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LAND USE COMMISSION  
STATE OF HAWAII

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ROBINSON FAMILY PARTNERS

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. DR16-56
	)	
ROBINSON FAMILY PARTNERS,	)	PETITION FOR DECLARATORY
	)	ORDER TO DESIGNATE
For Declaratory Order to Designate	)	IMPORTANT AGRICULTURAL
Important Agricultural Lands for	)	LANDS; VERIFICATION; EXHIBITS
approximately 20,888 acres at	)	"A" – "C"
Makaweli, Kaua'i, Hawai'i.	)	
_____	)	

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

Comes now, Petitioner ROBINSON FAMILY PARTNERS, by and through its attorneys, MATSUBARA – KOTAKE, and respectfully petitions the Land Use Commission of the State of Hawai'i ("Commission") to issue a declaratory order designating approximately 20,888 acres of land at Makaweli, Kaua'i, Hawai'i ("Property"), more particularly described below, as Important Agricultural Lands

("IAL") pursuant to §§ 205-44 and 45 of the Hawai'i Revised Statutes ("HRS") and §§ 15-15-98, 99, 120 and 121 of the Hawai'i Administrative Rules ("HAR"). In support of this Petition, Petitioner alleges and avers as follows:

**I. Petition Content Requirements**

Contents requirement for Petition for Declaration Order pursuant to HAR § 15-15-99:

A. Name, address and telephone number of Petitioner. Petitioner ROBINSON FAMILY PARTNERS is a Hawai'i general domestic partnership, whose mailing address is P.O. Box 690088, Makaweli, Hawai'i, 96769, and telephone number is (808) 335-3133. Benjamin M. Matsubara, Curtis T. Tabata and the law firm of Matsubara - Kotake have been appointed to represent the Petitioner pursuant to HAR § 15-15-35(b). All correspondence and communications in regard to this Petition shall be addressed to, and served upon, Benjamin M. Matsubara, Matsubara - Kotake, 888 Mililani Street, 8<sup>th</sup> Floor, Honolulu, Hawai'i 96813.

B. Statement of Petitioner's interest in the subject matter and reason for the submission. Petitioner is the owner in fee simple of the Property located in Makaweli, Kaua'i, Hawai'i, and more specifically identified and described on Exhibits "A" and "B" attached hereto and incorporated herein by reference.

C. Designation of specific question. Whether the Property should be designated as IAL pursuant to HRS §§ 205-44 and 45, and HAR §§ 15-15-120 and 121.

D. Statement of Petitioner's position or contention. It is Petitioner's position that the Property meets the qualifications for designation as IAL under HRS § 205-44 and HAR § 15-15-120, and that the Commission should issue a declaratory order designating the Property as IAL pursuant to HRS § 205-45 and HAR § 15-15-121.

E. Memorandum of authorities, containing a full discussion of reasons and legal authorities in support of Petitioner's position. HRS § 205-45(c) provides that the petition for declaratory order designating IAL shall be submitted in accordance with subchapter 14 of the Commission's rules and the requirements contained in HRS § 205-45(c). The petition for declaratory order content requirements under subchapter 14 are found at HAR § 15-15-99 and are discussed in Sections A-H herein. The requirements of HRS § 205-45(c) and HAR § 15-15-121(b) include the following:

1. Tax Map Key Numbers and verification and authorization from the applicable landowners. Petitioner seeks to designate as IAL approximately 20,888 acres of land on the island of Kaua'i, Hawai'i. Attached hereto and incorporated herein by reference as Exhibit "B" is a report identifying the location, Tax Map Key Numbers and acreage of the Property. Ownership of the lands identified by Tax Map Key Numbers stated in Exhibit "B" is held by Petitioner. Attached hereto and incorporated herein by reference as Exhibit "C" are the Kaua'i County real property tax records verifying ownership of the Property.

2. Proof of qualification for designation as IAL under HRS § 205-44.

HRS § 205-44(c) provides the standards and criteria to identify IAL. HRS § 205-44(a) provides that lands identified as IAL need not meet every standard and criteria listed in HRS § 205-44(c); rather, lands meeting any of the criteria in HRS § 205-44(c) shall be given initial consideration, provided that the designation of IAL shall be made by weighing the standards and criteria with each other to meet the constitutionally mandated purposes in article XI, section 3, of the Hawai'i State Constitution and the objectives and policies for IAL in section 205-42 and 205-43.

Attached hereto and incorporated by reference herein as Exhibit "A" is the Agricultural Lands Assessment for the Makaweli lands and describes and illustrates the characteristics of the Property.

The standards and criteria for identifying IAL pursuant to HRS § 205-44(c) are as follows:

a. Land currently used for agricultural production.

Members of the Robinson family and their affiliated companies have practiced cattle ranching, crop cultivation, and conservation in Makaweli for over 150 years.

Today, ROBINSON FAMILY PARTNERS is the fee simple owner of approximately 27,640 acres of Agricultural and Urban District land in Makaweli, Island of Kaua'i. They also own approximately 22,630 acres of Conservation District lands contiguous to the proposed IAL lands. With this Petition, ROBINSON FAMILY

PARTNERS is requesting that approximately 20,888 acres of land ("Property"), or approximately 76% of its non-Conservation District land holdings, be designated as IAL. The voluntary designation by the Robinson Family Partners of approximately 76% of the non-Conservation District land holdings would constitute the designation of the majority of their non-Conservation District land holdings as IAL, and would preclude the further involuntary IAL designation of its land holdings pursuant to HRS § 205-49(a)(3). The entire Property is in active agricultural production, including approximately 18,700 acres of land in cattle ranching and 2,188 acres in seed production.

The 18,700 acres of land utilized for cattle ranching is leased to Gay & Robinson who operates the ranch under the tradename Makaweli Ranch. The 18,700 acres is comprised on Upper Pasture (unirrigated) and Lower Pasture (partially irrigated), which are separated by the ditch system. Makaweli Ranch's herd is comprised of 3,500 to 4,000 head of cattle, and represents approximately 9% of Kaua'i Island's beef production. Makaweli Ranch is dedicated to providing premium, all natural, 100% grass fed beef with no hormones or steroids, to an expanding local market.

The 2,188 acres of land are a part of leased land for seed production. Current lessees include Agrigenetics Inc. (subsidiary of Dow Chemical Co.) and DuPont Pioneer.

From 1884 through 2009, sugar cane was cultivated on a portion of the Lower Pasture for 125 years. The Upper Pasture lands have been used for cattle ranching from circa 1865 to the present, or approximately 150 years. Today, Makaweli Ranch operates on both the Upper Pasture and the Lower Pasture, and seeks to expand its herd. See Exhibit "A" and Figure 2a of Exhibit "A", Current Agricultural Use and Figure 2b of Exhibit "A", Makaweli Ranch Operation.

b. Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops. The University of Hawai'i, Land Study Bureau ("LSB") developed the Overall Productivity Rating, which classified soils according to five (5) levels, with "A" representing the class of highest productivity soils and "E" representing the lowest. These letters are followed by numbers which further classify the soil types by conveying such information as texture, drainage and stoniness. About 7% of the proposed IAL lands are rated A, 7% are rated B, 3% are rated C, 6% are rated D, and 77% are rated E. See Exhibit "A" and Figure 3 of Exhibit "A", Land Study Bureau (LSB) Agricultural Land Productivity Rating. Solar radiation received by the Property is described in the Solar Radiation Map, as shown in Figure 4 of Exhibit "A".

c. Lands identified under agricultural productivity ratings systems, such as the agricultural lands of importance to the State of Hawai'i (ALISH) system adopted by the board of agriculture on January 28, 1977. In 1977, the State

Department of Agriculture developed a classification system to identify Agricultural Lands of Importance to the State of Hawai`i ("ALISH"). The classification system is based primarily, though not exclusively, upon the soil characteristics of the lands. The three (3) classes of ALISH lands are: "Prime", "Unique", and "Other", with all remaining lands termed "Unclassified". When utilized with modern farming methods, "Prime" agricultural lands have a soil quality, growing season, and moisture supply necessary to produce sustained crop yields economically. "Unique" agricultural lands possess a combination of soil quality, growing season, and moisture supply to produce sustained high yields of a specific crop. "Other" agricultural lands include those that have not been rated as "Prime" or "Unique". Approximately 27% of the proposed IAL are classified in ALISH: 13% in Prime ALISH, less than 0.1% in Unique ALISH, and 14% in Other ALISH. The balance of the proposed lands is not classified under ALISH classification but the land has been historically used for ranching and the cattle ranch operation is active to date. The unclassified land includes essential elements of the active cattle ranch operation, such as grasslands, ditches, and streams. See Exhibit "A" and Figure 6 of Exhibit "A", Agricultural Lands of Importance to the State of Hawai`i (ALISH) Map.

d. Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production. The cattle ranching on

ROBINSON FAMILY PARTNERS lands has been ongoing for approximately 150 years, and is both historically and operationally important as a significant producer of beef on Kaua'i, and as such, is a unique agricultural resource for the State of Hawai'i. See Exhibit "A".

e. Lands with sufficient quantities of water to support viable agricultural production. The Property is primarily irrigated by two ditch systems to support the cattle ranch and seed production.

The Koula Ditch System is approximately 13.5 miles long and the ditch line starts at the base of Manawaiopuna Falls and ends at Field 32 Reservoir. The water capacity of Koula Ditch System is approximately 55 millions of gallons per day (MGD).

The Olokele Ditch System is approximately 20 miles long. Water from Olokele River is diverted at 1,477 feet in elevation and delivered to a 1.25 megawatt (MW) hydroelectric plant. At the hydroelectric plant, the water splits into two directions. One flow goes southwestward to Kepani Reservoir all the way down to Waikaia Reservoir. The other flow goes eastward across the Robinson lands and ends at Kuhumu Reservoir. The water capacity of Olokele Ditch System is approximately 70 MGD.

The Property also includes 10 reservoirs with the total capacity of 275 million gallons.

In addition to the above water resources, according to the 2011 Rainfall Atlas of Hawai'i data collected by Department of Geography at University of Hawai'i at Mānoa,



the proposed IAL land receives an average of 25 to 30 inches of rain annually on the irrigated land below the east-west Olokele Ditch line and 50 to 80 inches of rain annually on the unirrigated *mauka* land above the same Olokele Ditch line. Two northern agricultural land areas, that include the Olokele Ditch and Koula Ditch, above the unirrigated *mauka* land receive more rain – an average of 80 to 140 inches annually. See Exhibit “A” and Figure 5 of Exhibit “A”, Agricultural Infrastructure and Water Resources map.

f. Land whose designation as Important Agricultural Lands is consistent with general, development, and community plans of the County. The Property’s agricultural classification is consistent with the Kaua`i General Plan. Additionally, the Property is situated within the State Agricultural District.

In August 2009, the County of Kaua`i undertook a planning effort to define the Important Agricultural Lands on Kaua`i. In August 2015, the County released a final report for the IAL study. Under the County of Kaua`i’s IAL Study, it was estimated that “beef production to support the current diet of residents would require approximately 91,533.6 acres of land.” If the entire proposed IAL lands by Robinson Family Partners were utilized for beef production, that would represent approximately 22% of the island’s beef needs; increasing the island’s ability to become more self-sufficient. The County’s IAL Study states that it is “important to note that lands for support of beef production does not require the best soils or topography (of “highest

importance"). Thus, the county should still consider supporting landowner/ farmer-led petitions for designation of lands for beef production, especially if sufficient water and necessary acreage are met to support the amount of cattle to be managed." The County's IAL Study goal is clearly focused on a County-led IAL petition that should focus on the lands of "high importance" estimated to require approximately 21,000 acres pursuant to the criteria of Act 183. However, the Study notes that this priority "should not preclude the County's support of landowner/ farmer designations of agricultural lands that are being used for beef production." See Exhibit "A" and Figure 7a of Exhibit "A", West Side Planning District Land Use Map, Figure 7b of Exhibit "A", Koloa-Poipu-Kalaheo Planning District Land Use Map, Figure 8 of Exhibit "A", State Land Use District, and Figure 9, County of Kaua'i IAL Assessment Agricultural Land Threshold Map.

g. Land that contributes to maintaining a critical land mass important to agricultural operating productivity. Petitioner seeks to designate approximately 20,888 contiguous acres of land as IAL on Kaua'i.

h. Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power. Existing infrastructure servicing the Property include extensive irrigation systems, roadways and transport systems, and markets along with the necessary facilities to support

agriculture. See Exhibit "A" and Figure 5 of Exhibit "A", Agricultural Infrastructure and Water Resources map.

3. The current or planned agricultural use of the area sought to be designated as IAL. The foreseeable future of Makaweli Ranch is to increase beef production utilizing land management activities.

Land management activities to improve pasture areas include (1) additional irrigated pastures, (2) grass seed production and planting programs, (3) fencing and paddocks repairs, (4) maintaining and upgrading roads, and (5) invasive species eradication to improve pastures.

The majority of the Ranch pastures (Upper and Lower) relies on rainfall to support a stocking rate of approximately 1 head per 5 acres. Cattle are rotated to pastures where there is sufficient rainfall to support grazing. Currently, the ranch has approximately 400 acres of irrigated pastures on proposed IAL. The total potential future acreage of irrigated pasture is 1,105 acres, which is comprised of former sugar cane fields below the ditch system.

The 5 year goal is to install approximately 1,000 additional acres of irrigated pasture within the proposed IAL.

The Ranch is also continuing its seed propagation and grass planting program to improve the carrying capacity of the Lower Pastures. The planting program removes invasive species and plants preferred species of pasture grass.

The land management and pasture improvement program can be applied to approximately 8,000 to 9,000 acres of current pasture lands within the proposed IAL. The 5 year goal for the planting program is to install an additional 500 acres of improved and managed pasture. This 500 additional acres would be in addition to the 1,000 additional irrigated acres of pasture. This combined additional 1,500 acres of land management improvement is expected to increase the herd capacity by at least one additional head per additional acre of land management improved pasture, or an additional 1,500 head of cattle.

Approximately 15,000 acres of proposed IAL is fenced with a combination of cattle and/or pig fencing. The pig fencing is used to keep out wild pigs and the fenced paddocks are used to corral the cattle, separate sexes, manage bulls, and effectively manage grass growth and maintenance. See Exhibit "A".

F. Other Potential Parties. Other potential parties include the Kaua'i County Planning Department, Office of Planning, State of Hawai'i, and the Department of Agriculture, State of Hawai'i.

G. Signature of each petitioner. This petition is signed below by Petitioner's attorney who is authorized to sign and file this petition on Petitioner's behalf.

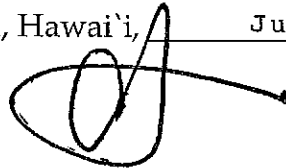
H. Related to any district boundary amendment or special permit. Petitioner is unaware of any related district boundary petition or special permit.

II. Waiver of 85/15 Reclassification Incentive

Petitioner is not seeking a reclassification of land pursuant to HRS § 205-45(b) in conjunction with this Petition to designate IAL. Furthermore, Petitioner hereby voluntarily waives any and all rights to assert, claim or exercise any credits pursuant to HRS § 205-45(h), as effective as of the date of this petition, that may be earned by Petitioner in the event of and as a result of this Petition being granted. This waiver is limited to the use of credits for the sole purpose of reclassifying other lands that are not the subject of this Petition to the Urban, Rural or Conservation Districts pursuant to HRS § 205-45(h), as effective as of the date of this petition, and shall not apply to any other credits, incentives, rights or privileges that Petitioner may possess now or in the future, whether known or unknown, which are hereby expressly reserved.

Based on the foregoing, Petitioner respectfully requests that the Commission find that the Petition meets the standards for designating Important Agricultural Lands pursuant to HRS §§ 205-44 and 45, and designates the Property as Important Agricultural Lands.

DATED: Honolulu, Hawai'i, June 27, 2016.



Of Counsel:  
MATSUBARA – KOTAKE  
A Law Corporation

BENJAMIN M. MATSUBARA  
CURTIS T. TABATA  
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ROBINSON FAMILY PARTNERS

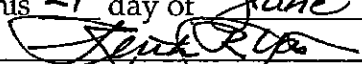
VERIFICATION

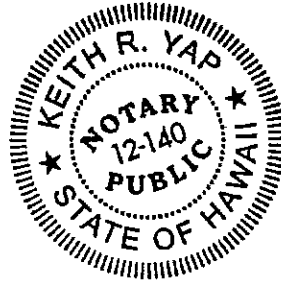
Bruce B. Robinson, being first duly sworn, on oath, deposes and says that he/she is the Chairman of the Management Committee of Robinson Family Partners, and as such is authorized to make this verification on behalf of said partnership; that he/she has read the foregoing Petition and knows the contents thereof; and that the same are true to the best of his/her knowledge, information and belief.

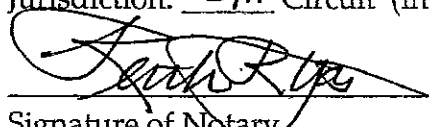
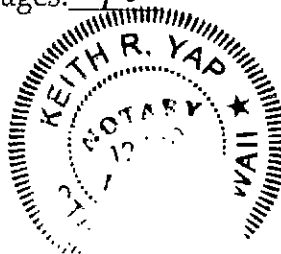
Dated: June 21, 2016, Kaua'i, Hawai'i, \_\_\_\_\_.



Bruce B. Robinson  
Robinson Family Partners  
Its Chairman of the Management Committee

Subscribed and sworn to me  
this 21 day of June 2016  
  
Name Keith R. Yap  
Notary Public, State of Hawai'i  
My commission expires: April 8, 2020



NOTARY CERTIFICATE (Hawai'i Administrative Rules §5-11-8)	
Document Identification or Description: Petition for Declaratory Order to Designate Important Agricultural Lands; Verification	
Doc. Date: <u>June 27, 2016</u>	No. of Pages: <u>42</u>
Jurisdiction: <u>5th</u> Circuit (in which notarial act is performed)	
 Signature of Notary	<u>April 8, 2020</u> Date of Certificate
<u>Keith R. Yap</u> Printed Name of Notary	 (Official Stamp or Seal)