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LAND USE COMMISSION

STATE OF HAWAI'I

HEARING AND ACTION)
DR12-48 GROVE FARM COMPANY, INC.)
(Kaua'i))
_____)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing at the State Building, Conference Rooms A, B, C 2nd Floor, 3060 Eiwa Street, Lihu'e, Kaua'i, Hawai'i, commencing at 1:00 p.m. on February 8, 2013, pursuant to Notice.

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

1 A P P E A R A N C E S

2 COMMISSIONERS:

3 RONALD HELLER, ACTING CHAIR
4 CHAD McDONALD, VICE CHAIR
5 SHELDON R. BIGA
6 THOMAS CONTRADES
7 LANCE M. INOUYE
8 ERNEST MATSUMURA
9 NICHOLAS W. TEVES, JR.

10 EXECUTIVE OFFICER: DAN ORODENKER
11 CHIEF CLERK/STAFF PLANNER: RILEY HAKODA
12 STAFF PLANNER: SCOTT DERRICKSON

13 DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

14 AUDIO TECHNICIAN: WALTER MENCHING

15 Docket No. DR12-48 Grove Farm Company, Inc (Kaua'i)

16 For the Petitioner: BENJAMIN MATSUBARA, ESQ.
17 CURTIS TABATA, ESQ.
18 MICHAEL TRESSLER, Grove Farm Co. Inc.

19 For the County: MAUNAKEA TRASK, ESQ.
20 Deputy Corporation Counsel
21 MICHAEL DAHILIG, Director
22 Kaua'i County Planning Dept.

23 For the State: BRYAN YEE, ESQ.
24 Deputy Attorney General
25 JESSE SOUKI
Director Office of Planning
RODNEY FUNAKOSHI

I N D E X

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OP POWERPOINT PRESENTATION	PAGE
Rodney Funakoshi	18

--00--

1 ACTING CHAIR HELLER: (Gavel) Let's call
2 the meeting to order. This is a hearing and action
3 meeting on DR12-48 in the matter of the Petition of
4 Grove Farm Company, Incorporated, for Declaratory
5 Order to Designate Important Agricultural Lands for
6 approximately 11,026.2 acres at Ha'upa and Lihu'e
7 Kaua'i, Hawai'i.

8 Will the Petitioner please identify itself
9 for the record.

10 MR. TABATA: Good afternoon, Mr. Chair,
11 Members of the Commission. Curtis Tabata and Benjamin
12 Matsubara appearing on behalf of the Petitioner Grove
13 Farm Company, Incorporated. Also present is Michael
14 Tressler, senior vice president of Grove Farm Company,
15 Incorporated.

16 ACTING CHAIR HELLER: Will the parties
17 please identify yourselves for the record.

18 MR. TRASK: Thank you, Chair. For the
19 record Deputy County Attorney Maunakea Trask on behalf
20 of the county of Kaua'i Planning Department. To my
21 left Planning Director Michael Dahilig.

22 MR. YEE: Good afternoon. Deputy Attorney
23 General Bryan Yee on behalf of the Office of Planning.
24 With me is Jesse Souki from the Office of Planning.

25 ACTING CHAIR HELLER: Thank you. Let me

1 update the record. On November 30, 2012 the
2 Commission received Petitioner's Petition for
3 Declaratory Order to designate Important Agricultural
4 Lands, and Exhibits A. through F.

5 On December 3, 2012 the Commission mailed
6 letters to DOA, OP and Kauai County requesting
7 comments on the Petition. On the same day Petitioner
8 provided the Commission with a CD containing the
9 Petition's digital file.

10 On January 9, 2013 the Commission received
11 Petitioner's revised Exhibit D-2, and forwarded copies
12 to DOA, OP and Kaua'i for comments.

13 On January 11, 2013 the Commission received
14 e-mail requests from OP and DOA requesting additional
15 time until January 17, 2013 to review the Petition.
16 The Commission acknowledged and approved those
17 requests.

18 On January 17, 2013 the Commission received
19 County of Kaua'i and OP's comments to the Petition.

20 On January 22, 2013 the Commission received
21 the Department of Agriculture's comments to the
22 Petition.

23 Has our staff informed you of the
24 Commission's policy regarding the reimbursement of
25 hearing expenses? If so, could you state your

1 client's response with respect to the policy?

2 MR. TABATA: Yes. We have been informed
3 and we will comply with the policy. Thank you.

4 ACTING CHAIR HELLER: Thank you. Let me
5 briefly describe our procedure for today on this
6 docket. I will first call for those individuals
7 desiring to provide public testimony to identify
8 themselves. All such individuals will be called in
9 turn to our witness box where they will be sworn in
10 prior to their testimony.

11 After completion of the public testimony
12 portion of the proceedings, staff will provide its
13 report. After staff has provided its report the
14 Petitioner will make its presentation.

15 After the completion of the Petitioner's
16 presentation we will receive any comments from Kaua'i
17 County, the Office of Planning, and/or the Department
18 of Agriculture. Thereafter the Commission will
19 conduct its deliberations and decide whether to deny
20 this Petition, grant it in whole or in part, or
21 schedule the matter for hearing pursuant to section
22 15-15-103 of the LUC Rules.

23 The Chair would also note that from time to
24 time I will be calling for short breaks. Are there
25 any questions on our procedures for today?

1 MR. TABATA: No questions, Chair.

2 ACTING CHAIR HELLER: Before beginning
3 there's one disclosure I want to make. My law firm,
4 Torkildson, Katz Law Firm, I believe is doing some
5 legal work for the County of Kaua'i. I'm not
6 personally involved in it. I don't know any details.
7 I believe it has something to do with the area of
8 labor and employment law. If anybody feels that
9 creates a conflict and has any objection to my
10 continuing this matter, now would be the time to raise
11 that.

12 MR. TRASK: Just for the record, deputy
13 county attorney Trask. Just in response to that I
14 myself am not aware of which case that is. I don't
15 believe I'm a part of it for everyone else's
16 edification. County of Kaua'i has no objection.

17 MR. TABATA: Petitioners no objections.

18 MR. YEE: No objection from OP.

19 ACTING CHAIR HELLER: Thank you. The Chair
20 intends to declare that the documents submitted by the
21 Department of Agriculture, the Office of Planning,
22 Kaua'i County and Petitioner's response are part of
23 the record in this matter. Does anyone have any
24 objections to this?

25 MR. TABATA: No objection.

1 MR. TRASK: No objections.

2 MR. YEE: No objection.

3 ACTING CHAIR HELLER: Hearing none the
4 documents are made part of the record. Is there
5 anyone present who desires to provide public
6 testimony? Did we have any signups? Is there anyone
7 present in the room who desires to provide public
8 testimony? Hearing none, we'll move to the staff
9 report. Scott.

10 MR. DERRICKSON: (off mic) Commissioners,
11 there's two maps, Land Use Commission maps behind you
12 up on the board.

13 THE REPORTER: Scott, could you use the
14 microphone.

15 MR. DERRICKSON: Sure. Okay. There's two
16 Commission maps, map No. 1, on the right-hand side,
17 map No. 2 on the left-hand side. Map No. 1 in yellow
18 highlights show the two separate portions of the
19 Petition Area.

20 The Lihue land section is up here. It's
21 north of the area Puhi, and Kaumuali'i Highway lies in
22 its southern boundary. Then the Ha'upu lands are down
23 here dominated primarily by the Waita Reservoir site
24 and the land area that's adjacent to it on the east
25 side.

1 Of note there are two previous designated
2 IAL areas. They're diagonally hashed. This one is
3 from DR11-43 Mahaulepu Farms. So that's this area
4 right here. Then the older DR08-37 Alexander and
5 Baldwin, Inc. lies over in this area here.

6 The other thing of note is -- well, our
7 maps are showing the three reservoirs up in the Lihue
8 area so you can see where they lie on the parcel.
9 One's up here, one is down here, one is over in this
10 area. Then, of course, the Waita Reservoir down here.

11 The other thing of note is a special permit
12 SP05-399 to Kaua'i ATV, LLC. It covers a large
13 portion which includes portions of the Lihue site
14 extending down through the Waita area as well as down
15 into the previous designation for Mahaulepu Farms.

16 Map No. 2 over here on the left-hand side
17 was developed primarily to show -- all in the red
18 shows areas that are 20 percent or more slope. And
19 20 percent or less slope are in the green. So you can
20 see here this large area of intermittent fingers of
21 greater than 20 percent slope. Then a little bit down
22 are Waita Reservoir area very little is 20 percent or
23 greater. Okay. Any questions?

24 ACTING CHAIR HELLER: Yes. You mentioned
25 the special permit for the ATV use. You said that

1 extends into the area that's already designated IAL?

2 MR. DERRICKSON: Correct. The area that's
3 covered under that permit is a very large acreage
4 designation. So, yes.

5 ACTING CHAIR HELLER: Thank you. Is
6 Petitioner ready to proceed?

7 MR. TABATA: Yes. Thank you, Mr. Chair.
8 The Petitioner is requesting a designation of the
9 11,026.2 acres of land as Important Agricultural
10 Lands. These lands are located in two areas: 10,266
11 acres in Lihue and 760 acres in Ha'upu.

12 What we are *not* doing today is requesting
13 the reclassification of any Ag lands to another
14 designation. We are not seeking to develop any
15 properties in the Urban District.

16 What we are asking for today is the
17 designation of these agricultural lands as IAL for the
18 protection and preservation of these lands, and for
19 the promotion of future agricultural production. We
20 are waiving the 85/15 development credit in the event
21 the Commission does grant our Petition today.

22 Now the majority of the proposed lands that
23 we're proposing for designation were once used for
24 sugar production. As such these lands possess
25 existing agricultural infrastructure including roads,

1 gates, streams and reservoirs.

2 The Ha'upu property includes the Waita
3 Reservoir, the largest inland body of water in the
4 state covering 415 acres and with the capacity of over
5 2.1 billion gallons of irrigation water.

6 Waita is used to irrigate 3,700 acres of
7 agricultural lands including 1,533 acres of IAL in
8 Mahaulepu. The remaining 345 acres is mostly in
9 ranching. So far there have been no objections to the
10 designation of the Ha'upu lands.

11 The Lihue lands are mostly in current
12 agricultural production. Most of this is in ranching.
13 The future of the Lihue lands we believe lie in
14 biofuels. Grove Farm and Hawai'i Bio-Energy, LLC have
15 executed an option for a 30-year lease for 96 percent
16 of the Lihue lands which comes out to 9,890 acres.

17 The purpose of the lease option is to grow
18 energy crops like eucalyptus and grasses for sugar and
19 fiber production. In anticipation of this production
20 Hawai'i Bio-Energy has entered into a 20-year contract
21 with Hawaiian Electric to supply 10 million gallons of
22 biofuels to power Hawaiian Electric's Kahe Power
23 Plant.

24 This represents more than 4 percent of
25 Kahe's annual fuel use. The Kahe Power Plant is the

1 largest on O'ahu with a total capacity of 650
2 megawatts.

3 Hawai'i Bio-Energy has also an agreement
4 with Boeing to work towards creating a renewable
5 source of aviation fuel. The crops they are looking
6 at for making the bio jet fuel include sorghum and
7 eucalyptus. These are all goals for the future and
8 our desire to one day become energy independent.

9 One of the important steps towards this
10 future is the protection and preservation of the Lihue
11 agricultural lands.

12 At this point I believe it would be helpful
13 to take a step back and look at the context of today's
14 Petition. The Commission is responsible for deciding
15 three land use actions:

16 No. 1. District Boundary Amendments;
17 No. 2. Special Use Permits;
18 And 3. The Designation of Important
19 Agricultural Lands.

20 The processing of district boundary
21 amendments and special use permits normally include an
22 evaluation of some type of project or development. In
23 those cases a development schedule and a specified
24 intended use is represented to the Commission.

25 If the Project use ever changes then

1 landowners typically seek to amend the Decision and
2 Order to allow for the change in use.

3 IAL designation, however, is different.
4 IAL does not change the permitted uses. It, instead,
5 serves to protect and preserve agricultural lands for
6 all intents and purposes in perpetuity. This forces
7 us to look beyond the present or the near term.

8 The long-range future for the Lihue lands
9 is nearly perfectly situated for biofuels production.
10 The infrastructure inherited from the sugar
11 plantations are still serviceable.

12 Rainfall is plentiful and sufficient for
13 biofuel crops. According to the State Energy Office
14 in their comment letter the Lihue lands have soil
15 qualities and growing conditions suitable for the
16 cultivation of trees and grasses which are strong
17 candidates for energy crops.

18 The Lihue lands are also contiguous which
19 is State Energy Office says is an important factor for
20 bio energy projects.

21 The comments received from the Office of
22 Planning were appreciated. We believe OP's desire for
23 a commitment beyond the existing lease option is more
24 in line with the Petition for District Boundary
25 Amendment where the Petitioner's obligated to provide

1 Project-related commitments and development schedule.

2 For IAL in this Petition we believe we need
3 to look at the designation as a long-term prospect and
4 try to anticipate the value we provide for future
5 generations. Clearly, the fact that the Lihue lands
6 are ideal for growing biofuel crops, and that Hawai'i
7 Bio-energy is currently pursuing future breakthroughs
8 in biofuels, dovetails with the long-terms goals of
9 the state.

10 As Governor Abercrombie provides in his New
11 Day plan, quote, "Hawai'i's most important economic
12 enterprise right now is to pursue energy independence"
13 end quote. The two other comments we received
14 include: (1) The Department of Agriculture's
15 objection to the designation of the Papua'a and
16 Halenanahu Reservoirs because they do not irrigate
17 Important Agricultural Lands.

18 And (2) The DOA's request for annual
19 reports to enforce agricultural permitted uses.

20 We believe that the two reservoirs in
21 question should be designated as IAL because they do
22 provide irrigation water to agricultural lands. The
23 Papua'a Reservoir Services agricultural lands in and
24 out of the proposed IAL. It irrigates agricultural
25 lands from Kuia to Kipu to Puhi and into Lihue. And

1 also serves as additional water storage for the Kaloa
2 and Mahalepu area including the IAL lands in Mahalepu.

3 The Halenaha Reservoir is what we hope will
4 be the critical water source for a future dairy
5 operations. This is one possible future for that
6 portion -- for a transportation of the Grove Farm
7 lands. Nine are proposed IAL by Grove Farm lands
8 nevertheless. And that reservoir is key.

9 And, finally, the annual reports we believe
10 should not be a requirement in IAL D&O's. Enforcement
11 of permitted uses in the classification districts is
12 the responsibility of the County pursuant to HRS
13 section 205-12. HRS 205-12 does provide, however,
14 that if violations do occur, then the Commission will
15 be notified by the County. So you will be informed.
16 Thank you, Mr. Chair. If there are any questions we
17 will do our best to answer them.

18 ACTING CHAIR HELLER: Commissioners, any
19 questions at this point? County.

20 MR. TRASK: Aloha, Chair, thank you.

21 ACTING CHAIR HELLER: Does the County wish
22 to offer any testimony or comments?

23 MR. TRASK: Yes, briefly. Aloha, Chair,
24 Honorable Commission Members. Again, for the record,
25 Maunakea Trask, deputy county attorney County of

1 Kauai.

2 I'm here today to represent the Planning
3 Department of the County of Kaua'i through its
4 director. My client has already submitted testimony
5 as stated by the Chair on this matter via a letter
6 dated January 16, 2013 so I will be brief. For the
7 record, my client has reviewed and supports in general
8 the Petition before you today.

9 In 2009 the County of Kaua'i began its IAL
10 study project. Although the final results of this
11 Project and recommendations are not available at this
12 time, the Planning Department is able to ascertain
13 through new maps and tools how well parcels of land
14 fit the criteria set forth in the legislation.

15 The maps provided in the Petition match the
16 preliminary maps developed through the IAL study
17 process of lands meeting the criteria for IAL
18 designation. Thus, the Planning Department supports
19 the overall designation of these lands.

20 The Planning Department is also supportive
21 of the continuance of ranching and grazing activities
22 in this area. In terms of protecting large swaths or
23 contiguous areas of land, although issues have been
24 raised regarding the appropriateness of IAL in this
25 area, nonetheless this Petition does, the County of

1 Kaua'i believes, apply and/or encompass the
2 preservation of large contiguous land parcels.

3 Furthermore, in respect to watershed
4 protection, our technical advisory committee
5 consistently found that water was cited consistently
6 again as a crucial resource. So while designation of
7 this -- and specifically this is the Puhi area in and
8 around the Kilohana Crater -- there is issues
9 regarding conservation IAL designation and the
10 appropriateness of both.

11 The County, nonetheless, supports this
12 Petition because of the importance of watershed
13 protection. The County also finds that the Petition
14 before you today is consistent with the County General
15 Plan in regards to both the potential urban boundaries
16 of Lihue and the preservation of Lihue agricultural
17 lands.

18 However, as stated in our communication to
19 you, the Planning Department remains uncertain about
20 issues pertaining to the designation of Waita
21 Reservoir as IAL, and the issues surrounding the
22 evaluation for further evaluation of recreational
23 issues on IAL designated land as stated by your staff
24 report.

25 However, nonetheless, we support the

1 Petition today. Thank you for your consideration on
2 this important matter. Mahalo. If you have any
3 questions at this time I'll be happy to answer them.

4 ACTING CHAIR HELLER: Commissioners? OP?

5 MR. YEE: Mr. Rodney Funakoshi will be
6 providing comments from the Office of Planning. For
7 the Commission's information I believe we passed out
8 hard copies of the PowerPoint presentation and the
9 Parties have copies of that as well.

10 MR. FUNAKOSHI: Good afternoon.
11 Rodney Funakoshi from the State Office of Planning. I
12 have, maybe, a 15 to 20-minute presentation running
13 basically through the testimony -- not 'testimony',
14 but the comment letter and the points we had raised
15 therein.

16 I'm going to go through kind of a brief
17 background of the IAL Law. The state of Hawai'i
18 Constitution Article XI Section 3 states as follows,
19 "The State shall conserve and protect agricultural
20 lands, promote diversified agriculture, increase
21 agricultural self-sufficiency and ensure the
22 availability of agriculturally suitable lands."

23 We've highlighted the last phrase:
24 "agriculturally suitable lands". This was followed by
25 a statement that, "The Legislature shall provide

1 standards and criteria to accomplish the foregoing."
2 It took them a while. This was 1978 Constitutional
3 amendment. But in 2005 the IAL law was enacted, Act
4 183, within which it stated, "The purpose of this Act
5 is not only to set policies for Important Agricultural
6 Lands and to identify Important Agricultural Lands,
7 but also provide for the development of incentives to
8 promote the retention of Important Agricultural Lands
9 for viable agricultural use over the long term."

10 The law and subsequent amendments provided
11 incentives for designation of IAL particularly by
12 private voluntary designation. Financial incentives
13 include the placement of onsite farm dwellings, an
14 allowance for employee housing, tax credits for
15 agricultural costs, loan guarantees and expedited
16 permitting for agricultural processing facilities.

17 There's also the 85/15 Rule which allows
18 for expedited State Land Use reclassification of up to
19 15 percent of Ag lands if the remaining 85 percent is
20 designated as IAL. We note this has been waived for
21 the subject Petition by the Petitioners.

22 And third it also provides the incentive of
23 exclusion from the County IAL mapping process if more
24 than 50 percent of the landowner's property is already
25 designated as IAL.

1 "Important Agricultural Lands" means lands
2 that (1) Are capable of producing sustained high
3 agricultural yields, contribute to the State's
4 economic base and produce agricultural commodities for
5 export or local consumption. Or are needed to promote
6 the expansion of agricultural activities and income
7 even if currently not in production. I will revisit
8 this later.

9 For the two Petition Areas OP's
10 recommendation first for Ha'upu, OP recommends
11 760 acres or 100 percent of the lands be designated as
12 IAL. We acknowledge the important irrigation source
13 provided by the Waita Reservoir. 75 percent of the
14 lands here ALISH: Agricultural Lands of Importance to
15 the state of Hawai'i. There are six tenants thereon.

16 For the larger Lihue portion, however, only
17 a limited portion of land is suitable for agriculture
18 under IAL criteria and definition. OP is recommending
19 that 3,957 acres, 39 percent of the 10,265 acres be
20 designated as IAL.

21 We are also requesting that the waiver of
22 the 15 percent rule be made a condition, be made
23 permanent as a condition of approval.

24 I will be going through the rationale for
25 our Lihue recommendation based on the eight IAL

1 criteria. And these are basically the topics that
2 I'll go through, but I'll read briefly the statutory
3 section that's provided here. This really is the
4 heart of determining IAL.

5 "Standards and criteria shall be used to
6 identify Important Agricultural Lands. Lands
7 identified as Important Agricultural Lands may not
8 meet every standard and criteria. Rather, these lands
9 shall be given initial consideration provided that the
10 designation of IAL shall be made by weighing the
11 standards and criteria with each other to meet the
12 constitutionally mandated purposes in Article XI,
13 section 3 of the Hawai'i Constitution and the
14 objectives and policies for IAL."

15 So going through the eight criteria
16 relative to the Lihue area only. First, lands
17 currently being used for agricultural production:
18 58 percent, approximately 6,000 acres are leased to 20
19 tenants. We're unclear on the actual usage, but this
20 amount is being leased currently.

21 2. Lands with soil qualities that support
22 agricultural production. In general the Petition Area
23 here consists of very poor lands. There's no aerated
24 lands. There's 0.3 percent of B lands. For B and C
25 total combined is only 14 percent of -- by the way,

1 this is the Land Study Bureau rating system that is
2 pretty key and central to all of our agricultural land
3 uses.

4 And then C-- I mean D and E lands comprise
5 85 percent of the lands in the Lihue Petition Area.
6 So we've shown here also continuing with soil
7 qualities that support agricultural production, we
8 have looked at the historical acreage of sugarcane
9 plantation in this area: 3,239 acres were formerly
10 planted here for approximately one-third of the Lihue
11 Petition Area.

12 The third criteria: Lands under
13 agricultural productivity ratings such as ALISH.

14 And here 34 percent are prime or other
15 Important Agricultural Lands. Two-thirds or
16 66 percent are not in the ALISH. This figure shows
17 both a combined Land Study Bureau and ALISH map
18 showing not only the Petition Area but the surrounding
19 region. The white areas are basically C, D, and E
20 quality lands. And the green areas are A and B lands.
21 So there's very little A and B lands in the Petition
22 Area. All of the A and B better quality lands are
23 outside.

24 Criterion 4: Native Hawaiian or unique
25 agricultural crops. Petitioner has cited the HBE

1 biofuel crop option. So we have looked at that and
2 yes, it is a potential, but there's no commitment or
3 definitive plans for this at this time.

4 Sufficient water to support agriculture is
5 the 5th criterion. There is a ditch system at
6 mid-elevation. We also acknowledge this is a high
7 rainfall area.

8 Relative to consistency with County general
9 and development and community plan designations, this
10 shows the Petition Area's relationship to the 2000
11 Kaua'i General Plan. Agriculture in green. And Open
12 in gray. I'll read from the General Plan.

13 "The intent of the Open District is to
14 preserve, maintain or improve the natural
15 characteristics of non-urban land and water areas."
16 This policy is also the most restrictive of all the
17 General Plan land use designations.

18 Criterion 7. "Lands contributing to
19 maintaining critical land mass for agricultural
20 operations."

21 Noted that there is -- the site is there's
22 extensive fragmentation here, steep terrain, gulches,
23 and overall very poor soil quality. You should also
24 note the soil quality also relates to the extreme
25 stoniness of the lands.

1 Near support infrastructure such as
2 transportation, power and water. This is the final
3 criterion. Water is available to the lower reaches.
4 And there is good transportation and access to
5 markets, harbors and power.

6 However, our overall assessment of the
7 Lihue lands: First, based on the definition of IAL
8 that it's capable of producing sustained high
9 agricultural yields. We find this is not met due to
10 the poor soils and terrain.

11 2. Contribute to the state's economic base
12 and produce agricultural commodities for export for
13 local consumption. This is partially met in the area.

14 3rd. Are needed to promote the expansion
15 of agricultural activities and income even if
16 currently not in production. We do not feel that this
17 need has been demonstrated that this area is needed to
18 promote the expansion of agricultural activities.

19 Having waived the criteria and definition
20 OP finds that only a limited portion of the lands is
21 suitable for Ag under IAL criteria and definition.

22 The Office of Planning recommends 3,957
23 acres or 39 percent of the 10,265 acres be designated
24 as IAL. These consist of lands downslope of the upper
25 Lihue ditch and Kamoaloha Stream. This area has the

1 majority of the ALISH prime lands and higher LSB
2 ratings. It also has slopes mostly less than 20
3 percent.

4 So this figure shows in yellow the area
5 that we are recommending be designated, partially
6 designated for IAL.

7 In conclusion, OP feels that if the entire
8 area is approved as proposed we are very much
9 concerned with the precedence this would set for what
10 constitutes IAL. Accordingly, we urge your favorable
11 consideration of our recommendation for a partial
12 approval in this area. Mahalo.

13 ACTING CHAIR HELLER: Thank you.
14 Commissioners, any questions? Is there anyone here
15 representing the Department of Agriculture?

16 MR. YEE: I believe DOA would be resting on
17 their letter. We do have a person, however, if you
18 have any questions.

19 ACTING CHAIR HELLER: Okay. Commissioners,
20 at this time we can deny the Petition. We can grant
21 it in whole or in part. Or we can schedule the matter
22 for hearing pursuant to section 15-15-103. Or if you
23 have any questions that you wish to address any of the
24 parties this is an opportunity to do that. What is
25 your pleasure?

1 COMMISSIONER McDONALD: I just have a
2 couple questions.

3 ACTING CHAIR HELLER: Please go ahead.

4 COMMISSIONER McDONALD: The Lihue lands,
5 the lands in question that OP has some concern about,
6 is that one continuous TMK? Is that one TMK?

7 MR. DAHILIG: No. It's made up of a couple
8 TMK's but there is one very large TMK. So we have the
9 TMK numbers, I believe.

10 COMMISSIONER McDONALD: Are there plans to
11 maybe further subdivide that TMK?

12 MR. TRESSLER: No, not at all.

13 COMMISSIONER McDONALD: Not at all. I was
14 just curious. What percentage of the lands being
15 Petitioned for IAL, what percentage of that represents
16 the total Grove Farm land area?

17 MR. TRESSLER: Grove Farm agricultural land
18 area or total Grove Farm land area?

19 COMMISSIONER McDONALD: Total Grove Farm.

20 MR. TRESSLER: I believe it's 51 percent.

21 ACTING CHAIR HELLER: Sorry, Sir, could you
22 please identify yourself.

23 MR. TRESSLER: I'm sorry. I'm Mike
24 Tressler senior vice president of Grove Farm Company.

25 COMMISSIONER McDONALD: So the Petition

1 Area before us today represents 51 percent of Grove
2 Farm's total land area?

3 MR. TRESSLER: Yes.

4 COMMISSIONER MAKUA: It currently owns.

5 MR. TRESSLER: Yes. Um -- well, no. I'm
6 sorry. It's 51 percent of the combined agricultural
7 and urban area -- let me try and calculate. We have
8 32,996 acres. So 10,000, it's about one third.

9 COMMISSIONER McDONALD: One third, roughly.

10 MR. TRESSLER: Yeah.

11 COMMISSIONER McDONALD: You know -- just
12 curious, the areas north and south of the Lihue
13 Petition Area, is that also your folks' lands?

14 MR. TRESSLER: The land north is not. The
15 land south is.

16 COMMISSIONER McDONALD: The land south is.
17 I was just looking at the soil classification maps.
18 It seems those areas south look pretty good as far as
19 the land classification. Any consideration for
20 putting that portion of your folks' property into IAL?

21 MR. TABATA: When we did our analysis we
22 had to look at the General Plan of the County. Our
23 interpretation of that was that the lands closer to
24 Lihue and Puhi were likely, was more consistent with
25 future urban growth.

1 So when we did our evaluation we looked at,
2 we looked at the areas we ended up designating to a
3 great extent upon the Hawai'i Bio-Energy lease option.
4 We understand the soil qualities aren't the greatest
5 if you were growing, perhaps, lettuce or other
6 produce. But for the trees and grasses that fit into
7 the Bio-Energy strategy it actually works quite well,
8 especially with the higher rainfall.

9 So that was basically how we came up with
10 our land area for the proposed IAL.

11 COMMISSIONER MAKUA: I'm just curious. I
12 think it's great that Grove Farm has taken the
13 initiative and looking at designating portions of the
14 property into IAL. I was just curious on my part.

15 MR. TRESSLER: There's no plans, but
16 they're in agriculture, active agriculture and will
17 remain so. We actively seek various agriculture
18 initiatives so that we can continue or perpetuate the
19 agriculture on our land; obviously always seeking for
20 the higher and better use in Ag on Ag land. So, you
21 know, that's been consistent with our practice for
22 that area that you're questioning.

23 COMMISSIONER McDONALD: Thank you.
24 Appreciate it.

25 ACTING CHAIR HELLER: Commissioners, other

1 questions?

2 MR. YEE: Commissioner, can I respond to a
3 question -- to give an answer to a question I think
4 was asked regarding the community plans designations?

5 ACTING CHAIR HELLER: Go ahead.

6 MR. YEE: We submitted in our PowerPoint
7 presentation one of the slides, slide 6, with respect
8 to consistency with the Community Plans. Slide 16 but
9 I think referring to factor 6. As we read the
10 community plans -- and it's possible, of course,
11 community plans can always change and we're only
12 looking at designations that we find mapped out.

13 And if you look at it it seems like there's
14 certain areas we've noted are in green for
15 Agriculture. I think the orange were more -- the gray
16 was Open so you can see what areas were marked for
17 Agriculture.

18 ACTING CHAIR HELLER: I had a question for
19 the County. Maybe I'm anticipating the same direction
20 you're going. Can you give us a little more of an
21 update as to where the County's process is in terms of
22 designation of Important Agricultural Lands? Is there
23 any kind of ranking list or priority list? And if so
24 where do these specific areas fit on that list?

25 MR. DAHILIG: Good afternoon, Mr. Vice

1 Chair. For the record Mike Dahilig, Director of
2 Planning for the County. Where we are currently in
3 that process is we are getting ready for, I guess,
4 would be an extra external agency release to both
5 State agencies as well as the public a comment on the
6 final draft of the report.

7 Just to familiarize the Commission with the
8 process that we've utilized to identify what we think
9 will lead to the County petition eventually. We
10 worked in conjunction with the University of Hawai'i
11 Department of Urban and Regional Planning to develop
12 an algorithm by which they use the eight criteria to
13 designate lands across the county as potential
14 candidates for IAL.

15 It was done on a score ranking between 0 to
16 32. Then based on these scoring it was weighted based
17 on how the technical advisory committee felt that
18 these 8 criteria actually did rank.

19 What we will anticipate is potentially
20 releasing a recommendation of a score of 28 as being
21 candidate lands for IAL as a conservative candidacy.
22 And the reason why is because it encompasses every
23 single element. If you were going on a score from 1
24 to 4 and you were to look at the eight criteria 28
25 would be the least. There's a little bit of

1 everything in the land that's being designated.

2 So in developing our comments we already
3 started using the data tools that are online, and for
4 reference by the public at least at this point, to
5 help develop our recommendations today.

6 And although some of these lands may not
7 necessarily meet what we anticipate to be our
8 recommended IAL threshold of the 28, other areas --
9 those other areas that did score lower than 28 were
10 not from a, I guess, did not deviate far from that 28
11 threshold. So we're looking at lands between, let's
12 say, 20 to 27 as potentially in these areas.

13 So contextually we think that the lands are
14 deserving of some type of IAL protection even though
15 it may not necessarily meet what will be our initial
16 outlay of a County petition which encompasses lands at
17 28.

18 MR. TRASK: I'd like to, just for the
19 record, add a little bit. As per the OP's PowerPoint
20 presentation which the County thinks was very good,
21 the Office of Planning looked at old sugarcane lands
22 and sugarcane maps from that era as far as a base to
23 look at IAL designation.

24 And the reason why is because
25 theoretically, conceptually it's easy to see that

1 large, continuous, flat pieces of land to support
2 what's viewed as traditional agriculture.

3 But as the County went through its IAL
4 process with the community, people who are familiar
5 with Ag on Kaua'i now, what Ag on Kauai was in the
6 relatively recent past, and looking at in the record,
7 historical and prehistoric record, what Ag was in
8 ancient Hawai'i at a macro level, what did that look
9 like.

10 And it's a matter of fact that in ancient
11 Hawai'i, which I think is important to consider, the
12 most productive areas on this island were in the
13 Napali Coast, Kalalau Valley. Terraced areas that
14 were taro cultivation, et cetera. Through the
15 sugarcane era you got the ability to divert water to
16 these large acreages. You could support large
17 agricultural prospects.

18 However, we all know -- and I'm glad myself
19 I was lucky enough to get the tail end of sugar on
20 Kauai. Sugar is no longer viable. Pineapple is no
21 longer there. The question is: What does the future
22 of Ag look like on Kaua'i? That's a big question.
23 And that's a question that our planning department and
24 our community wrestle with.

25 So in looking at that, what does Ag look

1 like on Kauai? What does the future of Ag look like
2 in Hawaii? Again, is it sugar? Pineapple? Probably
3 not. We'd assert no. Is it biofuel? Maybe. Is it
4 coffee? Possibly.

5 But in looking at this we support this
6 Petition in general because it does identify what is a
7 possible future. The viability of these big, huge
8 agricultural tracts, especially with public opinion
9 being what it is with GMO, with seed corn and stuff
10 like that it's a very passionate, very emotional
11 topic.

12 I just want to provide that as a background
13 to see where the County is coming from. We looked at
14 everything I mean from pre-contact up until 50,
15 hundred years in the future. I'd just like to add
16 that. Thank you.

17 ACTING CHAIR HELLER: Thank you. Having
18 allowed that additional comment from the County. In
19 fairness to the Petitioner or OP has any other brief
20 statement they want to make I'll give you the chance.

21 MR. TABATA: We have nothing else to add.
22 That was very well done. Thank you.

23 VICE CHAIR HELLER: OP?

24 MR. YEE: Only to note that sugar -- one of
25 the things you have to remember about sugarcane it was

1 very based on mechanical harvesting. So if the
2 argument is it's biofuels, you're not going to be
3 relying on a labor intensive process.

4 That's one of reasons why we looked at
5 sugar because there was a link to their proposed
6 possibility of biofuels. So the steep ravines made a
7 difference.

8 So just to explain that was one of the
9 reasons why we put it out. We've no problem with
10 Kaua'i's decisions on what they want to do in coming
11 out with their plan. But I don't know. We haven't
12 seen, of course, how they figured out the numerical
13 system.

14 But we haven't seen anything in the record
15 today that would indicate that the lands that OP has
16 concerns about would be conducive to Native Hawaiian
17 practices or any special sort of non-commercial
18 practice that we're not aware of.

19 So we'd be happy, certainly, to look at any
20 new project that they have. In fact we'd be happy to
21 look at it again if they ever exercised the option to
22 use -- to actually commit to using the land to develop
23 biofuels. As I said we'd be more than happy to look
24 at it at that time.

25 But at this time we're not prepared to sort

1 of give our recommendation for approval just because
2 you can justify biofuels on so many different kinds of
3 lands with such poor soils, that if we simply take all
4 those lands and say we're going to preserve all of
5 them for future growth, we really are not
6 discriminating about much of any lands. So that's it.
7 Thank you.

8 ACTING CHAIR HELLER: Thank you.
9 Commissioners, what is your pleasure?

10 COMMISSIONER INOUYE: Mr. Chair, may I ask
11 a couple questions?

12 ACTING CHAIR HELLER: Sure.

13 COMMISSIONER INOUYE: Let me preface my
14 questions with what I have concerns about: Piecemeal
15 trying to designate IAL's. So I'm wondering if the
16 County has a preliminary plan. Or is this particular
17 piece of property within their preliminary plans of
18 what IAL should be?

19 MR. DAHILIG: Commissioner, the portions of
20 the property -- we don't have the maps actually with
21 us at this point, but based on scoring, portions of
22 the property would reach that 28 threshold. But from
23 a contextual standpoint our recommendation comes more
24 broad based in the context of also contiguousness of
25 the land, fractionalization has been a problem with

1 respect to large-scale agricultural operations.

2 Even with respect to our General Plan
3 designation is the area as Open, the type of
4 agriculture that's being proposed does not, I guess,
5 deviate from what would be an open characteristic.

6 Because a lot of what the biofuels entail
7 is grasslands, forestry and those types of things. So
8 we look at it from a mapping standpoint but we also
9 look at it from a contextual standpoint. We believe
10 that both can be harmonized pretty congruously with
11 the General Plan.

12 COMMISSIONER INOUIYE: Yes. So are you not
13 concerned that -- by the way, your 28 point system if
14 it's all over the place you don't want it piecemeal
15 all over the place, right? So you're going to have to
16 have pieces that connect.

17 MR. DAHILIG: Yes. At the end of the day
18 the difficulty in having lands scored on almost a
19 square inch by squares inch scale is that you are
20 going to have areas that are 27, and have areas that
21 are 28.

22 If we remain strict on saying "only areas
23 that are 28 shall be designated IAL" we're going to
24 end up with these very weird looking squiggly areas.
25 So the operational and contextual element of

1 understanding how the Ag operation works like access
2 to water, land management, common area maintenance
3 types of fees, these types of other elements should
4 also remain in the calculus.

5 But just a primer for the basis of our
6 comments that we -- that I wanted to share the 28
7 threshold as a means of explaining to the Commission
8 that the lands that are designated, although they may
9 not meet the 28 in our mind, there are other factors,
10 other elements that do support the contiguousness of
11 the Petition, what the area encompasses and the type
12 of crops that are being proposed.

13 So it's one factor but it doesn't
14 singularly, I guess, drive our recommendation for the
15 Petition.

16 COMMISSIONER INOUYE: Well explained. What
17 I'm concerned about is -- let me ask this: When do
18 you plan to have this General Plan come out for IAL
19 lands?

20 MR. DAHILIG: So where we are right now is
21 we have gotten clearance from our mayor to actually go
22 through a public release process where we will be
23 consulting with the Department of Agriculture as well
24 as the Office of Planning. We will also be doing a
25 public outreach with respect to here are the areas

1 that have been scored and here are our
2 recommendations.

3 And here also -- as you know the IAL
4 studies require some type of incentive discussion on
5 the County level. So those are the final elements
6 that we'll be presenting to the public as well as
7 potential Petition Areas.

8 We haven't pared down specifically what we
9 think are going to be the actual presentation to the
10 county council on the Petition Areas.

11 But the areas that encompass these two
12 parcels -- not parcels but these two areas as
13 earmarked by the Grove Farm Company, encompass some,
14 if not a majority of their concern -- the majority if
15 not some of their Petition Areas are areas that we
16 would be looking at for candidacy as well.

17 I cannot with specificity actually point
18 out where exactly but from a viable comparison there's
19 around overlap of what we anticipate.

20 COMMISSIONER INOUE: Right. You said you
21 got clearance to go out to the public with --

22 MR. DAHILIG: Yes.

23 COMMISSIONER INOUE: -- something.

24 MR. DAHILIG: Yes.

25 COMMISSIONER INOUE: Do you have a plan?

1 MR. DAHILIG: So the plan is at this point
2 we believe in the transparency --

3 COMMISSIONER INOUYE: I'm sorry. When I
4 say "plan" I mean a map, not a procedure. A map of
5 what you are thinking about, what the county's
6 thinking about.

7 MR. DAHILIG: We have both. We have a plan
8 for the plan. And we are anticipating to present
9 those maps for public review. And what it encompasses
10 is options for Petition candidacy. Some of them are
11 related to the contiguousness of land. So, for
12 instance, we're not looking at parcels that have 28
13 and are less than 15 areas.

14 So those are the types of options that
15 hopefully by more public vetting we can get a better
16 feel about with respect to what is ultimately our
17 county's petition to this august body.

18 COMMISSIONER INOUYE: Okay. So where are
19 you on getting those?

20 MR. DAHILIG: They will be part of that
21 package that gets released publicly. It should be
22 very -- within the next month to two months we should
23 have that publicly out there for people to see.

24 COMMISSIONER INOUYE: Okay. So you're --
25 not -- by supporting the Petitioner's

1 recommendation -- I haven't seen those maps that's why
2 I was asking whether there're maps. But is it gonna
3 put a crimp on what you're trying to present to the
4 public as your overall IAL plan for the County of
5 Kauai?

6 MR. DAHILIG: It should not. It should
7 not, Commissioner.

8 COMMISSIONER INOUYE: Thank you.

9 ACTING CHAIR HELLER: Commissioners?

10 COMMISSIONER CONTRADES: Mr. Chairman.

11 ACTING CHAIR HELLER: Yes.

12 COMMISSIONER CONTRADES: Mr. Chair, in the
13 matter of DR12-48 Grove Farm Company, Incorporated,
14 Hawai'i, I move to grant the Petition for Declaratory
15 Order to designate Important Agricultural Lands for
16 approximately 11,026.2 acres at Ha'upu and Lihu'e,
17 Kaua'i, Hawai'i.

18 COMMISSIONER TEVES: Second.

19 ACTING CHAIR HELLER: Thank you. It's been
20 moved and seconded. Any discussion?

21 COMMISSIONER McDONALD: I'd just like to
22 for the record state that I applaud the County of
23 Kaua'i for getting the IAL designations moving within
24 their county. I think they're definitely in the lead
25 what's been going on.

1 I know it's been difficult for this
2 Commission. A lot of time it's come up during our
3 proceedings as far as where the counties are at with
4 their IAL. For the record I'd like to applaud the
5 County of Kauai for their initiative.

6 ACTING CHAIR HELLER: Commissioners, any
7 other comments? Mr. Orodenger, would you call the
8 roll.

9 MR. ORODENKER: Thank you, Mr. Chair. The
10 motion is to grant the Petition. Commissioner
11 Contrades?

12 COMMISSIONER CONTRADES: Aye.

13 MR. ORODENKER: Commissioner Teves?

14 COMMISSIONER TEVES: Yes.

15 MR. ORODENKER: Commissioner Matsumura?

16 COMMISSIONER MATSUMURA: Yes.

17 MR. ORODENKER: Commissioner Biga?

18 COMMISSIONER BIGA: Yes.

19 MR. ORODENKER: Commissioner McDonald?

20 COMMISSIONER McDONALD: Yes.

21 MR. ORODENKER: Commissioner Makua is
22 excused. Chair Chock is excused. Commissioner
23 Inouye?

24 COMMISSIONER INOUE: Yes.

25 MR. ORODENKER: Chair Heller?

1 ACTING CHAIR HELLER: Yes.

2 MR. ORODENKER: Mr. Chair, the motion
3 passes unanimously.

4 ACTING CHAIR HELLER: Thank you. I believe
5 we have no further business so we are adjourned.
6 Thank you.

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9 (The proceedings were adjourned at 2:00 p.m.)

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C E R T I F I C A T E

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

That I was acting as court reporter in the foregoing LUC matter on the 8th day of February 2013;

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

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

DATED: This _____ day of _____ 2013

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