

1	LAND USE COMMISSION	
2	STATE OF HAWAI'I	
3	ACTION	PAGE
4	DR11-44 DEPT. OF HOUSING and HUMAN CONCERNS,)	4
	COUNTY of MAUI (Lana'i))	
5)	
	DR10-41 MOLOKA'I PROPERTIES, LTD. (Moloka'i))	8
6)	
	DR10-42 CASTLE & COOKE HOMES HAWAI'I, INC.)	11
7	(O'ahu))	
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10 TRANSCRIPT OF PROCEEDINGS

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12 The above-entitled matters came on for a Public
 13 Hearing at Conference Room 405, 4th Floor, Leiopapa A
 14 Kamehameha, 235 S. Beretania Street, Honolulu,
 15 Hawai'i, commencing at 9:35 a.m. on Wednesday, March
 16 23, 2011 pursuant to Notice.

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22 REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR
 Certified Shorthand Reporter

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A P P E A R A N C E S

3 COMMISSIONERS:

KYLE CHOCK

4 THOMAS CONTRADES

VLADIMIR DEVENS (Chairman)

5 RONALD HELLER

CHARLES JENCKS

6 LISA M. JUDGE

DUANE KANUHA

7

8

EXECUTIVE OFFICER: ORLANDO DAVIDSON

9 ACTING CHIEF CLERK: RILEY HAKODA

STAFF PLANNERS: BERT SARUWATARI

10 DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

11 AUDIO TECHNICIAN: WALTER MENCHING

12

13 Docket No. DR11-44 Dept. of Housing and Human Concerns

14 For the Petitioner: CURTIS TABATA, ESQ.

WYETH MATSUBARA, ESQ.

15 BENJAMIN MATSUBARA, ESQ.

16 Also Present:

DIRECTOR JO-ANN RIDAO

17 BUDDY ALMEIDA

COUNCIL MEMBER RIKI HOKAMA

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21 For the State:

BRYAN YEE, ESQ.

Deputy Attorney General

22 JESSE SOUKI, Director

Office of Planning

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1 A P P E A R A N C E S cont'd

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3 Docket No. DR10-41 Moloka'i Properties, Ltd.

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5 For the Petitioner: CURTIS TABATA, ESQ.
6 WYETH MATSUBARA, ESQ.
7 BENJAMIN MATSUBARA, ESQ.

8

9 For the State: BRYAN YEE, ESQ.
10 Deputy Attorney General
11 RUSSELL KOKUBUN, Director
12 Department of Agriculture

13

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15 DR10-42 Castle & Cooke Homes Hawai'i, Inc.

16

17 For the Petitioner: BENJAMIN MATSUBARA, ESQ.
18 CURTIS TABATA, ESQ.
19 WYETH MATSUBARA, ESQ.

20

21 For the County: DAWN TAKEUCHI-APUNA, ESQ.
22 Deputy Corporation Counsel
23 RANDY HARA, Dept. of
24 Planning and Permitting

25

26 For the State: BRYAN YEE, ESQ.
27 Deputy Attorney General
28 JESSE SOUKI, Director
29 Office of Planning
30 RUSSELL KOKUBUN, Director
31 Department of Agriculture

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1 CHAIRMAN DEVENS: Meeting is called to order.

2 Today is March 23rd, 2011. Meeting today is being
3 held here in Honolulu. First item on the agenda is
4 adoption of the minutes. Are there any corrections or
5 changes to be made? Hearing none, motion to adopt?

6 COMMISSIONER JENCKS: Move to approve.

7 COMMISSIONER KANUHA: Second.

8 CHAIRMAN DEVENS: Any discussion? There being
9 none, all those in favor say aye.

10 COMMISSION VOTING: "Aye".

11 CHAIRMAN DEVENS: It's adopted unanimously.
12 Dan, the upcoming schedule.

13 MR. DAVIDSON: Thank you, Chair. You have the
14 meeting schedule which shows a pretty full agenda.
15 Second meeting in April is the Molokai IAL contested
16 case. First meeting in May looks like it's a split
17 meeting between O'ahu and then over to Kaua'i. So
18 Riley will be doing the logistics on that.

19 Second meeting probably will be the Lana'i
20 affordable project, Maui County. Thanks. Any
21 questions, obviously call me or Riley.

22 CHAIRMAN DEVENS: Thank you very much, Dan.
23 Next item on the agenda is DR11-44 Department of
24 Housing and Human Concerns, County of Maui, Lana'i,
25 Petition for Declaratory Order requesting the

1 Commission to determine whether Petitioner's noticed
2 but unfiled Petition for District Boundary Amendment
3 to be brought under Chapter 201H, Hawai'i Revised
4 Statutes, should be allowed a waiver of the time
5 schedule requirement for incremental plans under
6 Administrative Rule 15-15-50(c)(19).

7 Will the parties make their appearances,
8 please, starting with Petitioner.

9 MR. TABATA: Good morning, Mr. Chairman,
10 members of the Commission. Curtis Tabata, Wyeth
11 Matsubara and Ben Matsubara appearing on behalf of
12 Petitioner the County of Maui Department of Housing
13 and Human Concerns. Appearing with us today is
14 Director Jo-Ann Ridao and Buddy Almeida of the
15 Department of Housing and Human Concerns. Also
16 present today is the Maui County Council Member from
17 the Island of Lana'i Riki Hokama.

18 CHAIRMAN DEVENS: Good morning.

19 MR. YEE: Good morning. Deputy Attorney
20 General Bryan Yee on behalf of the Office of Planning.
21 With me is Jesse Souki, director of the Office of
22 Planning.

23 CHAIRMAN DEVENS: Good morning to you all.
24 Let me update the record. On March 1st, 2011 the
25 Commission received Department of Housing and Human

1 Concerns county of Maui's Petition for declaratory
2 order. On March 9, 2011 the Commission received is
3 the Office of Planning's Statement of Support for the
4 Petitioner's Petition for Declaratory Order.

5 On March 14, 2011 the Commission received the
6 errata from the Department of Housing and Human
7 Concerns County of Maui's Petition for Declaratory
8 Order.

9 I understand there are no public witnesses
10 today, Mr. Davidson.

11 MR. DAVIDSON: That's correct.

12 CHAIRMAN DEVENS: Mr. Tabata, is there
13 anything more you want to add to the pleadings that
14 you filed? I understand OP is supporting it. Unless
15 you had something to add on.

16 MR. TABATA: I did have a presentation
17 prepared but....

18 CHAIRMAN DEVENS: Is it just going to just
19 reiterate what's already in the pleadings?

20 MR. TABATA: Yes.

21 CHAIRMAN DEVENS: Unless you want to highlight
22 anything I think everyone has had a chance to read
23 through the pleadings.

24 MR. TABATA: That's fine.

25 MR. YEE: We'll rest on our Statement in

1 Support.

2 CHAIRMAN DEVENS: Commissioners, any questions
3 for the parties? There being none, is there a motion?

4 COMMISSIONER JENCKS: Move to approve.

5 CHAIRMAN DEVENS: Is there a second?

6 COMMISSIONER JUDGE: Second.

7 CHAIRMAN DEVENS: Any discussion? There being
8 done, Dan, call for the vote.

9 MR. DAVIDSON: Motion to approve DR11-44,
10 Commissioner Jencks?

11 COMMISSIONER JENCKS: Aye.

12 MR. DAVIDSON: Commissioner Judge?

13 COMMISSIONER JUDGE: Aye.

14 MR. DAVIDSON: Commissioner Kanuha?

15 COMMISSIONER KANUHA: Aye.

16 MR. DAVIDSON: Commissioner Heller?

17 COMMISSIONER HELLER: Aye.

18 MR. DAVIDSON: Commissioner Contrades?

19 COMMISSIONER CONTRADES: Aye.

20 MR. DAVIDSON: Commissioner Chock?

21 COMMISSIONER CHOCK: Aye.

22 MR. DAVIDSON: Chair Devens?

23 CHAIRMAN DEVENS: Yes.

24 MR. DAVIDSON: Motion passes 7/0, Chair.

25 CHAIRMAN DEVENS: Parties want to add anything

1 else to the record?

2 MR. TABATA: No.

3 CHAIRMAN DEVENS: Thank you very much.

4 MR. YEE: Thank you.

5 CHAIRMAN DEVENS: The next item on the agenda
6 is DR10-41. This relates to Moloka'i Properties
7 Limited, to consider the state Department of
8 Agriculture's Motion to Intervene. Will the Parties
9 make their appearances, please.

10 MR. YEE: Good morning. Deputy Attorney
11 General Bryan Yee on behalf of the Department of
12 Agriculture. With me is Chair Russell Kokubun from
13 the Department of Agriculture.

14 MR. TABATA: Good morning. Curtis Tabata,
15 Wyeth Matsubara, Ben Matsubara appearing on behalf of
16 Petitioner Moloka'i Properties, Limited.

17 CHAIRMAN DEVENS: Good morning to you all.
18 Also the Commission wanted to acknowledge and welcome
19 the new Director of the Department of Agriculture
20 Senator Kokubun.

21 MR. KOKUBUN: Thank you, Chair.

22 CHAIRMAN DEVENS: Let me update the record.
23 On February 9, 2011 the Commission received a copy of
24 the written correspondence to the Office of Planning
25 from the National Resources Conservation Service.

1 On February 16th, 2011 the Commission received
2 a copy of written correspondence to the Office of
3 Planning from DLNR-Water Resource Management.

4 On March 1st, 2011 the Commission received the
5 state Department of Agriculture's Motion to Intervene.

6 On March 2nd, 2011 the Commission received
7 written correspondence from the State Office of
8 Planning containing OP's comments on DR10-41 and
9 DR10-42.

10 On March 14th, 2011 the Commission received
11 Petitioner's Statement of No Opposition to the Hawai'i
12 Department of Agriculture's Motion to Intervene.

13 On March 21st, 2011 the Commission received
14 written correspondences from state of Hawaii
15 Department of Hawaiian Home Lands, Albert Alapaki
16 Nahale-a.

17 Dan, are there any public witnesses?

18 MR. DAVIDSON: No public witnesses, Chair.

19 CHAIRMAN DEVENS: Mr. Yee, do you have
20 anything more to add to the motion?

21 MR. YEE: No. Be happy to answer any
22 questions. But we would be happy to rest on our
23 motion.

24 CHAIRMAN DEVENS: Mr. Tabata, do you want to
25 add anything more?

1 MR. TABATA: We have nothing to add.

2 CHAIRMAN DEVENS: Commissioners, any questions
3 for the parties? There being none, is there a motion?

4 COMMISSIONER CHOCK: So moved, Mr. Chair.

5 CHAIRMAN DEVENS: Is there a second?

6 COMMISSIONER CONTRADES: Second.

7 CHAIRMAN DEVENS: Any discussion? There being
8 none, Dan...

9 MR. DAVIDSON: Motion to grant Department of
10 Agriculture's Motion to Intervene. Commissioner
11 Chock?

12 COMMISSIONER CHOCK: Aye.

13 MR. DAVIDSON: Commissioner Contrades?

14 COMMISSIONER CONTRADES: Aye.

15 MR. DAVIDSON: Commissioner Heller?

16 COMMISSIONER HELLER: Aye.

17 MR. DAVIDSON: Commissioner Jencks?

18 COMMISSIONER JENCKS: Aye.

19 MR. DAVIDSON: Commissioner Judge?

20 COMMISSIONER JUDGE: Yes.

21 MR. DAVIDSON: Commissioner Kanuha?

22 COMMISSIONER KANUHA: Yes.

23 MR. DAVIDSON: Chair Devens?

24 CHAIRMAN DEVENS: Yes.

25 MR. DAVIDSON: The motion passes 7/0, Chair.

1 CHAIRMAN DEVENS: Thank you very much.

2 MR. YEE: Thank you.

3 CHAIRMAN DEVENS: The last item on the agenda
4 is DR10-42. It's a Petition for Declaratory Order to
5 Designate Important Agricultural Lands for
6 approximately 902.066 acres for Waialua, Wahiawa, and
7 Waikele, O'ahu, Hawai'i. We'll have the parties
8 identify themselves for the record.

9 MR. MATSUBARA: Good morning, Chair Devens,
10 Members of the Commission. Ben Matsubara, Curtis
11 Tabata and Wyeth Matsubara on behalf of Castle & Cooke
12 Homes Hawai'i, Inc.

13 MS. TAKEUCHI-APUNA: Good morning. Deputy
14 Corporation Counsel Dawn Takeuchi-Apuna on behalf of
15 the Department of Planning and Permitting. Here with
16 me today is Randy Hara.

17 MR. YEE: Good morning. Deputy Attorney
18 General Bryan Yee on behalf of Office of Planning.
19 With me is Jesse Souki, director of the Office of
20 Planning. Also present today is Chair Kokubun of the
21 Department of Agriculture.

22 CHAIRMAN DEVENS: If I may let me update the
23 status of the record. On December 29, 2010 the
24 Commission received Castle & Cooke Homes Hawai'i's
25 Petition for Declaratory Order to Designate Important

1 Agricultural Lands and Exhibits A through D.

2 On January 3, 2011 the Commission received
3 Petitioner's First Amendment to the Petition for
4 Declaratory Order to Designate Important Agricultural
5 Lands and Exhibits E through G.

6 On February 22nd, 2011 the Commission received
7 comments from the Office of Planning. On the same day
8 the Commission received a comment letter from the
9 state Department of Agriculture via fax.

10 On March 2nd, 2011 the Commission received
11 additional comments from the Office of Planning.

12 On March 3, 2011 the Commission received the
13 City and County of Honolulu's Department of Planning
14 and Permitting's comment letter.

15 On March 4th, 2011 the Commission received
16 state of Hawai'i Office of Planning's correspondence
17 revising figure 1 in its comment letter.

18 On March 14th, 2011 the Commission received
19 Petitioner's response to OP's letter dated
20 February 22, 2011, the Department of Agriculture's
21 letter dated February 22, 2011, the Commission on
22 Water Resource Management's letter dated
23 February 23rd, 2011, the Department of Planning and
24 Permitting's letter dated March 2, 2011.

25 On March 22, 2011 the Commission also received

1 writing correspondence via email from Oahu County Farm
2 Bureau, Fred Mencher.

3 For the record, the Commission intended to
4 declare that the documents submitted by the Department
5 of Agriculture, Office of Planning, City and County of
6 Honolulu, and Petitioner's response will be made part
7 of the record. Parties have any objection?

8 MR. MATSUBARA: No objection.

9 MS. TAKEUCHI-APUNA: No objection.

10 MR. YEE: No objection.

11 CHAIRMAN DEVENS: There being no objections
12 those records will be made part of the record.

13 The procedure for today will be as follows:
14 We will first take public testimony. We will have our
15 staff report, take public witness comments from the
16 City, OP, Department of Agriculture, give the
17 Petitioner time to provide rebuttal. And there'll be
18 deliberation and decision making. Are there any
19 public witnesses?

20 MR. DAVIDSON: No public witnesses, Mr. Chair.

21 CHAIRMAN DEVENS: Staff report.

22 MR. SARUWATARI: Commissioners, staff has
23 prepared a map on the wall which depicts the Petition
24 Area. The Petition Area, which is comprised of 4
25 areas, actually shows up better on Petitioner's

1 location map which is figure 1 of the Petition.

2 The first parcel is the Waialua parcel located
3 in the North Shore area of O'ahu. The second and
4 third parcels are Central O'ahu, the Dole Plantation
5 and Whitmore parcels. And the last parcel is the
6 Mililani south, actually south of Mililani.

7 Upon receiving is the comments on the Petition
8 from OP, the DOA, DPP, Commission on Water Resources
9 Management and the National Resource Conservation
10 Service, staff did a review of the Petition in the
11 context of standards and criteria used for the
12 identification of IAL as outlined in section 205-44
13 HRS.

14 As part of this section, lands identified as
15 IAL do not meet every standard and criteria listed.
16 Instead, lands meeting any of the criteria are to be
17 given initial consideration.

18 Staff believes that in this case all four
19 parcels of the Petition Area satisfy the threshold for
20 initial IAL consideration as they meet at least one of
21 the eight standards and criteria. That concludes the
22 map orientation and brief staff report.

23 CHAIRMAN DEVENS: Thank you, Bert.
24 Commissioners have any questions for Bert?
25 There being none, Mr. Matsubara.

1 MR. MATSUBARA: Thank you, Chair. Thank you,
2 Bert. I'd like to thank staff for the thorough
3 report. There are four parcels consolidated together
4 that are part of this Petition which comprises
5 902 acres and is located in three separate districts,
6 as was pointed out by Bert.

7 For identification purposes we have the four
8 identified as Waialua, a Dole Plantation, and Whitmore
9 in Wahiawa and down in Waikele, Mililani south. I'll
10 give a brief overview of all four and get into each
11 individually.

12 In the aggregate, 56 percent or 505 acres of
13 land included in our Petition are currently in
14 agricultural production. The remainder of the
15 property historically have either been in pineapple,
16 sugar or used to support agriculture mainly through
17 reservoirs and the gulches.

18 The Petition outlines the characteristics and
19 staff referenced I believe in terms of the criteria
20 that's listed in the IAL statute the characteristics
21 of these properties satisfy the requirements.

22 During the site visit some questions arose in
23 regard to certain observations that Commissioners and
24 staff may have made. One of them had to do with the
25 structures that were observed on the properties. In

1 response to that we just wanted to report that tenants
2 are permitted to put up storage structures and
3 accessory utility sheds and warehouses.

4 In regards to the question on whether or not
5 any of them constituted farm dwellings the answer is
6 no. Farm dwellings are not permitted on any of the ag
7 properties. And there's no intent to permit farm
8 dwellings in the future.

9 There was a question relating to the Waialua
10 property on the landfill. The landfill consisted of
11 agricultural waste and was closed 10 years ago by
12 Dole. A No Further Action letter was issued by the
13 state Department of Health on November 15, 2003.

14 In an effort to summarize: Both the Office of
15 Planning and the Department of Agriculture agreed that
16 Waialua and Mililani south parcels meet the criteria.
17 They have no objections to the designation of those
18 two parcels as IAL.

19 However, their approval is conditioned upon
20 the Office of Planning insisting that there be
21 long-term leases for tenants on that property. And
22 that in regard to ag uses permitted only three of the
23 permitted ag uses, only three out of the 17 permitted
24 ag uses under the land use law which any owner of ag
25 land can put his property to should be permitted on

1 that property.

2 We believe that those additional conditions go
3 far beyond the criteria that we need to establish for
4 purposes of getting an IAL designation. First of all,
5 we're not involved in any uses in regard to our
6 Petition to designate it as IAL. The property is ag.
7 What we're doing is placing an additional overlay on
8 the ag property for purposes of ensuring that the
9 state's objectives in enacting the IAL law provides
10 lands devoted to agriculture.

11 So it would seem ironic that in trying to make
12 this land more suited for ag by giving it the IAL
13 designation, we get penalized by not being able to do
14 with our ag property what we would have been able to
15 do if we left it as ag.

16 So, I believe those two conditions for these
17 two parcels, or for any parcel, would be inappropriate
18 under the circumstances. We accept their
19 recommendation that it be approved, but we would
20 object to the imposition of those additional
21 conditions that I believe have no basis in the law in
22 terms of the criteria and the policies listed. That's
23 for the first two parcels.

24 Let me go now to the Whitmore parcel, which is
25 in Wahiawa. Now, the opposition to the Whitmore

1 property is that there's no current ag activity
2 presently occurring on the property; there's no
3 irrigation system, and future use for agriculture
4 seems uncertain.

5 We agree that the property is not currently in
6 ag production, but this is property that has been in
7 pineapple production for over a hundred years until
8 2001. So it was used as ag land. It still is ag land
9 except an alternative crop has not been established
10 for that particular parcel. We enjoy 60 inches of
11 rainfall on the property.

12 So we believe that based on its history the
13 fact that over a majority of the property is B rated,
14 it should receive serious consideration, especially
15 meeting five of the eight IAL criteria I think places
16 this property for primary consideration as an IAL
17 land.

18 One of the issues of concern to OP and
19 Department of Ag is the fact that there's currently no
20 ag activity occurring. But in the IAL law,
21 specifically section 205-42(a)(3) it says -- the title
22 of this section is "Important Ag Lands definitions and
23 objectives. As used in this part, unless contract
24 otherwise requires, Important Ag Lands meaning that
25 those lands identified pursuant to this part,

1 subsection 3, are needed to promote the expansion of
2 agricultural activities and income for the future even
3 if currently not in production."

4 So the IAL law contemplates that certain lands
5 that are subjected for candidacy as IAL lands may not
6 currently be in ag production. But the facts relating
7 to its hundred year use in producing pineapple and
8 other crops should receive serious consideration.

9 I think the concept envisioned in the IAL law
10 also was the fact that land reserves should be looked
11 into and perhaps created so that future use of
12 property for ag was available. It's a long-term
13 vision. It's one for perpetuity. And I think the
14 concept of having lands which may not be, but have a
15 history of and quality still be productive in an ag
16 basis, should be considered.

17 This is especially in a situation where the
18 Petitioner has waived the 85-15 credit. We're not
19 utilizing any of the IAL property to give us a
20 percentage of land we can reclassify to urban or to
21 another category. That's been waived. The acreage we
22 are utilizing will be devoted for farm purposes.

23 I'll move on to the last parcel which is Dole
24 Plantation. The opposition to that property is the
25 fact that it's primarily a reservoir and a gulch

1 system. On the field trip you saw the reservoir that
2 existed, Tanada Reservoir. There's 31 acres currently
3 in the diversified ag surrounding the reservoir. And
4 that property was also utilized for pineapple for
5 nearly a hundred years up to the early 1990s.

6 Let's talk about Tanada Reservoir which seems
7 to be the reason why the Office of Planning and the
8 Department of Ag is concerned about designating that
9 as IAL land. The Tanada Reservoir and Gulch is a
10 single system created a hundred years ago. It stores
11 approximately 158 million gallons in that reservoir
12 and services approximately 2500 acres of ag land. It
13 provides year 'round irrigation for other lands. And
14 it is not reclaimed water, so there's no limitation on
15 what crops you can use this water for for purposes of
16 ag.

17 Under section 205-43 under the IAL law
18 entitled "Important Ag Lands," it talks about the fact
19 that state and county agricultural policies should be
20 focused on certain things. And subsection 8 reflects
21 one of the objectives is: "To promote the maintenance
22 of essential agricultural infrastructure systems
23 including irrigation systems." So there's a
24 recognition in the objectives. That's one of the
25 purposes of the IAL law.

1 In this particular case we've also waived the
2 85-15. So if there's some concerns that acreage
3 that's currently is a reservoir or water will be
4 utilized to get us 15 percent of fast land
5 reclassified, that doesn't apply. We've waived that.

6 I think we've seen in many instances that once
7 our plantations have closed down and the land remains
8 fallow, you have the irrigation system and the
9 maintenance of those systems falling into disrepair.
10 And what happens, then, is that you have these huge
11 tracts and acreages that used to have a functioning
12 and viable irrigation system going away. Nobody
13 maintains it. I mean we're looking at a resource that
14 services approximately 2500 acres.

15 One of the credits that may be utilized for
16 this would be to utilize -- if this is designated as
17 IAL land it's eligible for tax credits which allow it
18 to assist the cost in maintaining a functioning
19 reservoir that serves a purpose.

20 Objection to Whitmore is that we don't have
21 water. I think the objection here is that there's
22 too much water, but there is a function and purpose
23 behind designating this as IAL. I think we want to
24 maintain the system. It's an integral part of
25 agriculture. We're talking perpetual in the future.

1 I think making sure we have a well-maintained system
2 is quite important.

3 That basically covers my presentation in
4 regards to our request to designate IAL. I'll reserve
5 my rebuttal after comments. Thank you, Chair.

6 CHAIRMAN DEVENS: Thank you. City?

7 MS. TAKEUCHI-APUNA: The city has basically 11
8 comments on the Petition. Number 1. Petitioner
9 should clarify that the proposed IAL designated sites
10 are outside the urban community boundary. The
11 Petitioner's maps, Figures 7B and 7C, may be
12 interpreted as showing the area as falling within the
13 Urban Community Boundary. The criteria to evaluate
14 IALs under Section 205-44(c), includes subsection (6)
15 that, quote, "land whose designation as IAL is
16 consistent with general, development and community
17 plans from the county."

18 DPP believes that an IAL designation of land
19 within the Urban Community Boundary could potentially
20 conflict with county growth policies.

21 Comment 2. Because of the 50 percent
22 limitation of IAL designation per landowner under HRS
23 Section 205-49(a)(3), DPP's concern is to make sure
24 that the highest-qualified lands are designated as
25 IAL. Therefore, Petitioner should provide an

1 inventory of the properties it owns under the state
2 Agricultural District to allow the parties to help
3 determine which of the landowner's lands are best for
4 IAL designation.

5 Comment 3. The proposed Whitmore property has
6 no current water allocation. The Whitmore property is
7 adjacent to the Whitmore Village municipal water
8 system, but it would require Board of Water Supply
9 approval. The cost to develop an operational
10 irrigation system to support agricultural uses on the
11 property may be cost prohibitive for farming.

12 Comment 4. If the Petition is approved, DPP
13 would like to know whether the Petitioner would
14 subdivide the IAL portions of existing lots if only a
15 portion of the lots are being designated as IAL.
16 Subdivision of existing lots will help the county
17 better track IAL and streamline permit reviews.

18 Comment 5. DPP would like to know what
19 adjacent and future plan uses are surrounding the
20 proposed designated sites because proposed designation
21 of IAL's should be consistent with the nature and
22 character of surrounding uses. Incompatible adjacent
23 land uses could influence the long-term viability of
24 ag use.

25 Comments 6. To discourage the fragmentation

1 of IAL's, DPP recommends that the Dole Plantation and
2 Whitmore properties be bridged or combined, if
3 possible, to form one contiguous piece. In the
4 alternative, it would be helpful to know the break
5 between the two sites would not adversely affect ag
6 use of the proposed IAL properties.

7 Comment 7. Petitioner should provide the
8 types of crops that are sustainable for the water
9 supply available for each proposed IAL designation.
10 The intent of IAL designation is the long-term
11 preservation of productive ag lands, not to maintain
12 existing crops. To the extent that water is a vital
13 requirement for ag, the range of crops that can be
14 supported by available water should be disclosed.

15 Comment 8. Criterion 7 of HRS Section
16 205-44(c) states, quote, "Land that contributes to
17 maintaining a critical land mass important to
18 agricultural operating productively," end quote. Not
19 knowing what defines the term "critical land mass" DPP
20 is not sure that Petitioner can adequately address or
21 fulfill this particular criterion.

22 Comment 9. The Petition does not discuss
23 whether the proposed designated sites have adequate
24 supporting infrastructure, particularly whether the
25 existing irrigation systems, roadways, drainage

1 systems, and electricity are available and currently
2 adequate to support the proposed designation of IAL
3 sites.

4 Comment 10. Regarding Table 1 of Exhibit A of
5 the Petition column 4 is blank.

6 And, lastly, Comment 11. In the Petition,
7 "growing conditions" of land that support agricultural
8 production of food, fiber, or fuel- and
9 energy-producing crops, are defined by the Land Study
10 Bureau and solar radiation maps.

11 However, factors such as rainfall, wind
12 patterns, use of fertilizers and
13 pesticides/herbicides, site elevation, et cetera,
14 should also be considered in the Petition.

15 CHAIRMAN DEVENS: Before we move to respond to
16 Mr. Yee's presentation, were the responses provided by
17 the Petitioner satisfactory to the questions the
18 county had? I'm referring to the March 14, 2011
19 letter that was submitted by the Petitioner.

20 MS. TAKEUCHI-APUNA: Some, but not all were
21 satisfactory.

22 CHAIRMAN DEVENS: Were there particular ones
23 that were not answered satisfactorily to the city's
24 concerns?

25 MS. TAKEUCHI-APUNA: I think whether....

1 CHAIRMAN DEVENS: If you want, what we can do
2 is move on to Mr. Yee's argument and then if you want
3 we can come back again.

4 MS. TAKEUCHI-APUNA: Yes.

5 CHAIRMAN DEVENS: Okay. Mr. Yee.

6 MR. YEE: We have, I think Director Kokubun
7 will be testifying.

8 CHAIRMAN DEVENS: Very well. Go ahead, sir.

9 MR. KOKUBUN: Thank you, Chair and
10 Commissioners. First let me say that how much I
11 appreciate the fact that we're actually having this
12 discussion today. The Important Agricultural Lands is
13 something that we've been chasing for a number of
14 years. And so to actually be present in a meeting
15 like this where the Commissioners are considering all
16 the criteria for designation of IAL is really a
17 significant moment for Hawai'i. So thank you for
18 that.

19 While I can understand where Mr. Matsubara
20 talks about land reserves, for instance, as being an
21 intent of IAL, I don't necessarily agree with that. I
22 think the idea, if you look at the criteria, is that
23 law is looking for lands that are either in current
24 production or that have potential for future
25 production, given the infrastructure that's in place.

1 So to me IAL is not intended to look at land
2 banking of ag lands. We have the Agricultural
3 District. IAL is not for all ag lands. It is a very
4 specific criteria that needs to be met.

5 This is an important application in my mind
6 because this is the first Petition that's looking at
7 non-contiguous parcels in one potential IAL
8 application. I think that some of the discussion has
9 been layed out to cover all of the parcels as one.
10 But I would really encourage the Commissioners to look
11 at these as individual parcels and how they actually
12 meet the criteria that's found in the law.

13 So we do offer partial support, as
14 Mr. Matsubara has indicated. We do support the
15 designation of the Waialua, the 242 acres of Waialua
16 and the Mililani south 232 acres.

17 We encourage that the Commissioners think
18 about providing an opportunity for lessees to have the
19 appropriate timeframe in order to carry out their
20 agricultural operations.

21 It's important for farmers to have the ability
22 to go to financing, to get financing to improve those
23 parcels, to conduct their operations. And typically
24 for financial institutions it takes a long-term lease
25 in order to ensure, to allow them to even consider

1 providing financing for these types of operations.

2 It's not something that we are demanding, but
3 I think it's just something that I would like to
4 inform the commission about with respect to what it
5 takes to run an agricultural operation.

6 With respect to the Whitmore and Dole
7 Plantation sites: The Whitmore site, let me address
8 that first off. Although the lands are rated B, I
9 think that they are also, the land is also fragmented
10 by gulches, for instance.

11 I think that although there is no current
12 agricultural activity occurring now, that access to
13 irrigation water is questionable. And to ensure that
14 future agricultural activity will take place there is
15 speculative at best. And for those reasons we oppose
16 the Whitmore parcel.

17 The Dole Plantation site, as has been stated,
18 is primarily to be used as a reservoir, an irrigation
19 system but not tied to any other agricultural lands.
20 Irrigation systems in and of themselves in my opinion
21 do not constitute what makes up Important Agricultural
22 Lands.

23 However, if they are tied to additional
24 parcels that are to be considered for IAL, then
25 certainly they can be considered as part of the

1 comprehensive weight part of it. So for that, you
2 know, we feel that there is no connection.

3 We would reconsider our position if, in fact,
4 there were additional lands that were provided by the
5 Petitioner for IAL designation that would utilize the
6 waters from the Dole Plantation site.

7 What we are concerned about, too, is that we
8 want to have a high standard for Important
9 Agricultural Lands. With respect to future
10 applications with respect to how the concept will be
11 embodied in the future I think is very important. So
12 I think this application is significant in that
13 regard. We understand, you know, that section 205-44
14 provides that the lands identified as IAL need not
15 meet every one from the eight IAL criteria.

16 But the Commission in my opinion needs to give
17 collective consideration to the IAL criteria and
18 determine whether or not they meet the
19 constitutionality of the mandated purposes. So we
20 encourage the Commission to fully consider all 8 IAL
21 identification criteria. Thank you.

22 MR. SOUKI: Jesse Souki, interim director for
23 the Office of Planning. The Office of Planning defers
24 to the expertise of the Department of Agriculture when
25 it comes to what is needed to have agriculture in the

1 future for these properties.

2 The Office of Planning is looking at the
3 broader sort of statewide planning kind of
4 perspective. The framework for IAL designation as we
5 understand it is that one of the criteria under 205-44
6 needs to be met. And we all agree, I think, that at
7 least one has been met for all four properties.

8 But that's not the end of the analysis. The
9 analysis also includes constitutional requirements.
10 It includes the IAL objectives under 42, 205-42, and
11 includes the policies of 205-43. So all of those need
12 to be part of the analysis. And what we're looking at
13 here in particular under the constitution is that as
14 the Land Use Commission, a state commission or agency
15 acting on this policy, we need to assure the
16 availability of agriculturally suitable lands in the
17 future.

18 And under the policies under 205-43 the
19 overarching concept is that we're promoting the
20 long-term viability of agricultural use of IAL. So
21 those things need to be met regardless of how many of
22 the conditions you meet, in the criteria you meet
23 under 205-44.

24 Another overarching concern that we have when
25 our director from the Department of Agriculture said

1 that we're looking for quality IAL, is that under
2 205-49, you know, how this process works is that
3 there's a voluntary IAL designation. And then at some
4 point the counties step in and do the process
5 themselves.

6 One of the considerations that the counties
7 need to take into account is that if a majority of the
8 IAL has been designated by a landowner, then the
9 counties would not be able to designate any additional
10 IAL.

11 So if we don't have a quality IAL in these
12 voluntary IAL designations, the counties are going to
13 be left with whatever is -- not being able to put
14 anything else into IAL that would be more useful than
15 parcels that are questionable.

16 So those are the overarching concepts that
17 we're working with here. To apply that to this case,
18 in particular for the Waialua and Mililani South -- by
19 the way, we submitted our comments and this is an
20 iterative process. So we appreciate the responses
21 that we got from the Applicant. That sort of informs
22 the discussion too that we're having.

23 So for the Waialua and Mililani south
24 properties we don't have an issue with that as the
25 Department of Planning. We do believe that this

1 concept of how long the leases are to ensure the
2 long-term viability of agricultural uses is important
3 and should be considered.

4 As far as this other condition that we had
5 recommended, permitting only certain ag uses under the
6 law, after reading the response by the Applicant I
7 don't think that's a requirement that's necessary.
8 Chapter 205 already identifies the kinds of uses that
9 are permissible in the Ag District. And I think
10 that's sufficient.

11 Now, moving on to the two parcels that we do
12 have issues with: The Dole Plantation and the
13 Whitmore property. Interspersed in those properties
14 are gulches. And there's a big reservoir on the Dole
15 Plantation property.

16 One of the considerations that we need to
17 think about here under the policy section -- so this
18 is not either or -- this is one of the things we need
19 to consider: "discouraging fragmentation and promoting
20 continuous intact and functional land units," this is
21 under 205-43.

22 And these two concepts are what goes to the
23 overarching principle, again, of long-term viability
24 of agriculture uses of IAL.

25 With these two properties, in particular the

1 Dole Plantation with that reservoir and the gulches,
2 it's difficult for us to see how that would promote
3 long-term viability of IAL particularly when our
4 director of Department of Agriculture has stated that
5 it's not tied into any IAL.

6 And I would also mention for your
7 consideration, and I know that the LUC doesn't
8 necessarily rely on precedent, but in the docket
9 DR08-37, that was the Alexander and Baldwin IAL
10 petition, 3,773 acres, one of the findings you had in
11 there was -- let's see, you talked about under item 16
12 of the Findings of Fact that of the 3,773 acres
13 proposed to be designated as IAL, 3,311 acres or
14 80 percent of the total proposed IAL area were in
15 active agriculture. The remainder, just 12 percent,
16 were reservoirs, streams and gulches.

17 So in that case we sort of have the reverse of
18 what we have here. Here we have a majority of the
19 parcel as far as the Dole Plantation property is
20 concerned as gulches and a reservoir.

21 In that other case it was productive ag
22 80 percent and just interspersed gulches. So I raise
23 that for your consideration.

24 Finally, with the Whitmore property, our
25 primary issue there is the no water issue. The reason

1 why that's such a concern for us is going back to
2 long-term viability of agricultural uses, that policy
3 under 205-43, if there's no water how do we ensure
4 long-term viability?

5 And this is particularly a concern when you
6 consider that 205-50(g) and 205-52. It talks about
7 how after a period of time if a property that has been
8 designated as IAL doesn't have water, for example,
9 that is one of the reasons why you could take it out
10 of the IAL.

11 So here it seems like we're starting on the
12 wrong foot already with a property that doesn't have
13 any water allocated. So we'll just rest on our
14 comments that we submitted. Thank you.

15 CHAIRMAN DEVENS: I want to come back to the
16 city, give counsel a chance to finish up. Can I ask
17 you a quick question? This concept about putting in a
18 condition to encourage and mandate longer leases, what
19 legal authority would the Commission have? It sounds
20 like it makes sense to me personally. That's what the
21 property is for.

22 But what legal authority would we have to
23 apply such a condition onto the Petition?

24 MR. SOUKI: I would have to agree with the
25 Applicant that there isn't any legal authority for

1 that. But that doesn't mean that it's not something
2 that could be considered. I'm not sure how exactly
3 that could be worked out as a condition or not. I'm
4 not even sure that this is probably the proper place
5 for it.

6 But maybe the Applicant can help out with how
7 that can be worded in the Decision and Order. Because
8 it is a concern. And I think -- I don't want to put
9 the Department of Ag on the spot -- but they probably
10 have better expertise about why that's so important.

11 CHAIRMAN DEVENS: Yeah, I don't disagree about
12 the importance. I'm just wondering if, you know,
13 what's the vehicle to get it done. I think
14 Mr. Matsubara's point that we may not have the legal
15 authority to do such a thing even though we may want
16 to. I just wanted to see if there was something that
17 was out there.

18 MR. YEE: Chair...

19 CHAIRMAN DEVENS: Mr. Yee.

20 MR. YEE: If I could just comment briefly. I
21 think if the determination from the Land Use
22 Commission was: In order to meet the requirements for
23 IAL designation that in order to ensure the land is
24 important enough that they meet certain conditions
25 attached to that land.

1 I think you are then authorized as part of
2 that declaratory determination, that in order to be
3 Important Ag Lands the following conditions would have
4 to be met:

5 So, for example, one of the conditions, one of
6 the findings you're probably going to make is that
7 they waived the 15 percent. Certainly from the Office
8 of Planning's viewpoint that was a very important
9 representation, a very important condition. So that
10 if this was a different Petition asking for
11 15 percent, the analysis may be different. I think
12 we've been pretty consistent in our views on that.

13 So I think the issue for you would be whether
14 you believe the long-term leases is a necessary
15 element in order to find that the land is important
16 enough to qualify as IAL.

17 Frankly, if you didn't think so then I'm not
18 sure that you could find as a requirement for this.
19 It's a little more restrictive, I think, on IAL
20 declaratory petitions than district boundary
21 amendments, but I think you have a much broader
22 format.

23 CHAIRMAN DEVENS: Thank you. Appreciate your
24 comments. Counsel, city, did you want to finish up on
25 the last question or to add?

1 MS. TAKEUCHI-APUNA: Yes. The City
2 appreciates the responses by the Petitioner on our
3 questions and comments. But there were just three
4 particular comments that were answered as
5 "irrelevant". So I think the city would appreciate
6 further explanation on the comments. That would be
7 No. 2 regarding the Petitioner's inventory of ag
8 lands, and comment by, regarding the adjacent and
9 future uses surrounding the proposed sites. And
10 comment 6 regarding the explanation of the gap between
11 the Dole Plantation and Whitmore properties.

12 CHAIRMAN DEVENS: As for No. 5 did they, in
13 effect, answer that question by identifying that the
14 adjacent properties were owned by others?

15 MS. TAKEUCHI-APUNA: I think they put it as
16 "irrelevant".

17 CHAIRMAN DEVENS: I might be looking at the
18 wrong one. I was looking at Page 14 of the
19 Petitioner's March 14 letter. I think they
20 incorporated the same objection. Looks like they did
21 go on to try and provide some information on
22 ownership. Is there more information that the city
23 was looking for?

24 MS. TAKEUCHI-APUNA: Yeah. I think DPP was
25 wondering if there's more information in terms of

1 zoning or land uses. If there was information on the
2 zoning of the adjacent properties or information about
3 the uses for those parcels, surrounding parcels, that
4 that would be helpful to DPP if it were available.

5 CHAIRMAN DEVENS: Okay. Mr. Matsubara, you
6 wanted to respond?

7 MR. MATSUBARA: To?

8 CHAIRMAN DEVENS: To whatever you want to
9 respond to.

10 MR. MATSUBARA: Thank you.

11 CHAIRMAN DEVENS: Just trying to narrow it
12 down for you.

13 (Laughter)

14 MR. MATSUBARA: I'll try to accommodate that.

15 CHAIRMAN DEVENS: No, no, that was not the
16 intent at all.

17 MR. MATSUBARA: I need to digress a little
18 bit, I think, to go back as to the IAL law. I think
19 the genesis for the IAL law began in the 1978
20 Constitutional Convention when a constitutional
21 amendment was passed which initiated the effort to
22 legislate the IAL statutory programs reserved
23 Important Ag Lands.

24 Although that amendment was enacted in 1978
25 you had to wait until 2008, some 30 years later,

1 before the IAL law was finally promulgated. And the
2 reason why it took so long was that there were many
3 interests that were involved in formulating this law,
4 not necessarily all uniform, separate competing
5 interests, et cetera and so on. And it took that long
6 before the law was finally enacted, 30 years.

7 The framework and the criteria by which IAL
8 law -- IAL lands was supposed to be determined passed
9 in 2005. But the Legislature specifically said:
10 Until the incentives package is promulgated by the
11 Legislature and attached to the IAL law, it does not
12 go into effect.

13 So at that early stage it was an important
14 concept for the Legislature that there needed to be
15 incentives in regard to making this program work. And
16 I think the issue relating to incentives runs
17 throughout. And if you look through the statutory
18 provisions you'll see it.

19 Now, not everybody agreed with the law as it
20 came out. Everybody had differing interests and they
21 felt that perhaps the law should have been stricter or
22 maybe looser in certain areas. But the law is the law
23 in regard to how it should be administered and
24 interpreted.

25 And for each of the provisions I've cited in

1 regard to the policies and so on, I've cited you a
2 specific statutory provision in support of that
3 interpretation of the IAL law.

4 I agree it's not perfect. People still have
5 problems with it. But under the circumstances the
6 Legislature in its wisdom vested the Land Use
7 Commission with the authority to make the
8 determination as to which lands would be designated as
9 IAL because you as a quasi-judicial body consider the
10 law, the facts, administer it accordingly. And
11 wishing that it could have been a certain way and
12 applied differently really doesn't cut it.

13 You're used to reading the law and applying it
14 accordingly. And I think that's why the Legislature
15 in its wisdom vested that authority with you. They
16 didn't give it to DOA and said: "Okay. You guys go
17 out and determine which lands should be IAL lands."

18 No, it's you. It's a voluntary 3-year period
19 which the counties can act, 2008 to 2011 encouraging
20 landowners to voluntarily apply and designate their
21 property as IAL lands. That was an important concept
22 so as to not be emersed in litigation so landowners
23 had no opportunity to do it on their own as part of
24 their future land planning which lands they wanted to
25 designate as IAL lands.

1 Now, I think what's being proposed by the
2 Office of Planning and DOA is more of a penalty than
3 an incentive. If I don't apply for IAL I won't be
4 faced with conditions requiring limited use of my land
5 for long-term leases. If I just kept it at ag I would
6 be free to operate it as it is.

7 And I should make a point now that Director
8 Souki took office after the Position Statement of the
9 Office of Planning was received by us. And on those
10 issues that are contained in that letter I recognize
11 the fact that the director wasn't involved in that.
12 And I'm addressing it with that recognition.

13 Section 205-43 Important Ag Land Policies. It
14 says, "State and county agricultural policies, tax
15 policies, land use plans, ordinances, rules, shall
16 promote the long-term viability of agricultural use"
17 -- long-term viability -- "of Important Ag Lands and
18 shall be consistent with and implement the following
19 policies:" Sub 6 says, "Facilitate the long-term
20 dedication of Important Ag Lands for future ag uses
21 through the use of incentives."

22 That's specific in the statute. If I come in
23 voluntarily and say, "Okay. I made a decision. My ag
24 land I'm going to put an IAL overlay on that so that
25 it will definitely be dedicated to ag uses." Why

1 should I be penalized by having more restrictions than
2 if I didn't do that?

3 You know, if I'm coming to you and designating
4 my land as IAL, I can only use it for ag purposes. In
5 order for me to generate any revenue from it I've got
6 to attract farm tenants; I've got to get 'em leases
7 that are attractive to them, work with them so I can
8 make my IAL land productive.

9 Now, you don't know what it's like to manage
10 many farm tenants. You know, you gotta make sure that
11 one farm tenant doesn't disobey the requirements so
12 that it makes it difficult for other farm tenants so
13 that they don't want to stay there anymore or have
14 other difficulties.

15 Paying the rent is another issue. You're
16 concerned with, okay, if somebody has had a good five
17 years with you that they've satisfied that. Then
18 maybe the next time it's a longer lease. If I'm going
19 to designate my land as IAL land, I'm going to make
20 every effort to make it productive and get the type of
21 tenants and the types of leases that would encourage
22 full utilization of that property.

23 So I think imposing on a landowner that wants
24 to designate this land as IAL, the requirement that
25 you have long-term leases is more of a penalty than an

1 incentive. And I think landowners contemplating
2 whether they should go IAL or not on their ag land are
3 sitting on the side and saying, "What? Why should I
4 do that and get faced with that possibility?"

5 I think the statute required using the carrot
6 as opposed to the hammer. It's specifically
7 referencing incentives. I think it should be
8 utilized. I certainly wouldn't want conditions like
9 that to create a chilling effect so other landowners
10 who are contemplating coming in for IAL property are
11 deterred from doing it. That certainly would not
12 fulfill the objectives of the IAL law.

13 I think the vision as it relates to IAL land
14 is that it's a vision in perpetuity. I mean you need
15 to look long term. And that's why the concept of land
16 reserve. That's why the concept of preserving water
17 in a 158 million gallon reservoir is so critical. You
18 all know how important water is to development of
19 property, especially ag lands. We are all looking
20 long term.

21 And I think the Commission has the benefit of
22 that discipline in regard to looking at competing
23 interests on how land is to be utilized and how land
24 in the future can be best utilized in pursuit of a
25 statutory directive that has a constitutional

1 amendment connected to it.

2 I think the view OP and DOA take is like a
3 snapshot. They're left just looking at: Okay, today
4 there may not be any ag use. Currently there's no
5 water so you shouldn't even consider it.

6 But I think if you look at the IAL statute,
7 throughout it you'll look at long-term use, planning
8 for the future and making sure those things that are
9 necessary to make ag a viable industry in the future
10 continue to be there.

11 And I find it difficult to understand. What
12 is there to lose by giving us IAL designation if we
13 meet the criteria, especially if we're waiving the
14 85-15? Is it a concern that we may get tax credits?
15 'Cause you only get tax credits if you file an
16 application with DOA specified purposes and they agree
17 with it and you get a credit. And the credit only
18 relates to credit on monies you spent on recognized ag
19 activities.

20 So I'm trying to figure out why I thought I
21 was coming in with a huge commercial development in
22 the middle of ag land. I'm trying to designate ag
23 land as ag. And the reasons I'm butting my head
24 against what seemed to be contrary to the purpose and
25 intent of what the IAL law was intended to do.

1 I think it's a long-term vision. And I think
2 the Commission is well suited to view it not as a
3 snapshot but as a continually developing concept.

4 I think we responded to all the questions that
5 DPP raised in our March 14 letter from Pages 13, 14,
6 15. I don't know whether or not -- we stated it was
7 irrelevant for them to ask what other ag land we
8 owned. Because the only issue before you is whatever
9 land we're asking to reclassify has the appropriate
10 designation as it meets the criteria.

11 As was pointed out the adjacent lands we don't
12 own. And the gap on Whitmore is because the property
13 in between is not owned by us. So we could only
14 reclassify those portions that we own. In between gap
15 that is owned by Dole.

16 There's a concern about some of the fact that
17 the parcels are smaller in nature. I think the
18 concept of plantation-type activities is not unless we
19 find an alternative crop, biofuels or something like
20 that. But if you looked at the Waialua ag activities
21 and the Mililani south, you saw smaller parcels,
22 diversified crops, ochrea, egg plants. Sometimes it's
23 more suited for the type of farm, farm tenants we more
24 readily can find. You don't need these huge tracts.
25 Small tracts are usable, especially if they have

1 history of that land being utilized for over a hundred
2 years in agricultural cultivation.

3 Director of DOA believes that water
4 reservation is not covered by IAL. I believe it is.
5 And I cited the provision that talked about irrigation
6 systems that exists in the IAL law.

7 So I believe that the four parcels that we're
8 proposing for IAL designation possess the qualities
9 that warrant serious consideration for their inclusion
10 for IAL. And I thank you for your time.

11 CHAIRMAN DEVENS: Thank you, Mr. Matsubara.
12 Parties warrants to add anything else? Mr. Yee.

13 MR. YEE: Sixty seconds. I'll try to be very
14 brief. Certainly Mr. Matsubara is entitled -- the
15 Office of Planning did raise proposals for conditions.
16 Mr. Matsubara's certainly entitled to address those
17 concerns that were previously raised.

18 I just want to be sure we're clear: The
19 Office of Planning is not asking, is no longer asking
20 for those restrictive easements that we asked for
21 before. And did not ask for a requirement for the
22 long-term ag leases. But it was a question we had.
23 It certainly would have helped their case if they
24 brought forward some evidence of that.

25 The long-term designation purpose that he

1 cites, I just want to remind you is just one of the
2 purposes. There's a multitude of purposes for the IAL
3 provisions. You can certainly read the statute on that.

4 Finally, Mr. Matsubara's correct that water's
5 important to any development. But it's important to
6 any development, not just agricultural development.
7 So when you have one parcel that has land and no
8 water, another parcel that has water but no land, you
9 need both. You need to combine the two. That's the
10 reason why we think you need both in order to have an
11 IAL designation. So with that I'll rest. Thank you.

12 CHAIRMAN DEVENS: I think we've been going for
13 a little over an hour. We'll take a short 5 minute
14 break. When we come back we'll let the Commission ask
15 any questions they have.

16 (Recess was held.)

17 CHAIRMAN DEVENS: (10:10) We're back on the
18 record. Commissioners, any questions for the parties?
19 Commissioner Heller.

20 COMMISSIONER HELLER: Let me kind of toss out
21 this question and see which of the parties wants to
22 respond to it. The issue of whether the reservoir
23 parcel qualifies because of the water being used to
24 promote on other adjacent to nearby lands.

25 If we found that the parcel with the reservoir

1 is Important Agricultural Land because that water is
2 used to promote agriculture on other land, wouldn't we
3 have to, in effect, find that that other land is or
4 qualifies as Important Agricultural Land in order to
5 determine that the use of the reservoir is therefore
6 important to support that other land?

7 Maybe Petitioner first and then anybody else
8 wants to take that up.

9 MR. MATSUBARA: I would think that the
10 preservation of a resource that helps ensure the
11 continued existence of agriculture as an activity,
12 whether it's just on plain agricultural land or IAL
13 and agricultural land is something that, I think,
14 would be within the purpose and intent of trying to
15 make ag and sustainability and self-sufficiency more
16 of a reality.

17 So I think it fits hand in hand. I think as
18 long as it's there promoting to a large extent viable
19 ag production it deserves to be considered I would
20 think. I don't know if I answered your question.

21 COMMISSIONER HELLER: Okay. Then following up
22 on that thought. Wouldn't it be in order to make that
23 determination, have to know more about the actual use
24 and potential use of the adjacent parcels?

25 MR. MATSUBARA: The adjoining parcels are

1 owned by Dole Company and utilized for their
2 irrigation purpose and that of their tenants. I have
3 been told that if Tanada was not available for
4 irrigation to residents of the surrounding area it
5 would be a significant threat to continued ag in the
6 area.

7 Let's consider, for example, the catastrophe
8 the berm breaks so all the water flows out. You don't
9 have a reservoir anymore. I mean all the surrounding
10 area that utilize the water for ag activities would be
11 severely impacted.

12 The properties we own in that area are the
13 Dole Plantation and Whitmore. And part of the
14 reservoir is used, of course, for the plantation. But
15 the area surrounding it is all Dole and it's been
16 utilized by them for their ag activities.

17 MR. YEE: If I could respond. We asked a
18 similar question. And the reason we didn't phrase it
19 the way you phrased it in terms of do you have to then
20 find the other land, adjacent lands, to be Important
21 Ag Lands. We didn't ask that question because you
22 can't answer that question. You don't know what the
23 other lands are like. So we couldn't come to you and
24 say they are or are not.

25 And second, it is not being requested by

1 Petitioner to include those as IAL. And the fact that
2 they're not included as part of the Petition was an
3 important factor in our analysis. Department of
4 Agriculture I think specifically said: You know, if
5 they came in with another Petition and included this
6 along with the other lands that that water is going to
7 be used for, completely, different question.

8 But because they're not doing that, and all
9 they're trying to do is include just the water without
10 a connection or without an IAL designation for the
11 land for which the water's to be used, neither DOA nor
12 OP could support that particular parcel.

13 COMMISSIONER HELLER: Mr. Chair, if I could
14 ask another question, this one to the Department of
15 Agriculture. With respect to the idea of long-term
16 leases being better from the tenant's standpoint, what
17 exactly would you suggest or recommend in terms of any
18 requirement or any promise that we might ask the
19 Petitioner to make?

20 What is your definition of "long term" as
21 opposed to the 5-year lease or 5-year option that
22 exists now as I understand it on most of these areas?

23 MR. KOKUBUN: Thank you, Commissioner, for the
24 question. I can refer particularly to the loan
25 program that the department has now in terms of making

1 funds available for farmers. And typically these are
2 for 20 to 35-year loans. The idea mainly is because
3 farmers need that kind of a long-term connection to
4 their land in order to amortize those loans.

5 So I think that's the most important part. I
6 think it would be -- I don't know what the legal
7 precedent -- I'm not an attorney so I don't know what
8 the legal precedent would be.

9 However, I think that if you're talking about
10 IAL as being a long-term designation, I mean that's, I
11 think everybody agrees to that. Then surely the
12 ability to provide that kind of condition with respect
13 to leases would make the most sense.

14 I have also seen the other side of the coin
15 where some ag leases are for very short-term. And it
16 just makes it very, very difficult on the operator,
17 the farmer to be able to not only go out and get
18 additional financing, but the plan for their future.
19 Because, you know, agriculture is a dynamic industry.
20 It's a technology that's changing all the time. And I
21 think farmers need to have those kinds of tools. And
22 in order to do that they would need the ability to
23 stay and use that land for a while.

24 May I quickly just address also the issue
25 about the water? It sounded to me -- your initial

1 question -- it sounded to me that from the response
2 from Mr. Matsubara is that there cannot be a
3 commitment made with respect to adjoining pieces
4 because they are under the jurisdiction of another
5 owner.

6 So even more so in my opinion if, in fact,
7 this piece is separate and apart, meaning the Dole
8 Plantation parcel, if that is separate and apart, then
9 I think that gives it even more validity in terms of
10 not designating that as IAL. Thank you.

11 COMMISSIONER HELLER: Thank you.

12 CHAIRMAN DEVENS: Any other questions?
13 Commissioner Jencks?

14 COMMISSIONER JENCKS: Thank you, Mr. Chair. A
15 couple questions for Mr. Matsubara. You talked about
16 the reservoir. A hundred 58 million gallons?

17 MR. MATSUBARA: Correct.

18 COMMISSIONER JENCKS: And that's serving about
19 2500 acres of agriculture?

20 MR. MATSUBARA: Correct.

21 COMMISSIONER JENCKS: That I would assume is
22 probably high quality agriculture.

23 MR. MATSUBARA: I think it's mostly A and B
24 lands.

25 COMMISSIONER JENCKS: Okay. You also talked

1 about infrastructure as it relates to IAL. And you
2 get this designation -- if you have a long-term
3 designation that's going to facilitate your ability to
4 get tax credits, help maintain, pay for the
5 maintenance of that infrastructure on a long-term
6 basis, correct?

7 MR. MATSUBARA: Yes.

8 COMMISSIONER JENCKS: So then that would
9 benefit all the other farmers downstream.

10 MR. MATSUBARA: I would think so,
11 Commissioner.

12 COMMISSIONER JENCKS: I mean that's a
13 long-term commitment to paying back capital. It gets
14 to what Mr. Kokubun was talking about in terms of
15 long-term lease. You can end up in that situation
16 anyway 'cause you're going to borrow money to invest
17 and you don't want to pay it back. You have to get a
18 return on your investment.

19 MR. MATSUBARA: Correct. And the water source
20 there it's only for ag use. I don't know what else
21 you would use it for except you're maintaining it for
22 that particular use.

23 COMMISSIONER JENCKS: It's not reclaimed
24 water.

25 MR. MATSUBARA: No. That's why you could use

1 it on almost any crops.

2 COMMISSIONER JENCKS: It's surface water.

3 MR. MATSUBARA: Surface water.

4 COMMISSIONER JENCKS: Question to the city. I
5 think you stated and correct me if I'm wrong here, but
6 you had some questions on some of the responses you
7 got from the Petitioner, maybe a half dozen, four or
8 so. Did you let them know you had questions on those
9 responses or not?

10 MS. TAKEUCHI-APUNA: I'm sorry. On his
11 rebuttal?

12 COMMISSIONER JENCKS: Yes.

13 MS. TAKEUCHI-APUNA: Ah, no, not 'til today.

14 COMMISSIONER JENCKS: And a couple questions
15 for Mr. Kokubun. It seems to me, just based on my
16 experience that I read through those Petition
17 requests, this one: Review the A&B request -- I'm
18 from Maui so I'm pretty familiar with A&B's properties
19 and I know you just bought some land from A&B awhile
20 back.

21 The thing that kind of bothers me is that it
22 seems as though the Department of Ag tends to want to
23 focus -- and, you know, look, in one sense I don't
24 blame you if you want to focus on the really great
25 land with regard to IAL. I think that's maybe not a

1 bad approach.

2 The problem is that there's a lot of land, for
3 example, in the state of Hawai'i -- I'm more familiar
4 with the land on Maui that's not A and B land, it's C
5 land or D land that was at one time in pineapple
6 production, Maui Land & Pineapple. It's served -- it
7 was served and still is served today by the Waialua
8 Ditch. The property is at the end of the ditch. If
9 there's no water in the ditch you got a problem. But
10 it is great land for pineapple.

11 So if you talk about these great lands that
12 have water and because they have water they're A and
13 B; then you have this piece that in a dry year may not
14 have any water. But clearly it's really good,
15 productive land you might miss the boat on the, on the
16 designation request for that piece of property, which
17 kind of brings me to what we're talking about today.

18 For example, the Whitmore piece. Sure, it
19 doesn't have any direct water supply. It does get 60
20 inches of rain per year. It has been in production
21 with pineapple. The description that we got from the
22 Petitioner talks about other activities that could
23 take place on that land, for example, ranching
24 activity.

25 We have other Petitions before us that talk

1 about ranching as an agricultural activity. And it
2 seems to me that the department doesn't, you know, in
3 a true sense, see ranching as a viable alternative but
4 it can be. On Maui, for example, we have a lot of
5 land that's C and D. It's great land. It's used for
6 ranching.

7 Are you going to foreclose on some really
8 great opportunities that isn't land that's, let's say,
9 suited A and B for truck crops and okra and eggplant,
10 whatever, but it's land for cattle that's just as
11 viable as an agricultural activity?

12 Are you going to miss the boat, perhaps, on
13 some great land if you go down this track where, "I'm
14 really only looking for the great, high quality land,"
15 are you going to miss the boat in the future? It's a
16 question.

17 MR. KOKUBUN: Thank you, Commissioner. That's
18 actually an excellent question. Let me just first
19 tell you that the department views ranching as a bona
20 fide agricultural activity, yes. So we do not make
21 our decisions based on what the agricultural use is.
22 If it's in production I think that's the foremost
23 concern for us.

24 But you do raise a great point. I don't think
25 in my opinion it's just A and B lands that need to be

1 considered for IAL. When the law was first put
2 together there was also another category called
3 "unique". And I think that is really important to
4 keep in mind.

5 For instance, on Hawai'i island, Kona where
6 all the greatest coffee is grown, that land is not A
7 and B. The slope is incredibly hard. It's a'a land,
8 but that produces the best, some of the best coffee in
9 some people's opinion. Taro lands same thing, yeah,
10 you know, it's not necessarily A and B. It's subject
11 to flood. But still very productive I think.

12 So there are opportunities and we are not
13 closed minded at the department with respect to those
14 kinds of issues. Does that answer your question?

15 COMMISSIONER JENCKS: That answers my
16 question. It's -- you know, when you get into
17 utilizing this land in all the jurisdictions and it's
18 C and D land and you want to use it for something
19 other than ag, let's say for larger ag, you want to
20 subdivide it for a larger ag parcel, you get some
21 resistance because, well, it could be A land, it just
22 doesn't have any water.

23 You get kind of caught up in this argument:
24 Well, it doesn't have water so it's C and D. Yeah,
25 but if it had water it could be A. You might lose

1 some opportunities in designation. Just that Whitmore
2 doesn't have water, but it does get a lot of rain.
3 And it has been viable in the past.

4 It just bothers me that we don't see the total
5 value of that piece of land in this discussion. I
6 think there's a tremendous amount of value there
7 simply because it has been used, it was productive and
8 it's a pretty good-sized contiguous piece. It's just
9 my thoughts. Thank you.

10 CHAIRMAN DEVENS: Commissioner Kanuha.

11 COMMISSIONER KANUHA: Thank you, Mr. Chairman.
12 I have questions for the city and county. You posed
13 some questions and you had some responses from the
14 Petitioner. Apparently they were not as satisfactory
15 as you would have liked.

16 That being the case what's the city's position
17 on this Petition then?

18 MS. TAKEUCHI-APUNA: The city doesn't take a
19 position on this Petition. But I think that our
20 concerns just highlight that the Petitioner is trying
21 to satisfy the criteria in 205-44(c). And the city's
22 interests go beyond that. And I think that it's the
23 same for the other parties as well, that we have a
24 greater interest when it comes to IAL.

25 We would like more information but they're

1 limited by the criteria.

2 COMMISSIONER KANUHA: Okay. Petitioner, now
3 that we're at this point in the proceedings, we have
4 had an opportunity to get some of the concerns from
5 the various state agencies and the city's, what were
6 you thinking when you came in for this ruling? I
7 listened to your response in terms of incentives or
8 non-incentives.

9 So what was the thought process behind this
10 petition now that you know that, you know, there's
11 recommendations to impose conditions that may not be
12 in your best interest? So what were you thinking?

13 MR. MATSUBARA: We looked at the eight
14 criteria in the IAL statute and measured that against
15 the four parcels we brought before you. Now, the two
16 prior IAL petitions we filed and got approved were, I
17 think, were about as ideal as you could get for an
18 IAL designation. And it happened to be A&B's Kaua'i
19 Petition and A&B's Maui Petition. And all the land
20 was in active ag, it was A and B lands, et cetera, and
21 so on.

22 But when you look at the statute it allows
23 some levels of not being perfect perfect. There are
24 different considerations that apply. In our
25 evaluation in looking at those criteria the question

1 then to us on a threshold was that: Okay. It's not
2 perfect as we would like, like we did before, but does
3 it -- can I come to you with a straight face and say,
4 "I think this satisfies it"? I thought it did.

5 Different emphasis on different things:
6 infrastructure, water resources, land reserves,
7 looking at potential ranching issues. I mean I think
8 the law needs to be fleshed out so you can, I think,
9 administer it in such a way that gives you the
10 flexibility to go beyond just the most perfect piece
11 of land there is and look at others that could provide
12 the elements that you need in the future for ag
13 property.

14 I mean if it is a land bank it could be
15 reserved maintaining infrastructure that provides a
16 critical element if the land has water. We felt that
17 was all worthy of your consideration. You may
18 disagree. But in my mind I thought: Okay. I can
19 come to you and ask you and argue that this, in fact,
20 to me qualifies. And I believe it should be. I don't
21 know what else to tell you what thread went through my
22 mind, but I certainly wouldn't have come here if I
23 didn't think it'd qualify. I think it met.

24 COMMISSIONER KANUHA: Thank you.

25 CHAIRMAN DEVENS: Commissioner Judge.

1 COMMISSIONER JUDGE: This is sort of a follow
2 up to the questions of Commissioner Jencks and
3 Commissioner Kanuha. And I'm looking at the Whitmore
4 map from the Petition. It's figure 5B. And it talks
5 about the ALISH qualification.

6 Director Kokubun brought up the point about it
7 doesn't necessarily have to be prime but there's the
8 Unique status that's also looked at. And I note that
9 44 percent of the Whitmore parcel is Unique.

10 And Director Kokubun gave the example of
11 coffee in Kona. Can you describe a little bit about
12 what makes this Whitmore parcel Unique rather than
13 Prime? Either one, either Director Kokubun or the
14 Petitioner. I'm just curious. (Pause).

15 MR. MATSUBARA: Commissioner Judge, we just
16 replicated the ALISH classification system as it
17 applied to this particular property to provide it as
18 part of the requirements under the criteria we need to
19 present to you as the Land Study Bureau and the ALISH
20 classification of the property.

21 So we took it as they had it, and didn't touch
22 it and doctor it, gave it to you to let you know how
23 ag lands of importance to the State of Hawai'i came up
24 it with and how Land Study Bureau came up with it.
25 That's all it is, just a replication of what they came

1 up with.

2 COMMISSIONER JUDGE: Right. Okay. I guess my
3 question would be then: Do you know why it's
4 classified unique? What makes that land unique rather
5 than prime?

6 MR. MATSUBARA: Earl, would you know?

7 MR. YAMAMOTO: Yes. (Laughter)

8 CHAIRMAN DEVENS: Can you just state your name
9 and tell us who you represent.

10 MR. YAMAMOTO: Earl Yamamoto, staff planner
11 with the Department of Agriculture. Regarding the
12 question of unique agricultural lands pursuant to
13 ALISH for the Whitmore site, I guess at the time that
14 study was done back in the mid '70's for ALISH.

15 And it reflected the crop on the land which
16 has been discussed already as being pineapple. The
17 pineapple was not irrigated. Pineapple usually is not
18 irrigated. And that that is why the unique
19 classification is a representation of that particular
20 agricultural use on irrigated pineapple.

21 CHAIRMAN DEVENS: Thank you very much, sir.

22 MR. MATSUBARA: May I just ask a question?

23 CHAIRMAN DEVENS: Sure.

24 MR. MATSUBARA: Earl, on some lands that are
25 unique because it's unirrigated, do they reference

1 that if irrigated it would be a higher quality, prime
2 or otherwise? Would that be applicable?

3 MR. YAMAMOTO: I do not know. That may be a
4 subcategory of the ALISH maps which describe the three
5 categories of prime, unique and other important. I
6 cannot answer that.

7 MR. MATSUBARA: Land Study Bureau, though,
8 studies would make a difference between irrigated and
9 non-irrigated, is that correct?

10 MR. YAMAMOTO: That is correct.

11 MR. MATSUBARA: So if this land --

12 CHAIRMAN DEVENS: You don't have any problems
13 with the questions, right?

14 MR. YEE: No. It's all right.

15 CHAIRMAN DEVENS: I mean he's not under -- he
16 hasn't been put under oath or -- we're trying to get
17 as much information. I just wanted to make sure
18 Mr. Yee was okay with the process. Go ahead,
19 Mr. Matsubara.

20 MR. MATSUBARA: Would you happen to know under
21 the ALISH Land Study Bureau if this land was irrigated
22 whether it would be considered A or B lands?

23 MR. YAMAMOTO: Ah, gee, yeah, those are B
24 lands. If they were irrigated I'm not sure if it
25 would be upgraded to A. I don't know without the

1 book. That Land Study Bureau book would indicate that
2 in many cases for all of the land types identified
3 here like on this island that's a numeric
4 classification, B being overall productivity rating
5 which is commonly referred to in HRS and the
6 corresponding land type which is a number.

7 In this case the Whitmore area I believe it
8 was B-121 which indicates the soil has a B or good
9 overall productivity rating as is without irrigation.
10 I do not know if irrigation would have made it into an
11 A classification.

12 MR. MATSUBARA: Thank you very much, Earl. I
13 have no other questions.

14 CHAIRMAN DEVENS: Commissioner Judge.

15 COMMISSIONER JUDGE: I think he answered my
16 question.

17 CHAIRMAN DEVENS: Commissioner Jencks, you had
18 some other questions?

19 COMMISSIONER JENCKS: This is for the
20 Petitioner. Weren't you here on Koa Ridge?

21 MR. MATSUBARA: Yes, I was.

22 COMMISSIONER JENCKS: How big was Koa Ridge,
23 how many acres?

24 MR. MATSUBARA: That was 575.

25 COMMISSIONER JENCKS: For Koa Ridge, that

1 application, I remember sitting here listening to
2 requests for perpetual agricultural easements. We
3 discussed that at length during the course of that
4 discussion. And I also recall, I think you talked
5 about coming back with an IAL designation request for
6 Castle & Cooke lands, correct?

7 MR. MATSUBARA: Right.

8 COMMISSIONER JENCKS: So here we are today
9 we're talking about 900 acres of land you want to put
10 in IAL. And you were talking, in the context of Koa
11 Ridge, a much smaller area. I think this is a really
12 interesting conversation. I'm glad you're here. I'm
13 glad you made the application because it demonstrates
14 that you follow up on what you said you would do,
15 which I think is terrific.

16 MR. MATSUBARA: We made you a promise that we
17 would file before the end of the year. So we filed in
18 December of last year making sure we had everything
19 done. So we fulfilled our representation to you and
20 filed it in that calendar year. And you're right.
21 Here we are.

22 COMMISSIONER JENCKS: So approximately
23 600 acres versus 900 acres of IAL designation.

24 MR. MATSUBARA: Right. We were asking for 900
25 and we got 576.

1 COMMISSIONER JENCKS: Thank you.

2 CHAIRMAN DEVENS: Is there any other
3 questions? Mr. Matsubara, if I can ask one. This is
4 directed to the Whitmore property. Because there's no
5 ag activity now and it looks like water access is a
6 concern, what is the exact plan for that property if
7 the IAL designation is granted?

8 MR. MATSUBARA: They're looking at alternative
9 crops for that property which could be biofuels I
10 guess would be the most -- they're looking at biofuels
11 or some other seasonal crop, orchard type, biofuels or
12 orchard type property, conceivably ranching but that
13 may not be large enough for ranching. But there's no
14 firm plan.

15 I mean it's just looking at whatever options
16 are available considering the amount of rainfall you
17 have and what it'd take to make a go of it. Since it
18 used to be in production for pineapple, which is
19 unirrigated, we'd like to find a crop that is similar
20 in nature, not require that much irrigation to go on.
21 But so far nothing has popped up.

22 CHAIRMAN DEVENS: Is there any plan to put in
23 any new type of irrigation infrastructure for the
24 property?

25 MR. MATSUBARA: The property adjacent to us

1 dug a well and has as well. But we've learned from
2 CWRM, the Commission on Water Resource Management,
3 that the aquifer may be at its limit. But we've
4 looked at potentially drilling our own water to
5 provide water.

6 Transmission from Tanada would be exorbitant
7 to get the water there. So unless we can do a well
8 right now, I don't think additional sources of water
9 other than rainfall is practically available.

10 CHAIRMAN DEVENS: Appreciate the responses.
11 Thank you. Any other questions? Commissioner Kanuha.

12 COMMISSIONER KANUHA: So, Mr. Matsubara,
13 couldn't Castle & Cooke do whatever they plan to do
14 with these properties without this designation?

15 MR. MATSUBARA: Well --

16 COMMISSIONER KANUHA: Or does the designation
17 make a difference in what would you plan to use the
18 properties for?

19 MR. MATSUBARA: I think it was fulfilling a
20 promise we made to you. And we had prior discussions
21 with the Farm Bureau when Dean Okimoto was there. And
22 he was such an advocate of IAL that he was going to
23 all the larger landowners and saying, "Aren't you guys
24 going to step to the plate and do it? Because none of
25 the smaller guys have the resources to do it. You

1 guys gotta step up." So commitments were made to Dean
2 to say, "Yes, we will proceed with doing the IAL."

3 And those lands can be utilized for ag
4 purposes. So it fits into future uses of the property
5 that we had contemplated. But specifically because of
6 promises made to the Farm Bureau and to the
7 Commission.

8 And to go a step further, instead of just
9 leaving it ag, coming in and saying: Okay, we're
10 committing this land to IAL. That's what we're going
11 to do. Come what may utilize it as best we can to
12 fulfill the objectives of the IAL law, have it
13 available.

14 COMMISSIONER KANUHA: But whether you have the
15 designation or not doesn't preclude you from doing
16 everything you said or you testified before us that
17 you plan to do, correct?

18 MR. MATSUBARA: Correct.

19 COMMISSIONER KANUHA: Thank you.

20 CHAIRMAN DEVENS: Commissioner Judge?

21 COMMISSIONER JUDGE: If the Whitmore parcel
22 was designated IAL does that help you get water?
23 Would that help any way of getting water? I know
24 'cause you get incentives if you put it into farming,
25 and you want to be encouraged to put it into farming.

1 So would that, in essence, help you versus if it
2 doesn't get IAL then your struggle for water might be
3 greater.

4 MR. MATSUBARA: We could make an application
5 to the Department of Agriculture to get a tax credit
6 for the expenses incurred in creating a water
7 resource. And we would have to justify the
8 expenditure with the receipts, plans, creation of the
9 well, et cetera, and so on to get a tax credit.

10 And that was the other reason for Tanada.
11 Because Kaua'i had the horrible catastrophe where dams
12 and other things, the maintenance, et cetera, and so
13 on, was overlooked because all that land and all the
14 irrigation systems that were utilized by plantations
15 before was in daily use sort of changed when the
16 plantations went out of business.

17 So you have these large resources that are
18 potentially available for future farm use but it's
19 extremely difficult to maintain. So Tanada was
20 another reason we said: Okay. Can we maintain this
21 resource? Is it worthwhile to try to maintain this
22 resource and do it?

23 And you're right. Those credits would be
24 helpful. The 85-15 we have no interest in
25 reclassifying 15 percent of the land we designated IAL

1 to another category. None. It's more for farming and
2 tax credit relating to enhancing the ag activity.

3 COMMISSIONER JUDGE: Thank you.

4 CHAIRMAN DEVENS: Would it change the plans
5 that you have if the IAL designation was not given to
6 Whitmore and Dole, the plans that, things that you're
7 contemplating now, would it change that in any way?

8 MR. MATSUBARA: Make it tougher.

9 CHAIRMAN DEVENS: In what way?

10 MR. MATSUBARA: In terms of having to absorb
11 the cost of maintaining a resource that provides ag
12 resource benefits to other ag activities. It would
13 make it a little difficult.

14 CHAIRMAN DEVENS: What do you mean by that?

15 MR. MATSUBARA: I guess the tax credit would
16 allow us to claim for maintenance costs and other
17 costs to main that resource. We could apply for it
18 and if approved by DOA get a credit. That would help.

19 CHAIRMAN DEVENS: Thank you. Any further
20 questions for the parties? Having nothing else what
21 is the Commission's pleasure on this matter?
22 Commissioner Jencks.

23 COMMISSIONER JENCKS: Mr. Chairman, I have
24 been listening intently. I've reviewed the file. I
25 didn't make the site tour. I did make a point of

1 going through the file and all the documents.

2 I would like to move that with respect to
3 DR10-42 the Petitioner's request for Declaratory Order
4 to Designate Important Agricultural Lands, we approve
5 his application.

6 CHAIRMAN DEVENS: Is there a second?

7 COMMISSIONER CONTRADES: Second.

8 CHAIRMAN DEVENS: There's a second.

9 Discussion? Commissioner Heller.

10 COMMISSIONER HELLER: Yes. Mr. Chair, I
11 think we've kind of got two different questions in
12 front of us. One is an easy part as I see it, which
13 is the designation for Waialua and Mililani south.
14 And then the harder question is the designation for
15 Whitmore and Dole Plantation.

16 And I think maybe we ought to split those
17 apart and deal with them separately. I suggest doing
18 the easy one first. So I'd like to offer an amendment
19 top Commissioner Judge's motion to grant the Petitions
20 as to Waialua and Mililani south first and then take
21 up what to do with the other business.

22 CHAIRMAN DEVENS: Commissioner Jencks, do you
23 accept that amendment -- the proposed amendment to
24 your motion?

25 COMMISSIONER JENCKS: Sure.

1 CHAIRMAN DEVENS: So the motion would be the
2 approval to the Waialua and Mililani south parcels.
3 Is there a second? (Pause) Is there a second? The
4 motion, Commissioner Jencks, would you accept an
5 amendment to also include: The Petitioner would abide
6 by the representations made to the Commission?

7 COMMISSIONER JENCKS: Yes, yes.

8 CHAIRMAN DEVENS: With that, that is the
9 motion. Commissioner Contrades, do you accept? Would
10 you second the amended motion?

11 COMMISSIONER CONTRADES: Which is?

12 CHAIRMAN DEVENS: It's basically just focusing
13 on approving the Waialua/Mililani south as an IAL
14 designation as opposed to considering all four
15 properties at this time.

16 COMMISSIONER CONTRADES: I'd prefer just
17 consider the whole thing but I'll go along.

18 CHAIRMAN DEVENS: So that is a second.

19 COMMISSIONER CONTRADES: Yes.

20 CHAIRMAN DEVENS: Thank you. Discussion?
21 There being none, Dan, call for the vote.

22 MR. DAVIDSON: Motion to approve the Waialua
23 and Mililani south parcels as IAL in this docket.
24 Commissioner Jencks?

25 COMMISSIONER JENCKS: Aye.

1 MR. DAVIDSON: Commissioner Contrades?
2 COMMISSIONER CONTRADES: Aye.
3 MR. DAVIDSON: Commissioner Kanuha?
4 COMMISSIONER KANUHA: Aye.
5 CHAIRMAN DEVENS: Commissioner Judge?
6 COMMISSIONER JUDGE: Yes.
7 MR. DAVIDSON: Commissioner Heller?
8 COMMISSIONER HELLER: Yes.
9 MR. DAVIDSON: Commissioner Chock?
10 COMMISSIONER CHOCK: Yes.
11 MR. DAVIDSON: Chair Devens?
12 CHAIRMAN DEVENS: Yes.
13 MR. DAVIDSON: That motion passes 7/0, Chair.
14 CHAIRMAN DEVENS: Is there another motion as
15 it relates to the Whitmore and Dole Plantation
16 properties? Commissioner Jencks.
17 COMMISSIONER JENCKS: Move to approve.
18 CHAIRMAN DEVENS: Is there a second?
19 COMMISSIONER KANUHA: Second.
20 CHAIRMAN DEVENS: Commissioner Kanuha seconds.
21 Any discussion? Commissioner Heller.
22 COMMISSIONER HELLER: Yes, thank you. I have
23 more difficulty with this part of the Petition because
24 I'm not sure what distinguishes these parcels as
25 Important Agricultural Lands.

1 I mean any piece of agricultural land is in
2 some ways useful and productive and a good thing to
3 have in our state. But if we're designating certain
4 parcels as important parcels I think there has to be
5 some specific basis for doing that. And as to these
6 particular parcels and before, there is no current
7 agricultural use in those, specific planned
8 agricultural use.

9 As to the Dole Plantation property the
10 argument is that it supports agricultural activity on
11 other land, but I don't think we've been told enough
12 about what's going on on that other land to make any
13 determinations about its importance.

14 And so to me that makes it difficult to say
15 that these particular parcels are somehow more
16 important to the state than any piece of agricultural
17 land. Thank you.

18 CHAIRMAN DEVENS: Any further discussion?
19 Commissioner Jencks.

20 COMMISSIONER JENCKS: Yeah, Mr. Chair, thank
21 you. I would just say that I believe that all of the
22 pieces that we've been presented in this Petition in
23 this request reflect the spirit and intent of the IAL
24 law. I do also believe with respect to these two
25 pieces we're talking about now they -- in one case

1 they clearly provide infrastructure support and need
2 to be maintained. As the Petitioner described it's
3 expensive, it's risky. Agriculture itself is a risky
4 endeavor.

5 With respect to Whitmore, it is a viable
6 piece. It has been in agricultural production. It
7 does get a significant amount of rain. We just
8 discussed the unique designation. By the way, there
9 was also a piece of that land I believe is prime.

10 I just don't know why we wouldn't include
11 these and accept all four of these pieces as Important
12 Agricultural Lands. They're all a part of the system.
13 They all have been or are being used for agricultural
14 activity. And they all play a role in supporting
15 agriculture statewide.

16 And I just don't think we should be parsing
17 out these parcels if, in fact, they do appear to based
18 on the analysis, meet all the criteria. So I just
19 continue to support these last two pieces.

20 CHAIRMAN DEVENS: Thank you. Any further
21 discussion? One thing I want to add is that I think
22 the concerns that Director Kokubun raises are genuine
23 concerns and important concerns because we're setting
24 the bar on what we consider to be IAL lands.

25 But on the other hand I never thought I'd ever

1 say no designating something as IAL because of what it
2 stands for. So, you know, there is a bit of a
3 struggle with that.

4 But as part of the discussion I wanted to at
5 least state on the record that there is definitely
6 things that Senator/Director Kokubun has said that
7 make a whole lot of sense as far as what lands we're
8 picking, that it should be a selective process.

9 As Commissioner Heller stated there are
10 certain standards that have to make it important as
11 opposed to just saying, yeah, it's productive, this,
12 that, whatever, just throw it in.

13 Anyway, just to give some insight on what my
14 thought processes were on that. Any further
15 discussion? Hearing none, Dan call for the vote.

16 MR. DAVIDSON: This is the motion to include
17 Dole Plantation and Whitmore parcels as IAL in
18 DR10-42.

19 Commissioner Jencks?

20 COMMISSIONER JENCKS: Aye.

21 MR. DAVIDSON: Commissioner Kanuha?

22 COMMISSIONER KANUHA: Aye.

23 MR. DAVIDSON: Commissioner Judge?

24 COMMISSIONER JUDGE: Yes.

25 MR. DAVIDSON: Commissioner Heller?

1 COMMISSIONER HELLER: No.

2 MR. DAVIDSON: Commissioner Contrades?

3 COMMISSIONER CONTRADES: Yes.

4 MR. DAVIDSON: Commissioner Chock?

5 COMMISSIONER CHOCK: No.

6 MR. DAVIDSON: Commissioner Devens?

7 CHAIRMAN DEVENS: Yes.

8 MR. DAVIDSON: The vote is 5 to two. By law 6
9 votes are needed for designation of IAL. So that vote
10 fails.

11 CHAIRMAN DEVENS: So the net result we have is
12 the two properties, Waialua and Mililani south, but no
13 designation for the Whitmore and Dole Plantation. Is
14 there anything else the parties want to add for the
15 record at this time?

16 MR. MATSUBARA: No. Just to thank the
17 Commission for the time and consideration.

18 CHAIRMAN DEVENS: Thank you for the
19 presentation, Mr. Matsubara. It is an important
20 issue. We appreciate the presentation.

21 COMMISSIONER JUDGE: Chair? I just had a
22 question. I know that last motion failed to do two of
23 them. I'm wondering can you still make a motion and
24 say just for one of them in case somebody wanted to
25 support the Dole Plantation and not the Whitmore? Or

1 does --

2 CHAIRMAN DEVENS: Let me consult. But off the
3 top of my head I don't think there's anything that
4 would prevent that. But let me just check with our
5 attorney general. We can take a short recess if the
6 parties don't mind so we can consider that.

7 MR. MATSUBARA: No objections. Thank you.

8 (Recess in place)

9 CHAIRMAN DEVENS: We are going to go back on
10 the record. Mr. Matsubara.

11 MR. MATSUBARA: The only thought I had was if
12 it would make the process and procedure easier,
13 assuming that was the Commission's inclination to vote
14 on the last two separately, I could make a Motion for
15 Reconsideration which I'm permitted to do within seven
16 days after your vote. And then if you agree that you
17 want to reconsider the motion, break it out
18 separately. If that helps I'm willing to do that.

19 CHAIRMAN DEVENS: I think based on our reading
20 on the law that we may not have the authority to do a
21 revote right now. That may be the way we have to go
22 on a recon and see if the Commission wants to put it
23 to a different vote.

24 My own thought process is I hate to restrict
25 the Commissioner from wanting to look at it in a

1 different way, which is what Commission Judge is
2 suggesting. It sounds like I cannot do that right
3 now. So if you want to file that, then of course you
4 have the right to do that. We can take it up at that
5 time.

6 MR. MATSUBARA: Right. Okay. I was just
7 considering the timing on the dec order because I
8 believe the 90 days would run next Tuesday, right,
9 Dan?

10 CHAIRMAN DEVENS: Right. The 29th.

11 MR. MATSUBARA: So I know this meeting was
12 scheduled for two days. If we can get a dec order
13 into you this afternoon? Just so that we don't run
14 afoul of the dec order time to get a motion back into
15 you -- or is the Commission willing to waive its rules
16 for me filing a written motion and allow me to make an
17 oral Motion for Reconsideration now?

18 And if the Commission's willing to waive that
19 rule, then I could make an oral Motion to Reconsider
20 your vote as it relates to Dole Plantation and
21 Whitmore. And if you are agreed you could, I imagine,
22 put it up separately. Just a thought.

23 CHAIRMAN DEVENS: Let me hear from the other
24 parties. Do you have any response to Mr. Matsubara's
25 proposed course of proceeding?

1 MR. YEE: The Office of Planning has no
2 objections to whatever process the LUC chooses to
3 take.

4 CHAIRMAN DEVENS: Okay.

5 MS. TAKEUCHI-APUNA: (Shaking head from side
6 to side.)

7 CHAIRMAN DEVENS: If you don't mind why don't
8 you let us go into executive session. I just want to
9 make sure about the authority of what we're doing here
10 so we don't mess up the record in any way.

11 So I'm going to move to go into recess and
12 move to go into exec session.

13 COMMISSIONER JUDGE: Second.

14 CHAIRMAN DEVENS: Commissioner Judge seconds
15 that. No discussion. All in favor say aye.

16 COMMISSIONERS VOTING: Aye.

17 CHAIRMAN DEVENS: Unanimous. We'll try and
18 make this real quick.

19 (Recess was held. 12:00-12:08)

20 CHAIRMAN DEVENS: We're back on the record.
21 Thank you for your patience in indulging us.
22 Mr. Matsubara, you wanted to make an oral Motion for
23 Reconsideration?

24 MR. MATSUBARA: Yes, Mr. Chair.

25 CHAIRMAN DEVENS: Your motion?

1 MR. MATSUBARA: I would like to make a motion
2 for the Land Use Commission to reconsider the vote
3 relating to the approval of Whitmore and Dole
4 Plantation and consider each of those parcels
5 separately.

6 CHAIRMAN DEVENS: Parties, have any opposition
7 to the motion?

8 MR. YEE: We have no opposition to the process
9 of the motion.

10 CHAIRMAN DEVENS: Right.

11 MR. YEE: We obviously would oppose granting
12 the motion.

13 CHAIRMAN DEVENS: Well, it's just a Motion to
14 Reconsider. You don't oppose the motion itself, the
15 procedure.

16 MR. YEE: We have no objection to the process.

17 CHAIRMAN DEVENS: Right. Okay.
18 Commissioners?

19 COMMISSIONER HELLER: Mr. Chair, just to be
20 clear.

21 CHAIRMAN DEVENS: Mr. Heller.

22 COMMISSIONER HELLER: A yes vote on this
23 motion would imply that we agree to vote separately on
24 each of the two pieces. It doesn't imply anything
25 about whether that vote is yes or no as to either

1 parcel, correct?

2 CHAIRMAN DEVENS: As I understand the motion,
3 and, Mr. Matsubara, you can correct me if I'm wrong,
4 is you're asking the Commission to reconsider taking a
5 vote on the parcels separately.

6 MR. MATSUBARA: That is correct.

7 CHAIRMAN DEVENS: Is there any opposition to
8 that particular motion?

9 MR. YEE: No.

10 MS. TAKEUCHI-APUNA: No.

11 CHAIRMAN DEVENS: There's no opposition to
12 that. Does that clarify it, Commissioner Heller?

13 COMMISSIONER HELLER: Thank you, yes.

14 CHAIRMAN DEVENS: Is there a Motion to Grant
15 this motion by Mr. Matsubara? Commissioner Judge.

16 COMMISSIONER JUDGE: Thank you, Chair. I make
17 a motion that we approve the Motion for
18 Reconsideration.

19 CHAIRMAN DEVENS: Is there a second?

20 COMMISSIONER JENCKS: Second.

21 CHAIRMAN DEVENS: There's a second. Any
22 discussion? Hearing none, Dan.

23 MR. DAVIDSON: On Motion for Reconsideration,
24 Commissioner Judge?

25 COMMISSIONER JUDGE: Yes.

1 MR. DAVIDSON: Commissioner Jencks?

2 COMMISSIONER JENCKS: Yes.

3 CHAIRMAN DEVENS: Commissioner Kanuha?

4 COMMISSIONER KANUHA: Aye.

5 MR. DAVIDSON: Commissioner Heller?

6 COMMISSIONER HELLER: Yes.

7 MR. DAVIDSON: Commissioner Contrades?

8 COMMISSIONER CONTRADES: Yes.

9 MR. DAVIDSON: Commissioner Chock?

10 COMMISSIONER CHOCK: Yes.

11 MR. DAVIDSON: Chair Devens?

12 CHAIRMAN DEVENS: Yes.

13 MR. DAVIDSON: Motion passes 7/0, 2 excused.

14 CHAIRMAN DEVENS: Given the passing of the
15 Motion for Reconsideration are there any other motions
16 by the Commission at this time? Commissioner Judge.

17 COMMISSIONER JUDGE: I would like to make a
18 motion that as part of DR10-42 that the Commission
19 would recognize the Dole Plantation parcel as IAL and
20 deny the IAL designation to the Whitmore parcel.

21 Oh, I'm sorry. We were going to take them
22 separately. Sorry. So my motion would simply be to
23 accept the Dole Plantation parcel as an IAL
24 designation.

25 CHAIRMAN DEVENS: Is there a second?

1 COMMISSIONER JENCKS: Second.

2 CHAIRMAN DEVENS: There's a second. Any
3 discussion? Commissioner Judge.

4 COMMISSIONER JUDGE: Thank you. In listening
5 to the testimony today and also from just knowing the
6 experience I have from Maui, and knowing how important
7 water source is to the future of agriculture, I
8 reference this map from the Office of Planning. It's
9 figure No. 1.

10 And I know there was a concern about not
11 having enough information about how that water, where
12 that water goes and how it might affect the other
13 agricultural parcels.

14 Just in my mind looking at this, this figure,
15 it pretty clearly shows that it's a significant
16 contributor to what looks to be the irrigation ditches
17 that run all through that whole northern part of
18 O'ahu in that agricultural lands.

19 So, therefore, I'm in support of designating
20 this Dole Plantation parcel that has the water source,
21 the reservoir, to recognize that as an important part
22 for the future of agriculture on O'ahu.

23 CHAIRMAN DEVENS: Any further discussion?
24 There being none, call for the vote.

25 MR. DAVIDSON: Motion in DR10-42 to approve

1 the Dole Plantation parcel. Commissioner Judge?

2 COMMISSIONER JUDGE: Yes.

3 MR. DAVIDSON: Commission Jencks?

4 COMMISSIONER JENCKS: Yes.

5 MR. DAVIDSON: Commissioner Kanuha?

6 COMMISSIONER KANUHA: Yes.

7 MR. DAVIDSON: Commissioner Heller?

8 COMMISSIONER HELLER: No.

9 MR. DAVIDSON: Commissioner Contrades?

10 COMMISSIONER CONTRADES: Yes.

11 MR. DAVIDSON: Commissioner Chock?

12 COMMISSIONER CHOCK: No.

13 MR. DAVIDSON: Chair Devens?

14 CHAIRMAN DEVENS: Yes.

15 MR. DAVIDSON: Again, the motion fails by 5 to

16 2 vote, Chair.

17 CHAIRMAN DEVENS: Is there a motion as relates
18 to the Whitmore property?

19 COMMISSIONER JUDGE: I'll make a motion.

20 Actually I am in favor of the Whitmore property going
21 into an IAL designation. So I would make that motion.

22 CHAIRMAN DEVENS: Is there a second?

23 COMMISSIONER JENCKS: Second.

24 CHAIRMAN DEVENS: Any discussion? Hearing
25 none, call for the vote.

1 MR. DAVIDSON: Motion to include Whitmore in
2 DR10-42 IAL.

3 Commissioner Judge?

4 COMMISSIONER JUDGE: Yes.

5 MR. DAVIDSON: Commission Jencks?

6 COMMISSIONER JENCKS: Yes.

7 MR. DAVIDSON: Commissioner Kanuha?

8 COMMISSIONER KANUHA: Yes.

9 MR. DAVIDSON: Commissioner Heller?

10 COMMISSIONER HELLER: No.

11 MR. DAVIDSON: Commissioner Contrades?

12 COMMISSIONER CONTRADES: Yes.

13 MR. DAVIDSON: Commissioner Chock?

14 COMMISSIONER CHOCK: Yes.

15 MR. DAVIDSON: Chair Devens?

16 CHAIRMAN DEVENS: Yes.

17 MR. DAVIDSON: That passes by a 6 to 1 vote,
18 Chair.

19 CHAIRMAN DEVENS: Do the parties want to add
20 anything to the record starting with Petitioner?

21 MR. MATSUBARA: I appreciate the Commission's
22 effort to accommodate our concerns. We thank you for
23 the time and effort exercising that regard. Thank
24 you.

25 CHAIRMAN DEVENS: We thank you too. City?

1 MS. TAKEUCHI-APUNA: No comments.

2 MR. KOKUBUN: Thank you very much, Chair and
3 Members.

4 CHAIRMAN DEVENS: Thank you for being here
5 today and giving us your insight into this very
6 important process.

7 Mr. Yee? Director Souki?

8 MR. SOUKI: Thanks. Just one quick comment.
9 As we move forward with other IAL petitions in the
10 future I want us to keep in mind what kinds of
11 properties are being designated by Applicants in the
12 broader picture as far as designating IAL.

13 CHAIRMAN DEVENS: We'll definitely do so.

14 Mr. Yee, do you want to add anything for the record?

15 MR. YEE: No, thank you very much.

16 CHAIRMAN DEVENS: Commissioners, anything else
17 for the record? That being it, we stand adjourned.
18 Thank you very much.

19 (The proceedings were adjourned at 12:15 p.m.)

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C E R T I F I C A T E

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5 I, HOLLY HACKETT, CSR, RPR, in and for the State
6 of Hawai'i, do hereby certify;

7

That I was acting as court reporter in the
8 foregoing LUC matter on the 23rd day of March 2011;

9

That the proceedings were taken down in
10 computerized machine shorthand by me and were
11 thereafter reduced to print by me;

12

That the foregoing represents, to the best
13 of my ability, a true and correct transcript of the
14 proceedings had in the foregoing matter.

15

16 DATED: This_____ day of_____2011

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HOLLY M. HACKETT, HI CSR #130, RPR
Certified Shorthand Reporter

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