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MONSANTO COMPANY, a

Delaware corporation

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Petition of

MONSANTO COMPANY, a Delaware
corporation

For Declaratory Order to Designate Important
Agricultural Lands for approximately
1,084.079 acres at Naiwa, Manowainui,
Kahanui, Moloka'i, identified by TMK No. (2)
5-2-012-004

DOCKET NO. DR17-60

PETITION FOR DECLARATORY ORDER
TO DESIGNATE IMPORTANT
AGRICULTURAL LANDS; VERIFICATION;
EXHIBITS 1 - 10; CERTIFICATE OF
SERVICE

LAND USE COMMISSION
STATE OF HAWAII
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LAND USE COMMISSION
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PETITIONER EXHIBITS:

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Exhibit 6	Map of Uses
Exhibit 7	Monsanto's Farm Sustainability Practices (2016)
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**PETITION FOR DECLARATORY ORDER
TO DESIGNATE IMPORTANT AGRICULTURAL LANDS**

Petitioner MONSANTO COMPANY, a Delaware corporation (“**Petitioner**”), by and through its attorneys, Carlsmith Ball LLP, respectfully petitions the Land Use Commission of the State of Hawai‘i (“**Commission**”) to issue a declaratory order designating approximately 1,084.079 acres of land at Naiwa, Manowainui, Kahanui, Moloka‘i 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 for Declaratory Order to Designate Important Agricultural Lands (this “**Petition**”), Petitioner alleges and avers as follows:

1. PETITION CONTENT REQUIREMENTS

Content requirements for a Petition for Declaratory Order under HAR §15-15-99 are as follows:

1.1 Name, Address and Telephone Number of Petitioner.

Petitioner’s address on Maui is 2111 Pi‘ilani Highway, Kihei, HI 96753, and its telephone number is 808. 879.4074. As permitted by HAR §15-15-35(b), Carlsmith Ball LLP represents Petitioner in this matter. All correspondence and communication regarding this Petition shall be addressed to and served upon JENNIFER A. LIM, Carlsmith Ball LLP, 1001 Bishop Street, Suite 2100, Honolulu, Hawai‘i 96813.

1.2 Statement of Petitioner’s Interest in the Subject Matter, Including the Reasons for Submission of the Petition.

Petitioner, and its wholly owned and controlled subsidiaries, including Monsanto Hawaii Production Co., LLC, a Delaware limited liability company, and Corn States, LLC, an Iowa limited liability company (collectively herein, “**Monsanto**”) owns, and farms the Property, as

hereinafter defined.¹ In Maui County, Monsanto owns land both on the Island of Maui and the Island of Moloka'i. The land on Maui is in the Kihei area, and the land on Moloka'i is in Kualapu'u. This fee simple land is shown on Petitioner's Exhibit 1a and Petitioner's Exhibit 1b and consists of approximately 1,817.357 acres, and will be referred to as the "**Maui County Land**".

Of the Maui County Land, Monsanto is requesting that the Commission designate approximately 1,084.079 acres, located at Tax Map Key parcel number (2) 5-2-012-004, as IAL. The land that Monsanto seeks to have designated as IAL is approximately fifty-nine and six-tenths percent (59.6%) of the Maui County Land, and is hereinafter referred to as the "**Property**". Monsanto respectfully requests that the Commission designate the Property as IAL pursuant to HRS §§ 205-44 and -45 and HAR §§ 15-15-120 and -121. As set forth below, the proposed designation of the IAL lands in Kualapu'u, Moloka'i supports and advances Monsanto's overall land management plans in the State of Hawai'i.

Prior to filing this Petition, Monsanto inventoried and assessed all of the land that it owns in fee simple in the State of Hawai'i, as well as lands leased from others. Out of that process, Monsanto determined that the Property should be designated as IAL pursuant to applicable statutory and regulatory requirements.² IAL designation would preserve the Property for agricultural purposes and allow Monsanto and future generations to continue to use the Property for agricultural production into the future.

¹ For internal governance and tax reasons, assets used in whole or in part for research and development purposes are held by the parent company, Monsanto Company, and assets used solely for production are held by wholly owned and controlled subsidiaries of Monsanto Company, such as Monsanto Hawaii Production Co., LLC.

² As part of this state-wide comprehensive process, Monsanto has filed a Petition for Declaratory Order to Designate Important Agricultural Lands with this Commission in LUC Docket No. DR 17-59 for a 1,550 acre portion of Monsanto's lands in Kunia, O'ahu.

1.3 Designation of Specific Statutory Provision, Rule, or Order in Question.

This Petition is made pursuant to HRS §§ 205-44 and -45 and HAR §§ 15-15-98, -99, -120, and -121.

1.4 Statement of Petitioner's Position or Contention.

The Property is appropriate for designation as IAL under HRS § 205-44 and HAR § 15-15-120, and the Commission should issue a declaratory order designating the Property as IAL pursuant to HRS § 205-45 and HAR § 15-15-121.

1.5 Memorandum of Authorities, Containing a Full Description of Reasons and Legal Authorities in Support of Petitioner's Position or Contention.

Under HRS § 205-45(c), a petition for declaratory order to designate IAL shall be submitted in accordance with subchapter 14 of the Commission's rules and include the additional requirements contained in HRS § 205-45(c).

The eight content requirements for a petition for declaratory order under subchapter 14 are found at HAR § 15-15-99 and are addressed in paragraphs 1.1 through 1.4, and paragraphs 1.6 through 1.8 of this Petition.

The additional requirements of HRS § 205-45(c), which are restated in HAR § 15-15-121(b), are set forth in this paragraph 1.5, and include the following:

1.5.1 Tax Map Key Numbers, Verification and Authorization from the Applicable Landowners.

Monsanto is petitioning to designate as IAL approximately 1,084.079 acres of land that it owns in fee simple, through its wholly owned subsidiary, in the County of Maui, Hawai'i. The Property proposed for IAL designation is identified by Tax Map Key parcel number (2) 5-2-012-004. See **Petitioner's Exhibit 1a** (map showing the location of the Property). Table 1 shows the Tax Map Key parcel numbers associated with the Maui County Land, and the approximate acreage of the tax parcel sought to be designated as IAL, i.e., the Property.

<u>Table 1 (Maui County Land TMK Parcel Numbers and Acres)</u>		
<u>TMK No.</u>	<u>IAL Acres</u>	<u>Total Acres</u>
(2) 5-2-012-004	1,084.079	1,084.079
(2) 5-2-011-012	0.000	89.075
(2) 5-2-011-028 ³	0.000	48.086
(2) 3-8-004-020	0.000	213.337
(2) 3-8-004-024	0.000	72.780
(2) 2-2-002-069	0.000	310.000
Total:	1,084.079	1,817.357
Percentage of Total:	59.651%	

The letter from Title Guaranty of Hawaii, Inc. attached as **Petitioner's Exhibit 2** confirms that Monsanto owns the Property. Attached hereto as **Petitioner's Exhibit 3** is an executed Landowner Letter of Authorization, authorizing Carlsmith Ball LLP to file and process this Petition through the Commission on behalf of Monsanto and its wholly owned subsidiary, Monsanto Hawaii Production Co., LLC. In addition, Yarrow Flower, Land Asset Manager of Monsanto, has provided a signed Verification of this Petition, which is included herein.

1.5.2 Proof of Qualification for Designation as IAL under HRS § 205-44.

The standards and criteria for identifying IAL are set forth in HRS § 205-44(c) and HAR § 15-15-120(c).

Lands identified as important agricultural lands do not need to meet every standard and criteria listed in [HRS §205-44(c)].

³ This parcel is used for production purposes, and is therefore owned by Corn States LLC, an Iowa limited liability company, a wholly owned and controlled subsidiary of Monsanto Company.

Rather, lands meeting any of the criteria in [HRS §205-44(c)] shall be given initial consideration, and the designation of important agricultural lands shall be made by weighing standards and criteria with each other to meet the constitutionally mandated purposes in article XI, section 3, of the Hawaii constitution and the objectives and policies for important agricultural lands in sections 205-42 and -43.

HRS § 205-44(a).

The following is a summary and overview of the characteristics of the Property proposed to be designated as IAL. The report attached as **Petitioner's Exhibit 4** (Agricultural Land Assessment for Monsanto Company's Proposed Important Agricultural Lands, hereinafter the "Ag Assessment") describes in greater detail these and other characteristics of the Property. The Property satisfies substantially all of the standards and criteria for IAL designation.

1.5.2.1 Land Currently Used for Agricultural Production - HRS § 205-44(c)(1) and HAR § 15-15-120(c)(1).

1.5.2.1.1 Current Agricultural Production. All of the Property is currently in active agricultural production. Approximately 524,400 acres, or 80.9% of the cultivatable acres⁴ within the Property (48% of gross acres), are in active seed corn and soybean production on a year-round basis. Of this, approximately 95% of the fields are planted with seed corn, and the remaining 5% of the fields are planted in soybeans. Each field is used to produce no more than one (1) seed corn or soybean crop per year.

On average, approximately one third (1/3) of Monsanto's fields at the Property are planted at any given time. This allows for year round crop production with three (3) crops per

⁴ For purposes of determining water assessments under the Molokai Irrigation System, the Department of Agriculture of the State of Hawai'i determines the number of cultivatable acres in a parcel by excluding streams, dry gulches, and uncultivable or unusable lands, within the Molokai Irrigation System service area. HRS § 167-19(b). The Department of Agriculture has determined that the Property contains a total of 1,081,400 acres, consisting of 647,900 cultivatable acres, 210,000 acres for conservation measures, and 223,500 acres of uncultivated (non-classified) land. The area determined by the Department of Agriculture is 2,679 acres less than the total area of the Property (1,084,079 acres), and this is the reason for the discrepancy between 223,500 and 226,179 acres of uncultivated (non-classified land) described in this Petition.

year. During the period between seed corn or soybean production, the fields are planted with cover crops for conservation and crop rotation purposes. Currently the cover crop used at the Property is a mix of cowpeas, sunn hemp, mung beans, canola, mustard, radish, buckwheat, sunflower and okra. The general location of the seed corn fields (including the soybean production areas) is shown on **Petitioner's Exhibit 6** (Map of Uses).

Monsanto's agriculture operations include a comprehensive conservation plan developed in conjunction with the United States Department of Agriculture's Natural Resource Conservation Service, with a goal of soil and water conservation. This plan includes the use of vegetative terraces established across slopes to slow and divert rain water runoff, grassed waterways to channel rain water runoff and slow its flow rate, and sediment basins. In addition, the plan includes use of drip irrigation, cover crops, windbreaks and field borders (including native species, such as Polynesian introduced species like Kukui (*Aleurites mollucana*), Kou (*Cordia subcordata*), and Kamani (*Inophyllum callophyllum*), indigenous specie include A'ali'i (*Dodonaea viscosa*), and endemic species such as Koa (*Acacia koa*) and the federally listed endangered species, 'Ohai (*Sesbania arborea*), and Cook pine trees (*Araucaria columnaris*)) and other tillage and dust mitigation measures. Monsanto's agriculture practices emphasize sustainability and best management practices. For additional information please see Monsanto's Farm Stewardship Practices (2016) attached as **Petitioner's Exhibit 7**.

Monsanto's conservation efforts on the Property include use of approximately 27 acres in an on-site gulch for restoration of 160 native plant species (including, for example, Naio or the Bastard Sandalwood (*Myoporum sandwicense*), A'ali'i (*Dodonaea viscosa*), and Wiliwili (*Erythrina sandwicensis*)) to create a native forest, as well as creation of a pollinator habitat of approximately 0.84 acres which is fenced and includes about 100 native and non-native species

and a walking path. This habitat provides a home for a monarch butterfly population to feed, lay eggs, and roost. This pollinator habitat also has an education component to allow the public to learn about the native plants in the habitat. In 2015, Monsanto's habitat conservation and management activities resulted in the first in Hawaii certification by the Wildlife Habitat Council.

As described in paragraph 1.5.2.1.2 below, the Property has been used for coffee cultivation for approximately 30 years. Currently, Monsanto leases approximately 115.5 acres of the Property to COHI, Inc., a Hawaii corporation, for coffee farming, in the location shown on **Petitioner's Exhibit 6**. The coffee crop is a year round crop, with one harvest over a 4 to 6 month period usually in the September to December time period. The lease to COHI, Inc. is a long term lease, expiring in 2031.

Another tenant of Monsanto, Tom DeCourcy, sole proprietor, grows sunn hemp seeds on approximately 8 acres of the Property. See **Petitioner's Exhibit 6**. This crop is planted and harvested once per year. Mr. DeCourcy has been farming on the Property since 2015, and has a year to year tenancy.

Collectively, the coffee farm and the sunn hemp seed farm occupy approximately one hundred twenty-three and one-half acres (123.500) acres, or 12%, of the Property.

Coral Wireless, LLC, doing business as Mobi PCS, leases approximately 65 square feet on Kualapu'u as a communications tower, for data and cellular communications.

The balance of the Property, consists of (a) approximately two hundred ten (210.000) acres, or 20% of the Property for soil conservation measures, roads, and water infrastructure (such as detention basins, berms, and filter strips), and (b) approximately two hundred twenty-two and one-half (226.179) acres of non-classified acres, such as gulch land or land where

Kualapu'u is located, which is too steep for row planted crops.

1.5.2.1.2 Prior Land Use. The Property has been in agricultural production for about 120 years, starting in approximately 1897 when what is now Molokai Properties Limited (also formerly known as Molokai Ranch, Ltd.) was formed and started ranching operations. Molokai Properties Limited used the Property for ranching until the early 1900s, when the Property became part of a pineapple plantation operated by Del Monte Corporation. Pineapple production continued until the mid-1980s when pineapple production ceased. Beginning in the mid-1980s, Molokai Properties Limited leased a portion of the Property for coffee production, and the remainder was either used for ranching operations or left unused. After a change in ownership of the coffee farm in about 2003, coffee continued to be grown at the Property but under three separate leases, all of which were ultimately assigned to Coffees of Hawaii, LLC. In 2007, Monsanto leased a portion of the Property for seed corn production. In 2012, Monsanto acquired the three coffee leases from Coffees of Hawaii, LLC, and thereafter had possession of all of the Property through leases with Molokai Properties Limited.

As the long term lessee of Molokai Properties Limited, Monsanto continued to sublease a portion of the Property to a coffee farmer for coffee production and continued to use the remainder of the Property for Monsanto's seed corn and soybean production. In 2015, Monsanto acquired the Property in fee simple from Molokai Properties Limited.

1.5.2.2 Land with Soil Qualities and Growing Conditions that Support Agricultural Production of Food, Fiber, or Fuel- and Energy-Producing Crops – HRS § 205-44(c)(2) and HAR § 15-15-120(c)(2).

The Detailed Land Classification System and Agricultural Land Productivity Ratings by the Land Study Bureau (“**LSB**”), University of Hawai‘i are based on a five-class productivity

rating system using the letters A, B, C, D, and E, with A representing the class of highest productivity and E the lowest. These ratings also include a qualifier, “with irrigation” as appropriate. As discussed in paragraph 1.5.2.5 below, the Property is irrigated by the Molokai Irrigation System. With irrigation, approximately 70.4 % of the Property is rated A, 22.8% is rated B, 0.1% is rated C, and 6.7% is rated E. See Ag Assessment, Fig. 4a and Fig. 4b. The soil productivity ratings on the Property are strong, and the Property has been, and continues to be, used for active agriculture uses. The table below summarizes the productivity rating of the Property, both without and with irrigation:

Table 2 (Property LSB Ratings)			
Land Type	Overall Productivity Rating	Total IAL	
		Acres	% of IAL
14	C		
14i	A	173.807	16.0%
29	D		
29i	A	57.960	5.3%
30	D		
30i	B	39.630	3.7%
38	D		
38i	A	532.737	49.1%
39	E		
39i	B	179.479	16.6%
48	E	70.123	6.5%
50	C		

Table 2 (Property LSB Ratings)			
Land Type	Overall Productivity Rating	Total IAL	
		Acres	% of IAL
50i	B	26.630	2.5%
51	D		
51i	C	1.298	0.1%
68	E	2.415	0.2%
	Total:	1,084.079	100%

The Property receives more than sufficient solar radiation to support agricultural production. Mean annual solar radiation on the Property ranges from 215 to 240 watts per square meter per hour, based on information from the Evapotranspiration of Hawai'i Final Report prepared in February 2014 by Department of Geography, University of Hawai'i at Mānoa for U.S. Army Corps of Engineers Honolulu District and State of Hawai'i Commission on Water Resource Management. See Ag Assessment, Fig. 6.

1.5.2.3 Land Identified under Agricultural Productivity Rating – HRS § 205-44(c)(3) and HAR § 15-15-120(c)(3).

The Agricultural Lands of Importance to the State of Hawai'i ("ALISH") classification system was developed in 1977 by the State Department of Agriculture. The system was primarily, but not exclusively, based on the soil characteristics of lands and existing cultivation. There are three classes of ALISH lands – Prime, Unique, and Other.

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

Unique ALISH is land other than Prime ALISH that is used for the production of specific high-value food crops. The land has the special combination of soil quality, growing season, temperature, humidity, sunlight, air drainage, elevation, aspect, moisture supply, or other conditions, such as nearness to market, that favor the production of a specific crop of high quality and/or high yield when the land is treated and managed according to modern farming methods. In Hawai'i, some examples of such crops are coffee, taro, rice, watercress, and non-irrigated pineapple.

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

Approximately 90.3% of the Property is classified under the ALISH system, with 90.0% being classified as Prime. See Ag Assessment, Fig. 5. The table below summarizes the ALISH classifications of the Property:

Table 3 (Property ALISH Ratings)		
ALISH Classifications	Total IAL	
	Acres	% of IAL
Prime	975.729	90.0%
Unique	0.000	0.0%
Other	7.453	0.7%
Unclassified	100.897	9.3%
Total:	1,084.079	100%

The area of the Property that is unclassified under the ALISH system includes essential elements for active agricultural operations, such as streams and drainage ways, water system infrastructure, roadways, and areas for soil conservation. See e.g. Ag Assessment, Fig. 3 (Topography and Streams), and Fig. 7 (Water Resources and Agricultural Infrastructure).

1.5.2.4 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 – HRS § 205-44(c)(4) and HAR § 15-15-120(c)(4).

Approximately 115.5 acres of the Property are used for coffee production, a statutorily defined unique crop. Coffee production at the Property has been ongoing for the past thirty (30) years, more or less. In addition, the entirety of the Property has been in ranching or active crop production both under Monsanto’s ownership, and prior ownership, since 1897.

1.5.2.5 Land with Sufficient Quantities of Water to Support Viable Agricultural Production – HRS § 205-44(c)(5) and HAR § 15-15-120(c)(5).

The Property is irrigated with water from the Moloka‘i Irrigation System (“**MIS**”), which was constructed and is owned by the State of Hawai‘i, and operated by the State of Hawai‘i Department of Agriculture (“**DOA**”). Agricultural Water Use and Development Plan (December

2003, revised December 2004), published by the DOA (“**DOA 2003 Report**”), at 100.⁵ Only land used or to be used for farming can be located within an irrigation project, such as the MIS, and therefore, the water produced by the MIS is to be used for agricultural purposes only. HRS § 167-12.⁶ The Kualapu‘u Reservoir, with a 1.4 billion gallon capacity, is located on a separate lot surrounded by the Property, and is part of the MIS. DOA 2003 Report, at 100. The MIS originally served large-scale pineapple operations, but was converted to serve diversified agriculture after pineapple operations closed in the late 1970s. *Id.* The system also serves native Hawaiian homesteads in Ho‘olehua. *Id.*

The MIS is operated by the DOA under authority given in HRS Chapter 167. *Id.*, at 99. The MIS’s sole water source is the Waikolu Valley Watershed. *Id.* Three intakes divert stream flows at the 1,000 foot elevation into the Moloka‘i Tunnel, and a fourth intake with a pump station at the 800 foot elevation lifts stream flows to the Moloka‘i Tunnel inlet portal. *Id.* The DOA registered these four diversions (Waikolu Dam #1, Dam #2, Dam #3, and Waikolu Pump House Diversion Dam) with the Commission on Water Resource Management in 1989, although the MIS was operating for many years before that.

Five wells provide supplemental supply of ground water from the valley, during droughts and low-flow periods. These wells are operated in compliance with Ground Water Use Permit No. 220, which provides for a ground water allocation of 0.853 million gallons per day (“**MGD**”). The five-mile long Moloka‘i Tunnel, which conveys water through the mountain by gravity to the central Moloka‘i farms. *Id.* Residents of Moloka‘i have input into the operation of

⁵ A link to the DOA 2003 Report is at <http://hdoa.hawaii.gov/arm/files/2012/12/AWUDP-Dec2003rev2004.pdf>

⁶ The DOA is allowed, however, to sell water for domestic purposes under certain limited circumstances. HRS § 167-11.

the MIS pursuant to the Moloka'i Irrigation System Water Users Advisory Board established under HRS § 167-23.⁷

The MIS provides water for agricultural purposes to a finite number of users in a geographic area, determined by the DOA. HRS §§ 167-5, -6, -12, and -19. The DOA determines the geographic boundaries of the land served by the MIS, and also determines the amount of cultivatable land for all users of the MIS. HRS § 167-19.⁸ In the absence of a DOA determination of cultivatable acres for a given user, a two acre minimum is used. HAR § 4-157-3(g).

The MIS service area ("**MIS Service Area**") may change, from time to time. The current MIS Service Area is 3,362 acres. Petitioner, in consultation with a DOA Agricultural Assessment Manager of the Agricultural Resource Management Division, confirmed that the current MIS Service Area includes approximately 1,400 acres of Ho'olehua Hawaiian Homestead lands owned by the Department of Hawaiian Home Lands ("**DHHL**"), 753 acres of the Moloka'i Agricultural Park owned by the State of Hawai'i and administered by the DOA, and privately owned lands of approximately 1,209 acres, of which the Property is a part. The MIS Service Area is shown on **Petitioner's Exhibit 8**.

Total water usage of the MIS for FY (July through June) 2015 through 2017 is shown in

⁷ The Advisory Board consists of seven members, as follows: (i) a homestead farmer user on Moloka'i; (ii) a nonhomestead farmer user on Moloka'i; (iii) a designee (by name, not office) of the Moloka'i County Farm Bureau; (iv) a designee (by name, not office) of Hikiola Cooperative, Inc.; (v) a designee (by name, not office) of the Moloka'i-Lana'i soil and water conservation district; (vi) a homestead farmer whose nomination was recommended by Moku Puni O Moloka'i; and (vii) the supervisor of the Moloka'i district office of Department of Hawaiian Home Lands, who serves as an ex officio voting member. All members of the Advisory Board must be users of the MIS and residents of the island of Moloka'i. See HRS § 167-23.

⁸ As indicated in fn. 4, the DOA has determined that the Property contains 1,080.4 acres for purposes of administering the MIS, which is 2.679 acres less than the total area of the Property (1,084.079 acres). While Petitioner is seeking IAL designation for the entirety of the Property (1,084.079 acres), in this Petition, this 2.679 acre discrepancy will be treated as *de minimus*, and disregarded.

the Table 4 below:

Table 4 (MIS Water Usage)						
Users	FY 2015	%	FY 2016	%	FY 2017	%
Homesteaders	154,410,000	18.3%	179,338,000	19.0%	170,011,000	17.6%
Non-Homesteaders	688,933,000	81.7%	763,238,000	81.0%	796,090,000	82.4%
Totals:	843,343,000	100.0%	942,576,000	100.0%	966,101,000	100.0%

Based upon actual need,⁹ the lessee/users on DHHL homestead lands have a prior right to two thirds (2/3) of the water from the MIS. HRS § 168-4. Furthermore, when water conservation measures are deemed necessary by the DOA, all users except for DHHL homestead lessee/users must take mandatory cuts in water usage before DHHL homestead lessee/users must take mandatory cuts. HRS § 167-6(4) and HAR § 4-157-4(k).¹⁰ See Protection of Homesteaders Preference Rights and Water Conservation Measures (DOA Publication), available at <http://hdoa.hawaii.gov/arm/files/2012/12/Protection-of-Homesteaders-Preference-Rights.pdf>. Putting this into perspective, in FY 2017, average monthly water usage for all DHHL lessee/users was approximately 14,000,000 gallons, with total average monthly use by all MIS users being approximately 80,500,000 gallons.¹¹ Based on this, all DHHL lessee/users would have to actually use at least 53,935,000 gallons in a month before any DHHL lessee/users would be subject to conservation restrictions.¹² This is almost a four times the amount of water

⁹ “Actual need” is defined as the volume of irrigation water consumed by an irrigation customer, measured by actual use as determined by monthly meter readings or as otherwise provided by rule. HAR § 4-157-2.

¹⁰ Hawaiian Homestead lessee/users are required to take mandatory conservation measures if, collectively, their total water usage exceeds two-thirds (2/3) of the water delivered by the MIS. HAR § 4-157-4(k).

¹¹ See Table 4. All DHHL lessee/users used 170,011,000 gallons in FY 2017, and all users used 966,101,000 gallons in FY 2017. Therefore, DHHL lessee/users used approximately 14,000,000 gallons per month on average (170,011,000/12), and all users used approximately 80,500,000 gallons per month on average (966,101,000/12).

¹² 80,400,000 gallons per month multiplied by 2/3, equals 53,935,000.

actually used by DHHL lessee/users on a monthly basis.¹³

The three (3) year trailing monthly moving average collective water usage of Monsanto and its tenants for fiscal years (July to June) 2015, 2016, and 2017 ranged from 10,789,139 to 11,737,694 gallons per month. See Petitioner's Exhibit 9.

In addition to water from the MIS, the Property receives a mean annual rainfall of approximately 22 to 34 inches of rain. See Giambelluca, T.W., Q. Chen, A.G. Frazier, J.P. Price, Y.-L. Chen, P.-S. Chu, J.K. Eischeid, and D.M. Delparte, 2013: [Online Rainfall Atlas of Hawai'i](#). Bull. Amer. Meteor. Soc. 94, 313-316, doi: 10.1175/BAMS-D-11-00228.1.

1.5.2.6 Land Whose Designation as Important Agricultural Lands is Consistent with General, Development, and Community Plans of the County – HRS § 205-44(c)(6) and HAR § 15-15-120(c)(6).

1.5.2.6.1 State Land Use Designation. All of the Property is in the State Land Use Agricultural District (See Ag Assessment, Fig. 8) and designation of the Property as IAL will be consistent with such land use designation.

1.5.2.6.2 Countywide Policy Plan. Designation of the Property as IAL is consistent with the Countywide Policy Plan for the County of Maui by maintaining the diversity and expanding sustainable forms of agriculture in the County, supporting ordinances, programs, and policies that keep agricultural land and water available and affordable to farmers, and supporting education, research, and facilities that strengthen the agricultural industry.. See Section IV, Goal F, Objective 2, Policies a, e, and h. Countywide Policy Plan (Ordinance No. 3732, 2010). The designation of the Property as IAL also supports the Countywide Policy Plan by promoting sustainable land use and growth management, and by improving planning for and management of agricultural lands and rural areas by protecting prime, productive, and potentially

¹³ 53,935,000/14,000,000, equals 3.84.

productive agricultural lands to maintain the islands' agricultural and rural identities and economies. See Section IV, Goal J, Object 2, Policy a. Countywide Policy Plan (Ordinance No. 3732, 2010).

1.5.2.6.3 Moloka'i Community Plan. The Property is covered by the Moloka'i Community Plan (2001). Recognizing the prime agricultural nature of the Property, all of the Property is designated for agriculture. The Moloka'i Community Plan explains that the "agriculture" designation indicates areas for agricultural activity which would be in keeping with the economic base of the County and the requirements and procedures of Chapter 205 HRS, as amended. Included within the Land Use Goals, is the goal of enhancing the unique qualities of the island of Moloka'i to provide future generations the opportunity to experience rural and traditional lifestyles. To achieve that Goal, the objectives and policies include discouraging developing or subdividing agriculturally designated lands for "gentlemen estates" or "Pseudo Agricultural" uses in which the residence would be the primary use and any non-intrusive agricultural activities would be secondary. See Moloka'i Community Plan at 10. Also, to "Protect prime, productive and potentially productive agricultural lands from competing non-agricultural land uses." *Id.* at 11. Correspondingly, the proposed Moloka'i Community Plan (2017 Draft) currently at the Maui County Council for review and adoption recommits the identification of the Property for agricultural purposes. See Ag Assessment, Fig. 9b. In addition, proposed Land Use Action No. 6.1.03 in the current Molokai Community Plan (2017 Draft) provides as follows: "Implement County responsibilities under Acts 183 (2005) and 233 (2008) to designate and establish Important Agricultural Lands (IAL) and the incentives therein." As

such, the designation of the Property as IAL is consistent with the Moloka'i Community Plan (2001) and the pending Moloka'i Community Plan (2017 Draft).¹⁴

1.5.2.6.4 County Zoning. All of the Property is zone for agricultural and interim use under the Maui County Code. Designating the Property as IAL will be consistent with these zoning designations.

1.5.2.7 Land that Contributes to Maintaining a Critical Land Mass Important to Agricultural Operating Productivity – HRS § 205-44(c)(7) and HAR § 15-15-120(c)(7).

Monsanto's Petition includes 1,084.079 contiguous acres of agricultural land, which in and of itself contributes to maintaining a critical land mass important to agricultural operating productivity. Additional lands proposed for inclusion, which consists of essential elements of the agricultural operations, are necessary to provide the overall critical "contiguous" land mass necessary for agricultural operating productivity. The entire Property, including those areas that are not being actively cultivated, such as gulch land or land where Kualapu'u is located, constitute contiguous, intact, and functional land units large enough to allow flexibility in agricultural production and management and is consistent with the policies of HRS § 205-43(1).

1.5.2.8 Land with or Near Support Infrastructure Conducive to Agricultural Productivity, Such as Transportation to Markets, Water or Power – HRS § 205-44(c)(8) and HAR § 15-15-120(c)(8).

In addition to on-site infrastructure, such as an irrigation system, drainage infrastructure and internal roads used for agricultural production, the Property has access to all of the necessary off-site infrastructure for long term agricultural productivity including access to Farrington Avenue and Maunaloa Highway, adjacency to the Kualapu'u Reservoir, with applicable utilities,

¹⁴ The Moloka'i Community Plan (2001) also notes that a majority of the Property is within the Kualapu'u Wellfield Wellhead Protection Area. The validity and accuracy of this designation is unclear, however. The Protection Area shown in the 2001 Moloka'i Community Plan map does not match the 2013 Wellhead Protection Overlay District zones that were delineated by the University of Hawaii Department of Geology & Geophysics. See Draft Wellhead Protection Overlay District Zones for Department of Water Supply Wells, Map 9, attached hereto as **Petitioner's Exhibit 10**.

available for use, as and when needed.

1.5.3 Current or Planned Agricultural Use of the Area Sought to be Designated as Important Agricultural Lands.

As described in paragraph 1.5.2.1 above, the Property is currently in seed corn production, soybean production, coffee production, and sunn hemp seed production, and Monsanto intends to keep the Property in these uses for the foreseeable future.

1.6 Names of Any Other Potential Parties.

Monsanto expects that the Department of Agriculture of the State of Hawai'i, the Office of State Planning of the State of Hawai'i, and the Director of the Department of Planning of the County of Maui may participate in these proceedings. No other potential parties have been identified. However, the current tenants/users of the Property (and as noted in paragraph 1.5.2.1.1 above) are: (A) COHI, Inc., a Hawaii corporation, P.O. Box 30686, Honolulu, HI 96820; (B) Tom DeCourcy, 132 Kahinani Place, Kaunakakai, HI 96748; and (C) Coral Wireless, LLC, doing business as Mobi PCS, 733 Bishop Street, Suite 1200, Honolulu, HI 96813.

All consulted parties indicated that there were no significant cultural activities or practices currently being conducted on the Property. Information from these consulted parties indicates that there is evidence of pre-contact cultural artifacts as well as a post contact plantation era burial on Kualapu'u. The proposed IAL designation does not change the existing uses or activities on the Property. The collective opinion of those interviewed was supportive of the proposed IAL designation for the preservation of agriculture into the future. The IAL designation would not interfere with or impact any existing or ongoing native Hawaiian cultural practices, resources, or historic or cultural sites that may be located in or around the Property. See Report of Findings on Cultural Research Related to the Designation of A Majority of Monsanto Company's Maui County Land

as Important Agricultural Lands, copy attached hereto and incorporated herein as **Petitioner's Exhibit 5.**

1.7 Signature of Each Petitioner.

The sole Petitioner in this matter is Monsanto. Counsel for Monsanto, with the authorization of Monsanto, has signed this Petition on Monsanto's behalf.

1.8 Statement Whether the Petition for Declaratory Ruling Relates to Any Commission Docket for District Boundary Amendment or Special Permit.

This Petition is not related to any Commission docket for district boundary amendment or special permit.

2. WAIVER OF 85/15 RECLASSIFICATION INCENTIVE

Monsanto is not seeking reclassification of land pursuant to HRS §205-45(b) in conjunction with this Petition to designate IAL. Monsanto also voluntarily waives all right to assert, claim or exercise any credits pursuant to HRS §205-45(h), effective as of the date of this Petition, that may be earned by Monsanto in the event that this Petition is 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 District pursuant to HRS § 205-45(h), effective as of the date of this Petition, and shall not apply to any other credits, incentives, rights or privileges that Monsanto may possess now or in the future, whether known or unknown. All such credits, incentives, rights or privileges are expressly reserved.

3. **CONCLUSION**

Monsanto respectfully requests that the Commission: (1) find that this Petition meets the standards for designating IAL pursuant to HRS §205-44 and -45, and (2) designate the Property as IAL.

DATED: Honolulu, Hawaii, September 29, 2017.



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corporation