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LAND USE COMMISSION

STATE OF HAWAI'I

HEARING AND ACTION	PAGE
DR13-50 Trustees of the Estate of )	1
Bernice Pauahi Bishop dba )	
Kamehameha Schools (Kau'ai) )	
_____ )	

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for a Public Hearing at Conference Rooms A, B, C, 2nd Floor State Building, 3060 Eiwa Street, Lihue, Hawai'i, commencing at 1:30 p.m. on January 8, 2014, pursuant to Notice.

(Transcribed post hearing by tape)  
HOLLY M. HACKETT, CSR #130, RPR  
Certified Shorthand Reporter

## A P P E A R A N C E S

## COMMISSIONERS:

CHAD McDONALD

ERNEST MATSUMURA

LANCE INOUE

CAROL TORIGOE

SHELDON BIGA

DENNIS ESAKI

KYLE CHOCK

RONALD HELLER (Chair)

AARON MAHI

EXECUTIVE OFFICER: DAN ORODENKER

CHIEF CLERK/STAFF PLANNER: RILEY HAKODA

STAFF PLANNER: BERT SARUWATARI

DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. DR13-50 Trustees of the Estate of Bernice

Pauahi Bishop dba Kamehameha Schools (Kau'ai)

For the Petitioner:

WILLIAM MEHEULA, ESQ.  
Trustees of the Estate of  
Bernice Pauahi Bishop dba  
Kamehameha Schools

For the County:

MICHAEL DAHILIG, DIRECTOR  
Kaua'i County Planning  
DepartmentMAUNAKEA TRASK, ESQ.  
Deputy Corp. Counsel KCPD

For the State:

BRYAN YEE, ESQ.  
Deputy Attorney General  
RODNEY FUNAKOSHI,  
Office of Planning

I N F O R M A T I O N  
P R E S E N T A T I O N S

For PBR Hawaii- Planner KSBE: THOMAS WHITTEN

For KSBE Representative - DARRYL HAMAMURA

For KCPD Planner - LEANORA KAIAOKAMALIE

1 CHAIR HELLER: (gavel) Okay. Let's call  
2 the meeting to order. It's 1:30 so we can officially  
3 get started. First order of business is the adoption  
4 of minutes from our November 22nd meeting. Is there  
5 any motion?

6 COMMISSIONER BIGA: So moved.

7 CHAIR HELLER: Second?

8 COMMISSIONER TORIGOE: Second.

9 CHAIR HELLER: Any discussion? Hearing  
10 none all in favor of adopting the minutes?

11 COMMISSIONERS: Aye.

12 CHAIR HELLER: Any opposed? Next order of  
13 business is our tentative meeting schedule. Dan,  
14 would you please update us.

15 MR. ORODENKER: Thank you, Mr. Chair. Our  
16 next meeting will be on O'ahu on January 23rd, which  
17 is Thursday. It's to approve the Form of the Order  
18 for this Petition and the status report on DR08-36 Ko  
19 Olina Development. There will also be a legislative  
20 activity report and an update by the Attorney General  
21 on LUC voting numbers. The rest of the schedule right  
22 now is currently open. Thank you.

23 CHAIR HELLER: Thank you.

24 COMMISSIONER ESAKI: Just clarification. I  
25 mean is this -- on January 23 there's no pre-conceived

1 notion of what will happen today?

2 MR. ORODENKER: That is correct. We have  
3 scheduled back for the decision regardless.

4 MS. ERICKSON: The Orders can go one way or  
5 the other.

6 COMMISSIONER ESAKI: Yeah, yeah, yeah.

7 CHAIR HELLER: Could be approval of an  
8 order granting or approval of an order denying. Okay.  
9 Before we move into the substance today I just want to  
10 welcome our newest commissioner, Commissioner Mahi is  
11 with us for the first time.

12 Today's hearing is a hearing and action  
13 meeting on DR13-50 in the matter of the Petition of  
14 the Trustees of the Estate of Bernice Pauahi Bishop,  
15 dba Kamehameha Schools, for Declaratory Order to  
16 Designate Important Agricultural Lands for  
17 approximately 190 acres at Hanalei, Kaua'i,  
18 TMK5-6-003:001 and others.

19 Will the Petitioner please identify itself  
20 for the record.

21 MR. MEHEULA: Bill Meheula for Kamehameha  
22 Schools.

23 CHAIR HELLER: Let me update the record.  
24 On November 7 the Commission received Petitioner's  
25 Petition for Declaratory Order to Designate Important

1 Agricultural Lands and Exhibits A through E and a  
2 \$1,000 application fee.

3 On November 12, 2013 the Commission  
4 received Petitioner's Certificate of Service regarding  
5 its Petition and exhibits.

6 On November 21, 2013 the Commission  
7 received OP's request for additional time until  
8 December 6, 2013 to review the Petition and provide  
9 comments. The Commission acknowledged and  
10 conditionally approved this request.

11 On December 5, 2013 the Commission received  
12 the Department of Agriculture's comments to the  
13 Petition.

14 On December 6, 2013, the Commission  
15 received OP's comments to the Petition and OP Exhibits  
16 through 1-4 with a CD.

17 On December 13, 2013 the Commission  
18 received a re-sent copy of Kaua'i County's position  
19 filing. The original had been mailed on November 27,  
20 2013. It was not received by the LUC until  
21 December 16, 2013.

22 On December 30, 2013 the Commission mailed  
23 the January 8, 2014 agenda to the Parties and the  
24 State and Kaua'i mailing lists.

25 On January 6, 2014 the Commission received

1 comments from the Commission on Water Resource  
2 Management through the Office of State Planning.

3 On January 7, 2014 the Commission received  
4 a Stipulation to Petitioner's Exhibits. Earlier today  
5 the LUC conducted a site visit to the Petition Area.

6 Mr. Meheula, has our staff informed you of  
7 the Commission's policy regarding the reimbursement of  
8 hearing expenses?

9 MR. MEHEULA: Yes.

10 CHAIR HELLER: If so would you state your  
11 client's position with respect to the policy.

12 MR. MEHEULA: We accept it.

13 CHAIR HELLER: Let me briefly describe our  
14 procedure for today on this docket. I will first call  
15 for those individuals desiring to provide public  
16 testimony to identify themselves. All such  
17 individuals will be called in turn to our witness box  
18 where they will be sworn in prior to their testimony.

19 After completion of the public testimony  
20 portion of the proceedings the Petitioner will make  
21 its presentation. After the completion of the  
22 Petitioner's presentation we will receive any public  
23 comments from Kaua'i County, the Office of Planning  
24 and the Department of Agriculture.

25 Thereafter the Commission will conduct its

1 deliberations. From time to time I may call for short  
2 breaks. Are there any questions on our procedures for  
3 today? (Pause)

4 Before we move on let me put on the record  
5 a disclosure, actually a couple of disclosures. My  
6 law firm, the Torkildson Katz Firm, does some legal  
7 work for the county of Kaua'i. I don't know the  
8 details of it. I know that it's in the general area  
9 of labor and employment law, not land use law.

10 My firm also does labor and employment work  
11 for Kamehameha Schools. Again, I'm not personally  
12 involved in it and not familiar with the details. I  
13 make those disclosures so that anybody who has any  
14 objection to my participation in this case now has the  
15 opportunity to raise the issue.

16 MR. MEHEULA: No objections.

17 MR. YEE: No objections.

18 MR. DAHILIG: No objections.

19 CHAIR HELLER: Commissioner McDonald.

20 COMMISSIONER McDONALD: Thank you,  
21 Mr. Chair. I have the same disclosure. My firm,  
22 which does architectural and engineering services, has  
23 done work for Kamehameha Schools as well more with  
24 regards to the educational component. I don't believe  
25 my participation in this hearing will have any effect



1 on my decision-making ability. But I would like to  
2 make that disclosure and now's the appropriate time if  
3 any of the Parties has any objections.

4 MR. YEE: No objection.

5 MR. MEHEULA: No objection.

6 MR. DAHILIG: No objection.

7 CHAIR HELLER: Thank you.

8 COMMISSIONER TORIGOE: I'm Carol Torigoe.  
9 I also have the same disclosure. My firm does do  
10 architectural work for KYA Design Group for Kamehameha  
11 Schools. So if there's any objection?

12 MR. MEHEULA: No objection.

13 MR. DAHILIG: No objection.

14 MR. YEE: No objection.

15 COMMISSIONER INOUE: I'm going to jump on  
16 the same band wagon. My firm is a construction  
17 company. And we have done work for Kamehameha Schools  
18 and we do occasionally bid some of their projects. So  
19 if there are any objections please so state. Thanks.

20 MR. YEE: No objection.

21 MR. MEHEULA: No objection.

22 MR. DAHILIG: No objection.

23 CHAIR HELLER: Anybody else? Okay.

24 Mr. Meheula --

25 COMMISSIONER MATSUMURA: No objections,

1 (Laughter). I'm with Partners in Development  
2 Foundation. We deal with the Kamehameha Schools from  
3 the educational standpoint, correspond with each other  
4 on our pre-education program. I chair that. I'm a  
5 cultural advisor for the O'ahu Partners Development  
6 Foundation. I just thought I'd say that.

7 MR. MEHEULA: No objection.

8 MR. DAHILIG: No objection.

9 MR. YEE: No objection.

10 CHAIR HELLER: Okay. Mr. Meheula, we've  
11 already received a stipulation regarding the  
12 Petitioner's exhibits. The Chair is tentatively  
13 planning to declare that the documents submitted by  
14 the Department of Agriculture, the Office of Planning  
15 and the Kaua'i County are all part of the record in  
16 this matter. Do you have any objections to that?

17 MR. MEHEULA: No objection.

18 CHAIR HELLER: Okay. Then all of the  
19 exhibits submitted are made part of the record. Do we  
20 have anyone who desires to provide public testimony?  
21 Did anyone sign up? Okay. Is there anyone present  
22 who wishes to provide public testimony? Hearing none,  
23 Mr. Meheula, are you ready to proceed?

24 MR. YEE: I'm sorry. Chair, could I raise  
25 a preliminary question?

1 CHAIR HELLER: Sure.

2 MR. YEE: You mentioned the Office of  
3 Planning's submission and the county of Kaua'i's  
4 submission. The Office of Planning did submit a  
5 letter -- or CWRM submitted a letter through the  
6 Office of Planning. We just wanted to know if that  
7 was also part of the record.

8 CHAIR HELLER: Yes.

9 MR. YEE: Thank you.

10 CHAIR HELLER: Petitioner, ready to  
11 proceed?

12 MR. MEHEULA: Yes.

13 CHAIR HELLER: Go ahead, please.

14 MR. MEHEULA: I'm going to spend maybe 5,  
15 10, 15 minutes in an opening statement. And based on  
16 the fact that the Office of Planning, the County,  
17 Department of Agriculture have pretty much joined in  
18 in recommending the passage of this Petition, we don't  
19 plan on calling any witnesses.

20 However, we do have as witnesses Mr. Tom  
21 Whitten of PBR Hawai'i, who created and drafted the  
22 assessment report. And we also have our two tenants,  
23 one of the licensees for Lumahai and the executive  
24 director for the Waipa Foundation which is the tenant  
25 for the Waipa properties. I'll give an opening

1 statement. And if anyone would like that testimony or  
2 if any of the other Parties would like to call them as  
3 witnesses there all three of them here. We also have  
4 representatives from Kamehameha Schools who can also  
5 provide information and testimony if necessary.

6 Kamehameha Schools has about 350,000 acres  
7 statewide. About half of that is agricultural land.  
8 It's in the Agricultural District. This is Kamehameha  
9 School's first IAL Petition before the LUC. Today we  
10 are proposing to submit for designation as IAL about  
11 190 acres. That would be 66 in Waipa and 123 in --  
12 I'm sorry, 66 in Lumuhai and 123 in Waipa.

13 We're very careful to pick out lands that  
14 we believe can stay in agricultural use and can  
15 develop into long-standing sustainable agricultural  
16 use and provide food for the state of Hawai'i.

17 In analyzing whether or not the Petition  
18 should be granted there are as set forth in HRS 205-44  
19 eight criteria. And the Department of Agriculture  
20 said that there previously had been or this is the 8th  
21 IAL Petition. And this is the first time that the  
22 Department of Agriculture has found that all 8  
23 criteria has been satisfied for any Petition. So  
24 we're grateful for that support.

25 Similarly, the Office of Planning came down

1 with the same, effectively the same finding. They  
2 went through every one of the criteria and found that  
3 each one of them had been met. And the County didn't  
4 go through criteria 1 through 8, but they recommended  
5 support for this Petition.

6 I'd say the only issue that came up and was  
7 that the Office of Planning stated in its position  
8 paper and its report that it was waiting for the  
9 Commission on Water Resource Management to come up  
10 with its report.

11 They came up with its report dated  
12 December 16th. And basically in that report it had --  
13 it supported the Petition in total. And for Waipa it  
14 noted that there were three stream diversion works on  
15 their records. And that is that there are two other  
16 users of the Waipa Stream. And that the last user  
17 this line would be the Waipa Foundation for these  
18 properties.

19 And that it has no -- and that the Waipa  
20 Foundation's projected use of the water coming from  
21 the Waipa Stream is consistent with the diversions  
22 identified by the commission and had no objection to  
23 the diversion of water from the Waipa Stream for  
24 purposes of agricultural use on these properties,  
25 123 acres.

1           With respect to Lumahai, we put down in our  
2           Petition that the licensee does pump water from the  
3           Lumahai Stream. The Lumahai Stream is a very big  
4           stream, 13 million gallons flow per day. This  
5           licensee is the only user of that stream water.

6           But the licensee had not made an  
7           application yet to the Commission for a special permit  
8           for diversion use. So the commission, the Commission  
9           on Water Resource Management, recommended an  
10          after-the-fact application. And we're thankful for  
11          the fact that OP has informed us that they would  
12          support the Petition despite the commission's  
13          statement on an after-the-fact application.

14          And said that they would not seek any kind  
15          of condition for this Petition as long as Kamehameha  
16          Schools represents -- and we kind of worked out  
17          language -- I'll read it to you: "That in light of the  
18          Commission on Water Resource Management's  
19          December 16th memo, Kamehameha Schools will commit  
20          that Kamehameha Schools or its licensee will apply for  
21          a stream diversion work permit, and if necessary an  
22          amendment to the interim stream flow standard for the  
23          Lumahai Stream." And we hereby make that commitment.

24          The other thing I wanted to cover in the  
25          opening statement is that in this Petition, Kamehameha

1 Schools with respect to the incentives, in particular  
2 reclassification type of incentives, No. 1.

3 Kamehameha Schools has approximately in agricultural  
4 land about 1,200 acres.

5 And we are seeking for designation, like I  
6 said, about 190 acres. So we are not near the  
7 majority rule as set forth in section 205-49(a) (3).

8 And as you know under that rule if we need  
9 a majority an urban type of land could not be  
10 designated. So just by the fact that we're not near  
11 majority at least at this point. I just wanted to  
12 make that clear.

13 The other thing is we put in our  
14 Petition -- and I'll recommit again -- that the  
15 reclassification incentive in HRS 205-45B we are not  
16 seeking and we are not seeking the right to  
17 reclassification credits under HRS 205-45H.

18 I think the Office of Planning wanted to  
19 make sure that we reasserted it and recommitted that  
20 we are not seeking those reclassification credits.  
21 And that is certainly the case.

22 So the only thing I wanted to touch on  
23 briefly are these 8 criteria. The 8 criteria are set  
24 forth in HRS 205-44, also restated in regulation or  
25 LUC Rule 15-15-120, the 8 criteria. And 205-44(a)

1 says not all of the criteria need to be met. It's  
2 more of a balancing. But we believe that we meet all  
3 of the criteria, nonetheless, with respect to this  
4 application.

5 The first criteria is land use. So this  
6 one in water I'll spend a little time with. The  
7 others I'll just kind of fly by because I don't think  
8 there's much controversy with respect to those other  
9 criteria.

10 But as far as land currently used for  
11 agricultural production I'm going to use this Google  
12 Maps map that I'm showing you here for demonstrative  
13 purposes. This is a Google map, recent Google map of  
14 the Waipa property. And it outlines in red the  
15 designated area for IAL, the 123 acres. So right now  
16 the current use is this lo'i area here by No. 3. That  
17 was the first site stop.

18 There's also some orchard up here. There's  
19 also vegetable gardens here, some orchard here and  
20 more vegetable gardens there. Then there's about  
21 45 acres of pasture right now which are right here and  
22 in here. So kinda mauka of 5 and a little lower of 5.  
23 So that's the current use.

24 The future use is to really put in a lot  
25 more lo'i in here and in here where they have the



1 pasture and in here. There's currently koa up here  
2 and koa up here. And to rotate the pasture so you  
3 can, the land can regenerate. So they'll make this  
4 lo'i, they'll move the cattle and the horses  
5 elsewhere. That's what the planned current and future  
6 use is for this property.

7           This one here, I'm showing you a Google map  
8 for Lumahai. Lumahai is 66 acres. This area right  
9 here, this grid obviously in the planting right now.  
10 It's about 6 acres. Interspersed in here are lo'i.  
11 And there's also vegetable gardens here, vegetable  
12 gardens here. There's orchard through here.

13           This area right here has historically been  
14 in taro, then rice, and then taro, then it's not been  
15 in use for many years now. So the plan is to make  
16 this diversified ag including kalo. Then the rest is  
17 pasture. So that's the current and future use of the  
18 property.

19           With respect to land soil qualities, the  
20 land soil quality for Waipa is -- as far as the Land  
21 Study Bureau it's 75 acres C or fair, 4 acres D,  
22 44 acres E, so not -- even though we've got 44 acres  
23 in E, which is poor, as OP said in its report, that  
24 despite that that this criteria has been met since  
25 these lands have historically been used for taro,

1 diversified ag and livestock.

2           And the ALISH ratings are 86 acres Other,  
3 10 Prime, 10 Unique, 16 Not Classified. So they also  
4 meet that criteria. For Lumahai on soil and ratings  
5 that would be 2 and 3. 64 acres of the 66 are C or  
6 Fair. 1.7 is Poor. The ALISH is 61 acres Other, 5  
7 not classified.

8           One of the criteria is, No. 4 is land types  
9 associated with traditional native Hawaiian  
10 agricultural uses such as taro cultivation. Both of  
11 these properties have historically been in kalo as  
12 early as the 1800s.

13           Then later on in the late 1800s, early  
14 1900s there was rice cultivation. Then it moved back  
15 to kalo. But historically they have. So this  
16 property, these two properties satisfy the fourth  
17 criteria.

18           The fifth criteria has to do with the  
19 quantities of water. Both Department of Agriculture  
20 and also Office of Planning found that this criteria  
21 has been met. With respect to Waipa you have the  
22 Waipa Stream comes through here. And there's also the  
23 Kipa'a Stream running through this way. And then  
24 there's also 80 to a hundred acres of rain annually.

25           And then with respect to Lumahai, again

1 you've got 80 to a hundred inches of rain annually.  
2 And you've got this very large Lumahai River,  
3 13 million gallons per day. So we submitted that  
4 criteria No. 5 with respect to water has been  
5 satisfied.

6           With respect to No. 6: Lands that are  
7 consistent with the General Plan, the County General  
8 Plan. The County General Plan for Waipa is  
9 agriculture. So it does -- the General Plan for  
10 Lumahai is Open. And "open" includes important land  
11 reforms, wetlands, streams, steep slopes, other  
12 environmentally sensitive areas.

13           The Kaua'i Comprehensive Zoning Code for  
14 this area is Diversified Ag. And both of these  
15 petitions are consistent with the County's 25 points  
16 of threshold. Both of them are less consistent with  
17 the 28 point threshold which is always the case  
18 because it's more criteria you have to satisfy. Most  
19 importantly, the County supports this application.

20           The seventh criteria is that land that  
21 contributes to maintaining a critical land mass  
22 important to agricultural operating productivity. And  
23 both of these lands, both of these parcels, the lands  
24 that are being submitted are the largest contiguous  
25 area suitable for agricultural use in both valleys.

1 That's how the Department of Agriculture describes it.

2 So we submit that that's been satisfied.

3 And infrastructure, both of them have roads throughout  
4 them for access and have access to the County highway  
5 right there. That's all I have for an opening  
6 statement.

7 If Commissioners have any questions of me  
8 or if anyone would like witness testimony our  
9 witnesses are here. And we reserve the right to call  
10 them if necessary. Thank you.

11 CHAIR HELLER: Commissioners, any  
12 questions? Go ahead.

13 COMMISSIONER ESAKI: Mr. Meheula, you  
14 mentioned the Office of State Planning has  
15 acknowledged the Water Resource Management position on  
16 the stream diversification permit.

17 MR. MEHEULA: Yes.

18 COMMISSIONER ESAKI: In that gulf.

19 MR. MEHEULA: Yes.

20 COMMISSIONER ESAKI: Understand their  
21 position is to have you apply for such permit prior  
22 to -- prior to IAL designation which is such a big  
23 leap for your statement.

24 MR. MEHEULA: Let me clarify. So the  
25 Commission on Water Resource Management in its memo

1 stated, and I'll quote here, "Assuming that the  
2 current license holder, Harada 'ohana, is relying on  
3 surface water for agricultural use," which it is, "the  
4 Commission recommends that an after-the-fact stream  
5 diversification work permit application be filed with  
6 the Commission prior to designating the proposed  
7 Lumahai parcels as Important Ag Lands."

8           So you are correct. That's what the  
9 definition stated in its letter. What I reported  
10 back -- and I believe accurately -- is that the  
11 Department of Office of Planning contacted me and said  
12 that they would not object to going forward with the  
13 Petition now. And it being voted on now with their  
14 recommendation and without any kind of condition in  
15 regards to a stream diversion work permit if we commit  
16 on the record that Kamehameha Schools, or its  
17 licensee, will be submitting a stream diversion work  
18 permit.

19           And if necessary based on findings an  
20 amendment to the interim stream flow standard for the  
21 Lumahai Stream would be effectuated.

22           So I guess what happened was we believed  
23 that the Commission on Water Resource Management's  
24 recommendation that this whole process be stalled  
25 until an application can be submitted was going too

1 far. I believe that Office of State Planning agreed  
2 with that. And so we came to -- actually I accepted  
3 their proposal to make this commitment on the record  
4 to satisfy the Commission's concern as stated in its  
5 memo.

6 COMMISSIONER ESAKI: Can I get a comment  
7 from OP?

8 MR. YEE: Sure, Commissioner, I'll address  
9 the question. The Commission on Water Resource  
10 Management did say in their letter they would have  
11 preferred that Petitioner get their stream diversion  
12 permits before the IAL designation.

13 The Office of Planning looked into the  
14 question. And we looked at a couple different things.  
15 One is what was the impact of the permit on the  
16 designation criteria? And certainly one of the issues  
17 would be the availability of water, which is always  
18 very important.

19 But when we looked at the requirement it  
20 appears to us that both the stream diversion permit as  
21 well as, if necessary, an instream flow standard  
22 amendment, did not appear to be problematic.

23 So we actually had to go look into the  
24 substance of these permits. What was the likelihood  
25 these permits would be issued? And given basically

1 the nature of their operations, the amount of water  
2 that's being withdrawn as well as any other users to  
3 the stream, our conclusion was that there would not be  
4 a problem with getting those permits, not to say they  
5 maybe should have done before. You're always supposed  
6 to get your permits before.

7 I can understand the Commissioner on Water  
8 Resource Management's position of wanting to hold  
9 something above a landowner's head, trying to get them  
10 to file the permits as soon as possible.

11 But from the Office of Planning's  
12 perspective in terms of whether or not the criteria  
13 was met under the statute, we concluded the criteria  
14 was met because these permits, although they needed to  
15 be unique to get them, would not be a problem.

16 So as long as the Petitioner is willing to  
17 commit that it would be done, we were satisfied that  
18 the designation could be given.

19 MR. MEHEULA: Could I just add one more  
20 thing? I'm sorry.

21 COMMISSIONER ESAKI: On the same subject,  
22 you know, a little while ago you said Harada was using  
23 surface water. What we saw was not the case. We saw  
24 the pumps there with petroleum fuel. The water pumps  
25 pumping the water. So it's not from the stream which

1 is not what you just told us, surface water.

2 MR. YEE: I think it goes from the stream  
3 to their little pump.

4 COMMISSIONER ESAKI: That's what I said,  
5 yeah.

6 MR. MEHEULA: I'm sorry. That's what I  
7 meant to communicate. Yeah. I wasn't trying to say  
8 that they weren't using it. In fact I pointed it out  
9 to all of the Commissioners at the site visit where  
10 the pump was and how it was being done.

11 COMMISSIONER ESAKI: While along the same  
12 line my gut concerning this operation-wise it's a  
13 flood prone area. You've got fuel. I'd like to say  
14 containment of fuel so it doesn't contaminate the  
15 water.

16 MR. MEHEULA: You mean from the --

17 COMMISSIONER ESAKI: From the storage of  
18 petroleum fuel.

19 MR. MEHEULA: I'm sure that's something  
20 that would be addressed in the permit area.

21 COMMISSIONER ESAKI: Another? Can I  
22 continue?

23 CHAIR HELLER: Yes, go ahead.

24 COMMISSIONER ESAKI: Another thing there's  
25 -- in the -- I believe in the Waipa area there's some



1 sloped area. I believe it showed 20 percent slope  
2 based on, I guess, the GIS map contours.

3 MR. MEHEULA: You mean right up here?

4 COMMISSIONER ESAKI: In the upper areas. I  
5 believe it's 20 percent. You really cannot tell  
6 exactly because they're like the wooded area. They're  
7 passed on aerial photos right, contours to thousand  
8 scale maps. The bottom line is, you know, it might be  
9 more than 20 percent and is it still feasible to do  
10 agriculture in that area?

11 MR. MEHEULA: We believe so. The Waipa  
12 Foundation has in its lease that Kamehameha Schools  
13 leases to them -- let me get the right number here --  
14 they have 1,600 acres. They have the whole ahupua'a.  
15 So when we picked these lands for IAL we made sure  
16 that they were using it for Ag. In fact this is the  
17 steepest area here. And they have planted already  
18 koa.

19 They plan to have orchard and timber here.  
20 And so the executive director is here for questioning,  
21 if you want more information on that. I asked her  
22 about it specifically and that's their response.

23 COMMISSIONER ESAKI: One last question for  
24 now.

25 CHAIR HELLER: Go ahead.

1                   COMMISSIONER ESAKI: How accurate are those  
2 lines?

3                   MR. WHITTEN: I'm not a line drawer.

4                   COMMISSIONER ESAKI: Within 50 feet?  
5 Because it's based on some blow-up of some  
6 uncontrolled photo. So can you give us some order of  
7 magnitude of the error on the line?

8                   MR. HAMAMURA: (off mic) It's about 100 to  
9 250 feet. It's the survey.

10                  CHAIR HELLER: If you could -- excuse me,  
11 Mr. Meheula. Because this meeting is being tape  
12 recorded we don't have a court reporter present, but  
13 we are making an audio recording. It's important to  
14 identify the speaker when information comes from off  
15 microphone.

16                  MR. MEHEULA: I'm sorry. The first speaker  
17 was Tom Whitten who is the person from PBR Hawai'i  
18 prepared the land assessment report. The second  
19 person that just spoke was Darryl Hamamura of  
20 Kamehameha Schools.

21                  COMMISSIONER ESAKI: And the answer that he  
22 gave us?

23                  MR. MEHEULA: Was it's close to a hundred  
24 to 150 feet.

25                  COMMISSIONER ESAKI: Just wanted that

1 corrected. Thank you.

2 MR. MEHEULA: Thank you.

3 CHAIR HELLER: Anything else?

4 Commissioners, any other questions? Commissioner  
5 McDonald.

6 COMMISSIONER McDONALD: First, I'd like to  
7 state that I appreciate Kamehameha Schools coming  
8 before the Land Use Commission and voluntarily  
9 requesting these lands be put into IAL. My question,  
10 though, is going back to Commissioner Esaki's question  
11 was basically about OP not wanting to put as a  
12 condition the stream diversion permit. I want to know  
13 why.

14 MR. YEE: I think there's a general belief  
15 by the Office of Planning that the IAL designation  
16 should not be filled with conditions. They could  
17 either be -- they're either representations or  
18 positions given to you or facts given to you by the  
19 Petitioner. And you can either grant it on those  
20 facts or deny it on those facts.

21 But I think the Office of Planning's  
22 position is that IAL designation is done through a  
23 declaratory Petition are simply a review of the  
24 request and a grounds for denial rather than something  
25 which is conditioned. So something like a mitigation

1 requirement are not part of an IAL analysis.

2           So that's the reason we've not asked for a  
3 condition. So as a matter of principle. We certainly  
4 acknowledge the issue. So we were looking for a  
5 representation to be made to you.

6           And on that basis we sort of felt that the  
7 IAL designation, then, is not conditioned, but it is  
8 made based upon various representations to you  
9 including the fact that a stream diversion permit  
10 application would be submitted.

11           I will say, as I'm talking to my client  
12 just now, there was a suggestion that perhaps there  
13 should be a timeframe representation from the  
14 Petitioner. But to answer your immediate question  
15 that's the reason we did not specifically say a  
16 condition.

17           Because unlike a District Boundary  
18 Amendment Petition we felt denial -- an issue -- a  
19 declaratory order issued by the LUC is not the  
20 appropriate method by which to impose conditions.

21           COMMISSIONER McDONALD: For past IAL  
22 designations -- and I can't recall offhand -- did OP  
23 request specific conditions in those instances?

24           MR. YEE: The only condition I think that  
25 we -- well, I will say I know of one condition we've

1 asked for. That is the waiver of the 15 percent. So  
2 we have asked for that. There was an issue on  
3 Kunialoa regarding residential. I think that was an  
4 issue in Kunialoa.

5 But I cannot recall any other case in which  
6 the Office of Planning had recommended a condition.  
7 But that's -- I'm simply providing you with this is  
8 the Office of Planning's position today.

9 COMMISSIONER McDONALD: It just sounds as  
10 if, you know, OP's not in the position to make the  
11 conditions a part of a declaratory ruling or permit.

12 MR. YEE: Correct.

13 COMMISSIONER McDONALD: Okay. One last  
14 question. And I don't know if this is more so for the  
15 Petitioner. Maybe the County can help out. In the  
16 Petition there were references made to the county of  
17 Kaua'i's IAL study islandwide.

18 And there were thresholds identified at a  
19 rating of 25 versus 28 whereas a rating of 28 -- I  
20 can't recall what the exact percentage is, but a  
21 significant amount of the area under this current  
22 Petition did not fall within that 25 rating, is that  
23 correct?

24 Whereas if we looked at it at a 28 rating,  
25 majority of the land would fall within the IAL

1 designation that the County had studied. I just want  
2 to know what the difference, what the biggest  
3 difference between a rating of 25 and 28 actually was.

4 MR. DAHILIG: Just first some background.  
5 Again I'm Michael Dahilig, director of planning, for  
6 the record. Just to provide some background for the  
7 Commission. The County's presently engaged in a study  
8 to identify as part of the County-driven process part  
9 3 of Chapter 205 potential lands for a County Petition  
10 for IAL designation.

11 And through the University of Hawai'i  
12 Department of Urban and Regional Planning Department,  
13 they devised a geographic information system tool by  
14 which input was taken from a group of stakeholders  
15 based on the criteria, so then weight from a GS  
16 analysis perspective areas that fall within a certain  
17 point scale.

18 And the 28 score that Mr. Meheula was  
19 referencing relates to a threshold that the  
20 stakeholders for the County's committee on the IAL  
21 decided that that wasn't an appropriate threshold  
22 because the points are essentially spread between the  
23 8 criteria.

24 And A score of 28 it ensures that at least  
25 all the criteria are met at least from one point to I

1 believe, it was 4 points. So 28 means that the  
2 minimum of every criteria is met at some point, at  
3 some level or another.

4           The reference to 25 I think it was with  
5 respect to the information that we had through a  
6 pre-consultation process with the Applicant, given  
7 some information about where we see the lands on our  
8 tool that the university provided us. They generally  
9 fall within 25.

10           They haven't passed what we believe is the  
11 threshold of 28. However, they're within, I would  
12 say, the pen number of 28 score. It didn't concern us  
13 that the lands in the Petition Areas met what was the  
14 County's specific threshold.

15           I think part of what also drove our  
16 recommendation to support the application was that  
17 beyond the score of 25 there are, you know, physical  
18 efforts on the property to actually do agriculture as  
19 we speak. I think that helped sway our opinion and  
20 provided the recommendation before the Commission.

21           The Commission, may I just add, I know  
22 there's a question concerning the water. One of the  
23 concerns with the CWRM's recommendations to actually  
24 have something be conditioned to come in for a water  
25 approval before designation.

1           As we've gone through our analysis we're  
2 looking at it from a standpoint of: Is there water  
3 available? We're not necessarily -- we haven't been  
4 looking at whether there're regulatory impediments to  
5 obtaining water. Rather is there a water source  
6 available?

7           It's incumbent upon the landowner should  
8 they -- we feel as part by our generalized analysis  
9 that's been going on, it doesn't concern us whether  
10 there are those regulatory impediments there. Whether  
11 it's more a physical thing: Is there a water source  
12 and can you get to a water source? Rather, has  
13 somebody approved you for a water source? And I think  
14 that distinction is important to know in this  
15 application.

16           COMMISSIONER McDONALD: Thank you.

17           CHAIR HELLER: Commissioners, any other  
18 questions? Go ahead.

19           COMMISSIONER INOUE: I do like  
20 Commissioner McDonald commend the Kamehameha Schools  
21 to voluntarily provide the IAL designations for these  
22 lands. At least in my experience it is one of the  
23 most complete that I've seen.

24           So my question is actually just trying to  
25 understand certain things like the 25-28 point scale.



1 I understand it's based on, from the testimony, 8  
2 criteria under Chapter 205-25 I guess. You said 4  
3 points. So 8 times 4 are 32. So when you say a 28  
4 point scale it meant 28 points?

5 MR. DAHILIG: It's actually -- maybe I can  
6 call my -- generally the 8 criteria are weighted on a  
7 1 to 4 scale. But there is one exception with respect  
8 to a weight that was provided to criteria No. 5 which  
9 is water.

10 So our committee that was advising us or  
11 the committee that was advising us or community  
12 committee that was advising us said: Above all else  
13 we can see the other set of criteria being on par with  
14 each other but we need to weight the water  
15 requirement.

16 So functionally that one criteria adds more  
17 points to the overall denominator when looking at the  
18 amount of points that are available for scoring the  
19 land.

20 COMMISSIONER INOUE: I see. What is a  
21 perfect score?

22 MR. DAHILIG: A perfect score?

23 MS. KAIAOKAMALIE: Good afternoon. Kamea  
24 Kaiaokamalie. I was a stock planner involved in the  
25 IAL Project. I think I maybe to step back a little

1 bit. When we took on trying to look at weighting the  
2 different criteria that was in the state legislation  
3 it was from a County process, not necessarily from the  
4 landowner process. We needed some way to basically  
5 prioritize those lands that we would consider for the  
6 County Petition.

7           What happened throughout -- it was a very  
8 long process. As you know we had the committee going  
9 for about 5 years, is that we looked at each  
10 individual criteria and broke those down to  
11 sub-criteria such as where the source is. What kind  
12 of source water is it? Is it rainfall, et cetera?  
13 And that's for all of them.

14           Consistently throughout our different  
15 meetings both with the committees and with the public,  
16 water, of course, there's one single source versus  
17 many sources. Of course, that's going to make that  
18 score a little bit different for the different  
19 properties that we're looking at.

20           The threshold is from 1 to 40. The perfect  
21 score would be 40. None of the lands on Kaua'i, none  
22 of the agricultural lands scored a 40 or a 1. There  
23 was always some attributes to all the different  
24 properties that would make it meet one criteria or  
25 another.

1           So in looking at the landowner Petition to  
2 date and not having actually gotten to the resolution  
3 part for the IAL maps, it hasn't gone to Council yet.  
4 We've used the tool to basically allow us to assess  
5 the different attributes that meet the legislation.

6           And if it falls short for some of the  
7 County's priority of 28 assets score it should meet  
8 all criteria to some level. If it doesn't, especially  
9 in regards to water, we would look at the land itself.

10          Instead of just looking at the tool and the  
11 technical aspect of what we develop, to actually look  
12 at the lands, look at the maps, do some ground  
13 truthing, also, of course, talk with the Petitioners  
14 about where is the water coming from.

15          What is the potentiality of more water  
16 coming in the future with the designation to expand  
17 what our community and our process is telling us?  
18 The most important thing is to start to grow food and  
19 other resources to, you know, increase our ability to  
20 do that kind of agriculture.

21          It's a little bit extended as a view, but,  
22 you know, again when we were looking at our study it  
23 was really for when we come out with our Petitions how  
24 are we gonna prioritize all of those lands out there  
25 to make sure that, you know, at least our initial

1 petitions have lands that are ready, capable of  
2 producing either agriculture toward the goals that  
3 we're looking at or with the designation perhaps, you  
4 know, allow them to be more ready for the growing of  
5 food and increase in resources that we need for our  
6 island.

7 COMMISSIONER INOUE: Thank you. I won't  
8 go too far with this, but water is the most important.  
9 So does that mean it has 8 points versus 4? I'm  
10 trying to get -- because it's 4 points or 8. Are  
11 there more than 8 criteria to look at that has points  
12 too?

13 MS. KAIAOKAMALIE: Each criteria on its own  
14 was aggregated to 1. So depending on how many  
15 sub-criteria came out, for example, again with water.  
16 The sources were broken down into sub-criteria:  
17 stream, waterfall, surface water, ditch. What the  
18 conditions of the ditches were. It got very  
19 complicated.

20 So each one was aggregated so that the  
21 weighting would be 1 -- .1 or .7 or .8 within that  
22 score because water by itself as a criteria has a  
23 larger weight than any other of that criteria. It  
24 definitely is the most telling of the potentiality in  
25 our opinion being to do agriculture long term.

1           In the appendix there's -- as part of the  
2 appendix and also on the website a criteria score  
3 sheet that goes through all the sub-criteria in those  
4 scores as well.

5           MR. DAHILIG: Just add, Commissioner, maybe  
6 I'll use the word 'wordbounding'. In the sense that  
7 part of it involves a few million foot then processing  
8 through pretty complex algorithms that the university  
9 has come up with. So from a simplistic standpoint we  
10 relied on points to try to describe thresholds.

11           But in reality what was done to come up  
12 with the points was a process of they distributed a  
13 number of these I-clickers or survey clickers to the  
14 various stakeholders.

15           And based on various criteria and various  
16 attributes which were sub-criteria, they were asked to  
17 kind of rate them either as a yes or no or a 4 or a 3  
18 or 2 or a 1, just a number of things.

19           And then those inputs came into a general  
20 score for one of the 8 criteria upon which time it was  
21 weighted. We do have a graphics that we can for  
22 informational purposes, provide to the Commission  
23 staff on how exactly this works.

24           It essentially looks like a spaghetti web  
25 of inputs into just the 8 points.

1 COMMISSIONER INOUE: Okay. Maybe just for  
2 my own education. If the website that you mentioned  
3 is available to provide it to staff, maybe I can just  
4 look at that. It's sounds real complex. I thought it  
5 was something simple. I appreciate the effort.  
6 Couple more questions.

7 I just want to, Mr. Meheula, make sure I  
8 understood the 3 already approved their versions. Did  
9 you say that the Petitioner landowner is downstream of  
10 all requests? Is that what I heard?

11 MR. MEHEULA: What I was saying is that for  
12 Waipa --

13 COMMISSIONER INOUE: Yes.

14 MR. MEHEULA: -- there's 3 streams that  
15 diversion permits that have been accepted. And Waipa  
16 would be the third in line. It's really these users  
17 across Waiko area, they're first using the water.  
18 This was once a smaller stream. So I was talking  
19 about that.

20 With respect to Lumahai, there's the  
21 Haradas are the only user and much bigger stream, but  
22 they need to go through the process of putting in an  
23 application.

24 COMMISSIONER INOUE: Where I'm driving  
25 with that is part of the 3, not the one that is in

1 controversy, but the 3 that approved. The Petition  
2 landowners are upstream. So the fact that you will be  
3 using downstream water is not gonna affect what they  
4 are using up there. Is that what I heard? Maybe not.

5 MR. MEHEULA: No. What I said is that  
6 they've all been approved. And that the commission  
7 stated with respect to that quote, "The use of surface  
8 water diverted from Waipa Stream is consistent with  
9 the existing versions identified by the commission."  
10 I was just reading what they stated. And they went on  
11 to state "The Commission supports the designation of  
12 these lands as Important Ag Lands."

13 COMMISSIONER INOUE: Okay. Then could you  
14 just briefly, if you know, there are 5 or 6 landowners  
15 within that Waipa parcel. Do you know what the  
16 existing uses or any future planned uses for those 5  
17 or 6 parcels?

18 MR. MEHEULA: I don't know. Maybe the  
19 executive director of the Waipa Foundation might, but  
20 I don't.

21 COMMISSIONER INOUE: And, finally, there  
22 was representation that there would be some  
23 infrastructure improvements without too many details.  
24 But do you have any details on those?

25 MR. MEHEULA: For Waipa?

1           COMMISSIONER INOUE: Yeah. I believe it's  
2 mostly Waipa.

3           MR. MEHEULA: There's going to be some  
4 buildings in here. I believe that -- they wouldn't be  
5 on the area but they're going to be supportive of  
6 agricultural use. That's why they kept this plain  
7 area where we parked here. You saw the multi-use  
8 building already created.

9           I believe that the additional structures  
10 that are going to be put up there, there's gonna be a  
11 kahua open multi-use area that would continue to host  
12 the farmers market. That would be right here where we  
13 drove in the last stop.

14           There's gonna be a community complex,  
15 certified kitchen, hale imu, multi-purpose building,  
16 administrative building and a bunk house. That's  
17 gonna be right around here. It's gonna start  
18 construction.

19           There's gonna be an educational complex for  
20 building schools including pre-school, small scale  
21 farm and garden and supporting infrastructure. That's  
22 going to be, again, this area.

23           And there's gonna be worker housing,  
24 housing for workers and kupuna as a resource for  
25 operation of the program. And I believe those are



1 going to be here and also here, right here.

2 COMMISSIONER INOUE: Okay. Thank you.

3 CHAIR HELLER: I have a question.

4 Following up on the issue with the Commission on Water  
5 Resource Management. There was a point raised about  
6 whether or not we could set a timeframe on that  
7 application. In relation to that I guess I have two  
8 questions.

9 1 is: Can the Petitioner make some kind of  
10 representation as to a timeframe?

11 2. Is the timing of an IAL designation all  
12 that critical? For example, does it make a  
13 significant difference to the Petitioner whether the  
14 designation became effective, say, three weeks from  
15 now versus three months from now?

16 MR. MEHEULA: You know, when you're before  
17 a body and the criteria are 8 and the test is you  
18 don't have to meet all the criteria, and all of the  
19 government supporting agencies are saying if you find  
20 that we don't meet that one, for that reason, I still  
21 think that under the rule we should be entitled to a  
22 decision today to be able to make a decision.

23 We just would like to move on with it, get  
24 it done. We're here at -- all of us are here at great  
25 expense. As far as the timing goes, I think the

1 reason why we're all saying "let's just go forward  
2 with it," if you just take a look at what I showed  
3 here.

4           In Waipa you have a much smaller stream and  
5 3 permit applications granted. No problem. This one  
6 you've got a much larger stream, no upstream users.  
7 And you saw the type of usage they have now. They  
8 basically have some lo'i right here in a 4-acre area.  
9 It's 6 acres but they're obviously aren't using all.  
10 Pretty de minimis.

11           As far as timing goes I believe that the  
12 Commission on Water Resource Management and our  
13 communication with them this week, that they'd like us  
14 to submit an application within 90 days.

15           And they said -- and if you don't commit to  
16 do that we're going to send you a letter which gives  
17 you a 90 days. So, you know, it's gonna happen within  
18 90 days.

19           The reason why it's unique you can't  
20 just -- you can't just submit it is you need to have  
21 verified numbers on the water flow, the usage, so that  
22 when you make your representations in your application  
23 they're accurate.

24           That takes a little bit of time. But if  
25 you're looking for, you know, a timetable I think it's

1 pretty much going to be imposed on us.

2 CHAIR HELLER: Are you comfortable with  
3 saying if the Petitioner makes the representation that  
4 it will be submitted in 90 days?

5 MR. MEHEULA: I'm just going to go check  
6 with my client right now. If you don't mind.

7 (Pause in proceedings).

8 CHAIR HELLER: Sure.

9 MR. MEHEULA: I can commit that we'll  
10 submit it within 90 days, but reserve the right to ask  
11 the Commission on Water Resource Management for more  
12 time. If they give us more time then we'd like to be  
13 able to have that time again for purposes of getting  
14 the professionals up there. But we will commit that  
15 we'll submit it within 90 days. The only exception  
16 being if that condition renders additional time.

17 CHAIR HELLER: I'm certainly not suggesting  
18 that we should take over running the Commission on  
19 Water Resource Management. Commissioner Matsumura.

20 COMMISSIONER MATSUMURA: One question that  
21 I have is is there any consideration of the FSMA of  
22 2001? Any time you're playing with water you have  
23 concern about additions and the use of federal  
24 regulations coming in place. You talked about  
25 certified kitchens, et cetera.

1           I think you're talking about taro,  
2 underwater. You're talking about selling the product  
3 in an open market. There's different kind of  
4 concerns. Wonder if you're addressing those things.

5           MR. MEHEULA: You know, I'm not prepared to  
6 address that. I think the reason is the application  
7 for Important Agricultural Lands designation. None of  
8 the criteria would be addressed in that issue.

9           I submit that Kamehameha Schools and any of  
10 its licensees or tenants, they're obligated like  
11 everybody else to follow all the laws including those  
12 that you just mentioned. I don't have the expertise  
13 or I didn't do the due diligence to specifically  
14 respond to that question.

15           CHAIR HELLER: Commissioners? Yes,  
16 Commissioner Biga.

17           COMMISSIONER BIGA: Mahalo. I just had a  
18 question. I did have this question when we were out  
19 at the site this morning. Eventually -- and this goes  
20 back to Commissioner Dennis' question about the  
21 gasoline powered pumps. Eventually that'll be used  
22 after you guys connect from the top into the property  
23 up at the river.

24           MR. MEHEULA: You mean up here at the  
25 river?

1                   COMMISSIONER BIGA: Would there still be  
2 needed gasoline pumps on the top side? Would that be  
3 used for the whole property?

4                   MR. MEHEULA: I believe so. My  
5 understanding is the licensee is here, is that if the  
6 Commission on Resource Management confirms that it's  
7 appropriate to continue to draw water from the stream  
8 in the quantities and in the manner that it has for  
9 this area, then they will. And what I thought was  
10 when they cleared this area they're going to draw  
11 water from the stream here to feed this area.

12                  COMMISSIONER BIGA: Right.

13                  MR. MEHEULA: So, you know, I presume  
14 they're gonna use that or another method if the  
15 commission finds, or any other agency finds that  
16 that's not an appropriate manner to do it.

17                  COMMISSIONER BIGA: Again, just a concern  
18 of the 15 families.

19                  MR. MEHEULA: Thank you.

20                  CHAIR HELLER: Commissioners, anything  
21 further? Does the County wish to offer any  
22 presentation or testimony?

23                  MR. TRASK: Thank you, Chair. For the  
24 record Deputy County Attorney Mauna Kea Trask on  
25 behalf of the county of Kaua'i. No. We'll just stand

1 on the stipulation to the letter that we provided  
2 early. Thank you.

3 CHAIR HELLER: Does the OP have any  
4 presentation or other?

5 MR. YEE: Thank you. Deputy Attorney  
6 General Bryan Yee on behalf of the Office of Planning.  
7 With me is Mr. Rodney Funakoshi from the Office of  
8 Planning.

9 I just wanted to give a brief overview and  
10 then to defer the substance of the testimony to  
11 Mr. Funakoshi who will then present the Office of  
12 Planning's position in the case.

13 The overall presentation I just wanted to  
14 tell you, I know the Land Use Commission is appointed  
15 in staggered terms. So some of you have been here for  
16 a long time and are very familiar with this issue and  
17 you're ready to get under the weeds and all of the  
18 issues.

19 Some of you may be a little newer, so may  
20 not be as familiar with the process. So I just wanted  
21 to make sure we're all on the same page. If I could  
22 just take a few minutes to talk about what this IAL  
23 process is about.

24 We start with the Hawaii State Constitution  
25 because Article XI Section 3 says, "Provide certain

1 protections for the lands which are designated as  
2 Important Agricultural Lands under the standards and  
3 criteria established by the Legislature."

4           So the Legislature in 2008 then established  
5 the standards and criteria as well as the process by  
6 which lands would be designated as IAL.

7           They're basically 2 ways in which lands can  
8 be designated. One is voluntarily by the landowner.  
9 The second is by the county. So in this particular  
10 process it is a landowner-initiated voluntary Petition  
11 for IAL designation.

12           There are some benefits, perhaps tax  
13 credits that might be gained. There are also  
14 restrictions on IAL to the extent that if an IAL is to  
15 be reclassified it requires a larger, more extensive,  
16 even difficult process for redesignation, for  
17 redesignation to Urban, for example.

18           But in addition you should be aware that  
19 people talk about a 50 percent majority as well as a  
20 credit for urbanization. Just be clear what these  
21 are.

22           If you go for an IAL designation as an  
23 individual landowner, you may ask that an equivalent  
24 of 15 percent of those lands that other lands could be  
25 urbanized.

1           So if you have a hundred acres of land  
2     you're going to declare it as IAL, you may pass that  
3     15 acres somewhere else to be urbanized.

4           In this case the Petitioner has stated --  
5     and it's an important point for the Office of  
6     Planning's analysis -- that they're waiving that  
7     15 percent credit.

8           So when they say they're waiving the credit  
9     they're saying: We're not going to ask that any other  
10    lands be urbanized.

11          The second issue that they talked about  
12    "This is not anywhere near our 50 percent majority of  
13    our lands." That's important because if the County  
14    goes in to designate lands as IAL they can only  
15    designate up to 50 percent of the individual  
16    landowner's land.

17          So Kamehameha Schools owns a hundred acres.  
18    You cannot designate more than 50 acres as IAL.  
19    You're prohibited by the law. So Kaua'i is going  
20    through a process in which they will eventually  
21    presumably come to a point where they will come to the  
22    Commission and say: Here are the lands we think  
23    should be designated as IAL.

24          If Kamehameha Schools came and said, "I  
25    want all of this land as IAL," that would inhibit or



1 prevent the Kaua'i County from them putting forth  
2 their proposal. That would be an important factor to  
3 consider. That's not true here.

4 That's one of the reasons why Mr. Meheula  
5 talked about: Oh, well, we're not anywhere close to  
6 our 50 percent.

7 So in other words, Kaua'i County still has  
8 the ability to move forward with whatever plans they  
9 may have, I mean eventually, to move forward with  
10 their plans for IAL designation. So just to let  
11 people understand about that.

12 Finally, I did want to note the Department  
13 of Agriculture cannot be here today. They apologize.  
14 Mr. Funakoshi cannot guarantee we'll have an answer,  
15 but if you have a question we will do our best to try  
16 to answer any questions based on the Department of  
17 Agriculture's testimony. Otherwise DOA rests on their  
18 testimony.

19 With that I will refer here to  
20 Mr. Funakoshi for the Office of Planning's position.  
21 Thank you.

22 MR. FUNAKOSHI: Thank you. I'm Rodney  
23 Funakoshi from the State Office of Planning. I am not  
24 going to go through the 8 criteria. That was done  
25 fairly well by Mr. Meheula. I would like to say in

1 general that the Office of Planning as well as with  
2 the Department of Agriculture, supports this Petition  
3 for the voluntary designation of IAL lands on Kaua'i.

4 We both further would like to commend the  
5 Petitioner for their comprehensive strategic  
6 agricultural plan which embodies the goals and actions  
7 consistent with the state of Hawai'i's policies for  
8 increased food security and food self-sufficiency.

9 So similar to DOA we agree that all the  
10 criteria have been complete to some degree. And only  
11 15 percent, approximately, of the Petitioner's  
12 holdings on Kaua'i are being requested for voluntarily  
13 designation. So this is far short of the majority of  
14 50 percent that was just referenced is a majority rule  
15 policy.

16 So in general we feel that it is a very --  
17 it's a very good Petition that should be supported in  
18 its entirety. We did get one comment, late comment  
19 from the Water Commission staff who pointed out  
20 correctly that, you know, this, the Lumahai diversion  
21 which is currently a temporary use, is being through a  
22 pump is not permitted or the commission has no record.  
23 So they did request that the permit be submitted.

24 The only other thing I would like to add is  
25 the commission also mentioned that there's the

1 possibility that they would also require an amendment  
2 to what they call interim instream flow standards  
3 which are established for every perennial stream in  
4 the state.

5           And if there is a water diversion that may  
6 amend, you know, what is the stream flow for that,  
7 what is the regulatory stream flow for that that may  
8 also require amendment.

9           At the same time they also indicated that  
10 this is not expected to be a problem given the  
11 relatively small amount of diversion and the very  
12 large stream flow for Lumahai. So I'll just leave it  
13 at that.

14           CHAIR HELLER: Thank you. Commissioners,  
15 any questions for OP?

16           COMMISSIONER INOUE: Thank you. Bryan, I  
17 have a question I was trying to look up.  
18 Fifty percent requirement. Is that by county or  
19 statewide? I have a feeling it's an interpretation of  
20 what it says. I was trying to look for it.

21           MR. YEE: It's an excellent question. I  
22 don't know.

23           COMMISSIONER INOUE: Okay. That's fine.

24           MR. YEE: My assumption, frankly, would  
25 have been "County". But I would really would have to

1 look much more closely at the statute itself and the  
2 legislative history. Sorry.

3 COMMISSIONER INOUE: Thank you.

4 CHAIR HELLER: Commissioners, anything  
5 further? Commissioners, what is your pleasure in this  
6 matter?

7 COMMISSIONER ESAKI: Move for approval.

8 COMMISSIONER CHOCK: Second.

9 CHAIR HELLER: It's been moved and  
10 seconded. Is there any discussion? If not I'll ask  
11 our executive director to call the vote.

12 MR. ORODENKER: Thank you, Chair. The  
13 motion is to approve the Petition. Commissioner  
14 Esaki?

15 COMMISSIONER ESAKI: Yes.

16 MR. ORODENKER: Commissioner Chock?

17 COMMISSIONER CHOCK: Aye.

18 MR. ORODENKER: Commissioner Inouye?

19 COMMISSIONER INOUE: Yes.

20 MR. ORODENKER: Commissioner Mahi?

21 COMMISSIONER MAHI: Aye.

22 MR. ORODENKER: Commissioner McDonald?

23 COMMISSIONER McDONALD: Yes.

24 MR. ORODENKER: Commissioner Torigoe?

25 COMMISSIONER TORIGOE: Yes.

1 MR. ORODENKER: Commissioner Biga?

2 COMMISSIONER BIGA: Yes.

3 MR. ORODENKER: Commissioner Matsumura?

4 COMMISSIONER MATSUMURA: Yes.

5 MR. ORODENKER: Chair Heller?

6 CHAIR HELLER: Yes.

7 MR. ORODENKER: Mr. Chair, the motion  
8 carries unanimously.

9 CHAIR HELLER: Thank you. Is there  
10 anything else on this docket? Thank you to the  
11 Parties for your participation. Anything further to  
12 come before the Commission at this meeting? If not  
13 we're adjourned. I'm sorry, we have an executive  
14 session coming up. All in favor? (Aye)

15 (Unanimous vote)

16 Okay.

17 (2:42 executive session recess held).

18 (The meeting reconvened for adjournment at 3:15 p.m.)

19 --oo00oo--

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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;

Post hearing I was supplied a tape of the above  
proceedings of which I thereafter using computerized  
machine shorthand 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 \_\_\_\_\_ 2014

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HOLLY M. HACKETT, HI CSR #130, RPR #5910  
Certified Shorthand Reporter