

## LAND USE COMMISSION

STATE OF HAWAII

September 7, 2016

Commencing at 1:00 p.m.

STATE OFFICE BUILDING

Conference Rooms A, B C - 2nd Floor

3060 Eiwa Street

Lihu'e, Hawai'i 96766

## HEARING AND ACTION

DR16-56 Robinson Family Partners IAL (Kaua'i)

To Consider Petition for Declaratory Order to  
Designate Important Agricultural Lands for  
approximately 20,888 acres at Makaweli, Kaua'i,  
Hawai'i; TMK(4)1-7-001-001 (por.) (4)1-7-001-009,  
(4)1-7-005-002 (por.) (4)1-7-005-009 (por,) (4)  
1-7-006:004 (por.), (4)1-7-006:005, (4)1-7-006:006 (por.)  
(4)1-8-001:001 (por.)

BEFORE: Jean Marie McManus, CSR #156

1 APPEARANCES:

2 EDWIN ACZON, Chairperson  
3 JONATHAN SCHEUER, Vice Chair  
4 ARNOLD WONG, Vice Chair

5 COMMISSIONERS:

6 AARON MAHI  
7 LINDA ESTES  
8 DAWN N.S. CHANG  
9 NANCY CABRAL  
10 GARY OKUDA  
11 KENT HIRANAGA

12 DIANE ERICKSON, ESQ.  
13 Deputy Attorney General

14 STAFF:

15 DAN ORODENKER, Executive Officer  
16 RILEY HAKODA, Chief Officer/Planner  
17 BERT SARUWATARI, Planner

18 DAWN TAKEUCHI APUNA, ESQ.  
19 LORRAINE MAKI, Planner  
20 RODNEY FUNAKOSHI, Planner  
21 Office of State Planning

22 BENJAMIN MATSUBARA, ESQ.  
23 CURTIS TABATA, ESQ.

24 For Petitioner Robinson Family

25 EARL YAMAMOTO, Planner  
NOA CHING, Planner  
Department of Agriculture

JODI HIGUCHI, Deputy County Attorney  
LEANORA KAI'AOKAMALIE, Planner

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1 CHAIRPERSON ACZON: Good afternoon. We  
2 were very lucky I this morning. We had a beautiful  
3 weather in Kaua'i during our site visit. I want to  
4 thank Mr. Robinson for showing us that.

5 It's also nice to see that we have all nine  
6 Commissioners present today. Glad to see you guys.

7 Also want to recognize the President of our  
8 Senate President Ron Kochi.

9 This is the September 7th this, 2016 Land  
10 Use Commission meeting.

11 The first order of business is the adoption  
12 of the August 25th, 2016 minutes. Are there any  
13 corrections or comments on them. If not, is there a  
14 motion to adopt minutes.

15 Good afternoon.

16 This is the September 7, 2016 Land Use  
17 Commission meeting.

18 The first order of business is adoption of  
19 the August 25th, 2016 minutes any corrections or  
20 comes if not a motion to adopt.

21 COMMISSIONER MAHI: Moved.

22 COMMISSIONER CABRAL: Second.

23 CHAIRPERSON ACZON: The motion made by  
24 Commissioner Mahi and seconded by Commissioner Cabral  
25 to adopt minutes. All in favor say "aye". Any

1       opposed?   The minutes are adopted unanimously.

2               The next agenda today item is tentative  
3 meeting schedule.   Mr. Orodenger.

4               EXECUTIVE DIRECTOR:   Next meeting is  
5 September 23rd at Poipu Grand Hyatt, HCPO conference  
6 from September 21st to 23rd.   That Friday we will be  
7 holding meeting at 1:30 p.m. for the tentative  
8 adoption of the order for this hearing.   And for a  
9 presentation from whose house LLC on sustainable  
10 communities.

11              On October 12th, 2016, hearing motion for  
12 order regarding satisfaction of affordable housing  
13 conditions in Kona.

14              October 26th to 27 is still to be  
15 determined.   November 9th and 10th, we will be having  
16 the first of the remand special hearing on Lana'i in  
17 front of hearings officer.

18              November 15th and 16 also reserved for  
19 remand special hearing on Lana'i or Maui for Lana'i  
20 case.

21              The remainder of the agenda still to be  
22 determined.

23              CHAIRPERSON ACZON:   Thank you.  
24 Commissioners, do you have any questions?

25              This is a hearing and action meeting on DR

1 16-56 in the matter of the Petition of the Robinson  
2 Family for Declaratory Order to Designate Important  
3 Agricultural Lands for approximately 20,888 acres at  
4 Makaweli, Kaua'i, Hawai'i TMK (4)1-7-001-001, portion  
5 of lot one, (4)1-7-001, lot 9, (4)1-7-005, portion of  
6 lot two, (4)1-7-005 portion of lot 9, (4)1-7-006,  
7 portion of lot 4, (4)1-7-006, portion of lot 5,  
8 (4)1-7-006 portion of lot 6, and (4)1-8-001, portion  
9 of lot 1.

10 Will the Petitioner please identify itself  
11 for the record?

12 MR. MATSUBARA: Good afternoon, Mr.  
13 Chairman, Commissioners, my name is Benjamin  
14 Matsubara along with Curtis Tabata. We represent the  
15 Robinson Family Partners. Sitting to my left behind  
16 me is Bruce Robinson, general partner of the  
17 petitioner. You may not recognize him this afternoon  
18 because he is not wearing his work clothes and blue  
19 jeans. He has dressed for the occasion.

20 CHAIRPERSON ACZON: Let me update record.

21 On June 27, 2016 Commission received  
22 Petitioner's Petition for Declaratory Order to  
23 designate Important Agricultural Lands, and Exhibits  
24 "A" through "C" with a hard copy and digital files;  
25 and \$1000 application fee. The Commission mailed a

1 request for comments to OP, The State Department of  
2 Agriculture and to the Kaua'i County of Planning  
3 Department on the same day.

4 On July 12, 2016, the Commission received  
5 Petitioner's Errata to Petition for Declaratory Order  
6 to designate Important Agricultural Lands filed June  
7 27, 2016, Exhibit "A".

8 On July 13, 2016, Commission mailed request  
9 for comments to the errata on the Petition to  
10 Declaratory Order Exhibit "A" to OP, the State  
11 Department of Agriculture and to the Kaua'i County  
12 Planning Department.

13 On August 1st, 2016, Commission received  
14 Petitioner's Second Errata to Petition for  
15 Declaratory Order to designate Important Agricultural  
16 Lands filed June 27, 2016 Exhibit "A". On the same  
17 day, the Commission mailed a request for comments to  
18 the Second Errata on the petition for Declaratory  
19 Order, Exhibit "A" to OP, State Department of  
20 Agriculture, to the Kaua'i County Planning  
21 Department.

22 On August 8, 2016, the Commission received  
23 OP's comments to the Petition and OP Exhibits 1 to  
24 two.

25 On August 10, 2016, the Commission received

1 the Department of Agriculture's and Kaua'i County  
2 Planning Department's comments to the Petition.

3 On August 16, 2016, the Commission received  
4 Petitioner's Response to OP, Department of  
5 Agriculture, and Kaua'i County Planning Department's  
6 comments to the Petition.

7 On August 30, 2016, the Commission mailed  
8 the September 7, 2016 agenda to the Parties and the  
9 State and Kaua'i mailing lists.

10 Earlier today, the LUC conducted a site  
11 visit to the Petition Area.

12 Mr. ACZON:

13 CHAIRPERSON ACZON: On September 7, 2016,  
14 the Commission received an email in support of the  
15 Petition for Declaratory Order to designate Important  
16 Agricultural Lands from Ronald D. Kouchi Senate  
17 President.

18 As of today the LUC conducted a site visit  
19 to the petition area.

20 Mr. Matsubara, has our staff informed you  
21 of the Commission's policy regarding the  
22 reimbursement of hearing expenses? If so, could you  
23 state your client's position with respect to this  
24 policy?

25 MR. MATSUBARA: We agree with the policy

1 and will abide by it.

2 CHAIRPERSON ACZON: Thank you.

3 Let me briefly describe our procedure for  
4 today on this docket.

5 I will first call for those individuals  
6 deciding to provide public testimony to identify  
7 themselves.

8 All such individuals will be called in turn  
9 to or witness box where they will be sworn in prior  
10 to their testimony.

11 After completion of the public testimony  
12 portion of the proceedings, the Petitioner will make  
13 its presentation.

14 After the completion of the Petitioner's  
15 Presentation, we will receive any public comments  
16 from Kaua'i County, the Office of Planning and the  
17 Department of Agriculture.

18 Thereafter, the Commission will conduct its  
19 deliberation.

20 The Chair would also note that from time to  
21 time I may call for short breaks.

22 Are there any questions on our procedures  
23 for today?

24 MR. MATSUBARA: No questions, Mr. Chairman.

25 CHAIRPERSON ACZON: Mr. Matsubara, the

1 Chair intends to declare that the documents submitted  
2 by the Department of Agriculture, Office of Planning,  
3 Kaua'i County and Petitioner's response are part of  
4 the record in this matter.

5 Do you have any objections to this matter?

6 MR. MATSUBARA: No, just a question. We  
7 just received a copy of topographical map of the  
8 portion of the subject property, and attached photo  
9 of Comiskey Park to show 70-degree slope.

10 Is this a Department of Ag exhibit?

11 MR. YAMAMOTO: Yes, it is.

12 MR. MATSUBARA: We will mark it as an  
13 exhibit to their testimony?

14 CHAIRPERSON ACZON: You don't have any  
15 objections to that?

16 MR. MATSUBARA: No objections.

17 CHAIRPERSON ACZON: The hearing on the  
18 documents are based part of the record.

19 Before I proceed, I think we have some  
20 Commissioners to make some disclosures.

21 Commissioner Okuda.

22 MR. OKUDA: Thank you, Mr. Chairman.

23 I would like to disclose that I represent a  
24 party involved in a litigation with the  
25 Matsubara-Kotake firm where they're involved also as

1 counsel. This litigation has nothing to do with  
2 anything that would deal with the professional  
3 integrity or abilities of Mr. Matsubara or members of  
4 his firm. I only hold him in highest regard as  
5 attorneys and people.

6 I make this disclosure in the event that  
7 anyone would like to see me recused from this matter  
8 and so that the record is also clear.

9 CHAIRPERSON ACZON: Mr. Matsubara, any  
10 objections?

11 MR. MATSUBARA: No objections.

12 CHAIRPERSON ACZON: Commissioner Estes.

13 COMMISSIONER ESTES: I just disclosed that  
14 Coco Emberson, who is a Robinson, went to the  
15 University of New Mexico and played intercollegiate  
16 volleyball while I was there. I've known her for  
17 about 40 years. We've never discussed any project,  
18 but I just wanted to make that disclosure.

19 CHAIRPERSON ACZON: Any objection?

20 MR. MATSUBARA: No objections, Mr. Chair.

21 CHAIRPERSON ACZON: Thank you.

22 Is there anyone in the audience who has  
23 decided to provide public testimony in this matter?  
24 A three minute limit of testimony will be enforced.

25 EXECUTIVE DIRECTOR: Mr. Chair, we have

1 four members of the public signed up to testify.  
2 First testifier is Richard Ruiz.

3 CHAIRPERSON ACZON: Will you sit in the  
4 witness box and may I swear you in first.

5 Do you swear or affirm that the testimony  
6 that your about to give is the truth.

7 THE WITNESS: I swear.

8 RICHARD RUIZ

9 Was called as a public witness, was sworn to tell the  
10 truth, was examined and testified as follows:

11 DIRECT EXAMINATION

12 CHAIRPERSON ACZON: Thank you. Please  
13 state your name and address for the record.

14 THE WITNESS: Richard Ruiz. I support the  
15 ranch --

16 CHAIRPERSON ACZON: Your address, please.

17 THE WITNESS: Address P.O. Box 781,  
18 Kekupua.

19 CHAIRPERSON ACZON: Please proceed.

20 THE WITNESS: I support Gay Robinson  
21 Makaweli Ranch. I started there working for them in  
22 early nineties as one helper, then proceeded, you  
23 know, as it went. And I later got hired as a cowboy,  
24 and so far I see the ranch growing.

25 We raise cattle in places you wouldn't

1 believe. If there's grass, they'll go. If you look  
2 at the map, all up in the higher elevations, you  
3 might think that they're not there, but they are.  
4 You know. You'd be surprised where they go, you  
5 know. Raising cattle my livelihood, be doing it all  
6 my life pretty much.

7 Now I have a 15-year old son that's coming  
8 along with us, and starting to learn the tradition.  
9 Here in Hawaii we pretty much the only ranch that  
10 runs work cattle the way that we do.

11 Not too much on horseback any more. We now  
12 have a slaughterhouse where we providing local grass  
13 feed beef to the community, and for that reasons, I  
14 support Makaweli Ranch, Gay Robinson, thank you.

15 CHAIRPERSON ACZON: Thank you. Any  
16 questions, Mr. Matsubara?

17 CROSS-EXAMINATION

18 BY MR. MATSUBARA:

19 Q Mr. Ruiz, the Department of Ag submitted  
20 this topo map showing the portion between Makaweli  
21 River up to the top of the property, and then they  
22 put one picture of Comiskey Park showing a 70-degree  
23 slope. You take your cattle up there?

24 A Yeah.

25 Q On that slope?

1           A       On that slope.

2           Q       You go up there?

3           A       I go.

4           Q       Horseback?

5           A       Horseback. Cannot go ATV. Some days we  
6 got to walk. If there's a way, they going. You got  
7 to go get 'em, bring 'em home, just the way it is.  
8 You have get grass, they going to look for grass, and  
9 get cattle up there.

10          Q       So you work up there?

11          A       Yes, I do.

12          Q       And then get rainfall that falls on the  
13 upper pasture area beyond the ridge and along this  
14 line?

15          A       Yes, yes.

16          Q       That's where the cattle go? Up there  
17 plenty grass?

18          A       Grass, vegetation, they going eat.

19          Q       So when the lower pasture area is dry, the  
20 cattle move up?

21          A       The cattle move, they go where get food.

22          Q       They can walk?

23          A       Yeah.

24          Q       Is there a difference with how you ranch  
25 compared to how maybe Parker Ranch ranches?

1           A       In many ways, yeah, I believe so. Yeah.

2           Q       Most of yours on horseback?

3           A       We do a lot of horseback riding. No ATV  
4 riding. Like I said, you hardly find any ranch in  
5 whole State of Hawaii that does it this way any more.  
6 Plenty of them is all on ATVs.

7           Q       Thank you very much.

8           A       Thank you.

9                   CHAIRPERSON ACZON: Commissioners, any  
10 questions?

11                   COMMISSIONER CABRAL: In reference to you  
12 having to go up to bring the cattle back, does that  
13 mean your perimeter is not fenced up top and open  
14 range in that area?

15                   THE WITNESS: We open range in the area,  
16 yes. There is places where there is fences, but a  
17 lot of places there is open range, which is good,  
18 because many a times you go, you see cattle in  
19 certain areas that you don't see, then you go again,  
20 or you go different area, you see cattle you see in  
21 certain places, you see them in another place,  
22 because they go travel wherever, you know, they just  
23 go where there is food.

24                   COMMISSIONER CABRAL: That means you don't  
25 have any cattle ranchers?

1 THE WITNESS: No, no neighbor ranchers.

2 COMMISSIONER CABRAL: Thank you.

3 CHAIRPERSON ACZON; anybody else,  
4 Commissioners? Thank you, Mr. Ruiz. Could we have  
5 the next witness.

6 EXECUTIVE DIRECTOR: Roger Taniguchi.

7 CHAIRPERSON ACZON: Do you swear that the  
8 testimony that you're about to give is the truth?

9 THE WITNESS: Yes, I do.

10 ROGER TANIGUCHI  
11 Was called as a public witness, was sworn to tell the  
12 truth, was examined and testified as follows:

13 DIRECT EXAMINATION

14 CHAIRPERSON ACZON: Please state your name  
15 and address.

16 THE WITNESS: Roger Taniguchi, Pakala,  
17 Makaweli.

18 CHAIRPERSON ACZON: Please proceed with  
19 your testimony.

20 THE WITNESS: I've worked for Gay Robinson  
21 for 34 years. I'm fourth generation cowboy working  
22 for the same company. My family's been there a long  
23 time and we do support the Gay Robinson because it's  
24 part of our tradition.

25 Whenever they needed us, we were always

1 there. And like I said earlier, we as cowboy, we  
2 don't do anything but horseback. Everything is  
3 horseback, and you got to jump down, got to walk, you  
4 got to run. You do the don't let boss walk. One  
5 rule from the old days, the boss never walks. All us  
6 young guys that does the walking, and believe me I'm  
7 old and still do.

8           So we go to the deep part of this mountains  
9 that you see here. I think wherever they got it  
10 blocked off, we got more than that. The cattle do  
11 roam. We do have fences out there, but because of  
12 the vegetation and the trees and the weather, you  
13 don't -- it will knock the fences down. They will  
14 go, but we need to track them. That's part of our  
15 job. You go out, you find them. You track them and  
16 you bring them back.

17           Sometimes you get couple of wild ones that  
18 get out, but we find a way to get them out, either  
19 track, catch 'em, lead 'em out. That's part of our  
20 job. I don't see anybody else here in the state that  
21 really does it, not like what we do. I mean that's  
22 just part of our life. That's all I got.

23           CHAIRPERSON ACZON: Any questions for the  
24 witness, Mr. Matsubara?

25           MR. MATSUBARA: No questions.

1 CHAIRPERSON ACZON: Commissioners? Thank  
2 you, Mr. Taniguchi.

3 THE WITNESS: Thank you.

4 CHAIRPERSON ACZON: Could we have the next.

5 EXECUTIVE DIRECTOR: Collin Robinson-Ague.

6 CHAIRPERSON ACZON: Can I swear you in?  
7 You affirm that the testimony that you're about to  
8 give is the truth?

9 THE WITNESS: Yes.

10 COLLIN ROBINSON-AGUE  
11 Was called as a public witness, was sworn to tell the  
12 truth, was examined and testified as follows:

13 DIRECT EXAMINATION

14 CHAIRPERSON ACZON: Please state your name  
15 and address.

16 THE WITNESS: My name is Collin  
17 Robinson-Ague, I live in Kaumakani.

18 So I'm in support of this IAL designation.  
19 I started work at G & R seven, eight years ago. My  
20 uncle offered me a job. And before that I used to  
21 come and visit all the time and we would go around  
22 and stay in the cabin and stuff and we would go all  
23 over. From when I was a kid there was always cattle  
24 all up in this area, and even now that I'm working  
25 here, you know, we go all up there like these other

1 guys said.

2 And, you know, there's cattle up there if  
3 you guys are in question of this area. So that's why  
4 I believe that it should be considered ag land.

5 Not much else to do with it other than  
6 cattle, that's just how we do it over there.

7 And I guess the other guys kind of covered  
8 everything, so.

9 CHAIRPERSON ACZON: Thank you. Any  
10 questions?

11 CROSS-EXAMINATION

12 BY MR. MATSUBARA:

13 Q What generation are you?

14 A I'm seventh generation.

15 Q Working the ranch?

16 A Yeah.

17 Q Thank you.

18 CHAIRPERSON ACZON: Commissioners, any  
19 questions?

20 Thank you Mr. Ague. Can we have the next?

21 EXECUTIVE DIRECTOR: Randy Uyehara.

22 CHAIRPERSON ACZON: Do you swear that the  
23 testimony that you're about to give is the truth?

24 THE WITNESS: I do.

25 -000-

1 RANDY UYEHARA

2 Was called as a public witness, was sworn to tell the  
3 truth, was examined and testified as follows:

4 DIRECT EXAMINATION

5 CHAIRPERSON ACZON: Thank you. Please  
6 state your name and address for the record.

7 THE WITNESS: My name is Randy Uyehara, and  
8 I currently reside at 501 Kalo Road. The only house  
9 on Kalo Road in Waimea.

10 CHAIRPERSON ACZON: Please proceed with  
11 your testimony.

12 THE WITNESS: I got some notes because I  
13 don't want to embarrass myself. This is really  
14 important.

15 Currently I'm serving as the vice president  
16 of the Kaua'i Taro Growers Association. I just  
17 stepped down this August as secretary of the  
18 Executive Board of the Directors of the Kaua'i County  
19 Farm Bureau. I'm still a member.

20 I retired December 2015 from Makaweli Ranch  
21 after 30 plus years. I started in the plantation,  
22 but the best years of my life I gave to the ranch.

23 I learned how to round up cattle, make  
24 saddles, repair saddles, shoe horses, fix fence. We  
25 planted grass all across that area. We had to cut

1 grass by hand to plant -- I mean all across the area,  
2 mauka to makai.

3 It's hard work. I don't know why anybody  
4 else would want to do it, but I was always interested  
5 in agriculture.

6 I want to stress the fact that we should  
7 accept -- first of all, I want to thank the Robinsons  
8 for this dedication. And I would trust in all of you  
9 to accept this dedication as-is as a whole for  
10 several reasons. And one of the reasons is the  
11 uniqueness of this ranch. Makaweli Ranch is named  
12 for Makaweli River and Makaweli River Basin which is  
13 fed by Mokuone, Kahana and Olokele Canyon Streams.  
14 Extremely rough territory, but there's cattle in  
15 there. It can go all the way up. There's grass in  
16 there.

17 Sometimes it takes a whole day to go all  
18 the way in on horseback and bring them all the way  
19 out and then truck then back to ranch headquarters.

20 Part of the -- you may think part of the  
21 problem that you don't want to accept some of the  
22 areas is the slope, 70 percent, but the palis, the  
23 gentler slopes are actually a plus because the  
24 shelves, the basins, they all contain grass now. And  
25 the palis, act as a natural border or fence. We can

1 separate the heifers that we don't want to get hapai  
2 from any bulls that, you know, of course they going  
3 to try. But that is a plus to have certain areas  
4 with steep grades.

5 But you'd be surprised where the cattle go.  
6 Sometimes I look down, and you cannot see the bottom,  
7 you got to trust the horse, sometimes you get off,  
8 because, you know, care more about your horse.

9 But there's other reasons why this whole  
10 area should be the ranch. I notice in 20 years a  
11 real increase in pasture quality and production. And  
12 mostly it was due to this. (Indicating.) This is  
13 called it "green panic", and it has seed, this type  
14 of grass is drought tolerant, and we had severe  
15 droughts the whole mountainside looked dead, it would  
16 be brown, but then after a good rain, it would be  
17 carpeted in green and this grass will eventually take  
18 over areas that we had patches of cactus, on any  
19 cactus, lantana, stuff that just rips at you, you  
20 don't want to walk through, much less ride a horse  
21 through there.

22 All those pastures now, some of the worst  
23 pastures are now the best most productive pastures  
24 because this grass has spread all across West Hawaii,  
25 even the south shore I notice is grass.

1           On my way, I turned around, went back, went  
2   to the bottom portion of the -- one part of the  
3   ranch, and I pulled this out of the ditch, because I  
4   know this, there's grass everywhere now.

5           I was originally going to get it from my  
6   house, but I forgot.

7           Another reason why I feel this way about  
8   the whole parcel is because when the constitutional  
9   convention came with important agricultural lands,  
10   part of the language. Let me get my glasses -- part  
11   of the language was the state is required to conserve  
12   and protect ag lands, promote diversified ag,  
13   increase ag self-sufficiency and assume -- and assure  
14   the availability of agriculturally suitable lands.

15          There's also language in there that the  
16   state should promote the retention of important  
17   agricultural lands, and I quote, blocks of contiguous  
18   intack and functional land units.

19          So traditionally, the tradition of lands or  
20   ahupua'a, from mauka to makai, will be maintained by  
21   this concept here. The cattle actually goes all the  
22   way to the beach, even though it's out of the  
23   designated area. But your decision is going to  
24   affect the next generation and generations  
25   thereafter.

1           The Robinsons have already tried different  
2       crops. I remember the taro, they tried to do taro.  
3       And still can. They planted Stevia. I think the  
4       generations to come will realize that with this  
5       concept of mauka to makai, you can actually propagate  
6       and harvest many different plants besides food.

7           I mean I remember one of the -- I forgot  
8       which uncle it was -- went across the world and  
9       brought back all different kinds of mango trees and  
10      all the cowboys knows where the mangos are the  
11      sweetest. When we see them always try to go get  
12      some. I do anyway.

13          Eventually people could grow food from  
14      mauka to makai, mauka crops at higher elevations,  
15      could include crops like purple passion fruit. You  
16      can even harvest or grow Maile, Kaua'i Maile,  
17      preferred Maile, it's more fragrant. Moki-hana  
18      berries almost impossible to get but it can be done.

19          Medicine, olena and noni can be cultivated.  
20      I see it in the stores now, really surprising.

21          CHAIRPERSON ACZON: Please summarize.

22          THE WITNESS: Anyway, I just want to thank  
23      you again, and I'm going to trust in your decision to  
24      accept this parcel as a whole for our future  
25      generations.

1 CHAIRPERSON ACZON: Thank you any  
2 questions, Mr. Matsubara?

3 MR. MATSUBARA: No questions. Thank you  
4 very much.

5 CHAIRPERSON ACZON: Commissioners?  
6 Commissioner Chang.

7 COMMISSIONER CHANG: I'm not as familiar  
8 with this area, but you said you're the VP of Kaua'i  
9 Taro Growers.

10 THE WITNESS: Uh-huh.

11 COMMISSIONER CHANG: Was this area  
12 historically used for taro?

13 THE WITNESS: I'm sure there has been taro  
14 there. I'm positive, in fact, because I actually  
15 grew taro in Makaweli Valley before I moved to  
16 Waimea, but with constant flooding and problem  
17 getting in and out, it was kind of difficult.

18 It would wreck your vehicle crossing the  
19 river all the time. So yeah, there was taro.

20 COMMISSIONER CHANG: Thank you.

21 CHAIRPERSON ACZON: Anybody else?  
22 Commissioner Okuda.

23 COMMISSIONER OKUDA: Thank you, Mr. Chair.

24 Mr. Uyehara, you gave us testimony about  
25 Mr. Robinson's uncle bringing back plants, and you

1 also gave us background of the years you spent with  
2 the ranch.

3 Have you observed how the Robinson family  
4 has tried to be good stewards of the land?

5 THE WITNESS: That's a good point. The  
6 Robinson family has always practiced good stewardship  
7 of the land, as well as taking care of the families  
8 and the people who work for them. I mean my wife's  
9 grandparents used to work there, and as retirees,  
10 they had jobs taking care of a house way up in the  
11 mountains for I think Bruce's Auntie Eleanor. Her  
12 uncles worked there. I got a job there.

13 The good stewardship part going beyond just  
14 taking care of the land, they take care of the  
15 animals as best they can even if it costs more money,  
16 we will go and look for a sick cow. Somebody spotted  
17 one and tried to treat it, and you know, take care of  
18 everything, the property.

19 If you go on the property, you're not going  
20 to see rubbish like anyplace else. You're not  
21 supposed to leave anything, no rubbish, no cans, we  
22 try as much as possible. I don't know what else to  
23 say.

24 COMMISSIONER OKUDA: So, in other words, to  
25 use the old cliché, the Robinsons in your view have

1 shown good stewardship through actions even if maybe  
2 they don't toot their own horn a lot of time?

3 THE WITNESS: Yeah, good stewardship and  
4 work ethic. I learned that. I've never seen anybody  
5 work 24 hours, all day, all night like Bruce, and  
6 continue working the next day because they had to.  
7 Either because they had to take care of the ranch or  
8 something to do with the plantation.

9 COMMISSIONER OKUDA: Thank you very much  
10 for your time and for your knowledge.

11 THE WITNESS: You're welcome.

12 CHAIRPERSON ACZON: Commissioner Scheuer.

13 VICE CHAIR SCHEUER: Mahalo for your  
14 testimony. Really appreciate your coming in and  
15 sharing.

16 I think when we go a little bit later on to  
17 the presentations from the Office of Planning and the  
18 Department of Agriculture as well as the attorneys  
19 for the Robinsons, one of the things that's going to  
20 come out is the difference between what Kaua'i County  
21 proposed as possible good important ag lands to  
22 protect in this area, versus what the land owner has  
23 proposed. And roughly speaking the landowners  
24 proposing inclusion of more mauka areas and the  
25 county having slightly more protection to the IAL

1 process of the makai areas.

2 Are you familiar with that difference?

3 THE WITNESS: No. I'm not familiar with  
4 that, but I wouldn't be surprised, because I  
5 understand there's tax benefits to agricultural land.  
6 But I'm interested. I would be willing to listen to  
7 what is going to be said, because I think it's  
8 important.

9 VICE CHAIR SCHEUER: I guess I'll just say  
10 for me, you know, none of my questions are going to  
11 be about questioning whether or not ranching is  
12 happening up mauka, or that it's a significant  
13 practice that's been considered, but I think at least  
14 what I'm going to be looking at is this difference in  
15 where the boundary lines are.

16 So the deliberations we're having is not --  
17 are not necessarily any statement for or against the  
18 value of ranching, but really where the State of  
19 Hawaii program, important agricultural lands, which  
20 lands should be prioritized for protection in  
21 comparison to other agricultural lands.

22 THE WITNESS: I would think that every  
23 effort should be made to support this agricultural  
24 enterprise, because I don't know if you know, in our  
25 United States, less than two percent of the

1 population feeds the other 98 point whatever percent  
2 of the population, and we need farmers, we need  
3 ranchers, we need to grow farmers and ranchers,  
4 that's really critical. So any issues with taxes or  
5 zoning, should be secondary.

6 Any other questions? Thank you. Can we  
7 stay if we want to just hear.

8 VICE CHAIR SCHEUER: Yes.

9 CHAIRPERSON ACZON: Any more public  
10 witnesses?

11 EXECUTIVE DIRECTOR: None signed up, Mr.  
12 Chair.

13 CHAIRPERSON ACZON: Do you swear or affirm  
14 that the testimony that you're about to give is the  
15 truth?

16 THE WITNESS: Yes.

17 RONALD D. KOUCHI

18 Was called as a public witness, was sworn to tell the  
19 truth, was examined and testified as follows:

20 DIRECT EXAMINATION

21 CHAIRPERSON ACZON: Thank you please.

22 State your name and address for the record.

23 THE WITNESS: Ronald D. Kouchi, 3391 Inoa  
24 Street, Lihue.

25 I got an email from my LUC representative

1 yesterday asking me why my testimony was so late.

2 And I candidly explained to her that until I read the  
3 newspaper article on Monday, I was unaware that this  
4 application was pending.

5 And I share that with you so that you know  
6 neither of the Robinson family nor any of their  
7 professional consultants contacted me to submit  
8 testimony.

9 As you declared at the beginning of the  
10 hearing what may be perceived as conflict, let me say  
11 that my grandfather came from Hiroshima, Japan to  
12 work on the Gay Robinson Plantation, so arguably  
13 everything that I have today and enjoy today is  
14 because of the Robinson family and the opportunity  
15 given my grandfather.

16 Ago having said that, I'm here because I  
17 have served on the Kaua'i County Council since 1983,  
18 and so have been aware of what has been going on in  
19 our community since then. And since 1983 the  
20 Robinson family has submitted one land use  
21 application to the state and the county, and that was  
22 for the Kapalawai Resort. And that was in or about  
23 the year 2000.

24 And it was for 250 hotel units on 300 acres  
25 of land. So their idea of a resort was less than one

1 unit per acre. And it was much later than the  
2 diversification that we saw by A&B and by Amfac as  
3 they got into other kinds of development  
4 opportunities, and also took the money out of sugar  
5 and invested around the world.

6 As to their stewardship, all the Robinsons  
7 have ever wanted to do is be farmers. They've kept  
8 the land in farming. I've eaten Makaweli beef from  
9 Ishihara Market since the 1960's as a boy growing up  
10 in Waimea, and Ishihara Market still serves Makaweli  
11 beef.

12 I went to eat at a place called Street  
13 Burger in Wailua across from Kintaro Restaurant, and  
14 they indicate on the menu that they only serve  
15 Makaweli beef. And in asking the ownership why was  
16 it that he chose Makaweli beef when there are grass  
17 fed operations in the Waialua-Kapaa area, he said  
18 their processing facility is spotless. You can eat  
19 off of the floors. The way that they handle their  
20 cattle, he believed was in an ethical way, and he was  
21 proud to serve their beef.

22 And so when we're talking about expanding  
23 an operation, it's not about the dream and a hope of  
24 what we could possibly do if we could actually raise  
25 the beef. They already have existing markets. They

1 have great acceptance in the marketplace. So this is  
2 just helping them continue to expand.

3 And I think that when we look at it in its  
4 totality, by their preservation and not going out and  
5 asking for residential subdivisions or strip malls  
6 and shopping centers and resorts, I just look to the  
7 heart of Bruce and the rest of his generation wanting  
8 to preserve.

9 And I don't know this young man who came  
10 up, but I worry with the family members around the  
11 world who may want to see a dividend check or  
12 interest payment off of this land, that we have an  
13 opportunity here to work with them, to preserve it in  
14 a way that they see fit. And to some of the makai  
15 lands, I'm not ashamed to say that in the balance, if  
16 some of those one day may need to be developed and  
17 those are months cost effective, they're more  
18 accessible for us and the infrastructure cost is  
19 less, I would certainly consider voting to support  
20 them, because of how long they have kept the land in  
21 agriculture, and how they have kept it open, and how  
22 they as a family have consciously resisted  
23 development.

24 You're not looking at a corporation and  
25 shareholders driving to the bottom line when you see

1     what is in their heart what do they want to do.  
2     You're looking at people who thought less than one  
3     unit per acre was the only kind of acceptable resort.  
4     It had to be plantation-style, ranch-style, not even  
5     two-storys on that Kapalawai property. That was  
6     their idea. So I have great faith in what they  
7     believe in. I believe in them, and that's why I'm  
8     here today to speak on their behalf.

9             And as stewards, my uncle died in the house  
10    that he was born in, then my dad was born in,  
11    15 years before my aunt passed away, and she was able  
12    to live in the house on the plantation until she  
13    passed away. They still maintain residences in  
14    Kaumakani and in Makaweli. There are few houses in  
15    camp six that are still there, and so even as  
16    stewards of their people, those housing opportunities  
17    at dramatically reduced rates, have been available to  
18    every single employee of the plantation, and that's  
19    been their commitment to their employees. So thank  
20    you.

21            CHAIRPERSON ACZON: Any questions for  
22    Senator Kouchi. Commissioner Estes.

23            COMMISSIONER ESTES: I just want to make a  
24    comment that after I received your reply, I informed  
25    my fellow Commissioners that your testimony had not

1       been solicited.

2               THE WITNESS:   Thank you.

3               CHAIRPERSON ACZON:   Anybody else?

4               THE WITNESS:   Thank you.

5               CHAIRPERSON ACZON:   Are there any more  
6 public witnesses?

7               Mr. Matsubara, please proceed with your  
8 presentation.

9               MR. MATSUBARA:   Thank you, Mr. Chair,  
10 Commissioners.   By today's Petition we're requesting  
11 that the Land Use Commission issue a Declaratory  
12 Order designating approximately 20,888 acres of land  
13 in Makaweli, Kaua'i as Important Agricultural Lands.

14               20,888 acres represents approximately  
15 76 percent of the non-conservation lands owned by the  
16 Robinson Family Partners.

17               Our presentation today will be as follows.

18               I will first call upon Bruce Robinson to  
19 give a history of the Petitioner.   And the  
20 relationship to agriculture and ranching.

21               Followed by Curtis Tabata, my partner, who  
22 will talk about the background of the IAL law and  
23 standards and criteria involved in determining the  
24 appropriateness of the property we are looking at  
25 today.

1           And the third individual will be Tom Witten  
2           principal of PBR, a landscape, architecture and  
3           planning firm will be providing the factual criteria  
4           relating to the applicable standards required to  
5           designate the land as IAL.

6           That's the order of presentation I  
7           anticipate doing and the first person I would ask --

8           CHAIRPERSON ACZON: Please proceed.

9           MR. MATSUBARA: Bruce Robinson.

10          CHAIRPERSON ACZON: May I swear you in?

11          Do you swear that the testimony you're  
12          about to give is the truth?

13          THE WITNESS: I do.

14          CHAIRPERSON ACZON: Please state name and  
15          address for the record.

16          THE WITNESS: Bruce Robinson. I live in  
17          Camp 3 at Makaweli, Kaua'i, P.O. Box 690011,  
18          Makaweli.

19          CHAIRPERSON ACZON: Please proceed.

20                    BRUCE ROBINSON

21          Was called as a witness by and on behalf of the  
22          Petitioner, was sworn to tell the truth, was examined  
23          and testified as follows:

24                    DIRECT EXAMINATION

25          THE WITNESS: My great, great grandmother

1 purchased the property in 1865, commenced ranching a  
2 year later, under the direction of her brother, the  
3 ranch grew. At that time there was no irrigation.  
4 So it was basically an open area, desert. So what  
5 you saw today where the land was irrigated was not  
6 available to the land until 1903.

7 Prior to 1903 all of the cattle ran in the  
8 mauka country, it was purely rain irrigated.

9 The mauka lands therefore are a very  
10 important part of the ranching process, because  
11 during the summer months, that's where the cattle ate  
12 the grass.

13 After the advent of the tunneling and the  
14 water system brought in for sugar, the cattle were  
15 carried in the lower valleys also, and every piece of  
16 land that was not used for sugar, was used for  
17 cattle.

18 They got the drinking water out of the  
19 water that came from the down the ditch for the cane.  
20 They were provided drinking water by that means.

21 So the ranch expanded into every corner of  
22 the property that wasn't used for sugar.

23 When the sugar closed, we then -- as of  
24 2009, we have been solely converting a lot of the  
25 sugar land as you saw back into drip -- into

1     sprinkler irrigation from the drip irrigation that  
2     came. It's a difficult process because the drip  
3     irrigation was designed at 30 gallons per minute, and  
4     the sprinklers require 60. So we have to upgrade the  
5     system, so it's a slow process. That's why when you  
6     looked out there you may have wondered why it wasn't  
7     expanded more than it is, and that's the reason. It  
8     takes time.

9             I am the fifth generation. We have seventh  
10     generation working there. Sixth generation here. My  
11     kids. The family has been completely dedicated  
12     throughout its entire existence here to maintaining  
13     agriculture on the property.

14            We only went to the development that  
15     Senator Kouchi referred to as a -- in the fear that  
16     agriculture was not going to be make it. It looked  
17     shaky at the time, and we wanted to get some means of  
18     cash to come in to be able to support the housing and  
19     the burden we have with employees, and that was the  
20     whole reason that we looked at the development.

21            Subsequently, we've been very fortunate to  
22     get some good corporate farmers in. We're very  
23     fortunate in that. And they've been able to maintain  
24     the land in agriculture. We've been very happy with  
25     them, and they are enabling us to continue the

1 stewardship that we feel is necessary.

2 BY MR. MATSUBARA:

3 Q Thank you. Do you have any comments on  
4 that piece (indicating)?

5 A Yes, I have a comment on this. I saw  
6 this --

7 MR. MATSUBARA: For the record, Mr.  
8 Robinson is referring to the Department of  
9 Agriculture exhibit, which was provided, a  
10 topographic map, and a cross-section of Comiskey  
11 Stadium.

12 CHAIRPERSON ACZON: Go ahead.

13 THE WITNESS: This land that is shown in  
14 this square and delineated by the white line has  
15 various slopes throughout it. From the valley floor  
16 that runs at four percent slope up into some of them  
17 which are 100 percent slope and the cliffs, but there  
18 a also a lot of level land up there, and there's a  
19 lot that's running at 20 percent.

20 You have to realize that a cow does not  
21 look at a hill as we look. A cow doesn't look up and  
22 figure it's going to climb a 50 percent slope. It  
23 goes along a contour. So maximum slope a cow is  
24 going to see is about ten regardless of what the site  
25 is.

1           Now, another thing that lot of people don't  
2 realize. This flat surface sitting here -- let's  
3 just call it an acre. You take this exact same  
4 surface and you raise it up and cover the exact same  
5 area in the wild, you now have two acres. You get  
6 almost double the production on a hillside that you  
7 do on a flat in rainy areas.

8           So you will get better pasture off this  
9 country when it has good grass like what Randy  
10 Uyehara brought in, in green panic, you get more  
11 production out of that land than you will off a flat,  
12 and it will have less trees on it. And the flat area  
13 down below in the valley bottoms, the trees shade out  
14 grass, up in the hillsides they don't. These  
15 hillsides are extremely important.

16           MR. MATSUBARA: Thank you, Bruce.

17           Q     Let me ask you a question. In terms of the  
18 property was purchased in 1865, and ranching began at  
19 that time in 1865 up to the present?

20           A     1866.

21           Q     1866 to the present. Sugar began in 1884  
22 to about 2009, so cattle ranching preceded cane  
23 cultivation?

24           A     The ranch was first, yes.

25           Q     What was the purpose of the ranching

1 activities at that time?

2 A That was the way the family made their  
3 living. It was ranching. Cattle. Those were the  
4 days when cattle was king.

5 Q Did it provide sustenance for the  
6 employees?

7 A Absolutely. And it was -- you have to  
8 realize in the old days, you had a block. You didn't  
9 runoff to a store to go get food, you had a block of  
10 land that provided everything for everybody.

11 Even in the beginning days of sugar, if you  
12 go back in the old records, you'll find when my  
13 grandfather went to get people who came from foreign  
14 countries off the ships, he always got best people  
15 because he always paid a little more. But what he  
16 did also was the plantation provided housing. The  
17 plantation provided meat. And the plantation  
18 provided medical.

19 And it was a whole total unit. And all  
20 they had to do was -- and every house had a garden  
21 and also community gardens. So you had a total unit  
22 right there. And that's the way it was.

23 When it started, then the plantation  
24 started producing electricity. There was no utility.  
25 Every plantation was its own units. They had their

1 own dairy, they fed their own beef, and that's how  
2 the whole thing developed.

3 And coming out of that background, we've  
4 kind of kept the beliefs that we take care of our  
5 farm employees and our own housing and that's what we  
6 try to do and you'll see that today.

7 Q Am I correct in understanding that you  
8 still maintain 400 homes for the employees?

9 A That is correct.

10 Q And the employees are permitted to stay and  
11 live there so long as they need to?

12 A We have different groups of people. We  
13 have people that come in from the outside who are not  
14 employ -- old time employees. The old time employees  
15 have a different system. It's called kanaka plan.  
16 It's a different system. But that's where they stay  
17 on until, you know, the widows die, and then the  
18 house will move on to others.

19 MR. MATSUBARA: Thank you. No further  
20 questions.

21 CHAIRPERSON ACZON: Commissioners, any  
22 questions?

23 VICE CHAIR SCHEUER: So I gather if you  
24 could plant grass at Comiskey Stadium your guys could  
25 ranch it successfully?

1           THE WITNESS: Not a problem. If they can  
2 plant the field in java that you see that are  
3 60 percent slope, we can do it, no problem.

4           COMMISSIONER CABRAL: I'm somewhat curious  
5 now you mention your camp housing and that. We were  
6 at your business office location fairly close to the  
7 slaughterhouses this morning.

8           Is that the area where your camp houses are  
9 or are your camp houses up inside the land that is  
10 going to be designated for agriculture?

11          THE WITNESS: No, the camp housing is right  
12 on the border. The last camp which is Kaawanui Camp  
13 is outside of the land designated as IAL and  
14 deliberately so because you have had laws introduced  
15 into the Kaua'i Kai Council which requires a setback  
16 for any farming activity.

17          And we would guess it foolish to dedicate  
18 land that wouldn't be used for ag.

19          COMMISSIONER CABRAL: Understood. And I  
20 would like to comment. You do look very nice, and  
21 you looked fine this morning, and I want to say that  
22 the attorney Mr. Matsubara was unrecognizable without  
23 his suit and tie this morning.

24          MR. MATSUBARA: Thank you.

25          CHAIRPERSON ACZON: Commissioner Okuda.

1 COMMISSIONER OKUDA: Thank you, Mr. Chair.

2 There has been testimony and evidence given  
3 about you and your family's stewardship of the land.  
4 Can you tell me your feelings or view about your role  
5 as a steward of the land?

6 THE WITNESS: We need to maintain the lands  
7 in the best possible -- the land was given to us in  
8 good condition, and our hope when I die it will be in  
9 better condition in terms of the next generation.  
10 That's our philosophy.

11 COMMISSIONER OKUDA: Does your view of  
12 stewardship also include stewardship regarding your  
13 people, your employees?

14 THE WITNESS: It is extremely important to  
15 us to maintain a relationship that we have had in the  
16 past. There are people working here that worked for  
17 my grandfather. We have people working for us who  
18 one of them is my dad's hunting partner, was his  
19 father. It's like family, and that's how we treat  
20 them.

21 COMMISSIONER OKUDA: Thank very much.

22 CHAIRPERSON ACZON: Commissioner Wong.

23 VICE CHAIR WONG: I have a question. You  
24 know, right now the land is designated ag lands,  
25 correct, the land in question?

1 THE WITNESS: Correct.

2 VICE CHAIR WONG: So we are here to  
3 designate IAL land, is that correct?

4 MR. MATSUBARA: Yes. We are asking for an  
5 IAL, would be an overlay over the ag land.

6 VICE CHAIR WONG: So the question I have  
7 is, what happens if we don't do IAL today, but if  
8 you're still doing ag, correct?

9 MR. MATSUBARA: Correct. There is no  
10 change in ag activities that would occur whether it's  
11 designated IAL or not.

12 VICE CHAIR WONG: The question I have is:  
13 Then you're waiving the 85-15 credit?

14 MR. MATSUBARA: Yes, sir. We're not  
15 requesting 15 percent of lands to be reclassified in  
16 another category, that's correct.

17 VICE CHAIR WONG: This is the Robinson land  
18 and it's already designated ag and it's up to the  
19 Robinsons to decide what to do with it right now.  
20 They could continue doing cattle ranching if it is  
21 not even designated IAL, correct?

22 MR. MATSUBARA: That's correct.

23 VICE CHAIR WONG: That's all for now.

24 MR. MATSUBARA: If I may add. What the IAL  
25 does, it basically perpetuates the ag activity on the

1 property. And it was important as stewards of the  
2 property that agriculture be perpetuated on their  
3 land.

4 CHAIRPERSON ACZON: Commissioner Hiranaga.

5 COMMISSIONER HIRANAGA: I have a question  
6 for Mr. Robinson.

7 Do you experience higher cattle loss on the  
8 upper pastures if they're grassing on the 60 plus  
9 slopes?

10 THE WITNESS: No.

11 COMMISSIONER HIRANAGA: So they are not  
12 endangering themselves?

13 THE WITNESS: They are very sure-footed  
14 animals.

15 COMMISSIONER HIRANAGA: Thank you, for  
16 someone not familiar with cattle raising.

17 CHAIRPERSON ACZON: Anybody else,  
18 Commissioners?

19 COMMISSIONER CHANG: Thank you very much,  
20 Mr. Robinson.

21 If you weren't doing cattle on those lands,  
22 those upper slopes, what other kinds of agricultural  
23 activities to could you do?

24 THE WITNESS: The highest and best use is  
25 cattle for that at the moment. There's nothing that

1 I could foresee that would be better than that.

2 COMMISSIONER CHANG: Thank you.

3 CHAIRPERSON ACZON: Thank you, Mr.  
4 Robinson.

5 CHAIRPERSON ACZON: Mr. Matsubara, your  
6 next witness.

7 MR. MATSUBARA: Mr. Tabata will be  
8 providing background on the IAL.

9 MR. TABATA: Thank you, Mr. Chair,  
10 Commissioners.

11 We usually don't give a legal background  
12 discussion on these petitions, but I was reviewing  
13 the statute one night and I think the light bulb kind  
14 of went on.

15 In our prior petitions, and in the county  
16 analysis for the lands there is a particular emphasis  
17 on the standards and criteria. There's eight of  
18 them. 205-44(c) eight are listed. And we're all  
19 quite familiar with them.

20 Current lands and current agricultural  
21 productions, those who are identified in lands rating  
22 systems, availability of water and so forth.

23 I just want to talk about the part that  
24 comes before 205-44(c), 205-44(a). And 205-44(a)  
25 says that lands identified as IAL need not meet all

1 eight standards and criteria, rather lands meeting  
2 any of the standards and criteria shall receive  
3 initial consideration.

4 Now, 205-44(a) goes onto say that the  
5 decision to designate lands as IAL is made by  
6 weighing the eight standards and criteria to meet the  
7 purposes of Article XI, Section 3, and the policies  
8 and objectives on Section 205-42 and 43.

9 The part where it says to meet the purposes  
10 of Article XI, Section 3, that caught my attention.

11 We have just gone through litigation, the  
12 Commission has, Hoopili Case and Koa Ridge case. XI,  
13 Section 3, the purposes of that section was at the  
14 center of the litigation.

15 And I believe the Sierra Club and Senator  
16 Clayton Hee took the position that the purposes of  
17 Article XI, Section 3 applied at the District  
18 Boundary Amendment stage. Hawaii Supreme Court said  
19 no, it is not. It is not self-executing. It has to  
20 be executed through the IAL statute, HRS Chapter 205.  
21 That's part three of Chapter 205. What was Acts 183  
22 and 233.

23 I mention this because we have always been  
24 focused on the eight standards and criteria, and they  
25 are important. They are. But when you reach the

1 decision-making process, I believe that's where the  
2 law comes full circle. And then if you turn to the  
3 purposes of Article XI, Section 3, as was discussed  
4 by Mr. Uyehara earlier. So eight standards and  
5 criteria enable us to analyze land from an  
6 agricultural standpoint, qualitatively and what  
7 Kaua'i County has done with their rating system is  
8 create quantitative numerical ranking system.

9           Look at those eight standards and criteria,  
10 you look at the first standard and criteria listed.  
11 It says land currently used for agricultural  
12 production, that's number one. Current production in  
13 ag.

14           That came to my attention also, and that  
15 makes sense. Because when you're in current  
16 agricultural production, you've got everything. You  
17 have soils that are sufficient; you have to have a  
18 water supply; you have to have infrastructure; you  
19 have to have management; you have to have a skilled  
20 work force. All of that has to be in place to be in  
21 current agricultural production, especially one  
22 that's been around for a long time.

23           So I can understand why that's listed as  
24 number one.

25           Look at number two, land with soil

1 qualities and growing conditions that support  
2 agricultural productions of food, fiber or fuel and  
3 energy producing crops.

4           So when you look at 2 you have everything  
5 you need except it does not necessarily have to be in  
6 current ag production, it could be fallow. But  
7 everything else, ag with soil qualities and growing  
8 conditions. It's almost like number one but not  
9 quite.

10           When you look at No. 3 under 205-44(c) it  
11 says: Land identified under agricultural  
12 productivity rating systems such as agricultural  
13 lands of importance, ALISH, adopted by the Board of  
14 Agriculture, January 28th, 1977.

15           Now with No. 3 you're looking at the land,  
16 just the land and its rating system.

17           So it's as if there's like a tier of just  
18 what kind of qualities the land has. And I would  
19 like to point out that in our Petition Makaweli  
20 Ranch, 100 percent of the lands that we're proposing  
21 is in current agricultural production. And when you  
22 weigh the eight standards or criteria in your  
23 decision-making, I would suggest that the fact that  
24 it's in current ag production weighs heavily in your  
25 deliberation.

1           Now, in the end, even after the eight  
2 standards of criteria are weighed, when the decision  
3 is made whether or not to designate this lands as IAL  
4 I believe we're obligated to return to the purposes  
5 of Article XI, Section 3 to meet those purposes as  
6 we're instructed to do so under 205-44(a) which is  
7 to, No. 1, conserving and protecting agricultural  
8 lands; 2, promoting diversified agriculture; 3,  
9 increasing agricultural self-sufficiency; and 4,  
10 assuring the availability of agriculturally suitable  
11 lands.

12           I think those are the end goals that we  
13 want to reach. To answer some of the questions that  
14 has been raised Commissioner Wong about what happens  
15 if you don't designate the lands as IAL. Then if the  
16 lands are IAL, it becomes much more difficult to  
17 reclassify them, to turn them into urban lands, it  
18 will be much more difficult. So it's considered a  
19 protection of the lands for agricultural use to  
20 designate it as IAL.

21           Also incentives like tax incentives,  
22 economic incentives, it will help promote, support  
23 the agricultural activities. So you're going to help  
24 agriculture proceed, and help keep it in agriculture  
25 for future generations. That's basically what we're

1 trying to do here with IAL.

2 Commissioner Scheuer mentioned about the  
3 boundaries and deliberating about the boundary. I'm  
4 not exactly sure what you mean by that. I think what  
5 they're referring to are the draft maps that the  
6 county has produced about the rating systems and what  
7 they may end up considering to be their  
8 recommendation.

9 All I'll say is this. That there are, as  
10 far as the boundaries currently existing for IAL,  
11 it's only what you've designated so far. I believe  
12 there's -- I probably might be way off -- but maybe  
13 150, 180,000 acres that you've already designated.

14 Until you do that, there's no IAL  
15 boundaries. So it's basically what you desire that  
16 would be the IAL boundary eventually. That's all I  
17 have.

18 CHAIRPERSON ACZON: Commissioners, holdup  
19 your questions. The Chair wants to take a two-minute  
20 recess.

21 (Recess taken.)

22 CHAIRPERSON ACZON: Back on the record.

23 Commissioners, any questions for Mr.  
24 Tabata? Commissioner Scheuer.

25 VICE CHAIR SCHEUER: Good afternoon.

1 Questions for you.

2 The first has to do with -- and I'd be  
3 happy to discuss a little bit any clarification if  
4 you wanted from me on my earlier point.

5 You were trying to interpret Important  
6 Agricultural Lands statute for us in the context of  
7 the constitution and this petition.

8 One of the core things in the constitution  
9 in the statutory provision are that we're trying to  
10 protect agricultural lands through the IAL process  
11 from encroachment or conversion to a nonagricultural  
12 use.

13 MR. TABATA: Correct, that's one of the  
14 policies and consideration.

15 VICE CHAIR SCHEUER: So in this case the  
16 question about the steep lands, one of the testifiers  
17 pointed out that this land is it's good for cattle,  
18 that's what it's good for. It's not like you're  
19 going to be putting housing developments or roads or  
20 anything else on these 60 percent, higher percent  
21 sloped lands.

22 So to me the question is, really, you know,  
23 what additional protection is IAL giving to these  
24 mauka lands that they don't already have by virtue of  
25 their remoteness and their slopes?

1           MR. TABATA: That's a good question,  
2 because what it brings to mind is the very peculiar  
3 nature of IAL that I've noticed, which is perpetuity.  
4 That's what makes it very difficult to really assess  
5 what you're going to IAL and what you're not.

6           I mean it's forever. We don't know what's  
7 going to be the uses nearby or what could be possible  
8 up there in the future. Because we're not talking  
9 50, 70 years, we're talking hundreds, hundreds of  
10 years, plus there's also the other factor of IAL  
11 which is to promote it to allow incentives, to help  
12 assist the farmers and the ranchers.

13           So in addition to protection, there's the  
14 assistance side of it which I believe these lands are  
15 deserving.

16           VICE CHAIR SCHEUER: That kind of  
17 assistance?

18           MR. TABATA: Yes.

19           VICE CHAIR SCHEUER: What is the assistance  
20 that comes from IAL designation of these mauka lands  
21 that doesn't already exist?

22           MR. TABATA: There are expenses. There is  
23 investment actually made into the lands. There's  
24 clippings. They have to cut the grass. They have to  
25 expend monies and resources to maintain those lands.

1 They look wild, but they still require maintenance  
2 and investment.

3 VICE CHAIR SCHEUER: I have the utmost  
4 respect for what the Robinsons and the extended  
5 family and employees have done for this property, but  
6 my question is: What does IAL designation for these  
7 steep mauka lands, what benefit does it give them for  
8 continuing these agricultural operations that doesn't  
9 otherwise exist?

10 MR. TABATA: I believe there are tax  
11 incentives that are available for investment into the  
12 agricultural operations.

13 VICE CHAIR SCHEUER: Later than exists or  
14 for already agriculturally zoned lands?

15 MR. TABATA: That's my understanding. I'm  
16 not a tax attorney, so I can't give tax advice, but I  
17 believe there was an article in the Star Advertiser  
18 in the last year describing our other clients and how  
19 they have used the IAL tax credit to their advantage,  
20 and it was significant monies involved.

21 VICE CHAIR SCHEUER: Second question. You  
22 asked about section -- or you spoke about Section  
23 205-44(b) and being applicable, it says as long as  
24 criteria 5 and 7, as long as there's sufficient water  
25 available, and that it's essential to maintaining

1 critical land mass, that land should be classified as  
2 IAL.

3 Did I understand you correctly? You talked  
4 about the language from Section 205-44(b).

5 MR. TABATA: I believe I was talking about  
6 205-44(a).

7 VICE CHAIR SCHEUER: Okay.

8 MR. TABATA: If you meet any of the  
9 standards or criteria, then the lands shall receive  
10 initial consideration. It goes onto say: Provided  
11 that the designation of IAL shall be made by weighing  
12 the standards and criteria to each other to meet the  
13 constitutionally mandated purpose in Article XI,  
14 Section 3.

15 VICE CHAIR SCHEUER: I thought you  
16 referenced the priority for sections 5 and 7 of the  
17 criteria.

18 MR. TABATA: No, I'm sorry. I was talking  
19 about 205-44(a), which I believe lays out the  
20 decision-making process. So we've always looked at,  
21 focused on 205-44(c) Nos. 1 through 8, that's what  
22 we've always done, and it makes sense because it  
23 gives you something to look at.

24 But I think that's maybe part of the  
25 starting point. And I think 205-44(a) sort of brings

1 Article XI, Section 3 back to the forefront.

2 It kind of made me understand what the  
3 ramifications of the Hoopili and the Koa Ridge cases  
4 were about.

5 VICE CHAIR SCHEUER: Thank you for that  
6 clarification. I'll hold onto my last question.

7 MR. MATSUBARA: One quick point on the  
8 aspects -- IAL was meant to encourage the  
9 preservation of agricultural land, and enhance  
10 agricultural activity.

11 And we have, once the plantation closed  
12 down thousands of acres of fertile ag land on Oahu,  
13 for example, that because the ag benefits and the  
14 cost of starting an agricultural activity is so  
15 expensive, it's difficult to stay in agriculture.

16 And the other part of IAL was not only to  
17 preserve the land and provide benefits, but also to  
18 sustain people who are actually farming the land to  
19 continue to utilize the land and perpetuate the land.  
20 That's the other of it, not so much as just the land  
21 use aspect. It's the ability to allow the  
22 preservation of sustained continued ag activity.

23 They're doing it now. They are committing  
24 to doing it basically forever, and IAL activity  
25 choose that. That's the only addition.

1 VICE CHAIR SCHEUER: Thank you.

2 CHAIRPERSON ACZON: Commissioner Hiranaga.

3 COMMISSIONER HIRANAGA: I have two  
4 questions.

5 I guess maybe you could explain your  
6 understanding of the 85-15 consecutive credit, taking  
7 advantage of it versus waiving it.

8 MR. TABATA: We have never taken advantage  
9 of it. But my understanding is that you make use of  
10 it, then you can reclassify it up to 15 percent of  
11 your land area that you're proposing, whereas the  
12 other 85 percent gets designated as Important Ag  
13 Lands.

14 COMMISSIONER HIRANAGA: For perpetuity?

15 MR. TABATA: Yes.

16 COMMISSIONER HIRANAGA: And the 15 percent  
17 that can be reclassified would be basically at the  
18 discretion of the petitioner?

19 MR. TABATA: To be proposed, but it will be  
20 up to the LUC whether or not you can actually  
21 reclassify the land. That's my understanding.

22 COMMISSIONER HIRANAGA: Diane, do you agree  
23 with that?

24 MS. ERICKSON: (Nods head.)

25 COMMISSIONER HIRANAGA: And so if you do

1 not take advantage of the 85-15 tax incentive credit,  
2 my understanding the petitioner can amend the IAL  
3 boundaries without legislative action? Because I  
4 believe it requires legislative action to amend the  
5 boundaries if you do take advantage of the 85-15  
6 incentive credit.

7 MR. TABATA: I believe that's the case,  
8 yes.

9 COMMISSIONER HIRANAGA: So if you don't  
10 take advantage of 85-15 incentive credit, it's not  
11 really perpetuity, because you do have the right or  
12 the ability to amend it. I guess you would have to  
13 petition the LUC to agree.

14 MR. TABATA: That's correct.

15 COMMISSIONER HIRANAGA: But it does not  
16 take legislative --

17 MR. TABATA: Not legislative action.  
18 There's two ways you can take lands out of -- well,  
19 you can try to reclassify Important Ag Lands, that is  
20 one way to do it. The other way is to remove the IAL  
21 designation. If you try to remove the IAL  
22 designation, my understanding is that you have to  
23 prove that there's an unavailability of water.

24 And some petitions we have done we've  
25 relied on rainwater, so I don't know how we are going

1 to prove that. That's going to be difficult. To  
2 reclassify Important Ag Lands to say the Urban  
3 District I believe there has to be a public purpose  
4 component to it.

5 I've never attempted to reclassify  
6 Important Ag Lands, so I can't really give firsthand  
7 experience, but it does not look like an easy task to  
8 me.

9 COMMISSIONER HIRANAGA: My second question  
10 is: Just reading the material provided to me by the  
11 staff, what is the significance of the 76 percent of  
12 landholdings? It seems to be some type of a  
13 threshold. I read 20,000 acres designated IAL,  
14 that's the maximum number that they could designate  
15 this IAL?

16 MR. TABATA: The statute -- there's been  
17 one referred to as 51 percent incentive. This comes  
18 into play when the county submits its map for  
19 involuntary IAL designation.

20 What the county does, they do their maps,  
21 they get it passed by their County Council, they send  
22 it to you for approval. It's not IAL yet until you  
23 say so, until you decide.

24 When you look at the maps, one of the  
25 things you have to consider is whether or not the

1 landowners, landholdings are already designated --  
2 majority of the landholders land holdings is already  
3 designated as IAL. And if so, then no more of that  
4 landowner's lands shall be designated as IAL. So it  
5 creates a cap.

6 COMMISSIONER HIRANAGA: Is that 51 percent?

7 MR. TABATA: 51 percent is the majority of  
8 the landholdings. We propose 76 percent of the  
9 landholdings, because that's the ranch. We're here  
10 to say, that, we want to protect and perpetuate this  
11 ranch, and that comes to 76 percent.

12 COMMISSIONER HIRANAGA: I may have  
13 misunderstood what that was saying.

14 MR. TABATA: That's my understanding of the  
15 significance of the percentage.

16 COMMISSIONER HIRANAGA: Thank you.

17 CHAIRPERSON ACZON: Anybody else? Thank  
18 you.

19 Mr. Matsubara, I'll take one more witness,  
20 and we might have to go into recess. Please call  
21 your next witness.

22 MR. MATSUBARA: Next witness is Tom Witten,  
23 principal at PBR, will address the criteria that the  
24 land possess as it relates to the standards IAL  
25 requires.

1           CHAIRPERSON ACZON: May swear you in. Do  
2 you affirm that the testimony that you're about to  
3 give is the truth?

4           THE WITNESS: Yes.

5           CHAIRPERSON ACZON: Please state your name  
6 and address for the record.

7           THE WITNESS: Tom Witten, PBR Hawaii, 1001  
8 Bishop Street, Suite 650, Honolulu, Hawaii 96821.

9                           TOM Witten

10 Was called as a witness by and on behalf of the  
11 Petitioner, was sworn to tell the truth, was examined  
12 and testified as follows:

13                           DIRECT EXAMINATION

14           THE WITNESS: Thank you, Commissioners. I  
15 appreciate the time you spent on the site today to  
16 see the property.

17                           My firm at PBR Hawaii and Associates  
18 prepared an agricultural land assessment that was a  
19 large component of the petition area, of the  
20 petition. And basically went through the details of  
21 all the criteria, provided maps and quantified those  
22 criteria.

23                           Rather than go through that in any detail,  
24 all that's available and to the Commission and the  
25 various departments that have had an opportunity to

1 review it. We've had comments. We've responded to  
2 comments. And we're hopeful that we've addressed all  
3 the concerns.

4 I would just highlight a couple items, and  
5 then be available for questioning if there's any  
6 concerns.

7 I think it's in context, I've personally  
8 been involved in seven other IAL petitions before  
9 this Commission over the years. And they've all been  
10 initiated by relatively large landowners and the  
11 primary impetus utilizing the majority incentive  
12 referred earlier, designating a majority of the land  
13 for IAL in advance of the county doing any -- the  
14 county doing their work and proposing to the Land Use  
15 Commission.

16 Similarly, in this case we have a landowner  
17 with 50,000 acres over, 22,000 almost half that is in  
18 Conservation land, the remaining 27, over 27,000 is  
19 in Ag and Urban.

20 Of the that 27,000 we're proposing to  
21 designate 20,888 acres, and that's what we're  
22 referring to as over the 76 percent.

23 So of all the petitions we have been  
24 involved in for IAL, this is far in excess of the  
25 majority, but it made sense when we evaluated the

1 that, although some of the criteria of the eight  
2 criteria doesn't live up to the highest standard, as  
3 an agricultural unit, we found it very compelling to  
4 include all the ranch lands from the Conservation  
5 boundary -- to the mauka Conservation boundary all  
6 the way down to the areas that comprise the  
7 76 percent.

8 And within those lands another really  
9 important part of agriculture is the water resources.  
10 Olokele Ditch has a capacity of 70 million gallons  
11 per day. Koula Ditch from Hanapepe side comes in at  
12 about 55 million gallons a day, for a total 125  
13 million gallons.

14 Within the property and mostly within the  
15 proposed IAL are ten reservoirs with storage capacity  
16 of over 275 million gallons. So it's an incredible  
17 amount of water, resources that have been developed  
18 and managed responsibly over the years to support the  
19 stewardship of these lands and specifically as they  
20 apply to the proposed IAL lands.

21 The roadways, much of that infrastructure  
22 was developed in the sugar plantation days and they  
23 continue to maintain those for access. They have an  
24 existing hydroelectric plant that provides power and  
25 a power distribution system to support the lands.

1           And as Bruce Robinson said, they've always  
2       tried to sustain these lands and maintain them with  
3       responsible stewardship in the context of the  
4       long-term betterment of the land and those that work  
5       on the land.

6           The ranch operations of the proposed IAL  
7       comprise about 90 percent of the IAL, about  
8       18,700 acres, the balance 2200 acres is utilized by  
9       the seed corn.

10          The pasture that we saw, some of it  
11       irrigated. They have plans to expand that 400 plus  
12       acres to 1500 acres. And within the proposed IAL,  
13       about half of their herd is typically managed within  
14       these lands.

15          The current herd is about 3500 to 4,000,  
16       and anticipate with their current five-year plan of  
17       increased pasture irrigation to increase the head by  
18       about 1500 head. And that would also support their  
19       slaughterhouse facility that has ample capacity to  
20       process the additional head of cattle as they  
21       increase their feeder herd.

22          We were in close consultation with the  
23       county as we went through this process, as they have  
24       completed their IAL assessments. They started in  
25       2009, I think they wrapped up their final report in

1 2015. We worked closely with them understanding  
2 their islandwide need and how they were using their  
3 study to guide their decision-making and have  
4 appreciated their support in this effort.

5 I guess just in conclusion, we feel that  
6 the IAL, the proposed IAL meets the intent of the IAL  
7 legislation, although not all lands have been high  
8 rating, the Robinson Family Partners has successfully  
9 ranches and farmed and stewarded these lands for over  
10 150 years.

11 With the available and managed water  
12 resources this important agricultural operation could  
13 continue and improve for the next 150 years.

14 We've appreciated the support, as expressed  
15 through the Office of Planning, the Kaua'i County and  
16 the Department of Agriculture. We recognize the  
17 Department of Agriculture has some reservations  
18 regarding about 3260 acres that they provided  
19 additional exhibits regarding today. It's basically  
20 these upper -- the upper northern most lands.

21 But I think hearing from those that work  
22 the land and steward these lands and how these lands  
23 are utilized, and looking at the bigger picture of  
24 contiguous operating ranch-holding, landholding, to  
25 us it made very common sense to include the entire

1 ranch areas rather than dissecting or isolating lands  
2 that are designated IAL.

3 As Commissioner Wong mentioned, you know,  
4 whether it's in or out, those lands will probably  
5 always be utilized for ranching, but to the extent  
6 that there are additional incentives developed by the  
7 county in addition to the tax incentives the state  
8 has provided, there is always opportunities to  
9 encourage diversified ag and the use of these lands  
10 and stewardship of these lands.

11 I guess I'll stop there and be available  
12 for any questions.

13 CHAIRPERSON ACZON: Mr. Matsubara.

14 MR. MATSUBARA: No questions.

15 COMMISSIONER CABRAL: I have one.

16 Conservation land, where is that in relationship --  
17 is that --

18 THE WITNESS: It's basically -- we should  
19 have had a map that really shows the total  
20 landholdings. It continues -- this whole ahupua'a  
21 continues up, so it's almost twice this (indicating).  
22 This is 27,000 acres, and there's another  
23 22,000 acres.

24 And as Bruce mentioned, in plan view of the  
25 50,000 acres, but on the steep pali when you turn it

1 on the surface, this area it changes equivalent to  
2 probably 100,000 acres.

3 COMMISSIONER CABRAL: Okay. So that's why  
4 your cattle, when they break through, are not  
5 trespassing on someone else' lands?

6 THE WITNESS: Right.

7 COMMISSIONER CABRAL: Thank you.

8 THE WITNESS: Pretty much watershed and  
9 management and water resources are all coming from  
10 those lands.

11 COMMISSIONER CABRAL: That's why you  
12 continue to have part of your ranch land go up that  
13 valley, for that water resource, to be able to have  
14 that be part of your Important Agricultural Lands?

15 THE WITNESS: Yes. It's very interesting.  
16 I guess when the original State Land Use Maps were  
17 created, the Ag and Conservation boundaries, these  
18 intakes, diversions from these -- or these ditches  
19 was in place. So these are actually the State Land  
20 Use Ag, Conservation boundaries.

21 So that they kept all the infrastructure  
22 related to the Robinson family agricultural  
23 operations in agriculture not in conservation.

24 COMMISSIONER CABRAL: Okay, very smart.  
25 That's paramount to keep them available --

1           THE WITNESS:  It's unusual.  But it was  
2 done back in probably in '59 when the state  
3 originally established the boundaries.

4           COMMISSIONER CABRAL:  They did something  
5 right.  Thank you very much.

6           CHAIRPERSON ACZON:  Commission Scheuer.

7           VICE CHAIR SCHEUER:  I have a couple  
8 questions about water resources to start off with.  
9 You explained what the capacity of the ditches are,  
10 but most ditches don't flow at capacity most of the  
11 time.

12                  What are the actual flows on those two  
13 ditch systems?

14           THE WITNESS:  I don't have the specifics on  
15 the flows.  Bruce --

16           MR. ROBINSON:  Approximately 50 percent.

17           THE WITNESS:  Approximately 50 percent of  
18 the capacity.

19           VICE CHAIR SCHEUER:  What on these IAL --  
20 because I didn't see it provided -- is the actual  
21 water demand on these lands?  Like for irrigated  
22 pasture, do you at least have a figure of gallons per  
23 acre per day?

24           THE WITNESS:  We could calculate that, and  
25 with the expansion of the irrigated pasture we could

1     come up with a number of, but some of the upper  
2     lands, the cattle go to the streams for water. And  
3     the real water use would be the irrigated pasture and  
4     then the makai lands that are also in agriculture.

5             VICE CHAIR SCHEUER: So just in terms of  
6     the findings of facts that the Commission has to  
7     make, right, we have to sort of say, here's the  
8     amount of water that's available, not just what's  
9     theoretically capable of being diverted versus the  
10    actual demand that's in there, and I didn't  
11    necessarily see that in your report.

12            THE WITNESS: Right. And my guess would be  
13    we're far under the capacity of the system, because  
14    sugar had used -- this just sustained the sugar  
15    plantation for decades, and it's a lot more demanding  
16    on water.

17            VICE CHAIR SCHEUER: Correct, which then  
18    raised the question of is more water being diverted  
19    than is being put to productive use?

20            THE WITNESS: I don't have the answer to  
21    that.

22            VICE CHAIR SCHEUER: Can you explain to me  
23    on the map that you helped prepare the U-shaped  
24    cutout at the bottom excluded from the Important  
25    Agricultural Land?

1           THE WITNESS: We're referring to this on  
2 Figure 1, location map, a valley and ridge complex  
3 that was excluded from the IAL. There's some  
4 preliminary studies that show some known basalt rock  
5 in there that could be quarried, and the Robinson  
6 Family Partners are exploring that, and until they  
7 understood what the resource was and moved forward  
8 with that land, they didn't want it to be incumbered  
9 both the actual resource area and the corridor of  
10 access.

11           VICE CHAIR SCHEUER: I understood the  
12 basalt area to be that exclusion, that little island.

13           THE WITNESS: No, the exclusion that's  
14 labeled not IAL is the expanded hydro-plant,  
15 hydroelectric system that they're proposing.

16           VICE CHAIR SCHEUER: That's it, thank you.

17           COMMISSIONER CHANG: Maybe I should have  
18 asked this of Mr. Robinson.

19           The lands mauka in the Conservation lands,  
20 have we received from DLNR any comments about  
21 potential impacts the cattle may have on the water,  
22 if any?

23           THE WITNESS: We have not received any  
24 comments on this petition from Department of Land and  
25 Natural Resources.

1           COMMISSIONER CHANG: Have we asked them for  
2 any comments about potential impact?

3           MR. MATSUBARA: Our petition is served upon  
4 the State to the Office of State Planning which  
5 basically coordinates the response with all agencies,  
6 so I would have to defer to them.

7           COMMISSIONER CHANG: I'm getting a negative  
8 shake.

9           Perhaps you can also answer, are there any  
10 historic trails that go up to the Conservation lands?  
11 I know, Mr. Robinson, you've been using the -- it's  
12 been in the family for over 150 years, but have  
13 hunters or others access to this area to go up mauka  
14 to those Conservation lands to even hunt or to  
15 gather, that you are aware of?

16          MR. ROBINSON: The only access that goes up  
17 there is what we permit, because it's a watershed  
18 area and we keep it closed.

19          COMMISSIONER CHANG: So it's closed, but  
20 has anybody come to request access let's say to go  
21 hunting or to gather, anything that may be above that  
22 in the Conservation lands?

23          MR. ROBINSON: No.

24          COMMISSIONER CHANG: And I know we asked  
25 this at the site visit, but I wanted to put on this

1 record, there are no kuleana lands within the lands  
2 currently owned by the Robinsons, is that correct?

3 MR. MATSUBARA: The lands that are subject  
4 of the petition before you today?

5 COMMISSIONER CHANG: Yes.

6 MR. MATSUBARA: No, as far as I know, no  
7 kuleana lands in what's before you today.

8 COMMISSIONER CHANG: And I also just want  
9 to confirm when Senator Kouchi came and testified  
10 that the first time that he heard about the petition  
11 was through this, I guess when he got notice, reread  
12 the newspaper.

13 Maybe ask this of the staff. Do we  
14 publicly notice this, and it is confirmed that we did  
15 provide notice so the public was aware of this  
16 hearing; and if they had any concerns, they would be  
17 here?

18 MR. MATSUBARA: I guess maybe the  
19 difference was that there is no difference in use  
20 being proposed which is normally the type of  
21 petitions you get. The uses are going to continue,  
22 have been going on for 150 years, and we hope to  
23 perpetuate and continue that.

24 COMMISSIONER CHANG: I just wanted to make  
25 sure that we didn't have, for example, someone who

1 asserts they've come through here and they want to  
2 gather or they want to exercise some right, that  
3 there was some official public notice so that they  
4 have the opportunity to come here and present any  
5 kind of information or evidence.

6 At least we can confirm that there was a  
7 public notice and it met the record. So there is a  
8 public forum of which people can come and provide  
9 statements.

10 MR. MATSUBARA: Your staff publishes  
11 notices. We pay for it.

12 CHAIRPERSON ACZON: Commissioner Wong.

13 VICE CHAIR WONG: Question on Figure 1.  
14 The bottom portion next to Kaumuali'i Highway is not  
15 requested to be designated IAL then. What is the  
16 rationale for that instead of going all the way to  
17 the highway?

18 THE WITNESS: Basically in the long-term  
19 under the IAL and majority rule they're taking  
20 advantage of that majority incentive by coming in  
21 voluntarily before the county and the state to  
22 designate IAL. So they have the opportunity to  
23 designate those lands that they wanted in IAL in  
24 perpetuity, and basically protect the balance of  
25 their landholdings, in this case only 25 percent or

1 less, that cannot be designated IAL by the county or  
2 state by taking this initiative.

3 Are there any plans? There's no --

4 VICE CHAIR WONG: Any plans for that  
5 portion going up?

6 THE WITNESS: No. That is the Robinson  
7 Family express, there's no specific plans, it more of  
8 an in perpetuity, and they would rather draw the  
9 boundaries then let the county or state draw the  
10 boundaries.

11 VICE CHAIR WONG: I know I'm getting to  
12 this a little bit more, but the question is type A ag  
13 land or --

14 THE WITNESS: A and B classified.

15 VICE CHAIR WONG: Where are those, more on  
16 the bottom side?

17 THE WITNESS: Correct.

18 VICE CHAIR WONG: Couldn't that also  
19 include anything above that highway in that  
20 non-designated area?

21 THE WITNESS: There are A and B class lands  
22 that are not being proposed by the IAL. In our  
23 summary report we show the percentage of IAL lands  
24 that are in class A and B lands, and working with the  
25 county, the types of high quality lands that they are

1 looking for, we met their needs or their projected  
2 needs for this area through that, this petition.

3 VICE CHAIR WONG: Thank you.

4 CHAIRPERSON ACZON: Commissioner Hiranaga.

5 COMMISSIONER HIRANAGA: Mr. Witten, what is  
6 the resistance from the petitioner to exclude the  
7 3200 acres that the Department of Agriculture is  
8 recommending be excluded from the IAL boundaries,  
9 because you exceed the 51 percent?

10 THE WITNESS: Correct.

11 COMMISSIONER HIRANAGA: Why would you not  
12 agree to excluding the 3200 acres since you can still  
13 keep it in ag use?

14 THE WITNESS: I don't think there is a lot  
15 of resistance from the Robinson Family Partners to  
16 exclude that. From the planning perspective and land  
17 management, and just from the planning perspective,  
18 we are kind of looking at it on the contiguous  
19 operational unit and we felt that was a significant  
20 resource for Kaua'i and the state, and why not  
21 include it, if it's being used in a similar manner as  
22 a function within the overall ranching operation. It  
23 is used by the cattle. In certain times of the  
24 year -- I mean the Department of Agriculture  
25 arguments are valid, that is steep, it's not highest

1     qualities land, but when you look in totality, we  
2     just felt that it met the standard contiguous, it's  
3     one long-standing operating ranch unit. Part of a  
4     large ahupua'a. And we didn't see a reason to  
5     exclude it.

6                 COMMISSIONER HIRANAGA: But exclusion from  
7     the IAL would not affect operations?

8                 THE WITNESS: No. It's more from a  
9     planning principle standpoint. And looking at the  
10    IAL, the intent of the IAL we saw as trying to  
11    include the whole agricultural unit that is  
12    functioning in that manner.

13                COMMISSIONER HIRANAGA: Just a follow up,  
14    we had a similar situation on Oahu where private  
15    landowner wanted to petition for IAL, and it was a  
16    small area that the Department of Agriculture  
17    recommended exclusion, it was included at the end,  
18    but it created difficulty for myself to ignore  
19    recommendations from state agencies. And so I'm  
20    having that same difficulty now.

21                THE WITNESS: Right. I think in some of  
22    the past petitions, Office of Planning had been more  
23    critical of some of the criteria. And in the case of  
24    the Kamehameha Schools, Hawaii Loa, some of the  
25    gulches, some of the steep lands, but I think

1 evidence that was provided showed that those integral  
2 to the agricultural operation from a drainage, from  
3 access, and also potential usability from orchards  
4 and so forth that, you know, actually I think the  
5 Department of Ag supported it.

6 In this case Office of Planning is full  
7 support of the petition and Department of Ag has  
8 isolated a concern on the 3260 acres. But again I  
9 don't think, like you said not a lot of resistance,  
10 but I think from a planning perspective and the way I  
11 look at it through that planning and land management  
12 perspective, I think it just makes sense to include  
13 the entire resource since it is a long managed  
14 agricultural unit important to Kaua'i and the state.

15 COMMISSIONER HIRANAGA: Thank you.

16 MR. MATSUBARA: Just one comment that, and  
17 I can understand your concern because Department of  
18 Agriculture is a state agency and has concerns  
19 relating to that property. I think the difference in  
20 this particular parcel is that you've heard testimony  
21 from people who actually utilize and farm and ranch  
22 that parcel.

23 And how we -- it fits into the total ranch  
24 operation. It's isolated, it's separated, good  
25 grass, the cows get there -- their concerns seems to

1 be the elevation of the slope. I think that has been  
2 handily expelled by actual testimony and actual use.  
3 I don't know if they walk the property, that they've  
4 conducted any activities on that slope, but they have  
5 people here that are there, they ranch it, have been  
6 there. And I think that bears some consideration to  
7 the fact that it fits into the ranching operations.

8 It's good to separate the heifers up there,  
9 separate them from the bulls. You can have the  
10 heifers and the bulls down low and have fences, but  
11 fences ain't going to keep the bulls away from  
12 heifers.

13 With them up in the steep areas, you get a  
14 better shot at it. So it's all part of the  
15 operations, and that's why it was included,

16 COMMISSIONER HIRANAGA: But for clarity  
17 excluding it from the IAL will not impact  
18 designation? You are not going to put up a wall or  
19 fence to exclude that 3200 acres?

20 MR. MATSUBARA: Right, but we talking about  
21 something that's been used 150 years as part of the  
22 ranch and we weren't going to arbitrarily isolate  
23 something when the reasons that were raised,  
24 articulated, fall in the face of practical use of the  
25 property, and that's why we state it.

1 COMMISSIONER HIRANAGA: Thank you.

2 COMMISSIONER ESTES: I'm just going to  
3 point out to Commissioner Hiranaga, the Kaua'i  
4 Office, which is also a state agency, has no problem  
5 with the petition. And the Kaua'i Department of  
6 Planning supports it. So we've got it coming from  
7 both sides.

8 CHAIRPERSON ACZON: Commissioner Scheuer.

9 VICE CHAIR SCHEUER: Just a couple  
10 follow-up questions.

11 I asked you about the large exclusion sort  
12 of island in the northern-northwestern parts of the  
13 property.

14 The three smaller areas in exclusion, and  
15 going up the smaller cluster above the large area,  
16 can you explain exclusion of those areas?

17 THE WITNESS: Those are all family granted  
18 homesteads of the Robinsons that have homes in those  
19 areas.

20 VICE CHAIR SCHEUER: And then thank you for  
21 pointing out the second corrected submittal. That  
22 you have that percentage of overlap between the  
23 county's lands assessment of these lands score 23 and  
24 above. Do you have, and if you don't know I'll ask  
25 the county when it becomes their turn the next time

1 we get together, what percentage of the lands score  
2 23 and above that are on the Robinson family  
3 properties? How does that compare to the overall, or  
4 what percentage is that overall lands 23 and above on  
5 the island?

6 THE WITNESS: I do not know that. I think  
7 the county would be better prepared. I do know on  
8 the 23 threshold that even on the -- I don't I think  
9 we explained the 23-point threshold, and under that  
10 scenario of the high important land that the county  
11 is looking for their county-wide sustainable  
12 important ag lands looking at 21,000 acres, of this  
13 petition area, the lands that meet their high  
14 criteria for approximately 4900 acres, so that in  
15 meeting the island demand, this petition area  
16 represents about 23 percent of what they're looking  
17 for the high quality lands to be put in IAL.

18 So I think that's significant in itself.

19 VICE CHAIR SCHEUER: Thank you.

20 CHAIRPERSON ACZON: Anybody else,  
21 Commissioners?

22 The Chair wants to apologize, but due to  
23 some logistical problems we're having, we're going to  
24 go in recess and reconvene on September 20, during  
25 the HCPO convention.

1                   So it will be at the county -- we will send  
2 out a notice. We are in recess.

3                   (The proceedings adjourned at 2:54 p.m.)  
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## CERTIFICATE

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF HONOLULU            )

I, JEAN MARIE McMANUS, do hereby certify:

That on September 7, 2016, at 1:00 p.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

I further certify that I am not of counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in this caption.

Dated this 7th day of September, 2016, in Honolulu, Hawaii.

\_\_\_\_\_  
JEAN MARIE McMANUS, CSR #156