

LAND USE COMMISSION

STATE OF HAWAII

October 11, 2017

9:30 a.m.

Airport Conference Center

400 Rodgers Boulevard, Suite 700, Room #IIT#2

Honolulu, Hawaii 96819

I. Call to Order

II. Adoption of Minutes

August 23, 2017 meeting and site visit, and
September 22, 2017 site visit

III. Tentative Meeting Schedule

IV. Action

DR17-59 Monsanto Company, a Delaware corporation
To Consider Declaratory Order to Designate
Important Agriculture Lands for approximately
1,500 acres at Kunia, Oahu identified by TMK
Nos. (1)9-2-001-001(por.); (1)9-2-001-005; and
(1)9-2-004-009

V. Adjournment

1 APPEARANCES:

2 COMMISSIONERS:

3 ARNOLD WONG, Chairperson
4 NANCY CABRAL, Vice Chair
5 JONATHAN SCHEUER, Vice Chair
6 LINDA ESTES
7 GARY OKUDA
8 DAWN CHANG
9 LEE OHIGASHI
10 AARON MAHI

11 DIANE ERICKSON, ESQ., Deputy Attorney General

12 STAFF:

13 DANIEL ORODENKER, Executive Officer
14 RILEY HAKODA, Staff Planner/Chief Clerk
15 BERT SARUWATARI, Staff Planner

16 DAWN APUNA, ESQ., Deputy Attorney General for State
17 Office of Planning
18 RODNEY FUNAKOSHI, Planning Program Administrator

19 RAYMOND YOUNG, City and County of Honolulu

20 JENNIFER LIM, ESQ. and MARK MURAKAMI, ESQ. For
21 Monsanto Company

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1 CHAIR WONG: Good morning. Loud voice. My
2 coaching voice. Sorry.

3 This is the October 11, 2017 Land Use
4 Commission Meeting.

5 The first order of business is the adoption
6 of the minutes for the August 23rd, 2017 meeting and
7 the August 23rd and September 22nd, 2017 site visits.
8 Are there any corrections or comments on them? If
9 not, is there a motion to adopt the minutes?

10 COMMISSIONER MAHI: I move.

11 COMMISSIONER CABRAL: I second.

12 CHAIR WONG: Is that Commissioner Mahi,
13 seconded by Commissioner Estes -- Cabral, sorry,
14 Commissioner Cabral. Is there a -- so adopt the
15 minutes as -- to adopt the minutes. All in favor,
16 please say aye.

17 COMMISSIONERS: Aye.

18 CHAIR WONG: Any opposed? Thank you.
19 Meeting has been -- minutes has been adopted.

20 First -- sorry, this is the first time I'm
21 chairing so a little different. Usually I'm the
22 troublemaker.

23 The next agenda item is the tentative
24 meeting schedule. Mr. Orodénker, please present the
25 schedule.

1 EXECUTIVE OFFICER: I don't know how much
2 trouble you want to be in Mr. Chair.

3 October 18th and 19th, we'll be on Molokai
4 for the Monsanto Important Agricultural Land
5 Petition.

6 On November 8th, we will be on Kauai for
7 Solar Special Permit and for training, commissioner
8 training on environmental impact statements.

9 On November 21st, we will be on Oahu for the
10 Honouliuli Special Permit.

11 On December 6th and 7th, we'll be on Maui
12 for the Waikapu Country Town District Boundary
13 Amendment.

14 On January 10th and 11th, we will be on Maui
15 for Pulelehua's Motion to Amend.

16 On January 24th, 2018, we will be on the Big
17 Island for status reports for Lanihau HHFDC and
18 Waikoloa Heights.

19 And that brings us into February which is
20 open at the moment.

21 CHAIR WONG: Commissioners, do you have any
22 questions? Thank you. Okay.

23 This is a hearing and action meeting on
24 DR17-59, In the Matter of the Petition of the
25 Monsanto Corporation for a Declaratory Order to

1 Designate Important Agricultural Lands for
2 approximately 1,550 acres at Kunia, Oahu identified
3 by TMK Nos.(1)9-2-001-001 portion, (1)9-2-001-005;
4 and (1)9-2-004-009. Commissioners, do you have any
5 declarations at this time? Commissioner Okuda.

6 COMMISSIONER OKUDA: Yes, thank you, Chair.

7 I would like to disclose that I'm a personal
8 friend of Karl Kobayashi, the longtime chairman of
9 the Carlsmith Ball law firm which I believe
10 represents one of the parties here. Mr. Kobayashi
11 has been to our house for social events. He
12 periodically also refers cases over to my law firm.

13 I do not know the specific attorneys that
14 are representing the applicant or Petitioner in this
15 case but Mr. Kobayashi is their chairman of the
16 board.

17 I don't believe that my relationship with
18 Mr. Kobayashi affects my ability to make a decision
19 in this case.

20 CHAIR WONG: Is there any objections?
21 Petitioner?

22 MS. LIM: No objections.

23 CHAIR WONG: State --

24 MS. APUNA: No objections.

25 CHAIR WONG: Thank you.

1 Commissioner Ohigashi.

2 COMMISSIONER OHIGASHI: I do know Jennifer
3 Lim and her husband Steven Lim is my classmate from
4 law school and had been with them on social
5 occasions. I don't think that would inhibit my
6 rendering a fair, impartial decision.

7 CHAIR WONG: Any objections? Petitioner?

8 MS. LIM: No objections from Petitioner.

9 MS. APUNA: No objection.

10 CHAIR WONG: Thank you. Any other?
11 Commissioner Scheuer -- or Vice Chair.

12 VICE CHAIR SCHEUER: Sorry, Mr. Chair,
13 just -- we still do not have the City here?

14 CHAIR WONG: No. But we do have their
15 statements so we're just going on without them.

16 VICE CHAIR SCHEUER: Okay. So I'm just
17 raising the question procedurally if people are
18 declaring potential conflicts and the City is not
19 present as a required party to waive, you know,
20 objecting to people's participation, whether that
21 raises any procedural concerns?

22 CHAIR WONG: I don't see any at this time.
23 So I think we can still continue unless there's
24 objections to hold this meeting to another date by
25 the Petitioner or the State.

1 MS. LIM: No. The Petitioner would like to
2 go forward today.

3 MS. APUNA: The State agrees.

4 VICE CHAIR SCHEUER: Just to be clear, I
5 wasn't suggesting we hold the meeting but kind of
6 like where's the City?

7 CHAIR WONG: Well, the City was informed
8 through various notices and also through the staff of
9 this date and the location so --

10 VICE CHAIR SCHEUER: Okay.

11 CHAIR WONG: Commissioner Estes.

12 COMMISSIONER ESTES: Yeah. I'm very
13 disappointed that they would object to this and then
14 not show up to make their case. I can't believe it.
15 Put that in the minutes.

16 CHAIR WONG: Thank you.

17 Okay. Can we continue? Okay. Will the
18 Petitioners please identify themselves for the
19 record.

20 MS. LIM: Sure. Good morning, Chair and
21 Commissioners. This is Jennifer Lim. I represent
22 the Petitioner Monsanto Company. With me to my right
23 is my law partner Mark Murakami also representing
24 Petitioner Monsanto Company.

25 CHAIR WONG: Thank you. OP?

1 MS. APUNA: Good morning, Chair and
2 Commissioners. Deputy Attorney General Dawn Apuna on
3 behalf of the State Office of Planning. Here with me
4 today is Rodney Funakoshi.

5 CHAIR WONG: Thank you.

6 So let me update the record.

7 On August 8th, 2017 the Commission received
8 Petitioner's Petition for Declaratory Order to
9 designate Important Agricultural Lands in Exhibit 1
10 through 10 with a hard copy and digital file; and
11 \$1,000 application fee. A request for comments to
12 the LUC about the Petition was mailed by Petitioner
13 to OP, the State Department of Agriculture and to the
14 City and County of Honolulu Department of Planning
15 and Permitting on the same day.

16 On September 22nd, 2017, the Commission
17 conducted a site visit to the Petition Area.

18 On September 29th, 2017, the Commission
19 received OP's comments on the Petition.

20 On October 3rd, 2017, the Commission
21 received the City and County of Honolulu Department
22 of Planning and Permitting's and the Hawaii Crop
23 Improvement Association's comments on the Petition.
24 On the same day, the Commission mailed the October
25 11, 2017 LUC meeting agenda to the Petitioner, OP,

1 DOA, DPP and the State and the Oahu mailing list.

2 From October 4th to October 6th, 2017, the
3 Commission received comments on the Petition from the
4 State Department of Agriculture and several other
5 organizations whose names are on the file that are
6 part of the record.

7 Also on October 4, 2017, the Commission
8 received Petitioner's response to OP, the Department
9 of Agriculture's and the City and County of Honolulu
10 Department of Planning and Permitting's comments on
11 the Petition.

12 Ms. Lim, Mr. Murakami, has our staff
13 informed you of the Commission's policy regarding the
14 reimbursement of hearing expenses? If so, please
15 state your client's position with respect to this
16 policy.

17 MS. LIM: Petitioner's been informed and
18 Petitioner has no objection. We'll comply with the
19 policy.

20 CHAIR WONG: Thank you.

21 Okay. So let me briefly describe our
22 procedure for today on this docket.

23 I will first call for those individuals
24 desiring to provide public testimony to identify
25 themselves. All such individuals will be called in

1 turn to our witness box where they will be sworn in
2 prior to their testimony.

3 After completion of the public testimony
4 portion of the proceedings, the Petitioner will make
5 its presentation.

6 After the completion of the Petitioner's
7 presentation, we will receive any public comments
8 from County, if they ever show up, the Office of
9 Planning and the Department of Agriculture.

10 Thereafter, the Commission will conduct its
11 deliberation.

12 The Chair also notes that from time to time,
13 I may call for short breaks.

14 Are there any questions on our procedure for
15 today?

16 MS. LIM: No questions on procedures, Chair.
17 But if I may, when you were reading through the list
18 of materials that had been submitted, I don't know if
19 I heard the PowerPoint presentation that Petitioner
20 submitted on the 9th. It's the same PowerPoint that
21 we'll be going through today. But just for the
22 record, it is something that was submitted to the
23 Commission.

24 CHAIR WONG: We have it on record so we do
25 have it.

1 MS. LIM: Thank you.

2 CHAIR WONG: Thank you for that correction.

3 OP, do you have any --

4 MS. APUNA: No objections, no questions.

5 CHAIR WONG: Okay. Hearing none, these
6 documents plus the PowerPoint are part of the record.

7 Is there anyone in the audience who desires
8 to provide public testimony on this matter?

9 EXECUTIVE OFFICER: Chair, we have no one --

10 CHAIR WONG: No, we have one person. Sir?
11 May I swear you in, sir?

12 DEAN OKIMOTO: Sure.

13 CHAIR WONG: Just for your information, I'm
14 going to give you a three-minute time.

15 DEAN OKIMOTO: Okay. That's good to know.
16 You know me.

17 DEAN OKIMOTO,
18 a public witness, having been first duly sworn
19 testified as follow:

20 CHAIR WONG: Thank you. Can you -- please
21 turn on your -- press the button right there.

22 Please state your name and address for the
23 record and proceed with your testimony.

24 DEAN OKIMOTO: My name is Dean Okimoto. My
25 address is 41-574 Makakalo Street, Waimanalo, Hawaii.

1 I am president of Nalo Farms and past president of
2 the Hawaii Farm Bureau and current chair of the
3 Hawaii Ag Foundation. So I have deep roots in the ag
4 community. I was president of Farm Bureau when we
5 did the IAL legislation in 2006.

6 And, you know, I just want the LUC to know
7 that, you know, when we did this, we did it in
8 collaboration with landlords, okay. So it wasn't --
9 we always -- we never called it a land use bill.
10 This was always called an ag viability bill which
11 means that part of the reason we wanted landowners to
12 put in their lands into this designation is that
13 there would be a whole list of incentives for
14 landowners to be able to farm these lands with
15 incentives for them to make it profitable. And that
16 was the whole intent of this bill. And that's how we
17 really got buy in from landlords.

18 I mean truthfully, that's -- you know,
19 all -- since for 27 years till this bill passed, it
20 was in the constitution that we needed to preserve
21 and protect ag lands. But nothing was ever done just
22 because farmers fought with the landlords. And until
23 we came and sat down with the landowners and came to
24 some agreements of that -- they realized that they
25 had to put and preserve some of the ag lands that

1 they had out there. And that's how we came up with
2 this bill. The voluntary ag designation was a
3 realization that large land ag owners, that their
4 lands need to be set aside for ag production.

5 And, you know, in all of this, the
6 overriding factor was how would you be able to farm
7 that land without attracting new farmers? And the
8 only way that we could think of to attract new
9 farmers would be to institute incentive programs on
10 the State and City level so that farmers could go in
11 and look at it and see that there was a chance for
12 them to make money. It's the only way you're going
13 to go farm. I mean -- and let me tell you even if
14 you do, it's really difficult to make money. You can
15 just ask me. Ask me anything you want. It's a tough
16 business. And making money at it is even tougher.

17 So, you know, going forward in order for us
18 to preserve land and produce the food that we need
19 for our State, our feelings are always that you have
20 to do something for the farmers. And the landowners
21 had to be able to make sure that these farmers would
22 survive on the land. So that was the whole intent of
23 IAL.

24 CHAIR WONG: Thank you. Any questions, Ms.
25 Lim?

1 MS. LIM: Just one question if I may.

2 DEAN OKIMOTO: Sure.

3 MS. LIM: Mr. Okimoto, thank you very much
4 for coming today.

5 DEAN OKIMOTO: My pleasure.

6 MS. LIM: Thank you for the letter that you
7 submitted and I guess at the risk of redundancy, I'm
8 just going to ask you are you supportive of
9 Monsanto's request to the Commission that the
10 Commission voluntarily -- or accept Monsanto's
11 voluntary offer to designate --

12 DEAN OKIMOTO: Yes. I'm -- I am strongly in
13 favor of what they're doing. I think it's -- it's a
14 showing of a company that is truly intending to farm
15 here and stay here in Hawaii and I think it's
16 commendable.

17 MS. LIM: Thank you very much. No further
18 questions, Chair.

19 CHAIR WONG: County, do you have any
20 questions?

21 MR. YOUNG: No questions.

22 CHAIR WONG: OP?

23 MS. APUNA: No questions.

24 CHAIR WONG: Commissioners? Commissioner
25 Okuda.

1 COMMISSIONER OKUDA: Thank you, Chair.

2 I'd like to make another disclosure. I
3 don't really know Mr. Okimoto as a social friend but
4 I'd like to disclose for the record that his parents
5 had consulted with our firm years ago on their estate
6 plan. Before I got on the Land Use Commission, I was
7 also the beneficiary of very large bags of Nalo
8 greens. We really appreciate it. And let me assure
9 everyone the fact that Mr. Okimoto's farm delivered
10 to our law firm large bags of Nalo greens years and
11 years ago, it will not affect my decision making in
12 this case. Thank you.

13 CHAIR WONG: Is there any opposition?
14 County, any opposition?

15 MR. YOUNG: No.

16 CHAIR WONG: OP?

17 MS. APUNA: No objection.

18 CHAIR WONG: Commissioner Cabral.

19 VICE CHAIR CABRAL: I'd like to thank you
20 for coming forward. It's really important for us to
21 have someone who's not financially connected to the
22 Petitioner or have a really -- obviously you have a
23 vested interest in the fact that, in general,
24 agriculture is extremely important to you. But I do
25 want to thank you personally for the fact that you're

1 willing to take your time and come forward as a third
2 party to this transaction. So thank you very much.

3 DEAN OKIMOTO: Thank you.

4 CHAIR WONG: Any other --

5 COMMISSIONER OHIGASHI: I guess --

6 CHAIR WONG: Commissioner Ohigashi.

7 COMMISSIONER OHIGASHI: I'll turn on my mike
8 now.

9 I know Dean Okimoto for 40 something years I
10 guess. And I do have some social interaction with
11 him in the past. We did go to college together and
12 all of that. But I don't think -- I didn't get any
13 Nalo greens. Never got them. But I don't think that
14 would affect my decision making in this matter.

15 CHAIR WONG: Thank you. Any opposition or
16 statements?

17 MS. LIM: None from Petitioner.

18 CHAIR WONG: County?

19 MR. YOUNG: No.

20 CHAIR WONG: OP?

21 MS. APUNA: No objection.

22 CHAIR WONG: Thank you.

23 COMMISSIONER CHANG: Chair, just one
24 question.

25 CHAIR WONG: Commissioner Chang.

1 COMMISSIONER CHANG: Good morning, Mr.
2 Okimoto. I didn't intend to ask this question but
3 because you are familiar, you said you were part of
4 the establishment of the legislation. At the time
5 the legislation was adopted, was it the intent that
6 the counties would take timely action in designating
7 IAL lands or did you anticipate landowners
8 voluntarily coming forward?

9 DEAN OKIMOTO: We fully intended for --
10 actually the State designated some incentives within
11 the first, I want to say, four years after the
12 legislation was passed. And the City never did --
13 repeated questions to the City about doing it always
14 came back with we don't have money to do it but yet
15 they went ahead and mapped the lands. So that kind
16 of disturbed -- it disturbed me because the intent of
17 the law was for incentives to really push landlords
18 to put their lands into this designation. So yeah, I
19 believe the intent of the law was not followed by the
20 City.

21 COMMISSIONER CHANG: Thank you.

22 CHAIR WONG: Any other questions? Thank
23 you, Mr. Okimoto.

24 DEAN OKIMOTO: Thank you.

25 CHAIR WONG: Before we begin, County, can

1 you please introduce yourself.

2 MR. YOUNG: My name is Raymond Young.

3 CHAIR WONG: Raymond --

4 MR. YOUNG: My name is Raymond Young. I'm
5 the planner assigned to this petition by Monsanto. I
6 represent the City and County Department of Planning
7 and Permitting.

8 CHAIR WONG: Mr. Young, I just -- when we
9 started, there was two Commissioners that wanted to
10 disclose some information. If you don't mind, I'll
11 be real brief and then you can expand if you want.

12 Commissioner Okuda said that he knows the
13 chairman of the board for the law firm of Carlsmith
14 and he does interact with him a little bit. Do you
15 have any objection to that? He'll be fair he stated.

16 MR. YOUNG: I apologize for my tardiness.
17 Unfortunately, I didn't anticipate the bus schedule.
18 But no objections.

19 CHAIR WONG: And then Commissioner Ohigashi
20 stated that he does know Jennifer, Ms. Lim and Steven
21 Lim. And they do interact at times but he still will
22 be fair. Do you have any objections?

23 MR. YOUNG: Thank you for the opportunity.
24 No objections.

25 CHAIR WONG: Thank you. Just wanted to get

1 it on the record that the County also has no
2 objection to the Commissioners.

3 We have one more witness I think. Sir, if
4 you may.

5 DAVID ARAKAWA: I apologize for being late.
6 My name is David Arakawa.

7 CHAIR WONG: May I swear you in first, sir?

8 DAVID ARAKAWA: Sure.

9 DAVID ARAKAWA,
10 a public witness, having been first duly sworn
11 testified as follow:

12 CHAIR WONG: Please state your name and
13 address for the record and proceed with your
14 testimony.

15 DAVID ARAKAWA: My name is David Arakawa.
16 My address is 1100 Alakea Street, Suite 408,
17 Honolulu, Hawaii 96813.

18 CHAIR WONG: Please proceed.

19 DAVID ARAKAWA: That was harder than my
20 testimony I think.

21 Okay. I've worked for Land Use Research
22 Foundation for a little over ten years. And in this
23 room today, you have three of the major players
24 for -- that helped pass and draft the IAL law. One
25 is Dean Okimoto. The second -- I guess three of the

1 four. The second is Alan Takemoto who's sitting
2 right there. He was the executive director of the
3 Farm Bureau at that time. Dean Okimoto was the
4 president of the Farm Bureau at that time. And I was
5 the executive director of Land Use Research
6 Foundation. Dean Uchida started the IAL process with
7 the Farm Bureau. It was a joint effort by the Farm
8 Bureau and Land Use Research Foundation. So there
9 were four of us that started it.

10 I'm going to pass out -- I apologize for
11 this late -- this late testimony. But this is a
12 letter -- I'm going to pass forward a letter from the
13 Farm Bureau and LURF to the legislature in April
14 2008. And this will tell you the background of the
15 IAL law. This will tell you the intent and purpose
16 of the IAL law. And the important ag lands law was
17 setting a new paradigm.

18 In the 1970s, the legislature -- excuse me,
19 the constitution -- the Constitutional Convention
20 included a provision on important ag lands in the
21 State Constitution. It took over 25 years to get
22 some legislation passed. And it only passed because
23 the farmers and the landowners finally got together
24 in the early 2000s to make it happen. Do you have
25 enough copies?

1 COMMISSIONER CHANG: One more.

2 DAVID ARAKAWA: Okay. And so the issue on
3 IAL, important ag lands, the change in the paradigm
4 is this is not -- this is not an open space or land
5 use initiative. IAL is not. Although it's in the
6 Land Use Commission, it is not intended to be a land
7 use initiative. It's an agricultural viability
8 initiative, an agriculture viability initiative.

9 So I'm going to use a word and I'm going to
10 use it out of context and I apologize. But most of
11 us understand it's not about kapu-ing as much land as
12 possible, ag land as possible. I'm using the word
13 kapu out of context but many of us understand it.
14 It's about helping farmers be viable. It's helping
15 farmers make a profit so they stay on land and they
16 keep that land in agriculture. That is what this law
17 is about. It's about long term viability through
18 economic production or economic success. It is not
19 about kapu-ing as much land as possible. So many
20 people misunderstand the IAL law but that was the
21 intent. You can read it. I just underlined and I
22 highlighted some portions of it but that is the main
23 basis.

24 The other issue is that we knew when we
25 started this law, Commissioner Chang raised the issue

1 with her question. But we knew that there could be
2 challenges, constitutional takings challenges if a --
3 the County or the Land Use Commission puts this type
4 of -- the IAL designation on top of somebody's land,
5 a landowner's land involuntarily, involuntarily. And
6 that would tie the landowner's hands and you could
7 get sued. We were worried about lawsuits, right, for
8 taking. So because of that, there was a very strong
9 emphasis on viability. You look at the statute,
10 you're going to see the word viability used many,
11 many times and an emphasis on incentives, incentives.
12 So the State had to pass incentives. And then the
13 Counties had to pass incentives also. The Counties
14 have not passed incentives. But anyway, that's the
15 first issue what the law was about. And the idea is
16 that the Counties would pass incentives and the State
17 would pass incentives so that the landowner would
18 have a harder time making a takings claim. Their
19 land would be valuable. Okay?

20 CHAIR WONG: Mr. Arakawa, just -- I don't
21 know if you heard but because you came in late, we're
22 giving all witnesses three minutes so if you could
23 wrap it up.

24 DAVID ARAKAWA: Okay. And the last thing
25 is -- the last thing is on the first page of this --

1 the excerpts from the statute. We put in the law a
2 50 percent rule. I know the City and County's asking
3 for all of the land to be designated as IAL. But the
4 intent of the law was that everybody, all the major
5 landowners do their part. So you're going to see
6 Section 205-49 Subsection A Subsection 3. And that
7 is what we call the 50 percent rule, the 50 percent
8 rule. So you're going to see it. It's right in the
9 middle of the first page you see. And that 50
10 percent rule says if a landowner designates,
11 voluntarily designates over 50 percent of their land
12 as IAL, then the Commission is prohibited, prohibited
13 from designating any more, any more than 50 percent.
14 Because we didn't want a situation where the County
15 or the Land Use Commission would designate 100
16 percent of somebody's land as IAL. And in this case,
17 our understanding is Monsanto is proposing to
18 designate 72 percent, way over 50 percent of their
19 land.

20 The balance of this, Mr. Wong, I'm just
21 going to just conclude is, you know what -- I know
22 the County and the County's worked hard on IAL but
23 you know what, they totally misunderstand the law and
24 they should be shame coming to you folks. It's a
25 local term. They should be shame, utterly shame

1 coming to you folks asking for 100 percent of that
2 land when they never do whatever, whatever about IAL.
3 And this -- and the law -- the law shows all of these
4 things that the City has -- was supposed to do. They
5 never do nothing. They never do nothing.

6 CHAIR WONG: Thank you. Questions?

7 MS. LIM: No questions. Thank you.

8 CHAIR WONG: County?

9 MR. YOUNG: No questions.

10 CHAIR WONG: OP?

11 MS. APUNA: No questions.

12 CHAIR WONG: Commissioners? Thank you.

13 DAVID ARAKAWA: And I will conclude my
14 testimony now. But the last thing is, and I'll pass
15 this out, is that Dean Okimoto and I did a training
16 for the State Land Use Commission in 2009 on IAL.
17 And so I'm passing out what we -- our training
18 materials. Thank you very much. And we'll be
19 willing to train you again.

20 CHAIR WONG: For the record, Mr. Arakawa,
21 just for your handouts, we're putting it on the
22 record.

23 DAVID ARAKAWA: Yes, of course, thank you.

24 CHAIR WONG: Okay. Is there anyone else
25 willing to testify? Okay.

1 Ms. Lim and Mr. Murakami, are you ready to
2 proceed?

3 MS. LIM: Yes, we are Chair. If I may, I'll
4 tell you how we intend to make our presentation
5 today. And we've got three witnesses. First witness
6 is going to be Dan Clegg. He's with Monsanto and he
7 is the Hawaii Operations Business Lead for Monsanto.

8 Followed by Mr. Clegg will be Tom Witten of
9 PBR Hawaii. PBR Hawaii is the company that put
10 together the agricultural land assessment. That's
11 Petitioner's Exhibit 4. And I think you've seen PBR
12 Hawaii do several of the IAL petitions that have been
13 before the Commission.

14 And then the last witness that we will
15 present is Dr. Robert Starke who prefers to be called
16 Bob. And he is the farm manager at the Kunia Farm.
17 And you met Mr. Starke and Mr. Clegg at the site
18 visit for those of you who were there.

19 So with that, I'd like to call up Mr. Clegg
20 as our first witness.

21 CHAIR WONG: May I swear you in, sir?

22 DAN CLEGG: Yes.

23 DAN CLEGG,
24 called as a witness by Petitioner, having been first
25 duly sworn, was examined and testified as follows:

1 CHAIR WONG: Thank you. Please state your
2 name and address for the record and then proceed.

3 DAN CLEGG: My name is Dan Clegg. My
4 address is 859 Kai Hele Ku Street, Lahaina, Hawaii
5 96761.

6 CHAIR WONG: Thank you, please proceed.

7 DIRECT EXAMINATION

8 BY MS. LIM:

9 Q Good morning, Dan.

10 A Good morning.

11 Q Have you ever been before this Commission
12 before?

13 A No, I have not.

14 Q So why don't we take a couple of minutes
15 letting the Commission know about your background,
16 who you are, what you do at Monsanto so they can
17 understand what your role is there. Okay?

18 A Sure. So thank you for your time today.

19 I -- my background really is agriculture. I
20 grew up on a farm. I'm the third generation to have
21 been in agriculture.

22 So when I was a young guy, I decided to go
23 for a little different adventure and I ended up
24 coming to Hawaii in the military. And I was a deep
25 sea salvage diver during that time. So something

1 completely different from farming and raising
2 livestock and all the things that come with an
3 agriculture life.

4 I met a girl and we got married. And we
5 both at that point pursued our agricultural
6 educations back on the mainland. And the one thing
7 that really drew me, I guess if you will, back to
8 Hawaii is that I wanted to really combine two things
9 in my life. And that was the one thing I thought I
10 didn't want was agriculture and it turned out that
11 was the most important thing in my life and to be
12 able to do that here in Hawaii.

13 So I had this great opportunity in 1997 to
14 come back to Hawaii, to Maui actually, and start with
15 a seed company in raising seed here in Hawaii. And
16 we've been here ever since. So, you know, outside of
17 the military time, I'm pretty much a farm guy.
18 That's what I do.

19 Q So you said a seed company. Is Monsanto a
20 seed company?

21 A Monsanto is a seed company. Monsanto is
22 certainly a lot of different things but Monsanto in
23 its core is a 100 percent agriculture company.
24 That's all we do.

25 Agriculture has a lot going on. I mean as

1 we see, we see the decisions the farmers' making. We
2 see the decisions that the ranchers make and all the
3 different tools they can use. But at the end of the
4 day for Monsanto, really we try to provide the best
5 possible tools for farmers and ranchers to make good
6 decisions to have the best possible yields on their
7 farms. But farmers are our customers. And I'll tell
8 you that's why -- I mean when I got involved in this,
9 that's why I've stayed with it is because the
10 dedication of our business to continue to want to
11 help farmers and help agriculture be successful is
12 actually what I believe in. That's what -- those are
13 my core values.

14 So for Hawaii, really our focus here in the
15 State of Hawaii is about seed. And it's really one
16 of the biggest decisions that most farmers are going
17 to make, farmers and ranchers are going to make is
18 what am I going to plant this year? What crop cover
19 am I going to plant? What grass may I plant in my
20 pasture if I'm trying to beef up my pasture for my
21 cattle? I mean there's all these different
22 decisions. But at the end of the day, that seed that
23 goes into the ground, it's a critical important
24 decision for anybody that grows -- that grows
25 anything.

1 Q What kind of seeds does Monsanto provide to
2 these farmers?

3 A So it's a wide range. You've got these, you
4 know, these major crops, you know, we talk about --
5 of course, there's corn and soybeans and there's
6 cotton, alfalfa and wheat. Some of these major
7 crops. But there's also the minor crops as well that
8 maybe people aren't familiar with. And if you go to
9 the next slide, this is where we get into one of the
10 areas that, you know, it's not something that people
11 talk about a lot in relationship to Monsanto but
12 we're a vegetable seed company too. And a lot of
13 those crops -- and when you think about those little
14 packets that people buy in the store, it'll have
15 little ten seeds inside of them. Really what
16 Monsanto does -- what I spend my career doing is
17 instead of, you know, putting ten seeds in a packet
18 and selling to a farmer, it's -- you know, it's a
19 bushel of seeds in a packet. It's -- you know,
20 you're scaling up for farmers that have more than --
21 they're planting more than just a row of tomatoes or
22 a couple pots of tomatoes.

23 So the idea is, you know, when you think
24 about the vegetable business, the interrelationship
25 between the farmer and Monsanto is very similar to a

1 gardener walking into a store and actually picking up
2 a packet of seeds saying I think I'm going to plant
3 that variety of tomato this week in my garden. It's
4 the same relationship.

5 Q Does Monsanto -- let me step back. We're
6 here today to talk about the petition for the 1550
7 acres at the Kunia Farm. Does Monsanto plant seeds
8 there, cultivate seeds at that petition area?

9 A We do absolutely. So on that farm, and Bob
10 Starke is going to talk about this more, there's --
11 you know, there's no farm manager really wants
12 anybody else to talk about their farms so I'm going
13 to leave that for him. But we do. We raise corn and
14 soybean seeds.

15 And I think when you folks were out on the
16 visit, one of the things that those of you were able
17 to see is there's a lot of ground cover. And there
18 was ground cover being planted. And there was some
19 ground being turned, getting ready for that -- this
20 winter crop. And so there's over 1150 acres within
21 that area that you looked at that are actually
22 really, really good quality tillable land that -- a
23 lot of that will be full this winter as I think Bob
24 told you on the farm tour is that there's going to be
25 a lot of crop in the ground this winter.

1 Q So did Monsanto bring the seed industry to
2 Hawaii?

3 A No. No. It's -- that's a long story. It's
4 a good story. But Monsanto's been here since 2000.
5 Monsanto becomes part of the seed industry story
6 because of its acquisition of an organization -- a
7 couple organizations that were already here. But
8 really where the seed industry started was with
9 University of Hawaii. And we all know, you know --
10 everybody knows who Jim Brewbaker is. Everybody
11 knows about his breeding program. But, you know, the
12 University of Hawaii was literally going to the
13 mainland in the mid to mid late '60s and talking with
14 seed producers that were sitting around the table and
15 actually trying to figure out how to continue to
16 enhance and get these new hybrids out to farmers
17 faster and quicker. I mean literally be able to how
18 can we serve the farmers better? The University of
19 Hawaii really saw an opportunity and said look, if
20 you guys are able to do your farming in Hawaii, not
21 only can you do your farming for one cycle on the
22 mainland where, you know, you're from and then in the
23 wintertime you send your seed to Hawaii and then you
24 get another -- you get another growth cycle.

25 The one thing that's consistent about being

1 a seed farmer is you can't hurry Mother Nature. I
2 mean you put a seed in the ground and if it's going
3 to take 110 days for that crop to grow from a
4 seedling to the point that you can finally harvest
5 it, that's a fixed point in time.

6 So the University of Hawaii really saw an
7 opportunity to bring to Hawaii an economically viable
8 agricultural crop. I don't think anybody thought it
9 would be this successful. I think everybody thought
10 it might be a little smaller in footprint but the
11 reality is that it's turned out that the seed
12 industry has turned out to be one of the great
13 agriculture successes of Hawaii, at least in this
14 last couple decades.

15 Q So let's be a little more specific on that,
16 Dan. One of the statutory criteria that the
17 Commission is supposed to consider is whether or not
18 the land can contribute to the State's economy based
19 on an -- from an agricultural perspective. What
20 approximately is the economic impact of the seed
21 industry alone in the state of Hawaii?

22 A I mean just -- you can -- so we have
23 multiple reports that get done throughout the year.
24 The university -- the United States Department of
25 Agriculture, their statistics department, they

1 actually track the industry every year and run an
2 evaluation of the value of these different
3 commodities and the seed business is one of them.

4 But in one of the reports that was done
5 by -- actually by Paul Brewbaker, the estimated total
6 value of the industry was 323 million for the
7 industry as a whole. But for that particular farm,
8 like there's 258 employees there. These are
9 full-time employees. These are employees that have
10 full benefits. I mean we're talking about a company
11 that after three years, you get four weeks of paid
12 vacation. This isn't -- this isn't about low wage,
13 low skilled employees. These are folks that are
14 going to the field and they're working with
15 technology. They're using iPads to take data.
16 They're getting all sorts of job training skills. We
17 have engineers, IT people and we have people that
18 work with their hands every day. You know, that
19 commitment to 258 people, that comes at a cost. And
20 that cost is a direct injection, if you will, to the
21 economy. And that doesn't include GET taxes and real
22 estate taxes and some of the income taxes and things
23 that are associated with the property. So it's a
24 standard business. But in this case, I would point
25 to the 258 employees and just say that's a

1 significant commitment to that -- especially that
2 Kunia region. That would be a big gap if those
3 employees weren't there right now.

4 Q Thanks, Dan.

5 So we'll talk a lot about the seed industry
6 and the economic impact of the seed industry and what
7 Monsanto is doing with the seed industry. Let's
8 telescope it even further down on the next slide and
9 talk about the property itself because -- is all the
10 property -- all of the areas on the property used for
11 seed cultivation? And if not, please describe what
12 else goes on.

13 A Sure. Sure. Some of this, Bob will --
14 we'll want Bob to get into. But looking to see if
15 the pointer's working here. Nope.

16 Q We have a flesh and blood pointer.

17 A Okay. Great.

18 So for the -- you folks that were actually
19 on the field tour, I mean obviously, this was the
20 office. This was the starting point. And you guys
21 went through. We met where these three stars are, we
22 met. One of the areas that was talked about was a
23 ranching area here and then up mauka up on the
24 Waianae side, there's a ranching area here. So
25 you've got this sort of classic convergence of what

1 ag land to me looks like is you've got these areas
2 where you got prime agriculture land that are great
3 for row crop tillage. You've got -- I think one of
4 the things Bob will talk about is these conservation
5 strips, strips of land with grass on them. So
6 they're used for conservations, for the soil and
7 water conservation plan. And then we have these
8 areas that quite honestly, they're more suited for
9 ranching. They're really good for ranching. But
10 from a soil and water conservation standpoint, some
11 of those areas you don't go in and till the earth
12 because quite honestly, you're -- it runs against the
13 concept of a soil and water conservation plan.

14 But the point is that that 1550 acres, all
15 of that has a purpose. In some form or fashion,
16 every part of that farm plays a purpose and plays a
17 role in supporting each other part of the farm.
18 Right? You can't just -- you can't piece it apart.
19 It all belongs together.

20 Q And are there -- is Monsanto doing the
21 ranching or --

22 A No. Those are actually -- those are
23 actually leases to other farmers that -- it's
24 something that Monsanto's been doing. Actually
25 around the state is we actually are involved in quite

1 a few operations where we either lease our land to
2 other farmers or we've worked with other landowners
3 to create opportunities for farmers to have land to
4 farm. So this falls in line with really what we've
5 been doing for the last 20 years of saying how are we
6 going to be an active part of agriculture in Hawaii
7 and how are we going to show that commitment? And
8 that's part of it.

9 Q And are those ranchers aware that this
10 petition was filed?

11 A They are.

12 Q Speaking of the petition, that's what we're
13 here for, have you read through the petition?

14 A I have.

15 Q The petition requesting that the Commission
16 designate 1550 acres as important agricultural land?

17 A Yes.

18 Q And the exhibits with that petition,
19 Exhibits 1 through 10?

20 A Yep.

21 Q Any comments or concerns about those
22 documents?

23 A I don't have any concerns or comments on
24 those documents.

25 Q And have you read the comments that were

1 submitted by the agencies? And by the agencies, I'm
2 referring to the State Office of Planning, State
3 Department of Agriculture and also the City and
4 County of Honolulu Department of Planning and
5 Permitting.

6 A I have.

7 Q And do you have any comments?

8 A Well, what I do appreciate from the agencies
9 that have reviewed this, I do appreciate the support
10 of taking a look at, you know, this voluntary process
11 and actually coming out on behalf of the agency and
12 supporting what we're trying to accomplish for
13 agriculture quite honestly.

14 Q And there's also -- there were also some
15 letters submitted by different groups --

16 A Yeah.

17 Q -- public testimony letters.

18 A So this is -- I want to make sure. I mean
19 we had Hawaii Crop Improvement Association. We had
20 Hawaii Farm Bureau, Japanese Cultural Center of
21 Hawaii, Hawaii Cattlemen's Council, Nalo Farms of
22 course. You guys talked to Dean earlier. Hawaii
23 Agricultural Foundation. And I believe we had a
24 couple of late folks that have come in a little later
25 to provide support.

1 But it's sort of -- you know, you work in
2 agriculture and you spend all your time. It's a
3 pretty small community. It's a small group of
4 people. And when you have a scenario where you're
5 trying to accomplish a goal like this, it's really
6 nice to see people be willing to speak up and speak
7 out in support of something that's going to have a
8 long term positive impact. So I really appreciate
9 their support.

10 Q So you just read off the name of several
11 organizations or entities that clearly are tied to
12 agriculture. But one of those entities doesn't seem
13 to have anything to do with agriculture and that's
14 the Japanese Cultural Center. So can you explain
15 what their letter of support was about?

16 A Yeah. That's -- those guys are really good.
17 They're -- they're a great organization. So if
18 you -- I need to -- let me explain the organization
19 real quick and I'll explain the relationship.

20 The Japanese Cultural Center of Hawaii
21 has -- has the most thorough library and knowledge of
22 the internment camp in Honouliuli Gulch. So in
23 2007 -- this is the relationship. I'll try to make
24 this quick. In 2007, when we bought this property,
25 we were aware that in this gulch which had recently

1 been sort of, if you will, rediscovered, Honouliuli
2 internment camp had been certainly identified as
3 that's the location. There's a lot of history there.
4 There was POWs, there was internment, there was --
5 those that were interred. But the Japanese Cultural
6 Center of Hawaii had already done a lot of research
7 and they were collecting what I would call the
8 intellectual property. They knew who the survivors
9 were, who was still alive, they knew who to talk to,
10 who'd been interred, what families were impacted.
11 They knew how to get a hold of people.

12 But they also knew that okay, all of a
13 sudden, Monsanto Company had ownership of this land.
14 And with folks within our organization, we were -- I
15 don't remember who approached who but we sat down and
16 said what are we going to do about preserving and
17 essentially preserving and protecting Honouliuli?
18 What does that look like? The ultimate dream was it
19 becomes a national park. But this is in 2007. So
20 along through the process working with JCCH, they'd
21 become very, very familiar with Monsanto. I mean
22 they just -- they spent an enormous amount of time
23 driving back and forth across the farm in trying to
24 do cultural tours and educate people about what
25 happened there to the point where our relationship

1 with them is close because we're -- in a sense we're
2 neighbors and both have a bond and we both belong to
3 the place.

4 So today, it's a national monument. It's
5 owned by National Park Service. And there's yet more
6 to come. And JCCH continues to do their work.
7 But -- so the dream comes true, right? You create
8 this national monument. But they know that their
9 mission is not over. They're going to continue to
10 have a relationship with that park. And they're
11 going to continue to do the work that they do. They
12 think somewhere along the lines that some of us at
13 Monsanto think is that this is a legacy issue is that
14 I'm just a steward sort of temporarily as I'm passing
15 through, somebody else is going to take this over.
16 How do I make sure I set this up to where it's taken
17 care of? And that's essentially what we did with
18 that so. Sorry for the long story but it's an
19 important part of what that place is about.

20 Q So that land area is outside of the petition
21 area?

22 A It's owned by the National Park.

23 Q You know, Dan, I was going to ask you why
24 does Monsanto want to have these 1550 acres
25 designated as IAL but I feel like you just answered

1 that in talking about stewardship and legacy and long
2 term planning. But is there anything about that that
3 you would like to share with the Commission?

4 A So we -- we -- my only comment, I guess, I
5 made the other day when we were talking in the room
6 is just that I felt having been involved with the
7 business and having been involved with the things
8 that we've done like that story I was just telling
9 about JCCH, I just felt like we were at a point where
10 we just need to make a move. It really wasn't about
11 whether, you know, what the -- whether there were
12 incentives or whether there was anything specific
13 that we were targeting.

14 I actually felt like this was just a really
15 good time for Monsanto to put a stake in the ground
16 and just say look, our commitment is to be here for a
17 very, very long time and continue to be part of
18 agriculture. And so we did. We started this
19 conversation about what are we going to do with IAL?
20 First thing you have to do is figure what it is. And
21 then you have to figure out how you're going to
22 participate. And once we did that, we just kept
23 going. I mean there were so much support within our
24 organization. It was actually -- it was cool.
25 Because everybody was in agreement that we're going

1 to make this long term commitment. And that's --
2 that's why I'm so confident saying the things I'm
3 saying because that's why we're doing this. That's
4 the truth. That's what's driving us.

5 Q My final question to you before we rest, I
6 turn you over to the Commission, is Monsanto a land
7 developer? You have any -- does Monsanto have any
8 intention to become a land developer?

9 A No.

10 Q Because?

11 A We're an ag company. I just -- that's who
12 we are.

13 MS. LIM: Thanks very much. I have no
14 further questions for the witness.

15 CHAIR WONG: County, you have any questions?

16 MR. YOUNG: No questions.

17 CHAIR WONG: OP?

18 MS. APUNA: Yes. Thank you for your
19 testimony, Mr. Clegg.

20 CROSS-EXAMINATION

21 BY MS. APUNA:

22 Q You mentioned that I think one of the seed
23 industry in Hawaii, you mentioned the overall
24 contribution of seed for the State. And then you
25 pointed to 258 employees at Kunia Farm. Is the seed

1 exported from Kunia Farm?

2 A Exported in what way?

3 Q Or is it used here in the State?

4 A So it's -- this is the -- this is always the
5 part about -- showing the story of the seed, why a
6 seed business, right? So the seeds that we grow at
7 Kunia, many of them are to -- the second to the last
8 stop before they get put into a bag and sold to the
9 farmer. So some of those seeds actually may go to --
10 somewhere on the mainland or even South America and
11 they're finished. In other words, they're put into a
12 final product in a large enough scale that they can
13 actually be sold to the farmers in a big enough
14 scale.

15 What's interesting though is the vegetable
16 seed piece I was talking about is we have farms kind
17 of like ours right here in Hawaii that are in, you
18 know, say San Joaquin Valley of California, and
19 they're packaging seeds and actually sending
20 vegetable seeds to Hawaii. And then our farmers in
21 Hawaii are actually planting those vegetable seeds
22 and those are all some of the fruits and veggies that
23 we're eating from the store today. There's a sort of
24 reciprocal, if you think about it, relationship
25 between that. If that makes sense. I don't know if

1 I would call it export but it's -- there's
2 certainly -- it goes in different stages and phases,
3 right.

4 Q So it would be part of a agricultural
5 commodity would you say, the seeds that are coming
6 from or through Hawaii?

7 A It is one of the agricultural commodity
8 groups in Hawaii. And it's just -- but the way it's
9 measured is -- and that would be actually a better
10 question for the USDA. I mean the USDA tries to
11 measure each different -- every commodity a little
12 differently. Coffee is measured certainly much
13 differently than cucumbers, right? So we're just one
14 of those -- we're one of those commodities that has
15 its own unique form of measurement.

16 MS. APUNA: Thank you.

17 CHAIR WONG: Commissioners, any questions?
18 Vice Chair?

19 VICE CHAIR SCHEUER: Aloha. Thank you again
20 for the tour that you gave to us.

21 I have a few questions. And if these are
22 outside of this witness's expertise, just let me know
23 and direct me who in the future I should ask these
24 to.

25 My first question is, and this is just

1 curious and it has to do with, I believe, information
2 that came up in the petition about the value of
3 exports from this property. If I understood
4 correctly during the tour and your testimony just
5 now, the seed that you grow off and goes to other
6 Monsanto subsidiaries, it's not actually sold to a
7 commercial -- to a third party?

8 DAN CLEGG: It's not a final product. We
9 don't finish a product and put it into, you know, a
10 bag, you know. When he was talking about -- we
11 don't -- we don't finish a final product that's
12 actually been put on a shelf and sold to the farmer.

13 VICE CHAIR SCHEUER: So when we hear data
14 about the value of seed corn exports or seed exports,
15 how do you -- how is it valued in a case like that?

16 DAN CLEGG: So the USDA has a couple way
17 of -- ways of doing their evaluation. One of them is
18 viewing -- you can view a business as a cost, right?
19 Or you can view the business as the income revenue it
20 makes it a farm gate value. So some commodities are
21 certainly going to be farm gate value. Some
22 commodities, as you guys know, are traded on a
23 exchange and we know how much commodity is worth per
24 bushel. It's already determined by another
25 mechanism. So many times, our business will be

1 measured more by the cost. The upside to that, and
2 it's always difficult to explain to everybody, but
3 the upside to that means there's product being sold
4 somewhere else. Those dollars are being generated
5 somewhere else. And then those dollars are coming to
6 Hawaii and actually being spent in Hawaii. So the
7 seed business actually needs this. It's a very
8 direct negative economic gain for Hawaii. That's
9 what that translates into.

10 VICE CHAIR SCHEUER: Okay. Thank you.

11 Second question has to do with sort of the
12 landowner's intent in dedicating agriculture --
13 important agricultural land for this property. There
14 was a witness, our second -- or second public
15 testifier who indicated that IAL was not about the
16 protection of agricultural lands but rather incentive
17 program. What's your understanding of the
18 constitutional purposes of designation of IAL?

19 DAN CLEGG: So I -- I don't know
20 that . . .

21 VICE CHAIR SCHEUER: If you're not --

22 DAN CLEGG: I don't know that I'm -- yeah, I
23 don't know that -- I'm probably more qualified to
24 comment not on what the constitutional intent was but
25 I can comment on what -- certainly what our intent

1 was. And our intent was not to pursue any
2 incentives. That wasn't the driving factor. Our
3 intent was to make very, very clear to our
4 agricultural community and the community in general
5 that Monsanto is very serious about being an
6 agriculture company long term in the state of Hawaii.

7 VICE CHAIR SCHEUER: Okay. Thank you.

8 So then my third and final sort of group of
9 questions has to do with which lands of the total
10 land holdings by Monsanto in this area was proposed
11 for IAL designation as opposed to others. How many
12 acres total does the company own in this area?

13 DAN CLEGG: 2150.

14 VICE CHAIR SCHEUER: And do you know what
15 percentage of those lands are classified as A?

16 MS. LIM: That may be something better
17 addressed by Tom Witten --

18 VICE CHAIR SCHEUER: Okay. So what I'll
19 just say now and then if it's Tom, he has a chance --
20 what I'm interested in is the petition stated what
21 percentage of the 1550 were A lands. But I'm
22 actually interested also in is what percentage of all
23 the A lands held by Monsanto are being protected in
24 this proposed designation and what percentages of the
25 A lands owned by Monsanto in this area are not in

1 this petition?

2 DAN CLEGG: I think Tom, you have to cover
3 that.

4 VICE CHAIR SCHEUER: Okay. Thank you very
5 much.

6 CHAIR WONG: Any other questions?
7 Commissioner Chang.

8 COMMISSIONER CHANG: Yes, thank you. Thank
9 you so much for your testimony. Appreciate that.
10 Appreciate Monsanto's commitment to ag.

11 I just wanted a clarification. The products
12 that Monsanto produces in ag, are any of those
13 products consumed in Hawaii?

14 DAN CLEGG: So the products -- can I hear
15 the first part again?

16 COMMISSIONER CHANG: Yes. The products
17 primarily -- 'cause we saw seed. We saw corn. We
18 saw soybeans. Are any of those products that you
19 grow on this land consumed in Hawaii?

20 DAN CLEGG: It depends on how far down the
21 food chain you go. So if you -- if you're talking
22 about a -- driving a truckload of corn off the farm
23 and going to the local farmers market and selling
24 something and that's the definition of the question,
25 then the answer is no. I mean we have -- across the

1 State we have over 600 acres of land, you know,
2 leased to other people. We have folks that are
3 growing coffee and ranchers and all that. But even
4 in some of those cases, those uses when people are
5 producing crops and they're going into other products
6 that are being marketed somewhere else.

7 I think the contribution to the food -- the
8 local food piece though is still a question that
9 comes up. And it is an issue of how you make sure
10 that you have a robust enough agricultural
11 environment so all of those pieces can exist
12 together. And that's where these ag parks and some
13 of these other things that we've all been pursuing
14 are helpful. But at the end of the day, you know,
15 we're not driving the farmers market.

16 COMMISSIONER CHANG: Thank you for your
17 answer.

18 CHAIR WONG: Any other questions?
19 Commissioner Cabral.

20 VICE CHAIR CABRAL: Yeah. Just for
21 clarification, I have -- I like maps so I printed a
22 map. And so -- but up on this comparison wise,
23 you've taken out and it's not even shown where the
24 internment camp was, is that correct? That's not
25 even in your striped area at all, is that correct?

1 MS. LIM: That's correct.

2 DAN CLEGG: It's over --

3 VICE CHAIR CABRAL: Right along --

4 DAN CLEGG: Yeah. I mean it's literally --
5 when we say Honouliuli and turn the camp for
6 Honouliuli Gulch, I mean it's literally that
7 internment was in -- it was in the gulch.

8 VICE CHAIR CABRAL: Okay. And then you have
9 a second area might be where that little white dot is
10 along Kunia Road, is that where you have a water tank
11 on something you're donating to Department of Water
12 Supply or something?

13 DAN CLEGG: Oh, yeah. That's what that is.

14 VICE CHAIR CABRAL: Right there? Okay. I
15 just like to get my bearings. So then adjacent to
16 the water area, the area that's not striped at all
17 which includes your red star which is where your
18 office building and warehouse was, then that -- all
19 of that area is not part of what you're looking to
20 dedicate at this time, correct?

21 DAN CLEGG: Correct.

22 VICE CHAIR CABRAL: Okay, thank you very
23 much.

24 CHAIR WONG: Commissioner Ohigashi.

25 COMMISSIONER OHIGASHI: Because I got

1 disconnected from the net and I don't have it in
2 front of me, one of the things I wanted to ask you,
3 I'm not sure if you're the person to ask but in the
4 petition and in some of the recommendations by OP and
5 I believe the City, they indicate that you've given
6 up or waiving certain incentives under the statute.
7 Are you able to enumerate what you believe you're
8 waiving or is that something counsel will do later on
9 or --

10 DAN CLEGG: Why don't we have counsel do
11 that.

12 COMMISSIONER OHIGASHI: Just interested.

13 DAN CLEGG: Yeah. I mean that's --

14 COMMISSIONER OHIGASHI: As long as that is
15 addressed. I just want to have that on the record.

16 DAN CLEGG: I mean it gives you an idea of
17 how not focused on incentives we actually are in the
18 process is that it's -- that wasn't a relevant --
19 actually a relevant part of our decision making.

20 COMMISSIONER OHIGASHI: Okay. Just wanted
21 to be sure what those --

22 DAN CLEGG: I understand. Thank you.

23 CHAIR WONG: Any other questions by
24 Commissioners?

25 COMMISSIONER OKUDA: Mr. Clegg, thank you

1 for your testimony. Can you just briefly just so
2 that everyone in the room knows, can you briefly tell
3 us your educational background and your employment
4 experience just so that we can determine or have in
5 the record and everyone here knows the level of your
6 expertise please.

7 DAN CLEGG: Sure. So after spending six
8 years in the military and certainly learning a lot of
9 technical skills that don't necessarily translate to
10 a farm, but leadership skills do, I did get a
11 bachelor's in agriculture economics. So what that
12 led me to in my first part of my career was starting
13 as an agronomy specialist in the field of making
14 decisions around production practices, crop scouting.
15 And that quickly then, as our business was going,
16 translated into building and establishing water
17 systems and managing farmland and creating soil and
18 water conservation plans and really starting to get
19 almost into the edge of some of the -- into the edge,
20 I guess, of the engineering world and making
21 decisions about how to best operate on these pieces
22 of property here in Hawaii as we're going through our
23 growth stages. Ultimately, that resulted in a shift
24 in my career to managing and actually being involved
25 in the real estate investments and divestments for

1 our organization. And that's how I became very
2 intimate with this piece of farmland is that I was
3 the person for Monsanto that was the -- that did the
4 deal. And I was the one that dug in and did the due
5 diligence and was trying to figure out what was
6 there, what was about the property as well as
7 Molokai.

8 So my range of expertise is really wide. I
9 didn't spend a lot of time on any one issue. But if
10 you'll talk to anybody that's run a farm before, it's
11 exactly what they do. I can pick up a welder and
12 weld something for you today if you'd like. You
13 know. Or I can work with you on a strategic plan on
14 how we can run a great capital improvement project.
15 Right? I mean these are the kind of things that
16 happen over time in your career as you progress as
17 okay, how do I -- how do I best benefit the company?
18 And how do I best benefit the people around me? And
19 that's where I'm at today. It's a great place to be.

20 CHAIR WONG: Commissioner Okuda.

21 COMMISSIONER OKUDA: Yes, just a short
22 follow-up. So can you identify the university or the
23 institution that you got the degree from?

24 DAN CLEGG: University of Illinois.

25 COMMISSIONER OKUDA: And the companies that

1 you worked for after graduation, can you tell us the
2 names of the companies?

3 DAN CLEGG: Yeah. DeKalb Genetics was the
4 company I was working for prior to its purchase by
5 Monsanto.

6 COMMISSIONER OKUDA: Thank you very much.

7 DAN CLEGG: Thank you.

8 COMMISSIONER ESTES: He answered my
9 questions.

10 CHAIR WONG: Thank you. Commissioner
11 Scheuer.

12 VICE CHAIR SCHEUER: So I just -- just one
13 more. When -- it came to me after you stated your
14 background from the company and the reference to land
15 that's being transferred to the Honolulu Board of
16 Water Supply. Are you familiar with that portion of
17 the farm that's being transferred?

18 DAN CLEGG: So I'm familiar with the
19 scenario. I'm not the -- I'm actually not the land
20 manager any more. We have somebody else that works
21 on that and I would not get into any of those
22 details.

23 VICE CHAIR SCHEUER: Usually, not always but
24 often the practice with our County Departments of
25 Water Supply is that landowners receive credits when

1 portions of source or transmission or storage are
2 given to them that can then be used for future
3 development. Is Monsanto receiving future water
4 credits in exchange for that --

5 DAN CLEGG: I'm not aware of anything of
6 that nature.

7 VICE CHAIR SCHEUER: Ms. Lim.

8 MS. LIM: With permission, my co-counsel,
9 Mr. Murakami, would like to respond to that.

10 MR. MURAKAMI: Commissioner, thank you for
11 the question. I wanted to clarify that the portion
12 of the land that is being deeded to the Board of
13 Water Supply, I don't have a pointer but it's like
14 that little --

15 VICE CHAIR SCHEUER: White spec.

16 MR. MURAKAMI: Actually, that spec is owned
17 by the Board of Water Supply now which is why it's
18 white. But if you go in this direction, there's a
19 little like ovally looking thing. I'm sure that's
20 not a legal word but where you see stop number 2, if
21 you go sort of diagonally that way, right there,
22 there's that little ovally thing. That actually is
23 not subdivided yet but it's going -- it's in the
24 process of being subdivided. And it's going to be
25 deeded to the Board of Water Supply.

1 With respect to credits, Monsanto is not
2 getting any credits for that. Because as part of the
3 transaction when they acquired the land from the
4 prior landowner, that little piece of land was
5 reserved for the Board of Water Supply. And, in
6 fact, another -- pardon me, another person is going
7 to be developing that on behalf of the board and
8 conveying it to the Board of Water Supply.

9 VICE CHAIR SCHEUER: Thank you.

10 CHAIR WONG: Ms. Lim, any more statements
11 before we finish with this witness?

12 MS. LIM: If I could, I would like to just
13 ask a couple of questions on redirect and also a
14 clarification. And the clarification is we are not
15 offering Mr. Clegg as an expert witness. We're not
16 seeking the Commission to recognize him as an expert
17 witness. He is the business lead at Monsanto. He
18 just has a lot of experience in the farming business.

19 REDIRECT EXAMINATION

20 BY MS. LIM:

21 Q But now my question to you, because one of
22 the Commissioners was asking about incentives and
23 what incentives you're waiving. And yes, I can try
24 to discuss that during my closing statements but I
25 think you can answer this too. And so I'm going to

1 ask you a couple of questions. One, there's a tool
2 under the law that allows landowners who are
3 voluntarily offering their land for IAL designation
4 to also seek reclassification of some smaller
5 percentage of land that reclassification to urban
6 rural conservation almost as a gift. You still have
7 to go through proceeding but it's a little bonus to
8 incentivize landowners to offer their land for IAL
9 designation. Does Monsanto have any intention of
10 pursuing that opportunity for reclassification based
11 on this IAL petition?

12 A No.

13 Q Has Monsanto agreed to waive any opportunity
14 to seek reclassification based on this IAL
15 designation?

16 A In that specific case -- in that specific
17 case, I believe we have.

18 Q Right. So you're not seeking any kind of
19 credits that will allow you to reclassify future
20 lands based on this 1550 acres?

21 A Yes.

22 Q I'm sorry, yes, you're not seeking any --

23 A No, we're not.

24 Q Thank you.

25 A I'm having the word incentive roll around my

1 head and I'm thinking about this very broadly. So
2 I'm sorry. It's -- I'm making sure we're --

3 Q I just wanted to drill down on that specific
4 statutory statute.

5 MS. LIM: Nothing further, Chair.

6 CHAIR WONG: Thank you, witness.

7 Before the next witness, we'll take a
8 five-minute recess.

9 (Recess taken.)

10 CHAIR WONG: Okay. Let's get started with
11 the second witness. May I swear you in, sir?

12 TOM WITTEN: Sure.

13 TOM WITTEN,
14 called as a witness by Petitioner, having been first
15 duly sworn, was examined and testified as follows:

16 CHAIR WONG: Thank you. Please state your
17 name and address for the record and you may proceed.

18 TOM WITTEN: Thomas Witten. My business
19 address is 1100 or 1000 Bishop Street, Suite 650,
20 Honolulu, Hawaii 96821.

21 CHAIR WONG: Proceed.

22 DIRECT EXAMINATION

23 BY MS. LIM:

24 Q Morning, Tom.

25 A Good morning.

1 Q I know you've been before the Commission
2 before but let's just -- if you could briefly go over
3 your background before you talk about the
4 agricultural land assessments and go through these
5 PowerPoint slides. So please describe what kind of
6 time -- what kind of events you've presented to this
7 Commission in the past.

8 A I've been involved in community planning,
9 land use planning, environmental planning in Hawaii
10 for, I guess, coming up on 40 years. I got my degree
11 from University of California at Berkeley in
12 landscape architecture. I returned home and pursued
13 my career here. Been with PBR Hawaii for over 35
14 years and currently chairman of PBR Hawaii. We're a
15 land planning -- land planning, landscape
16 architectural and environmental planning firm
17 practicing primarily in the state of Hawaii.

18 Q Have you been involved in any IAL
19 proceedings?

20 A Yes. As it turned out, we've been involved
21 in, I think -- or eight of the nine IAL petitions,
22 voluntary petitions that have come before the Land
23 Use Commission. On seven of those eight, seven of
24 those eight involved the landowners coming forward on
25 a voluntary basis, what we refer to as a majority

1 incentive.

2 Basically as David Arakawa mentioned, the 50
3 percent rule but basically the incentive that was
4 provided for in the law that said if you voluntarily
5 designate over a majority of your land, that the
6 state and counties could not designate the balance of
7 those lands. And of those petitions, of the ones
8 we've been involved with, I think there were seven of
9 the eight that we're involved with, utilized that
10 incentive to designate their lands. And over the
11 petitions that I've been involved in, it's over
12 130,000 acres, have been voluntarily put into IAL.

13 Q Have you ever been designated as an expert
14 witness before this Commission?

15 A Yes. As both a land use land planner and
16 environmental planner.

17 MS. LIM: With that, I'd like to ask the
18 Commission to agree to the designation of Mr. Witten
19 as an expert witness for land use planning in this
20 proceeding.

21 CHAIR WONG: County, any objections?

22 MR. YOUNG: None.

23 CHAIR WONG: OP?

24 MS. APUNA: No objections.

25 CHAIR WONG: Commissioners? No objections.

1 It's approved.

2 MS. LIM: Thanks very much.

3 Q (By Ms. Lim) And with that, Tom, why don't
4 you walk the Commissioners through the PowerPoint
5 slide and the agricultural land assessment and let
6 them know what your findings were in that study.

7 A Sure. And I'll try to get through this
8 quickly. I think if you all had an opportunity to
9 look through the agricultural land assessment that
10 we've prepared. We'll just go through the slides.
11 I'll just reference the slide number and kind of
12 highlight the information provided.

13 On slide 7, the proposed IAL, it's
14 previously noted, Monsanto owns 2151 acres in Kunia
15 and are proposing 1550 acres to be designated IAL.
16 That includes -- that represents 72 percent of their
17 total land holdings on Oahu. This is really targeted
18 to one of the standards and criteria of maintaining
19 critical land mass important to agricultural
20 operating and productivity.

21 Slide 8, we highlight the crop production of
22 their total land holdings there. And in the proposed
23 IAL, we're showing 75 percent of the land being
24 utilized for crop production. There's just under 20
25 percent is for cattle ranching as was previously

1 highlighted. And the balance is drainage and related
2 infrastructure serving the -- serving those IAL
3 lands.

4 On slide 9, the topography and streams. As
5 you probably saw on the site visit, the land is
6 relatively generally sloping in most areas. It rises
7 from close to the H-1 Highway on the makai side at
8 about 160 foot elevation and kind of parallel to
9 Kunia Road, it gets up to about 640 foot elevation.
10 And moving up the slope on the Waianae Range, it gets
11 up to just over a thousand feet elevation. So
12 generally, the primarily core of the farm is very
13 tillable and very high quality agricultural land.

14 On slide 10, the Land Study Bureau, detailed
15 land classification highlights that 76 percent of the
16 land is either A or B class land. The highest
17 rankings within the -- that Land Study Bureau rating
18 system. This demonstrates the soil qualities and
19 growing conditions that support agriculture
20 production on these properties.

21 The next slide is just showing the one
22 factor it supports good growing conditions is solar
23 radiation and were ranges from 187 to 190 watts per
24 square meters per hour. And don't ask me how that
25 translates to production of crops. But obviously

1 from the success of the farm, it's a very good
2 growing condition.

3 The next slide is ag lands of importance to
4 the state of Hawaii. And under this rating system,
5 almost 90 percent of the property proposed IAL is
6 prime, unique or other. So designated in some form
7 under the agricultural lands of importance to the
8 state of Hawaii. Again, supporting the -- supporting
9 the designation of these lands as IAL.

10 Water resources, next slide 13, water
11 resources, agricultural infrastructure. The source
12 of water for these lands, IAL lands are the Waiahole
13 Ditch. Monsanto operates under water use permit from
14 the state and is allowed to withdraw 2,636 million
15 gallons per day. And that's based on a 12 month
16 moving average. So it's -- it slides with the usage.
17 The actual use when they look at the 12 month average
18 from 2013 to 2016 was below that maximum and was
19 shown as about 1.815 million gallons and 2.158
20 million gallons per day.

21 Q Was a copy of the water use permit included
22 with the petition?

23 A Yes, it was. I think it was Exhibit 8 and 9
24 or --

25 Q That's correct. Petitioner's Exhibit 8.

1 A Yeah. In addition to the Waiahole Ditch
2 water source, there's also a mean annual rainfall of
3 26 to 34 inches across the property.

4 We're getting into the land use regulatory
5 or planning controls for the City and County of
6 Honolulu. The majority of the land is within the Ewa
7 Development Plan which was updated and adopted in
8 2013. And a small portion is in the Central Oahu
9 sustainable community's plan which was approved in
10 2002 and is pending an update. It hasn't been
11 adopted.

12 And these lands are consistent with the
13 County's designation for agriculture and are outside
14 the urban growth boundary which is that heavy dash
15 line that you see surrounding Kunia and coming down
16 to the H-1 and then abutting the University of Hawaii
17 property.

18 The City and County of -- zoning is
19 agricultural restricted ag 1 is the designation. So
20 again, consistent with the land use -- land use
21 zoning for the City and County of Honolulu.

22 The last slide is just a recap of the eight
23 standards and criteria we highlight and go through in
24 our ag -- agricultural assessment report. And really
25 we really hit on this subject request, we really hit

1 probably all -- if not all, eight -- seven of the
2 eight criteria.

3 Q Tom, one of the Commissioners raised a
4 question to Dan Clegg about how this designation is
5 consistent with the constitutional mandate. Are you
6 at all familiar with what Article 11 Section 3 of the
7 constitution said?

8 A Yeah. I do have a copy of that with me.
9 And I guess in that Section 3, I guess it's probably
10 best just to quote it. The State shall -- this is
11 quote, the State under Article 11 Section 3, the
12 State shall quote, "The State shall preserve or
13 conserve and protect agricultural lands, promote
14 diversified agriculture, increase agricultural self
15 sufficiency and assure the availability of
16 agriculturally suitable lands." It goes on to get
17 into other specifics but I think that's where the
18 foundation of that constitutional mandate.

19 Q When you look at this petition area, this
20 1550 acres proposed for the IAL designation, would
21 you say that it fits within any of those goals within
22 the constitutional mandate?

23 A Definitely. It meets several of the --
24 several of the objectives and policies. The -- under
25 HRS 205-42 B and again, I'll quote this section is

1 "To identify and plan for the maintenance of its
2 strategic agricultural land resource base that can
3 support a diversity of agricultural activities and
4 opportunities that expand agricultural income and job
5 opportunities and increase agricultural self
6 sufficiency for current and future generations."

7 Q And they already heard Mr. Clegg talk about
8 the job opportunities that Monsanto provides but if
9 this land is designated as IAL, it will allow future
10 landowners to also provide job opportunities in the
11 agricultural industry?

12 A Correct.

13 Q If you care to touch on any of the IAL
14 policies briefly.

15 A There's of the -- I guess there's eight
16 policies. Maybe I'll just highlight four of those.

17 The first is, you know, it's a large
18 contiguous, intact and functional land unit and farm.
19 I think that's an important characteristic of the
20 proposed IAL. By this contiguous 1550 acre
21 contiguous parcel, it discourages the fragmentation
22 of important agricultural lands.

23 And the lands is -- the lands are well
24 served by infrastructure, the water resources from
25 the Waiahole Ditch and the other growing conditions.

1 Growing conditions access and support services are --
2 have been developed and are in place to support the
3 farming of that property. And the -- it also
4 promotes the maintenance of essential agricultural
5 infrastructure including irrigation systems. I think
6 it should be noted that the Waiahole Ditch is
7 actually operated -- owned and operated by the State
8 Department of Agriculture.

9 Q My last question to you is this. You
10 indicated at the start that I think you were involved
11 in -- was it eight of the nine -- eight of the nine
12 IAL --

13 A Eight of the nine and seven of the eight
14 utilized the majority incentive.

15 Q Okay. Well, my question is actually of any
16 of those petitions, did any of those landowners offer
17 100 percent of their lands for IAL designation?

18 A No. I think that the majority incentive
19 that was embodied in the law was to encourage
20 primarily -- seemed like it was targeting the larger
21 landowners to voluntarily come forward and designate
22 what they felt were the majority of their lands that
23 could be put into important agricultural lands and
24 they could consider it in perpetuity 'cause the
25 standard to change it is raised at two-thirds

1 approval of the Land Use Commission if you want to
2 take it out. So it was -- they took that commitment
3 seriously. So some of the petitions, it was a -- you
4 know, it might have been 52 percent or 53 percent.

5 In this case, we're at 72 percent as being
6 proposed. And only those lands adjacent to Kunia
7 Road and around there and their farm headquarters
8 area is being withheld from IAL.

9 Q So nobody's offered 100 percent of their
10 land?

11 A No.

12 MS. LIM: Okay. I have no further
13 questions.

14 CHAIR WONG: County?

15 MR. YOUNG: No questions.

16 CHAIR WONG: OP?

17 MS. APUNA: No questions.

18 CHAIR WONG: Commissioners? Commissioner
19 Scheuer.

20 VICE CHAIR SCHEUER: Aloha, Tom.

21 TOM WITTEN: Aloha.

22 VICE CHAIR SCHEUER: So you heard the
23 questions I asked to Dan earlier and they were
24 deferred to your expertise. And just to restate for
25 the record, I'm interested in understanding of the

1 total holdings that Monsanto has in this area
2 which -- what percentage of the class A lines are
3 being protected by this IAL petition and which --
4 what percentage are not?

5 TOM WITTEN: Okay. Tom, can we go back to
6 the LSB rating map. Although the LSB rating map that
7 we have does not show the balance of their land
8 holdings that extend to Kunia. But my recollection,
9 and I don't have a number for you, but my
10 recollection is other than the gulch area, those
11 lands around the headquarters of the farm and that
12 extend to Kunia Road are similarly classified as A
13 and B class lands. But I don't have the figure on
14 it. I would guess that of that 600 and so acres that
15 are not being proposed IAL, I would say probably at
16 least 70 percent of that would be in an A and B class
17 lands.

18 VICE CHAIR SCHEUER: So what I'm trying to
19 understand, I mean there's a series of related issues
20 that have been brought up by both the Petitioner as
21 well as some of the public testifiers that gets to --
22 what is the overall purpose of the IAL designation?
23 How does it relate to the 50 percent rule? And so to
24 step back for one second and you were asked by Ms.
25 Lim in questioning and you read from the

1 constitutional provision. Isn't it true that Article
2 11 Section 3 states as one of the primary purposes of
3 IAL the protection of agricultural lands?

4 TOM WITTEN: Yes.

5 VICE CHAIR SCHEUER: Okay. So earlier,
6 public testifier who indicated that it was not a land
7 protection scheme, that might not be a completely
8 accurate way of describing it?

9 TOM WITTEN: Well, it's -- it's not a change
10 in land use classification. So I guess it was --
11 under the constitution, it's a -- you know, the State
12 shall preserve important agricultural lands and
13 defining important agricultural lands and then coming
14 up with a system to designate it. I think the system
15 that was implemented has been implemented through the
16 IAL through the legislature provided incentives and
17 recognized that there needed to be a balance as far
18 as determining where, you know, a commitment for
19 important ag lands would be made. And they put that
20 incentive in to encourage large landowners to take
21 advantage of voluntarily determining where they want
22 -- where they want to commit to long term
23 agriculture. It doesn't mean the corollary that if
24 it's not an IAL, it's proposed for development. It's
25 just that they made the commitment to the State and

1 went through that process to really study and know
2 where in the long term they know for sure these lands
3 are going to be retained in agriculture.

4 VICE CHAIR SCHEUER: So I guess to state
5 what I asked slightly differently but if the IAL
6 petitioner is granted, I believe you said in your
7 testimony, it creates a higher bar for changing the
8 zoning?

9 TOM WITTEN: Correct.

10 VICE CHAIR SCHEUER: Okay. So --

11 TOM WITTEN: To reclassify --

12 VICE CHAIR SCHEUER: -- it is an extra
13 protection of agricultural lands?

14 TOM WITTEN: Yeah. It does set the bar
15 higher.

16 VICE CHAIR SCHEUER: By this Commission?

17 TOM WITTEN: Correct.

18 VICE CHAIR SCHEUER: Okay. So how does this
19 Commission in granting this petition and excluding --
20 so you set up the 600 acres, you said maybe 70
21 percent of those 600 acres not included are A and B
22 probably lands?

23 TOM WITTEN: Correct.

24 VICE CHAIR SCHEUER: So roughly 420 acres.
25 So we're going to take 420 acres and not protect them

1 as IAL if we granted this petition. And --

2 TOM WITTEN: Well, you're not going --
3 you're not going to provide the incentives for
4 those --

5 VICE CHAIR SCHEUER: We'll not provide the
6 incentives. We would -- theoretically, the
7 Commission could accept, decline this petition. If
8 they decline this petition, and I'm not saying that
9 we should or I think that's a good idea, but if the
10 Commission declined this petition, then the City
11 could come in and propose its designation of which
12 lands should be included as IAL?

13 TOM WITTEN: Correct.

14 VICE CHAIR SCHEUER: Okay. So --

15 TOM WITTEN: And there'd still be due
16 process before this Commission.

17 VICE CHAIR SCHEUER: Absolutely, yes. So --
18 but the choice is really if we grant this petition,
19 we're saying in some ways unless it's voluntarily
20 done by the landowner, this 420 perhaps acres of A
21 and B lands will not be designated as IAL?

22 TOM WITTEN: Correct.

23 VICE CHAIR SCHEUER: Okay. Thank you.

24 CHAIR WONG: Any more questions,
25 Commissioners? Commissioner Chang.

1 COMMISSIONER CHANG: Just -- good morning,
2 Tom.

3 TOM WITTEN: Good morning.

4 COMMISSIONER CHANG: Thank you so much for
5 your testimony.

6 Just two questions. The area that's outside
7 the petition area, the 600 acres, is that zoned ag as
8 well?

9 TOM WITTEN: Yes. I think from a land use
10 planning, it's policy standpoint, you know,
11 ultimately, the County controls, as is shown in the
12 development plans and sustainable communities plan
13 and their zoning, they really control the ultimate
14 land use disposition of those non IAL lands, you
15 know, going forward. Ultimately, if some proposal
16 came forward and it was not owned by Monsanto or, you
17 know, for some -- you know, decades into the future,
18 you know, not in our lifetime but that, you know,
19 land use policies may change and that would be a
20 consideration. But again, the City kind of holds the
21 key as far as land use planning and growth
22 directive -- growth directives under their planning
23 system. And they have a very robust planning system
24 with development plans and zoning controls.

25 COMMISSIONER CHANG: And at this point in

1 time, is it your understanding that the City has not
2 designated the IAL lands for Oahu?

3 TOM WITTEN: No. They have come up with
4 draft maps and they -- and in their testimony, they
5 confirm that we're consistent with their draft maps
6 although their draft maps include the entire land
7 holding of Monsanto. And it's Monsanto's discretion
8 to determine what they want to put into IAL. And
9 that's why we're coming here today voluntarily to
10 designate the 1550 acres.

11 COMMISSIONER CHANG: Well, currently, those
12 maps are drafts. It's not been finalized?

13 TOM WITTEN: Yeah. I don't think they've
14 gone out with their formal public notice and hearing
15 process and taken it through the County Council. So
16 they said they intended to get it out by the end of
17 the year but as far as I know, they haven't initiated
18 that process yet.

19 COMMISSIONER CHANG: Does Monsanto own other
20 lands on Oahu?

21 TOM WITTEN: No. These are their only land
22 holdings.

23 COMMISSIONER CHANG: Thank you very much.

24 CHAIR WONG: Any other question --
25 Commissioner?

1 COMMISSIONER OKUDA: Mr. Witten, this -- my
2 question deals with the lands that are not being
3 asked to be designated IAL. Even though those lands
4 are not designated IAL, if Monsanto or let's say
5 somebody else in the future, assuming there's no
6 change in the land use laws, wants to have that
7 designated urban or have the boundary changed to be
8 designated urban, that applicant would have to come
9 back to the Land Use Commission, assuming no change
10 in the law, and basically prove their case, isn't
11 that correct?

12 TOM WITTEN: Yes. Like I mentioned, they
13 have to prove their case at the development plan
14 level or sustainable community's plan level first
15 because that's one of your decision making criteria
16 in a land use boundary amendment. So they basically
17 have to, you know, have it consistent on the County's
18 planning effort before they come to you. And then
19 they got to go back to the State -- back to the
20 County to obtain the necessary zoning if it got
21 reclassified from say ag to urban.

22 COMMISSIONER OKUDA: Right. And when -- if
23 that were to happen where whoever it is in the future
24 because we take Monsanto at its word that it's not a
25 land development company, the Commission, unless

1 there's a change in the law, we have to consider the
2 Land Study Bureau's evaluation of the land that's --
3 they're asking for re-designation, whether it's A or
4 B or something else and all the other factors that
5 the Commission's required to take into account
6 regarding those lands, isn't that correct?

7 TOM WITTEN: Correct.

8 COMMISSIONER OKUDA: So in other words, even
9 though it's true that an IAL designation as you
10 pointed sets the bar higher, there still is some type
11 of bar or we shouldn't maybe use that in exact words.
12 There's certain standards that have to be met before
13 there could be a boundary change or re-designation on
14 these other lands that are not designated IAL,
15 correct?

16 TOM WITTEN: Correct.

17 COMMISSIONER OKUDA: Okay. Thank you. I
18 have no further questions.

19 CHAIR WONG: Any other questions?

20 I have just one question. So just to
21 make -- reaffirm that this IAL designation, it will
22 go with the land and not with the owners, is that
23 correct?

24 TOM WITTEN: Correct.

25 CHAIR WONG: Okay. Just wanted to make sure

1 of that. Thank you.

2 Any rebuts?

3 MS. LIM: No.

4 CHAIR WONG: Okay. Thank you.

5 Your next witness please.

6 MS. LIM: Okay. Thank you. Our next
7 witness is going to be Dr. Robert Starke.

8 CHAIR WONG: May I swear you in?

9 ROBERT STARKE: Sure.

10 ROBERT STARKE,
11 called as a witness by Petitioner, having been first
12 duly sworn, was examined and testified as follows:

13 CHAIR WONG: Thank you. Please state your
14 name and address for the record and proceed with your
15 testimony.

16 ROBERT STARKE: Robert Starke, 91-1010
17 Waikoihi Street, Ewa Beach, Hawaii.

18 CHAIR WONG: Thank you. You may proceed.

19 DIRECT EXAMINATION

20 BY MS. LIM:

21 Q Hi Bob.

22 A Good morning.

23 Q Good morning. Would you please let the
24 Commissioners know what your job is at the Kunia
25 Farm?

1 A Sure. I am the farm manager for our Kunia
2 Farms. So really responsible for the operations of
3 the farm and working with our employees there.

4 Q And would you let the Commissioners know
5 also your educational background.

6 A Sure. So I grew up in a small town in
7 Northwest Missouri with -- spent some time there.
8 Grew up actually on a farm. My dad still farms
9 there. So I have a lot of aunts, uncles, cousins,
10 those individuals there. So I really consider my
11 education as starting on the farm and working on the
12 farm. And many of my high school friends still farm
13 in the community and in the area.

14 After that, then I went off to university.
15 I went to the University of Missouri. I got my
16 bachelor's degree there in agronomy, studying in
17 basically wheat, corn and soybean production systems.
18 After that, I attended Michigan State University. At
19 Michigan State University, I got my master's in crop
20 and soil science. At that university, I had the
21 opportunity to work on a lot of different crops. So
22 one of the things that's always been interesting to
23 me is different crop production. So there, I was
24 able to work on sugar beets, potatoes, dry edible
25 beans, corn, soybeans, wheat. Very diverse state

1 there in Michigan. Mainly focused on row crops.

2 After that, I actually left the Michigan
3 State University and went to the University of
4 Arkansas. In Arkansas, I was able to get my
5 doctorate degree. In -- while working in Arkansas, I
6 was able to work in cotton, rice, soybeans and corn
7 as well.

8 So just a real great opportunity through my
9 education to be able to travel to many different
10 parts of the mainland and understand agriculture in
11 different ways so.

12 Q So I know the answer to the question have
13 you ever testified before this Land Use Commission is
14 no. But have you ever given testimony before any
15 other board or commission or had any other position
16 where you were educating people about agriculture?

17 A Sure, absolutely. So I taught soils classes
18 when I was a assistant in graduate school. I've also
19 served on many certified crop advisor boards. I've
20 been a trainer for those types of things. Also
21 pesticide applicators license, those types of
22 activities where applicators get credit and where
23 other individuals are there to learn and -- spent a
24 lot of my time teaching and training.

25 MS. LIM: So with that, I would ask the

1 Commission to consider designating Mr. Starke or
2 Dr. Starke as an expert in agronomy, crop and soil
3 sciences.

4 CHAIR WONG: County, any objections?

5 MR. YOUNG: No objection.

6 CHAIR WONG: OP?

7 MS. APUNA: No objection.

8 CHAIR WONG: Commissioners? Okay. So be
9 it. Thank you.

10 MS. LIM: Thanks very much.

11 Q (By Ms. Lim) Okay. We've gotten a lot of
12 formalities out of the way. Why don't you talk to
13 the Commission about what you do at Kunia Farm. And
14 just for the Commission's benefit, I think we've only
15 got two slides left for those PowerPoint. But Dr.
16 Starke will explain in more detail what those of you
17 who went to the site visit, what you saw and also
18 explain the stuff that really wasn't so evident just
19 by looking at the property which you'll understand
20 through the life cycle of this agricultural
21 commodity.

22 A You bet. So for those of you that were able
23 to attend our site visit, we were able to go out.
24 And at that time, we were really somewhat between
25 crops. So at that time, we were planting some of our

1 cover crops and we were really removing what we would
2 call our summer crop and moving towards our winter
3 crop.

4 Today, we're actually starting some of the
5 planting of our winter crop and our teams are out
6 right now planting. Basically, what they're doing is
7 planting -- majority of what we grow on our farm is
8 corn seed. We also do grow and produce some soybean
9 seed as well. But we're really focused in starting
10 our corn planting right now. So the teams are out
11 planting corn seed. That corn seed will have a small
12 piece of drip irrigation line underneath each row
13 which we use to water and to make certain that we can
14 provide the nutrients to that growing crop. And so
15 they're out planting and installing that drip tube
16 today and will be for the next several weeks.

17 Here in about another 50 to 60 days, that
18 corn will be to a place where it is reaching towards
19 maturity or what we would call pollination. So we
20 will then have the -- our teams and crews will be out
21 actually pollinating different crops. So they will
22 actually be hand -- what we call hand pollinating.
23 And that is basically taking a certain male plant by
24 a certain female plant to produce seed. Then about
25 110 days from now, we'll be able to harvest those ears.

1 And so we will then harvest those ears. And then we
2 will till down that crop and we will then prepare and
3 place cover crops on that soil.

4 So what we're doing is planting a number of
5 different cover crops. So our goal of cover crops is
6 really to protect soil and protect the land from wind
7 or water erosion. We use a number of different
8 species that we plant on that with the goal of making
9 sure that provide cover all through the season. And
10 then we would have a fallow period for about four
11 weeks. And then after that, we would restart and
12 start planting what we call our summer crop. So
13 definitely a very cyclical process that we go through
14 on the farm to make certain that we are producing at
15 the highest quality levels to make certain that we
16 are very, very consistent in what we do and what we
17 grow.

18 Q You mentioned briefly some natural resource
19 protection measures. And I know Petitioner's Exhibit
20 7 is all about those kind of measures. But could you
21 educate the Commission a little bit about what you do
22 at the Kunia Farm.

23 A Sure. So each of our farms and the Kunia
24 Farm as well, have a soil conservation plan. So that
25 is in cooperation with the USDA NRCS. So what that

1 really is is a way for us to protect our soils and
2 making sure that we have a very strong plan put in
3 place. And so one of the key things that we do on
4 our Kunia land is make sure that we have built up
5 berms and -- that allow the -- and slow down water
6 from moving off the farm in case of a very big rain
7 event. We also have grass waterways that provide a
8 lot of erosion control protection. These are very,
9 very key methods to make sure that we can control
10 water flow in the event of a large rainfall or -- and
11 also to protect against wind erosion.

12 Some of the other things that we do to
13 protect our land are some reduced tillage methods.
14 So we practice something called strip till where we
15 only till the land underneath where the corn row is
16 going to go. So if you leave -- if you leave the
17 space between the corn row undisturbed, the cover
18 crop roots provide a channel there for water to
19 infiltrate the soil. And so when we do get a rain
20 event, we're able to pull that water in and able to
21 make sure we keep that water on the farm and that
22 water does not move and potentially move off the farm
23 or down to the berms. It's just a great way for us
24 to protect the soil and make certain that we can
25 infiltrate that water as quickly as possible.

1 Some of the other key things that we do on
2 the farm, we have very key crop rotations. So we, at
3 most, only plant one of our fields one time a year.
4 So if you think about our entire farm, we can plant
5 three crops a year. Generally, we only plant two.
6 We do that just as a way of keeping track and keeping
7 our operations going. But for each specific piece of
8 land, it only receives a crop once a year. When I
9 say crop, that does not include a cover crop. So
10 most of the year, the farm would have a crop on it
11 for half the year and a cover crop on it for the
12 other half of the year. So that's very key to us to
13 make certain that we're protecting that land in
14 between our crop cycles.

15 Some of the other things that we do on the
16 farm that are very key are a lot of water management.
17 So we have soil probes that we put into the ground.
18 And we also model the amount of water that our crops
19 are using so we can only supply back to that crop
20 exactly what it's taking out of the ground and what
21 is evaporating from the soil as well. So those are
22 some of the type of things.

23 'Cause as we think about the land and we
24 think about stewardship, you know, it's very, very
25 important to us from what we do. Everything that we

1 do and produce at the farm comes from the soil, comes
2 from the top soil. It's our goal and our objective
3 to protect that to make certain that we keep it there
4 for the long term because it's very, very vital to
5 our success so.

6 MS. LIM: You know, I have no further
7 questions for you, Bob.

8 CHAIR WONG: Thank you. County, any
9 questions?

10 MR. YOUNG: No questions.

11 CHAIR WONG: OP?

12 MS. APUNA: No questions.

13 CHAIR WONG: Commissioners?

14 COMMISSIONER CHANG: Just --

15 CHAIR WONG: Commissioner Chang.

16 COMMISSIONER CHANG: Thank you so much for
17 your testimony. And I appreciated the site visit,
18 having an opportunity to see the Honouliuli Camp.

19 And I -- based upon the three witnesses so
20 far or have been -- come before us today, I suspect
21 you are the most familiar with the land?

22 ROBERT STARKE: On a day to day basis, I
23 would be the most, absolutely.

24 COMMISSIONER CHANG: So because the
25 Honouliuli Camp is so near by, have you seen or are

1 you aware of any of the historic properties that may
2 be on the top areas where you are farming? Have you
3 seen anything?

4 ROBERT STARKE: I have not.

5 COMMISSIONER CHANG: Okay. I do want to
6 acknowledge Monsanto's partnership with deeding that
7 land over to the National Park Service. I applaud
8 you for doing that, keeping that land in stewardship.

9 One final question and maybe it's pointless.
10 While Monsanto is -- you are -- you have a commitment
11 to keeping the land in ag, recollection of that
12 constitutional mandate towards self sufficiency, your
13 crop production does not really get Hawaii to self
14 sufficiency. Is that -- would you agree? You are
15 sending your seeds off. They're not being produced
16 or consumed -- they're not being consumed in Hawaii?

17 ROBERT STARKE: The seed that we would -- or
18 corn or soybean that we would be producing would be
19 exporting. We would be exporting that. That seed
20 could then be grown by a mainland farmer and that
21 crop be brought back in as we finish that product.

22 COMMISSIONER CHANG: Okay. Thank you.

23 CHAIR WONG: Commissioner Cabral.

24 VICE CHAIR CABRAL: My question in some of
25 that same line. In terms of your stewardship of the

1 land, sort of thinking ahead or beyond in the
2 potential future, if this is going to stay in
3 agriculture land into my grandchildren times, you are
4 doing one of your primary crops because that's your
5 selection to do that. And then you do a stationary
6 crop to preserve your water and your soil and that,
7 okay. That's really good 'cause you -- apparently
8 you're making enough money to do it that way.
9 Congratulations. But is this land and this area with
10 all that you know that God has given in terms of soil
11 conditions and water conditions and that -- or let's
12 say God and the State Government through the ditch or
13 whatever, that the ability of this land as
14 agriculture land, is it land that potentially in some
15 time in the future, let's say Monsanto said hey,
16 we're out of this business, we're going somewhere
17 else. We've got something else. Come to the Big
18 Island, you know, something like that. If you were
19 to do something and leave this land, is it possible
20 that under the concept that was explained earlier
21 with why do we want to preserve our ag land is it's
22 got to become profitable for a farmer to make a
23 living on it. Otherwise, why would you work that
24 hard? And is it possible -- then you said you could
25 do three crops. Are there -- but then you'd wear out

1 your land, I'm assuming, rather rapidly or your
2 conditions and erosion in that. But is it possible
3 in some of these kind of crops with your expertise
4 that you could have crops that we would want to
5 consume here in Hawaii that would be able to have
6 potentially the primary -- like could you be growing
7 corn and some kind of other crop around the ground at
8 the same time that would save the soil from erosion?
9 Are there things -- I mean how viable could this land
10 become to become a crop that we could go to the
11 farmers market and eat into the future? I'm not
12 talking -- limiting you now. I'm just saying in the
13 future.

14 ROBERT STARKE: No. This land is very
15 fertile land. It's very effective land. For
16 example, we grow a number of vegetables on site that,
17 you know, we use as we're talking about. And we have
18 some of our vegetable counterparts that come out and
19 look at those vegetables that we grow on the farm and
20 they grow very, very effectively. We could grow
21 those in larger acreage. And I use we as the wrong
22 term there. Someone could grow those vegetables in
23 the long term. It's not -- Monsanto's mission is to
24 grow seed, you know. We do not compete with local
25 farmers. That's not at all our mission. Our mission

1 is to grow seed. But that land could effectively be
2 used for vegetables by someone else and could be a
3 very -- it could produce at a very high level.

4 VICE CHAIR CABRAL: Okay. Thank you.

5 CHAIR WONG: Any other Commissioners? Any
6 rebuttal?

7 MS. LIM: Just one question on redirect.

8 REDIRECT EXAMINATION

9 BY MS. LIM:

10 Q You know, going to the constitutional
11 mandate and how that got articulated in statute, I
12 know we talked about how the constitutional mandate
13 instructs the State to set aside lands to ensure the
14 availability of agriculturally suitable lands. Now,
15 when you go to the statute, one of the policies or
16 objectives in the statute -- I'm going to read it to
17 you and I want you to tell me if you think that this
18 land qualifies under this, okay? So to be important
19 agricultural lands, it's land that now I'll quote,
20 "contribute to the State's economic base and produce
21 agricultural commodities for export or local
22 consumption." And that's under 205-42 A2. So you
23 believe that this land satisfies that criteria?

24 A Yes, it does. We export a large amount and
25 we also provide a lot to the economic base as well.

1 MS. LIM: Thank you. No further questions.

2 CHAIR WONG: Thank you. Is there any other
3 witnesses?

4 MS. LIM: No. Petitioner rests.

5 CHAIR WONG: Thank you.

6 Mr. Young, you ready to give us a statement
7 on behalf of the City that will be part of the City's
8 position?

9 MR. YOUNG: The City stands on its comment
10 letter that was submitted to the Land Use Commission.

11 CHAIR WONG: Thank you. That was very fast.

12 We'll take a five minute recess. Thank you.

13 (Recess taken.)

14 CHAIR WONG: Okay. Commissioners, I forgot
15 to ask. Do you have any questions for the County?

16 Any questions? Commissioner Scheuer.

17 VICE CHAIR SCHEUER: Could you please update
18 us, County, as to where you are in your process of
19 actually moving forward with your designation
20 process?

21 MR. YOUNG: At this point, we're very close
22 to getting our final matters presented to the
23 technical advisory committee and thereafter on over
24 to the City Council. Somewhere in that process, we
25 will also present to the public and notify the

1 landowners affected.

2 So we expect, as you earlier heard, to get
3 the maps over to Council by the end of the year and
4 perhaps by then very shortly after that, on to your
5 Commission.

6 VICE CHAIR SCHEUER: To what do you
7 attribute the long delay?

8 MR. YOUNG: I'm not very familiar with the
9 history behind this. I was only assigned this
10 project like about a month ago. It seemed to be
11 quite inclusive as far as participation goes. So
12 that's my -- my guess is that because of the process
13 that we undertook, that contributed to the lengthy
14 time to get all the maps together and try to finalize
15 it. But ever since we -- ever since I became
16 involved in this, I'm working diligently to have
17 those maps done. In fact, we're now reviewing it at
18 management, the final maps so we can then send it off
19 to our consultants.

20 VICE CHAIR SCHEUER: Last question for now
21 at least. You mentioned talking to landowners would
22 occur where in your process?

23 MR. YOUNG: We've had a couple public
24 meetings so far. And everyone who was involved in
25 terms of the lands being designated were notified

1 that we have this process and to look at the website.
2 And they can see for themselves whether or not their
3 lands are being proposed for IAL. Each of the
4 landowners that are being affected by the draft
5 designations have been sent notices about the
6 proposed IAL designations.

7 VICE CHAIR SCHEUER: Have you engaged in any
8 further conversations with this particular landowner?

9 MR. YOUNG: We did get a comment letter some
10 time ago, a few months back. Other than that, we are
11 still in the process to get those maps done.

12 So what we've been telling landowners is
13 that until the Land Use Commission makes a final
14 decision, everything is still in the draft stages.

15 VICE CHAIR SCHEUER: Thank you.

16 CHAIR WONG: Any other questions?
17 Commissioner Chang.

18 COMMISSIONER CHANG: Thank you. Could
19 you -- approximately based upon where you are in the
20 process at this point in time in the maps that you
21 completed, approximately how many acres is the City
22 proposing to put in IAL designation?

23 MR. YOUNG: Based on my rough calculations,
24 we think it's about 52,700 acres. That's inclusive
25 of all of Monsanto's owned lands.

1 COMMISSIONER CHANG: So when you say
2 inclusive, would be the additional 600 acres that is
3 not part of the petition area?

4 MR. YOUNG: That's correct.

5 COMMISSIONER CHANG: And what are some of
6 the other areas -- these are -- that would be about
7 52,000 additional acres?

8 MR. YOUNG: Roughly, yes. In addition to
9 what already has been designated IAL.

10 COMMISSIONER CHANG: And approximately how
11 many acres have already been designated IAL?

12 MR. YOUNG: I don't have that number
13 offhand. Perhaps the Petitioner's consultant could
14 answer that.

15 COMMISSIONER CHANG: He's not here so let me
16 ask you another question. If you have designated
17 lands to be an IAL, for example, this current
18 petition, the additional 600 acres and the petition
19 comes forward and hypothetically the LUC approves
20 this, where would you -- so you would include
21 Monsanto's additional 600 acres in your maps, is that
22 correct?

23 MR. YOUNG: I don't think so. According to
24 the law, once those lands are designated by the Land
25 Use Commission, then the remainder -- unless the

1 Petitioner desires it to be and will be excluded from
2 our maps.

3 COMMISSIONER CHANG: So you will find other
4 lands to fill your goal?

5 MR. YOUNG: I don't think we have a target.
6 We're just draft under the draft maps designating
7 lands according to those criteria set by Chapter 205.

8 COMMISSIONER CHANG: And based upon that
9 52,000 acres, what percentage of that in relationship
10 to other ag lands -- do you have a percentage that --
11 how much of that IAL, the 52,700 acres that you are
12 proposing to put in IAL, what percentages is that of
13 all ag lands on Oahu?

14 MR. YOUNG: I can't say. I don't have that
15 figure with me.

16 COMMISSIONER CHANG: Not real helpful.
17 That's okay. That's okay. That's not before us
18 anyway. And I'm assuming you are going out to public
19 hearing on your maps as well?

20 MR. YOUNG: Yes. That number can be
21 produced. I just don't have the wherewithal to do it
22 at this moment.

23 COMMISSIONER CHANG: Okay. I just recall
24 when we went to Kauai, they did have a percentage of
25 how much land is in ag, how much land they're

1 proposing to put in IAL and that they've actually
2 achieved that percentage based upon the petitions
3 that have come forward. So that was very helpful for
4 LUC. So likewise, that would have been helpful
5 information as well to know what the County was
6 proposing in the percentage of all the ag lands
7 versus how many lands have already been placed in
8 IAL.

9 MR. YOUNG: I believe that can be done. But
10 at this point, until the draft maps have been, you
11 know, become to the state of being finalized and
12 presented before the Commission, those figures if
13 were to be presented today, would be subject to
14 change.

15 COMMISSIONER CHANG: Sure, sure. Okay.
16 Thank you very much for that.

17 CHAIR WONG: Any other questions? Okay.
18 Thank you, Mr. Young.

19 MR. YOUNG: Thank you.

20 CHAIR WONG: OP, do you have any statements
21 or --

22 MS. APUNA: Yes, I do. Thank you, Chair.

23 The Office of Planning appreciates
24 Petitioner's participation in this voluntary process
25 of designating IAL at Kunia, Oahu.

1 Based on review of the petition, exhibits
2 and site visit and in weighing the policies,
3 standards and criteria governing IAL, OP recommends
4 that this Commission approve the designation of all
5 1550 acres offered as IAL.

6 While particular areas of the petition area
7 are considered less productive agricultural lands due
8 to topography and soil qualities, the presence of
9 active crop reduction and cattle ranching and
10 sufficient water supplies, OP believes the petition
11 area sufficiently meets most of the IAL criteria.

12 Also the Petitioner's employment of 258
13 employees at the petition area likely contributes to
14 the State's economic base.

15 OP recommends that a condition of approval
16 be imposed waiving any and all rights to credits
17 under HRS Section 204-45 H as represented by the
18 Petitioner.

19 With regard to DPP's assertion that
20 Petitioner did not offer a compelling reason for
21 exclusion of the remaining approximately 558 acres,
22 we believe based on the IAL statute and rules that
23 Petitioner's not required to offer a compelling
24 reason to exclude those acres from this petition and
25 that this Commission may not include the 558 acres

1 for its consideration today.

2 To help clarify, there are two distinct
3 processes to designate privately owned and county
4 owned land as IAL. The first which we are here today
5 participating in, allows farmers or landowners to
6 voluntarily petition the LUC for declaratory ruling.

7 The second is a mandatory county designation
8 process. The landowner voluntary process offers
9 incentives to encourage private landowners to
10 dedicate their lands as IAL including the ability to
11 choose which lands may be considered for IAL and an
12 exemption from additional lands being designated via
13 the county's process if a majority of their land
14 holdings has been designated as IAL. It is the
15 prerogative of the Petitioner to choose which lands
16 it wants to designate for IAL through this process.

17 Here the 1550 acre petition area constitutes
18 approximately 72 percent of the land owned by the
19 Petitioner within the State ag district. If
20 approved, the Commission is thereafter barred from
21 designating any additional land owned by the
22 Petitioner including the 558 acres suggested by DPP.

23 Separate from this, there is the County's
24 mandatory designation process that includes the
25 county planning department's preparation of draft

1 maps of recommended IAL, notification to landowners
2 and public review. Then council adoption and LUC
3 designation thereafter.

4 All lands designated as IAL through the
5 County process even if landowners disagree, are
6 subject to the final IAL designation. Through the
7 County process, DPP has proposed that an additional
8 558 additional acres of Petitioner's land holdings be
9 included for IAL designation. DPP has yet to submit
10 its draft IAL package for council adoption and
11 receive LUC designation. Importantly, the county
12 process is completely separate from those
13 simultaneous with the voluntary landowner petition
14 process. So even though DPP believes that an
15 additional 558 acres should be included based on the
16 county process, the landowner process which we are
17 partaking in today is based on what the Petitioner is
18 voluntarily offering which is only the 1550 acres.
19 It's like a race to the finish to see who will first
20 receive IAL designation for the -- from the LUC, the
21 landowner or the County.

22 For this landowner petition, the Commission
23 may approve the petition area, it may approve a
24 portion of the petition area or it may deny the
25 petition in its entirety. The IAL statute does not

1 authorize LUC to include additional areas that are
2 not part of the petition. In essence, this
3 Commission should only consider the 1550 acres
4 offered in the petition for designation of IAL.

5 Thank you.

6 CHAIR WONG: Ms. Lim, do you any questions?

7 MS. LIM: I don't have any questions.

8 CHAIR WONG: Sorry, Commissioners. Okay.

9 None.

10 COMMISSIONER CHANG: Chair, excuse me.

11 Chair this may be a little out of order but OP made a
12 statement that they supported the petition, IAL
13 petition. And I guess I just wanted for the record,
14 the County's position 'cause the County said they
15 stand on their comment letter. So I guess I just
16 wanted for the record this County's -- the City's
17 position on the petition. Do you support the
18 petition?

19 MR. YOUNG: I think officially our position
20 is no objection. And then all we've mentioned was
21 that we question the -- not the -- the area that's
22 not being designated.

23 COMMISSIONER CHANG: Would you disagree with
24 Ms. Apuna's statement that LUC does not have the
25 authority to grant more than the petition

1 application?

2 MR. YOUNG: Yes, I agree.

3 COMMISSIONER CHANG: So notwithstanding the
4 City's comment letter that more of the area should be
5 included in the petition or should be designated,
6 that what is before us is only the 15,000 acres and
7 that the LUC has no authority to grant more than what
8 is before us. Would you agree?

9 MR. YOUNG: Yes, that's correct. However, I
10 just wanted to clarify that the City's position is
11 not to -- under that comment letter to include the
12 remainder. It's just asking why it's not.

13 COMMISSIONER CHANG: Okay. Okay. Thank you
14 for that clarification. And thank you for putting on
15 the record your position.

16 Thank you, Mr. Chair.

17 CHAIR WONG: Any other questions for OP?
18 Okay. Thank you.

19 You know, is there anyone from DOA that
20 wants to make a statement or -- please. May I swear
21 you in?

22 EARL YAMAMOTO: Yes.

23 EARL YAMAMOTO,
24 a public witness, having been first duly sworn
25 testified as follow:

1 CHAIR WONG: Can you please state your name
2 and address for the record.

3 EARL YAMAMOTO: Earl Yamamoto, Hawaii
4 Department of Agriculture, 1420 South King Street,
5 Honolulu, Hawaii.

6 CHAIR WONG: Thank you. You may proceed.

7 EARL YAMAMOTO: Okay. There isn't much for
8 me to add on top of OP's testimony. I thank them for
9 being so thorough.

10 The Department of Agriculture strongly
11 supports the petition by Monsanto for the 1500 plus
12 acres of their Kunia lands to be designated as
13 important agricultural lands. There's sufficient
14 water. It's already been clearly explained, very
15 well described earlier by all testifiers, the quality
16 of the land and its use in agricultural production.

17 It's also correctly pointed out that
18 agriculture for export is valid as lands or crops
19 that are grown locally for Hawaii. I mean for
20 residents' consumption here in Hawaii.

21 Another export of crop -- among the other
22 export crops that we have that maybe very little is
23 consumed here in Hawaii includes mac nuts, a lot of
24 flowers, potted foliage, coffee and so forth and so
25 on. So there are a lot of exported crops.

1 Let's see. Maybe I should read our
2 concluding remarks rather than be so abrupt in my
3 statement.

4 In conclusion, the -- we -- as I spoke
5 earlier, the department strongly supports the
6 Petitioner's request to have the 1550 acres of its
7 Kunia lands designated as important agricultural
8 lands. We believe the petition satisfactorily
9 addresses -- well, seven of the eight important ag
10 lands identification criteria.

11 Further, the petition represents the first
12 request for important agricultural lands designation
13 in an area containing among the most productive
14 agriculture lands on Oahu and serviced by an
15 incomparable irrigation water system. For nearly 40
16 years, the department has strenuously encouraged the
17 City and County of Honolulu to continue -- to
18 continue protecting these lands from urbanization.
19 Important agricultural lands designation will help to
20 reinforce these protections. And that -- I conclude
21 my remarks with that.

22 CHAIR WONG: Thank you. Commissioners, is
23 there any questions for Department of Ag? None.
24 Thank you.

25 EARL YAMAMOTO: You're welcome.

1 CHAIR WONG: Now five minutes of final
2 statements or -- for each party so if -- Petitioner,
3 you --

4 MS. LIM: Thank you, Chair and
5 Commissioners. And I will keep it brief.

6 We've been here all morning. We very
7 much -- Monsanto very much appreciates the attention,
8 the detailed attention that the Commission has paid
9 to this matter. And obviously, that the agencies,
10 Department of Ag, Office of Planning and Department
11 of Planning and Permitting have paid and the care
12 with which the petition and exhibits were reviewed.
13 And we're appreciative of that.

14 We believe that the record, based on not
15 only what we've filed, but also the filing made by
16 those other agencies, clearly shows that this
17 property is absolutely qualified as important
18 agricultural lands.

19 There are those eight statutory criteria but
20 those eight statutory criteria are really just a lens
21 with which to view the objectives and policies of
22 important agricultural lands. When you make the
23 decision about important agricultural lands, it's not
24 so much who's the petitioner. It's not even so much
25 what is the specific crop that's being grown on the

1 property. It's is this land land that is appropriate
2 for designation not only today but into the future.
3 And that designation doesn't allow any additional
4 land uses but what it does is it puts a little extra
5 layer, an overlay to say this land is important
6 agricultural land. There's going to be higher
7 standards that you'll have to meet should anybody
8 want to do something different from agriculture in
9 the future on that land.

10 It seems as if, especially with the, I
11 think, compelling testimony that Deputy AG Apuna gave
12 a short time ago about this, whether there can be an
13 involuntary designation. Getting back to DPP's
14 comment letter, it seems as if that issue has been
15 fully put to rest. But I'll just put a few comments
16 on the record. Again, our October 4th letter to the
17 Commission, I think sets that forth as well. But
18 there are two processes. And one of them is
19 voluntary landowner or farmer offering. It's a gift
20 to the State in some respects. It's saying we
21 believe and we want to make this happen. And at the
22 Petitioner's expense, going through a proceeding like
23 this, it's their way of raising their hand and saying
24 yes, we want this, we're willing to make this happen.

25 The second process is the County process

1 that's been happening for years. And the statute is
2 crystal clear in several instances that if a
3 petitioner identifies lands for designation, the
4 Commission's role is to look at whether that land
5 qualifies as important agricultural land, period. If
6 you find that it doesn't, then you would issue
7 findings of fact, conclusions of law and decision and
8 order articulating why it doesn't meet the IAL
9 criteria. But if it does, then the decision is yes,
10 it satisfies and the petition must go forward. It is
11 not an issue where the Commission or any other
12 parties can dicker around with whether it should be
13 greater land areas and what the petitioner set forth.
14 Under 205-45 subsection E, in fact, the Commission is
15 directed to vote to issue a declaratory order
16 designating the petitioner's identified lands as IAL
17 if you find that we meet the criteria. So that's
18 what the Commission's role is here. And we hope that
19 we've presented enough evidence to give this
20 Commission comfort that the land is, in fact,
21 qualified as important agricultural lands. And with
22 that we just again, reiterate our appreciation of
23 your time and we do request that you grant this
24 petition to designate the 1550 acres as important
25 agricultural lands in Kunia. Thank you.

1 CHAIR WONG: Thank you.

2 County, would you want to make any final
3 statements?

4 MR. YOUNG: No additional material to
5 present other than our comment.

6 CHAIR WONG: Thank you. OP?

7 MS. APUNA: Nothing. We'll just rest on our
8 comments.

9 CHAIR WONG: Thank you.

10 Mr. Yamamoto, do you want to say anything
11 else? Okay. Thank you.

12 Okay. Commissioners, do you have any final
13 comments or questions for Petitioner, County, OP or
14 Department of Ag? Commissioner Cabral.

15 VICE CHAIR CABRAL: Okay. I just like to
16 think ahead. In the event that Petitioner could come
17 back to this body if they so choose and take
18 additional lands under their -- out of the acreage
19 that they're submitting now and submit that into
20 the -- in the future if they so wanted to, correct?

21 MS. LIM: I want to make sure I'm
22 understanding the question correctly. But you mean
23 could the Petitioner come forward with another
24 voluntary petition to designate additional --

25 VICE CHAIR CABRAL: Yes.

1 MS. LIM: Yes.

2 VICE CHAIR CABRAL: Okay. If the Petitioner
3 were in sometime in the future sell those lands that
4 are not in the IAL designation right now and being
5 voluntarily submitted and a new landowner were to
6 come on board for that -- those lands only, let's
7 say, and that landowner then, would that landowner
8 then become subject to potentially having to -- a
9 proportion of their land separated, forcefully
10 separated into being IAL lands?

11 MS. LIM: So, you know, that's a very
12 interesting question. And I can tell you that as the
13 legislative history behind Act 183 really won't
14 illuminate a response and there's -- obviously,
15 there's no case law on that. But so any response I
16 give you right now is my opinion, okay? It's not
17 based on a court decision or any findings in statute.
18 But the statute talks about when the County presents
19 after they go through the County Council process,
20 then the County presents its maps to this Commission,
21 that this Commission cannot designate additional
22 lands as IAL if that would mean that the majority of
23 the landowners land holdings were already designated
24 as IAL. So does that mean if Monsanto were -- if the
25 Commission is good enough to grant this request today

1 and Monsanto sells this 500 acres tomorrow, that that
2 landowner would -- that the County would be precluded
3 from identifying it and asking this Commission to
4 designate as IAL, it's really beyond the record that
5 we have in front of us. We don't plan on selling the
6 property any time soon so it's not been something
7 that we really had to analyze --

8 VICE CHAIR CABRAL: I'm just thinking
9 outside the box, you know, because clearly that's
10 somewhat an issue is what's going to happen with the
11 550 acres that -- or land that's not being
12 designated. So okay. Thank you very much.

13 CHAIR WONG: Any other questions,
14 Commissioners? Okay. Thank you.

15 Commissioners, what is your pleasure on this
16 matter?

17 COMMISSIONER ESTES: I move for approval.

18 VICE CHAIR CABRAL: I'll second that.

19 CHAIR WONG: Okay. Commissioner Estes moved
20 to approve this and Commissioner Cabral second it.

21 I want to just put on the record friendly
22 amendment if you don't mind. I just wanted to just
23 say that the Petitioner should comply with any
24 representations made that they would not claim any
25 credits described in HRS 205-45 H with respect to the

1 petition area. And that within seven days of
2 issuance of the Commission's decision and order,
3 Petitioner shall record it with the Bureau of
4 Conveyance. So if you don't mind --

5 COMMISSIONER ESTES: I accept that.

6 VICE CHAIR CABRAL: I do not accept that.
7 And my reason is I can understand that there's all
8 kinds of complicated things that the Petitioner may
9 face if they were to try and get credits. And I
10 don't understand that by any means fully. But I look
11 ahead to the fact that when we talk about we have all
12 this wonderful ag land and we don't want to give it
13 up and we don't want to give it up, we want to keep
14 it as ag. But then we also look at our homeless
15 issue and our housing issue and the constant housing.
16 And the more burdens and the more things we tag on to
17 lands ahead of time, the more complicated we make it
18 later on in the event somebody wants to make a
19 change. And I would like to assume that this
20 Petitioner or someone in the future, should they want
21 to take those other lands, whether they use it with a
22 credit or not with a credit, they would still have to
23 come before a variety of different bodies and groups
24 in order to take any of that other land and convert
25 it from ag to urban or any other usage. And I don't

1 know -- I don't really know whether there's a reason
2 that we, as the Land Use Commission, want to put our
3 mark and our control on lands that are on a request
4 outside of the Petitioner's land that we're dealing
5 with at this time. That's my opinion.

6 CHAIR WONG: Commissioner Ohigashi.

7 COMMISSIONER OHIGASHI: I'm going to second
8 the motion as amended so -- and I think that is a
9 more proper issue for discussion during our
10 consideration of whether or not we should pass the
11 motion or not. My -- and I'm going to second it for
12 the -- to include those conditions. I think all you
13 need is a second, isn't that right, Mr. Chair?

14 CHAIR WONG: Yes. So I guess on the table
15 right now with the friendly amendment, just to add
16 the friendly amendment. Not to about the entire
17 issue but just to -- a motion -- just the issue on
18 the table about the friendly amendment, the addition
19 that we have to vote on, is that correct? Yeah. So
20 the friendly amendment was just to add those two
21 points which was the -- not -- the waiving of any
22 credits and also the within seven days of issuance
23 that --

24 COMMISSIONER OHIGASHI: They are waiving the
25 credits?

1 CHAIR WONG: Yes. No, but I just wanted
2 to -- because Commissioner Cabral stated she opposes
3 that statement. So I just wanted to I guess -- let
4 me have a recess.

5 (Recess taken.)

6 CHAIR WONG: So we left off with the issue
7 about the amendment. Commissioner Cabral has
8 objected to the amendments. So it's no longer a
9 friendly amendment. And then it's just a regular
10 amendment. Commissioner Ohigashi has second my
11 motion to amend. So let's discuss about it now since
12 there's a second -- just the amendment itself. Go
13 ahead --

14 COMMISSIONER OKUDA: Yeah. Chair, I'd like
15 to speak in favor of the amendment. And this is the
16 reason why. I believe the amendment -- and if any of
17 the counsel or parties think that I'm misstating what
18 I'm stating, please stop me so that I don't waste
19 everyone's time. But I believe the amendment is
20 simply to make the motion consistent with the relief
21 that the Petitioner is asking for. And if anyone
22 disagrees with that, please let us know. And that --
23 that's the way I took the amendment. In other words,
24 it's to make the motion consistent with what the
25 Petitioner is asking for in total so that when and if

1 the Commission takes a vote on it and if the ultimate
2 motion passes, the decision of the Commission would
3 be consistent with what the Petitioner was asking
4 for.

5 I do share, you know, Commissioner Cabral's
6 concern about the broader economic and social issues
7 that the State is facing and individual counties are
8 facing. But my -- I respectfully ask that or would
9 argue that those are issues that should be dealt with
10 as specific petitions are raised where specific lands
11 might implicate those issues.

12 So as far as this petition goes, we have
13 only before us the evidence that's been placed on the
14 record. That's what our decision has to be based on.

15 And again, I support the amendment because
16 my understanding of the amendment is to make the
17 motion consistent with the relief that's being asked
18 for by the Petitioner and also the representations
19 that the Petitioner has represented to this
20 Commission including the representations of what
21 benefits under the statute the Petitioner is willing
22 to waive.

23 CHAIR WONG: The Petitioner, Ms. Lim, just
24 wanted to reaffirm that you understand Commissioner
25 Okuda's statement and you agree with that.

1 MS. LIM: Commissioner Okuda stated it
2 perfectly. And it's page 17 of our petition that
3 Petitioner does voluntarily, you know, with eyes wide
4 open waive that, the re-classification credits. So
5 yes, you said it perfectly consistent with what's in
6 the petition.

7 CHAIR WONG: Commissioner Scheuer.

8 VICE CHAIR SCHEUER: Mr. Chair, I just want
9 to make sure I am clear in my mind where we are
10 procedurally. We're debating an amendment to the
11 motion. We will then vote on the amendment to the
12 motion --

13 CHAIR WONG: To add.

14 VICE CHAIR SCHEUER: To add to the motion.
15 And then if it passes, we will then take up
16 discussion on the motion as amended?

17 CHAIR WONG: Correct.

18 VICE CHAIR SCHEUER: Thank you.

19 CHAIR WONG: Is there --

20 COMMISSIONER CHANG: I just want to follow
21 up with what Commissioner Scheuer -- so we're not
22 having discussion on the actual motion. We're just
23 having a discussion on whether to accept the
24 amendment to the motion?

25 CHAIR WONG: That is correct.

1 COMMISSIONER CHANG: Okay. All right.

2 CHAIR WONG: Any other Commissioners? Any
3 other statement before we call to vote. Okay.

4 Not -- Mr. Orodenger, this is on the amendment only.

5 EXECUTIVE OFFICER: This is a vote on the
6 motion to amend the motion.

7 Commissioner Wong.

8 CHAIR WONG: Aye.

9 EXECUTIVE OFFICER: Commissioner Ohigashi.

10 COMMISSIONER OHIGASHI: Aye.

11 EXECUTIVE OFFICER: Commissioner Aczon is
12 absent. Commissioner Estes.

13 COMMISSIONER ESTES: Yes.

14 EXECUTIVE OFFICER: Commissioner Cabral.

15 COMMISSIONER CABRAL: No.

16 EXECUTIVE OFFICER: Commissioner Okuda.

17 COMMISSIONER OKUDA: Yes.

18 EXECUTIVE OFFICER: Commissioner Scheuer.

19 VICE CHAIR SCHEUER: Yes.

20 EXECUTIVE OFFICER: Commissioner Chang.

21 COMMISSIONER CHANG: Yes.

22 EXECUTIVE OFFICER: Commissioner Mahi.

23 COMMISSIONER MAHI: Aye.

24 EXECUTIVE OFFICER: Mr. Chair, the motion to
25 amend the motion passes with seven affirmative votes

1 and one no vote.

2 CHAIR WONG: Thank you.

3 So now, the amendment has been added to the
4 main motion. So now we're in discussion on the
5 motion as a whole. Commissioners? Commissioner
6 Scheuer.

7 VICE CHAIR SCHEUER: Mr. Chair and members,
8 I'm going to be voting in favor of the motion, to
9 accept as it's been made and amended with mixed
10 feelings. And I just want to explain why I have some
11 mixed feelings about the petition. I am grateful
12 for -- to the company for coming forward with their
13 petition. I think -- at their expense and their
14 efforts. That's a good thing and should be
15 appreciated. But I want to state really clearly, you
16 know, the representative from the Land Use Research
17 Foundation stated in public testimony an assertion
18 that IAL is not an open space for land use
19 initiative. And I just have to say that the
20 legislative record would contradict that assertion
21 very clearly. The State Constitution is really
22 clear. The very first part of the constitutional
23 amendment speaks about the purpose of this is to
24 protect agricultural lands. In addition, if you look
25 at the legislative history, one of the standing

1 committee reports on this when it passed through the
2 legislature in 1990 -- in 2005 -- or sorry, 1995.
3 Your committees recognize, I quote, that designation
4 and identification of IALs are an important in
5 fulfilling the constitutional mandate to protect and
6 conserve agricultural land. This is not about
7 incentivizing agriculture alone. It is about
8 protecting agricultural land.

9 And so the reason why I have misgivings is
10 because in this petition, we're protecting some ranch
11 lands as IAL which I do not believe are fundamentally
12 the kinds of land that we need to be protecting. We
13 have well over a million acres of good ranch land in
14 the state of Hawaii. That's not what is the special
15 protection is supposed to really be for. And I find
16 it is hard for -- to explain what we do to average
17 citizens, to our friends and colleagues who when we
18 say we're on the LUC, they're like oh, what do you
19 do? And we try and talk about IAL. They scratch
20 their heads and like okay, so you're not protecting
21 some A and B lands and you are protecting some
22 steeper ranch lands without irrigation water. How
23 are you doing that? It doesn't sort of pass that
24 common sense test. But I fully agree with the
25 statements of the Petitioner and Office of Planning

1 that given the law the way it's written, we have to
2 look at this petition solely on whether it meets the
3 criteria before it under the criteria that are in the
4 law and it does and so I'm actually obligated to vote
5 in favor of it. And to the degree that it is
6 protecting some A and B prime lands, that's a really
7 good thing. And I really appreciate it. But we're
8 losing the opportunity to protect some of the most
9 important high A and B lands alongside Kunia Road and
10 unfortunately, we're losing that opportunity 'cause
11 the City has failed after all these years to bring us
12 a good set of maps where we can actually take a
13 comprehensive look at things. So that's my
14 statement. Thank you.

15 CHAIR WONG: Thank you. Any other --
16 Commissioner Cabral.

17 VICE CHAIR CABRAL: I am in favor of the
18 motion and -- as amended at this point because I'm in
19 favor of the main motion enough to accept the
20 amendment.

21 And then I'd like to make a voice that
22 cattle ranching and cattle are very important in a
23 paniolo lifestyle to our state. Thank you.

24 CHAIR WONG: Thank you. Any other
25 statements? Commissioner Chang.

1 COMMISSIONER CHANG: You know, I too am
2 going to be voting in favor of this petition. I do
3 applaud the landowner for coming forward. I realize
4 that there is an incentive to come before the City
5 makes its determination. And I think the City had an
6 opportunity to -- and I appreciate the fact that Mr.
7 Young, you're trying to move this along. And that's
8 great that you're doing that. But we are in a
9 situation where landowners who come forward and
10 voluntarily put lands in IAL, this is something that
11 I think we all support.

12 I think having this motion, the amended
13 motion is also critical to address one of the issues
14 that Commissioner Cabral brought up regarding the 600
15 acres. This motion, this amendment runs with the
16 land. So it runs with the 600 acres as well. So any
17 credits would apply as I understand it. And I'm not
18 really -- I'm not really familiar with how these
19 credits work. But I think the credits -- so I'm not
20 real clear about that and maybe there's a difference
21 of opinion on that. But maybe all that's before us
22 is just the 1500 acres. That might be it. That
23 might be just the petition area. So the credits may
24 not apply to the 600 acres. That may be legally
25 that's all that we've got before us. But I think

1 Commissioner Cabral's, you know, comments are worth
2 the landowner thinking about -- I think we are trying
3 not to put as many conditions but to the extent that
4 this is reflective of the Petitioner's representation
5 that this is what they're willing to do. While we
6 cannot put this in the motion, again, I appreciate
7 the fact that this is being kept in ag. These are
8 really important ag lands.

9 I also understand that these lands, the
10 products that are being produced on these lands are
11 not for consumption in Hawaii. They may be exported
12 and I understand that the statute also uses the word
13 export or local consumption. We are trying very hard
14 in the state of Hawaii to become much more self
15 sufficient. We import 90 percent of our food. So to
16 the extent that Monsanto, I know you're not in the
17 business of producing local food and competing with
18 local, but even to the extent of growing, you know,
19 your other crops, to the extent you can consider
20 growing local produce or setting aside some of the
21 land 'cause I know some of the other seed companies
22 do do that. They do grow corn that they can -- they
23 donate to the local community. So something like
24 that. I think there's a contribution that goes both
25 ways. But you are employing 258 people. I think

1 that's -- that also needs to be recognized that that
2 is contributes to our economy. So I do support this
3 petition for several reasons. And I thank you for
4 bringing it before us.

5 CHAIR WONG: Thank you. Anyone else?

6 VICE CHAIR SCHEUER: Just to my good friend
7 and colleague from Hawaii Island, let me be
8 absolutely clear that I support ranching. My
9 statement was very specific to I do not think that we
10 need to use the IAL process to protect ranching in
11 Hawaii. That we have a large, large amount of lands
12 suitable for ranching.

13 CHAIR WONG: Commissioner Okuda.

14 COMMISSIONER OKUDA: Thank you, Chair. I
15 will also be voting in favor of the motion as
16 amended. But if I could disagree with my good friend
17 Commissioner Scheuer on the land designation issues.
18 I'm not sure if we can take judicial notice of prior
19 proceedings but in one of our proceedings -- prior
20 proceedings, I believe one of the witnesses testified
21 that the Land Study Bureau designation was based on
22 evaluating land for purposes of suitability for let's
23 say big sugar, big pine. And again, I'm not saying
24 we were ignoring that because the statute requires us
25 to consider the rating of the specific land. But as

1 I think Judge Ronald -- retired Judge Ronald Ibarra
2 found in the Hokulea decision which ended up on
3 appeal to the supreme court, if my recollection is
4 correct, sometimes the most productive types of soil
5 for Kona coffee is not A and B land but it could be D
6 and E designated land. So again, you know, the LSB
7 ratings are relevant. The question is under the
8 circumstances, how much weight do you give that
9 evidence and also the fact that agriculture does
10 include ranching. And I would slightly disagree with
11 my colleagues that I think protecting land which is
12 in ranching oftentimes would be just as important and
13 sometimes more important from a standpoint of
14 productive agriculture.

15 And in any event, I do share as I stated
16 earlier, Commissioner Cabral's concerns about a
17 number of things if those issues arise in future
18 petitions. I'm sure we will deal with those issues
19 at that point in time.

20 But I will be voting in favor of the motion
21 as amended based on the good cause which I believe
22 the witnesses have shown and evidence produced in the
23 record. Thank you.

24 CHAIR WONG: Commissioner Estes.

25 COMMISSIONER ESTES: I will be voting in

1 favor of the motion and I call for the question.

2 COMMISSIONER MAHI: I was going to do that
3 before I start commenting on my coffee farm in Kona.

4 CHAIR WONG: Okay. So if there's no further
5 discussion, Mr. Orodénker, if you please.

6 EXECUTIVE OFFICER: Thank you, Mr. Chair.

7 The motion is to approve the petition and
8 the motion as amended by Commissioner Wong's motion
9 to include the waiver and the issuance requirement.

10 Commissioner Estes.

11 COMMISSIONER ESTES: Yes.

12 EXECUTIVE OFFICER: Commissioner Cabral.

13 VICE CHAIR CABRAL: Yes.

14 EXECUTIVE OFFICER: Commissioner Aczon is
15 absent. Commissioner Okuda.

16 COMMISSIONER OKUDA: Yes.

17 EXECUTIVE OFFICER: Commissioner Ohigashi.

18 COMMISSIONER OHIGASHI: Yes.

19 EXECUTIVE OFFICER: Commissioner Scheuer.

20 VICE CHAIR SCHEUER: Aye.

21 EXECUTIVE OFFICER: Commissioner Chang.

22 COMMISSIONER CHANG: Yes.

23 EXECUTIVE OFFICER: Commissioner Mahi.

24 COMMISSIONER MAHI: Aye.

25 EXECUTIVE OFFICER: Chair Wong.

1 CHAIR WONG: Aye.

2 EXECUTIVE OFFICER: Thank you, Mr. Chair.
3 The motion passes with eight affirmative votes.

4 CHAIR WONG: Thank you.

5 Is there any other items or questions or
6 comments regarding our meeting agenda items?

7 Just for the record, next week we'll be on
8 Molokai and we have an extensive agenda. As such, I
9 would like to direct the staff to provide lunch for
10 the Commissioners just because of the agenda for --
11 sorry, for next week on Molokai.

12 COMMISSIONER OHIGASHI: Manapua cannot be
13 delivered?

14 CHAIR WONG: Thank you again. If there's no
15 further business, I declare this meeting adjourned.

16 MS. LIM: Thank you, Commissioners.

17 (Concluded at 12:27 p.m.)

18 --oo0oo--

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1 CERTIFICATE

2 STATE OF HAWAII)
3 COUNTY OF HONOLULU) SS.

4 I, PRISCILLA GONZAGA, CSR #127, do hereby
5 certify:

6 That on October 11, 2017, the proceedings
7 contained herein was taken down by me in machine
8 shorthand and thereafter reduced to typewriting under
9 my supervision; that the foregoing represents, to the
10 best of my ability, a true and correct copy of the
11 proceedings had in the foregoing matter.

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

16 Dated this 17th day of October, 2017 in
17 Honolulu, Hawaii.

18
19
20 /s/ Priscilla Gonzaga

21 Priscilla Gonzaga, CSR #127
22
23
24
25