

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

LAND USE COMMISSION
STATE OF HAWAI'I

ACTION)
DR12-49 KUNIA LOA RIDGE FARMLANDS (O'ahu)
_____)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing at Honolulu Airport Conference Center, 400 Rodgers Blvd., Suite 700, Room #3, Honolulu, Hawai'i, commencing at 10:58 a.m. on April 5, 2013, pursuant to Notice.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

COMMISSIONERS:
KYLE J.K. CHOCK, CHAIRPERSON
RONALD HELLER, VICE CHAIR
CHAD McDONALD, VICE CHAIR
THOMAS CONTRADES
LANCE M. INOUYE
ERNEST MATSUMURA
NICHOLAS W. TEVES, JR.

EXECUTIVE OFFICER: DAN ORODENKER
CHIEF CLERK: RILEY HAKODA
STAFF PLANNER: BERT SARUWATARI

DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. DR12-49 KUNIA LOA RIDGE FARMLANDS

For the Petitioner: RAYMOND IWAMOTO, ESQ.
DEBBIE LUI-ANDERSON

For the County: TIM HATA, DPP
DAWN TAKEUCHI-APUNA, ESQ.
Deputy Corporation Counsel

For the State: BRYAN YEE, ESQ.
Deputy Attorney General
RODNEY FUNAKOSHI, OP

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESSES

PAGE

Earl Yamamoto

Direct Examination by Mr. Yee

18

RODNEY FUNAKOSHI

Direct Examination by Mr. Yee

31

1 CHAIRMAN CHOCK: (Gavel) Good morning,
2 everyone. This is a hearing and action meeting on
3 DR12-49 in the matter of the Petition of Kunia Loa
4 Ridge Farmlands for Declaratory Order to Designate
5 Important Agricultural Lands for approximately 854
6 acres at Kunia, O'ahu.

7 Will the Petitioner please identify
8 yourself for the record.

9 MR. IWAMOTO: My name is Ray Iwamoto. I'm
10 the attorney for the Kunia Loa Ridge Farmlands.

11 CHAIRMAN CHOCK: Good morning.

12 MR. IWAMOTO: And I have Debbie
13 Lui-Anderson who's also a representative for Kunia Loa
14 Ridge Farmlands. Good morning.

15 CHAIRMAN CHOCK: Good morning, Debbie.
16 Parties, will you identify yourselves.

17 MS. TAKEUCHI-APUNA: Good morning. Deputy
18 Corporation Counsel Dawn Takeuchi-Apuna on behalf of
19 the Department of Planning and Permitting. Here with
20 me today is Mr. Tim Hata.

21 MR. YEE: Good morning. Deputy Attorney
22 General Bryan Yee on behalf of the Office of Planning.
23 With me is Rodney Funakoshi from the Office of
24 Planning.

25 CHAIRMAN CHOCK: Good morning, everyone.

1 Let me please update the record. On December 31st,
2 2012 the Commission received Petitioner's Petition for
3 Declaratory Order to designate Important Ag Lands, and
4 Exhibits A through C-2.

5 On January 2, 2013 the Commission mailed
6 letters to DOA, OP and Kaua'i County requesting
7 comments on the Petition. On January 3rd, Petitioner
8 provided the Commission with a CD containing the
9 Petitioner's digital file.

10 On January 8th the Commission received
11 Petitioner's map for Kunia Loa Ridge Farmlands
12 Subdivision Plan Figure 10.

13 On January 25th the Commission mailed
14 errata Notice to DPP, DOA and OP regarding corrected
15 comment submittal date to February 6, 2012. On
16 February 15 the Commission received City and County of
17 Honolulu's comments to the Petition.

18 On February 25th the Commission received
19 OP's comments on the Petition. February 26 the
20 Commission received Department of Ag's comments.
21 February 27 the Commission mailed a March 21-22 LUC
22 meeting Notice to Petitioner and received Petitioner's
23 Request for Continuance 'til the April 5th, 2013 LUC
24 meeting.

25 On March 1 the Commission mailed a letter

1 acknowledging Petitioner's request for continuance.
2 On March 8th the Commission received Petitioner's
3 response letter to written comments regarding the
4 Petition.

5 And on March 27 the Commission mailed the
6 April 4 through 5, 2013 mailing notice to the parties
7 and the statewide O'ahu and Maui mailing lists.

8 Mr. Iwamoto, has our staff informed you of
9 the Commission's policy regarding reimbursement of
10 expense for hearings?

11 MR. IWAMOTO: Yes.

12 CHAIRMAN CHOCK: If you don't mind, do you
13 have a problem with that? Does your client?

14 MR. IWAMOTO: No.

15 CHAIRMAN CHOCK: Okay. Thank you very
16 much. Let me briefly describe our procedure for today
17 on this docket. I will first call for those
18 individuals desiring to provide public testimony to
19 identify themselves. All such individuals will be
20 called in turn to our witness box where they will be
21 sworn in prior to their testimony.

22 After completion of the public testimony
23 portion of the proceedings the Petitioner will make
24 its presentation. After the completion of the
25 Petitioner's presentation we will receive any public

1 comments from the City and County of Honolulu, Office
2 of Planning and the Department of Agriculture.
3 Thereafter the Commission will conduct its
4 deliberations and decide whether to deny this
5 Petition, grant it in whole or in part or schedule
6 the matter for hearing pursuant to section 15-15-103
7 of the LUC Rules.

8 The Chair would also like to note that from
9 time to time I'll be calling for short breaks.
10 Parties, any questions regarding our procedures for
11 today? Petitioner?

12 MR. IWAMOTO: No.

13 MR. YEE: Chair, the Office of Planning
14 will have two witnesses, Mr. Rodney Funakoshi from the
15 Office of Planning and Mr. Earl Yamamoto from the
16 Department of Agriculture. I guess my question's
17 would we be submitting these witnesses during our
18 presentation and comments?

19 CHAIRMAN CHOCK: Yes.

20 MR. YEE: Thank you.

21 CHAIRMAN CHOCK: Okay. Petitioner, Chair
22 intends to take the documents submitted by the
23 Department of Agriculture, Office of Planning and City
24 and County DPP and Petitioner's response as part of
25 the record on this matter. Do you have any

1 objections?

2 MR. IWAMOTO: I have no objection.

3 CHAIRMAN CHOCK: Okay. Thank you very
4 much. Those documents are officially a part of the
5 record. Is there anyone from the audience wishing to
6 provide public testimony on this matter? Please come
7 forward now. I don't believe we have anyone signed up
8 at this time but is there anyone in the audience who
9 would like to provide public testimony? Okay, having
10 seen none, Mr. Iwamoto are you prepared to proceed
11 with your presentation?

12 MR. IWAMOTO: Yes, I am.

13 CHAIRMAN CHOCK: Okay. Go ahead.

14 MR. IWAMOTO: Mr. Chairperson,
15 Commissioners, thank you for this opportunity for us
16 to first of all, host you at the site visit to our,
17 what will we call our property and for this
18 opportunity to make the presentation to you and to
19 submit our request for designation of Important
20 Agricultural Lands.

21 I think you recognized immediately that
22 this is a very unusual application from the standpoint
23 of so far you have approved the big boys. You've
24 approved the Alexander & Baldwins, the Castle &
25 Cookes, the Grove Farms and others.

1 This one here is a unique historic project
2 in Hawai'i because it is a project of small, little
3 farmers. It's the little guy that's coming before you
4 with this Petition asking that you designate their
5 property as Important Ag Land.

6 Attached to my materials is a lot activity
7 report which will show you all the names of our little
8 farmers. I don't have to read them to you here, but
9 these are people who are dedicated to agricultural use
10 of this property. These are people with a passion to
11 farm. These are people who went out, took out home
12 equity loans on their homes in order to come up with
13 the money to buy these farm lots. And they know that
14 this is strictly farming and it cannot have any
15 dwellings on them. They all know this. And they
16 don't have dwellings on them. They do have
17 agricultural buildings. As we drove by to me looks
18 like houses, but they are not houses.

19 Now, how did this come about? And what I
20 want to do is I know you have a criteria before you
21 can designate a property as Important Ag Land. I
22 don't have to go over that criteria. Instead I want
23 to tell you the story of Kunia Loa Ridge Farmlands how
24 this unique historic property has come about.

25 As you know the Constitution of the state

1 of Hawai'i as well as the state of Hawai'i after that
2 constitution has encouraged agricultural development,
3 has encouraged protecting agricultural lands. As you
4 know our plantations have closed and a lot of lands
5 have lane fallow including our property. It's been
6 fallow for a long, long time.

7 So what has happened is the Act passed, I
8 mean the state Legislature passed Act 271. That
9 incorporated Act 271 into the Hawaii Revised Statutes
10 that addresses the zoning for state Ag lands.

11 What Act 271 did for us was to say that you
12 can go out and you can subdivide Ag zoned lands
13 without getting a city and county subdivision
14 approval. You can do this. Your lots will be, will
15 be valid lots for title purposes and financing
16 purposes provided -- provided that there can be no
17 dwellings, and provided that you record restrictive
18 covenants saying that there can be no dwellings.
19 We've done that.

20 Now, when my clients first came to me with
21 this Project this land was Land Court land. They
22 bought it from Campbell as Land Court land. So I said
23 to them: Even though the state law says you can
24 subdivide without getting city and county subdivision
25 approval because it's Land Court land, you're not

1 going to be able to convey title unless you get Land
2 Court approval. That means we had to apply for
3 subdivision approval, which we did. We submitted our
4 application for subdivision approval.

5 Now, the city and county of Honolulu, we
6 appeared before Bob Sumitomo who had previously been
7 the subdivision chair, but at this point in time he
8 was deputy for the Department of Permitting and
9 Planning. So we met with Bob and with David Tanoue.

10 We told him our story. We told him our
11 story how we are little farmers who are trying to own
12 our own lots and farm our own lots, and we need help
13 because we don't have any electricity. We don't have
14 any potable water. We're not going to have sidewalks.
15 We're not going to have streets and roads. We're just
16 going to have cane haul roads.

17 And lo and behold Sumitomo and Tanoue
18 decided that they would support us. In fact Bob went
19 before the city and county Ag Task Force. And he has
20 testified that he wants to support this Project. And
21 so Bob came up with a solution as to how we can do
22 this even though we don't meet all the city and county
23 subdivision standards. I won't go into that solution
24 because it's moot right now.

25 But what happened is Bob, of course, cannot

1 tell the state agencies that they should support us.
2 So what happened was we had to go to the state DOT and
3 all the agencies that received our application for
4 subdivision. They all commented and we were fine
5 because we were fine in terms of the Department of
6 Health and everybody else except for the Department of
7 Transportation.

8 The Department of Transportation wanted us
9 to improve Kunia Road. Right-turn lanes, left-turn
10 lanes acceleration/deceleration, it would have killed
11 the Project. We were so depressed we left and didn't
12 know what to do. What happened? The State came to
13 our help again. The state Legislature passed a law
14 whereby you can deregister Land Court land. When we
15 saw this law we said we're going to deregister this
16 land from Land Court.

17 My application to deregister was the first
18 one filed. It wasn't the first one approved, but it
19 was the first one filed. We got it approved. Our
20 property is no longer Land Court land. As a result we
21 went to see Tanoue and Sumitomo. And we said, "We're
22 going to just let our subdivision application lapse.
23 We don't need city and county subdivision approval.
24 We're going to proceed with a subdivision of our
25 854 acres into 90 something lots, minimum 5 acres

1 sizes," which you saw as you drove around. So that's
2 what saved our Project. It was the fact that the
3 State really encourages agricultural development.

4 So now we're here to tell you our story and
5 to ask you for your support because this is not a big
6 budget Project. It's low economics by passionate,
7 small farmers who are, who don't have the big bucks
8 like the big boys that you have.

9 And I understand that there are some
10 concerns that the Office of Planning will raise. And
11 I think one of the concerns -- I hope I've satisfied
12 them on the concerns about the fact that we have built
13 into this Project that there can be no dwellings. I
14 hope that's satisfied. The other concern is the
15 amount of water that's available.

16 Yesterday I talked to our, the Kunia Water
17 Association people that services and provides us our
18 water, and got a letter from them that essentially
19 says that the water supply is 5 million gallons. So
20 far all of the users from this water system have only
21 been using 47 percent at the maximum. Any surplus is
22 available to us to use even if it exceeds our
23 allocation. And to me that's very important.

24 Now, diversified agriculture and how much
25 water. There are artificial standards that you apply

1 to water. This is just people's opinions. And it's
2 not clear because it really depends on what crop. You
3 can come up with one standard and say diversified
4 agriculture requires X gallons. Well, diversified
5 agriculture means many different types of crops. So
6 it really, really depends. We have aquaculture out
7 there. We have taro.

8 I think there's enough grayness in this
9 water issue to allow you Commissioners to designate
10 this property as Important Agricultural Lands
11 especially because the law says that no property has
12 to satisfy each and every one of the criteria which
13 you know, but I just had to read it into the record.

14 So we're here to answer any questions.
15 That is our story. I think it's a very important
16 agriculture project. I don't think you've seen one
17 before in Hawai'i where you have all these little guys
18 coming up with the money to make this possible.
19 There's no construction loan. The money comes from
20 these little guys.

21 All the construction of the reservoirs ad
22 the roads, and the waterlines that you saw there's no
23 construction loans. It comes from these little guys.

24 So on behalf of these little guys some of
25 'em -- lot of 'em are South East Asians. Some of 'em

1 are Hawaiians. Some of 'em are religious
2 organizations. The Church of Samoa just recently
3 ordered 500 taro plants, ordered, that they're going
4 to put on their parcel that they ordered. So I'm
5 really here as the attorney for Kunia Loa Ridge
6 Farmlands which all of these small farmers own.
7 They're the owners of the Petition Area. They're not
8 our big companies.

9 So I'm here to say that we think we have
10 met all of the criteria, well most of it, and we
11 request that you grant us approval for the
12 designation. Thank you.

13 CHAIRMAN CHOCK: Thank you, Mr. Iwamoto.
14 County, do you have any presentation?

15 MS. TAKEUCHI-APUNA: Yes, we do. DPP has
16 reviewed the subject Petition and has no objection.
17 DPP finds that the designation of the 854-acre site at
18 IAL is consistent with the objectives and guidelines
19 of the City's General Plan and Central O'ahu
20 Sustainable Communities Plan to preserve agricultural
21 lands.

22 DPP is aware that there's opposition by
23 other agencies due to the water issue. But DPP feels
24 that it's difficult to oppose this Petition just on
25 that issue. Water is just one of the 8 criteria for

1 the LUC to weigh. We look at the fact that the area
2 is already in the Agricultural District. It's
3 historically been used for agriculture. Additionally,
4 as the county begins to map IAL, it may be that likely
5 that this land would be designated IAL, if not through
6 this Petition.

7 DPP as offered comments on the Petition
8 that the Petitioner has addressed in correspondence to
9 the Commission. Based on Petitioner's feedback DPP
10 has the following additional comments and questions.
11 The TMK that is listed as 9-2-004:5 portion does not
12 match the records for the Petition Area. And we're
13 wondering why there's this discrepancy.

14 It is not clear if there is an adequate
15 supply of water. We would like the Petitioner to show
16 the daily demand for water in the Petition Area and
17 what would be the supply including sources and amounts
18 of water.

19 We would like to know if there are any
20 plans to add electrical infrastructure to the Petition
21 Area. And Petitioner has provided a letter sent to
22 then acting DPP director Gerald Sumida requesting DPP
23 to first consent with his client prior to issuing any
24 building permits for construction on the Petition
25 Area. However, DPP is not required or inclined to

1 follow this request.

2 And lastly, seeing how the Petitioner is
3 waiving all rights to credits under Act 183 and is not
4 Petitioning for IAL as part of the reclassification,
5 we are wondering what is the motivation for
6 designating these lands IAL. That's it.

7 CHAIRMAN CHOCK: Thank you, County. State?

8 MR. YEE: Before I begin I was just
9 wondering. Mr. Iwamoto, you referenced a letter. You
10 did send us a letter dated April 3rd, 2013 from Second
11 City Property Management. Is that the one you're
12 referring to?

13 MR. IWAMOTO: Yes.

14 MR. YEE: For the Commission's information
15 the Office of Planning did get this letter. I don't
16 think it was sent to the Land Use Commission though.

17 MR. IWAMOTO: Yes, it was.

18 MR. YEE: Oh, it was.

19 MR. IWAMOTO: Yes.

20 MR. YEE: Okay. So I just wanted to know
21 if that was part of the record.

22 CHAIRMAN CHOCK: What date, Mr. Iwamoto,
23 was that letter submitted?

24 MR. IWAMOTO: Yesterday.

25 MR. YEE: Otherwise I was going to ask if

1 you wanted to submit. But if you already have Office
2 of Planning has no objection. In that case then we
3 would like to submit Mr. Earl Yamamoto first as a
4 witness in this case.

5 CHAIRMAN CHOCK: Proceed.

6 EARL YAMAMOTO

7 being first duly sworn to tell the truth, was examined
8 and testified as follows:

9 THE WITNESS: I do.

10 CHAIRMAN CHOCK: Your name and address.

11 THE WITNESS: My name's Earl Yamamoto.

12 Address is 1428 South King Street, Honolulu. I'm the
13 staff planner for the Department of Agriculture.

14 DIRECT EXAMINATION

15 BY MR. YEE:

16 Mr. Yamamoto, are you -- I'm sorry, please
17 finish. I was going to ask you a beginning question.

18 A That's it, I believe.

19 Q Okay. Are you here representing the
20 Department of Agriculture today?

21 A Yes, I am.

22 Q And has the Department of Agriculture
23 submitted comments on this Petition?

24 A Yes, we have.

25 Q Would you please summarize your testimony

1 for this Commission.

2 A Our position is that we -- let me read it
3 rather than just wing it. "The Petition Area in its
4 entirety does not merit designation as Important
5 Agricultural Lands because the quantity of irrigation
6 water available to the Petition site is, in our
7 opinion, insufficient to carry out the proposed
8 agricultural uses." That summarizes the entirety,
9 well, that's basically our recommendation. Shall I go
10 over...

11 Q What's the basis for the -- yes. If you
12 could briefly summarize the basis for your
13 recommendation.

14 A The biggest concern, and I've heard it also
15 from the City, is the quantity of irrigation water
16 committed to the site or in other words allocated by
17 the Kunia Water Association. That figure is
18 714,000-gallons per day. And the total land area that
19 is proposed to be put into agricultural use is
20 478 acres. That turns out to be about thousand five
21 hundred -- 350,500 gallons per acre -- planted acre
22 per day.

23 The Department finds that woefully
24 inadequate to meet or woefully adequate to meet the
25 moisture needs of crops proposed in the, at the Kunia

1 Loa Petition site. It will not lead to optimal plant
2 growth. Yields would be -- I can't imagine what the
3 impact it would have on crop yields. That we, the
4 Department, has estimated for its, our own Kunia
5 Agricultural Park which is located about 2 miles south
6 on Kunia Road from the Petition site.

7 We estimated the daily per acre water
8 requirements to be about 3700 gallons per acre per day
9 at our agricultural park site. And compare that to
10 the 1,500 gallons would be available from the water
11 allocation from Kunia Water Association to the
12 Petition site then you'd be able to see the
13 difference.

14 I understand that there are or will be soon
15 5 million gallons of water, of reservoir capacity in
16 three reservoirs. However, if the water drawn out and
17 supplied to the Petition Area is consumed completely
18 by the irrigation requirements of the farming, the
19 farmers located on the Petition site, there wouldn't
20 be any need for the reservoirs.

21 So the reservoirs would be pretty much dry
22 which over a period of a year that would not be good.
23 As you can imagine in an area like Kunia, which is
24 pretty dry as indicated by the dust flying about, the
25 irrigation requirements would vary greatly over a

1 period of a year.

2 In the case of our Kunia Ag Park there
3 could be months, maybe December, January -- December,
4 January and February where irrigation -- supplemental
5 irrigation would not be needed. But the other months
6 of the year would require additional irrigation.
7 Critical to, again to continue plant growth without
8 stunting plants, especially vegetable crops as is
9 proposed in the Petition Area.

10 As to the amount of acreage that is
11 planted, well, I was kind of disappointed not seeing
12 more planted acreage on the site, at least the parts
13 we've seen. Again, that may be a function of the lack
14 of irrigation water.

15 And for the farmers that, the people that
16 did purchase these lots, it being a situation where,
17 where as you heard from Mr. Iwamoto, if you borrowed
18 money or is family money that was used you would
19 expect that the income generated from these farms
20 would be sought immediately to recover the costs of
21 purchase of the commitment, the shares, whatever it is
22 into the subject area. So I was disappointed in not
23 seeing more intensive agriculture use.

24 Q I have a few -- are you finished?

25 A Yes.

1 Q I noticed in the Petition that they also
2 have a description of the ALISH classification of the
3 property. The Commission has looked at the LSB
4 A,B,C,D,E classifications before but we don't always
5 look at the ALISH classifications. I was going to go
6 through them so you can explain what those
7 classifications meant. I notice that something over
8 8 acres is located in prime, is classified as ALISH
9 Prime, what does that mean?

10 A ALISH, ALISH meaning the Agricultural Lands
11 of Importance to the state of Hawai'i. ALISH prime,
12 it represents oftentimes the existence of land area
13 that's cultivated and irrigated. In this particular
14 case it could have been on the southern section maybe
15 part of the sugar, some of the O'ahu Sugar fields that
16 intrude into what appears to be part of the site. So
17 that would be the ALISH Prime.

18 Q Now, almost 124 acres are ALISH Unique?
19 What does that mean?

20 A ALISH Unique that's usually crop and site
21 specific. For instance, in that particular area Del
22 Monte cultivated pineapple on it. It was unirrigated
23 pineapple, dryland pineapple. Pineapple being a very
24 low water consumptive crop. That is more than likely
25 the case with that 124 acres. It was unirrigated

1 pineapple cultivated by Del Monte.

2 Q A little over 351 acres is unclassified.
3 What does that mean?

4 A Unclassified means it did not meet the
5 standards of the other three categories within the
6 ALISH soil index. It has to be pretty, pretty bad.
7 It's not conducive to agricultural use by virtue of
8 topography, stoniness, other characteristics of the
9 soil that will really limit its utility for
10 agriculture purposes.

11 Q And a little over 371 acres is ALISH
12 'other'. What does Other mean?

13 A The Other important category of ALISH
14 indicates that it has characteristics -- generally has
15 characteristics that would indicate its probable use
16 for agricultural production, but it lacks something.
17 In this particular case what's lacking is irrigation.

18 Q Now, moving on to a different question.
19 Mr. Yamamoto had talked about the subdivision for the
20 property. With respect to individual farmers and
21 their ability to finance capital improvements, what's
22 the importance of having a subdivided lot?

23 A Well, a formal subdivided lot like by the
24 City Department of Planning and Permitting that
25 whereby the property is described in metes and bounds.

1 It's a physically defined area. It's important in so
2 far as for agricultural loans. I'm not an
3 agricultural loan expert by any means. So I'm just
4 kind of playing it by ear here. It is a means by
5 which the property can be determined whether or not
6 it's mortgageable which is important in loan
7 consideration. Also as important, maybe even more
8 important and preceding consideration of the
9 mortgageability of a property, is whether or not it
10 has water.

11 Because if you have a property, it's
12 supposed to be a farm, you go to a formal lending
13 institution and you don't have water for it, or you
14 have insufficient water, then you aren't going to be
15 able to undertake the primary economic purpose of the
16 endeavor which is farming, growing crops.

17 So that precedes the agricultural loan
18 going through the estimation of the mortgageability,
19 the collateral of the property.

20 Q Based on your understanding is the Petition
21 Area subdivided?

22 A From what I've -- from what I've read the
23 Petition Area after the, whatever happened prior to
24 the creation of this 854-acre lot, since that point in
25 time I believe it's not, it is not subdivided in the

1 manner that I'm accustomed to understanding what
2 subdivision is from the City.

3 MR. YEE: Thank you. I have nothing
4 further.

5 CHAIRMAN CHOCK: Commissioners, any
6 questions for this witness? Parties, any questions
7 for this witness? Petitioner?

8 MR. IWAMOTO: I have no questions. I have
9 some comments.

10 CHAIRMAN CHOCK: Maybe we can save it for
11 rebuttal. Commissioner Inouye.

12 COMMISSIONER INOUE: Thank you. Thank
13 you, Chair. Thank you for your testimony. I just
14 have a general question actually. Act 183 kind of put
15 the Department of Agriculture in charge to come up
16 with an overall state plan and try to make it viable
17 for farmers to farm.

18 Was that done, it says regular session
19 2007? If you can answer. I'm not sure you're the
20 right person to ask.

21 THE WITNESS: I heard certain things Act
22 182 2005 which established the Important Agricultural
23 Lands Act.

24 COMMISSIONER INOUE: Right. Section 9.

25 THE WITNESS: Section 9. It is, let's see,

1 that includes, I believe, the discussion on the
2 incentives?

3 COMMISSIONER INOUYE: That's correct.

4 THE WITNESS: The agricultural incentives.
5 I believe there are about seven incentives. Allowance
6 of farm dwellings. This is not within the Act itself,
7 not 183, but it appeared about three years later in
8 the Important Agricultural Lands Incentives Act 266 or
9 something like that. I forget exactly.

10 But all the, all the incentives were
11 identified on that part including the Important
12 Agricultural Lands Qualified Agricultural Cost Tax
13 Credit which I believe is at the heart of many of the
14 Petitioners in the past for voluntary IAL. The
15 primary reason for getting IAL other than to prevent
16 counties from taking additional land.

17 So, yes, I understand that. Our
18 responsibility's within some of the incentives. But
19 we don't -- there's no -- we have no hearing kind of
20 responsibility trying to go out and encourage if
21 that's what you're asking, Commissioner, as to our
22 responsibility as a department?

23 COMMISSIONER INOUYE: No. I just wanted to
24 know if it was done. Is that the Act 283 session laws
25 2008?

1 THE WITNESS: Yes, that's correct. 2008,
2 that's correct.

3 COMMISSIONER INOUYE: Okay. Based on what
4 came out of it do you consider this particular
5 property one of those that could help farmers to -- or
6 has incentives so that they could make a viable
7 business out of farming?

8 THE WITNESS: I certainly can't speak to
9 viability. That's up to the individual and their
10 capacity of knowledge, experience. Even before that,
11 of course, if you don't have all the nuts and bolts in
12 place certainly nothing can run. In this particular
13 place I believe, I believe water, irrigation water.
14 The sufficiency is required to meet -- to sustain
15 agricultural production.

16 If you have a lot of water at one time and
17 you have practically no water at another time, you
18 know, that really doesn't work out with crops, many
19 crops, especially truck crops, particularly vegetables
20 and melons. It's catastrophic when you don't have,
21 like, 2 or 3 weeks of water or just, just short.
22 You're short. You're continually starving the crops
23 for water. That's really important.

24 So before anyone would consider undertaking
25 farming where -- farming, whether it be a farmer or

1 somebody that would like to pursue that avocation,
2 that land, security of land by fee title or some
3 lesser form of possession, lease, license, permit,
4 right of entry, that and availability of irrigation
5 water is fundamental to agriculture. And everything
6 else can follow thereafter. Without those two things
7 together at the beginning not much can happen.

8 COMMISSIONER INOUYE: Thank you very much.
9 Appreciate it.

10 THE WITNESS: You're welcome.

11 CHAIRMAN CHOCK: Commissioner McDonald.

12 COMMISSIONER McDONALD: Mr. Yamamoto, thank
13 you for your testimony. What I'm hearing is a big
14 disparity in estimating water demands. You had
15 mentioned that the Kunia Ag Park Department of Ag has
16 estimated 3700 gallon per day per acre estimate.

17 THE WITNESS: Yes.

18 COMMISSIONER McDONALD: Whereas the
19 Petitioner, based on the diversified agricultural
20 portion, 478 acres, you come up with 1500 gallons per
21 acre per day. What's the basis of your 3700 quantity
22 demand?

23 THE WITNESS: I didn't go into all the
24 engineering stuff. What I did was just take that last
25 table which, which showed, they call it a rolling

1 average, which also didn't really get into and I'm
2 trying to understand myself. But I didn't look at the
3 crops that were being proposed. If they look at
4 reservoir loss, evapotranspiration which is
5 evaporation of water as it's being applied to the land
6 is also taken into consideration as part of the
7 3700 gallons. Something called line loss as well as
8 the fluctuations of irrigation demand per acre over
9 the course of a year.

10 So if you look at that table which I
11 believe was included as part of some later
12 correspondence that we had, I believe it was February
13 20 -- not maybe in late February, early March that
14 had included a table Exhibit D at the back end of the
15 document. (document handed to witness)

16 Thank you, Rodney. It's on our April 2
17 letter to the Land Use Commission Exhibit D. I'm
18 sorry if none of you have it. But anyway, what this
19 describes is the water budget over an entire year.
20 And it looks at each month.

21 COMMISSIONER McDONALD: The water budget
22 for the Kunia Ag Park.

23 THE WITNESS: For the Kunia Ag Park. Then
24 on the far right-hand side of this table you see the
25 demand per acre per day for each month. Again it's an

1 average. But then you see it ranges from zero, no
2 need irrigation. That's December, January. Then the
3 other months it varies. It goes up as high as
4 6,700 gallons per acre per day to as little as
5 nothing. There's a wash. There's enough rainfall in
6 those months.

7 That's how the average, the 3700 gallons
8 per acre per day, was determined. And the crop's
9 quite similar again also on that same table.

10 COMMISSIONER McDONALD: Okay. I was just
11 trying to get a feel as far as where that disparity
12 between 1500 and 3700.

13 THE WITNESS: Yeah. I was checking around.
14 For pineapple it's interesting. The pineapple about a
15 thousand, thousand 100 gallons per acre per day under
16 mulch is sufficient for pineapple. And we all know
17 that pineapple's about the driest crop. It's the
18 least water-consumptive crop there is. So that kind
19 of gives an idea.

20 Seed corn, which I believe was one of the
21 crops proposed for the Petition Area, a figure I got,
22 again this is from the University of Hawai'i College
23 of Tropical Agriculture, it's about 9,600 gallons per
24 acre per day.

25 COMMISSIONER McDONALD: 9,000.

1 THE WITNESS: 9,600. It's equivalent to
2 sugar cane. During the furrow irrigation days --
3 furrow irrigation means you just, you open up the
4 sluice gates and just let the water run down.
5 10,000 gallons per acre per day was the standard at
6 least from what I recall small kid time.

7 COMMISSIONER McDONALD: Thank you.

8 THE WITNESS: You're welcome.

9 CHAIRMAN CHOCK: Commissioners, any other
10 questions for this witness? Thank you very much.

11 THE WITNESS: Thank you.

12 MR. YEE: Our second witness is Mr. Rodney
13 Funakoshi.

14 CHAIRMAN CHOCK: Good morning, Rodney.

15 RODNEY FUNAKOSHI

16 being first duly sworn to tell the truth, was examined
17 and testified as follows:

18 THE WITNESS: Yes.

19 CHAIRMAN CHOCK: Name and address please.

20 THE WITNESS: Rodney Funakoshi. Office of
21 Planning. I forgot our address, but it's on Beretania
22 Street.

23 DIRECT EXAMINATION

24 BY MR. YEE:

25 Q Mr. Funakoshi, do you represent the Office

1 of Planning in this matter?

2 A Yes.

3 Q And was it under your direction that the
4 letters from the Office of Planning were sent to the
5 Land Use Commission?

6 A Yes.

7 Q Could you please summarize your testimony
8 today.

9 A Okay. The Office of Planning is a
10 supporter of agriculture for self-sufficiency, food
11 security. We also appreciate the Petitioner's
12 voluntary designation of IAL. And we support the
13 intent to make the small agricultural lots available
14 to farmers.

15 However, for this Petition we have several
16 major issues with the IAL designation. These relate
17 to water availability, soil quality and the potential
18 allowance for farm dwellings.

19 For water availability of the eight
20 standards and criteria for the identification of IAL,
21 in HRS 205-44 water availability is one of the most
22 important. OP is concerned that there is insufficient
23 water available to support the requested IAL acreage
24 designation.

25 Soil quality: The Petition Area generally

1 has poor soil with areas of steep terrain and gulches.
2 Under the Land Study Bureau ratings 72 percent of the
3 lands are rated D and E. Under ALISH 59 percent are
4 in ALISH designations. I believe that, as Mr.
5 Yamamoto pointed out, this is largely due to the soil
6 quality but lack of irrigation.

7 And in the third issue relates to the
8 allowance of farm dwellings. Farms dwellings aren't
9 allowed on IAL lands pursuant to HRS 205-45.5. Given
10 the small lot subdivision and limited water viability
11 OP is concerned that the potential establishment of a
12 gentlemen estates residential subdivision in this
13 area.

14 The Petitioner indicates there are clear
15 CCR prohibitions on dwellings and that Act 271 SLH
16 2006 allows the subdivision of land for mortgaging
17 purposes exempt from county subdivision standards.
18 But this provision, this statute also provides that
19 dwellings are specifically prohibited.

20 OP acknowledges this but remains concerned
21 in the event a county subdivision approval special
22 permit or use change is pursued.

23 Like to review the IAL, the 8 IAL criteria.
24 I would note, though, that not -- again, not every
25 standard and criteria needs to be met, but that

1 importance is in terms of weighing the standards and
2 criteria with each other to meet the constitutionally
3 mandated purposes of IAL.

4 And the constitutionally mandated purpose
5 again is that the State shall conserve and protect
6 agriculture land, promote diversified agriculture,
7 increase agricultural self-sufficiency and assure the
8 availability of agriculturally suitable lands.

9 Our first IAL criteria relates to lands
10 currently used for agricultural production.

11 Petitioner indicates that 378 acres or 44 percent are
12 currently used for agriculture under long-term leases.

13 2. Soil and growing conditions supporting
14 crop production. The area was previously used for
15 sugarcane and pineapple although the majority of lands
16 are rated C, D or E. Agricultural productivity rating
17 systems: 59 percent are in the ALISH category. There
18 is only 7 percent A and B soils; 21 percent C and
19 72 percent D and E rated.

20 4. Traditional agricultural uses or unique
21 crops. Petitioner indicates lots could include
22 traditional Hawaiian agricultural uses and plants.

23 5. Sufficient water to support
24 agricultural production. Petitioner indicates 0.7
25 mgd allocation is available. This is sufficient to

1 support only 193 acres based on 3,700 gallons per day
2 per acre. To supply 478 acres, 1.77 million gallons
3 per day is required.

4 6. Consistency with county plans. The
5 site has Ag 1 zoning. Sustainable Community Plan
6 designations for agriculture and preservation which
7 are consistent.

8 7. Critical land mass important to
9 productivity. The Petition Area is fragmented due to
10 steep terrain, gulches and poor soil.

11 And, finally, 8. Near support
12 infrastructure. Kunia Road is a major accessway to
13 roads, markets, harbor and power.

14 So in conclusion and our recommendations
15 are as follows: OP recommends denial of the Petition
16 due to inadequate assurance of water supply which we
17 believe to be a critical factor in the designation of
18 IAL.

19 OP would be supportive of a new or amended
20 Petition in which Petitioner either obtains an
21 increase in its water supply allocation or it
22 delineates a smaller Petition Area, say, up to
23 193 acres which currently has assurances of water
24 supply.

25 Finally, should the Land Use Commission

1 approve the Petition OP recommends a condition
2 expressly prohibiting dwellings that are not used in
3 connection with a farm. And that special permits
4 shall not be allowed for residential uses so long as
5 the property is in IAL. That concludes the testimony.

6 MR. YEE: I have no further questions.

7 CHAIRMAN CHOCK: Parties, any questions for
8 this witness?

9 MR. IWAMOTO: No, I have none.

10 CHAIRMAN CHOCK: County? Commissioners,
11 any questions for this witness? Okay. Thank you,
12 Rodney.

13 MR. YEE: We'll present our comments at
14 this time.

15 CHAIRMAN CHOCK: Go ahead.

16 MR. YEE: I've often told our planners that
17 the difference between a planner and an attorney: The
18 planner starts with all of the facts, every single
19 analysis then reaches a conclusion. The attorneys
20 start with our conclusion and we work our way back.
21 (laughter) So let me start with our conclusion.

22 The Office of Planning recommends denial of
23 this Petition as it's currently framed because of the
24 inadequate supply of water which is the primary issue.
25 We would be supportive, however, of a new Petition in

1 which they either obtain an increase in their water
2 allocation or in which they decrease the amount of
3 land which had access to water.

4 However, if you should approve this
5 Petition we do recommend a condition in addition to
6 the waiver of 15 percent. Also a condition
7 prohibiting residential dwellings as long as the
8 property is in IAL. And let me just quickly go over
9 or summarize the three primary issues which is water,
10 the soil quality, and then our concern about farm
11 dwellings or residential units in this area.

12 The Office of Planning raised water as a
13 concern because the water allocation was too small to
14 support such large acreages. There's a significant
15 difference between water allocation and the acreage
16 requested.

17 Now, they did submit a letter to us dated
18 April 3rd in which they did -- they looked at 8 months
19 of water use from the Kunia Water Association. Let me
20 take one step back.

21 The land is serviced by a private water
22 company. And every party to that water company has an
23 allocation of a certain amount of water. So the
24 Petition described how much water was available to it
25 under the water allocation.

1 What the April 3rd letter tells us is that
2 if everybody else doesn't use their water then the
3 amount of unused allocation is available to anyone
4 else who wants to use it. And they obviously would
5 pay for the additional water. So what they have --
6 argument they've made to us is: Well, currently the
7 amount of water that's unused is large enough to
8 support this particular Petition.

9 The Office of Planning's concern, however,
10 is but each of the members of the Water Association
11 have a certain allocation. They have the right to
12 that water allocation. So where these particular
13 Petitioners have not, do not have a right to the
14 water, that excess water supply can be gone at some
15 point in the future when whomever these members of the
16 Kunia Water Association decide to use up their water
17 allocations for whatever purpose it is.

18 And, you know, there's always, frankly, a
19 constant fear or concern that these irrigation water
20 supplies can always be treated and used for other
21 purposes other than agriculture. So there may be
22 future intention by these other members of the Kunia
23 Water Association.

24 The solution obviously would have been
25 simple. That is if there's such a large excess of

1 unused water allocation, get an option to purchase the
2 other water allocation. Then come to the Commission
3 and say, "If I can get this land into IAL I have the
4 option to purchase all of this water that no one else
5 is using. And I will then -- I will exercise the
6 option and I will then have enough water to assure
7 that this land can be used for agricultural purposes.

8 And if they did that the Office of Planning
9 would be supportive, I think, of the Petition which is
10 the reason why we said if they come back with a new
11 Petition with an adequate water supply we would be
12 supportive.

13 A couple quick comments about the letter
14 they sent. We also noted just by the by that the
15 eight months they submitted to us in this letter does
16 not include March, April, May, June and July which
17 includes the summer months.

18 Now, I know that in their letter they said
19 October through November is typically the highest
20 water use. I will say if you look at the numbers for
21 the Kunia Ag Park it's clearly the summer months that
22 have the highest water use, which is the more logical
23 outcome to us is the summer months tend to be the
24 driest, at least if your purpose is irrigation for
25 agriculture.

1 The second issue is involving the lands and
2 soil quality. The interrelationship between soil
3 quality and water is a complicated one. So the amount
4 of A and B lands is very small. The majority of the
5 land, 72 percent, are rated D or E. But, you know,
6 you have to acknowledge that if you have water some of
7 these lands can be productive.

8 So we also looked at the ALISH
9 classifications. But when we looked at the ALISH
10 classifications, as Mr. Yamamoto was discussing, the
11 Unique lands were sugarcane which has a low water
12 consumption and is obviously not the proposed crop.
13 The Other indicates that there's something missing
14 which we would guess is mostly water.

15 Then of course a large amount is
16 unclassified. So although it's true 59 percent of the
17 lands have an ALISH classification that was not
18 persuasive to us that the soil quality given the
19 inter-relationship with the water supply was an
20 adequate justification for this Petition into IAL.

21 Finally, with respect to homes
22 Mr. Iwamoto's correct in noting there is a CC&R
23 prohibiting residential dwellings. But we did look at
24 the CC&R's. The original CC&R's said that they can be
25 changed sort of almost at any time.

1 The second CC&R's says they can never be
2 changed unless there's a change in the land use
3 classification. But then that's the first amended
4 CC&R's. But then the second amended CC&R's actually
5 changes that and says: Well, you can change the
6 CC&R's if there's a change in the land use
7 classification or in a manner which is consistent with
8 the laws of the state which allows residential
9 dwellings, allows farm dwellings on Ag lands.

10 So we were not -- we did not receive
11 comfort from the CC&R's in its latest iteration. Now,
12 it is now also correct -- Mr. Iwamoto was also correct
13 that if they went through a particular process of
14 subdivision that that particular process of
15 subdivision does not allow for residential dwellings
16 but they just haven't done that. And you just don't
17 know what's going to happen in the future.

18 So if you did reclassify this the Office of
19 Planning would recommend a provision specifically
20 prohibiting residential dwellings while the land is in
21 IAL. If they ever come back and take the land out of
22 IAL obviously that restriction would go away.

23 In summary, the Office of Planning has
24 reviewed this. I think they made -- it is true that
25 we would be supportive of the concept of an

1 agricultural park for small farmers. We understand
2 some of the restraints that they are under. But under
3 the criteria established by the Legislature it simply
4 doesn't meet the requirements given the way they have
5 framed the Petition, given the size of the 800+ acres
6 for this Petition Area and the very low water
7 allocation they have or guarantee of water they have
8 at this time. Thank you.

9 CHAIRMAN CHOCK: Thank you, State.
10 Petitioner, would you like to make any rebuttal
11 comments at this time? Mr. Iwamoto.

12 MR. IWAMOTO: I have only a few on the
13 dwellings issues with the DPP is here. As far as the
14 DPP is concerned we just have a single lot. And only
15 two dwellings are allowed on the single lot.

16 In fact, the City was even thinking of
17 changing it to one. That's for the whole 854 acres.
18 So no matter what people are saying here, even if
19 these guys tried they're not going to get the
20 dwellings.

21 We've tried to set it up so that they're
22 not going to have any dwellings. And we sold it to
23 them on that basis and on that understanding. They
24 understand that.

25 So to me I think we come down to the

1 question of adequacy of water. And one point I would
2 like to make is that the beauty of having small farms,
3 5-acre lots, you have the flexibility, each farmer has
4 the flexibility to decide what type of diversified
5 crop he's going to use. We have a lot of
6 aquaponics-type people out there. And the amount of
7 water they need is very little. The amount of water
8 really depends on what crop you choose. If you're a
9 small farmer you have flexibility to change your
10 crops. You can do that.

11 Now, I know you have to pay a lot of
12 attention to what the Department of Ag tells you in
13 their analysis we don't have enough water. I think
14 that's a matter of opinion. I think that's a matter
15 of debate. It really depends on what crop these
16 farmers choose. In order to really do this, you know,
17 you need to figure out what crop each guy is using.

18 We submitted an agricultural feasibility
19 study two years ago when we were attempting to get
20 subdivision approval from the City. PBR was our
21 planner who helped us with that agriculture study.

22 That agriculture study included a study
23 from Tom Nance that discussed, provided that we had a
24 source of water and that we had sufficient water for
25 our Project. That agricultural study was submitted to

1 the Department of Ag two years ago. I have e-mail
2 records with Tom Nance or PBR requesting comments,
3 begging for comments. We never got comments. Never
4 got comments until now.

5 And that's why at this last minute you see
6 me scurrying around getting letters from our water
7 provider telling us that, you know, all of these
8 people who are drawing water they're not drawing
9 what's available. You can have the rest. I'm doing
10 this at the last minute.

11 So we think that it's a matter of opinion.
12 It's not what the Department of Ag says is definitely
13 true. We think that our farmers are out there; that
14 they believe that they have a source of water and
15 they're gonna adjust their crops to that source of
16 water. So we don't think that that should be the one
17 criteria that makes you decide that we are not
18 entitled to be designated as Important Ag Lands.

19 CHAIRMAN CHOCK: Thank you, Mr. Iwamoto.
20 Commissioners, any questions for any of the parties?
21 Commissioner Matsumura.

22 COMMISSIONER MATSUMURA: Mr. Iwamoto, the
23 water there for the aquaponics that you're talking
24 about, is that potable water or just water you're
25 going to get from the reservoir?

1 MR. IWAMOTO: I think Debbie can answer
2 that better. but we don't have potable water.

3 MS. LUI-ANDERSON: It would primarily be
4 water from the reservoirs. And we have had actually a
5 couple of workshops for our farmers to introduce other
6 opportunities towards farming.

7 We had Glenn Martinez of Olomana Gardens
8 come out, talk about different things, particularly
9 the water and the purity of the water and talking
10 about filtration systems that they can put on for the
11 water coming through the reservoir.

12 But the reservoir water is not R2 water.
13 It's actually well water. And it is monitored. But
14 then, again, sitting in our reservoirs, people in
15 discussion with our farmers we talked about what
16 should we do about the water that's coming through.
17 And we did talk about different options of filtration
18 as pumped in.

19 But in setting up an aquaponics system,
20 depending on the size of the tank you use and the fish
21 you use, you know, you only need to add 50 gallons of
22 water a day, you know, on certain things.

23 And our farmers are receptive to this.
24 They like the idea of raising fish. And they like the
25 idea of growing different types of things with what we

1 have, what's available to them. Part of the other
2 things is that we have been working with O'ahu RC&D.

3 And we actually have worked with NRCS and
4 brought them out there to have -- one of the things is
5 reaching the small farmers, having these agencies that
6 have amazing information for the small farmers and the
7 farmers just not having a venue or avenue to get to
8 these agencies. So in working with the districts
9 that's been one of the nice things about.

10 We've had interns come up, talk about
11 conservation planning, working directly with the
12 farmers. We've actually been a nice source for the
13 agencies to be able to reach out and share their
14 workshops to support sustainability and small farming.

15 COMMISSIONER MATSUMURA: In regards to the
16 FDA, FSMA can you tell me what those new rulings that
17 might be coming down the pipeline?

18 MS. LUI-ANDERSON: I'm not super familiar
19 with it, but I do understand that. And that's one of
20 the things we were talking to the districts and with
21 CTAR about how do we -- for the small farmers is
22 getting the education out there so that if they can
23 follow and fall in those guidelines.

24 COMMISSIONER MATSUMURA: I was trying to
25 focus on the water issue. One of the probable acts

1 would be that you need to have potable water. And
2 that for food safety you need to assure that the water
3 is food safe. So how are you gonna address that?

4 MS. LUI-ANDERSON: I think I would have to
5 talk to, consult with Kunia Water Association. And to
6 tell you the truth, so would all the ag parks in the
7 area. We're all getting it from the same water
8 source.

9 COMMISSIONER MATSUMURA: No further
10 questions.

11 CHAIRMAN CHOCK: Commissioner Heller.

12 COMMISSIONER HELLER: Yes. Again, question
13 for the Petitioner. Couple questions. First, you
14 referred to the various farmers who have acquired lots
15 as "members". Could you just clarify what is the
16 actual legal structure of the Petitioner.

17 MR. IWAMOTO: Thank you. Very complex.
18 But if you're familiar with the gold coast in Waikiki,
19 and if you went to buy a co-op unit at Diamond Head
20 Apartments or Colony Surf, if you're familiar with
21 that, what you receive is a fee simple co-op
22 apartment. But what you receive is a share of stock
23 in the entity that owns the fee simple in the
24 property. And you get a proprietary apartment lease
25 to designate to you which unit you have exclusive use

1 over.

2 We took that concept and we applied it to
3 our agricultural project. And basically what we have,
4 because the statute does not allow you to issue shares
5 of stock for this type of co-op because it's not a
6 housing co-op, so instead we created a non-profit
7 corporation which is the Petitioner here.

8 And if you were to come and purchase a lot
9 from us you would get a membership interest or
10 ownership interest in this non-profit corporation.
11 Together with that you would get a long-term, 99
12 years, renewable proprietary lot lease which is,
13 designates which lot is for your exclusive use. Those
14 are recorded. And the title company will give title
15 insurance. That's our structure.

16 COMMISSIONER HELLER: Okay. And those are
17 transferable.

18 MR. IWAMOTO: Yes. With transferable only
19 if you transfer at the same time you signed the lease
20 but you also signed the membership interest in the
21 corporation. They're inextricably entwined. You
22 cannot transfer one without the other.

23 COMMISSIONER HELLER: Thank you. Now, from
24 the perspective of either the Petitioner as an entity
25 or the members as a group, what is the real necessity

1 for, incentive for the IAL designation? You can do
2 the activities that you're doing now without it,
3 correct?

4 MR. IWAMOTO: As I mentioned this is a low
5 budget Project so we're really looking for the
6 economic incentives and the tax credits.

7 COMMISSIONER HELLER: Okay. So you're not
8 asking for 15 percent but you are seeking the tax
9 credits.

10 MR. IWAMOTO: Yes.

11 COMMISSIONER HELLER: Thank you. That's
12 all the questions I had.

13 CHAIRMAN CHOCK: Thank you, Commissioner
14 Heller. Commissioners, any other questions?
15 Commissioner Inouye?

16 COMMISSIONER INOUE: Thank you, Chair
17 Chock. Let me first say I personally appreciate
18 voluntary designations to IAL. So I appreciate the
19 Petitioner coming in to do this. My concern as well
20 as others, I guess, has to do with water too. One is
21 you mentioned that the farmers have a choice that if
22 they don't have enough water they can grow another
23 crop. How does that feed into one of the goals is to
24 diversify agriculture limited by your resources?

25 MR. IWAMOTO: Well, the word "diversified

1 agriculture" means that there is all kinds of crops.
2 That's what I meant by flexibility to choose your
3 crops or to go to an aquaponic system because they're
4 small.

5 Let's say you bought a 5-acre lot and you
6 have the flexibility to decide what type of
7 diversified crop you want to use that 5 acres for.
8 Portions of it for something different, maybe other
9 portions something different.

10 COMMISSIONER INOUE: I understand what
11 you're saying. I'm just saying that in the grand
12 scheme of things if you're limited by some you don't
13 have a choice of diversifying. I'm looking kinda what
14 is your overall goal from what I understand is to be
15 self-sustained as a state and trying to figure how if
16 you have some limitations like that, you don't have
17 the choice of what people growing what people need
18 here in Hawai'i.

19 So that's the source of my question. If
20 you start to limit them to you can only grow this with
21 all the water you have, that doesn't really help your
22 overall goal is what my concern in.

23 MR. IWAMOTO: I'm sorry if I'm not
24 understanding you. But we place no limitations.

25 COMMISSIONER INOUE: Understand.

1 MR. IWAMOTO: Am I misunderstanding your
2 question?

3 COMMISSIONER INOUE: Not really because
4 I'm going to ask the questions of the city. I wanted
5 to understand what your basis -- do you have a map of
6 what is Important Ag Lands? Do you have a conceptual
7 plan in place?

8 MR. HATA: Good morning. Tim Hata from
9 DPP. I think I can address that. Right now the
10 Department of Planning and Permitting is in phase 1 of
11 our mandated responsibility in accordance with Act 183
12 to map IAL. At this point we do not have a map
13 showing where IAL is. However, we're getting there.

14 We have seen recently maps that were
15 produced by our consultant, Helber, Hastert and Fee,
16 maps that show certain attributes based on the voting
17 process that was undertaken by our technical advisory
18 committee which consist of about 25 individuals that
19 represent a broad interest on O'ahu in terms of
20 agriculture.

21 There's landowners, farmers. There's
22 government agencies and other people that have
23 agriculture interests. We try to bring these people
24 together.

25 I think what we're gonna do is have at the

1 end of phase 1 our goal is to have some sort of
2 preliminary map that will not show exactly where we
3 think IAL should be. But, you know, I'm not sure what
4 exact form it's gonna take but we won't actually see a
5 map that shows where we think IAL should be until
6 Phase 2, the next year. Is that sufficient?

7 COMMISSIONER INOUYE: Yes. Not sufficient
8 yet but that gets us to Phase 1, how many phases?

9 MR. HATA: We're looking at two phases.
10 Right now just one.

11 COMMISSIONER INOUYE: In okaying the
12 particular Petition what is your criteria where you're
13 saying this is okay? Because once we do, if we do
14 approve this IAL it's there. I mean you have no
15 flexibility. Not no but there's ways of
16 re-designating that's really tough.

17 But what I'm saying is what is your
18 criteria you're using to say this IAL is okay without
19 knowing overall? Because you are limiting, when you
20 do plan this there's limitations like you can't take
21 more than 50 percent from any one property owner, that
22 kind of thing.

23 So I'm trying to understand why you're okay
24 with a particular occupation without having a full
25 blown map.

1 MR. HATA: Well, based on what we've
2 reviewed in the Petition and reviewing our existing
3 plans and policies and knowing that that area has had
4 a long history of being in agriculture, we feel that
5 we're supportive of the Petition. Because to object
6 to it is actually counter to our existing plans and
7 policies.

8 The General Plan, the Central O'ahu
9 Sustainable Community Plan say that Central O'ahu,
10 these areas in Kunia shall remain in agriculture and
11 open space.

12 And so it'd be counter to, you know, the
13 precedent has been set historically to say that we
14 shouldn't have this in state ag. It is a state
15 agriculture. We have designated it in Agriculture
16 Preservation in the Sustainable Communities Plans. So
17 it's consistent and it's also likely that this area
18 will be reviewed for IAL by our consultants.

19 COMMISSIONER INOUYE: Right. I for one
20 have a real difficult time to figure out how we as
21 Commissioners are going to make decisions like this on
22 a piece meal basis. This is my concern.

23 I know that Act 183 there is a provision
24 there you're supposed to -- each county is supposed to
25 come up with a plan within 60 months, 5 years of being

1 funded by the state. My understanding -- let me ask.
2 Have you been funded by the state?

3 MR. HATA: Well, to my knowledge we've
4 received the funding, 200,000 to do phase -- we're
5 spending that for phase 1.

6 COMMISSIONER INOUYE: When was that
7 allocated to you?

8 MR. HATA: Last year.

9 COMMISSIONER INOUYE: Okay. So you're in
10 your second year of your 60 months deadline.

11 MR. HATA: The contract was running
12 basically 13 months from about, I guess, maybe the
13 fall or late summer of last year til about September
14 of this year.

15 COMMISSIONER INOUYE: Okay. So we have two
16 or three years left before we can come up with an
17 overall state plan. Not state but city, county plan.
18 But you, the county, are comfortable this will
19 probably be in your maps.

20 I'm just trying to figure out how you're
21 deciding on these 'cause there's a difference between
22 in my mind, ag land which it's admitted that whatever
23 the Petitioner's proposing to do on this property can
24 be done without a change to IAL.

25 So I'm trying to grasp how the City is

1 comfortable, as we approve all these plans it's going
2 to be okay and not limiting what your consultant or
3 you want to do.

4 MR. HATA: Like I go back to what our
5 deputy corporation counsel said before. It's our
6 position that petitioners to IAL they do not have to
7 meet all 8 criteria. Now, we know that there is water
8 there. Maybe there's not enough water to satisfy some
9 people. But we feel that there is enough water to do
10 some agriculture.

11 And, you know, we have to weigh, the access
12 you gotta weigh each criteria. So that's what we're
13 doing in our County-mandated responsibility.

14 But to object to the Petition solely on the
15 fact that they may not have enough water, we don't for
16 sure 'cause we did not do a detailed analysis on the
17 water. We just reviewed what was provided to us.

18 And from that basis we feel there's not
19 sufficient grounds the Department has to object to the
20 Petition.

21 Now, we understand that some of that land
22 is marginal, there's gullies, things like that. Can
23 be farmed? Maybe not. So not all 854 acres can
24 actually be cultivated.

25 But I think we're supportive of the concept

1 of their Petition to place these lands in IAL because,
2 frankly, it is consistent that this area should remain
3 in Agriculture/Open Space over the long term in
4 accordance with our plans.

5 Now it's really up to the Commission to
6 decide whether this land deserves to be in IAL. But
7 based on what we reviewed we have no objections to
8 placing it in IAL.

9 COMMISSIONER INOUE: Thank you.

10 CHAIRMAN CHOCK: Commissioner McDonald.

11 COMMISSIONER McDONALD: This is for OP.
12 Sounds like the County's coming out with their
13 criteria, a weighted criteria for IAL designation.
14 And sounds like OP really is putting a big weight on
15 the availability of water.

16 So my question is is this availability of
17 water one of the bigger criteria that they're basing
18 their support or not for IAL designation in the
19 future?

20 MR. YEE: I think water is an issue in
21 every IAL petition we've seen. In some cases they met
22 them easier than others. I'm hesitating only because
23 every petition has sort of its unique issue. You may
24 remember steepness and gullies was a big issue in
25 another one. But the adequacy of water is an

1 essential criteria.

2 It's not just the adequacy of water, it's
3 the discrepancy between how much you need and how much
4 you've got. If you're close there's maybe a different
5 analysis. But in our analysis it's a big discrepancy.
6 So in this particular case water's always important
7 and in this one it was actually determinative.

8 COMMISSIONER McDONALD: There's a concern
9 on my part because the counties will be designating
10 their IAL maps, will be coming before us. If OP is
11 coming from the standpoint of you're not in support of
12 this strictly from the basis of availability of water,
13 then this could be the start of something bigger when
14 the counties do come before this Commission.

15 MR. YEE: That's a fair point. It's a good
16 one. I think we're doing this, you're right, a little
17 bit in the dark of what the counties' positions are.
18 It's a bit of speculation now.

19 But the Office of Planning is applying the
20 criteria set under the statute. It's not looking per
21 se at preserving open space 'cause we want to preserve
22 open space, for example.

23 COMMISSIONER McDONALD: Right.

24 MR. YEE: So it's for the purpose of
25 agriculture. And if a county finalizes its plans and

1 releases them and gets it all approved, certainly a
2 certain amount of deference has to be given to the
3 county plan so that it's uniform for that county. But
4 at this time we don't have any in effect. Right? So
5 we have to apply the statute as we see it and
6 interpret it.

7 And if the counties -- I'm sort of thinking
8 hypothetically how a county could come up with a plan
9 to not weigh water as a critical element. I'm going
10 to guess they do weigh it as a critical element.

11 But I think we just don't know at this
12 point. But if you had, hypothetically then, you have
13 a piece of property that's been in agriculture for a
14 long time, it's terrible property; it doesn't grow a
15 lot, but people have some sentimental value that they
16 attach to this particular farm, do you put it in IAL?

17 I mean that's I guess where the rubber
18 would hit the road in that kind of analysis. Where a
19 county might choose to put a horrible farm into IAL
20 just because it's always been a farm.

21 So you just -- they make that choice. But
22 from our perspective that's not our analysis today.
23 And if we get something from the county we'll have to
24 factor that in. But until we do we're simply applying
25 the criteria set out in the statute.

1 COMMISSIONER McDONALD: Thank you, Bryan.
2 One last comment, Chair. This Commission's been
3 through a number of DBA's, some pretty controversial
4 recently. And we've heard a lot of testimony from the
5 standpoint of profitability of agriculture, farming,
6 whatnot.

7 And from my standpoint whatever support the
8 state and counties can provide these, these farmers
9 I'll be in support just based on the testimony we've
10 heard going through these DBA's and the difficulties
11 these farmers currently have in making a business,
12 making a run at a farm. So I just wanted to make that
13 comment.

14 CHAIRMAN CHOCK: Thank you, Commissioner
15 McDonald. Commissioners, any other questions?

16 COMMISSIONER HELLER: Mr. Chair.

17 CHAIRMAN CHOCK: Commissioner Heller.

18 COMMISSIONER HELLER: This isn't a question
19 for the parties but I actually have a procedural
20 question I'd like to bring up with our legal counsel.
21 So I'd like to move for an executive session.

22 CHAIRMAN CHOCK: Is there a second?

23 COMMISSIONER McDONALD: Second.

24 CHAIRMAN CHOCK: All in favor of going into
25 an executive session? All right. Any opposed? (no

1 response) So we're going to take an executive
2 session, give our court reporter a few minutes to take
3 a break. If we could ask everyone in the audience to
4 vacate the room, when we're done we'll come outside
5 and get you. Thank you.

6 (Executive session was held.)

7 CHAIRMAN CHOCK: Back on the record.
8 Commissioners, any other questions for any of the
9 parties? Okay, Commissioners, what is your pleasure
10 on this matter?

11 COMMISSIONER INOUYE: Chair Chock, I'll
12 make the motion. But before I make the motion again,
13 the motion is to deny the Petition. That's not to say
14 that the Petition doesn't have merit. I think it has
15 a lot of merit. I think in weighing the eight
16 criteria it's not only water. Water is of serious
17 concern. That's not the only concern that I have. I
18 have concern that there's a least three of the eight
19 criteria are in question.

20 The thing that drives me is in weighing the
21 eight criteria we should be mindful of the
22 constitutional mandated purposes Article XI Section 3
23 and the objectives and policies of 42 and 43. That is
24 my concern.

25 I think there's a lot of missing pieces yet

1 to this particular Petition. The motion to deny
2 doesn't, I don't think, preclude you from coming back
3 later on. So it's not the merits of it.

4 I just have too many questions about it
5 whether it's going to be good for the entire county as
6 well as the state. But really appreciate any
7 petitioner coming in and voluntarily putting their
8 lands into IAL. Just wanted to make sure that was
9 clear.

10 CHAIRMAN CHOCK: Thank you, Commissioner
11 Inouye. There's a motion to deny. Is there a second?
12 Commissioner Heller.

13 COMMISSIONER HELLER: I'll second the
14 motion. But let me also add that I do see some merit
15 in the Petition. I just feel that there is maybe not
16 sufficient information right now on certain points to
17 grant it in particular the water issue obviously.

18 And the other concern that I have is that
19 this is seeking designation of 854 acres. And I think
20 everybody has recognized that there aren't really 854
21 acres of usable farmable land there.

22 Given that the parcel has been subdivided
23 I'm wondering if it might be appropriate to take a
24 closer look at what portions should be designated.
25 For me, that plus the water questions just leaves me

1 with the feeling that I'm not ready to approve as of
2 today. That doesn't necessarily mean that I wouldn't
3 ever approve.

4 In fact, frankly, I'm very sympathetic to
5 the Petition and the small farmers who are behind it.
6 And I think what they're trying to do is basically a
7 good thing. I just think we're missing some key
8 pieces of information at this point and I'm seconding
9 the motion on that basis.

10 CHAIRMAN CHOCK: Thank you, Vice Chair
11 Heller. Comments, Commissioners? Any discussion?
12 Okay, Dan, why don't you poll the Commission.

13 MR. ORODENKER: Thank you, Mr. Chair. The
14 motion is to deny the Petition. Commissioner Inouye?

15 COMMISSIONER INOUE: Aye.

16 MR. ORODENKER: Commissioner Heller?

17 COMMISSIONER HELLER: Yes.

18 MR. ORODENKER: Commissioner Matsumura?

19 COMMISSIONER MATSUMURA: Yes.

20 MR. ORODENKER: Commissioner Biga's
21 excused. Commissioner Teves?

22 COMMISSIONER TEVES: No.

23 MR. ORODENKER: Commissioner McDonald?

24 COMMISSIONER McDONALD: No.

25 MR. ORODENKER: Chair Chock?

1 CHAIRMAN CHOCK: No.

2 MR. ORODENKER: Mr. Chair, the motion does
3 not carry.

4 CHAIRMAN CHOCK: Okay. Commissioners, any
5 other motions that anybody would like to offer on this
6 Petition?

7 COMMISSIONER TEVES: Do we have any
8 options? (laughter)

9 CHAIRMAN CHOCK: We could take a motion to
10 approve or we could move to go into a contested case
11 hearing and allow the Petitioner another opportunity
12 to submit additional evidence, present exhibits,
13 expert witnesses.

14 COMMISSIONER TEVES: I'll make that motion
15 to go to a contested case hearing.

16 CHAIRMAN CHOCK: Moved by Commissioner
17 Teves.

18 COMMISSIONER McDONALD: I'll go ahead and
19 second the motion.

20 CHAIRMAN CHOCK: Moved and seconded. Any
21 discussion? Okay, Dan, call for the question.

22 MR. ORODENKER: The motion is to move this
23 matter into contested case hearing. Commissioner
24 Teves?

25 COMMISSIONER TEVES: Yes.

1 MR. ORODENKER: Commissioner McDonald?

2 COMMISSIONER McDONALD: Yes.

3 MR. ORODENKER: Commissioner Matsumura?

4 COMMISSIONER MATSUMURA: Yes.

5 MR. ORODENKER: Commissioner Biga's

6 excused. Commissioner Contrades excused.

7 Commissioner Makua is excused. Commissioner Heller?

8 COMMISSIONER HELLER: Yes.

9 MR. ORODENKER: Commissioner Inouye?

10 COMMISSIONER INOUE: Yes.

11 MR. ORODENKER: Chair Chock?

12 CHAIRMAN CHOCK: Yes.

13 MR. ORODENKER: Mr. Chair, the motion

14 carries unanimously.

15 CHAIRMAN CHOCK: Thank you. Parties, any
16 questions? Petitioner, are you prepared to enter into
17 a contested case hearing on this matter?

18 MR. IWAMOTO: Yes, subject to my confirming
19 with my client later. But yes.

20 CHAIRMAN CHOCK: Okay. County, any
21 questions? State?

22 MR. YEE: Just for purposes of the record.
23 Will the Land Use Commission be designating the County
24 and the Office of Planning as parties to this
25 contested case?

1 CHAIRMAN CHOCK: I would imagine so.

2 MR. YEE: Okay. I just needed to know if
3 we required anyone to file a motion if you would just
4 designate us as parties today.

5 COMMISSIONER HELLER: Mr. Chair, if that
6 requires a motion I'll make the motion.

7 CHAIRMAN CHOCK: Okay. It's been moved.
8 Any second?

9 COMMISSIONER INOUYE: Second.

10 CHAIRMAN CHOCK: Moved and seconded. Any
11 opposed to admitting the State and the County as
12 parties in this matter? No opposed. So you're
13 admitted, Bryan. Thank you. Any other comments or
14 questions from Commissioners? I believe that is the
15 last item on our agenda for today. We stand
16 adjourned. Thank you, everybody. (gavel)

17

18 (The proceedings were adjourned.)

19 --oo00oo--

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 5th day of April 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