

LAND USE COMMISSION

STATE OF HAWAII

October 18, 2017

Commencing at 1:30 p.m.

Kulana O'iwi, DHHL/OHA Conference Room

600 Maunaloa Highway

Kaunakakai, Molokai, Hawaii'i

I. Call to Order

II. Adoption of Minutes

III. Tentative Meeting Schedule

IV. Hearing and Action - DR17-60 Monsanto Company -
Molokai IAL (Molokai) to consider Petition for
Declaratory Order to Designate Important
Agricultural Lands for Approximately 1,084.079
acres at Naiwa, Manowainue, Kahanui, Molokai,
identified by TMK No. (2) 5-2-012-004

BEFORE: Jean Marie McManus, CSR 156

1 APPEARANCES:

2 COMMISSIONERS

3 ARNOLD WONG, Chair
JONATHAN SCHEUER, Vice Chair
4 NANCY CABRAL, Vice Chair
GARY OKUDA
5 LEE OHIGASHI
DAWN N.S. CHANG
6 AARON MAHI
LINDA ESTES
7

8 DIANE ERICKSON, Deputy Attorney General

9 STAFF:

DAN ORODENKER, Executive Officer
10 RILEY K. HAKODA, Chief Clerk/Planner
SCOTT A.K. DERRICKSON, AICP
11

JENNIFER LIM, ESQ.
12 MARK MURAKAMI, ESQ.
Attorneys for Monsanto Company
13

DAWN APUNA, ESQ.
14 LORENE MAKI, Planner
For Office of State Planning
15

WILLIAM SPENCE, Planning Director
16 KATHLEEN AOKI, Planner
County of Maui
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1 CHAIRPERSON WONG: Good afternoon. This is
2 the October 18, 2017 Land Use Commission meeting.
3 First order of business is adoption of the minutes
4 for the October 11, 2017 meeting. Any corrections or
5 additions?

6 If there is none, may I have a motion to
7 adopt?

8 COMMISSIONER ESTES: So move.

9 COMMISSIONER MAHI: Second.

10 CHAIRPERSON WONG? Commissioner Estes
11 moved, and Commissioner Mahi second. The motion has
12 been made. All in favor say "aye"; any opposed? No
13 opposed. The minutes have been adopted unanimously.
14 Thank you.

15 Next agenda item is the tentative meeting
16 schedule. Mr. Orodanker.

17 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.

18 Tomorrow, October 19th, we will be here if
19 necessary in this matter.

20 November 8th we will be on Kaua'i for Kauai
21 Solar Special Permit; and November 21st, here on Oahu
22 for Hono'uli'uli Wastewater Treatment Plant Special
23 Permit at Honolulu Airport.

24 December 6th and 7, we will be on Maui for
25 Waikapu Country Town District Boundary Amendment.

1 On January 10th and 11, we will be on Maui
2 for Pulelehua (Maui Land & Pine) Motion to Amend.

3 And on January 24th, we will be on Big
4 Island, National Park Service on Lanihau, HHFDC
5 status report, Waikoloa Heights.

6 CHAIRPERSON WONG: Thank you, Mr.
7 Orodenker.

8 Commissioners, do you have any questions?
9 Thank you.

10 This is a hearing and action meeting on
11 DR17-60, in the Matter of the Petition of the
12 Monsanto Corporation for Declaratory Order to
13 Designate Important Agricultural Lands for
14 approximately 1,084.079 acres at Naiwa, Manowainui,
15 Kahanui, Moloka'i, identified by Tax Map No.
16 (2)5-2-012-004.

17 Just for your information, this is not a
18 contested case hearing, it's only to consider the
19 Petition for Declaratory Ruling.

20 Will the Petitioner please identify itself
21 for the record?

22 MS. LIM: Good afternoon, Chair and
23 Commissioners.

24 Jennifer Lim representing Petitioner
25 Monsanto. To my right is my law partner, Mr. Mark

1 Murakami.

2 CHAIRPERSON WONG: Thank you.

3 MS. APUNA: Good afternoon, Chair and
4 members of the Commission, Deputy Attorney General
5 Dawn Apuna on behalf of State Office of Planning.
6 Here with me today is Lorene Maki.

7 CHAIRPERSON WONG: Thank you.

8 MR. SPENCE: Good afternoon, Chair,
9 Commissioners. I'm William Spence, Planning Director
10 for Maui County. With me day is Kathleen Aoki, a
11 Planner assigned to this Petition

12 CHAIRPERSON WONG: Thank you. Let me
13 update record.

14 On September 29th, 2017, the Commission
15 received Petitioner's Petition for the Declaratory
16 Order to designate Important Agricultural Lands, and
17 Exhibits 1 through 10 with a hard copy and digital
18 file; and \$1,000 application fee.

19 A request for comments to the LUC about the
20 Petition was mailed by Petitioner to OP, Office of
21 Planning, the State Department of Agriculture, and to
22 the City and County of Maui Planning.

23 Earlier today, the Commission conducted a
24 site visit to the Petition Area.

25 On October 10th, the Commission received

1 OP's comments on the Petition and mailed the
2 October 18, 2017 LUC meeting agenda to the
3 Petitioner, OP, DOA, Maui County and the State and
4 Oahu mailing list.

5 On October 13, 2017, Commission received
6 the County of Maui Planning Department's comments on
7 the Petition.

8 From October 12th to October 17th,
9 Commission received comments on the Petition from the
10 State Department of Agriculture and several other
11 organizations whose names are on file and are part of
12 the record.

13 Additionally, we have received a letter
14 from the Petitioner dated October 18th, about this
15 issue, all the Commissioners got it. And also an
16 errata to Petitioner's Exhibit 16 on October 17th.

17 Ms. Lim, can you please confirm that your
18 client understands and will comply with the
19 Commission's policy regarding the reimbursement of
20 hearing proceedings?

21 MS. LIM: Sure, Chair. I can confirm that
22 Petitioner will comply.

23 And if I may, in that list of exhibits, we
24 did also file on the 16th Exhibits 11 through 16.
25 And so that included the PowerPoint, the full

1 PowerPoint slides. And then, as you correctly noted
2 this morning, Petitioner submitted the letter
3 responding most directly to Office of Planning's
4 comments, but also to Department of Ag and the County
5 of Maui as well.

6 And at the same time we had noticed a
7 couple of typographical errors in the PowerPoint
8 slides, so two replacement PowerPoint slides were
9 filed this morning, just for the record.

10 CHAIRPERSON WONG: Any questions about
11 those? Thank you

12 Ms. Lim, the Chair understands the parties
13 had discussions and had agreed on how the
14 presentations could be made to expedite these
15 proceedings; is that correct?

16 MS. LIM: Yes.

17 VICE CHAIR SCHEUER: Sorry, I missed the
18 opportunity. Mr. Chair, just regarding the last
19 minute filings from the Petitioner, have those been
20 made available to the interested members of the
21 public?

22 MR. ORODENKER: They have been posted to
23 the website.

24 CHAIRPERSON WONG: Go ahead, Commissioner
25 Okuda.

1 COMMISSIONER OKUDA: Thank you, Mr. Chair.

2 Before we begin or proceeding, I would like
3 to disclose the fact that I know Karl Kobayashi, who
4 is the Chairman of the Board of the Petitioner's law
5 firm Carlsmith Ball. Mr. Kobayashi is a personal
6 friend of mine dating back to college days at
7 University of Hawai'i at Manoa.

8 He sometimes refers clients to my firm; and
9 so would I like to make that disclosure.

10 CHAIRPERSON WONG: Is there any opposition?

11 MS. LIM: No opposition from Petitioner,
12 and technically, for the record, Mr. Kobayashi has,
13 after many, many years of service, actually stepped
14 down from the Chair position, but he is still a
15 partner at our law firm.

16 CHAIRPERSON WONG: OP?

17 MS. APUNA: No opposition.

18 CHAIRPERSON WONG: County?

19 MR. SPENCE: No opposition.

20 CHAIRPERSON WONG: Thank you. Is there any
21 other --

22 COMMISSIONER CHANG: Yes, Mr. Chair. Thank
23 you.

24 While I don't believe this is a conflict of
25 interest, I did want to disclose I have done work in

1 the past for Dow AgroSciences. I helped them with a
2 water use permit a couple years agriculture, but I
3 have not done any work for Monsanto, but I did want
4 to disclose that for the record.

5 CHAIRPERSON WONG: Any objections?

6 MS. LIM: No objections.

7 MS. APUNA: No objections.

8 MR. SPENCE: No.

9 CHAIRPERSON WONG: Commissioner Ohigashi.

10 COMMISSIONER OHIGASHI: I just want to
11 disclose that I have a social relationship with Ms.
12 Lim's husband, Steven Lim, friends from law school.
13 And I don't think it would impair in my impartial
14 judgment.

15 CHAIRPERSON WONG: Petitioner?

16 MS. LIM: No objection.

17 MS. APUNA: No objection.

18 MR. SPENCE: No objection.

19 CHAIRPERSON WONG: Commissioner Scheuer?

20 VICE CHAIR SCHEUER: I have declared, on
21 previous occasions, worked as a consultant to the
22 Department of Hawaiian Homelands assisting them with
23 their assertions of their water rights issues around
24 the State of Hawai'i, which include rights to the
25 Molokai Irrigation System, which is also used by the

1 Petitioner.

2 However, I do not believe these issues
3 substantially affect this Petition, nor do I think --
4 and I also believe I can be fair and balanced and
5 unbiased in this proceeding.

6 CHAIRPERSON WONG: Petitioner?

7 MS. LIM: Petitioner has no objection.

8 MS. APUNA: No objection.

9 MR. SPENCE: No objection.

10 CHAIRPERSON WONG: Is there anyone else
11 that wants to -- okay. Thank you.

12 So what's before -- the parties have had
13 discussions about the presentation to try to
14 expedite. I just wanted to make sure that OP, is
15 that correct, that you talked with the Petitioner
16 about this issue of the proceedings and you're okay
17 with it?

18 MS. APUNA: Yes, we are okay with it.

19 CHAIRPERSON WONG: County, are you okay
20 with it?

21 MR. SPENCE: Yeah.

22 CHAIRPERSON WONG: Thank you. The Chair
23 will agree with these proposed changes.

24 Let me briefly describe our adjusted
25 procedure for today on this docket.

1 I will first call for those individuals
2 desiring to provide public testimony to identify
3 themselves. All such individuals will be called in
4 turn to our witness box where they will be sworn
5 prior to the testimony.

6 After completion of the public testimony
7 portion of the proceedings, the Petitioner will make
8 its presentation.

9 After the completion of today's portion of
10 Petitioner's presentation, we will receive any public
11 comments from the County, Office of Planning and
12 Department of Agriculture.

13 And then we'll finish any remainder of the
14 Petitioner's presentation, and any agencies public
15 comments tomorrow or today, if we can.

16 Thereafter, the Commission will conduct its
17 deliberations.

18 The Chair also notes that from time to time
19 I may call for a short break just for all of us to
20 get up and stretch out.

21 Are there any questions about the
22 procedures for today?

23 MS. LIM: Chair, Petitioner does have one
24 question just to clarify.

25 If the proceedings do go through today and

1 onto tomorrow, will public testimony be closed as of
2 today? So there will be no additional public
3 testimony at the start of tomorrow's hearing, but of
4 course the commenting agencies would be able to
5 continue commenting, as they typically do in these
6 IAL proceedings.

7 I believe that's what you were describing,
8 but I want to make sure I heard it correctly.

9 CHAIRPERSON WONG: Well, we hope that all
10 the public testimony can be done today, unless
11 there's someone that really feels the need to
12 testify, then we will allow them the opportunity if
13 time permits tomorrow. But we will take it as we go,
14 just in case.

15 If all the public testimony is done, and we
16 hear everyone's statements, take into account, then
17 we'll leave it at that.

18 MS. LIM: I understand.

19 CHAIRPERSON WONG: Ms. Lim, the Chair also
20 intends to declare all the documents submitted by the
21 Department of Agriculture, Office of Planning, County
22 of Maui Planning Department, any written public
23 testimony as part of the record.

24 Do you have any objections to that?

25 MS. LIM: Not at all, thank you.

1 MS. APUNA: No objection.

2 MR. SPENCE: No objection.

3 CHAIRPERSON WONG: The documents are made
4 part of the record.

5 Is there anyone who desires to provide
6 public testimony on this matter? A three-minute time
7 limit will be enforced on this matter. So not
8 telling you to don't stop, but I just want everyone
9 to have their time to speak. We're just giving
10 everyone three minutes. Mr. Orodenker.

11 EXECUTIVE DIRECTOR: Thank you, Mr. Chair.

12 The first public witness we have signed up
13 is Tom DeCourcy, followed by Kauhane Adams.

14 THE WITNESS: I feel like Attorney General
15 Sessions here, but you'll have to excuse me, I don't
16 have any written notes. I just have handwritten
17 notes, and so, Mr. Chairman, members of the
18 Commissioner, good afternoon.

19 CHAIRPERSON WONG: May swear you in first?

20 THE WITNESS: Oh, yeah.

21 CHAIRPERSON WONG: Do you swear or affirm
22 that the testimony your about to give is the truth?

23 THE WITNESS: Yes.

24 CHAIRPERSON WONG: Thank you.

25 Can you please state your name and address

1 for the record, and proceed?

2 THE WITNESS: My name is Tom DeCoursey,
3 P.O. Box 745 Kaunakakai 96748.

4 CHAIRPERSON WONG: Please proceed.

5 TOM DeCOURSEY

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

8 DIRECT EXAMINATION

9 THE WITNESS: I am operation manager for
10 the Molokai Seed Company which produces seed for
11 conservation and sustainable ag. And I've been
12 farming on Molokai for 45 years. And, let's see.

13 We farm about eight acres of this land.
14 It's up by Kualapu'u School. We sublease it from
15 Monsanto. And you might, in your travels, you might
16 have seen the land. We haven't planted it yet. We
17 rely on rains up there. Try not to irrigate. It's
18 organic growing organically.

19 We usually are growing sunn hemp, which is
20 a tropical legume that adds nitrogen to the soil.
21 It's for Conservation and sustainable ag.

22 I strongly support Monsanto's action in
23 this. Over the years, in my career, I've seen much
24 agriculture land taken out of ag, but I've never seen
25 any nonagricultural land put into ag.

1 Once it's taken out of ag, it's gone
2 forever. And this 1000 acres, if I understand this
3 right, will be in agriculture in perpetuity. And
4 I've been fighting for that my career. Whether
5 Monsanto owns it or whoever owns it, it doesn't
6 matter, it will remain in agriculture.

7 I've seen fields here on Molokai, and
8 throughout the country, and internationally taken out
9 of agriculture, never to be put back into
10 agriculture. And as a farmer, that really frosts me.

11 Hopefully this will put it in agriculture,
12 put it in agriculture to stay.

13 This land -- I did some research -- this
14 land has been farmed for about 100 years consistently
15 in agriculture from when pineapple started, when
16 coffee came, now Monsanto, but it's prime
17 agricultural land, and I would hate to see houses
18 built on it.

19 If you -- that's all I've got, but if you
20 have any questions, I would be glad to answer it.

21 CHAIRPERSON WONG: Thank you. Petitioner?

22 MS. LIM: No questions.

23 MS. APUNA: No questions.

24 MR. SPENCE: No questions.

25 CHAIRPERSON WONG: Commissioners, do you

1 have any questions? Commissioner Scheuer.

2 VICE CHAIR SCHEUER: Mahalo for coming and
3 sharing your thoughts.

4 I just want to clarify, since you stated
5 your understanding that this would protect this
6 agricultural land in perpetuity.

7 What it does, should the Commission accept
8 all or a portion of the Petition area and designate
9 it as Important Agricultural Lands, it increases the
10 voting requirement for redistricting the land from
11 agriculture to urban. But it does not absolutely
12 prevent the conversion of that land from agricultural
13 use to nonagricultural use.

14 That still remains at the discretion of
15 this, or some future body with zoning authority.

16 THE WITNESS: Thank you for that
17 clarification.

18 I took our family farm and put it in an
19 easement in perpetuity back in the east. That's the
20 ideal. This is better than nothing.

21 VICE CHAIR SCHEUER: A separate disclosure
22 is I'm on the board of the Hawaiian Islands Land
23 Trust, and we do those kind of conservation easements
24 which truly perpetual. This is a different kind of
25 thing.

1 THE WITNESS: Yeah, okay.

2 CHAIRPERSON WONG: Anyone else? Thank you,
3 sir. Next person.

4 EXECUTIVE DIRECTOR: Next person signed up
5 Kauhane Adams followed by Aaron Boswell.

6 (Discussion held off the record.)

7 Next person is Aaron Boswell.

8 CHAIRPERSON WONG: May I swear in, please?

9 THE WITNESS: Yes.

10 CHAIRPERSON WONG: Do you swear or affirm
11 that the testimony you're about to give is the truth?

12 THE WITNESS: Yes.

13 CHAIRPERSON WONG: State your name and
14 address.

15 THE WITNESS: My name is Aaron Boswell,
16 P.O. Box 83, Ho'olehua, Hawai'i 96729.

17 AARON BOSWELL

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

20 DIRECT EXAMINATION

21 THE WITNESS: I oppose this. I don't
22 believe that the intention of the law is being met.
23 The products that they produce in general is not for
24 consumption here locally.

25 The biggest reason I object is because of

1 water. I feel that they will have extra -- they will
2 be able to present a demand for current and future
3 uses on the water system, and I don't agree with
4 that. I don't think they should have that kind of
5 vote as they are an outside entity.

6 I don't believe that they should have a say
7 in the way that our resources get reallocated.

8 As far as not being able to develop,
9 according to the rules, they are able to reclassify
10 like a certain amount of their -- this area. And
11 although they say that it's going into conservation,
12 they could also classify it as rural or urban.

13 There is an allowance of a certain amount
14 of development that is allowed within this parcel, I
15 believe. And I don't agree with that as well. I do
16 believe that it should stay as farming.

17 You know, everybody seen the news that they
18 just -- they're in the process of getting bought out
19 or merging or whatever with Bayer. And, you know,
20 that, qualify -- this will allow them to qualify for
21 certain amount of tax exemptions. And being the
22 monster company that they are, they shouldn't be
23 allowed -- you know, they should pay their taxes like
24 everybody else.

25 I am a local farmer. In fact, my homestead

1 is neighboring this property. If I read this
2 correctly, I believe a lot of the voting that would
3 take place would leave our County Planning
4 Commission, and would lie in the hands of you folks,
5 and no offense, but the Island of Molokai has been
6 very good at protecting its own. The State doesn't
7 have the best track record in taking care of our
8 resources.

9 And that's all I have. Thank you.

10 CHAIRPERSON WONG: Thank you. Petitioner,
11 any questions?

12 MS. LIM: No questions.

13 MS. APUNA: No questions.

14 MR. SPENCE: No.

15 CHAIRPERSON WONG: Commissioners? Thank
16 you. Next person.

17 EXECUTIVE DIRECTOR: Next testifier, Rob
18 Stephenson followed by Adolph Helm.

19 MR. STEPHENSON: I respectfully would like
20 to allow others to testify, and I'll wait until
21 others are finished. Thank you.

22 EXECUTIVE DIRECTOR: Adolph Helm.

23 THE WITNESS: I go junk Ns po, so I can go
24 last. Just kidding.

25 CHAIRPERSON WONG: May I swear you in?

1 THE WITNESS: Oh, okay.

2 CHAIRPERSON WONG: Do you swear or affirm
3 that the testimony you're about to give is the truth?

4 THE WITNESS: I do.

5 ADOLPH HELM

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

8 DIRECT EXAMINATION

9 THE WITNESS: My name is Adolf Helm. Keiki
10 o ka aina. Born and raised on Molokai. My address
11 is P.O. Box 391, Ho'olehua, Hawai'i 96729.

12 CHAIRPERSON WONG: Please proceed.

13 THE WITNESS: First of all, my family has a
14 long history of farming. My dad was the first in
15 Hawaiian Homes annual historically to meet the intent
16 and purpose of the Hawaiian Homes Act as a farmer.

17 As a child of my mother and dad, and my
18 siblings also, we carry that legacy today. I also am
19 a project leader for Mycogen Seeds, which is a
20 subsidiary of Dow AgroSciences on Molokai.

21 We have an operation on Molokai. We're the
22 smaller seed company on Molokai. That being said, I
23 also farm on Hawaiian Home Lands. I do a variety of
24 crops.

25 One of the things that we specialize in is

1 specialty teas. We grow a lot of Native Hawaiian
2 teas for marketing.

3 That being said, the intent and purpose, I
4 believe, with Monsanto is to obviously designate
5 1,080 acres or so, and I'm going to use the word
6 "perpetuity". I might be wrong, but use the word
7 "perpetuity" into agriculture as Tom mentioned, the
8 first speaker.

9 As far as growing up on this island, I
10 remember that whole place being into farming. And,
11 you know, there may be some differences, and perhaps
12 the practices that Monsanto do, you know, in terms
13 of, you know, whether they're growing conventional --
14 whether they practice conventional farming,
15 biotechnology farming or organic farming, they have
16 done an excellent job in transforming this particular
17 area in what I believe is very outstanding farming and
18 agricultural conservation practices.

19 They have transformed it into a place where
20 they have put in infrastructure that helps to
21 mitigate against soil erosion and other things that
22 may cause problems in that area.

23 Though not perfect, I believe that they're
24 trying to work as much as possible with neighbors and
25 people in the community to mitigate against what

1 others may perceive as negative. And so I think
2 those are things, as corporate citizens, you know,
3 are things that I think we all are responsible for,
4 and the same with our company.

5 And I think as corporate citizens they have
6 done an excellent job with outreach work also, and
7 especially with helping other farmers, and especially
8 Hawaiian homestead farmers, helping them in many ways
9 to start farming.

10 And one example would be a lot of farmers
11 don't have the cash flow to clear their land.
12 Monsanto, and so is the company I work for, we go
13 into the land unconditionally, clear the land, and
14 make it turnkey so the farmer can farm. And there's
15 no outlay of cash on the farmer, perhaps saving 10 to
16 \$20,000 in cost.

17 We've been doing that as long as I can
18 remember. I've been working for the seed corn
19 company for 20 years. That's really, really helpful,
20 helpful for farmers. And it's all about big ag,
21 small ag succeeding.

22 And our philosophy and fundamental reason
23 why agricultural needs to be viable is that we, as
24 farmers, need to help other farmers succeed. And the
25 problem with Molokai is we don't have enough farmers.

1 And by having corporations such as Monsanto to make
2 it easier for farmers to farm, tells a lot.

3 CHAIRPERSON WONG: Can you please wrap it
4 up?

5 THE WITNESS: Sure.

6 And the fact that, you know, if we go back
7 to 2014, there's a very contentious issue concerning
8 GMO moratorium. Molokai as a community voted
9 overwhelmingly against the moratorium. You have a
10 lot of people on this island that support farming,
11 not just GMO, but support farming in general.

12 And with that said, I would like to humbly
13 ask that you consider their Petition, and ask you to
14 approve their Petition to set aside 1,084 acres as
15 important ag lands for Molokai.

16 CHAIRPERSON WONG: Thank you. Any
17 questions?

18 MS. LIM: No questions.

19 MS. APUNA: No questions.

20 MR. SPENCE: No questions.

21 CHAIRPERSON WONG: Commissioners, any
22 questions? Thank you.

23 EXECUTIVE DIRECTOR: Next public testifier
24 is Artice Swingle.

25 THE WITNESS: My name is Artice Swingle,

1 P.O. Box 121, Kualapu'u Hawai'i 96757.

2 CHAIRPERSON WONG: Can I swear you in?

3 THE WITNESS: Yes.

4 CHAIRPERSON WONG: Do you affirm or swear
5 that the testimony that you're about to give is the
6 truth?

7 THE WITNESS: Yes.

8 CHAIRPERSON WONG: Can you please proceed?

9 ARTICE SWINGLE

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

12 DIRECT EXAMINATION

13 THE WITNESS: My testimony basically, I am
14 very much in favor of having this set aside as
15 agricultural land that would be available to all
16 people on the island to farm it. My concerns would
17 be the use of the land with pesticides.

18 I come at this because of my background as
19 a diagnostician for the Diagnostic School of
20 Neurologically Handicapped in Southern California. I
21 was a state level diagnostician, and I have the
22 privilege of working with the children who came out
23 of Davis, California, and many of those communities
24 where high levels of pesticides were used, and also
25 saw the impact of it generationally.

1 In moving here 16 years ago, I was
2 extremely disturbed by finding some of the same
3 profiles on testing that I saw there that impact the
4 learning of these children, and are hidden in many
5 ways.

6 I am opposed to genetically modified
7 organisms. In particular, I have sensitivities to
8 many kinds of pesticides. I fear for our water. I
9 fear for our children. I fear for the land itself.

10 Coming here one of the first things I saw
11 was the flaps of black plastic on the land, the
12 results of the previous pineapple usage.

13 It was promised that those would be
14 removed, and they never were.

15 I voted, and I -- you know, I'm definitely
16 opposed to the genetically modified organisms. And I
17 was thrilled to see that we did pass a moratorium on
18 the growth of those products.

19 And I was very disturbed to see that it got
20 overruled at both county and state levels because of
21 the judge's wife not -- that wasn't recused properly.

22 Anyways, I have great concerns about our
23 children and the welfare of this population. You
24 have very, very high levels of diabetes, heart
25 disease and other kinds of things.

1 And as painful to me to say that I know
2 someone personally who's sister had a child with the
3 intestines born on the outside. The child died.

4 I think that's about it. I'm concerned. I
5 just want us to farm. I want land to be kept sacred,
6 the water kept sacred, the wind is sacred, the
7 elements are sacred. And human life is sacred.
8 That's all.

9 CHAIRPERSON WONG: Any questions?

10 MS. LIM: No questions.

11 MS. APUNA: No questions.

12 MR. SPENCE: No questions.

13 CHAIRPERSON WONG: Commissioners?
14 Commissioner Chang.

15 COMMISSIONER CHANG: Just one question. Do
16 you support the Petition or do you oppose Petition?

17 THE WITNESS: No, I would like to see the
18 Petition go forward, but the thing that's missing
19 from there, which I think other testimony will say, I
20 feel like we need to have a committee that is made up
21 of local people, not necessarily involved with
22 genetically modified organisms.

23 We have a web now of organic farmers on our
24 island. We have sustainable Molokai in place. It's
25 taken years to build these things so that people know

1 who's growing, what food is clean. I personally
2 won't eat anything that I can't source.

3 So if we have a committee that monitors,
4 that is made out of local people who have lived here,
5 know the people, know the ways, and respect the
6 sacredness of what we have here.

7 COMMISSIONER CHANG: Thank you.

8 CHAIRPERSON WONG: Next witness.

9 EXECUTIVE DIRECTOR: Next testifier is Lori
10 Buchanan.

11 CHAIRPERSON WONG: May I swear you in,
12 please?

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

15 THE WITNESS: Yes, sir.

16 CHAIRPERSON WONG: Thank you. Can you
17 please state your name and address for the record and
18 the proceed with your testimony.

19 LORI BUCHANAN

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

22 DIRECT EXAMINATION

23 THE WITNESS: Aloha Honorable Commission
24 members. My name is Lori Buchanan. I was born and
25 raised on the Island of Molokai, and that's it.

1 So I do have written testimony, if you --
2 if it can be distributed, sorry I don't have 21
3 copies. I never know going to have this much people
4 associated. Thank you.

5 I wanted to thank Monsanto for
6 accommodating the public this morning in a public
7 site visit. I very much appreciated that, so thank
8 you very much. Thank you to the Commission for
9 providing the opportunity for the public to see what
10 you see.

11 I was born and raised in Manowainui, which
12 is across the street from the parcel that is being
13 asked for declaration. We were the only house within
14 three miles.

15 I learned how to drive in the pineapple
16 fields. And at the age of 14 I got a work permit and
17 I worked picking pineapple until Dole went out of
18 business. And that's how we made money during the
19 summer.

20 So while some of you on Oahu was in the
21 cannery, we were picking up the pineapple following
22 the boom that sent those pineapples to Honolulu to
23 the Dole Cannery.

24 The first night I had dreams of yellow
25 pineapples was horrible. I am well acquainted with

1 the parcel. I spent my life there.

2 Up until Monsanto put up fences, I accessed
3 the pu'u as a place for respite. I would climb on
4 the hill, look out against the grand landscape, and
5 just be in awe. That has ceased.

6 Also my ability to access across the street
7 since private ownership of Kualapu'u Ranch. And we
8 stopped subsisting, gathering, hunting in that area.
9 So we hunted religiously since the day I was born in
10 those areas, also my brother did.

11 But I wrote a lot of stuff while I was on
12 the site visit, and I only have three minutes, so I
13 might have to entertain the mercy of the Chair in
14 asking to come back to wrap it up.

15 But a lot -- you can see that my testimony
16 says in support with conditions. And the conditions
17 are there. And I'm sorry, I had maybe 20 minutes to
18 type this up between the site visit and coming here.

19 There's justification to the condition that
20 I put out in here. And the reason why, as you can
21 see, is to incorporate stateholder concerns, because
22 I don't know of any management plan for the 1000
23 acres that is available or currently that the
24 Petitioner has.

25 So today Commissioners asked on the site

1 visit how much percentage of this land is being used,
2 and important -- the designation. Nobody was able to
3 answer that. They weren't able to answer questions
4 about field rotation, all that type of questions that
5 you as a land manager would know, and would be able
6 to convey was absent.

7 So that goes to the "why". And so a lot of
8 the negative -- not negative, but I would say a lot
9 of the concerns arise from best management practices
10 by a landowner. And that would be stuff, you know,
11 like if that's the wildlife integrated pest
12 management, wildlife pesticide use. Earlier a
13 testifies was worried about if they have priority to
14 water.

15 And that's because we didn't have any
16 environmental assessment or any EIS. So I'll wrap it
17 up, but I would love to expound that maybe another
18 three minutes and come back after everybody else has
19 a chance.

20 CHAIRPERSON WONG: Petitioner, any
21 questions?

22 MS. LIM: No questions.

23 MS. APUNA: No questions.

24 MR. SPENCE: No questions.

25 CHAIRPERSON WONG: Commissioners? Thank

1 you. Next testifier.

2 EXECUTIVE DIRECTOR: Next testify Walter
3 Ritte.

4 CHAIRPERSON WONG: Good morning, sir --
5 afternoon, sorry.

6 Do you swear or affirm that the testimony
7 that you're about to give is the truth?

8 THE WITNESS: Yes.

9 CHAIRPERSON WONG: Can you please speak
10 your name and address?

11 THE WITNESS: My name Walter Ritte. I'm a
12 Ho'olehua homesteader from Ho'olehua. And grew up
13 next to this parcel.

14 CHAIRPERSON WONG: Please proceed.

15 WALTER RITTE
16 Was called as a public witness, was sworn to tell the
17 truth, was examined and testified as follows:

18 DIRECT EXAMINATION

19 THE WITNESS: I could spend my whole three
20 minutes talking about why I don't support this kind
21 of farming. I don't know why they call it farming.
22 It's hard to figure out why they call it farming.

23 But it has a lot of negative impacts on our
24 community trying to figure out how to resolve that.
25 So really hard to get the government to resolve that

1 because most of them don't live here. They don't
2 talk to people while the dust is blowing in their
3 faces.

4 So I'm going to talk about what I want to
5 see put into conditions if this is passed by this
6 board.

7 The first thing I'm concerned about is the
8 people who live downwind, including myself. I live
9 less than a mile away downwind, and we have to deal
10 with this dust and what's in the dust. And I don't
11 know if their using dicamba now, but I think they
12 are, which is a lot more prevalent about staying in
13 the air and floating in the air. I'm really worried
14 about the dust.

15 So I would like a condition to be that they
16 plant windbreaks all along their property downwind to
17 protect the homesteaders from what's coming out of
18 these fields.

19 I saw some of the bermes that they were
20 putting up, and it seems to me the bermes are only to
21 divert water. They want to divert 'em this way,
22 divert 'em that way. That's not good enough. They
23 should be putting in Gabions. They hold the water on
24 the land so it doesn't go down to the ocean.

25 This what I'm talking about. We were

1 standing up on the hill, and we looked down across
2 the street, was more farmland that they're leasing.
3 Past that is our precious ocean.

4 This study was done by federal government
5 calls it a treasure, U.S. treasure. So impacting
6 this ocean negatively a high priority for us because
7 that's where a lot of fisherman go to feed their
8 families. Right below these fields, very critical.

9 So they need to figure out how to hold that
10 water up. And there are permaculture ways to do it,
11 different ways to hold the water on the land.

12 I really believe that we need a management
13 plan from these people, that these issues could be
14 put into that management plan.

15 The other one I'm really nervous about is
16 our kids. Nobody made it a point to show you that
17 right across the street from where these guys are
18 farming is Kualapu'u School. All my grand kids are
19 in that school.

20 So we need a buffer zone of some sort to
21 protect the kids. We need a windbreak. We need
22 Gabions. We need a management plan. We need buffer
23 zones.

24 The last point I would like to bring out is
25 that pu'u. That pu'u should not be in this plan.

1 That pu'u is a special pu'u, sacred place. And many
2 of us know the stories. And many of us don't know
3 the stories of that place.

4 So somehow in part of this plan it has to
5 address Article XII, Section 7 of our constitution
6 which gives us the right as Hawaiians to access these
7 places. And that had been nonexistent. In fact,
8 there is a fence to keep the deer out that goes right
9 around, and there's these guys in white truck all
10 night driving with white trucks to make sure no one
11 goes in there.

12 So management plan with all of these items
13 need to be there. If they're not in there, then I
14 would like to have an opportunity to be an intervenor
15 in this process.

16 CHAIRPERSON WONG: Thank you. Petitioner.

17 MS. LIM: Petitioner doesn't have any
18 questions, but we would hope that the Commission
19 recognizes that the test before the Commission today
20 is whether or not the land that we were on, the soil
21 that we were on today qualifies as Important
22 Agricultural Land.

23 And there's some impassioned testimony, but
24 if that testimony rises to be material or relevant,
25 it's something I would question. And Petitioner just

1 wanted to lodge that concept for the Commissioners to
2 consider.

3 CHAIRPERSON WONG: Thank you.

4 THE WITNESS: That has been the exact
5 problem we have been having here on Molokai with the
6 government.

7 CHAIRPERSON WONG: OP.

8 MS. APUNA: No questions.

9 MR. SPENCE: No questions.

10 CHAIRPERSON WONG: Commissioners?

11 COMMISSIONER ESTES: I just wonder how
12 making this Important Agricultural Land would make
13 your situation worse.

14 THE WITNESS: Would make it worse? Well,
15 first of all we don't agree that this, how you define
16 agriculture. This is like stretching this whole idea
17 of what is agriculture.

18 I'm not against Important Agricultural
19 Land, but I'm really against the negative impacts.
20 If nobody in the government, including you guys, are
21 not going to address that, then we're the ones that
22 are going to bear the burden of all of the negative
23 impacts from this.

24 We cannot just push this aside. They would
25 love to push it aside and not deal with it, because

1 you guys supposed to only do -- you're bound by these
2 laws and whatever. But our job is to say what is
3 impacting us.

4 So I'm not here saying that we don't want
5 agriculture. We all grew up with agriculture. It's
6 something that's in our hearts. But we're not sure
7 this is agriculture at all. And we want to be
8 protected.

9 So we're hoping that you guys are going to
10 be the ones that's going to help put into these
11 conditions, before you give them the right do what
12 they want to do, put in these conditions that is
13 concerns coming out of the community to protect the
14 community, whether it's us, our kids or the ocean.

15 CHAIRPERSON WONG: Commissioner Scheuer.

16 VICE CHAIR SCHEUER: Aloha, Mr. Ritte.

17 THE WITNESS: Aloha.

18 VICE CHAIR SCHEUER: You mentioned the
19 ocean. I'm going to ask you some obvious questions.
20 You go fish shore gather along the ocean makai of
21 this area?

22 THE WITNESS: Yes. We do crabbing. We do
23 fishing.

24 The other concern I have is before you even
25 get to the ocean, there's all these fishponds. And

1 what we have done to the fishponds is horrendous and
2 they keep doing this.

3 VICE CHAIR SCHEUER: Are you aware or did
4 you have a chance to review a document that's posted
5 on the LUC website as part of this Petition called A
6 Report of Findings on Cultural Research Related to
7 the Designation of Majority of Monsanto Companies,
8 Maui County Land. It was a report done by Ramsey
9 Taum of PBR Hawai'i?

10 THE WITNESS: No.

11 VICE CHAIR SCHEUER: He listed various
12 groups that he consulted with. Were you consulted
13 for the effect of anything on this property or
14 downstream of this property on cultural impacts of
15 this action?

16 THE WITNESS: I don't remember.

17 VICE CHAIR SCHEUER: Are you part of a
18 group -- I'm going to get the name wrong unless I
19 read it directly, the DHHL -- something like the DHHL
20 Molokai Hawaiian Home Lands Kupuna Advisory Group.
21 Are you a member of that group?

22 THE WITNESS: No, I'm too young.

23 VICE CHAIR SCHEUER: I guess that I have
24 nothing further then, Mr. Ritte.

25 CHAIRPERSON WONG: Thank you.

1 EXECUTIVE DIRECTOR: Next testifier is Judy
2 Caparida.

3 THE WITNESS: Aloha, everybody. My name is
4 Judy Caparida. I'm a kupuna, and I've been serviced
5 in our community for years.

6 CHAIRPERSON WONG: Can I swear you in,
7 please?

8 THE WITNESS: My name is Judy Caparida.

9 CHAIRPERSON WONG: Do you swear or affirm
10 that the testimony you're about to give is the truth?

11 THE WITNESS: Oh, brother, I do. Of course
12 it's got to be the truth.

13 CHAIRPERSON WONG: Now your address,
14 please.

15 THE WITNESS: My address is -- I used to be
16 in (indecipherable) but now I moved to Hawaiian
17 Homes. I got a home there. And my address, my new
18 address is P.O. Box 417, Ho'olehua 96729.

19 CHAIRPERSON WONG: Thank you. You can
20 continue.

21 JUDY CAPARIDA
22 Was called as a public witness, was sworn to tell the
23 truth, was examined and testified as follows:

24 DIRECT EXAMINATION

25 THE WITNESS: Okay. I was having breakfast

1 this morning at the bakery, and I saw all of these
2 people. And I said to my daughter, something must be
3 up. Let's have a meeting. She said to me, oh, mom.
4 And say, never mind, oh, mom. You see your eyes are
5 closed. I say you got to open your eyes, when you
6 look around, you see people.

7 And I think this was -- I said to her, I
8 said, sis, she look at me. I said is there a meeting
9 someplace? I say to her. And then she told me. And
10 that's why I'm here.

11 I'm here because I care for Molokai. I
12 love Molokai. When you are a farmer, you come from a
13 family of a farmer, you learn how to stretch the
14 ground with nothing. And you know what, any -- you
15 live the life because that's what you was taught.

16 So when you got older, and then you travel
17 around and you see the difference in life. You know,
18 the lord blesses us. I don't care what anybody say
19 anything. I acknowledge God, because he is the
20 creator of everything on this earth, and everything
21 is temporary.

22 So for me, it's life is precious. Life is
23 precious. Everyone of us, we don't know what
24 tomorrow. So the lord says, do what you can do
25 today. Do it in righteousness, that maybe one day

1 you be with him to see him face to face. That is his
2 promise.

3 And I'm here to let you know that there is
4 nothing that over here that you do. When you cannot
5 see the bees, then you cannot see insects, there's
6 something wrong. There's something wrong.

7 Because there isn't any insects any more
8 because of too much manmade stuff that kills the
9 ground. Everything get killed. That is natural.
10 Why don't you just say it. The ocean is dead. All
11 along the ocean, line is dead. And don't tell me,
12 oh, you know -- you damn well, you have got to
13 believe it. We were raised on the ocean; raised on
14 the mountain. You tilt the soil to live.

15 And this is why I raise all my children, my
16 grandchildren to know that. And I'm a blessed mom,
17 because you know why, if you teach them the right
18 way, this is the way their life is going to be
19 fulfilled. You're always with the joy and the peace.
20 There's nothing that can bother you.

21 But I feel for those that don't know. And
22 this is why I'm here today, to tell you that it has
23 ruined our life on Molokai. If you live here, you
24 would know the difference about living there. And
25 this is why I say to myself, I say, wow, we ain't got

1 much time to live. But while I'm living on this
2 earth, I will profess that. You know what,
3 everything that we do, you better be make sure you're
4 doing it in righteousness, because you killing
5 people. Just say it. Why everybody cannot say the
6 truth, that everything that we doing it is ruining
7 the life of our life on this earth.

8 And on Molokai we're blessed. We're
9 blessed. If you're not lazy, you get it. You have
10 the best. So this is what I need to share with all
11 of you. That I oppose it. If you're going to do it,
12 do it the right way. Did you ever see anything that,
13 wow, like everything. I saw the whole sky red with
14 red dust, all the way down. I was watching it. I
15 pull on the side, wow, lord, what is this. And I saw
16 the whole sky red.

17 It was like one tornado of red dirt it was
18 coming from that land. It was covering all the way
19 to the ocean. This is God's truth.

20 And all these things come because why? We
21 not doing it the right way. Man can say anything
22 they like. Man do nothing -- when we leave this
23 earth we ain't taking nothing with us. So I need to
24 say that I share that with all my heart. I share it
25 with all my heart that everybody knows the job is

1 that it's limited, yes. But if you do it the right
2 way, it can be done. It can be done.

3 But if you not living on Molokai, no talk
4 to us. No try to live our lives. I just telling you
5 that we happy with what we have. It's just that we
6 need to work together to do it the right way.
7 Mahalo.

8 CHAIRPERSON WONG: Any questions?

9 THE WITNESS: Because, know what? Before I
10 came, there's a prayer table in town that every day,
11 five days a week we go down there to prayer and we
12 meet everybody that needs prayer. And I say the
13 first thing, I say, you know what, I don't know what
14 this meeting is all about, and that's why I didn't
15 sign up right away.

16 But I say water is life. Water is power.
17 And that's why everybody needs water. But not water
18 to waste. So thank you.

19 CHAIRPERSON WONG: Next person.

20 EXECUTIVE DIRECTOR: Next testifier Keoni
21 Rawlins Fernandez.

22 CHAIRPERSON WONG: May I swear you in?

23 Do you swear or affirm that the testimony
24 you're about to give is the truth?

25 THE WITNESS: Yes.

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

3 THE WITNESS: Aloha, my name is Keoni
4 Rawlins Fernandez, P.O. Box 935, Kaunakakai Heights
5 96748.

6 KEONI RAWLINS FERNANDEZ
7 Was called as a public witness, was sworn to tell the
8 truth, was examined and testified as follows:

9 DIRECT EXAMINATION

10 THE WITNESS: I was born and raised on
11 Molokai. My family has land in Ho'olehua, less than
12 a mile from the property in question.

13 I have concerns, many of it shared
14 previously. Water, erosion and soil. Homesteaders
15 have two-thirds private right to the water, the water
16 that is being used on this land. Non-homesteaders
17 used 81 percent of the water of the MIS water in 2016
18 and 82.4 percent this year already. And the year
19 isn't even over.

20 So concerns that were shared earlier about
21 non-homesteaders getting more water is validated by
22 these numbers.

23 I'm also concerned about the MIS water
24 being contaminated because of the open-air pesticide
25 testing. The wind can easily blow the dirt, which

1 carries pesticides into the open reservoir, which you
2 guys seen this morning.

3 My concerns about erosion is that the
4 erosion mitigation that is used is not effective
5 enough. The ocean water below should be tested for
6 pesticides.

7 My family has a house that we call Pala'au
8 house. It's on the sand bank below. And we go there
9 to gather crab and fish and to enjoy life.

10 It's not just runoff that I'm concerned
11 about, it's also wind erosion. I'm concerned about
12 the pine trees that are used for windbreak. Pine
13 trees are known to absorb and hold onto water rather
14 than letting it recharge the aquifer.

15 So for the soil I would hope that when
16 Monsanto leaves, it gives our community assurances
17 that they will conduct bio remediation on this land
18 before they leave.

19 So this important ag land designation will
20 provide Monsanto tax breaks. And this community
21 should be able to readily see the tradeoff for the
22 money that is not going to county operations as some
23 of the testifiers shared before.

24 I support the idea of having a land use
25 management plan. I believe that a plan would help to

1 address some of the concerns that I just shared.
2 Mahalo.

3 CHAIRPERSON WONG: Thank you. Petitioner,
4 any questions?

5 MS. LIM: No questions.

6 MS. APUNA: No questions.

7 MR. SPENCE: No questions.

8 CHAIRPERSON WONG: Commissioners? Thank
9 you.

10 THE WITNESS: Mahalo.

11 CHAIRPERSON WONG: Okay, Kauhane Adams
12 wanted to speak last.

13 THE WITNESS: Aloha, my name is Kauhane
14 Adams. Change our number -- 588 Nenehanapo
15 (phonetic) Avenue, Ho'olehua, Molokai.

16 CHAIRPERSON WONG: Do you swear or affirm
17 that the testimony you're about to give is the truth?

18 THE WITNESS: Yes.

19 KAUHANE ADAMS
20 Was called as a public witness, was sworn to tell the
21 truth, was examined and testified as follows:

22 DIRECT EXAMINATION

23 THE WITNESS: I get relevant information.
24 So I born and raised over here, live here 50 years.
25 My family live here, we go back 16 generations

1 (Hawaiian spoken).

2 Live here long time. So I also
3 homesteader. I got you an autistic child that we
4 want. I have chemicals, you know, gave her that
5 disability.

6 I was trained in horticultural from Hawai'i
7 four years in Hilo. So I know about chemicals and
8 about the adverse affect on us and the environment.

9 Farming. Take off all 2017 glasses, put on
10 our 380 glasses. Hawaiians love farming in that
11 sense. We make malas (phonetic). We make gardens.
12 We make places that benefitted people, the
13 environment and the spirit, yeah.

14 I against this because this is not
15 Hawaiian. I live on homestead. I try got my land
16 certified by tilt, they told me come see them in
17 400 years. And they're saying if you live two miles
18 away from Monsanto's field, chemicals is going into
19 my fields, is going into my family's lungs. So this
20 is not agriculture in our sense, yeah.

21 (Hawaiian spoken.) It's not farming. This
22 is not what we call farming. I also one of the last
23 kia'i locals. I work in fishponds from the late
24 1980s. I work in Kalua'apuhi Fishpond which is right
25 below the place where they like designate Important

1 Agriculture Lands.

2 I see what is happening because of your
3 agriculture. I see what it's doing to our reefs. I
4 also work in kalo, lo'i kalo. I see my water not
5 regulated. Nobody know how much water coming to my
6 lo'i, but I see the thing declining. I talk to the
7 people around the area. They see 'em declining too.
8 So for that reason, I against this, yeah. Mahalo.

9 CHAIRPERSON WONG: Petitioner? OP?
10 County?

11 MS. LIM: No questions.

12 MS. APUNA: No questions.

13 MR. SPENCE: No.

14 VICE CHAIR SCHEUER: Where do you farm
15 kalo?

16 THE WITNESS: Down the Manai (phonetic)
17 side, 11-mile marker.

18 CHAIRPERSON WONG: Next person.

19 Do you swear or affirm that the testimony
20 your about to give is the truth.

21 THE WITNESS: I do.

22 CHAIRPERSON WONG: Can you please state
23 your name and address for record?

24 THE WITNESS: Yes, thank you. My name is
25 Robert Stephenson. My address is Post Office Box

1 515, Kaunakakai 96748.

2 ROBERT STEPHENSON

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

5 DIRECT EXAMINATION

6 THE WITNESS: Aloha, Chair Wong and
7 Commissioners. Thanks for taking the time to come to
8 Molokai today. As I said my name is Robert
9 Stephenson. I'm the President of the Molokai Chamber
10 of Commerce. I was a member of the Molokai Community
11 Plan Advisory Committee, and former Chair of the
12 Molokai Planning Commission.

13 And I too grew up on a farm. My great
14 grandparents were the first to receive land from the
15 federal government and settled the Central Utah
16 Valley and turned it into the alfalfa capitol of the
17 United States.

18 So there are many voices in the community
19 and there are many perspectives, and I would like to
20 share one from my perspective with you.

21 Today I would like to share some statistics
22 from the current State of Molokai. 35 percent, or
23 one-third of our island is on government assistance.
24 Molokai's unemployment rate is the highest in the
25 entire state.

1 The state unemployment rate is 2.5 percent,
2 and except for Lana'i, Molokai's rate at nine
3 percent, that's right, nine percent is more than
4 triple to four times any other island or the state
5 average.

6 We have a workforce of 2,500 people on
7 Molokai. Compare that to 84,000 on Maui. Now
8 compare that to 694,000 statewide. That really shows
9 how small and fragile of an economy we're talking
10 about. That's why significant initiative like this
11 Petition can have a profound affect on our future.

12 Agriculture is the largest private sector
13 of our economy, but agriculture doesn't just sustain
14 agriculture. As agriculture activity fluctuates up
15 or down, it affects the unemployment rate.

16 It impacts our local business, and it can
17 create or relieve stress on our families. We know
18 the greatest indicator of health on a community is
19 jobs.

20 We also know as unemployment increases, so
21 do social and family challenges. And as we create
22 more jobs, these challenges, they fall away.

23 One of the reasons jobs are so important to
24 Molokai is to help us deal with our financial
25 realities. The cost of fuel on Oahu is under \$3 a

1 gallon. Here on Molokai we may pay nearly \$5. And
2 that high cost of fuel is part of the reason we pay
3 among the highest electric rates in the nation,
4 nearly double that of Oahu.

5 The cost of freight puts additional cost on
6 every single item that we purchase on this island.
7 We have two gas station. We have one hotel, and we
8 have four small grocery stores. And that's all that
9 this economy can sustain. And that's why all types
10 of agriculture are important to our island.

11 So the time is now to put that foundation
12 in place. It's a rare circumstance that anything
13 great was achieved as a reaction to something else.
14 We as a community need to take the lead. We need to
15 create the things that will sustain us into the
16 future. And the first step, and most important step
17 for an agriculture community is to support this
18 designation as Important Agriculture Lands.

19 With that said, I strongly support the
20 Petition as presented by the Petitioner. And I'm
21 happy to answer any questions you may have.

22 CHAIRPERSON WONG: Thank you. Petitioner?

23 MS. LIM: No questions.

24 MS. APUNA: No questions.

25 MR. SPENCE: No questions.

1 CHAIRPERSON WONG: Commissioners?
2 Commissioner Estes.

3 COMMISSIONER ESTES: The land is
4 agricultural right now. I want to know when it
5 becomes Important Agricultural Land, how does that
6 help your community?

7 THE WITNESS: It helps our community by
8 keeping the agricultural land in agriculture. From
9 what I understand, please correct me if I'm mistaken,
10 but placing this land in Important Agricultural Land
11 designation does that make it more difficult for that
12 land to be designated otherwise?

13 If my understanding is correct, that would
14 be one step closer, along with the intent of the
15 Petitioner to be able to continue to farm, because we
16 have a very unique situation here on Molokai where
17 the largest farming operations help contribute to the
18 economies of scale that allow all of the smaller
19 farmers, and even our residents to purchase goods at
20 our local co-op, Hikiola Cooperative. The bulk
21 purchasing power allows everyone lower prices. It
22 also help to subsidize the operational costs of the
23 Molokai Irrigation System, and many other things that
24 this company brings to the benefit of our community.

25 So I believe that this is the first step in

1 securing the future of agriculture.

2 COMMISSIONER ESTES: So you believe if this
3 becomes Important Agricultural Land, there'll be
4 fewer people on assistance and a lower unemployment
5 rate; is that what you're saying?

6 THE WITNESS: Yes, in part. I believe it will
7 help agriculture remain strong on the island, and the
8 stronger our agricultural community is, the less
9 likely unemployment will rise, and the more likely
10 more people will continue to have jobs longer into
11 the future.

12 CHAIRPERSON WONG: Anyone else? Thank you,
13 sir.

14 Anyone else wanted to provide public
15 testimony at this time?

16 May I swear in?

17 THE WITNESS: Yeah.

18 CHAIRPERSON WONG: Do you swear or affirm
19 that the testimony that you're about to give is the
20 truth?

21 THE WITNESS: Yes.

22 CHAIRPERSON WONG: Can you state your name
23 and address for the record?

24 THE WITNESS: My name is Justin Avelino.
25 Just I live Ho'olehua, Lot No. 4.

1 JUSTIN AVELINO

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

4 DIRECT EXAMINATION

5 THE WITNESS: For me, I mean, we like talk
6 truth. I think we really got to mahalo the holy
7 spirit today. Auntie Caparida, not knowing, you
8 sneaky people do sneaky things. I found out half
9 hour before I came, and I was already an hour late.
10 Holy spirit works in different ways.

11 Plus auntie, for me, this auntie over here
12 to who made it, so one kupuna was present. Other
13 than that wouldn't have had kupuna.

14 So on top of that, I speak on behalf of
15 everybody else who still working today because this
16 meeting is at 1:30. If this is public meeting you
17 guys need to consider the fact that everybody pau at
18 3:30, 4:00 o'clock, so if you guys going hold public
19 meeting, it should be at that time.

20 So like I said, sneaky people do sneaky
21 things. I don't support you guys plan. I stand with
22 auntie. I stand strong with auntie. I stand for
23 this aina, and I go die for it.

24 You guys remember this face. I hope we
25 don't got to meet again.

1 MS. LIM: No questions.

2 MS. APUNA: No questions.

3 CHAIRPERSON WONG: Next person.

4 May I swear you in?

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

7 THE WITNESS: Yes.

8 CHAIRPERSON WONG: Please state your name
9 and address for the record.

10 THE WITNESS: My name is Lawrence
11 Kalamakulanakilaokekulakiekie Lasua, P.O. Box 544,
12 Kaunakakai, Hawai'i 96748.

13 CHAIRPERSON WONG: Please proceed.

14 LAWRENCE KALAMAKULANAKILAOKEKULAKIEKIE LASUA
15 Was called as a public witness, was sworn to tell the
16 truth, was examined and testified as follows:

17 DIRECT EXAMINATION

18 THE WITNESS: Thank you, Commissioners, for
19 coming here and listening to the Molokai people
20 speak.

21 First of all, I'm in favor for this
22 Important Agricultural Land designation. I want to
23 talk about the farming which is important, I guess,
24 for what this designation will be for.

25 I'm the fifth generation from the Island of

1 Molokai, and third generation on homestead land. My
2 father farmed on our location here in the Kalamaula
3 area. We also had pineapple lands, homestead lands
4 up in Ho'olehua area where you guys are designating.

5 So I'm well versed on that part of it. And
6 we've done our homework. But yet my father couldn't
7 farm the area I currently live on, only because the
8 products that he was selling to the stores wasn't
9 purchased by the store owners. And so he had to quit
10 farming because they were bringing produce from off
11 island.

12 Again, it fails the people of Molokai who
13 trying to make a living, and trying to improve their
14 farm products to the community of Molokai. So that's
15 number one.

16 The other thing, and that's why I like to
17 have this designated Important Agricultural Land to
18 help us, not only the small farmers, you have small
19 farmers like me, although I'm working, I still do
20 some small subsistence farming.

21 People talk about subsistence farming
22 through Hawaiian Home Lands, but they tend to look at
23 subsistence farming as a way to make money by selling
24 their product. So they look at bigger product, or
25 bigger lands to farm so they can improve their --

1 what do you call -- the benefit of being a farmer,
2 yeah.

3 Just like you have big farm, then you have
4 a lot of money coming in from those big farms. But
5 it wasn't actually set up for that. It was set up
6 for subsistence farming.

7 So as a subsistence farmer, I speak on
8 behalf of what I grow. Everybody in here say they're
9 subsistence farmer, but I don't really see that
10 subsistence farming really happening in some of the
11 areas on Molokai.

12 You have small farmers. I know that they
13 sell to the market area their product, which is good,
14 but I think what you guys are talking about is the
15 designation of this piece of land, you know, the
16 1000-plus acres up in the Ho'olehua area, Naiwa,
17 Manowainui, Kahanui.

18 So I think it's important that everybody,
19 especially the Commissioners, who have no idea what
20 Molokai is like, I think it's important that you guys
21 at least find out about the area before you guys come
22 in, not through maps, but talk to the people of
23 Molokai.

24 Again, I like the designation for it to be
25 the -- what you call -- important ag land.

1 Now, I did submit my testimony to you
2 through email. That's it for me. Any questions?

3 CROSS-EXAMINATION

4 BY MS. LIM:

5 Q Mr. Lasua, thank you very much for your
6 written testimony and for coming in today.

7 I know you mentioned, and I'm reading it
8 here in your letter, that you are a homestead lessee?

9 A Yes.

10 Q So there has been some concerns mentioned
11 by other testifiers that somehow Monsanto is
12 precluding DHHL homestead lessees from getting the
13 water that they need from the Molokai Irrigation
14 System.

15 What has been your experience in getting
16 the irrigation water from the MIS?

17 A I don't see that as a problem. I don't see
18 any -- I see homesteaders farming, but it's not like
19 the Monsanto or even the other company is taking that
20 much -- they're using the water, everybody uses the
21 water.

22 But I can't see -- since they're on a drip
23 line system, probably using as much water as they say
24 they are. They might be bigger than theirs, but
25 sure, that's going to happen.

1 Q Have you experienced reduction or
2 restriction in the amount of water that you can use?

3 A No.

4 MS. LIM: I don't have any further
5 questions. Thank you.

6 CHAIRPERSON WONG: OP?

7 MS. APUNA: No questions.

8 MR. SPENCE: No questions?

9 CHAIRPERSON WONG: Commissioner Scheuer?

10 VICE CHAIR SCHEUER: Aloha. Thank you for
11 your written testimony.

12 I just want to understand a point you made
13 towards the end of your oral testimony just now about
14 Commissioners, and there's nobody on this Commission
15 right now who is born and raised on Molokai, right?
16 So you talked about Commissioners not familiar with
17 your island need to spend time on your island
18 understanding issues on agriculture before taking
19 this action.

20 THE WITNESS: Uh-huh.

21 VICE CHAIR SCHEUER: Just to be really
22 clear, are you suggesting that we should not take up
23 this action immediately, though you are in support of
24 us taking the action?

25 THE WITNESS: No. If you guys are fine

1 with what you have in front of you, and what you've
2 -- I'm not saying not that you have to talk to all
3 the people in here, but at least like Justin was
4 saying, you have some community input as well, but
5 still, I would rather have you move on it.

6 VICE CHAIR SCHEUER: Thank you.

7 CHAIRPERSON WONG: Anyone else.

8 Commissioners? Thank you, sir.

9 Do you swear or affirm that the testimony
10 you're about to give is the truth?

11 THE WITNESS: Yes.

12 SHEILA AWAI

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

15 DIRECT EXAMINATION

16 THE WITNESS: My name is Sheila Awai, and
17 I'm -- you see, I came from Texas. I live Molokai
18 75 years, but because, you know, children grow older,
19 you got to travel.

20 CHAIRPERSON WONG: Just say the area you
21 live, how's that?

22 THE WITNESS: Right here in Kamuela.

23 You heard everybody. And they're opposing
24 it or they want the place. I don't oppose in any
25 company coming on the Island of Molokai, I don't.

1 What I oppose though is this: Water. Even
2 as I look at my people that came to testify, we not
3 going get water. And this is a promise to all of
4 you, and even to our people. I can tell you the
5 truth.

6 Kamuela from this end, all the way down to
7 this end (indicating), you walk outside by the ocean.
8 Limu eleele do not grow unless they get freshwater
9 and saltwater. Without freshwater, the limu eleele
10 you will not see. And it's sad to say at this time,
11 no more. There's none.

12 So what I'm saying to the people, as well
13 as the people of Molokai, I cry within my heart. And
14 the reason I cry is because I know what without water
15 is.

16 As a little girl growing up in Kamuela, we
17 never had water. And every Friday we used to get the
18 water. And I remember bathing, and you have to stand
19 by a plant to bathe because not enough water. You
20 know, when you come my house, my yard, I have fruit
21 trees in my yard and those fruit trees was when I was
22 young.

23 And the reason I'm saying this is because
24 years ago when the kupunas came by, and we had to go
25 fight Molokai Ranch because they was spilling water,

1 and nobody knew. And we had to walk all the way,
2 almost four-and-a-half miles. And we found this big
3 pipe that was flowing water constantly. And we went
4 to the Commission down here, and I said -- I walked,
5 and I am now telling you, I walked.

6 I'm a doer. I'm not a speaker only. I
7 don't raise flags. I don't accuse any company of
8 anything whether they right or wrong. But my
9 concern, and you folks need to know because none of
10 you go pick the Hawaiian stuff in the ocean.

11 There the ocean tells you what the land is
12 all about. If I see today that you cannot see limu
13 eleele, there is not going to be enough water for the
14 people here. Not enough.

15 So when the Commission gets together, I
16 want you guys to understand something when you
17 prepare for these things that come to you, I don't
18 know -- we don't speak too much, little bit, but I
19 try hard to speak the right words.

20 But the thing is when you first look
21 things, first say, oh, Molokai, what about the water?
22 When people come they get all your information. You
23 go send somebody go Kamuela, walk over here, and you
24 can tell if you get water.

25 And the other thing is that Molokai needs

1 jobs. I work all my life. I never ever went to
2 welfare. I struggle with four kids, single parent.
3 You know what, I'm going tell you folks. We need
4 jobs.

5 But sometimes we have to forfeit those
6 jobs, and maybe there is something that you guys can
7 do, and Maui, so can help us, so we can help our
8 keikis.

9 I am on income fixed income they call it,
10 so I don't need worry until I die, right? But you
11 see these young people over here, they still got --
12 and the younger ones standing out there, they need
13 every one of your concerns.

14 They need everyone of you to look at your
15 paper when anything coming in for Molokai. You guys
16 got to sit down. You got to look at it. And let me
17 tell you, I don't want any guys sending reports here
18 and said, okay, without during homework. Because I
19 am your homework.

20 So if you cannot understand my homework,
21 then go home. Throw out the paper. And go take a
22 good night's bath and go sleep.

23 CHAIRPERSON WONG: Thank you.

24 MS. LIM: No questions.

25 MS. APUNA: No questions.

1 MR. SPENCE: No questions.

2 CHAIRPERSON WONG: Commissioners? Thank
3 you.

4 THE WITNESS: Thank you everybody for
5 coming. I never know too. I was just called last
6 minute to come. Remember I live in Texas now.

7 CHAIRPERSON WONG: May I swear you in?

8 Do you swear or affirm that the testimony
9 you're about to give is the truth?

10 THE WITNESS: Yes.

11 CHAIRPERSON WONG: Please state your name
12 and address.

13 THE WITNESS: Liko Wallace. P. O. Box 935,
14 Kaunakakai, Hawai'i 96748.

15 CHAIRPERSON WONG: Thank you, please
16 proceed.

17 LIKO WALLACE

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

20 DIRECT EXAMINATION

21 THE WITNESS: As I indicated, my name is
22 Liko Wallace, born and raised here on Molokai, and I
23 raise my children here.

24 I am homesteader. My homestead is less
25 than a mile from the property. And what I wanted to

1 add to that, I understand there is two different
2 types of economy here as far as agriculture. We have
3 subsistence and we have cash economy. And I
4 understand that in the cash economy we do bring in
5 jobs, but there are some residues that the rest of us
6 will have to do to bring our lands back to grow foods
7 to eat, because the land has been diminished for
8 years of abuse.

9 We're still digging up black paper for
10 years. It's just everywhere. And the nutrients is
11 gone from the land.

12 So to just start off fresh with subsistence
13 economy, and to be able to grow stuff to sell, or to
14 do as -- to trade, because not everything is about
15 cash. You can trade with your neighbors, you know,
16 what you grow, what they grow.

17 And part of the cash economy has caused our
18 soil to be diminished to the point of us being able
19 to have to take care of our land and bring it back to
20 a place where it can actually -- you can actually
21 grow food on it. Because it's so hard, and it's clay
22 and it's terrible right now.

23 Our subsistence economy helps support those
24 that are unemployed survive. This type of chemical
25 agriculture has an adverse impact on our subsistence

1 economy, which is what I had just discussed.

2 The enrichment of jobs should never
3 outweigh the protection of our environment, and our
4 ability to subsist.

5 So I appreciate you guys being here, but as
6 Justin had mentioned earlier, at 1:30 in the
7 afternoon it's difficult for most of us come. I'm a
8 substitute teacher. I just got off from work and
9 just also found out that you guys are here.

10 And this Commission is very important to
11 us. And we need to be heard, because we would like
12 for your guys' decision to be our decision, and to,
13 you know, be in favor of the community in general.

14 CHAIRPERSON WONG: Thank you.

15 MS. LIM: No questions.

16 MS. APUNA: No questions.

17 MR. SPENCE: No questions.

18 CHAIRPERSON WONG: Commissioners, any
19 questions? No one else? This concludes public
20 testimony.

21 THE WITNESS: Can I wrap up?

22 CHAIRPERSON WONG: Can we get back to you
23 because I want to take a recess.

24 (Recess was taken.)

25 -o0o-

LORI BUCHANAN

Was recalled as a public witness, having been previously sworn to tell the truth, was examined and testified as follows:

DIRECT EXAMINATION CONTINUED

THE WITNESS: Lori Buchanan wrapping up from earlier testimony.

For the record, if there is not conditions that the Applicant is agreeable to from testimony that you heard, then I would like to state my intent to intervene into a contested case hearing.

My earliest did say in support with conditions. So if there is no conditions that is acceptable to this community, then I wanted to state that, for the record, before any decision-making was made.

CHAIRPERSON WONG: Thank you.

Commissioner Cabral, do you want to speak?

VICE CHAIR CABRAL: I do have some questions that I need to consult with the Board's attorney on issues pertaining to our decision-making, powers, duties, privileges, immunities and liabilities, so I would like to move into executive session.

COMMISSIONER OHIGASHI: Second.

1 CHAIRPERSON WONG: It's been moved and
2 seconded to go into executive session. Please clear
3 the room.

4 Sorry, folks. All in favor say "aye".
5 Opposed? None.

6 Please clear the room.

7 (Executive session.)

8 CHAIRPERSON WONG: Mr. Ritte. Is there a
9 Miss Buchanan here? Come to the witness stand,
10 please.

11 Mr. Ritte, can you please come to the
12 witness stand?

13 Mr. Ritte, did you request for a contested
14 case hearing, yes or no?

15 MR. RITTE: Yes, on conditions, same
16 conditions that Ms. Buchanan --

17 CHAIRPERSON WONG: So you're requesting a
18 contested case hearing?

19 MR. RITTE: It depends on what?

20 CHAIRPERSON WONG: We need a yes or no.

21 MR. RITTE: I cannot answer that question
22 because it's dependent upon what you guys going to
23 do.

24 COMMISSIONER CHANG: Walter, if I may.

25 I think what -- you know, the struggle is

1 looking with the existing Hawai'i Supreme cases. For
2 us to make conditions, then the Commission would have
3 to make a decision. And if we make a decision, then
4 based upon the recent cases, when there's a request
5 for contested case hearing, we have procedurally --
6 there's a defect.

7 So essentially what we need to have
8 confirmed, because both you and Lori have asked to
9 intervene, and we also understand you said if there's
10 conditions you don't agree with.

11 But I guess for us as a Commission, once a
12 request for contested case hearing comes in, we
13 really have to stop the proceedings, and then move
14 into the contested case hearing, like what some of
15 the other projects have been required do.

16 If we were to do what you're asking is to
17 approve it with conditions, then it's too late,
18 because by that time, as the Supreme Court says, once
19 you've made a decision, and there's a request for
20 contested case hearing, you have violated their
21 rights.

22 So for us, we need to be very clear. If
23 you're requesting a contested case hearing, then
24 we're going to stop the proceeding and permit the
25 procedural compliance, filing the Petition for

1 contested case hearing, permitting the Petitioners to
2 respond.

3 But if you're saying, well, if you're going
4 to approve it, we want to see what the conditions
5 are, then that's really not a contested case hearing.

6 You can make comments on the conditions,
7 but it would be too late to ask for contested case
8 hearing.

9 So we need to make sure from you, because
10 we want to be very clear that we are not in any way
11 violating any potential rights that you may have.

12 MR. RITTE: There's two people requested.

13 CHAIRPERSON WONG: What we heard was both
14 you and Lori Buchanan.

15 MR. RITTE: So Lori is not here. So even
16 if I said something --

17 COMMISSIONER CHANG: Once we proceed,
18 because in someway if you are not here during our
19 proceedings --

20 MR. RITTE: Too bad.

21 COMMISSIONER CHANG: I won't say too bad,
22 but we need to proceed one way or the other, right?
23 You understand?

24 THE WITNESS: So there is a governmental
25 way of doing things, and there's a community way of

1 doing things. And right now we clashing in what we
2 want to do.

3 I don't to have a contested case hearing if
4 my concerns are met. And then -- yeah, so we're kind
5 of stuck with this one.

6 COMMISSIONER CHANG: And that's how we are
7 feeling too. And we haven't heard their case yet.
8 We haven't heard what the Petitioner may be willing
9 to do. Totally outside of these proceedings. Some
10 of things that you guys have asked for, they may be
11 willing to do.

12 We have not heard them put on their case or
13 the Office of Planning or the county to respond to
14 their Petition.

15 Because right now before us the proceedings
16 under the statute says we can either grant Petition,
17 we can deny the Petition, we can set it for a
18 hearing. And we have got 90 days. If we don't take
19 an action within 90 days, arguably they may be
20 entitled to their relief. They may be entitled to
21 their Petition, the granting of the Petition by
22 default entitlement.

23 So you have -- now, it's before you. If
24 you would like to hear what their presentation is,
25 what they may be willing to do, versus --

1 MR. RITTE: That would be -- will force me
2 into a position where I don't know what there willing
3 to do. I don't know what you're willing to do. So
4 if you're going to intervene, that's a huge
5 commitment.

6 COMMISSIONER CHANG: You're right.

7 MR. RITTE: So I don't want to take this
8 thing lightly. But the issues are pretty dire, and
9 the conditions that we mentioned.

10 COMMISSIONER CHANG: And we've
11 appreciated -- that's why it took us -- this was --
12 the request that came in, we took that very
13 seriously.

14 We want to be very clear. This is a
15 Petition to designate these lands into important ag
16 lands. It is not to change the use out of ag. So
17 that's what is before us.

18 But we want to make sure that we're --
19 procedurally, we want to make sure we're very clear.

20 MR. RITTE: So it would be useless for me
21 to have a contested case hearing if I don't know what
22 you guys are able to do. So I'm operating in the
23 dark here.

24 What you're saying is that you can only do
25 so many things, because of what is being brought

1 before you. And the community wants to expand this
2 thing to include the safety of them in the future,
3 all these things that they want to do. And we don't
4 know whether you have the powers to grant our
5 request.

6 So I'm sitting here going, if you're not
7 going to tell me what you can and cannot do, then I'm
8 going to make a decision that is based nothing.

9 You know, I'm putting myself out there
10 based on I don't know what -- I mean, even if I win
11 the contested case hearing, and the law says you guys
12 cannot do it anyway. So I've wasted all my time and
13 energy and money.

14 So you guys are putting the community in a
15 really sticky position there.

16 VICE CHAIR SCHEUER: Mr. Chair.

17 So, sorry, Walter, I will just say I
18 slightly react to we're putting you, the community in
19 a position. We are responding to a Petitioner, a
20 Petition from a private landowner that they are
21 entitled to file with us.

22 I want to make it clear, and hopefully to
23 clarify some things that I heard during the process.

24 Just in case people don't know, we are
25 volunteers. We are not getting paid to be here, in

1 fact, we are not getting paid for our jobs. We are
2 taking vacation time or other sacrifices to serve
3 what we are hoping is useful to the people of
4 Hawai'i.

5 We're not sneaky in the sense that if you
6 actually want to find out how much money I make, and
7 where I make it from, you can find that on-line,
8 because I actually have to declare that. It's
9 accessible on your smart phone.

10 And also, just clearly what's in front of
11 us is this IAL process does not -- if we granted
12 their Petition, they don't get do extra agriculture
13 or anything new. If we deny their Petition, they
14 don't get to do anything less than they are already
15 doing.

16 It doesn't actually change their
17 operations, per se. They get certain benefits that
18 are enumerated under the law, but they don't get to
19 grow different crops or do different practices or
20 anything by this action by the Commission.

21 I fully appreciate that there is all sort
22 of different government agencies with different
23 responsibilities. We are constrained by the statutes
24 that we're charged with enabling.

25 MR. RITTE: So do I play my violin or what?

1 What do i do?

2 I mean this is a hard one. I mean, working
3 with Monsanto is like working with some chemical
4 company from Timbuktu to that doesn't really care or
5 get to what this community's concerns are. And we
6 have been struggling with this for years and years
7 and years.

8 So -- and we've been through a lot as a
9 community, split families, the whole works on this
10 issue. So this is a pretty serious matter.

11 COMMISSIONER CHANG: I want to just add,
12 Walter. We're really not here to question what
13 they're specific activity. It is ag. I know that
14 the community has issues about what they're doing,
15 and that may be a totally separate jurisdiction.

16 THE WITNESS: This is impacting our lives.
17 And our future generations. So this is something
18 that we have never been able to get across to the
19 government. The only people I think that can somehow
20 make these guys do the right thing, and whether or
21 not they're going do it on their own is what you're
22 asking me do right now is to trust that these guys
23 going to do what we're all talking about, and I'm
24 pretty hesitant to do that.

25 COMMISSIONER CHANG: And we're not asking

1 you -- what we're asking is, we have limited
2 authority we cannot go and tell Monsanto to do more
3 than what is the Petition before us.

4 You may have other avenues upon which to
5 address some of your other concerns, whether they're
6 Department of Health, whether they're other kinds --
7 but we're not here -- our only issue before us is the
8 Petition that's been filed to designate these lands
9 into IAL, which gives these lands greater protection.

10 Whether they are seed today or tomorrow
11 they grow something else is grown on it, it is an
12 important ag land designation. Probably one of the
13 highest designations you can get. But we're not here
14 to revisit what they can grow on the land.

15 MR. RITTE: So you don't know your powers,
16 so having an intervention would be, in the end, we're
17 not sure what you can and cannot do. So that puts me
18 in a really bad position.

19 Whatever I've been telling you, have been
20 telling Monsanto for years and years, and they have
21 never reacted. No windbreaks, no this, no that.
22 Whether Monsanto wants to work with this community is
23 a huge question.

24 So at this point, I guess, you know,
25 dealing with the government, the same response from

1 all of the agencies, so we're kind of stuck.

2 So I cannot see wasting all my time and
3 money and energy if you don't have that power, which
4 I'm beginning to get that you don't have that power.

5 So I'll just be satisfied with what we have
6 on the record. And we can use that record in future
7 times that we got to deal with Monsanto, and maybe
8 there is some heart in Monsanto, who knows. We will
9 see.

10 So I'll withdraw my intent for intervention
11 and wait for the next battle.

12 CHAIRPERSON WONG: Thank you.

13 Can you identify yourself, please?

14 MS. SWINGLE: My names Artice Swingle. And
15 my testimony, as well as in Lori Buchanan's we said
16 that we were in favor of the action except if these
17 conditions -- and hers were very specifically written
18 out.

19 In my oral testimony to you, I said I want
20 to have committees or leadership here. Now, I would
21 contest it also if we were not going to move towards
22 some direction where there would be community
23 involvement.

24 I'm not contesting whether this is good or
25 bad, nothing about Monsanto. I'm just saying the

1 process.

2 So what I would like to know is would the
3 90 days give us an opportunity for process or not?

4 COMMISSIONER CHANG: No.

5 MS. SWINGLE: No opportunity for process?

6 COMMISSIONER CHANG: And you're asking for
7 process before the Land Use Commission? What kind of
8 process?

9 THE WITNESS: The conditions that she --
10 you have her written testimony.

11 COMMISSIONER CHANG: Yes, we do.

12 THE WITNESS: And you have the conditions
13 written out that she wrote down.

14 COMMISSIONER CHANG: Yes.

15 THE WITNESS: And under that she said, if
16 these conditions cannot be met, then I will contest.

17 So at a minimum, I think you owe it to Lori
18 to contact her. She had another commitment and had
19 to go.

20 COMMISSIONER CHANG: And I appreciate that,
21 unfortunately, we are in the proceeding right now,
22 and she's not here.

23 THE WITNESS: I understand that.

24 COMMISSIONER CHANG: We did get her on the
25 record, what she's asked for, but we went into

1 executive session and now we're out.

2 So the proceedings are ongoing, and I'm
3 sorry that I she's not here, but we need to proceed
4 one way or the other.

5 THE WITNESS: Well, okay.

6 You're going to continue the hearing and
7 action tomorrow morning?

8 CHAIRPERSON WONG: Commissioner Okuda.

9 COMMISSIONER OKUDA: Mr. Chair, if I can
10 just add something for the record, just so that we're
11 really clear.

12 We cannot give anyone legal advice about
13 what anyone's rights are, what anyone's remedies are.
14 And so everyone, including members of the Commission,
15 many times have to do their best judgment or get
16 their own advice as far as what the law empowers the
17 Commission to do, and what the law doesn't empower
18 the Commission to do.

19 What we are trying to ascertain or
20 determine here is whether or not anyone has
21 specifically and clearly told us, without any
22 ambiguity, that they want a contested case. Because
23 there are certain obligations that may attach
24 procedurally if that request has been made.

25 And one of the things I don't believe we

1 have at this point in time, and anyone in this room
2 can correct me if I'm misunderstanding this. I don't
3 believe anyone has clearly unequivocally stated that
4 they want a contested case.

5 THE WITNESS: See, I felt that in her
6 written statement, which I read, that she did in fact
7 at the end of that first page make that statement.
8 And that she offered to be a person who would
9 intervene.

10 COMMISSIONER CHANG: And you're right, and
11 that's the reason we asked both Walter Ritte and Lori
12 Buchanan, because you're right, it was unclear. She
13 had asked for contested case if certain conditions
14 weren't met.

15 And what we did clarify with Walter was we
16 cannot take an action and make conditions if there is
17 a request for contested case hearings.

18 So what Walter did was said let's continue
19 to proceed forward. He's going to withdraw his
20 request. I'm sorry Lori is not here. So I guess --
21 are you asking for contested case hearing?

22 THE WITNESS: No, I could not intervene.

23 COMMISSIONER CHANG: Thank you.

24 VICE CHAIR CABRAL: I would like to have it
25 read out loud for everyone what our three options

1 are. What the law says is our options as Land Use
2 Commission. It basically spells out three things
3 that we can do after we've heard everything that we
4 can hear. And whatever we can hear, we had to stop
5 hearing things, and that's part of the issue.

6 But right now I think it should be shared
7 with everybody, because we're being told all these
8 limitations, and I think it would help understand
9 what our conditions are.

10 CHAIRPERSON WONG: I'll ask Attorney
11 General to state those three points.

12 MS. ERICKSON: I'm reading from Hawai'i
13 Administrative Rules Section 15-15-100.

14 The Commission, within 90 days after
15 submission of a Petition for Declaratory Order shall:

16 One, deny the Petition -- I'm going to --
17 I'll read the whole thing.

18 Where, A, the question is speculative or
19 purely hypothetical and does not involve an existing
20 situation, or one which reasonably be expected to
21 occur in the near future;

22 Or, B, the Petitioner's interest is not of
23 the type that confers sufficient standing to maintain
24 an action in a court of law;

25 Or, C, the issuance of the Declaratory

1 Order may adversely affect the interest of the State,
2 the Commission or any of the officers or employees in
3 any litigation which is pending, or may be reasonably
4 be expected to arise;

5 Or, D, the Petitioner requests the ruling
6 on a statutory provision not administered by the
7 Commission, or the matter is not otherwise within the
8 jurisdiction of the Commission.

9 So again, to repeat, the first option for
10 the Commission is to deny the Petition when one of
11 those four items occur.

12 The second potential action of the
13 Commission is issue a Declaratory Order on the
14 matters contained in the Petition.

15 And the third option, is set the Petition
16 for hearing before the Commission or hearings officer
17 in accordance with this subchapter.

18 CHAIRPERSON WONG: Thank you. So if
19 there's no other request for intervention, and I see
20 none, we're going to proceed with the Declaratory
21 Order request Petition.

22 Ms. Lim, can you please proceed with your
23 presentation?

24 MS. LIM: Thank you, Chair and
25 Commissioners. Sounds like that was a fruitful and

1 detailed discussion. We are prepared now to put on
2 our case.

3 We have a few witnesses with us today. I
4 want to take a minute or so to talk about the
5 discussions that I had with OP, and to a lesser
6 extent with the County, about what we have on the
7 record.

8 You will absolutely hear from our first
9 witness Dan Clegg who is the Monsanto Hawai'i
10 Business Operation Lead.

11 Our second witness Tom Schnell, PBR
12 Hawai'i. PBR Hawai'i is the company that prepared
13 the agricultural land assessment. That was Exhibit 4
14 to our Petition. And they can walk through the
15 PowerPoint presentation.

16 The filing that we made on Monday also
17 included certain written direct testimony. The
18 written direct testimony is of Mr. Josh Hunziker, who
19 is the Molokai Farm Manager. You met him today
20 talking about the windbreak.

21 And then there's also written direct
22 testimony by Mr. Ramsey Taum. He's the person from
23 -- who did the cultural consultation. That's the
24 letter report that's Exhibit 5 to the Petition. And
25 like I said, he's also got written direct testimony

1 on the record.

2 Mr. Taum could not be here today,
3 absolutely couldn't happen. And because of that, we
4 asked him to write written direct testimony, because
5 the report says a lot, but we imagine there's also
6 additional questions that the Commissioners might
7 have or other parties might have.

8 So Mr. Hunziker is here. I think we will
9 most likely, depending on the level of questioning,
10 is there's still things that the Commission needs to
11 hear about more after we present with Mr. Clegg and
12 Mr. Schnell, we can certainly bring Josh up.

13 And although Mr. Taum can't be here today,
14 he can come tomorrow. So if there are questions and
15 the Commission or OP or County are not satisfied, if
16 they want to explore further despite what we've
17 already got in the record, then we can bring him
18 tomorrow morning. So that's our layout.

19 Again, we're definitely going to bring up
20 right now Mr. Dan Clegg.

21 VICE CHAIR SCHEUER: Mr. Chair, what is
22 your sense of how long we're planning to proceed
23 today? What is the availability of the room?

24 MS. LIM: I don't know how long we have the
25 room.

1 VICE CHAIR SCHEUER: Mr. Chair, we're going
2 to lose some members who have to travel this evening.

3 CHAIRPERSON WONG: Just for your
4 information we have until 5:45. Then some of the
5 Commissioners have to catch a flight out and come
6 back tomorrow morning.

7 VICE CHAIR SCHEUER: In that regard, and in
8 regard to what the Petitioner said, I just like to
9 make sure we have a few minutes to discuss issues
10 around the cultural report so that it can be
11 determined whether or not it makes sense to have Mr.
12 Taum come over before we adjourn for the evening.

13 CHAIRPERSON WONG: Thank you.

14 MS. LIM: With that, I would like to
15 introduce Mr. Dan Clegg, who many of you met last
16 week, Monsanto Hawai'i Business Lead.

17 CHAIRPERSON WONG: May I swear you in,
18 please?

19 Do you swear or affirm that the testimony
20 you're about to give is the truth?

21 THE WITNESS: Yes.

22 CHAIRPERSON WONG: Please state your name
23 and address for the record.

24 THE WITNESS: My name Dan Clegg. My
25 business address is 2111 Pi'ilani Highway, Kihei,

1 Hawai'i 96753.

2 CHAIRPERSON WONG: Thank you. Please
3 proceed.

4 DAN CLEGG

5 Was called as a witness by and on behalf of the
6 Petitioner, was sworn to tell the truth, was examined
7 and testified as follows:

8 DIRECT EXAMINATION

9 THE WITNESS: What we will do is run
10 through a couple of highlights in our slides.

11 BY MS. LIM:

12 Q Before we do, Dan, in the interest of
13 efficiency, I do want to call attention to the fact
14 that we filed Petitioner's Exhibit 11, your resume.

15 Do you acknowledge that is your resume?

16 A Yes.

17 MS. LIM: Are there any questions about Mr.
18 Clegg's background to any of the parties?

19 A Thank you.

20 So Monsanto Company is a 100 percent
21 agricultural company. And so my experience with the
22 organization has been, as you see in my resume, I've
23 been farming and raising seed in Hawai'i for
24 20 years.

25 The key component that I always try to make

1 sure that everybody understands, when we do have
2 conversations about our what our organization does,
3 what Monsanto really is, we create products for
4 farmers, customers -- the customers from Monsanto are
5 really farmers. That's who we serve.

6 The primary focus that you guys certainly
7 experienced today on the farm tour -- which thank you
8 very much for taking the time to look at our farm --
9 really is about producing the best, highest quality
10 seed for our farmers that can assist our farmer
11 customers really actually in having the highest
12 possible yield, and doing the best job of farming
13 they can do.

14 One of the lesser known aspects of our
15 business in Hawai'i really is the vegetable seed
16 business. And I know there has been some
17 conversation about that, but one of the things we're
18 proud of is that many of the vegetables that you see
19 in the store, some of the vegetable seeds that you
20 see in the little packets that gardeners buy, some of
21 those seeds are actually some of this brand seed.

22 So at the end of the day, people that are
23 gardening or even raising vegetables here in Hawai'i
24 are using Monsanto seeds to run their farms.

25 But the focus on the property here on

1 Molokai really actually is the row crops. So when we
2 talk about row crops, we are talking corn, soybean,
3 cotton, sorghum, wheat. These are typically what,
4 from just the farming vernacular, it's typically what
5 people consider our row crops. So these are planted
6 in rows.

7 What we grow on our are farm for our
8 farmers is primarily corn, seed corn and soybeans.

9 Q And there other people using that land as
10 well, right?

11 A So that is one of the things that we work
12 hard to do as a business. With raising seed for over
13 20 years, and the one thing that we always committed
14 to is that if we were farming new land or we were
15 able to lease more land, or even in if this case we
16 were able to buy land, there were a lot of times
17 farmers that were already on the property, maybe they
18 were a tenant to somebody prior to us.

19 So the coffee farm is a perfect example of
20 how you can really partner up with somebody that is
21 raising a different crop. And that partnership
22 actually helps both organizations be more successful.

23 I've used a coffee operation. And then we
24 heard from Mr. DeCoursey raising sunn hemp. So
25 farming is about sharing. And farming is about

1 working together on these resources. And that's
2 certainly something that we do. And I think the farm
3 you saw today, is a good demonstration of what that
4 can look like.

5 Q You know, something that we spent some time
6 on the site visit, but I know we don't have a slide
7 to describe it, was that native plant habitat and the
8 pollinator habitat.

9 Can you just quickly touch on that. It's
10 described in the Petition starting around page six.

11 A Right.

12 The idea of -- and I think you saw the
13 sign -- the idea of having a pollinator habitat is to
14 do exactly that, is to promote this natural
15 proliferation of pollinators. And that happens all
16 over the farm by itself. The pollinator habitats are
17 there, but part of the idea of what you saw was to
18 actually set aside and do this almost intensive -- I
19 think there was even a question around water. Why is
20 one greener?

21 I think the idea around that is to have
22 something that you can say look, here's all the
23 plants that are endemic that are on the property.
24 Here's an example. It's easy to get to, and it's a
25 great educational tool.

1 But those pollinator habitats, that's not
2 the only place those are. Literally pollinator
3 habitats are all over the farm, and that's where you
4 start to comingle all of these different uses on the
5 property, and that's what makes this farm special.

6 Q Did Monsanto -- was Monsanto awarded any
7 kind of certification from the Wildlife Habitat
8 Council?

9 A We were the first one to receive a Wildlife
10 Habitat Certification. It's a third-party
11 certification, so it's not a self-awarded thing. You
12 literally have a biologist and entomologist and
13 people that are part of that organization come and
14 ensure that what you say you're doing, you're doing.

15 Q Let's maybe move on to the next subject, if
16 we could. What I want to mention to you, and the
17 Commission no doubt knows this, but under HRS 205-41,
18 the state has a substantial interest in the health
19 and sustainability of agriculture as an industry.

20 And what I like you to talk about briefly
21 now is what is the seed industry's contribution to
22 agriculture in the State of Hawai'i?

23 A So we're talking on this slide, certainly,
24 we're talking about economics. But you can -- there
25 are several things that go into that.

1 So I want -- you do want to point out that
2 the seed industry is -- and I'm looking here, going
3 as far back as 2006 -- you can go back to 1969 and
4 get a hard number. But as far as back as this chart
5 goes, you can see the seed industry is valuable.

6 These are really a function of wages.
7 These are a function of taxes. These are a function
8 of buying input. These are dollars spent here in
9 Hawai'i, here on Molokai. Some of these dollars are
10 spent right here on Molokai in supporting the local
11 economy and agriculture.

12 Q Why don't we go to the next slide. On this
13 next slide what we're going to ask you to address is
14 the statutory requirement under 205-42, that one of
15 the definitions of IAL is lands that contribute to
16 state's economic basis to produce agricultural
17 commodities for export or for local consumption.

18 So with that, if you can please identify a
19 few interesting details about this chart?

20 A So I'll point out -- I'm using a laser, a
21 pointer here -- but seed crops are identified as
22 number one. Now, this is a 2015 number, but it's
23 pulled from USDA-NASS numbers from 2017.

24 They do regular censuses and gather
25 information. So this is the recent chart.

1 But as you work your way down the list, I
2 mean, this is the top 20. What I point out there is
3 a wide variety of crops. When we talk about
4 agriculture, agriculture is a lot of stuff. It can
5 also include things such as landscape plant material.

6 There's even a category for other
7 agriculture, aquaculture, algae, honey, livestock.
8 But it's been in my tenure that I've seen, as we've
9 seen agriculture change, as we've seen the crops that
10 are economically viable in the State of Hawai'i, we
11 have seen that change.

12 You know, at one point in time, sugar was
13 on top. And that's not what we have today. Seed
14 crops are the top commodity. That means that's the
15 top economic contributor to agriculture in the State
16 of Hawai'i.

17 Q So that's the big picture, seed industry,
18 big picture agriculture.

19 If you would turning to the next slide.
20 We're still a little bit on the big picture in terms
21 of the multiplier affect and the statutory
22 requirement under 205-42(b), but I also want to
23 discuss employment figure for the Molokai farm.
24 First the multiplier.

25 A The multiplier, so are starting with -- if

1 you look at the number 323 million and really compare
2 that to the chart previously that was.

3 Q The 141.

4 A Yeah, 140.

5 So the multiplier effect, is in fact,
6 related to employment. It's related to those jobs.

7 So again, it's the transfer of those
8 dollars from the agricultural business, spent the
9 dollars. Those dollars are received by vendors,
10 they're received by employees in the form of payroll,
11 taxes. Those dollars are then spent again.

12 So there's this larger picture. And I
13 think you heard some testimony earlier that really
14 did a good job of explaining that it's not just that
15 one piece. Not just that \$1 that the seed business
16 will spend in Hawai'i. That starts to impact lots of
17 different areas economically.

18 And that's where the 323 million number
19 comes from, and that is sourced from an economic
20 report that Mr. Paul Brubaker was commissioned to do
21 for the HCIA, Hawai'i Crop Improvement Association.

22 So we get back to ag workers in Hawai'i.
23 Finishing the point, 20% of the agricultural
24 employees in the State of Hawai'i work for the seed,
25 raise seed. And on Molokai there's 66 of them.

1 Q 66 who are employed by Monsanto?

2 A Employed by Monsanto, yes. These are
3 full-time employed people that have good benefits,
4 good pay, consistent work. It's important for
5 Molokai.

6 Q So in terms of meeting the statutory
7 objective of supporting diversity of agricultural
8 activities and opportunities that expand agricultural
9 income and job opportunities, what is your position
10 on this 1,084 acres?

11 A I believe it completely meets that
12 criteria.

13 Q Thank you.

14 I'm going to switch gears entirely now, and
15 want to ask you, have you read the Petition?

16 A Yes, I have.

17 Q And all the exhibits?

18 A Yes, I have.

19 Q You know, in the Petition on -- toward the
20 end of the Petition -- let me get exact page number.
21 But in the Petition we made a statement that the
22 Petitioner is voluntarily waiving any rights to seek
23 a reclassification of any land in conjunction with
24 this request for IAL.

25 Would you comment on that, please?

1 A I think that was stated perfectly. We are.
2 We're waiving any rights to reclassify land.

3 Q So you're not seeking reclassification in
4 connection with this?

5 A That's correct.

6 Q You're not claiming any credits with the
7 reclassification?

8 A That's correct. In fact, there are no
9 incentives today for the submittal of this IAL even
10 outside of this component that are funded. Thank
11 you.

12 Q Have you read the comments that have come
13 in from the commenting agency, particularly County of
14 Maui, Department of Agriculture and the Office of
15 State Planning?

16 A Yes, I have.

17 Q And do you have any commentary on those
18 letters?

19 A So those letters made reference to an
20 area --

21 Q You're referring to the Office of Planning
22 letter making reference to an area Pu'u Uala area?

23 A Yes. And then if I -- without looking at
24 these again -- I believe that we had a lot of support
25 for the Petition. But there was a reference to

1 actually removing, I think it was 58 acres, from the
2 Petition area, because it didn't qualify as Important
3 Agricultural Lands.

4 Q Because it's --

5 A 20 percent slope. It's not irrigated. It
6 hasn't been used in agricultural for a very long
7 time. And certainly we are not using it for
8 agriculture.

9 I think the idea, when we started was, you
10 have this critical mass, that's part of IAL is to
11 create this critical mass, sustained agriculture, an
12 area for which agriculture can thrive.

13 That was built into the -- you know, you
14 draw a circle around the property it sort of
15 naturally fits in because it's right in the center.
16 But in further review, and other agencies's review, I
17 think it was good point-out that there's this
18 58 acres that they really don't need. Just for lack
19 of a better word, it's not good farm land. And they
20 probably shouldn't be included in the Petition.

21 Q And so today your attorney submitted a
22 letter to the Commission, and that letter stated what
23 in terms of Monsanto's position on the 58 acres?

24 A I believe our position was that we -- I
25 think the Commission can decide whether that stays in

1 or stays out. We don't want to run -- we're
2 certainly open to the idea of that being pulled from
3 the Petition.

4 Q Whether it's in or out?

5 A Whether it's in or out, no objection, no.

6 Q Let's go through the slide, so we can make
7 sure -- although we were all on the site visit --
8 let's go to the slide and make sure that we are all
9 talking about the same area.

10 So that's slide number 11.

11 A We're talking about -- that's what
12 everybody has been talking about, the pu'u. So that
13 right there is the exact spot that we're talking
14 about. And today during the farm tour, I think we
15 stopped somewhere around here (indicating) when we
16 came around.

17 Q We received several letters on the
18 Petition, or the Commission received several letters
19 on the Petition.

20 Do you have any comments on those letters?

21 A In general. It's a lot -- there's an
22 amazing amount of support. So if I look at the
23 organizations, and I think about who stepped forward
24 and who took a hard look at the Petition, actually
25 understand the purpose of IAL, and took this serious

1 in the matter of saying, look, our organization can
2 support this for the good of agriculture.

3 I mean, you have the Maui County Farm
4 Bureau, Coffees of Hawai'i, Hikiola Cooperative,
5 Molokai Land Trust, Molokai Farm Bureau, Lawrence
6 Lasua, Luigi Manera, Stacy Crivello, Cheryl Corbiell,
7 and you have people providing verbal testimony today.

8 It's good for us. It's something that I
9 think we can be proud of moving forward that the
10 agriculture community is supportive of the commitment
11 that Monsanto was making to this land.

12 Q But is the commitment solely Monsanto, or
13 does this commitment to IAL run with the land?

14 A It runs with the land.

15 Q So whether Monsanto is still here or not,
16 the land still has this extra layer of protection?

17 A It's the long view. You can talk about
18 conservation. You can talk about stewardship, but at
19 some point you have write it down. So this is the
20 long game that lives beyond all of us.

21 Q You know, I know that you're not the farm
22 manager, but perhaps you could speak a little bit
23 about some of the conservation measures that are
24 employed on the property, and also the process that
25 you go through with the NRCS?

1 A Right. So the Soil Conservation Service,
2 the National Conservation Resources Service, that's a
3 federally run organization that has standards and
4 protocols for how you manage land. They take
5 everything into consideration from soil type, slope,
6 the amount of rainfall. The type of farming you're
7 doing, whether it's row crop or hill cropping, or you
8 know, you saw the list of the different kinds of
9 agricultural products just in the top 20.

10 So you sit down. And what you do is you
11 take a look at the farm just from the land itself,
12 and you start to determine how do you protect the
13 soil? How do you protect other variables of the farm
14 around it? And what you end up with -- if you think
15 about the farm tour today -- those bermes we were
16 talking about was the grassy areas. The whole
17 purpose of those is to actually keep and preserve
18 soil.

19 So that's why we called the Soil
20 Conservation Service just to sort of offhandedly,
21 because that is the focus. And everything starts
22 with the soil.

23 That is reviewed by the board. And then
24 obviously conservation specialists go through that
25 process. They use these protocols. They use

1 scientific standards to determine whether you've
2 written a good plan. They'll help you write a good
3 plan, which we have certainly worked with them here
4 on Molokai. And then they approved the plan.

5 The idea though is to execute on the plan
6 that's approved, and you're constantly improving on
7 that plan. As you're improving on that plan, you
8 continue to go back and work with NRCS ensuring that
9 you're still in compliance with the plan that they
10 helped you create. So there is oversight.

11 Q So it's an on-going process?

12 A It can be. If you continue doing the same
13 exact thing, I guess you wouldn't have to change
14 anything. But I think agriculture is so dynamic, and
15 there's always something to improve on.

16 So the nice part is that you can go sit
17 down with NRCS and the soil and water conservation
18 district, and say I have an idea of how to make it
19 this better. And they will actually help you with
20 these protocols, and say, yeah, that's an improvement
21 in your plan, let's do that. And then we go do it.

22 Q Are you aware that the State of Hawai'i and
23 the Constitution of the State of Hawai'i sets forth
24 certain rights to the Native Hawaiians who engage in
25 traditional customary practices?

1 A Yes, I am. I believe that's Article XII,
2 chapter 7.

3 Q And do you have any concerns with that? In
4 other words, let me -- strike that question.

5 Does Monsanto have any -- does Monsanto
6 have any intention of not complying with whatever the
7 statutory requirements or constitutional requirements
8 there are under the laws of the State of Hawai'i?

9 A No, no. We follow the rules. That's what
10 we do.

11 Q At this point has anybody approached
12 Monsanto, to your knowledge, to be gaining access to
13 the pu'u area that we were talking about earlier?

14 A Not to my knowledge.

15 Q Why does Monsanto want to get this land
16 designated as IAL?

17 A To make a long-term commitment to
18 agriculture for Molokai. It's a really simple --
19 it's actually a pretty complex process. I think
20 everybody understands that. It takes a lot of work
21 to get to this point. But I think the commitment is
22 to make sure that you're setting the stage for those
23 that are going to come after you, and making sure
24 that that commitment runs long.

25 MS. LIM: I don't have any further

1 questions at this time.

2 CHAIRPERSON WONG: County?

3 MR. SPENCE: Thank you, Mr. Chairman. I
4 don't think I have any questions.

5 CHAIRPERSON WONG: OP?

6 MS. APUNA: Thank you, Chair. I have just
7 a few questions.

8 CROSS-EXAMINATION

9 BY MS. APUNA:

10 Q Thank you for your testimony.

11 Are there regulations for pesticide use on
12 Monsanto land?

13 A They're the same regulations that any other
14 farmer would follow.

15 Q And what about dust control? Does Monsanto
16 practice dust control measures?

17 A You saw today -- I don't know if you were
18 on the tour today -- that's exactly what a soil and
19 water conservation plan is. I mean, that's one of
20 the emphasis is to get plant material and do as much
21 as reasonably possible to maintain soil.

22 Q Do you do like water spraying when you're
23 tilling the soil?

24 A You can try to do that, but there is this
25 balance between water usage and all that. So I mean,

1 farming is hard. And you have to decide where you're
2 going to use resources. And one of the things we
3 have really focused on -- this is I think in one of
4 the exhibits around our farm stewardship practices,
5 it may not articulate it as greatly as it could, but
6 we actually monitor wind speeds, and when we're doing
7 equipment operation, where you're telling and things
8 of that nature, if the wind is going to pick up, or
9 we know there's gong to be an exceptionally dry
10 period of time, we will stop what we are doing.
11 We'll change what we are doing on the fly to match
12 the environment to make sure we are not creating
13 problems.

14 Q As far as access to the pu'u, I believe
15 Vice Chair Scheuer had asked if there is access. And
16 think the response was that the gates are left
17 unlocked.

18 Would that be considered Monsanto's policy
19 as far as access to the pu'u?

20 A You know, I think we have got to figure --
21 I think we have to figure out what that means. And I
22 think when I go back to Mr. Taum's written direct
23 testimony, I think if you go back to Article XII,
24 chapter 7, that has to play a role in defining what
25 access means.

1 And the archaeological literature review
2 that we did has -- it's information that obviously we
3 didn't have until today. So now we're going to try
4 to figure out what that means.

5 Q Thank you.

6 CHAIRPERSON WONG: Commissioners, any
7 questions? Commissioner Scheuer.

8 MS. LIM: May I just ask a point of
9 clarification?

10 Q You mentioned the literature review, but we
11 don't have a literature review. You're referring to
12 Mr. Taum's --

13 A Yeah, that's what I'm referring to.

14 Q So that's, again to be super clear, you're
15 talking about Exhibit 5?

16 A Yep, that's Exhibit 5.

17 CHAIRPERSON WONG: Commissioner Cabral?

18 VICE CHAIR CABRAL: I appreciate OP's
19 comments, and I'm not sure if I'm asking the question
20 of the right person, because I don't know who's
21 coming. But I do want to say that's something that I
22 think has come up now, or if not in the future, but
23 that making access in the event, especially in the
24 event that the pu'u is removed, that there be really
25 clear agreements working with the community to have

1 access into those areas. So I think that that is
2 something that clearly needs to be acknowledged into
3 the future.

4 I do have some questions about the
5 conservation measures, and I had them out on the
6 field, and I have some more.

7 Are you the best person to ask, or is there
8 somebody else?

9 THE WITNESS: Let's see how far we can go.

10 VICE CHAIR CABRAL: Where we stood on visit
11 number 2 -- and I gave my colored map to somebody and
12 they never returned it. Thank you.

13 We were on stop number two. And I
14 specifically asked about some of those questions
15 about the tree planting, because to me, obviously
16 that's a lot of acreage. I mean, you know it's a lot
17 of big area. And I myself have access to acreage,
18 but I live in Hilo, trees grow everywhere. You have
19 to work to not have them there.

20 The question was, are you planting more
21 tree breaks? Because there was a long distance
22 between what appeared to be tree breaks for
23 windbreaks, and I was thinking wind at that time, and
24 that was pointed out that yes, that's an ongoing
25 process.

1 But it did seem like it's a long distance,
2 so I have concerns about that type of conservation
3 measures. And they have been brought up by others
4 today.

5 And then also obviously with the bermes.
6 We may not have seen the entire berme to hold the
7 water, direct the water, because I think it was flat,
8 looked more like a roadway, and then maybe above that
9 was in fact berme for water control.

10 But I do kind of want to know a little bit
11 more about how you determine what to do, and how to
12 do it. And maybe how much money emphasis, percentage
13 of profit you spend towards that kind of conservation
14 measures.

15 THE WITNESS: We'll kind of work it
16 backwards, if that's all right.

17 So the percentage of profit, I don't have
18 that number. But there's 66 people on the site, and
19 there's about five of them spend almost all their
20 time on conservation efforts. And I mean literally
21 that.

22 Now, that means if we pull a crew in, and
23 they're actually doing a big planting or tree
24 planting, then that's even more people. So if
25 somebody could do the math of five into 66 for me

1 real quick.

2 But it's not really common that you're
3 going to find an agricultural business that's going
4 to put full-time people on payroll, and say, go out
5 and do only conservation efforts.

6 At some point there is a cash crop that you
7 have to make money on. I'm just bringing this up as
8 a point as our commitment.

9 What wasn't really apparent. I know there
10 were some questions in the field tour, and I remember
11 this too, when you were asking some questions, there
12 is filter strips in front of those bermes. The
13 bermes are really -- we have all experienced it.
14 Think of the rain that happened today. So if that
15 had happened and it kept coming for two hours, that
16 would have been a real doozy, right?

17 So those bermes stop the water. They slow
18 the water down. Those filter strips in front of them
19 that stay in grass, those filter strips then are
20 designed to hold that water and let that water soak
21 into the soil, whatever water then would reach those
22 bermes.

23 A light rain you never see it. But a big
24 heavy rain like we saw today that rained for two
25 hours is going to be flooding everywhere. So bermes

1 and filter strips are like the tag team, they go
2 together. One without the other isn't as effective.
3 And the NRCS helped us you put that together,
4 including where the water should go, and how it
5 should flow based on X amount of rainfall, what's the
6 capacity of these bermes. And you actually have to
7 maintain them.

8 You can't let them get small. You have to
9 maintain their height. There is a lot of maintenance
10 that goes into it on a regular every year, every year
11 you're constantly maintaining what you've already got
12 in place.

13 I know I missed a question there somewhere.

14 VICE CHAIR CABRAL: No, I think between the
15 answer I got in the field, which not everybody got,
16 and then this answer, because we did not really
17 discuss the bermes there.

18 I guess then the question is, the subject
19 property is uphill, upslope from the highway. And
20 then you also lease land below that. So I don't know
21 if Monsanto has land that goes all the way down to
22 the ocean? No.

23 So you layer it onto somebody else before
24 you get there?

25 THE WITNESS: (Nods head up and down.)

1 CHAIRPERSON WONG: Commissioner Scheuer.

2 VICE CHAIR SCHEUER: Aloha, Mr. Clegg. I
3 have a few questions.

4 And I'll count on your counsel to stop me
5 if I'm asking somebody I'm not supposed to be, or at
6 least to object.

7 Do you have the power to bind Monsanto in
8 this proceeding as to any commitment you made such as
9 the commitment to try and work -- phrased by right
10 now, paraphrased to work on access issues around Pu'u
11 Uala?

12 THE WITNESS: It would depend on how their
13 there documented.

14 VICE CHAIR SCHEUER: Theoretically, you
15 have that --

16 THE WITNESS: Handshake agreements are
17 really is good, they're really easy, anybody can do
18 it, but if we start talking about documentation,
19 easement, and things of that nature, we would have a
20 process that we would have go through. I don't know
21 what those look like.

22 But I certainly need to be careful to say
23 that -- I'm not -- I don't have all the --

24 VICE CHAIR SCHEUER: I'm not trying to trap
25 you.

1 In other proceedings, not saying these
2 proceedings, but in other proceedings Land Use
3 Commission has made conditions, and testifiers, on
4 behalf of Petitioners potential say, yes, I can
5 commit the company to agreeing to condition X. So
6 just asking if you had that kind of authority.

7 THE WITNESS: It depends on how they would
8 followed through. That's the hard point.

9 MS. LIM: And as a point of clarification,
10 Monsanto has authority to file an IAL petition.
11 There's been eight or nine of them. The only
12 conditions ever put on IAL petitions are the waiver
13 of the reclassification, and the requirement to
14 record.

15 So Monsanto clearly has that authority,
16 correct.

17 THE WITNESS: That's right.

18 VICE CHAIR SCHEUER: Does Monsanto intend
19 to seek the tax credit program? Tax credits from the
20 reclassification of these lands?

21 THE WITNESS: We are not seeking any
22 credits for reclassification.

23 VICE CHAIR SCHEUER: Once it's designated,
24 it allows you under state law --

25 THE WITNESS: We're waiving those credits.

1 MS. LIM: So let me -- sorry to make this
2 so interactive.

3 But you're correct, you have stated on the
4 record you are waiving the reclassification credit.

5 What Commissioner Scheuer is asking about
6 is any of the tax benefits. And perhaps -- we didn't
7 discuss this on the record, but I'll state it now.

8 Our understanding, and I believe Department
9 of Agriculture could probably talk about this a
10 little bit more in detail, but those tax credits have
11 expired. The statute did not get extended during
12 this last session.

13 So there incentives in statute, but the
14 actual tool to get tax credit I believe expired just
15 this last tax year. So there's not -- are you
16 waiving the ability to ever claim tax credits should
17 that opportunity ever present itself?

18 THE WITNESS: No, we're not. I'm just
19 looking at the Petition. And if I look at the
20 Petition, this waiver is limited to use of credits
21 for the sole purpose of reclassifying other lands
22 that are not subject of this Petition.

23 VICE CHAIR SCHEUER: I understand what
24 you're counsel is saying.

25 Do you have an answer to the question I

1 asked during the field tour as to, on this day of the
2 Petition area, what percentage of land, or how many
3 acres of land currently have or bear red soil that we
4 saw in certain areas?

5 THE WITNESS: I heard the question, and I
6 knew what you were getting at.

7 VICE CHAIR SCHEUER: Well, that makes one
8 person.

9 THE WITNESS: I was kind of watching this
10 happen and sort of going round and round, right.

11 I think the thing that was not obvious, and
12 we didn't have time on the farm tour, is a majority
13 of those areas, if you saw, had tracks or lines in
14 them. Those fields -- most of those fields have
15 actually been planted with cover crop, so the seeds
16 haven't had a chance to germinate.

17 So there's this -- because of the rotation,
18 the fallow that we do -- I'm going to tell you
19 straight up, I don't have the overall percentage
20 month/year number that you were looking for. But
21 this moment -- any moment in time on just about any
22 farm, if you're farming year-round, there's going to
23 be a period of time where you're going to go from one
24 crop to another crop. And you may plant a cover crop
25 in between or you may not.

1 What we do is we literally go from one
2 crop, we plant a cover crop, and there's that moment
3 in time where the water's on, the seeds in the
4 ground. And I think that's what you saw for the most
5 part today.

6 VICE CHAIR SCHEUER: Thank you.

7 I just want to go -- this is the last thing
8 I'll ask for now. A little bit of comment, and I ask
9 the indulgence of my fellow Commissioners.

10 If I heard you correctly, you said you were
11 okay with excluding Pu'u Uala because -- I heard you
12 say it's not good agricultural land.

13 THE WITNESS: Yes.

14 VICE CHAIR SCHEUER: Just a comment, and I
15 think gets to maybe some of the larger issues which
16 drive controversies over IAL. I mean, it's named Pu'u
17 Uala, because obviously it was great agricultural
18 land, right? But the IAL statute might not be
19 designed or really intended to capture that kind of
20 thing.

21 So in these proceedings, part of me wants
22 to say of course that's great agricultural land.
23 It's named Pu'u Uala. But it's also not necessarily
24 getting to the kind of IAL that the legislature had
25 contemplated.

1 Thank you I will be quiet for now.

2 CHAIRPERSON WONG: Commissioner Chang.

3 COMMISSIONER CHANG: Thank you, Dan, I
4 really appreciate your testimony, and taking us on
5 the site visit. I'm sure today probably wasn't the
6 best day to take us as you did have a lot of land
7 that wasn't in cultivation, but I appreciate the site
8 visit.

9 And I do want to acknowledge Monsanto's
10 volunteering to put this land into IAL. But I have
11 several questions.

12 Based upon your testimony, one, when you
13 talk about the pollinator, you saw that. It is my
14 understanding that the seeds -- you carefully breed
15 your corn crops.

16 So how do you ensure that these pollinators
17 don't impact your seed crops? Because my
18 understanding with the seed, you want to keep a very
19 hybrid seed, so how do you ensure that the
20 pollinators don't crossbreed with that? Do you
21 understand?

22 THE WITNESS: I do understand your
23 question, and I haven't been asked that for a long
24 time. I appreciate it.

25 I'm not an entomologist. But, you know,

1 seed purity is not -- seed purity is not exactly
2 100 percent.

3 Pollinators are an equally important part
4 of any farming environment. But pollinators are only
5 going to move so far, based on the species, and
6 they're only going to carry so much pollen in
7 general.

8 If you see a field of corn on Molokai, and
9 it's out there planted together to self-pollinate, a
10 majority of that pollen will fall on the intended
11 female part of the plant.

12 So the answer to the question is
13 pollinators move pollen.

14 COMMISSIONER CHANG: The way it was
15 described to us in Kunia, you actually have people
16 who pollinate the corn. I guess the point I'm trying
17 to get across is there was great pride in the fact
18 that you have these habitat pollinators.

19 But yet it is somewhat inconsistent with
20 the method of your crop production where you manually
21 pollinate the corn, right?

22 THE WITNESS: On Molokai we do -- we
23 cross -- we self-pollinate. So if you were to see
24 the crew in the field, this would be the difference
25 between Kunia and Molokai, is that Kunia those brown

1 paper bags you put over the ear and then over the
2 tassel. That's how you would control moving pollen
3 from the male part of the plant to the female part of
4 plant.

5 On Molokai it's actually at a later stage,
6 and these fields are planted. And then they're
7 allowed to you actually shed pollen on themselves,
8 there's no paper bag.

9 COMMISSIONER CHANG: Thank you for
10 clarifying that.

11 I'm trying to confine my questions just to
12 what you're testifying.

13 So that was a little kind of something
14 inconsistent with what we had previously heard. So
15 thank you for clarifying.

16 The other question I have, based on
17 testimony, the statute talks about import, but it
18 also talks about local consumption. That's one of
19 the goals with the statute.

20 But essentially the seed crop, or the
21 products that you're growing on your property here is
22 not for local consumption. Is that correct?

23 THE WITNESS: No, here's -- these are,
24 truly in the definition of the statute, these are
25 truly an export product.

1 COMMISSIONER CHANG: And I'm not making a
2 judgment, because it is consistent with the statute.
3 The statute does talk about import, but also talks
4 about local consumption. Because the State of
5 Hawai'i is looking at trying to be much more
6 self-sufficient rather than importing in -- or
7 exporting in a lot of food.

8 So I understand that the statute does say
9 import, but the products that you are growing is not
10 for local consumption?

11 THE WITNESS: In the context of are they
12 State of Hawai'i, yeah.

13 COMMISSIONER CHANG: You also made a
14 comment that there are no incentives today to do the
15 IAL designation. Do you remember saying something --

16 THE WITNESS: Financial, to my knowledge.
17 There's huge incentives to do IAL from a
18 stewardship standpoint, but from a financial
19 standpoint, especially with the waiver of
20 reclassification credits, that's not what our goal
21 is.

22 COMMISSIONER CHANG: This is what I'm
23 trying to really understand. I'm looking at one of
24 your figures, Figure 2. You have an approximately
25 524 acres in corn and soybean. You have 210 acres in

1 soil conservation. That's where we saw a lot of
2 bermes. A lot of those dark green on your map.

3 And you have 168 acres in other
4 nonclassified plant restoration gulch. Then this
5 58 acres in the pu'u and 123 acres in coffee and sunn
6 hemp seed production.

7 Under this IAL designation, if you
8 voluntarily designate 50 percent of your land or
9 more, then the county, if and when they do their IAL
10 designation, they cannot designate any more of your
11 land in the county. Is that your understanding?

12 THE WITNESS: That would be our position,
13 yeah.

14 COMMISSIONER CHANG: As I'm looking at this
15 chart, you are requesting to have -- you have
16 identified 1,084 acres. But out of that, really only
17 524 acres is in seed and soybean. But this
18 designation does preclude the county from designating
19 your lands on Maui. Is that correct?

20 THE WITNESS: That's correct.

21 COMMISSIONER CHANG: So there is somewhat
22 of a financial incentive, because you could
23 subsequently change the zoning on those lands, or it
24 would preclude the county from ever designating those
25 lands on the Island of Maui as IAL?

1 THE WITNESS: As IAL, that would be our
2 position.

3 COMMISSIONER CHANG: And those lands are
4 located in Kihei?

5 THE WITNESS: That is correct. But we are
6 not a development company. From our position -- I
7 mean, when I come and sit in front of you today,
8 Monsanto, we don't develop. We are not real estate
9 developers. So that's why we plan longer term as an
10 ag company. That's the only view point of the world
11 that we have is agriculture.

12 COMMISSIONER CHANG: And I do appreciate
13 that you've made that clarification.

14 But not having the IAL designation on those
15 Kihei lands, if at some point in time, because this
16 designation runs with the, land, if at some point in
17 the future you want to, let's say sell those lands,
18 it doesn't have the IAL designation on those Kihei
19 lands?

20 THE WITNESS: Correct.

21 COMMISSIONER CHANG: And I guess just one
22 follow-up question about the Native Hawaiian rights.

23 While we may not be able to put it as a
24 condition on this approval, what I heard you say -- I
25 just want to make sure I understand -- that you would

1 comply with whatever legal requirements and
2 constitutional requirements are made?

3 THE WITNESS: Correct.

4 COMMISSIONER CHANG: I really appreciate
5 your testimony. Thank you so much.

6 CHAIRPERSON WONG: Commissioner Okuda.

7 COMMISSIONER OKUDA: Thank you, Mr. Chair.

8 Following up on Commissioner Chang's
9 question, and maybe this is not so much a question,
10 but it's just a request to help us out over night. I
11 don't want to call it homework, but maybe it's
12 something along that line.

13 Please don't take this question to mean I
14 or anybody else is prejudging anything here. But my
15 question -- this was probably directed more to
16 counsel that are all sitting at the table here -- is
17 a question about whether or not, or does the Land Use
18 Commission have to apply the Ka Pa'akai versus Land
19 Use Commission case, that's 94 Hawai'i 131. The case
20 analysis in making its decision here whether or not
21 to grant this Petition or not grant this Petition.

22 That's the overall question. Of course, I
23 don't expect an answer here today, and I guess you're
24 free not to even answer my question, but that's a
25 question I have.

1 And specifically when you look at the Ka
2 Pa'akai case, is there anything in that case which
3 specifically prohibits the Land Use Commission from
4 imposing conditions besides a waiver of the
5 reclassification provision under the statute, and
6 number two, the recording of the decision?

7 In other words, if your position or you
8 believe that the case prohibits the imposition of
9 conditions, where in the case does it say that, where
10 it limits the authority of the Land Use Commission?

11 And I'm only talking about that case. I'm
12 not asking or raising this question as far as any
13 other statutes which may limit the Commission's
14 authorities.

15 And conversely, the question also would be,
16 is there language in the Ka Pa'akai case which in
17 fact would authorize the Land Use Commission to
18 impose conditions besides recording and the waiver of
19 the -- or consensual waiver of, you know, the right
20 to seek boundary redesignation, whether there's any
21 language in the case that so states?

22 And this is the reason -- so you understand
23 my limited thought process about this. The case
24 makes clear that the Land Use Commission has
25 independent obligations which can't be delegated to

1 applicant or anyone else to protect certain Native
2 Hawaiian cultural practices and resources enshrined
3 in the constitution?

4 And without getting into a long speech,
5 having worked at the Constitutional Convention in
6 1978, I can assure you that the provision was not
7 simply a concern about Native Hawaiians, but it was a
8 statement of community values.

9 So if you can help clarify the extent and
10 the application of that case, that would be really
11 helpful.

12 And just a technical question here. Is
13 this property land court registered property, regular
14 system bureau, or dual system?

15 MR. MURAKAMI: Commissioner, it's land
16 court.

17 COMMISSIONER OKUDA: Oh, okay, because
18 usually I think, if and when these petitions are
19 granted, the order says, record at the bureau, but if
20 it's land court, it would actually have to be filed
21 with the land court, not recorded at the bureau.

22 MS. LIM: I don't think that that's case.
23 I've been in several matters where the land is land
24 court but the rules say record at the bureau.

25 COMMISSIONER OKUDA: Let me just state one

1 thing.

2 Having taken the deposition of a land court
3 registrar once, I notice that many of their rules and
4 procedures are in writing. So that's another matter.
5 Thank you.

6 CHAIRPERSON WONG: Commissioner Ohigashi.

7 COMMISSIONER OHIGASHI: I just have a
8 question on slide number 8. I was looking at the
9 Molokai properties that are not considered IAL
10 petition.

11 Could you just tell me what's going on on
12 those areas?

13 THE WITNESS: This lower property, if
14 everybody can see that laser point to the bottom
15 property, that's actually the baseyard, where the
16 office is and equipment, tractor, things like that
17 are stored.

18 That piece of property here is sort of --
19 it's isolated. And so the logical thought for us
20 when we were looking at Molokai was, again, to really
21 try to achieve this single critical mass.

22 COMMISSIONER OHIGASHI: I was reading your
23 percentages. That would mean these two lots comprise
24 about ten percent or 11 percent of your holdings on
25 Molokai?

1 THE WITNESS: Yeah.

2 COMMISSIONER OHIGASHI: Are those zoned
3 agriculture?

4 THE WITNESS: Yes, sir.

5 COMMISSIONER OHIGASHI: Community Plan
6 agriculture?

7 THE WITNESS: Is that -- Tom --

8 MS. LIM: Why don't you go ahead and turn
9 to that. I actually don't think that the slide show
10 is showing what the Community Plan designation is, so
11 if we can hold that question for tomorrow.

12 COMMISSIONER OHIGASHI: I was just -- and
13 just to make sure that those -- if they are in
14 agriculture and the Community Plan as well as the
15 zoning designation, those are -- those will be --
16 county rules and regulations concerning zoning?

17 THE WITNESS: I'm not a land planner. I do
18 think that's a good one for tomorrow.

19 CHAIRPERSON WONG: Any other questions?
20 None. Redirect.

21 MS. LIM: Just some brief redirect.

22 REDIRECT EXAMINATION

23 BY MS. LIM:

24 Q Dan, is this Petition voluntary or
25 involuntary?

1 A Voluntary.

2 Q Right now if you were to withdraw this
3 Petition, would it change any access rights to the
4 property?

5 A No, it would not.

6 Q So with or without IAL is there a change in
7 access rights over the property?

8 A No, there is not.

9 Q Thank you.

10 You know there was a question about the
11 difference size land areas, and why this land was
12 picked rather than the much smaller Maui County
13 lands.

14 Are you familiar with under Chapter 205-43,
15 I think you were making reference to this, but I
16 don't know if you have the statute in front of you.

17 205-43, that does talk about promoting the
18 retention of IAL in blocks of contiguous intact and
19 functional land units large enough to allow
20 flexibility.

21 So when you consider that, and you look at
22 that piece of property that you're proposing
23 voluntarily that designated as IAL, do you believe
24 that that piece of property constitutes a contiguous,
25 intact and functional land unit, and I ask you that

1 as a farmer?

2 A Yes. That component of it really does,
3 when you look at the voluntary process for IAL, it
4 literally steers you, one that's looking at this to
5 look at those larger parcels as enough critical mass
6 to be sustainable long term for agriculture.

7 Q I have no further questions.

8 CHAIRPERSON WONG: Ms. Lim, how long will
9 Mr. Schnell take?

10 MS. LIM: Mr. Schnell could go through very
11 quickly, but then I'm sure the Commission would want
12 to hear from OP.

13 Mr. Schnell could go through his
14 presentation in under 15 minutes.

15 CHAIRPERSON WONG: I'm just watching the
16 time.

17 (Discussion held off the record.)

18 CHAIRPERSON WONG: Back on the record.

19 May I swear you in, sir?

20 THE WITNESS: Yeah, sorry.

21 CHAIRPERSON WONG: Do you swear or affirm
22 that the testimony you're about to give is the truth?

23 THE WITNESS: Yes.

24 CHAIRPERSON WONG: Thank you. Can you
25 please state your name and address?

1 THE WITNESS: My name is Tom Schnell. My
2 address is 1001 Bishop Street, Suite 650, Honolulu,
3 Hawai'i.

4 CHAIRPERSON WONG: Ms. Lim, can you
5 proceed.

6 TOM SCHNELL
7 Was called as a witness by and on behalf of the
8 Petitioner, was sworn to tell the truth, was examined
9 and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. LIM:

12 Q Hi, Tom. We know that the Commissioners
13 have all read through the agriculture land
14 assessment. I'm sure they also looked through the
15 PowerPoint slides, so we'll move pretty quickly.

16 I just want to reference the fact, was your
17 resume filed as Exhibit 12?

18 A It was.

19 Q Have your ever been qualified as an expert
20 witness in any sort of proceeding before state or
21 county board or agency?

22 A I've been considered an expert witness --
23 I've been qualified as an expert witness before the
24 Land Use Commission, and also I presented in front of
25 many boards and commissions besides the Land Use

1 Commission.

2 Q And your credentials are set forth on
3 Exhibit 12, correct?

4 A That's correct.

5 Q You're with PBR Hawai'i, correct?

6 A Yes.

7 Q I think I mentioned already you prepared
8 the Agricultural Land Assessment.

9 In the interest of time, if you could just
10 please bring the Commissioners through the PowerPoint
11 slides. I know that these are figures that are
12 largely from the Agricultural Land Assessment.

13 A I'll walk you through the slides very
14 quickly. Some of the questions have been discussed,
15 but what I also want to do is highlight down at the
16 bottom in italics, you'll see some of the standards
17 and criteria for reclassification to IAL, so I'll try
18 to relate it to the standard.

19 Q That's a designation, there's no
20 reclassification?

21 A Sorry, designation.

22 So briefly, we've gone over some of this
23 before, but Monsanto owns 1,817 acres in the County
24 of Maui. What they are proposing at this point is to
25 designate or have the LUC designate 1,084 acres on

1 Molokai as IAL.

2 That represents about 60 percent of their
3 land holdings in Maui County in total, and that's
4 89 percent of their land holdings on Molokai.

5 The reason they want to do this 1,084 acres
6 is that it contributes to maintaining the critical
7 lands mass important to its ag operations and
8 productivity. And that's one of the criteria.

9 Q Tom, real quick, a question was raised on
10 the land use classifications of the other properties,
11 mainly the Maui Island properties.

12 Did you read the County's Planning
13 Director's letter that was submitted?

14 A I did.

15 Q Are you familiar with in paragraph 6 where
16 the Planning Director references the fact that the
17 Maui Island lands are in fact agricultural lands?

18 A Yes, that's correct.

19 Q So you said before that you've been before
20 the Land Use Commission as an expert witness.

21 Does that mean that you've been involved in
22 boundary amendment proceedings?

23 A I have.

24 Q If you to could in three bullet points just
25 remind the Commissioners the steps that would have to

1 go forward in order for any of those Maui Island
2 lands to be turned into development lands?

3 A So the lands on Maui are State Land Use
4 Agriculture. They are Community Plan Agriculture,
5 and they're zoned Agriculture in the County of Maui.

6 So to redesignate those for another purpose
7 that's not agriculture, the Molokai or whoever -- I'm
8 sorry, Monsanto or the landowner would need to go to
9 the State Land Use Commission. They would need to
10 get a community plan amendment, and they would also
11 need to have a change in zoning.

12 Q Does the community plan amendment require
13 compliance with Chapter 343?

14 A Yes, it does.

15 Q What is your approximation of the number of
16 years it would take to turn any of those Maui Island
17 lands into urban development?

18 A I would say three to five years.

19 Q At a minimum?

20 A At a minimum.

21 Q Thank you. Let's move on.

22 A So in the next slide we'll talk about the
23 land use. And we've gone through this slide a little
24 bit, but I wanted to highlight the active agriculture
25 use, such as corn, soybean, coffee and sunn hemp,

1 constitutes about 60 percent of the property.

2 And the balance is used for soil
3 conservation, which is the integral part of the
4 entire farming operation. And soil conservation
5 and -- not just soil conservation, but the roads we
6 drove on, the water infrastructure, the bermes, the
7 filter strips, all of those are part of the other
8 part that's not cultivated.

9 And we also saw the pollinator habitat and
10 there is a 27-acre portion in the gulch that's native
11 plant restoration area.

12 Q Tom, you were involved with the Kunia
13 Petition, and if you recall with the Kunia Petition,
14 the Commission was asked to consider the eight
15 different criteria under 205-44. The Commission I
16 believe found that that property clearly satisfied
17 seven of those eight criteria?

18 A That's correct.

19 Q Is there any difference with this property?

20 A The difference is that this property
21 satisfies all eight of those criteria.

22 Q Why is that?

23 A Because the criteria that Kunia did not
24 meet was -- let me flip to it.

25 Q 205-44(c)(4)?

1 A Yes. And that would be land types
2 associated with traditional Native Hawaiian
3 agricultural uses such as taro cultivation or unique
4 agricultural crops and uses such as coffee,
5 vineyards, aquaculture and energy production.

6 So the difference on this property is that
7 there is actually coffee cultivation taking place on
8 this property.

9 Q So all eight criteria are satisfied?

10 A That's correct.

11 Q Thank you.

12 Go ahead and move to the next slide.

13 A I'll just quickly go through this, just
14 topography and streams. Up at the top is about
15 850 feet elevation. Down here is about 524. The
16 property slopes up gently. The steep slopes occur on
17 the pu'u.

18 So the LSB classifications of the property,
19 93 percent of the property is classified either A or
20 B, with irrigation, and irrigation is available to
21 the property.

22 The portion we were talking about, it
23 doesn't show very well on the slide. But this, the
24 pu'u portion that's 58 acres is rated E48, and E is
25 the lowest classification of the LSB study.

1 The E classification doesn't change if it's
2 irrigated or not irrigated. So that's designated.

3 Q What is the ALISH classification?

4 A The ALISH classification, most of the
5 property is prime agricultural land. So over
6 90 percent of the property is prime agricultural
7 land, including the area of the pu'u.

8 So there is some sort of a dichotomy going
9 on there, but prime land has the soil quality, the
10 growing season and moisture supply needed to produce
11 high yields of crops.

12 Q You're just reading from the statute?

13 A I was reading actually from the ALISH
14 definition of "prime".

15 Q Let's go to the next slide, solar
16 radiation, and we were all on the property. It gets
17 a fair bit of sun?

18 A Actually it gets quite a bit of sun. The
19 mean annual solar radiation is 215 to 240 watts per
20 square meter per hour. That's a pretty high degree.
21 It's actually higher than Kunia gets.

22 Q And when we go to the next slide, I know
23 I'm moving through this very quickly, but there was
24 discussion about the water source.

25 How is the Molokai farm irrigated?

1 A So the source of water for the Molokai farm
2 is the Molokai Irrigation System and the Kualapu'u
3 Reservoir. Right here in the center is the terminus
4 of that system. I believe that's the terminus, or
5 that's the largest reservoir that supplies this area.

6 Q And does Monsanto own or control the
7 reservoir, or the use of the water from that
8 reservoir?

9 A It's owned and controlled by Department of
10 Agriculture.

11 Q Looking at the next slide, we see that the
12 land is in the State Land Use Agriculture District.

13 A That's true. It's in the State Ag
14 District, but it's also close to infrastructure
15 systems for power and water, and it has direct access
16 to roadways or access to markets and transportation
17 of the materials.

18 Q So it's another statutory box that we're
19 checking off?

20 A Right. One of the statutory requirements
21 is infrastructure conducted to agricultural work
22 productivity, such as transportation to markets,
23 water or power.

24 And I might add, it's also not close to the
25 Conservation District.

1 Q There's no Conservation District
2 surrounding this land?

3 A That's correct.

4 Q Another criteria that the Commission should
5 consider, which is whether or not the land proposed
6 for IAL designation is consistent with any county
7 general or community or development plans?

8 A So the Molokai Community Plan that was last
9 updated in 2001 is the current community plan,
10 designates the property as agriculture.

11 The County of Maui is also working on a
12 draft update to the Molokai Community Plan at the
13 council right now. And that plan also designates the
14 land as agriculture.

15 Q Tom, I know PBR has been involved in all or
16 almost all of the IAL petitions.

17 A Eight out of nine.

18 Q Are of you aware of any other IAL lands
19 within the County of Maui?

20 A Yes. So Alexander & Baldwin have their
21 land designated by LUC in Central Maui. It's
22 approximately 27,000 acres, and that's on the Island
23 of Maui.

24 Q So we are not moving very closely towards
25 constitutional and statutory obligations of actually

1 getting more IAL designated within the State of
2 Hawai'i, it would seem?

3 A It seems that a 1000 more acres would move
4 closer to that goal.

5 Q Thank you.

6 The next slide, maybe just put it up and
7 rest on that, because I know that you took pains to
8 check off those various statutory boxes. We're
9 talking about slide 19.

10 A This slide lists all the standards and
11 criteria for IAL under 205-44(c), and there eight
12 criteria standards. And we believe that the property
13 meets all eight of those criteria.

14 Q Is there any obligation to meet even more
15 than one criteria?

16 A There is no obligation to meet more than
17 one. It's a decision the LUC makes based on the
18 criteria.

19 Q And it's rather extraordinary to see
20 property that satisfies all eight -- at least based
21 on the IAL petitions you've seen?

22 A I have not seen a Petition that satisfies
23 all eight.

24 Q Thank you. I don't have any further
25 questions.

1 CHAIRPERSON WONG: County, any questions?

2 MR. SPENCE: I don't have any questions.

3 CHAIRPERSON WONG: OP?

4 MS. APUNA: No questions.

5 CHAIRPERSON WONG: Commissioners?

6 VICE CHAIR CABRAL: I don't know whether
7 this is a question for you or perhaps Don.

8 From the maps and that -- and I do have my
9 map back, thank you, sir -- it appears that -- I'm
10 assuming when there was a reference earlier in the
11 public testimony about a school being near this
12 agriculture area.

13 So I'm assuming that the schools are up
14 here along the Farrington Avenue area; is that
15 correct?

16 THE WITNESS: I believe that's correct,
17 yes.

18 VICE CHAIR CABRAL: That is land that's
19 still under control of Monsanto or adjacent to land
20 that's been leased for the coffee or sunn hemp seed?

21 THE WITNESS: Monsanto doesn't own land
22 mauka of Farrington Avenue.

23 VICE CHAIR CABRAL: I know that. But I'm
24 saying your land that is adjacent, you've got all
25 that coffee. The red is coffee, right?

1 THE WITNESS: Right.

2 VICE CHAIR CABRAL: Is that your coffee?

3 THE WITNESS: Monsanto subleases that.

4 VICE CHAIR CABRAL: And the same with the
5 hemp seed?

6 THE WITNESS: I believe the hemp seed is
7 down in this location (indicating).

8 VICE CHAIR CABRAL: So I don't know where
9 the school is. Is that adjacent to -- the question
10 is it adjacent to land that you currently control or
11 adjacent to land that's leased to somebody else at
12 this time?

13 THE WITNESS: I think it's both. I think
14 the school is right in this area here (indicating).

15 VICE CHAIR CABRAL: Has your organization
16 or Monsanto ever heard before about this concern
17 about the dust or the chemicals or the proximity of
18 agricultural lands to the schools? Has this ever
19 come up before at community hearings?

20 I don't want the history so much, but have
21 you looked at doing something to help mitigate that
22 concern?

23 THE WITNESS: I think Dan would be more
24 qualified to answer that question.

25 CHAIRPERSON WONG: Commissioner Vice Chair

1 Scheuer.

2 VICE CHAIR SCHEUER: I have some questions
3 about water. You state you prepared the Agricultural
4 Land Assessment Report?

5 THE WITNESS: That's correct.

6 VICE CHAIR SCHEUER: Bottom of page 15 you
7 state the MIS originally served large scale pineapple
8 operations, but was converted to serve diversified
9 agriculture after pineapple operations closed in the
10 late 1970s. The system also served the DHHL
11 homestead in Ho'olehua.

12 What is your authority for that statement?

13 THE WITNESS: Let me review the statement.
14 Just a minute. Could you reference the page?

15 VICE CHAIR SCHEUER: Bottom of page 15, the
16 last two sentences.

17 THE WITNESS: 15 of the Petition?

18 VICE CHAIR SCHEUER: No, of your report,
19 Exhibit 4, Agricultural Land Assessment.

20 THE WITNESS: The last sentence says: The
21 MIS originally served large scale pineapple
22 operations, but was converted to serve diversified
23 agriculture after pineapple operations closed in the
24 late '70s. The system also serves DHHL homesteads in
25 Ho'olehua.

1 And you wanted to know the source of that?

2 VICE CHAIR SCHEUER: Yes.

3 THE WITNESS: I think maybe Mark would be
4 able to answer that question.

5 VICE CHAIR SCHEUER: Are you aware that
6 there are at least others who have written that the
7 system was actually built for DHHL initially, and
8 included pineapple operation to help subsidize the
9 construction cost?

10 THE WITNESS: I understand that the system
11 is owned and operated by Department of Agriculture.
12 So I don't know the origins of the system, but I do
13 know Department of Ag --

14 VICE CHAIR SCHEUER: I'm getting at whether
15 or not the -- I realize it only has to meet one
16 criteria. I'm getting to the assertion that it meets
17 all of the criteria, including sufficient quantities
18 of water.

19 Are you aware that there is a two-thirds
20 priority of water use from the system for the
21 Department of Hawaiian Home Lands?

22 THE WITNESS: I'm aware of that.

23 VICE CHAIR SCHEUER: Have you calculated if
24 there is sufficient water if DHHL was asserting its
25 full two-thirds use to supply the agricultural

1 operations on these lands?

2 THE WITNESS: I'm not able to answer that
3 question, but I believe Dan or Josh --

4 VICE CHAIR SCHEUER: You can't answer
5 whether or not you've calculated it?

6 THE WITNESS: I have not personally
7 calculated it, no.

8 VICE CHAIR SCHEUER: So you're not sure
9 whether or not if DHHL asserted its full legal
10 rights, there would be sufficient water available?

11 THE WITNESS: I don't think I'm the right
12 person to respond to that question.

13 VICE CHAIR SCHEUER: I'm just trying to ask
14 what's in the report and your claim that there is
15 sufficient water available.

16 THE WITNESS: Currently there is sufficient
17 water available.

18 VICE CHAIR SCHEUER: Under the law?

19 THE WITNESS: Jennifer or Mark maybe can
20 clarify.

21 MS. LIM: Well, is water be served to the
22 property?

23 THE WITNESS: Yes.

24 MS. LIM: And do we actually have, included
25 in the record, the amount of water that is going to

1 the property?

2 THE WITNESS: Yes.

3 MS. LIM: Did the Department of Agriculture
4 indicate in their comment letter that there's been
5 any shortage, and that somehow the Monsanto land is
6 claiming more water, and therefore leaving Department
7 of Hawaiian Home Land lessees without water?

8 THE WITNESS: No.

9 MS. LIM: So right now, the snapshot in
10 time right now today, which is what the statute is
11 having us look at, are there adequate supplies of
12 water to this property, to the best of your
13 knowledge?

14 THE WITNESS: Yes.

15 MS. LIM: Have you heard otherwise -- has
16 Department of Agriculture or Office of Planning
17 submitted any comments to suggest otherwise?

18 VICE CHAIR SCHEUER: Respectfully, Ms. Lim,
19 the statute also points out that a landowner can
20 remove land use designation if IAL, there is
21 sufficient water available.

22 MS. LIM: That's absolutely correct.

23 VICE CHAIR SCHEUER: I'm done. Thank you.

24 CHAIRPERSON WONG: Any other questions?

25 COMMISSIONER CHANG: Thank you so much for

1 your testimony. Just a few questions, two.

2 There was questioning by counsel that if --
3 what's the step to change the designation, in
4 particular she was asking questions regarding Maui,
5 for those lands to be changed out of ag.

6 And you said that -- you went through three
7 steps, and you said it probably would take three
8 years to change the designation.

9 THE WITNESS: Three to five years, yes.

10 COMMISSIONER CHANG: If the county
11 designated the land IAL, what would be the additional
12 process that Monsanto or anyone else would have to go
13 through to change that designation from IAL to a
14 different land use?

15 THE WITNESS: So one of the steps would be
16 a state district boundary reclassification. So it's
17 currently in the state ag district, and if they
18 washed to change it to urban, I believe that takes
19 the majority of the Land Use Commission to approve
20 that now.

21 Under IAL, it takes two-thirds majority.

22 COMMISSIONER CHANG: So there is a
23 different process which would be much more difficult
24 if the land was designated IAL?

25 THE WITNESS: Yes, I believe a higher

1 standard, yes.

2 COMMISSIONER CHANG: And you discuss the
3 Kunia Petition as well. In the Kunia Petition
4 76 percent of that land on Oahu owned by Monsanto was
5 going into IAL designation. Do you recall that?

6 THE WITNESS: I believe that's correct,
7 yes.

8 COMMISSIONER CHANG: And in this case
9 currently there is 59 percent of the total land
10 holdings of approximately 1800 acres. You took the
11 County of Maui.

12 THE WITNESS: The County of Maui as a
13 whole.

14 COMMISSIONER CHANG: Molokai and Maui,
15 approximately 1800 acres. And this particular
16 Petition, according to the Petition, 59 percent of
17 that land, entire land holdings is going into the
18 Petition?

19 THE WITNESS: Correct.

20 COMMISSIONER CHANG: However, based upon
21 today OP's testimony objection about wanting Pu'u
22 Uala taken out, and that's five percent. So that
23 would take the designation down to approximately
24 54 percent, if we follow --

25 THE WITNESS: With rounding it would be

1 about maybe 56, 55 percent, correct.

2 COMMISSIONER CHANG: I'm looking at your
3 Figure 2 on the PowerPoint where it went down from
4 the pu'u was approximately 58 acres, the percentage
5 was five percent. That's why I got 59 minus five.
6 It's not mathematically correct?

7 THE WITNESS: I did the calculation last
8 night, so the numbers that I have is Monsanto owns
9 1,817 acres, not counting the decimal point, on Maui
10 County, within Maui County.

11 Our Petition was asking for 1,084.
12 However, if you took out the pu'u, which was
13 58 acres, that would be 1,026 acres. So the
14 percentage of 1,026 acres to the total is about
15 56 percent.

16 COMMISSIONER CHANG: I'm sure there would
17 be difference calculations on this Figure 2. But out
18 of that, the coffee and sunn hemp subleases
19 123 acres, soil conservation lands, 210 acres, other
20 non-classified plant restoration gulch, 168 acres.
21 I'm looking at Figure 2.

22 MS. LIM: On slide 9.

23 COMMISSIONER CHANG: So the total amount of
24 land that Monsanto is actively in agricultural use
25 for the corn and the seed is 524 acres, according

1 to --

2 THE WITNESS: Yes, according to the table
3 in the Ag Assessment Report on page eight, corn and
4 soybean production is 524 acres.

5 COMMISSIONER CHANG: And standard and
6 criteria under this figure as well, land currently
7 used for agricultural production, HRS 205-44(c)(1),
8 that's what you got up there.

9 A majority of the land is not currently
10 used for agricultural production. A majority of the
11 land on your chart is soil conservation, other land
12 restoration, the gulch, the pu'u. I guess maybe more
13 than that, because you have the coffee and the hemp.

14 THE WITNESS: If you added the coffee and
15 the sunn hemp to those corn and soybean, you have
16 about 60 percent in active cultivation.

17 But the soil conservation measures and
18 infrastructure and all of the things that make up the
19 other contribute to the entire working cultivation
20 and production of the farm.

21 COMMISSIONER CHANG: But it does -- if you
22 look at the standards you've got there, land
23 currently used for agricultural production. I guess
24 my point is that under the statute, if more than
25 50 percent, the landowner voluntarily puts in more

1 than 50 percent, then the county is precluded from
2 designating any more lands into IAL.

3 THE WITNESS: That's correct.

4 COMMISSIONER CHANG: The percentage is --
5 you're very close to the 50 percent.

6 THE WITNESS: Well, I would say if you look
7 at LSB classification and also the ALISH
8 classification, it is all good farm land, or large
9 majority is highly -- ranked very highly understand
10 LSB and ALISH.

11 So they may be using soil conservation
12 measures that are an active part of the farm now, but
13 that does not mean that those lands are not
14 productive agricultural lands that in the future
15 could be perhaps planted with a different crop or
16 cultivated differently.

17 COMMISSIONER CHANG: Because the statute in
18 the constitution is very clear that the purpose of
19 IAL is really to promote agriculture use, right? So
20 I understand that some of these lands are being used
21 for soil conservation, but if we actually look at the
22 amount of total land owned by Monsanto that's
23 actually going into IAL, it is very close to --

24 THE WITNESS: I would say that this
25 1,084 acres is an intact farm. We were out there

1 today, and you could see that this is a large farm
2 area. And it's one large piece. So it's a critical
3 mass that contributes to this farm. The farm is not
4 just the row crops. The farm is everything else that
5 makes the farm functioning.

6 COMMISSIONER CHANG: And I guess today was
7 probably not the best day for us to be out there,
8 because you're right, we really didn't see a lot of
9 the land actually being in production.

10 I did see a lot more soil conservation
11 measures, so probably wasn't a very good
12 representation of the potential of the land.

13 THE WITNESS: Well, there wasn't a lot of
14 corn growing on the land. You didn't see a lot of
15 greenery. But similarly when we went to Kunia, they
16 were also in the period where they're between crop
17 cultivation.

18 So there was not a lot of corn stocks that
19 you could see on the Kunia property either.

20 COMMISSIONER CHANG: But we did see a lot
21 of what would have been in my mind markings of
22 cultivation. There were rows. There were clearly
23 areas that you knew -- whether they were cover crops.

24 Here, I'll be honest, I saw a lot more hale
25 koa than I did see evidence of potential active

1 cultivation.

2 And then the coffee and the sunn hemp,
3 those are under lease?

4 THE WITNESS: That's correct.

5 COMMISSIONER CHANG: And Monsanto has no
6 control over what or how they grow on those land?
7 Currently it's in active coffee cultivation, but if
8 those leases were terminated -- let's say coffee --
9 they decide to stop growing, that could potentially
10 affect the total percentage of the lands that make --

11 THE WITNESS: But if you designate it IAL,
12 then probably another crop would go in there.

13 CHAIRPERSON WONG: Commissioner Chang,
14 anything else? I want to stop there with Mr.
15 Schnell.

16 Just because Department of Ag wants to
17 present something out of order, because they cannot
18 make it tomorrow.

19 So can you -- do you have enough time,
20 because we have to stop here like in five, ten
21 minutes. So if the other parties don't mind, can we
22 take Department of Ag out of order?

23 Mr. Schnell, we will continue with you
24 tomorrow, if you don't mind.

25 Let me swear you in.

1 Do you swear or affirm that the testimony
2 that you're about to give is the truth?

3 THE WITNESS: Yes, I do.

4 CHAIRPERSON WONG: Can you please state
5 your name and address for the record.

6 THE WITNESS: Earl Yamamoto, Department of
7 Agriculture, Kaua'i, 1420 South King Street,
8 Honolulu.

9 CHAIRPERSON WONG: Please proceed.

10 EARL YAMAMOTO
11 Was called as a witness on behalf of State Department
12 of Agriculture, was sworn to tell the truth, was
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 THE WITNESS: Make a short story shorter,
16 I'll just go to the conclusion that we concur with
17 all the prior presentations, that all eight of the
18 criteria have been met, and we feel that -- the
19 Department of Agriculture feels that the project
20 merits IAL designation, with the exception of that
21 area around the Pu'u Uala, what acreage that is, is
22 to be determined by other parties.

23 We ask the Commission to consider not
24 including that as part of the designated IAL area.
25 I'm available for any questions.

1 CHAIRPERSON WONG: Petitioner, any
2 questions?

3 MS. LIM: No questions.

4 CHAIRPERSON WONG: County, any questions?

5 MR. SPENCE: No questions.

6 CHAIRPERSON WONG: OP?

7 MS. APUNA: No questions.

8 CHAIRPERSON WONG: Commissioners?
9 Commissioner Okuda.

10 COMMISSIONER OKUDA: You were here, and you
11 heard the questions that Commissioner Scheuer was
12 asking about the calculations of water if existing
13 persons or entities asserted their water rights on
14 the system that is now serving the property.

15 Do you remember that line of --

16 THE WITNESS: Yes, two-thirds preference.

17 COMMISSIONER OKUDA: Did the Department of
18 Agriculture conduct or do the calculation that the
19 Commissioner was asking about?

20 THE WITNESS: Calculated for this
21 particular Petition, no.

22 COMMISSIONER OKUDA: So there is no
23 calculation done about whether there would be
24 sufficient water if other parties asserted their
25 legal rights to the water, is that correct?

1 When I say sufficient water, sufficient for
2 Monsanto's farming operation.

3 THE WITNESS: Could you repeat the question
4 again?

5 COMMISSIONER OKUDA: My question is: Is
6 there any calculation that you're aware of showing
7 whether or not there would be sufficient water for
8 Monsanto to maintain its farming operation on the
9 subject property if all the other parties who have
10 rights to use the water from the water system
11 actually asserted those water rights?

12 THE WITNESS: I'm personally at this time
13 am not aware of a calculation being made. That does
14 not mean that one doesn't exist.

15 I'm sure after these years with all the
16 meetings held by the Molokai Irrigation System Users
17 Advisory Board, that that question surely has -- but
18 I do not have that.

19 COMMISSIONER OKUDA: Thank you, no further
20 questions.

21 CHAIRPERSON WONG: Just for your
22 information, Petitioner, I would like to have your
23 cultural expert --

24 VICE CHAIR CABRAL: I have a question.
25 Sorry, question of our current testifier, Earl,

1 right, and your Department of Agriculture.

2 In the event that there are concerns that
3 the public might have about pesticide use or even
4 fertilizer uses, or dust and that, is the Department
5 of Agriculture the place that someone could go to to
6 get some type of examination or relief to see if
7 there is something that might be affecting the
8 community, or potentially adjacent crops or
9 something?

10 Or do you as, a department, state
11 department provide that type of service to
12 investigate those types of things.

13 THE WITNESS: I'm aware of a history of
14 such investigations taking place on Kaua'i, whether
15 or not what mechanism was used to get these
16 investigations, the field practices and so forth and
17 so on, done, I'm not aware.

18 COMMISSIONER CABRAL: But you're saying
19 Department of Ag has done it on another island, so
20 potentially that is an area --

21 THE WITNESS: Let me back up. I'm not
22 saying that -- I'm sure in terms of initiation, what
23 took place. It was in our planning industry division
24 pesticide branch, but I am aware that we did
25 obviously have a role in the study for field

1 practices out in, I think it was Kekaha/Waimea area
2 on Kauai.

3 VICE CHAIR CABRAL: Thank you very much.

4 CHAIRPERSON WONG: Any more questions?

5 Before I ask, Ms. Lim. Mr. Schnell, you're
6 not off the hook. Come back tomorrow. And also
7 would like your cultural expert to be here tomorrow
8 and we will recess and come back at 8:00 o'clock
9 tomorrow morning.

10 (The proceedings adjourned at 5:50 p.m.)
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CERTIFICATE

STATE OF HAWAI'I)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on October 18, 2017, at 1:30 p.m., the proceedings contained herein was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct copy of the proceedings had in the foregoing matter.

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

Dated this 18th day of October, 2017, in Honolulu, Hawai'i.

/S/Jean Marie McManus
JEAN MARIE McMANUS, CSR #156