

# EXHIBIT 1

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KEKAHA AGRICULTURE ASSOCIATION

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of  
KEKAHA AGRICULTURE  
ASSOCIATION,  
a Hawaii 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

AMENDED PETITION FOR  
DECLARATORY ORDER TO DESIGNATE  
IMPORTANT AGRICULTURAL LANDS;  
VERIFICATION; EXHIBITS "A" – "B";  
CERTIFICATE OF SERVICE

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

Petitioner KEKAHA AGRICULTURE ASSOCIATION ("Petitioner" or "KAA"),  
by and through its attorneys Schlack Ito, A Limited Liability Law Company, respectfully  
petitions the Land Use Commission of the State of Hawaii ("Commission") to issue a declaratory  
order designating approximately 11,863 acres of land at Kekaha, Kauai ("KAA IAL"), 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, -999, -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 Kekaha Agriculture Association, a Hawaii agricultural cooperative. Petitioner's address is 8297 Kekaha Road, Kekaha, Hawaii 96752. Petitioner's telephone number is (808) 337-9262.

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

KAA is an agricultural cooperative organized under HRS chapter 421 which manages and operates agricultural infrastructure (e.g., irrigation water, drainage, roadways, and electric power systems) on land on Kaua'i referred to as the "Kekaha Ag Lands." The Agribusiness Development Corporation ("ADC") controls the Kekaha Ag Lands and licenses land within the Kekaha Ag Lands to KAA farmer members for agricultural activities. The State of Hawai'i owns the Kekaha Ag Lands. KAA manages and operates the agricultural infrastructure located on the Kekaha Ag Lands pursuant to an agreement with ADC, the Restated and Amended Memorandum of Agreement By and Between the State of Hawaii Agribusiness Development Corporation and the Kekaha Agriculture Association dated August 29, 2008, with a term of twenty years.

The Kekaha Ag Lands comprise approximately 12,762.26 acres along the leeward side of West Kaua'i abutting the town of Kekaha to the south and east. The Kekaha Ag Lands are within all, or portions of, the following ahupua'a: Pōki'ikauna, Waiawa, Niu, Mana, and Ka'ula'ula. All the Kekaha Ag Lands are within the State Agricultural District (Agricultural District).

Throughout this report the term:

- “Kekaha Ag Lands” refers to the approximately 12,762.26 acres of land along the leeward side of West Kaua‘i controlled by the ADC.
- “Kekaha Agriculture Association” or “KAA” (also referred to as Petitioner) refers to the agricultural cooperative which manages and operates agricultural infrastructure on the Kekaha Ag Lands and whose members are farmers engaged in agricultural activities on the Kekaha Ag Lands.
- “KAA IAL” refers to the Kekaha Ag Lands KAA proposes to designate as IAL.
- The “Remainder Land” refers to Kekaha Ag Lands the KAA is not proposing to designate as IAL.

Petitioner proposes to designate the vast majority of the Kekaha Ag Lands (approximately 93 percent or 11,863 acres) as IAL. The Kekaha Ag Lands that KAA is not proposing to designate as IAL (“Remainder Land”) are approximately 899 acres (approximately 7 percent of the Kekaha Ag Lands).

The Kekaha Ag Lands are a single Tax Map Key (“TMK”), which is TMK 4-1-2-002:001, as more particularly depicted on the map attached to this Petition as Exhibit A. The “Agricultural Land Assessment For The Kekaha Agriculture Association Proposed Important Agricultural Land, Island of Kaua‘i, November 2021,” prepared by PBR Hawaii (“ALA”) is attached as Exhibit B. Table 1 (below) shows the TMK number, the area proposed to be designated IAL, and the area that is not proposed to be designated as IAL.

**Table 1: TMK and Proposed IAL Areas**

<b>Tax Map Key Parcel No.</b>	<b>Total Acres (Kekaha Ag Lands)</b>	<b>IAL Acres (KAA IAL)</b>	<b>Non-IAL Acres (Remainder Land)</b>
4-1-2-002:001 Por.	12,762.26	11,863	899.26
<b>Total Acres</b>	<b>12,762.26</b>	<b>11,863</b>	<b>899.26</b>
<b>Percentage of Total</b>		<b>93%</b>	<b>7%</b>
		<b>100%</b>	

The KAA IAL is actively used by Petitioner (i.e., the members of the agricultural cooperative) for agricultural purposes. The reason for the submission is to obtain a declaratory order designating the KAA IAL as IAL. Such designation is appropriate under the applicable constitutional, statutory, and regulatory frameworks. Consistent with those frameworks, Petitioner desires IAL designation to secure the KAA IAL’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 KAA IAL 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 KAA IAL 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 KAA IAL 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 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 KAA IAL consists of Tax Map Key Parcel No. 4-1-2-002:001 Por., as more particularly depicted on the map attached to this Petition as Exhibit A. Table 1, above, shows the approximate area of the KAA IAL and the Remainder Land. On January 1, 2018, the ADC Board of Directors approved a request by ADC to authorize Petitioner to file a petition with the Commission seeking IAL designation of the Kekaha Ag Lands. A letter authorizing the firm of Schlack Ito LLLC to file and process this Petition on Petitioner's behalf was attached to as Exhibit C to the original Petition filed December 2, 2021.

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 ALA, the KAA IAL satisfies substantially all of the standards and criteria for designation as IAL.

- a. Whether the land is currently used/or agricultural production.

***Current Agricultural Use***

The KAA IAL comprises lands that either are currently in agricultural use or historically have been used for agricultural purposes. Current agricultural operations on the KAA IAL includes cultivation of diversified crops, aquaculture, research crops, and traditional native Hawaiian agricultural crops. Diversified crops include alfalfa, melon, squash, papaya, avocado, banana, mango and other fruits and vegetables. Diversified crops grown on the KAA IAL vary based on growing cycles and market conditions. Research crops and seed production are mostly used for cultivation of corn. Along the makai portions of the KAA IAL, there are various aquaculture ponds used for production of shrimp. In addition, traditional Hawaiian crops such as dryland taro are grown within the KAA IAL with plans to develop lo'i for wetland taro cultivation as well.

Petitioner operates and maintains agricultural infrastructure to serve and support agricultural use on the KAA IAL, which ADC licenses to a mix of large agricultural entities and individual tenant farmers. Currently there are three large licensees comprising operations that collectively account for the majority of active agricultural operations within the KAA IAL, totaling approximately 3,496 acres. This includes Hartung Brothers, Inc. (2,164 acres), Corteva Agriscience (767 acres), and Kauai Shrimp (415 acres). There are licensees on agricultural fields on the mauka lands, leased to Wines of Kaua'i (127 acres) and Kokee Farms (62 acres).

On the makai portions of the KAA IAL, other agricultural lands (comprising a total of approximately 167 acres) are licensed to smaller farmers actively growing crops,

including Becks Ag (10 acres). Several unlicensed fields (comprising approximately 3,894 acres) are fallow but are available for license to new farmers. The remaining approximately 4,257 acres of the KAA IAL are designated for continuity for maintaining critical land mass important to agricultural operation as outlined in standards and criteria. Figure 2 of the ALA shows the location of each of the licensees currently farming the KAA IAL.

The Statewide Agricultural Land Use Baseline 2015 confirms agricultural use on the KAA IAL with seed production on most of the KAA IAL and smaller areas used for cultivation of aquaculture and tropical fruits. In addition, 5,371 acres of the KAA IAL are covered under a restrictive covenant for the protection and preservation of agricultural production through 2029.

Figure 3 of the ALA shows the KAA IAL topography and illustrates the slopes, showing areas with relatively gentle grades conducive for food crop production and supporting infrastructure such as agricultural buildings across most of the KAA IAL. Approximately 55 percent of the KAA IAL comprises relatively flat lands with less than 10% slope, and 77 percent of the KAA IAL comprises lands with less than 20% grade.

Table 2 summarizes the KAA IAL slopes. Most of the KAA IAL is relatively flat, providing ideal topography for various types of crop production. Some areas of the KAA IAL that are not currently cultivated along the mauka segments, especially in the eastern portion, are too steep for certain types of crops grown, or are drainage ways and streambeds. However, these areas support agricultural activities on other parts of the land that are cultivated and are important parts of the overall KAA IAL for land stewardship, soil conservation, and cohesion and continuity of agricultural uses; and maintaining a critical land mass important to overall agricultural operation productivity.



**Table 2: Slope Summary**

<b>Slope</b>	<b>Acres</b>	<b>Percent</b>
Less than 10%	6,554	55.2%
10%-20%	2,583	21.8%
20%-25%	592	5.0%
Greater than 25%	2,134	18.0%
<b>Total:</b>	<b>11,863</b>	<b>100%</b>

*Prior Land Use*

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 com, and seed com. Since the sale, Petitioner has been actively exploring expanding the range of crops produced on its Hawaii land (including the KAA IAL and other property leased by Petitioner on Kauai).

- 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 Land Study Bureau (LSB) (1967) are based on a five-class productivity rating system using the letters A, B, C, D, and E. The rating is based upon several environmental and physical qualities of the land such as soil condition, climate, surface relief, and drainage.

As summarized in Table 3, approximately 10.8 percent of the KAA IAL is rated A, 45.0 percent of the KAA IAL is rated B, 7.0 percent is rated C, 2.1 percent is rated D, 34.5 percent is rated E, and 0.6 percent is unclassified (Land Study Bureau, 1967). According to the

LSB, only 2.8 percent and 8.6 percent of the total agricultural land on Kaua‘i is rated A and B respectively. Given the high percentage (55.8%) of the KAA IAL being rated as A and B, the productivity of the soil is strong, and the KAA IAL has been and continues to be used for active agriculture.

**Table 3: LSB Productivity Rating**

Productivity Rating	Total IAL	
	Acres	% of IAL
A	1,283	10.8%
B	5,336	45.0%
C	834	7.0%
D	244	2.1%
E	4,095	34.5%
Unclassified	71	0.6%
<b>Total</b>	<b>11,863</b>	<b>100%</b>

The KAA IAL receives sufficient solar radiation to support agricultural production. Mean annual solar radiation on the KAA IAL ranges from 190 to 220 watts per square meter per hour, based on information from the Evapotranspiration of Hawai‘i Final Report prepared in February 2014 by Department of Geography, University of Hawai‘i at Mānoa for the U.S. Army Corps of Engineers Honolulu District and the State of Hawai‘i Commission on Water Resource Management. Figure 5 of the ALA shows the solar radiation levels received on the KAA IAL in graphic form.

- 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.

In 1977 the State Department of Agriculture developed the Agricultural Lands of Importance to the State of Hawai‘i (“ALISH”) classification system. The ALISH system is

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.

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

The Unique ALISH rating is applied to lands other than Prime ALISH lands, that are used for production of specific, high-value food crops. Such lands have the special combination of soil quality, growing season, temperature, humidity, sunlight, air drainage, elevation, aspect, moisture supply, or other conditions, such 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. Examples of such crops are coffee, taro, rice, watercress, and non-irrigated pineapple (Hawai'i State Department of Agriculture, 1977).

The Other ALISH ratings is for lands other than Prime or Unique that are of state-wide or local importance for production of food, feed, fiber, and forage crops. Such lands are important to agriculture in Hawai'i and yet they exhibit properties such as seasonal wetness, erodibility, limited rooting zone, slope, flooding, or draftiness that exclude the land from Prime or Unique rating classifications. Two examples are: (1) lands which lack adequate moisture supply to be qualified as Prime; and (2) lands with similar characteristics and properties as Unique rated lands, except that the land is not currently in use for production of a "unique" crop. These Other rated lands can be farmed sufficiently by applying greater amounts of fertilizer and other soil amendments, drainage improvement, erosion control practices, and flood protection. Lands with an Other ALISH rating can produce fair to good crop yields when managed properly.

As shown on Figure 6 of the ALA and summarized in Table 4, approximately 66.8 percent of the KAA IAL is classified under the ALISH system: 40.2 percent is classified as Prime, and 26.6 percent is classified as Other.

**Table 4: ALISH Rating**

ALISH Classifications	Total IAL	
	Acres	% of IAL
Prime	4,772	40.2%
Unique	0	0%
Other	3,155	26.6%
Not ALISH	3,936	33.2%
<b>Total:</b>	11,863	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.

Kekaha Ag Lands have a long history of agricultural use dating back to the pre-Contact era. Traditional accounts and conditions indicate agricultural use in the Kekaha region prior to European arrival, as part of the traditional Hawaiian ahupua‘a system. However, historical accounts suggest intensive agricultural uses on the KAA IAL were concentrated in the southeastern section of the Lands. These accounts from the mid-18th and 19th centuries described the Kekaha region as rich with taro patches, fishponds, and coconut trees. Here the wetlands were fed in part by a natural spring at the base of the cliffs which supported the taro lo‘i of Kekaha. Other springs supported cultivatable lands at the base of the Pali bordering the Mānā Plain, but the region northwest of Kekaha was traditionally referred to as Mānā (arid) and described as a hot and dry place with large sections of marshlands.

The Mānā Plain is not flat. Two shallow, saucer-shaped depressions, over 100 foot high sand dunes, and alluvial fans at the mouths of gulches draining high-elevation land

above the Pali are among the most prominent topographic features. No streams cross the depressions or are present elsewhere on the plain, and prior to the excavation of the agricultural drainage ditch system evaporation and lateral groundwater flow were the only means of evacuating accumulated water from groundwater seepage, direct precipitation, and storm runoff. These and other low-lying regions on the Mānā Plain formerly supported perennial wetlands that expanded in wet and contracted in dry periods. The wetlands began to be drained after sugar cane started to be planted on a commercial scale in the 1870s. An initial connection to the ocean was established at Kawai‘ele in 1878; First Ditch was completed by 1907; Cox Drain and Kīkīaola Harbor Drain were in use by 1910; and Nohili Ditch was excavated in 1922 when large-capacity drainage pumps were installed. The wetlands surrounding the loko pu‘uone (ponds) at Kawai‘ele, Kolo and Nohili had been drained by 1931, and what remains the largest reclamation project in State history was completed when the final parcel was drained and planted in 1959.

Commercial agriculture on the Mānā Plain began with rice cultivation around the fringes of the perennial, depressional wetlands in the 1860s. After the treaty which removed the import tax on Hawaiian products entering the United States was ratified in 1875, sugar cane began to be grown commercially in 1878, and the Kekaha Sugar Company was created in 1898.

Groundwater was initially used to irrigate the cane fields and rice paddies, with spring water being supplemented by well water from 1890. However, crop failures caused by drought and irrigation water shortages motivated the construction of irrigation ditch systems that drew water from the perennial Waimea River. The six-mile-long Waimea Ditch was constructed in 1903 and the 20-mile-long Kekaha Ditch, which connected with the pre-existing Mānā Pump Ditch, was completed in 1907. By 1920, water from Kekaha Ditch was being used to irrigate

some 3,000 acres of land, and it is still the primary source of the irrigation water that supports diversified agriculture on the Mānā Plain.

Under the operation of the Kekaha Sugar Company, sugar cane cultivation became the main agricultural operation on the KAA IAL, although dairy and beef cattle have historically been raised on the land. Sugar operations flourished over the first half of the twentieth century until broader economic factors and shifts in agricultural production led to the decline and eventual closure of the Kekaha Sugar mill in 2000.

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

The KAA IAL has sufficient quantities of water, water-related infrastructure, and other agricultural infrastructure to support viable agricultural production, as summarized below. Figure 7 of the ALA shows the water resources and agricultural infrastructure on the KAA IAL.

The KAA, under the control of the ADC, has access to irrigation water provided by the Kōke‘e Ditch Irrigation System (“KODIS”) and Kekaha Ditch Irrigation System (“KEDIS”). Water rights for the KAA IAL from the Kōke‘e and Kekaha irrigation ditches are granted by Governor’s Executive Order No. 4287.

The Kekaha Ditch was originally constructed in the early 1900s to supply sufficient water to the former sugar cane fields managed and operated by the Kekaha Sugar Company. Following the success and improvements to the Kekaha Ditch, the Kekaha Sugar Company initiated construction of the Kōke‘e Ditch (constructed between 1923 and 1925), resulting in the existing ditch systems that provide significant water resources to the KAA IAL.

The KEDIS diverts water from the Waimea River supplying water along the approximate 27-mile ditch as far west as the reservoirs abutting Polihale State Park. The KODIS supplies water to the reservoirs on mauka lands and is The KAA IAL has sufficient quantities of

water, water-related infrastructure, and other agricultural infrastructure to support viable agricultural production, as summarized below. Figure 7 of the ALA shows the water resources and agricultural infrastructure on the KAA IAL.

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The Kekaha Ditch was originally constructed in the early 1900s to supply sufficient water to the former sugar cane fields managed and operated by the Kekaha Sugar Company. Following the success and improvements to the Kekaha Ditch, the Kekaha Sugar Company initiated construction of the Kōke‘e Ditch presently sourced from four major streams at the headwaters of the Waimea River watershed in Koke‘e State Park: Waikoali Stream, Kawaikōi Stream, Kauaikananā Stream, and Koke‘e Stream.

Under the terms of the 2017 Waimea Watershed Agreement Koke‘e Ditch supplies 0.5 mgd to the mauka lands. Flows in Kekaha Ditch cannot exceed (a) 10 mgd (as measured at Hukipo Flume); and (b) 6 mgd at times when flows in the Waimea River (measured at USGS gage 16031000) are less than 25 mgd. Based on data collected from 2017 to the present by KAA and reported to the Commission on Water Resource Management, the mean monthly flow in the Koke‘e Ditch is 0.5 mgd and the Kekaha Ditch is 9.1 mgd.

In addition to water resources provided by the existing irrigation ditches, supplemental water is provided by existing wells within the KAA IAL. Since the 1890s, over 60 wells and shafts have been drilled on the KAA IAL, five of which remain in active use and supply <0.5 mgd. The other wells and shafts have been capped to prevent possible degradation

of the groundwater.

Figure 7 of the ALA shows the irrigation ditches, reservoirs, water infrastructure, well locations and drainage pumps providing water resources across the KAA IAL. In addition to water from the Koke'e and Kekaha irrigation systems and wells, the KAA IAL receives a mean annual rainfall of approximately 18 to 30 inches which varies by elevation, providing supplemental water resources for agricultural production.

- 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 KAA IAL as IAL is consistent with State and county plans and classifications, as follows:

#### ***State Land Use District***

The State Land Use Law (HRS Chapter 205) establishes the State Land Use Commission and authorizes this body to designate all lands in the State into one of four districts: Urban, Rural, Agricultural, and Conservation. The Kekaha Ag Lands are completely within the Agricultural District, as shown in Figure 10 of the ALA. HRS §205-2(d) specifies that lands within the State Agricultural district shall include (among other things) activities or uses as characterized by the cultivation of crops; farming activities or uses related to animal husbandry; aquaculture; agricultural tourism conducted on a working farm or a farming operation; and open area recreational facilities. Current uses on the KAA IAL are consistent with these authorized agricultural uses.

#### ***County General Plan***

The General Plan for the County of Kaua'i (2018) ("General Plan") establishes priorities for managing growth and community development over a 20-year planning timeframe



with policies to guide County decision-making by mapping land use patterns, describing what type of development is desirable, and by setting high-level priorities for infrastructure and programs. The General Plan includes 10 sectors that provide the framework for the County's expression of public policy concerning the needs of the people and the functions of government.

The "Economy" portion of the General Plan includes a section on "Agriculture" which lists an objective to ensure long-term viability and productivity of agricultural lands. In addition, the section outlines policies to maintain the viability of agriculture on Kaua'i, including a specific policy for "Protecting Important Agricultural Lands (IAL)." The designation of the KAA IAL as IAL is consistent with this objective and these policies as the designation of the land as IAL will contribute toward the continuation of agriculture as an important source of income and employment; help ensure sufficient agricultural lands in Kekaha by encouraging the continuation of agriculture activity in these areas; and encourage more intensive use of productive agricultural lands.

After a four year process of engaging with residents, community leaders, government officials, business owners and landowners, Kaua'i Planning Commission transmitted the General Plan Update to the Kaua'i County Council in June 2017. The Kaua'i County Council approved the General Plan in February 2018 and the mayor signed it into law on March 15, 2018.

The designation of the KAA IAL as IAL is consistent with the General Plan's objectives and policies regarding maintaining the viability of agriculture. According to the General Plan's Land Use Map, roughly half of the KAA IAL is designated as "Agricultural" with the remaining half designated as "Natural." Designating the KAA IAL as IAL is consistent with this General Plan's Land Use Map as the lands will be preserved for agricultural production and

natural areas for contiguous preservation of agricultural uses across the KAA IAL. Figure 8 of the ALA shows the General Plan land use map illustrating land use designations for the KAA IAL.

### ***County Community Plans***

The County of Kaua‘i’s Community Plans are policy documents intended to guide the County’s land use approvals, infrastructure improvements, and private sector investment decisions for the enhancement and improvement of the people of Kaua‘i. The County of Kaua‘i is organized into six regions. The KAA IAL is located within the West Kaua‘i Community Plan (“WKCP”) region. The WKCP, which was adopted in December 2020, represents the County’s land use policy at the regional level and is a long-range plan that considers a 20-year planning timeframe to the year 2040. The WKCP contains a map for various designations within the WKCP region. The WKCP map designates roughly half of the KAA IAL as “Agriculture” with portions along the mauka boundary and the segment extending mauka of Kekaha and Waimea along the mountain slopes designated as “Natural.” Figure 9 of the ALA shows the WKCP land use map illustrating land use designations for the KAA IAL.

### ***County Zoning***

The County of Kaua‘i’s Comprehensive Zoning Ordinance (“CZO”) designates the majority of the KAA IAL as Agriculture District (A) with smaller portions of the KAA IAL as Open District (O). While most of the KAA IAL is within the Agriculture District, portions of the KAA IAL along the mauka boundary to the north and east and steeper section of the mauka lands comprising drainageways are zoned Open District.

According to the Kaua‘i County Code (“KCC”) § 8-8.1, the purpose of the Agriculture District is to “protect the agriculture potential of lands within the County of Kaua‘i,”

“assure a reasonable relationship between the availability of agriculture lands for various agriculture uses and the feasibility of those uses,” and “limit and control the dispersal of residential and urban use within agriculture lands.” KCC § 8-9.1 states that the purpose of the Open District is to “preserve, maintain or improve the essential characteristics of land and water areas that are of significant value to the public as scenic or recreational resources” and “preserve, maintain or improve the essential functions of physical and ecological systems, forms or forces which significantly affect the general health, safety and welfare.” Current uses on the KAA IAL are consistent with the purposes of the Agriculture District and the Open District.

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

As explained in this Petition and the ALA, the KAA IAL consists of 11,863 acres of important agricultural land. Based on size alone, this extraordinarily large acreage is certain to contribute to maintaining a critical land mass important to agricultural operating productivity.

- 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, as shown in Figure 7 of the ALA, the KAA IAL contains gates, fencing, greenhouses, electrical infrastructure, storage facilities, shade/rain shelters for field workers, a baseyard facility, and agricultural roads to facilitate agricultural production. The KAA IAL also contains aquaculture-related facilities and infrastructure for shrimp cultivation, including earthen ponds, breeding and production facilities, and packing buildings.

Agricultural roads within the KAA IAL have nine direct access points to Kaumuali‘i Highway, two direct access points to Kōke‘e Road, and three direct access points to Kekaha Road for transportation of agricultural products to and from markets and for access to

and from the KAA IAL for agricultural equipment.

As described above, there is significant water infrastructure for distributing and managing irrigation water across the vast area within the bounds of the KAA IAL. The KEDIS is comprised of a series of ditches, tunnels, and siphons that stretches approximately 27 miles, providing water resources to the majority of the agricultural fields along the Kekaha-Mana plains. The State provided funding for ADC to upgrade the existing KEDIS, including \$5 million worth of new piping to replace portions of the system along the Mana Plain.

The KODIS is comprised of a series of ditches that terminates along the upper mauka agricultural fields within the KAA IAL. On the mauka lands, there are three irrigation basins with gravity distribution systems for irrigation water. Plantation-era irrigation supply lines are present but will need repair and refurbishment in the future. While the mauka lands receive limited water from the Kōke'e Ditch irrigation system, a water pump with a 500,000 gpd capacity and irrigation force main pipeline have been purchased pending installation for future expansion of water resources on these lands.

There are six irrigation reservoirs, three basins (smaller reservoirs in mauka fields), six pumping and filtering stations, two deep wells, and three Maui-style well shafts/pumping stations located across the KAA IAL. The KAA IAL also includes a significant network of drainage ditches and canals throughout the makai fields, providing additional water infrastructure conducive to agricultural productivity.

The KAA IAL includes various agricultural roads, providing transportation access to all the agricultural fields. A key road, referred to as the Mana Track (from Kekaha to Kiko Road) and as the Upper Saki Mana Road (in Mana) to the 130 Reservoir, runs the length of the Kekaha-Mana plain and connects to most of the fields along the makai portions of the KAA IAL.

Supplemental agricultural roadways interconnect to the key road, creating an internal network within the KAA IAL for distribution of goods and materials. Many agricultural roads within the KAA IAL feed into the major roadways of the West Kaua‘i region, including Kaumuali‘i Highway, Waimea Canyon Drive, and Kōke‘e Road. These roads provide sufficient access points to transport agricultural goods to markets and consumers throughout the County and beyond.

**F. Current or Planned Agricultural Use of the Area to be Designated.**

As explained above, the KAA IAL is currently in active agricultural production and Petitioner intends to continue to actively use the KAA IAL in agricultural production.

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

Petitioner expects that the State of Hawaii Department of Agriculture, the Office of Planning and Sustainable Development, and ADC may participate in these proceedings. Apart from the foregoing State of Hawaii agencies, no other private party is expected to have a direct interest in this matter.

**H. Signature of Each Petitioner.**

Counsel for Petitioner has, with Petitioner’s authorization, signed the Petition filed on December 2, 2021 on Petitioner’s behalf.

**I. 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 the Kekaha Ag 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 the KAA IAL.

### 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 KAA IAL as IAL.

DATED: Honolulu, Hawai’i, April 27, 2022.

  
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