent is rated B. The remaining approximately 25 percent of the Property is rated C, D, or E as summarized in the table below:

Productivity Rating	Total IAL	
	Acres	% of IAL
A	284.672	61.5%
B	61.906	13.4%
C	56.490	12.2%
D	24.295	5.2%
E	35.604	7.7%
Unclassified	0.000	0.0%
Total	462.967	100%

The soil productivity ratings of the Property are high, and this high-productivity land has been and continues to be used for active agriculture.

An assessment of solar radiation received within the boundaries of the Property demonstrates that the Property receives more than sufficient solar radiation to support agricultural production. Mean annual solar radiation on the Property ranges from 186 to 188 watts per square meter per hour. This assessment is based on information from the

*Evapotranspiration of Hawai'i Final Report* prepared in February 2014 for the U.S. Army Corps of Engineers, Honolulu District and the State of Hawai'i's Commission on Water Resource Management by the Department of Geography at the University of Hawai'i at Mānoa. See ALA, Figure 6.

***c. The land's classification or identification under agricultural productivity rating 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***

The Agricultural Lands of Importance to the State of Hawai'i (ALISH) classification system was developed in 1977 by the State Department of Agriculture (Hawaii State Department of Agriculture, 1977). The system was primarily, but not exclusively, based on the soil characteristics of lands and existing cultivation. There are three classes of land under the ALISH system: Prime, Unique, and Other.

Prime ALISH is land best suited to the production of food, feed, forage, and fiber crops. The land has the soil quality, growing season, and moisture supply that are needed to produce high yields of crops in an economic manner when the land, including water resources, is treated and managed according to modern farming methods.

Unique ALISH is land other than Prime ALISH that is used for the production of specific high-value food crops. This land classification has the special combination of soil quality, growing season, temperature, humidity, sunlight, air drainage, elevation, aspect, moisture supply, or other such conditions as nearness to market, that favor the production of a specific crop of high quality and/or high yield when the land is treated and managed according to modern farming methods. In Hawai'i, some examples of crops grown on Unique ALISH land are coffee, taro, rice, watercress, and non-irrigated pineapple (Hawaii State Department of Agriculture, 1977).

Other ALISH is land other than Prime or Unique that is of state-wide or local importance for the production of food, feed, fiber, and forage crops. This land is important to agriculture in Hawai‘i, and yet it exhibits properties (such as seasonal wetness, erodibility, limited rooting zone, slope, flooding, or droughtiness) that exclude the land from Prime or Unique agricultural land use classifications. Two examples are: (i) lands which do not have an adequate moisture supply to be qualified as Prime; and (ii) lands which have similar characteristics and properties as Unique, except that the land is not currently in use for the production of a “unique” crop. These Other lands can be farmed sufficiently by applying greater amounts of fertilizer and other soil amendments, drainage improvement, erosion control practices, and flood protection. Other ALISH land can produce fair to good crop yields when managed properly.

Approximately 96.3 percent of the Property is assigned a classification rating under the ALISH system: 66.8 percent is classified as Prime, 0.5 percent is classified as Unique, and 29.0 percent is classified as Other (Hawaii State Department of Agriculture, 1977). The balance of the Property (3.7 percent) is not classified under the ALISH system but includes essential elements for active agricultural operations, such as drainage ways, water system infrastructure, roadways, or areas for soil conservation. See ALA, Figure 5. The table below summarizes the ALISH classification of the Property:

ALISH Classifications	Total IAL	
	Acres	% of IAL
Prime	309.308	66.8%
Unique	2.449	0.5%
Other	134.210	29.0%
Not ALISH	17.000	3.7%
Total:	462.967	100%

- d. If the land has been or is a type that has been associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production*

To the best of Petitioner's knowledge, the Property has not been used to cultivate taro, but has been used since the late 19<sup>th</sup> century for sugar, pineapple, and corn production.

- e. Whether the land has sufficient quantities of water to support viable agricultural production*

The Property has sufficient quantities of water, water-related infrastructure, and other agricultural-related infrastructure to support viable agricultural production, as summarized below. See ALA, Figure 7, for a map of the water resources and agricultural infrastructure on the Property.

A majority of the Property is irrigated by a plantation-era, on-site irrigation system, portions of which were installed by O'ahu Sugar Company, Ltd., Del Monte Fresh Produce (Hawaii), Inc., and Syngenta. The system includes one on-site reservoir, two reservoirs on neighboring land, three water pumps, and two booster pumps.

The on-site irrigation system draws water from Reservoirs #155, #23, and #90. Reservoir #155 was built in 1927 to store irrigation water for the previous sugarcane cultivation operations on the Property and in the region. Reservoirs #155 and #90 lie on an adjacent parcel, currently owned by Monsanto Company, to which Petitioner has access over various easements, and Reservoir #23 is a new addition recently built on the Petitioner's Land. Each of these reservoirs receive water from the Waiāhole Ditch, the western-most portion of which is located on the makai boundary of the Property, and which serves as the primary source of irrigation water for the Property.

Petitioner is permitted to withdraw Waiāhole Ditch water pursuant to Ground Water Use Permit No. 1052, issued by the Commission on Water Resource Management, State

of Hawai‘i, which allows the withdrawal of 0.590 million gallons per day (mgd) of water on a 12-month moving average basis for use on Petitioner’s Land. Since Hartung acquired the Land in June 2017, the 12-month moving average collective water use by Petitioner has ranged from 0.560 mgd to 0.475 mgd. Approximately 80 percent of this water is used for crops on the Property. Thus, Petitioner’s current allocation of water from Waiāhole Ditch is sufficient to meet crop irrigation needs within the Property. A copy of the Water Use Permit is attached hereto as Exhibit “F.” Additionally, Petitioner is a member of the Kunia Water Association (the “KWA”), in connection with which Petitioner’s Land has been allocated 3.82% of the total water available from the KWA. The actual amount of water (i.e. a specific number of gallons per day) that is available to Petitioner under this allocation is not set and can vary based on KWA well capacities with current pump systems, which could be upgraded in the future. Currently, Petitioner does not use any water from their KWA allocation<sup>2</sup>, and thus water from the KWA allocation does not currently play a critical role in meeting Petitioner’s irrigation needs. However, Petitioner’s KWA water allocation provides a backup source of water in the event that there may be a disruption of water capacity from the Waiāhole Ditch system.

In addition to water from the Waiāhole Ditch system, the Property receives a mean annual rainfall of approximately 30 to 40 inches annually.

***f. If the land's designation as important agricultural lands will be consistent with general, development, and community plans of the county***

Designation of the Property as IAL is consistent with State and county plans and classifications, as follows:

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<sup>2</sup> This is partially because water from the KWA is more expensive per gallon than water from the Waiāhole Ditch system.

### **State Land Use District**

All of the Property is within the State Agricultural Land Use District. See ALA, Figure 8. HRS §205-2(d) specifies that lands within the State Agricultural district shall include (among other things): (i) activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry; and (ii) farming activities or uses related to animal husbandry and game and fish propagation. Current and planned uses on Petitioner's Land are consistent with these uses.

### **County General Plan**

The General Plan for the City and County of Honolulu (2002) (General Plan) is a comprehensive statement of objectives and policies which sets forth the long-range aspirations of O'ahu's residents and the strategies of actions to achieve them. The General Plan includes 11 subject areas that provide the framework for the City's expression of public policy concerning the needs of the people and the functions of government.

Under the "Economic Activity" section of the General Plan is an objective and several policies to maintain the viability of agriculture on O'ahu. The designation of the Property as IAL is consistent with this objective and these policies, in that the designation of the Property as IAL will: (i) contribute toward the continuation of agriculture as an important source of income and employment; (ii) help to ensure sufficient agricultural land in 'Ewa and Central O'ahu to encourage the continuation of agriculture in these areas; and (iii) encourage more intensive use of productive agricultural land.

As of March of 2018, the City and County of Honolulu's Department of Planning and Permitting (DPP) is in the process of updating the General Plan. In March of 2017, the City and County of Honolulu presented the Second Public Review Draft of the General Plan (Draft

General Plan). DPP then made revisions based on comments received to a final draft which is scheduled to be presented to the Planning Commission for review in March of 2018. The Draft General Plan includes an objective and several policies to ensure the long-term viability and continued productivity of agriculture on O‘ahu. The designation of the Property as IAL is consistent with this objective and these policies in that the designation of the Property as IAL will: (i) help to ensure the continuation of agriculture as an important component of O‘ahu’s economy; (ii) encourage active use of high quality agricultural land for agricultural purposes; (iii) permanently preserve agricultural land with high productivity potential for agricultural production; (iv) contribute toward lessening the urbanization of high-value agricultural land located outside the City’s growth boundaries; and (v) encourage investment to improve and expand agricultural infrastructure, such as irrigation systems, agricultural processing centers, and distribution networks.

### **County Community Plans**

The City and County of Honolulu’s Development Plans and Sustainable Communities Plans are policy documents that are intended to guide the County’s land use approvals, infrastructure improvements, and private sector investment decisions for the enhancement and improvement of life on O‘ahu. The Island of O‘ahu is organized into eight regions. The Property is located mostly within the Central O‘ahu Sustainable Communities Plan (Central O‘ahu SCP) region, with a smaller portion in the ‘Ewa Development Plan (‘Ewa DP) region. See ALA, Figure 9.

The Central O‘ahu SCP (2002) contains a series of maps for various designations within the Central O‘ahu SCP area. All of the Central O‘ahu SCP maps designate the area of the Property that is in the Central O‘ahu SCP area as “Agricultural Areas” of some type. Similarly,



the ‘Ewa DP (2013) also contains a series of maps and all of the ‘Ewa DP maps designate the area of the Property that is in the ‘Ewa DP area as “Agricultural Areas” of some type. Additionally, all of the Central O‘ahu SCP and ‘Ewa DP maps show growth boundaries. The Property is not within the growth boundaries on any of the Central O‘ahu SCP and ‘Ewa DP maps.

The City and County of Honolulu is currently in the process of updating the Central O‘ahu SCP. In the Central O‘ahu SCP Proposed Revised Plan (2016), the maps continue to designate the area of the Property that is in the Central O‘ahu SCP area as “Agricultural Areas” of some type. See ALA, Figure 10.

The designation of the Property as IAL would support both the 2002 SCP and the 2016 SCP Proposed Revised Plan’s policy of agricultural land retention through ‘...providing long range protection for diversified agriculture on lands outside the Community Growth Boundary...’ (SCP 2002/2016: 2.2.1-2.2.3 and SCP 2016 Draft: 2.1, 3.1.3.4). It will also support the current and proposed plan policies of: (i) retaining natural gulches and drainageways (SCP 2002: 3.1.4.2 and SCP 2016 Draft: 3.1.3.2); and (ii) protecting greenways and open space (SCP 2002: 3.1.4.8 and SCP 2016 Draft: 3.1.3.8,).

In addition to maps, the Central O‘ahu SCP (2002), the Central O‘ahu SCP Proposed Revised Plan (2016), and the ‘Ewa DP (2013) include objectives and policies regarding retaining “prime,” “unique,” “high-quality,” or “high-value” agricultural lands.

### **County Zoning**

The City and County zoning of Petitioner’s Land, including the Property, is AG-1 Restricted Agricultural District (AG-1). See AAL, Figure 11. According to the Revised Ordinances of Honolulu (ROH) §21-3.50(b), the intent of the AG-1 District is to “conserve and

protect important agricultural lands for the performance of agricultural functions by permitting only those uses which perpetuate the retention of these lands in the production of food, feed, forage, fiber crops and horticultural plants.” Current and anticipated future uses on the Property are consistent with this intent.

### **County IAL Study**

In July of 2012, the City and County of Honolulu (City) Department of Planning and Permitting (DPP) initiated the City’s Important Agricultural Land Study (Study) to identify the City’s candidate lands for IAL designation. The Study consists of two phases.

DPP completed Phase I in April 2014. Phase I tasks included: (i) defining the IAL site selection criteria (ii) identifying available data sets to assist in mapping the defined criteria; and (iii) developing methodology for weighing or ranking the criteria. Formal public review, a comment period, and notification to affected land owners was not part of the Phase I tasks. Although the City’s proposed IAL were not defined in the Phase I study, the DPP prepared a series of criteria maps and came up with two composite maps of the City’s top three and four priority criteria using a geographic information system (GIS).

DPP began Phase II of the Study after the completion of Phase I in 2014, with public meetings held as recently as November 2017. In Phase II, the DPP devised incentives for landowners to designate their lands as IAL, and has produced draft maps of proposed IAL lands on O‘ahu based on the City’s top three priority criteria: (i) land currently used for agricultural production, (ii) land with soil qualities and growing conditions suitable for agricultural production, and (iii) land with sufficient quantities of water to support viable agricultural production. Land possessing at least one of these three priority criteria has been included in the City’s proposed designation as IAL. A map of the Property in relation to the City’s proposed

IAL lands is included in the AAL as Figure 12, which shows that the designation of the Property as IAL is consistent with the City's proposed IAL lands.

Since the publication of the City's draft maps of proposed IAL lands, DPP has presented the draft maps at public meetings, received comments from the public and affected landowners, and notified affected property owners. Starting in January of 2018, DPP is in the process of refining the proposed IAL maps and finalizing their recommendations before formally presenting them to the City and County of Honolulu Council (Council). DPP's tentative schedule is to present their IAL recommendations to the Council in 2018. The Council would then review the proposed IAL recommendations and maps and make any adjustments before the City would present the recommendations and maps to the State Land Use Commission for review and adoption.

***g. Whether the land contributes to maintaining a critical land mass important to agricultural operating productivity***

The Property consists of a contiguous block of 463 acres of important agricultural land. Furthermore, the Property itself is contiguous with land to the South owned by Monsanto Company which has been designated as IAL pursuant to the Decision and Order adopted by the Commission pertaining to Monsanto's Kunia land (Docket No. DR17-59).

***h. Whether the land has, or is near, support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power***

In addition to the water resources infrastructure described above, the Property contains agricultural roads between fields and Kunia Road is capable of supporting farming equipment and direct road transportation to/from markets. See ALA, Figure 7 for a map of agricultural roads through the Property. The Property has direct access to electrical power, either through land owned by Petitioner or via easements running to the south over Monsanto's

property. Petitioner's own processing facility is located on land immediately adjacent to the Property. The Property also has fences, gates, berms, and windbreaks to improve agricultural productivity and protect the environment.

**3. Current or planned agricultural use of the area to be designated**

As more fully described in section I.E.2.a above, the Property is currently in active agricultural production. Petitioner intends to continue to actively use the Property in agricultural production, and is exploring potential options to increase productivity via rotational production crops such as alfalfa or other production crops that may thrive on parts of the Property.

**F. Names of any Other Potential Parties**

Petitioner has no tenants, and no other private party is expected to have an interest in this matter. Petitioner expects that the State of Hawaii Department of Agriculture, the Office of Planning, and the Department of Planning and Permitting of the City and County of Honolulu may participate in these proceedings.

**G. Signature of Each Petitioner**

Counsel for Petitioner has, with Petitioner's authorization, signed this Petition on Petitioner's behalf.

**H. Whether the Petition Relates to any Commission Docket for District Boundary Amendment or Special Permit**

The Petition is not related to any Commission docket for district boundary amendment or special permit.

## **II. WAIVER OF IAL INCENTIVE CREDITS**

HRS § 205-45(b) provides that a petitioner for designation of IAL may also seek reclassification of land in the agricultural district to the rural, urban, or conservation district, or a combination thereof. Petitioner is not seeking such reclassification.

Furthermore, Petitioner hereby voluntarily waives its right to claim or exercise any “credits” provided for under HRS § 205-45(h) to reclassify any other of Petitioner’s lands. The foregoing waiver is limited to the aforesaid credits, and shall not apply to any other right, credit, entitlement, or privilege held now or in the future with respect to any of Petitioner’s property.

## **III. CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests that the Commission (1) find that this Petition meets the applicable standards for a petition for declaratory order to designate lands as IAL, and (2) issue a declaratory order designating the Property as IAL.

DATED: Honolulu, Hawaii, March 21, 2018.

CHUN KERR LLP  
A Limited Liability Law Partnership



DANTON S. WONG  
JOSEPH A. DANE

Attorneys for Petitioner  
HARTUNG BROTHERS HAWAII, LLC,  
a Hawaii limited liability company


BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. DR 18-61
	)	
HARTUNG BROTHERS HAWAII, LLC,	)	VERIFICATION
a Hawaii limited liability company,	)	
	)	
For Declaratory Order to Designate	)	
Important Agricultural Lands for	)	
approximately 463 acres at Kunia, O'ahu;	)	
TMK (1) 9-2-004-006 (por.), -011, and -012	)	
(por.)	)	


**VERIFICATION**


JOSHUA UYEHARA, being first duly sworn on oath, deposes and says that he is the General Manager for Hartung Brothers Hawaii, LLC, a Hawaii limited liability company, and, as such, is authorized to make this verification on behalf of Hartung Brothers Hawaii, LLC, and that he has read the foregoing Petition for Declaratory Order to Designate Important Agricultural Lands and knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

DATED: Honolulu, Hawaii, March 19, 2018.

  
JOSHUA UYEHARA, General Manager  
Hartung Brothers Hawaii, LLC, a Hawaii  
limited liability company

Subscribed and sworn to before me  
this 19<sup>th</sup> day of March, 2018.

  
\_\_\_\_\_  
Print Name: Patricia N. Hisamoto  
Notary Public, State of Hawaii  
My Commission Expires: March 27, 2020

Document Identification or Description: PETITION FOR DECLARATORY ORDER TO DESIGNATE IMPORTANT AGRICULTURAL LANDS; VERIFICATION; EXHIBITS "A"- "F"; CERTIFICATE OF SERVICE	
Document Date: <u>UNDATED AT TIME OF SIGNATURE</u>	No. of Pages: <u>119</u>
Name: Patricia N. Hisamoto	First Circuit
	<b>MAR 19 2018</b>
Notary Signature	Date
<u>NOTARY CERTIFICATE</u> (Hawaii Administrative Rules §5-11-8)	