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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 Lands for approximately 12,123  
acres at Kekaha, Kauai; TMK 4-1-2-002:001  
Por.

DOCKET NO. DR21-76

OFFICE OF PLANNING AND  
SUSTAINABLE DEVELOPMENT'S  
SUPPLEMENTAL COMMENTS;  
CERTIFICATE OF SERVICE

**OFFICE OF PLANNING AND SUSTAINABLE DEVELOPMENT'S  
SUPPLEMENTAL COMMENTS**

Kekaha Agriculture Association ("Petitioner") filed a Petition for Declaratory Order to Designate Important Agricultural Lands on December 2, 2021 ("Petition") with the Land Use Commission ("LUC") under Hawaii Revised Statutes ("HRS") Section 205-45. The Petition proposes to designate 12,123 acres of land at Kekaha, Kauai ("Petition Area") as IAL. The Petition Area is owned by the State of Hawai'i and set aside to the Agribusiness Development Corporation ("ADC") by Executive Order 4007.

A question arose as to whether the Petition Area must be designated under HRS Section 205-44.5 because it is land owned by the State of Hawai'i, and whether this precludes designation under HRS Section 205-45. The answer is clearly no.

HRS Section 205-44.5 sets forth a process for the Department of Agriculture and the Department of Land and Natural Resources to identify public lands that should be designated as IAL and to prepare maps delineating those lands. Specifically, HRS Section 205-44.5 states that “the department of agriculture and the department of land and natural resources shall collaborate to identify public lands as defined under section 171-2 that should be designated important agricultural lands as defined in section 205-42 and shall cause to be prepared maps delineating those lands.” HRS § 205-44.5.

The lands proposed for IAL designation by the Petition are not “public lands.” Public lands are defined in HRS Section 171-2, which contains a list of exceptions to inclusion in the definition of public lands. One of these exceptions is “Lands that are set aside by the governor to the agribusiness development corporation; lands leased to the agribusiness development corporation by any department or agency of the State; or lands to which the agribusiness development corporation in its corporate capacity holds title[.]” HRS § 171-2(11). The Petition Area is comprised of lands that are set aside by the Governor to ADC. As such, the Petition Area is not considered public lands that are subject to designation under HRS Section 205-44.5.

For the reasons stated above, HRS Section 205-44.5 is inapplicable to the Petition Area and the Petition is appropriately brought under HRS Section 205-45.

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DATED: Honolulu, Hawai'i, 12/17/21.



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Re: Dkt. No. DR21-76; In the Matter of the Petition of Kekaha Agriculture Association; OFFICE OF  
PLANNING AND SUSTAINABLE DEVELOPMENT'S SUPPLEMENTAL COMMENTS

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of

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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 on the date noted below:

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DATED: Honolulu, Hawai'i, 12/17/21



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