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A Limited Liability Law Partnership

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KONA ANIMAL CARE, INC.



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of
KONA ANIMAL CARE, INC.

For a Declaratory Order Providing that the
Operation of a Veterinary Establishment
and Animal Hospital is a Permissible Use
On Certain Land in the Agricultural
District

DOCKET NO. DR26-80

PETITION FOR DECLARATORY ORDER

VERIFICATION OF PETITION

EXHIBITS 1 – 6

CERTIFICATE OF SERVICE

PETITION FOR DECLARATORY ORDER

Kona Animal Care, Inc. dba Kona Veterinary Service (“**Kona Animal Care**”) petitions the Land Use Commission of the State of Hawai‘i (“**Commission**”) to issue a declaratory order determining that the operation of a veterinary establishment and animal hospital is a permissible use on certain land in the agricultural district. This Petition for Declaratory Order (“**Petition**”) is brought pursuant to Hawai‘i Revised Statutes (“**HRS**”) § 91-8 and Hawai‘i Administrative Rules (“**HAR**”) § 15-15-98.

I. NAMES, ADDRESS AND TELEPHONE NUMBER OF PETITIONER

Petitioner is the following:

Kona Animal Care, Inc. dba Kona Veterinary Service
Dr. Jenny Chartier
Dr. Bob Jordan
73-4730 Mamalahoa Hwy.
Kailua-Kona, Hawai'i 96740
Telephone Number: (808) 325-6637

Kona Animal Care respectfully requests that all correspondence and communications regarding this Petition be addressed to, and served upon, the undersigned counsel at:

Roy A. Vitousek
Darene K. Matsuoka
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In connection with the filing of this Petition, Kona Animal Care has authorized the undersigned counsel to act on its behalf with respect to this matter.

II. STATEMENT OF THE PETITIONERS' INTEREST, INCLUDING REASONS FOR SUBMISSION OF THE PETITION

Kona Animal Care respectfully requests a declaratory ruling from the LUC that the operation of a veterinary establishment and animal hospital is a permissible use on certain land in the State Land Use Agricultural District.

Kona Animal Care is the fee owner of the 1.64 acre property at 73-4730 Mamalahoa Hwy., Kailua-Kona, Hawai'i (TMK (3) 7-3-008: 001) (the "**Property**"). The Property is shown below in blue. A copy of the TMK Map is attached hereto as **Exhibit 1**. The Property is in the State land use Agricultural District and is zoned A-1a by the County of Hawai'i.



The Property is classified by the Land Study Bureau as overall (master) productivity rating class “C,” which means that it is only “fairly” suited for agriculture. The area surrounding the Property has been developed as low density urban.

Kona Animal Care provides critical health services to animal members of our West Hawai‘i ‘ohana, including some non-domestic animals, and was voted by residents of West Hawai‘i as a top 3 finalist in Best of the West for Best Pet Care and Best Veterinarian. Kona Animal Care is currently accredited by the American Animal Hospital Association (“AAHA”) and became AAHA accredited on November 9, 2021.¹ Only 15% of veterinary hospitals in the United States are accredited. Onsite evaluations are completed every three years.

Kona Animal Care has serviced West Hawai‘i for many years without regulatory problems or issues. A copy of web-based materials about the veterinary service is attached hereto as **Exhibit 2**.

¹ AAHA is a voluntary program in which hospitals are required to meet over 900 standards covering customer service, client care, case management, hospital management, diagnostic management and much more.

Kona Animal Cares wishes to continue to operate as a veterinary establishment and animal hospital on the Property. Accordingly, Kona Animal Cares has an interest in the land parcel at issue sufficient to submit this Petition.

III. DESIGNATION OF THE SPECIFIC PROVISION, RULE, OR ORDER IN QUESTION

A. **HAR § 5-15-98(a)** provides that “[o]n petition of an interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission.”

Thus, the Commission has jurisdiction to interpret the applicability and meaning of HRS § 205-4.5. *See id.*; *see also* HRS § 91-8 (“Any interested person may petition an agency for a declaratory order as to the applicability of any statutory provision or of any rule or order of the agency. Each agency shall adopt rules prescribing the form of the petitions and the procedure for their submission, consideration, and prompt disposition. Orders disposing of petitions in such cases shall have the same status as other agency orders.”).

B. **HRS § 205-2(d), “Districting and classification of lands,”** provides in relevant part:

(d) Agricultural districts shall include:

(2) Farming activities or uses related to animal husbandry and game and fish propagation[.]

C. **HRS § 205-5(b), “Zoning,”** provides in relevant part:

(b) Within agricultural districts, **uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted;** provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance. . . . (emphasis added)

D. **HRS § 205-4.5, “Permissible uses within the agricultural districts,”** provides in relevant part:

- (a) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B and for solar energy facilities, class B or C, shall be restricted to the following permitted uses:
- (3) Raising of livestock, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
 - (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and animal husbandry. For the purposes of this paragraph, "farm dwelling" means a single-family dwelling located on and accessory to a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (b) Uses not expressly permitted in subsection (a), including landfill units, as defined in section 342H-52, located on land within the agricultural district that has soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A in a county with a population greater than five hundred thousand, shall be prohibited, except the uses permitted as provided in sections 205-6² and 205-8, and construction of single-family dwellings on lots existing before June 4, 1976. . . .
- (c) Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U shall be restricted to the uses permitted for agricultural districts as set forth in section 205-5(b).

E. HAR § 15-15-23, "Permissible Land Uses," provides:

Except as otherwise provided in this chapter, the following land and building uses are compatible and permitted within the following land use districts, except when applicable county ordinances or regulations are more restrictive. Except as otherwise provided in this chapter, uses not expressly permitted are prohibited.

² HRS § 205-6 provides: "(a) Subject to this section, the county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use the person's land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired."

F. HAR § 15-15-25(b) provides:

- (b) Permissible uses within the agricultural district on land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class of C, D, E, and U shall be those uses as set forth in section 205-2, 205-4.5, and 205-5, HRS, and also uses compatible to the activities described in 205-2(d), HRS.

G. Hawai'i County Code ("HCC") § 25-5-72(a), "Agricultural Districts, Permitted uses," which provides in relevant part:

(a) The following uses shall be permitted in the A district:

- (4) Animal hospitals.
- (26) Veterinary establishments.³

H. HAR § 15-15-01. The purpose of the rules was and is as follows:

This chapter governs the practice and procedure before the land use commission, and shall be construed to secure the just and efficient determination of every proceeding.

HAR § 5-15-01 additionally provides that the Commission's Rules "shall be liberally construed to preserve, protect, and encourage the development and preservation of lands in the State for those uses to which they are best suited in the interest of public health and welfare of the people of the State of Hawai'i." Ultimately, the statute controls because rules may not "enlarge, alter, or restrict the provisions of the act being administered." *Coon v. City and County of Honolulu*, 98 Hawai'i 233, 252, 47 P.3d 348, 367 (2002).

³ "Kennels" are also permitted. HCC § 25-5-72(a)(17); HCC § 25-1-5(b) ("Kennel" means a commercial establishment in which dogs or domesticated animals are housed, groomed, bred, boarded, trained, or sold, all for a fee or compensation. The term includes animal quarantine stations.").

IV. STATEMENT OF RELEVANT FACTS AND ISSUES RAISED OR CONTROVERSY OR UNCERTAINTY INVOLVED

Kona Animal Cares owns the Property situated within the State Agricultural District located within the County of Hawai'i (the "County").

On July 15, 1991, the County Planning Commission voted to approve Special Permit No. 780 ("SP 780") "to allow an office/ outpatient clinic to support a mobile veterinary service on 1.64 acres of land within the State Land Use Agricultural District." **Exhibit 3** (SP 780).

In issuing SP 780, the County stated:

The granting of the permit to allow the establishment of an office/outpatient clinic to support a mobile veterinary service will promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law Rules and Regulations are intended to preserve, protect, and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii.

In the case of the Agricultural districts, the intent of the State Land Use Law Rules and Regulations is to preserve or keep lands of high agricultural potential in agricultural use. The land on which the proposed development is located is classified as "C" or "Fair" by the Land Study Bureau for agricultural productivity and "Unclassified" by the ALISH Map. No agricultural activity is presently being conducted on the property. While a portion of the parcel will be taken out of potential agricultural use to accommodate the proposed

office/outpatient clinic and single family dwelling, the limited nature of the proposed clinic will have a negligible effect on the County's agricultural land inventory. The proposed use will be in conjunction with single family residential use, which is a permitted use within the district. Therefore, it can be determined that the proposed use will not affect important agricultural lands within the district or region.

The request is not contrary to the General Plan. The proposed use is consistent with the following goals, policies, and standards of the General Plan:

Land Use

"Designate and allocate land uses in appropriate proportions and mix in keeping with the social, cultural, and physical environments of the County.

"The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment."

The granting of the request will also complement the General Plan policy of supporting and encouraging agricultural activities. The proposed facility will provide support services for the applicant's mobile veterinary service as well as a central location where clients may obtain medication or medical assistance. Although the granting of the proposed use will allow the establishment of a non-agricultural use on the property, it is determined that this use will supplement the services offered by the applicant's mobile veterinary service in supporting the existing livestock industry in the region. Thus, the proposed facility would also promote the objectives of the State Land Use Law Rules and Regulations by helping to preserve, protect, and encourage the development of agricultural lands.

The proposed use will not have any significant adverse effects on the surrounding properties. As previously mentioned, this request involves the construction of the office/outpatient clinic as an addition to a proposed single family dwelling. The proposed facility will be located a minimum of 43 feet from all property boundaries and in excess of 70 feet from the nearest dwelling. The boarding or kennelling of animals will not be permitted, with overnight accommodations limited to indoor cages to be kept within the proposed clinic. A paddock(s)

...

The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. Water is available to the property. Consulted agencies had no objection to the request.

Exhibit 3 (SP 780). SP 780 was subject to numerous conditions, including but not limited to limited hours (8:00 a.m. to 5:00 p.m. daily), staffing (“no more than two people, excluding the applicant”) and square footage (“not [to] exceed 900 square feet of gross floor area”). *Id.*

Following 20 years of successful operations as a veterinary office on the Property, Kona Animal Care returned to the County Planning Commission to expand its office.

On July 24, 2009, the County Planning Commission voted to approve Kona Animal Care’s “amendment to conditions relating to extension of . . . increase in square footage of the building, and related conditions of Special Permit No. 780, which allowed a veterinary office and clinic on 1.64 acres of land within the State Land Use Agricultural District.” **Exhibit 4** (August 14, 2009 amendment). Specifically, SP 780 was amended “to increase the office/ outpatient clinic staff size and gross floor area. *Id.*

In approving the amendment, the County stated:

Approval of this request would not be contrary to the General Plan or the Zoning Code. The project site will continue to be used as an office/outpatient clinic for the applicants' mobile veterinary service as proposed in the original request. The property is located on lands designated Agricultural by the State Land Use Commission and zoned Agricultural-1 acre (A-1a) by the County. Since the permit was originally granted, the General Plan LUPAG Map designation for the property has changed from Extensive Agriculture to Low Density Urban, which allows for residential uses with ancillary community and public uses and neighborhood and convenience-type commercial uses. Soils on the property are unclassified by the ALISH map, and the Land Study Bureau's Soil Rating for the property is "C" or "Fair" for agricultural activity. The proposed amendments would not diminish the agriculture use of the land as expansion of the clinic would occur by converting 800 square feet of the attached single-family dwelling into clinic space. The County Zoning Code considers veterinary establishments a permitted use on agriculturally zoned lands; however, State Land Use Law continues to not allow veterinary establishments on lands designated Agricultural by the State Land Use Commission without securing a special permit. The minimum number of parking stalls for the expanded clinic has been provided by the applicant.

Approval of this request would not be contrary to the original reasons for granting the Special Permit. The permit was originally granted to provide outpatient veterinary services to the surrounding residential and agricultural community. Demand for these services has grown since the permit was originally granted. To avoid adverse noise impacts to surrounding neighbors, a condition of the permit will continue to prohibit boarding or kenneling of animals on the property. Additionally, the Department of Environmental Management has requested a Solid Waste Management Plan for the expanded clinic. This will be included as a condition of approval.

Based on the above, the request to amend Special Permit No. 780 to increase the office/outpatient clinic staff size and gross floor area is an unusual and reasonable use of land within the State Land Use Agricultural District, and would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations or the original reasons for approving this permit. Approval of this request is subject to the following conditions. Material to be added is underscored; material to be deleted is bracketed and struck through.

Exhibit 4 (August 14, 2009 amendment).

Following 27 years of successful operations as a veterinary office on the Property, Kona Animal Care returned to the County Planning Commission to further expand its office.

On May 16, 2016, the County Planning Commission voted to approve Kona Animal Care's amendment to "increase the square footage of the clinic from 1,700 square feet to approximately

3,100 square feet” and “increase the number of staff from 8 to 12.” **Exhibit 5** (June 8, 2016 approval).

In approving the amendment, the County stated:

The applicant is requesting the proposed amendments to improve administrative efficiency and to meet the growing demand for veterinarian services in the Kona region which has increased since the Special Permit and First Amendment were granted.

Approval of this request would not be contrary to the General Plan or the Zoning Code. The project site will continue to be used as an office/outpatient clinic for the applicants’ mobile veterinary service as proposed in the original request and First Amendment. The property is located on lands designated Agricultural by the State Land Use Commission and zoned Agricultural-1 acre (A-1a) by the County. Since the permit was originally granted, the General Plan LUPAG Map

designation for the property has changed from Extensive Agriculture to Low Density Urban, which allows for residential uses with ancillary community and public uses and neighborhood and convenience-type commercial uses. Soils on the property are unclassified by the ALISH map, and the Land Study Bureau's Soil Rating for the property is "C" or "Fair" for agricultural activity. The proposed amendments would not diminish the agriculture use of the land as expansion of the clinic would occur by converting an existing 1,446 square foot, 3-bedroom dwelling on the parcel clinic and office space. The County Zoning Code considers veterinary establishments a permitted use on agriculturally zoned lands; however, State Land Use Law continues to not allow veterinary establishments on lands designated Agricultural by the State Land Use Commission without securing a special permit. Based on the submitted site plan, a total of 11 parking stalls (5 additional stalls) would be required. This required increase will be managed through the Plan Approval process which will be included as a condition of approval.

Approval of this request would not be contrary to the original reasons for granting the Special Permit. The permit was originally granted to provide outpatient veterinary services to the surrounding residential and agricultural community. Demand for these services has continued to grow since the permit was originally granted and amended. To avoid adverse noise impacts to surrounding neighbors, a condition of the permit will continue to prohibit boarding or kenneling of animals on the property. Additionally, the Department of Water Supply (DWS) has requested the applicant submit estimated maximum daily water usage calculations for the proposed uses. Based on the results of those calculations, the DWS will determine the need for additional meters and/or other water system improvements. Finally, the State Department of Health (DOH) has required that the applicant verify compliance with the Environmental Protection Agency (EPA) large capacity cesspool rules. According to DOH, if a non-residential facility is using an existing cesspool which serves 20 or more persons per day, the cesspool is considered a large capacity cesspool (LCC). Should the existing cesspool be determined to be an LCC, the applicant may be required to upgrade to a septic system. The DWS and DOH requirements will be included as conditions of approval.

Exhibit 5 (2016 amendment, County findings).

For 35 years, Kona Animal Care has successfully operated as a veterinary establishment and animal hospital on the Property. The County apparently takes the position that a special permit is required for a veterinary establishment or animal hospital on the Property located in the State

land use Agricultural District. Specifically, because a veterinary establishment or animal hospital is not expressly identified in HRS §§ 205-4.5 and 205-2(d), and HAR 15-15-25(b) provides that “uses not expressly permitted are prohibited,” such use on the Property may be prohibited.

Accordingly, there remains a dispute as to whether Kona Animal Care’s use of the Property as a veterinary establishment or animal hospital is a permitted use on the Property pursuant to state land use laws. The County represented that it is looking at this issue, which will take some time, and thus was not opposed to Kona Animal Care making this request for a declaratory ruling to the Commission. The County has made no representation as to what position it will take with the Commission related to this request for declaratory ruling.

**V. STATEMENT OF THE PETITIONER’S INTERPRETATION OF THE
STATUTE, RULE, OR ORDER OR THE POSITION OR CONTENTION
WITH RESPECT THERETO**

As set out below, Kona Animal Care’s position is that by operating a veterinary establishment or animal hospital, they are using their land to care for domestic animals; that this constitutes or is compatible with “raising livestock” or “animal husbandry;” and that the use is therefore permitted as of right pursuant to HRS §§ 205-4.5(c), 205-5(b) and 205-2(d)(2).

Kona Animal Care further contends that the Hawai‘i zoning code, which expressly permits “veterinary establishments” and “animal hospitals” is not in conflict with Chapter 205, but is a valid exercise of the County’s authority pursuant to HRS § 205-5 to zone within the Agricultural District and permit specific uses that are consistent with the general scheme set forth in Chapter 205. Thus it is Kona Animal Care’s position that it should not be required to obtain a special permit from the State or the County to operate a veterinary establishment or animal hospital on their Property.

**VI. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PETITIONER'S POSITION OR CONTENTION**

A. The LUC Has Jurisdiction.

Kona Animal Care is before the Commission on a petition for declaratory order. The Commission has jurisdiction over this matter. *See* HRS § 91-8; HAR § 15-15-98. Under the Commission's rules, "the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission to a specific factual situation." HAR § 15-15-98; *see also* HRS § 91-8.

B. Kona Animal Care's Use Constitutes or Is Compatible with Raising Livestock and Animal Husbandry and Is Therefore Permissible.

The Land Use Commission Rules provide that:

Permissible uses within the agricultural district on land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class of C, D, E, and U shall be **those uses as set forth in sections 205-2, 205-4.5, and 205-5, HRS, and also uses compatible to the activities described in 205-2(d), HRS.**

HAR § 15-15-25(b) (emphasis added).

In addition, the Commission recognizes that it has the authority to "to determine whether proposed uses on State Land Use Agricultural District lands with soil classified by the Land Study Bureau's Detailed Land Classification System as overall (master) productivity rating class C, D, E, or U are **compatible with agricultural activities and are therefore permitted uses[.]**" *In re The Sierra Club and David Kimo Frankel*, No. DR00-23, Declaratory Order, at 12 (Haw. Land Use Comm'n Oct. 25, 2000) (emphasis added); *see also* HRS § 205-4.5(c) ("Within the agricultural district, all lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U shall be restricted to the uses permitted for agricultural districts as set forth in section 205-5(b)."); *id.* § 205-5(b) ("Within

agricultural districts, **uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted[.]**”) (emphasis added).

HRS § 205-4.5(a) identifies the following as permitted uses in the agricultural district: “(3) **Raising of livestock**, including poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use; (4) Farm dwellings, employee housing, farm buildings, or activities or uses related to farming and **animal husbandry.**” HRS § 205-4.5(a) (emphasis added).

HRS § 205-2 further states in relevant part: “Agricultural districts shall include . . . uses **related to animal husbandry . . .**” HRS § 205-2(d)(2) (emphasis added).

For 35 years, Kona Animal Care has successfully operated as a veterinary establishment and animal hospital on the Property. They submit that this use fits use within the meaning of “raising of livestock” or “animal husbandry” or that it is compatible with such activities.

Initially, these terms are not defined by Chapter 205 or the Land Commission Rules. The Ninth Circuit Court of Appeals has recognized that the term “livestock” is “much broader than the traditional categories of horses, cattle, sheep, and pigs.” *United States v. Park*, 536 F.3d 1058, 1060 (9th Cir. 2008). Indeed, the Court recognized that the “dictionary definition of ‘livestock’ is **sweeping capturing every type of domesticated animal.**” *Id.* at 1062 (emphasis added).

For example, Webster’s Dictionary defines “livestock” as “**animals kept or raised for use or pleasure[.]**” MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/livestock> (accessed May 6, 2026) (emphasis added); *see also* BLACK’S LAW DICTIONARY (12th ed. 2024) (defining “livestock” as “[d]omestic animals and fowls that (1) are kept for profit or pleasure, (2) can normally be confined within boundaries without

seriously impairing their utility, and (3) do not normally intrude on others' land in such a way as to harm the land or growing crops.”).

This definition is clearly broad enough to include pet dogs and cats. *Cf.* MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/pet> (accessed May 6, 2026) (defining “pet” as “**a domesticated animal kept for pleasure rather than utility**”) (emphasis added); *Foster Village Cmty. Ass’n v. Hess*, 4 Haw. App. 463, 470-72, 667 P.2d 850, 854-5 (Haw. Ct. App. 1983) (citing Webster’s Third International Dictionary where the Honolulu zoning code did not define the terms “livestock” or “pets;” finding that a pig, though normally classified as livestock, could also be a pet); *see id.* (defining “livestock” as “Animals of any kind kept or raised for use or pleasure; *esp.*: meat and dairy cattle and draft animals—opposed to **dead** stock”) (quoting Webster’s Third International Dictionary (1971)) (emphasis in original).

Moreover, the term “raising” is easily broad enough to encompass Kona Animal Care’s activities, which can be described as caring for and promoting the growth of pet dogs and cats. *Cf.* Dictionary.com, <https://www.dictionary.com/browse/raise> (accessed May 6, 2026) (defining “raise”: ““7. To grow or breed, **care for**, or promote the growth of: **to raise corn; to raise prizewinning terriers.**”) (emphasis added).

Similarly, “animal husbandry” is broadly defined as “a branch of agriculture concerned with the production and **care of domestic animals**,” and an “animal husbandman” is defined as “one that keeps or tends livestock.” MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/animal%20husbandry> (accessed May 6, 2026) (emphasis added).

There is ample authority for the proposition that operating as a veterinary establishment or animal hospital fits within the meaning of “animal husbandry.” *See Rootstown Twp. Zoning Bd.*

of Appeals, 338 N.E. 2d 763, 763 (Ohio 1975) (“The breeding, raising and care of dogs constitutes animal husbandry[.]”); *Bd. of Brimfield Twp v. Bush*, No. 2005-P-0022, 2007 WL 2759495, at *4 (Ohio Ct. App. Sept. 21, 2007) (“[T]he dog is to be included within the class of animals customarily described as farm livestock and either as such, or as domestic animals, the dog is the subject for animal husbandry.”); *id.* at *5 (acknowledging dog rescue operations and dog boarding operations as being agricultural uses); *Linn County v. Hickey*, 778 P.2d 509, 509 (Or. Ct. App. 1989) (“Defendant contends that, in the absence of more specific legislation bearing on the subject, kennel operations constitute ‘animal husbandry’ and therefore come within the definition of ‘farm use.’ We agree.”); *Kang v. Dept. of Revenue*, 12 Or. Tax. 407, 408 (Or. Tax. Ct. 1993) (“[T]here is no question that breeding and kenneling of dogs is animal husbandry[.]”); 83 Am. Jur. 2d *Zoning and Planning* § 295 (2d. ed. 2026) (“The breeding, raising and care of dogs constitutes animal husbandry[.]”).

Even if the terms “raising of livestock” and “animal husbandry” might be interpreted more narrowly, Hawai‘i courts have been clear that zoning statutes are in derogation of common law rights and that they must be construed in favor of the free use of land. *See Topliss v. Planning Comm’n*, 9 Haw. App. 377, 385, 842 P.2d 648, 653-54 (Haw. Ct. App. 1993) (acknowledging rule that “zoning statute[s] . . . must, as a general rule, be strictly construed against further derogation of common-law property rights.”); *Hess*, 4 Haw. App. at 469, 667 P.2d at 854 (“Zoning laws and ordinances are strictly construed, as they are in derogation of the common law, and their provisions may not be extended by implication. . . . Ambiguities in a zoning regulation should not be resolved in further derogation of common-law rights.”); *id.* at 470-71, 667 P.2d at 854-55 (rejecting narrow reading of accessory use provision in zoning code that would exclude pet pigs and thereby extend restrictions “in derogation of every property owner’s

right to use his property in any lawful manner.”); *cf.* 1 Rathkopf’s *The Law of Zoning and Planning* § 5:13 (4th ed. 2025) (“Since a zoning law or ordinance is in derogation of the owner’s common law rights in the use of his land, most state courts hold that ordinance provisions will be construed in favor of the free use of land. Where doubt exists as to the meaning of zoning restrictions, courts hold that such restrictions will be strictly construed in favor of the landowner.”).

Moreover, even if a pet boarding facility does not fit neatly within the meaning of “raising of livestock” or “animal husbandry,” there can be no doubt that it is “compatible” with these and other agricultural uses. *See Renson v. Zoning Hearing Bd. of Lower Southampton Twp.*, 406 A.2d 1160, 1162 (Pa. Commw. Ct. 1979) (holding that a kennel for boarding and grooming dogs could not be classified as a “traditional agricultural use” but nonetheless finding that it was permissible under an ordinance that permitted “any use of the same general character.”).

Indeed, in a strikingly similar case, this Commission determined that the operation of a pet boarding kennel on land within the State Land Use Agricultural District to care for domestic animals constitutes or is compatible with “raising livestock” or “animal husbandry.”⁴ This Commission concluded that the use is “therefore a permissible use as of right pursuant to HRS sections 205-4.5(a)(3) and/or 205-2(d)(2). **Exhibit 6** (Docket No. DR12-26 Declaratory Order).

Under these circumstances, Kona Animal Care respectfully submits that their use of their land should be declared permissible under the State’s land use laws.

⁴ Kennels were not (and still are not) expressly identified in HRS §§ 205-4.5 and 205-2(d). *See also* HAR 15-15-25(b) (“uses not expressly permitted are prohibited”). The use of agricultural lands to operate a kennel was (and still is) permitted as of right under county zoning code.

C. The Hawaii County's Zoning Code Is Consistent with State Land Use Laws.

The Hawai'i County zoning code expressly permits Kona Animal Care to operate a veterinary establishment or animal hospital on the Property. This is a valid exercise of the County's authority pursuant to HRS § 205-5 to zone within the agricultural district.

The Property is zoned A-1a. The Hawai'i County zoning code permits "veterinary establishments" and "animal hospitals" as of right in the "A" district. *See* HCC § 25-5-72(a)(4) and (26) ("The following uses shall be permitted in the A district: (4) Animal hospitals. (26) Veterinary Establishments."). There is no question that Kona Animal Care is operating a veterinary establishment or animal hospital on the Property and that this use is permitted under County law.

Moreover, state law expressly authorizes the counties to zone within the state agricultural district according to the dictates of HRS § 46-4 and subject to the limitations within HRS chapter 205. *See* HRS § 205-5(a); *Save Sunset Beach Coal. v. City & County of Honolulu*, 102 Hawai'i 465, 480, 78 P.3d 1, 16 (Haw. 2003).

If there is a conflict between the state land use laws and county zoning ordinances, the conflict is resolved in favor of state laws. *See id.* at 481, 78 P.3d at 17. But there is not necessarily a conflict just because the zoning code identifies a specific use that is not mentioned by name in chapter 205. The Hawai'i Supreme Court has explained that:

In Hawaii's land use system the legislature's statutory districts constitute more of a general scheme, and . . . by delegating authority to zone to the counties, the legislature intended that specific zoning be enacted at the county level. . . . By adopting a dual land use designation approach, **the legislature envisioned that the counties would enact zoning ordinances that were somewhat different from, but not inconsistent with, the statutes.**

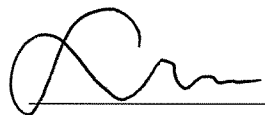
Id. at 482, 78 P.3d at 18 (emphasis added).

In other words, the question is not whether “veterinary establishment” or “animal hospital” are specifically named as permitted uses in chapter 205; rather, the question is whether these uses are “consistent” with the general categories of uses set forth in sections 205-4.5(a) and 205-2(d). Based on the authorities cited above, Kona Animal Care submits that operating a veterinary establishment or animal hospital involves caring for and promoting the growth of domestic animals; that this is consistent with the general terms “raising of livestock” and “animal husbandry;” and that, therefore, the County zoning ordinance that expressly permits veterinary establishments and animal hospitals on agricultural lands such as Kona Animal Care’s is valid.

For the reasons set out above, Kona Animal Care respectfully requests that the Commission issue a declaratory order providing that the operation of a veterinary establishment or animal hospital is a permissible use on their Property.

DATED: Honolulu, Hawai‘i, May 6, 2026.

CADES SCHUTTE
A Limited Liability Law Partnership



ROY A. VITOUSEK
DARENE K. MATSUOKA
Attorneys for Petitioner
KONA ANIMAL CARE

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of
KONA ANIMAL CARE, INC.

For a Declaratory Order Providing that the
Operation of a Veterinary Establishment
and Animal Hospital is a Permissible Use
On Certain Land in the Agricultural
District

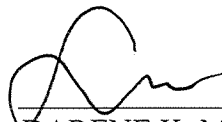
DOCKET NO. DR26-80

VERIFICATION OF PETITION

VERIFICATION OF PETITION

Darene K. Matsuoka, being first duly sworn on oath, deposes and says that I am an attorney for Petitioner KONA ANIMAL CARE, INC., and as such am authorized to make this verification on behalf of Petitioner. I have read the foregoing Petition and accompanying Memorandum and have full knowledge of the contents thereof, and the same are true to the best of my knowledge and belief.

DATED: Honolulu, Hawai'i, May 6, 2026.



DARENE K. MATSUOKA

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

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On Certain Land in the Agricultural
District

DOCKET NO. **DR26-80**

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certify that on this date, a copy of the foregoing document was duly served on the following persons at their last known address by depositing a copy in the U.S. mail, postage prepaid:

State Office of Planning and Sustainable Development

MARY ALICE EVANS

Director

Office of Planning

P.O. Box 2359

Honolulu, HI 96804-2359

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Office of the Attorney General

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County of Hawai'i, Planning Department

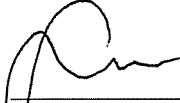
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DATED: Honolulu, Hawai'i, May 6, 2026.

CADES SCHUTTE
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