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LAND USE COMMISSION
STATE OF HAWAII

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OUR REFERENCE NO.:
066928-00011

October 4, 2017

VIA HAND DELIVERY & EMAIL

Mr. Daniel E. Orodener, Executive Officer
Land Use Commission, State of Hawaii
235 South Beretania Street
Room 406, Leiopapa A. Kamehameha Bldg.
Honolulu, Hawaii 96813

Re: Monsanto Company, DR17-59, Petition for Declaratory Order to Designate Important Agricultural Lands for approximately 1,550 acres at Kunia, O`ahu identified by TMK (1) 9-2-001-001 (por.); (1) 9-2-001-005; and (1) 9-2-004-009

Dear Executive Officer Orodener:

We provide this letter response on behalf of Petitioner Monsanto Company ("**Petitioner**"), to address the comments submitted by the Department of Planning and Permitting of the City & County of Honolulu ("**DPP**") dated September 28, 2017, as well as the comments provided by the Office of Planning, State of Hawaii ("**OP**") dated September 28, 2017, and the Department of Agriculture, State of Hawaii ("**DOA**") dated October 2, 2017. Petitioner greatly appreciates the supportive feedback from DPP, OP, and DOA in response to the Petition for Declaratory Order to Designate Important Agricultural Lands that we filed with the Commission on September 8, 2017.

We are pleased that DOA, OP, and DPP recognize that the 1,550-acre Petition Area should be designated as Important Agricultural Lands ("**IAL**"). Through the Petition, Petitioner is asking the Commission to designate 72% of Monsanto's Oahu land as IAL. By offering to designate 1,550 acres as IAL, Petitioner is helping the State move closer to the following 1978 constitutional mandate:

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions without meeting the standards and criteria established by the legislature and approved by a two-thirds vote of the body responsible for the reclassification or rezoning action.

Hawaii Constitution, article XI, section 3.

The Legislature, in enacting the IAL law in 2005 (Act 183) found that there was a compelling need to provide standards, criteria, and mechanisms to fulfill the intent and purpose of article XI, section 3, and to enable the implementation of that constitutional mandate. The Petition Area satisfies the standards and criteria set forth under HRS § 205-44(c). As noted by OP, under HRS § 205-44(a), to qualify for IAL designation the lands "need not meet every standard and criteria . . . [r]ather, lands meeting any of the criteria in subsection (c) shall be given initial consideration" and those standards and criteria must be weighed with each other to meet the constitutional mandate and the statutory IAL objectives and policies.

As noted by DOA, OP and DPP, the Petition Area handily meets each of the possible standards and criteria provided by law, with the exception HRS § 205-44(c)(4).¹ With regard to (c)(4), the Petition Area is not now, and has not historically been, used for the cultivation of coffee, vineyards, energy production, taro cultivation or aquaculture. However, the Petition Area has been in active agricultural production at least since 1897, and Petitioner will maintain the Petition Area in agriculturally productive use.

Petitioner wishes to address the erroneous conclusion implicit in DPP's statement that, with regard to 557.927-acres that Petitioner has not submitted for IAL designation, "there is no compelling reason to support excluding these lands from IAL designation." DPP misconstrues the purpose of Act 183. Neither Petitioner, nor the Land Use Commission, has the burden to justify **not** designating lands that have **not** been submitted for consideration pursuant to a voluntary Petition.

There is no obligation for any private landowner to submit any of its property for IAL designation. HRS § 205-45(a) invites farmers and landowners to file IAL Petitions with the Commission "at any time in the designation process" meaning no matter what stage the particular County is in its IAL process. In fact, the law expressly encourages farmers and landowners to voluntarily submit their lands for IAL designation by providing a "majority incentive." Under HRS § 205-49(a)(3), if a landowner voluntarily submitted the majority of its lands for IAL designation, and the land was deemed suitable for IAL designation, the Commission is precluded from designating additional lands as IAL even if additional designation is recommended by the County. This statutory "majority incentive" language provides:

¹ The standard listed under HRS § 205-44(c)(4) refers to "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."

In designating important agricultural lands in the State, pursuant to the recommendations of individual counties, the commission shall consider the extent to which:

* * *

(3) The commission has designated lands as important agricultural lands, pursuant to section 205-45; **provided that if the majority of landowners' landholdings is already designated as important agricultural lands**, excluding lands held in the conservation district, pursuant to section 205-45 or any other provision of this part, **the commission shall not designate any additional lands of that landowner as important agricultural lands except by a petition pursuant to section 205-45.**

HRS § 205-49(a)(3) (emphasis added).

The County IAL process is long and the outcome is uncertain. Before presenting IAL maps for consideration, the Counties must engage in an inclusive and extensive public consultation process. *See* HRS § 205-47(c). Furthermore, in preparing proposed IAL maps the Counties must take into considerations any feedback received from landowners. *Id.* at (d)(5). Finally, before the Counties can present their proposed IAL maps to the Commission for decision-making, the respective County Councils must first adopt the proposed maps, with or without changes, by resolution. *See* HRS § 205-47(e). With so many links in the chain, both legal and political, there is no telling the final outcome of any particular County IAL designation process. The "majority incentive" was established to encourage landowners to voluntarily offer their lands for IAL designation, in part to avoid the delay and uncertainty that is embedded in the County IAL designation process.

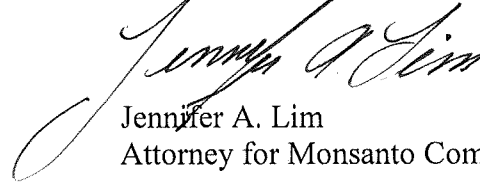
Petitioner is not a real estate developer. Petitioner is part of a successful and economically viable seed business that has been active in Hawaii for over 50 years. Petitioner has no intention of pursuing non-agricultural activities on the excluded land along Kunia Road. However, in the interest of certainty, and in deference to the IAL law, and in anticipation that sooner or later additional restrictions may be imposed upon IAL lands in furtherance of the IAL policies (*see e.g.*, the policy under HRS § 205-43(4) to "limit physical improvements on important agricultural lands to maintain affordability of these lands for agricultural purposes"), Petitioner identified and presented to this Commission 1,550 acres of land for IAL designation. There is no requirement, or even suggestion, under the IAL law that Petitioner should offer a "compelling reason" for **not** offering certain lands for IAL designation. In that respect, we respectfully submit that the DPP comments are misguided.

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Petitioner appreciates the feedback from DOA, DPP, and OP in support of the IAL Petition. We also appreciate the work of the Commission and its staff in reviewing and considering the IAL Petition. Please do not hesitate to contact me should you have any questions.

Respectfully submitted,

CARLSMITH BALL LLP



Jennifer A. Lim
Attorney for Monsanto Company

cc: Department of Planning and Permitting, City & County of Honolulu
Office of Planning, State of Hawaii
Department of Agriculture, State of Hawaii
Monsanto Company

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