

**Kaua`i County, Hawai`i**  
**Charter Amendment of 2014 to add a new Article XXXIII**

**ARTICLE XXXIII**  
**BILL OF RIGHTS**

TO PROTECT FROM HAZARDS OF GMO AGRICULTURE, TOXINS AND TESTING,  
ESTABLISH AN ADMINISTRATOR OF ENVIRONMENTAL HEALTH,  
AND PROVIDE FOR ENFORCEMENT

The people of Kaua`i County make the following findings:

*Whereas*, the people of Kaua`i find that the large volumes of toxins used in testing and production practices for genetically modified crops pose significant threats to the health, safety, and welfare of residents and the environment within Kaua`i when transported in air and water outside the location of use; and that contamination of air, water, soils and agricultural products beyond the locations of use violate the right of the people of Kaua`i to a clean and healthful environment established by the people of Hawai`i in Article XI of the Hawai`i Constitution.

*Whereas*, the people of Kaua`i County find that the release of toxins designed to kill or inhibit the growth of natural organisms are air pollutants and water pollutants when released into the ambient air and surface and ground waters because such toxins are transported from the location where applied to control pests to locations where they adversely affect human health, safety and welfare, interfere with the growth, reproduction and natural life cycles of other species, and reduce the diversity, productivity and human enjoyment of natural systems; and

*Whereas*, the people of Kaua`i County find that substantial scientific and medical evidence establish that atrazine is a toxin, hazardous to human health when ingested, mimics and displaces human hormones during pre- and post-natal development, disrupts normal human development in the womb and after birth, has been found in the drinking water on portions of the island near agricultural fields where it has been, and continues to be, applied, and therefore has “unreasonable adverse effects” as declared by HRS, section 149A-32.5.

*Whereas*, the people of Kaua`i County find that substantial credible medical opinion and scientific evidence demonstrate that exposure to GMOs and toxins expressed by such organisms presents a significant risk to human health, safety and welfare (see Position Statement of the American Academy of Environmental Medicine and other references listed at [www.kauairising.org](http://www.kauairising.org))

*Whereas*, the people of Kaua`i County find that numerous medical professionals including Kauai’s physicians such as pediatricians, obstetrician gynecologists, naturopaths, and nurses presented uncontradicted testimony that a higher incidence of serious ailments and diseases consistent with exposure to toxins used in GMO agriculture is observed among children and adults who reside, attend school or are employed on Kauai’s Westside where pesticides are more heavily administered than other areas of the Island; and

*Whereas*, the people of Kaua`i County find that the rapid development and introduction of crops, combined with inadequate regulatory oversight at the state and federal levels, have left the citizens of Kauai County with significant concerns regarding the long-term safety of GE crops. The U.S. Food and Drug Administration does not require or conduct safety studies of genetically engineered foods. Instead, any safety consultations are voluntary, and genetically engineered food developers may decide what information to provide to the agency. Approval of genetically engineered food is based on industry research alone. There have been no long-term or epidemiological studies in the U.S. that examine the safety of human consumption of genetically engineered foods.

*Whereas*, the people of Kaua`i County find that independent scientists are limited from conducting safety and risk-assessment research of genetically engineered materials due to industry restrictions on research of those materials; and

*Whereas*, the people of Kaua`i County find that increased use of herbicides on GMO crops has resulted in the rapid development and proliferation of previously unknown herbicide-tolerant superweeds. The proliferation of these superweeds threatens to overtake the habitat of native flora and fauna in uncultivated lands and forces farmers to use increasingly toxic and expensive herbicides to remove them from cultivated lands; and

*Whereas*, the people of Kaua`i County find that the use of genetically engineered organisms is unsustainable and unreasonable when such use results in the uncontrolled dispersion and proliferation of those organisms beyond the fields in which they are grown, or the unintended and unpermitted modification of the genetic material of naturally occurring organisms, thereby threatening the genetic integrity and health of the natural environment; and

*Whereas*, the people of Kaua`i County find that the release and dispersion of genetic material from GMOs into the ambient environment interferes with the right to farm of the residents of Kaua`i by interfering with their right to grow, save, preserve, protect, harvest, consume, distribute and sell their own crops and seed free of contamination from modified genetic material; and

*Whereas*, the people of Kaua`i County find that the contamination of crops with modified genetic material can cause producers of unmodified crops to lose access to domestic and international markets, and to suffer from lost income resulting from the reduced value of crops because they cannot be labeled and offered for sale as “organic” or “GMO-free” food products; and

*Whereas*, the people of Kaua`i County find that preventing contamination of crops with modified genetic material to ensure access by growers to high value markets is necessary to “*enable and promote the economic sustainability of agriculture*” as required by HRS, section 205-46.

*Whereas*, the people of Kaua`i County find that protection of a safe and healthful food supply from contamination by modified genetic material, harmful toxins expressed by GMOs or applied when a commercial agricultural entity is engaged in the use of GMOs is included in the right of each person to a clean and healthful environment protected by Article XI, section 9 of the Hawai`i Constitution; and

*Whereas*, the people of Kaua`i County find that each person, both individually and collectively, possesses the right to grow, raise, access, harvest, preserve, process, exchange, sell and consume agricultural products

produced by sustainable agricultural practices; and

*Whereas*, the people of Kaua`i County understand that establishing these protections may reduce the profitability of a commercial agricultural entity engaging in the use of GMOs and toxins, but no such entity has the right to make profits at the expense of the right of the people to a clean and healthful environment;

*Whereas*, the people of Kaua`i County find that monitoring is required to determine exposures to GMOs and toxins because modeling based on single point meteorological data is not reliable given the extreme diversity of meteorological conditions around the island, and because toxin application rates are unverifiable; and

*Whereas*, the people of Kaua`i County enact this Charter Amendment pursuant to the Hawai`i Constitution's recognition that all political power is "inherent in the people," that governments are instituted to secure the rights of people; the United Nations Council on Human Rights' resolution, which stipulates in the Declaration of Rights of Indigenous People, Article 29, Sections 1 and 2, "the right of people to the conservation and protection of the environment and the productive capacity of their lands and resources"; Article XI of the Hawai`i Constitution that declares "each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources" which encompasses the right to nurture the integrity of our people and culture, and to preserve the quality of life that sustains the health and well-being of the people; and

*Whereas*, the people of Kaua`i County affirm the findings made by the County Council in Kaua`i County Code section 22-22.1.

Therefore, we the people of Kaua`i County hereby adopt this Charter Amendment.

**Section 33.1. Right to Safe Air, Water, and Food Supply.**

**(a) *Right to Produce Safe Foods.*** The right to farm guaranteed to residents of Kaua`i County includes the right to grow or produce for consumption clean, healthful and safe agricultural products.

**(b) *Right to Protect Seed.*** All residents of Kaua`i County possess the right to save, grow, preserve, protect, collect, share, store, use, harvest, exchange, sell and distribute all seeds used for sustainable agricultural practices within Kaua`i County. This right shall include, but not be limited to, the right to be free from infection, infestation, and contamination by GMOs, whether resulting from drift or any other form of intentional or unintended transport through the ambient environment.

**(c) *Duty to Conserve and Protect Natural Communities.*** To carry out the duty of Kaua`i County to conserve and protect the land, water and air and other natural resources required by Article XI, Section 1, of the Hawai`i Constitution, Kaua`i County declares that soils and other terrestrial systems, aquatic systems such as aquifers, streams, rivers, wetlands, and reefs, shall be conserved and protected by prohibiting activities and practices that result in the intentional or unintentional introduction into such systems of GMOs or toxins that may endanger, or may reasonably be suspected to, endanger or threaten the existence, survival, productivity or natural diversity of organisms comprising such systems, or the ability of organisms naturally present in such systems to thrive.

**(d) *Right to Clean and Healthful Air, Water and Land.*** Each person has the right to breathe clean and

healthful air free from air pollution, and drink and use clean and healthful water free from contamination with GMOs and toxins.

**(e) Purpose.** The policies and procedures established by this Charter Amendment are enacted for the purposes of (1) implementing the duty imposed by the people upon the subdivisions of the State of Hawai`i through the Hawai`i constitution, Article XI, section 1, to conserve and protect the land, air, water and other natural resources of Kaua`i County, (2) defining by law the right to a clean and healthful environment established by the people through Article XI, section 9 of the Hawai`i constitution; and (3) securing the inalienable rights protected by Article I, section 2 of the Hawai`i constitution.

**(f) Securing the Rights to a Clean and Healthful Environment.** To effectively secure for the residents of Kauai County the environmental rights guaranteed by Article XI of the Hawai`i constitution, enforce the statutory prohibition against air pollution, HRS, section 342B-11, and the statutory declaration that contamination of drinking water with pesticide residues is an “unreasonable adverse effect,” HRS, section 149A-32.5, Kaua`i County determines that uncertainties regarding the effects of exposure to GMOs or toxins on human health and the health and integrity of environmental systems must be resolved against exposure to such pollutants consistent with the precautionary principle.

**(g) Rights are Self-Executing.** All rights secured and duties delineated by this Charter Amendment are fundamental and inalienable, shall be self-executing except with regard to actions specifically delegated to the Kaua`i County Council or the Administrator of Environmental Health, and shall be enforceable against both public and private entities.

### **Section 33.2. Prohibitions and Duties Necessary to Secure the Bill of Rights.**

(a) It shall be unlawful for any entity to violate, or interfere with the exercise of, any right secured by this Charter Amendment.

**(b)(i) Containment of Genetically Modified Organisms.** It shall be unlawful for any commercial agricultural entity to engage in, or seek to engage in, the use of any genetically modified organism –

(A) in a manner that allows, causes, or contributes to –

(I) the release, introduction or transport of that GMO into the ambient environment beyond the boundary of the terrestrial or aquatic domain under the control and management of such commercial agricultural entity;

(II) unlawful trespass resulting from the infestation or contamination with that GMO of any agricultural product planted or grown, or any feed, nutrient or fertilizer used to produce an agricultural product, by any other entity beyond the boundary of the terrestrial or aquatic domain under the control and management of any commercial agricultural entity engaged in such use;

(III) the infestation, or contamination with that GMO of any organism that occurs naturally in the ambient environment beyond the boundary of the terrestrial or aquatic domain under the control and management

of any commercial agricultural entity engaged in such use; or

(B) if any previous use of that GMO demonstrates that genetic material from that GMO has been transferred to, and incorporated into, the genetic material of any non-target cultivated or wild organism.

(ii) It shall be unlawful for any commercial agricultural entity to engage in the use of GMO(s) or trans-genetic risk seed, unless the commercial agricultural entity proposing to use such seed or organism demonstrates beyond a reasonable doubt, to the satisfaction of Kaua`i County, pursuant to Section 33.4 hereof, that such use will not violate any prohibition in paragraph (b)(i) of this section.

(A) The demonstration required by this subparagraph (ii) shall be based on a continuous monitoring program established in accord with section 33.3 of this Charter prior to any new planting, propagation or germination of seed subject to this subparagraph (ii).

(B) An exemption from the prohibition in this subparagraph (ii), as authorized herein, must be obtained prior to the planting of any new crop of GMO(s), or the propagation or germination of any trans-genetic risk seed after the effective date of this Charter Amendment.

(C) Engaging in the use of GMO(s) pursuant to an exemption from (b)(ii) shall be conducted in a manner that does not cause or contribute to any violation of any prohibition in paragraph (b)(i) of this section, and complies with each condition or requirement of any ordinance granting such exemption.

**(c) Protecting the Public, Wildlife and Reefs From Toxins.**

(i) It shall be unlawful for any commercial agricultural entity to engage in, or seek to engage in, the use of any toxin(s) in a manner that causes, or contributes to –

(A) the release, introduction or transport of toxins into the ambient environment beyond the boundary of the terrestrial or aquatic domain under the control or management of such commercial agricultural entity;

(B) the infestation or contamination with toxins of any agricultural product planted or grown by, or any feed, nutrients or fertilizers used by, any other entity beyond the boundary of the terrestrial or aquatic domain under the control or management of such commercial agricultural entity;

(C) contamination of drinking water; or

(D) exposure in the ambient environment that may impair the health, growth, development, reproduction or welfare of, or endanger any person or fetus, or any naturally occurring organism, not a pest.

(ii) It shall be unlawful for any commercial agricultural entity that purchased or used in excess of five (5) pounds or fifteen (15) gallons of any single restricted use toxin during any prior calendar year to use or apply any restricted use toxin in any amount unless the commercial agricultural entity proposing to use such toxin demonstrates beyond a reasonable doubt, to the satisfaction of Kaua`i County, based on monitoring data

obtained in accordance with Section 33.3 hereof, information obtained through research protocols developed in accordance with Section 33.4 hereof, and other relevant probative information, that –

(A) use of such toxin can be undertaken in a manner that will not violate any prohibition in paragraph (c) (i) of this section, or

(B) the commercial agricultural entity may be exempted from the prohibition in (c)(i)(A) hereof with respect to the defined application or use of a specific toxin or combination of toxins, because such toxin(s) expected to be, or likely to be, dispersed or transported beyond the boundary of the terrestrial or aquatic domain under the control or management of such commercial agricultural entity, when considered together with releases or transport of toxins from other entities, will not result in cumulative concentrations of toxins that cause, or contribute to, (I) air pollution, (II) water pollution, (III) contamination of drinking water, (IV) contamination of any agricultural product planted or grown by, or feed, nutrient or fertilizer used by any entity not using such toxin(s), or (V) exposure in the ambient environment that may impair the health, growth, development, reproduction or welfare of, or endanger any fetus, person or other organism.

(iii) To protect residents from contamination of drinking water with toxins, it shall be unlawful for any commercial agricultural entity to engage in the use of, or to apply any toxin (or any mixture containing toxins) to any crop, terrestrial or aquatic domain when residues of such toxin, or a degradant of any such toxin, is found in drinking water, unless the commercial agricultural entity establishes beyond a reasonable doubt, to the satisfaction of Kaua`i County, that –

(A)(I) periodic sampling of drinking water during at least 60 days demonstrates that residues of the toxin(s) are no longer detectable;

(II) the pathway for contamination of the drinking water has been identified;

(III) the source of the toxin(s) in drinking water has been identified and contamination at the source has been abated; or

(B) the commercial agricultural entity using, or proposing to use any toxin found in drinking water, obtains a new exemption pursuant to (ii)(b) and Section 33.4 hereof, which includes a demonstration that the use of such toxin by that commercial agricultural entity did not in the past, and could not in the future, contribute to contamination of the drinking water supply where such toxin was found.

(d) It shall be unlawful and against public policy for any commercial agricultural entity that violates any prohibition in section 33.2(b) hereof by causing or allowing the infection, infestation or contamination of agricultural products by genetically engineered organisms, or other patented traits, to assert a claim for damages or equitable relief against any entity with an interest in such infected, infested or contaminated agricultural product(s) based on seed patent, ownership rights, loss of income or commercial infringement resulting from any such violation of section 33.2(b).

(e) No permit, license, privilege, charter, or other authority issued by any State or federal agency or officer that would authorize activities or conduct that violate the rights, obligations or prohibitions of this Charter

Amendment, the Hawai`i Constitution, the United States Constitution, or other laws, shall be given effect to defeat or interfere with the rights of the residents of Kaua`i County protected by this Charter Amendment.

### **Section 33.3. Monitoring for Compliance.**

(a) No commercial agricultural entity may lawfully engage in, or seek to engage in, the use of GMOs or restricted use toxins, unless such entity –

- (i) has paid the fee required by this section to establish, implement and continuously operate a monitoring program approved by the Administrator consistent with this section;
- (ii) has reported, and shall periodically report during the period when the commercial agricultural entity engages in the use of GMOs or restricted use toxins, and for at least one year following notice to the Administrator that the commercial agricultural entity has terminated the use of GMOs and such toxins, the results of monitoring conducted pursuant hereto to the Administrator and the public; and
- (iii) demonstrates annually, or more frequently if required by the Administrator, that no violation of section 33.2 hereof has occurred, is occurring, or is likely to occur. Such demonstration shall include an evaluation of samples obtained as part of an investigation of any complaints filed by residents or adjacent land owners of suspected or possible violations of section 33.2 hereof, or the conditions of any exemption granted pursuant to section 33.4.

(b) The monitoring program required by section 33.3(a) shall include, but not be limited to –

- (i) a comprehensive network of monitoring stations for the collection of samples from around the perimeter of the terrestrial or aquatic domain where the commercial agricultural entity proposes to engage in the use of GMOs, or toxins, and from drinking water and drinking water sources in the vicinity of such domain.
- (ii) at minimum, such samples shall be collected from –
  - (A) the ambient air in all directions where the public has access within 500 meters downwind from the terrestrial or aquatic domain of the commercial agricultural entity, but between such domain and the nearest point(s) of exposure by residents or the public;
  - (B) surface waters flowing off the fields where such commercial agricultural entity engages in, or proposes to engage in, the use of GMOs or toxins;
  - (C) ground waters down gradient from the fields identified in clause (B);
  - (D) soils on the terrestrial and aquatic domain where GMOs and/or toxins are proposed to be used, and on adjacent properties;
  - (E) any crops or produce grown, or honey gathered on nearby properties when the grower or bee keeper has reason to suspect possible contamination by GMOs or toxins; and
  - (F) other pathways that could result in the transport of GMOs or toxins into (I) ground water used for drinking or irrigation, (II) surface water bodies or the marine environment, or (III) ambient air.
- (iii) the sampling and analysis shall be conducted in accord with a protocol approved by the Administrator, after consultation with the Director of the Hawai`i Department of Health, and based on the recommendations of an expert panel convened pursuant to section 33.3(c).
- (iv) the sampling protocol shall be designed to –
  - (A) establish baseline concentrations or conditions of each GMO and toxin that the commercial agricultural entity proposes to use before the commercial agricultural entity engages in any new or future use of such organism(s) or toxin(s);
  - (B) require scheduled, periodic collection of samples sufficient to determine whether transport of each such organism and/or toxin occurs under routine operating conditions and typical meteorological conditions;

- (C) require additional samples to be collected during periods and under meteorological conditions when each such GMO and/or toxin is most likely to be transported beyond the boundary of the terrestrial or aquatic domain under the control and management of such commercial agricultural entity;
- (D) identify the presence in the nearby environment of agricultural products that could be contaminated with GMOs and/or toxins, and other species in the environment likely to be sensitive to exposure to the GMOs and toxins proposed to be used by the commercial agricultural entity;
- (E) characterize the population density, and diversity of such species in the nearby environment representative of the baseline environment not affected by GMOs or toxins, and if GMOs or toxins have been used in the terrestrial or aquatic domain of the commercial agricultural entity proposing their future use, the population of such species most likely to have been affected by such use;
- (F) provide for the periodic re-assessment of agricultural products and species identified pursuant to (iv)(D);
- (G) select monitoring locations and monitoring parameters that provide sufficient site-specific information as is necessary to allow the respective responsibility for any violations to be attributed to each entity engaged in the use of each GMO and/or toxin.

(c) The Administrator shall not approve any monitoring protocol pursuant to this section without requiring that such protocol implement the recommendations of a panel of experts convened to evaluate any proposed protocol. The panel of experts shall be convened in the manner prescribed by Section 33.4.

(d) Any monitoring program required by this section, including but not limited to, the operation and maintenance of monitoring sites, sample collection, laboratory analysis and reporting, shall be performed by one or more independent contractor(s) employed by Kaua`i County, and under the supervision of the Administrator. The funds to compensate the contractor shall be assessed by Kaua`i County as a monitoring fee to be paid by the commercial agricultural entity proposing to engage in the use of GMOs and/or restricted use toxins.

**Section 33.4. Compliance, Exemptions.**

(a) Any commercial agricultural entity that engages in the use of GMOs or toxins in a manner that causes or contributes to a violation of any requirement of section 33.2 hereof shall cease and desist any such use upon discovery of such violation, or upon notice of such violation from the Office or any resident thereof.

(b) Any commercial agricultural entity may apply for an exemption from the prohibition against the use of any toxin in section 33.2(c)(ii) hereof by making the demonstration required by 2(c)(ii)(A) in accord with the following procedures.

(i) the applicant for an exemption based on section 33.2(c)(ii)(A) must provide evidence demonstrating beyond a reasonable doubt, to the satisfaction of Kaua`i County, that any toxin, or any combination of toxins, proposed to be used will not be released from or transported beyond the boundary of the terrestrial or aquatic domain under the control and management of the commercial agricultural entity that proposes to engage in the use of such toxin(s). Such evidence must include, at a minimum --

(A) baseline monitoring data of toxins and fugitive dust collected from the domain in compliance with the monitoring protocol established pursuant to Section 33.3, and monitoring data collected during, and periodically after, test applications of proposed toxins.

(B) a description of each toxin(s), and any mixture, proposed to be used on the site, the proposed location of intended use, the method of application, the season(s) and time(s) of day of proposed application, and any meteorological conditions when toxins would not be applied or used.



(C) a description of contour of fields and design of channels, holding ponds and/or catchment basins with sufficient capacity to capture surface water runoff and prevent its discharge from the domain during extreme precipitation events.

(D) analysis of ambient air samples collected during high wind episodes to demonstrate that fugitive dust was successfully controlled to establish that toxins deposited on soils, plant surfaces, plant residues or adhering to soil particles will not be transported from the domain; and

(E) such other evidence as may be required by the County or requested by the panel convened pursuant to paragraph (d) to make the determination required by (b)(ii)(B) of this section.

(ii) an application for an exemption may be granted by the County only if –

(A) the conditions of use of such toxins will satisfy the requirements of 2(c)(ii)(A); and

(B) a panel of experts convened pursuant to paragraph (d) hereof agree that the evidence demonstrates beyond a reasonable doubt that the conditions of use will achieve compliance with the requirements of 2(c)(ii)(A).

(c) Any commercial agricultural entity may apply for an exemption from the prohibition against the use of any toxin in section 33.2(c)(ii) hereof by making the demonstration required by 2(c)(ii)(B) in accord with the following procedures.

(i) the applicant for an exemption based on section 33.2(c)(ii)(B) must provide evidence demonstrating beyond a reasonable doubt to the satisfaction of Kaua'i County that any toxin, or any combination of toxins, proposed to be released from or transported beyond the terrestrial or aquatic domain where the commercial agricultural entity proposes to engage in the use of such toxin(s) will not cause, or contribute to, air pollution, water pollution, impair the health, growth, development, or reproduction of, or endanger any fetus, person, organism or natural system. Such evidence must include, at a minimum --

(A) the information required by (b)(i)(A)-(E) hereof, and the proposed conditions and limitations for the use or application of such toxins at such location;

(B) application of models that have been validated against monitoring data obtained from the domain to be modeled, using both long-term and short-term worst case rates of use or application, to estimate release into air and water, and accumulation on soils, locally consumed foods, dispersion and transport through all media, and short-term and long-term cumulative exposures from all media for the most exposed residents, students attending nearby schools, and users of recreational and public facilities;

(C)(I) measurement of current onsite and offsite concentrations in air, water, and soils, at all locations in Hawaii where such toxins have been used, and which are under the control or management of the applicant, any entity under the control of the applicant, or another subsidiary entity under common control with the applicant by a parent entity; and

(II) any such measurements from locations inside or outside Hawaii known to, or available to the applicant, any entity under control of the applicant, or another subsidiary entity under common control with the applicant by a parent entity;

(D) collection of soil samples at locations identified in response to (C)(I) and analysis to determine changes in the presence, structure, and diversity of the species occupying the ambient environment at such locations;

(E) cohort studies of residents living in close proximity to such locations identified in response to (C) compared with populations in the same culture but not in close proximity to such locations to determine whether such proximity is associated with (I) significant disruption of, or interference with, normal biological functions related to the flora of the gut, the uptake of nutrients, hormonal balance, and performance of the immune system; (II) the incidence of adverse health effects including diseases, birth

defects, successful pregnancy outcomes, birth weight, abnormal or impaired fetal or childhood development, abnormal or diminished cognitive function, autism spectrum disorders, increased dementia or Alzheimer symptoms, or (III) any other effect that adversely affects well-being and enjoyment of life; (F) the studies performed pursuant to clause (E) hereof shall be designed to, or of such duration as is deemed necessary to, detect both acute effects associated with short-term exposures, and chronic effects associated with long-term exposures;

(G) a survey of all published reports of effects on human populations and other species associated with exposure to each toxin proposed for use, including but not limited to, the effects listed in (E);

(H) investigations to assess whether the effects of exposure to the toxins proposed to be used may endanger organisms in the environment in Hawai'i that are suspected of being sensitive to such exposure.

(ii) Any cohort study or other investigation performed to develop evidence required by (c)(i) hereof, shall be designed in consultation with the expert panel convened pursuant to paragraph (d) of this section, and the protocol governing the performance of such investigation shall be implemented by one or more independent contractors in accord with any terms and conditions of the protocol adopted or approved by such panel.

(d) Expert Panels. The monitoring protocol required by Section 33.3, and the research protocols to develop information sufficient to demonstrate that exposure to toxin(s) will not endanger or impair the health of persons or natural systems as required by Section 33.4(c), shall be designed in collaboration with, and approved by, a panel of experts.

(i) Monitoring panel. One panel of experts may be convened for a period not to exceed four years to review and approve all monitoring protocols under Section 33.3. Members appointed to such panel shall have training or experience in fields related to the monitoring sciences.

(ii) Research panels. A separate panel of experts shall be convened for each application for an exemption under Section 33.4(b) or 33.4(c). Half of the members appointed to a panel to review an application under section 33.4(c) shall have experience with the design, implementation and analysis of human cohort studies and/or field investigations into natural systems. Other members of such a panel shall have experience relevant to other issues that will be addressed as part of the investigation.

(iii) Experts shall be appointed to any monitoring or research panel by the Administrator as follows:

(A) one member shall be selected from two candidates nominated by the commercial agricultural entity proposing to engage in the use of GMOs and/or toxins;

(B) the Administrator shall invite the nomination of three or more candidates by the American Academy of Environmental Medicine from which the Administrator will select, at a minimum, two members.

(C) the Administrator shall invite the nomination of two or more candidates by the Director of the Hawai'i Department of Health from which the Administrator will select, at a minimum, one member.

(D) the Administrator shall invite the nomination of two candidates nominated by the Pesticide Action Network from which the Administrator will select, at a minimum, one member;

(E) the Administrator has discretion to appoint other qualified experts to ensure that areas of expertise relevant to the investigations to be conducted are represented on the panel. For the selection of qualified experts in specialized areas of expertise, the Administrator shall invite nominations from the director of the National Institutes of Environmental Health.

(iv) Any decisions by panels, including but not limited to, approval of monitoring or research protocols, and the adoption of statements of fact and explanations of uncertainties for reports to Kaua'i County Council required by (e)(i) hereof, shall be made in meetings open to the public, and after a reasonable opportunity for public

comment on a draft of the proposed decision document. Such meetings may be convened in person or with panel members participating by web conference, provided that all proceedings will be open to the public.

(e) Demonstrating to the Satisfaction of Kaua`i County.

(i) Any exemption from the requirements of this Charter Amendment may only be granted by ordinance after a determination is made to the satisfaction of Kaua`i County that all the conditions for granting such an exemption have been met. The following procedures to assist the County Council and the public in making such a determination shall be completed before final action may be taken by the Kaua`i County Council on any application for an exemption pursuant this Section:

(A) a report shall be prepared by the research panel of experts convened pursuant to this section, and submitted to the Kaua`i County Council for action along with any recommendations by the Administrator.

(B) The report of the research panel of experts shall identify –

(I) the facts upon which all panel members concur, a summary of the scientific or other evidence relied upon for finding such facts, and appendices containing the data sources;

(II) facts alleged by any panel member that are in dispute;

(III) an agreed explanation of the uncertainties underlying the factual matters in dispute, or separate explanations of the uncertainties if there is no agreed explanation;

(IV) discussion of whether the facts upon which all members concur are sufficient to establish, beyond a reasonable doubt, that the conditions and requirements for an exemption under 4(b) or 4(c) are met and will be satisfied by implementation of the proposal to engage in the use of GMOs and/or toxins;

(V) description of any limitations on, or conditions for, uses or applications that must be met to provide certainty that the requirements for an exemption will be met during the term of the exemption; and

(VI) recommended term of the exemption which will determine when new data must be evaluated.

(ii) An ordinance granting an exception shall include –

(A) any enforceable monitoring, reporting and other conditions necessary to ensure compliance with this Charter and the terms of the ordinance; and

(B) a term limit for the exemption to require reconsideration of the exemption based on any new evidence that becomes available during the period of the exemption.

(iii) Such ordinance shall become final and effective 120 days after adoption by the Kaua`i County Council, unless within such 120 days a satisfactory petition has been submitted for referral of that ordinance to the voters of Kaua`i County pursuant to the procedures in Article XXII of this Charter.

(f) The costs of convening the panel(s) of experts required by this section, any field investigations, data collection, sampling, or laboratory analyses deemed necessary by the panel and/or Administrator, to make findings required by this Section 33.4 beyond a reasonable doubt, shall be assessed on the applicant seeking an exemption under section 33.4(b) or 33.4(c) by Kaua`i County as an application fee. An initial fee based upon expected costs may be assessed upon submission of the application, but all costs incurred must be assessed and paid by the applicant before final action by the Kaua`i County Council may be taken on the application.

### **Section 33.5. Reducing Use of Toxins by Kaua`i County.**

The Administrator shall, in cooperation with the directors of the Kaua`i County Department of Public Works, and Department of Water Supply, prepare a survey of toxin uses by the County, identify opportunities for replacing toxins with alternative practices or chemicals that are not toxins, or that minimize risk to health and the environment, and biannually present a report to Council that (1) describes current uses of toxins by Kaua`i

County, and (2) recommends actions that will eliminate or minimize risks to public health and/or the environment.

**Section 33.6. Administration and Enforcement.**

(a) Violations.

(i) Offense. Any commercial agricultural entity, and any officer or manager responsible for the policies or actions thereof, that violates any provision of this Charter Amendment, violates or fails to implement any monitoring program required by section 33.3, or violates or fails to implement any provision or condition established by ordinance granting an exemption pursuant to section 33.4 hereof, shall be guilty of an offense.

(ii) Strict liability. Any action, activity or conduct, or failure to act, that violates this Charter Amendment is an offense without requiring proof that the defendant knew or intended that such action, activities or conduct, or failure to act, would cause or contribute to the violation.

(iii) Prior approvals not a defense. Actions, activities or conduct authorized by any applicable local, state, or federal permit, approval or registration shall not be lawful if prohibited by this Charter Amendment. Any such permit, approval or registration shall not be a defense to an action for enforcement of any requirement under this Charter Amendment.

(b) Penalties.

(i) Civil penalties.

(A) Upon conviction of an offense, any commercial agricultural entity, officer or manager thereof, whether acting as principal, agent, or otherwise, that violates, causes, or permits the violation of any provision of this Charter Amendment shall be assessed a civil fine of \$10,000-\$25,000 per day, per violation.

(B) Upon proof that any person knew that actions, activities or conduct, or failure to act, would result in a violation, or intended to violate any requirement under this Charter Amendment, the maximum civil fine shall be assessed, unless such conduct was necessary to protect the health or safety of employees or other persons at risk of suffering immediate physical harm.

(ii) Criminal penalties. In addition to any civil penalty described in subsection (b)(i), upon conviction of an offense, any commercial agricultural entity, officer or manager thereof, whether acting as principal, agent, or otherwise, that violates, causes or permits the violation of any provision of this Charter Amendment, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than two-thousand dollars (\$2,000.00), or imprisoned not more than one (1) year, or both, for each offense. The continuation of any violation after conviction for a first offense shall be deemed a new criminal offense for each day that the violation or violations continue.

(iii) Coordination with State law. To the extent that any conduct that violates a requirement or prohibition of this Charter Amendment also violates a requirement or prohibition of State law, penalties assessed for any violation shall be consistent with those prescribed by the applicable Hawai`i statute.

(c) Civil remedies.

(i) Kaua`i County, or any resident of Kaua`i County, may enforce the rights, duties and prohibitions of this Charter Amendment through an action brought in any court possessing jurisdiction over actions, activities or conduct by any entity occurring within Kaua`i County, including failure to perform any duty required by this Charter Amendment. No action may be commenced against the Administrator for the failure to perform a duty required by this Charter Amendment unless at least 60 days prior thereto written notice was served on the Administrator identifying the duties that have not been performed, and the Administrator is failing to perform such duties when such action is commenced.

(ii) In any action brought pursuant to (c)(i) of this section, Kaua`i County or the resident shall be entitled to recover all costs of litigation, including, without limitation, travel expenses necessary for the appearance of counsel and witnesses, reasonable compensation for expert witnesses, and attorney's fees. Such costs shall be awarded if significant objectives of the action are achieved without requiring that plaintiffs prevail by obtaining favorable decisions or an order granting relief.

(iii) Any action brought pursuant to (c)(i) of this section shall be in the name of Kaua`i County on behalf of any adversely affected person(s), ecosystem or natural community. In such action, equitable relief shall be available to prevent continuing or imminent future violations, and public and private damages shall be awarded to compensate for harm.

(iv) Compensation for public damages shall be in addition to civil or criminal penalties assessed pursuant to (b) of this section, and shall include –

(A) the cost of restoring contaminated waters and/or soils, and ecosystem(s) or natural communities to its natural state before the injury;

(B) the loss of, or interference with, public use; and

(C) the loss of commercial value to users of public resources such as clean water supplies, fisheries, and native food sources.

Compensation for the cost of restoring contaminated waters, soils or ecosystems shall be paid to Kaua`i County as trustee of the protected resources to be used exclusively for the full and complete restoration of the waters, soils, food sources, ecosystem or natural community.

(d) Administration.

(i) Office created. An Office of Environmental Health is hereby created under the direction of an Administrator to be appointed by the Kaua`i County Council to implement and enforce (A) the provisions of this Charter Amendment, (B) such powers as are delegated to Kaua`i County to protect the environment by the Hawai`i Constitution and state laws, and (C) Ordinance 960, and any other environmental protection ordinances adopted by the Kaua`i County Council. The Administrator shall be appointed for a term of five years, and shall continue to serve thereafter until reappointed or replaced. Prior to termination of service by appointment of a successor, the Administrator may only be removed from office for cause by two-thirds vote of County Council.

(ii) Qualifications. The Administrator shall either --

(A) have (I) received either a doctor of medicine degree from an accredited medical school or a doctorate from an accredited Ph.D. granting university in a field related to environmental medicine, human health effects research, the administration of environmental health protection or environmental systems protection programs, and (II) at least ten years professional experience in such a program; or

(B) have received a law degree from an accredited law school and have at least ten years experience in the development of environmental regulatory programs and enforcement of environmental laws.

(iii) Powers and Duties. In addition to the duties assigned by this Charter Amendment, the Administrator is hereby authorized to –

(A) issue such regulations or orders as may be necessary to implement the provisions of this Charter Amendment, including but not limited to, orders requiring the production of reports or records;

(B) enter the premises of commercial agricultural entities to conduct inspections and obtain samples;

(C) enter into cooperative agreements with, and accept grant funding from, state and federal agencies, other counties, public interest foundations and research institutions to implement studies, monitoring and investigations related to the protection of human health and the health and sustainability of natural systems.

(iv) The Kaua`i County Council shall determine and approve the budget for the Office of Environmental Health, and appoint a Administrator to begin implementation of this Charter Amendment within 90 days following the effective date hereof. An acting Administrator may be appointed for a limited term not to exceed one year to allow time for selection of a permanent Administrator.

(e) Environmental Health Advisory Committee. The Kaua`i County Council shall appoint a seven-member citizen committee within 2 months after the effective date hereof, with responsibility for oversight of the Office of Environmental Health, including but not limited to, assisting Council in the search for and evaluation of candidates for appointment as Administrator, advising the Administrator regarding a timeline for, and monitoring of, the removal of pesticide residues from any drinking water supply, and restoration of any damage to ecosystem(s) or natural communities resulting from the use of toxins, recommending ordinances or regulatory actions to address environmental health threats. The terms of committee members shall be limited and staggered, as determined by the Kaua`i County Council.

**Section 33.7. Consistency with Federal Constitution.**

(a) This Charter Amendment is enacted pursuant to the powers retained by the States pursuant to the Ninth and Tenth Amendments to the United States Constitution.

(b) Any toxin regulated by this Charter Amendment, or any GMO, released, sprayed, emitted or introduced into the “ambient air” is an “air pollutant” within the meaning of that term as applied in the Clean Air Act. The regulation of such air pollutant(s) pursuant to this Charter Amendment is a standard or limitation respecting

emissions of air pollutants and a requirement respecting control or abatement of air pollution adopted by a subdivision of a State pursuant to the right preserved by the Clean Air Act. 42 U.S.C. section 7416.

(c) Through the adoption of this Charter Amendment, the people of Kaua`i County call for amendment of the United States Constitution to recognize the right of each person to a clean and healthful environment free from governmental pre-emption, nullification by corporate “rights” or any priority for economic interests established pursuant to the interstate commerce clause or by confirmation or ratification of international trade agreements.

### **Section 33.8. Definitions**

(a) “Adverse effect,” includes, but is not limited to, --

- 1) a condition that impairs health or a change in the health status of persons or fetuses, such as
  - (A) significant disruption of, or interference with, normal biological functions related to the flora of the gut, the uptake of nutrients, hormonal balance, and performance of the immune system;
  - (B) the incidence of adverse health conditions including diseases, birth defects, unsuccessful pregnancies, low birth weight, abnormal or impaired fetal or childhood development, abnormal or diminished cognitive function, autism spectrum disorders, increased dementia, Alzheimer symptoms, or
  - (C) any other effect or health outcome that adversely affects well-being and enjoyment of life.
- 2) conditions that impair –
  - (A) the health of organisms occurring in the environment;
  - (B) the habitat on which an organism relies for survival; or
  - (C) the diversity and sustainability of the natural system to which the organism contributes.

(b) “Agricultural product” means crops, animals, milk, eggs, honey, flowers and ornamental plants intended for use as whole foods, or the production of processed food products, food additives, nutritional supplements, or other products intended or likely to be ingested, or absorbed through the skin, or that could release toxins in indoor human environments.

(c) “Air pollutant” means the same as defined by the Clean Air Act, 42 U.S.C. section 7602(g), and HRS, section 342B-1.

(d) “Air pollution” means the presence in the outdoor air of substances in quantities and for durations which may endanger human health or welfare, plant or animal life, or property or which may unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such areas of the State as are affected thereby. HRS, section 342B-1.

(e) “Ambient” means and includes, but is not limited to –

- (1) “ambient air” as defined by HRS, section 342B-1;
- (2) ground and surface waters;
- (3) soils not under the control or management of the commercial agricultural entity;
- (4) forests; and
- (5) marine environment.

(f) “Clean, healthful and safe agricultural product” means an agricultural product not contaminated with GMOs, toxins expressed by such organisms, or toxins used, applied, administered or introduced in the preparation, planting, propagation, testing, cultivation, harvesting or processing of such

agricultural product. This definition shall not be construed to bar the voluntary, intentional ingestion of toxins by an informed person, or to toxins prescribed by a licensed health care practitioner for the treatment of disease or other practice intended to protect or support health.

(g) “Commercial agricultural entity” shall refer to any entity that owns, manages or controls real property in Kauaʻi County, either public or private, that is used to grow, cultivate, develop or produce agricultural products for commercial use or sale, and that – (1) engages in the use of genetically modified organisms; or 2) purchased or used in excess of five (5) pounds or fifteen (15) gallons of any single restricted use toxin during any prior calendar year.

(h) “Contamination” shall include, but not be limited to, the presence of toxin residues or genetically modified material detected by using the most sensitive method of analysis for the purpose of detecting a specific toxin or genetic material.

(i) “Administrator” shall refer to the Administrator of the Office of Environmental Health. |

(j) “Endanger” shall include, but not be limited to, a plausible risk of suffering, causing or contributing to an adverse effect sufficient to raise a reasonable doubt that an anticipated or possible exposure to a toxin is safe.

(k) “Engage in the use of” shall include, but not be limited to, any use, provision, sale, distribution, testing, planting, growing, cultivation, propagation, reproduction, raising, rearing, or harvesting within Kauai County.

(l) “Entity” shall refer to any natural person, governmental agency, corporation, officer or body, limited partnership, limited liability partnership, business trust, other business entity, or limited liability corporation organized under the laws of any State of the United States, or under the laws of any nation.

(m) “Environment” shall refer to water, air, land, and all plants and humans and other animals living therein, and the interrelationships which exist among these.

(n) “EPA” means the United States Environmental Protection Agency.

(o) “Exposure” means the presence of a toxin, mixture of toxins or genetic material from a GMO in (1) a location where persons have lawful access, or (2) the ambient environment where organisms naturally occur that may be endangered by such toxins or material.

(p) “Genetically Engineered Life Forms” or “Genetically Modified Organisms” or “GMOs” and equivalent terms shall refer to organism(s), or the genetic material of an organism, which has been directly altered through recombinant DNA technology, genetic modification, genetic manipulation (GM), or gene splicing that results in the transfer of, or combination of, genetic material from organisms that are not capable of transferring or combining genetic material by natural means. The term shall not refer to traditional breeding where the organism's genes are manipulated indirectly by sexual transmission or other natural means of transferring genetic material between individual organisms.

(q) “Genetic material” includes the genes, chromosomes, DNA or any single or multi-cell structure of an organism that contains or transmits the DNA of that organism, including, but not limited to, seeds, sperm, eggs,



and pollen.

(r) “Inalienable rights” includes, but is not limited to, --  
(1) personal sovereignty grounded on the right of informed consent; and  
(2) the right of informed consent includes the right of each person to decide which chemicals, substances and organisms not to consume, inhale, ingest or imbibe after being fully informed of their presence, benefits and risks.

(s) “Office” shall refer to the Kauaʻi County Office of Environmental Health created by section 33.6(d) hereof.

(t) “Organism” shall include any life form that has the capacity to grow or reproduce.

(u) “Pest” means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacterium, or any other microorganism which the Administrator of the United States Environmental Protection Agency determines to be a pest, but not including viruses, bacterium, or any other microorganisms naturally part of a healthy human system or other living animal.

(v) “Precautionary principle” shall include, but is not limited to, the requirement that the public not be exposed to toxins when reasonable doubt exists regarding the potential adverse effects of exposure without –

(1) fully investigating the suspected or potential risks of such exposure;

(2) preventing or eliminating such exposures until uncertainties giving rise to such reasonable doubt are eliminated, or reduced to such minimal levels that the public will be fully informed by disclosing the nature, magnitude, and severity of risks in a manner that allows each person to decide whether to give informed consent to such exposure; and

(3) requiring the proponent or economic beneficiary of such exposures to bear the burden of resolving uncertainties regarding potential adverse effects.

(w) “Restricted use toxin” means any restricted use pesticide which includes:

(1) A pesticide or pesticide use classified by the Administrator of the EPA for use by certified applicators or competent persons under their direct supervision and so designated on the label of the pesticide; or

(2) A pesticide or pesticide use classified by the Hawaiʻi Board of Agriculture for use by certified applicators or competent persons under their direct supervision.

(x) “Reasonable doubt” means a range of uncertainty sufficient to preclude a determination with a high degree of confidence that an exposure will not cause or contribute to an adverse effect. Examples include, but are not limited to, uncertainty arising from conflicting data, the absence of data or insufficient data to establish 1) the likelihood that an adverse effect will occur, 2) the severity or duration of an adverse effect that is likely to occur, or 3) whether an effect that may not be of concern if of short duration may not be reversible over the longer term,

(y) “Seed Heritage”: Seeds inherited from family or community, generation after generation, adapted to the local climate and held in the commons, by seed growers that specialize in open-pollinated and heritage seed.

(z) “Sustainable agricultural practices” means the production of clean, healthful and safe agricultural products.

(aa) “Trans-genetic risk seed”: Any seed, crop produced from that seed, or genetic material derived from such seed, including, but not limited to, corn, soy, flax, canola, wheat, papaya, rice and beets, that contains modified genetic material or patented genetic characteristics,

(bb) “Toxin” for the purposes of this Charter Amendment, means (i) any synthetic agricultural chemical applied to seeds, crops, trees, soils, irrigation water, livestock or other organisms for the purpose of killing, removing, defoliating, or dessicating pest organisms, or suppressing the emergence, growth or reproduction of such pest organisms; and (ii) any bio-active agent or compound intended to be harmful to pest organisms that is produced within, or expressed by, a GMO that does not occur naturally in such organism. “Toxin” includes, but shall not be limited to, any pesticide chemical for which EPA has identified a health risk which required the establishment of a residue tolerance for food pursuant to the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 201, et seq., 40 C.F.R. Part 180. “Toxin” shall not include any pesticide determined by EPA not to require registration under the Federal Insecticide, Fungicide and Rodenticide Act, 40 C.F.R. section 152.25, unless such pesticide contains, or is derived from, a GMO.

**Section 33.9. Severability**

The people intend that the provisions of this Charter Amendment are severable. If any court decides that any section, clause, sentence, part, or provision of this Charter Amendment is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any remaining provisions of this Charter Amendment.

**Section 33.10. Repealer**

All inconsistent provisions of prior Ordinances adopted by Kaua`i County are hereby repealed, but only to the extent necessary to remedy the inconsistency.

**Section 33.11. Effective Date.**

This Charter Amendment shall take effect on the date of its enactment.

ENACTED AND ORDAINED this \_\_\_\_ day of \_\_\_\_\_, 2014, by the County of Kauai.

By: \_\_\_\_\_