

Land USE COMMISSION

STATE OF HAWAI'I

October 19, 2017

Commencing at 8:07 a.m.

Kulana O'iwi, DHHL/OHA Conference Room

600 Maunaloa Highway

Kaunakakai, Molokai, Hawaii'i

V. Continued 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, Manowainui, 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
4 JONATHAN SCHEUER, Vice Chair
5 NANCY CABRAL, Vice Chair
6 GARY OKUDA
7 LEE OHIGASHI
8 DAWN N.S. CHANG
9 LINDA ESTES

10 DIANE ERICKSON, Deputy Attorney General

11 STAFF:

12 DAN ORODENKER, Executive Officer
13 RILEY K. HAKODA, Chief Clerk/Planner
14 SCOTT A.K. DERRICKSON, AICP

15 JENNIFER LIM, ESQ.
16 MARK MURAKAMI, ESQ.
17 Attorneys for Monsanto Company

18 DAWN APUNA, ESQ.
19 RODNEY FUNAKOSHI, Planning Program Administrator
20 For Office of State Planning

21 WILLIAM SPENCE, Planning Director
22 KATHLEEN AOKI, Planner
23 County of Maui

1 CHAIRPERSON WONG: Good morning, everyone,
2 bright and early.

3 Before we start, we have a different person
4 from Office of Planning, so Ms. Apuna-Chang introduce
5 that person.

6 MS. APUNA: Good morning. With me today is
7 Rodney Funakoshi.

8 CHAIRPERSON WONG: Thank you.

9 So what happened yesterday is we did have
10 some public testimony, but because some people could
11 not make it yesterday, the Chair has decided to open
12 it up for brief public testimony.

13 The other thing we wanted to tell you is
14 that we're very short on time. This hearing for the
15 Declaratory Order, if there is no decision made by
16 today, then if it's not made by the Commission, then
17 within the rules, it goes through.

18 So I just wanted to tell everyone that,
19 it's automatically approved. So just FYI.

20 So is there anyone else that wanted to
21 speak from the public, new testimony?

22 Ms. Buchanan. I just want to remind you
23 you're still under oath from yesterday.

24 Can you just state your name for the
25 record?

1 MS. BUCHANAN: Aloha, everyone. Lori
2 Buchanan, Molokai resident. Thank you, Mr. Chair,
3 for allowing me to testify.

4 I would like to apologize to this
5 Commission. During Executive Session we were all
6 outside waiting, and I had a family emergency and I
7 had to leave.

8 My understanding, even though I wasn't here
9 yesterday, is that what occurred afterwards was
10 Walter Ritte and myself were called up because we had
11 offered testimony to this Commission that we were
12 interested in intervening in this hearing.

13 I would like to reiterate my desire and my
14 intent that I would like to enter into a contested
15 case hearing on this matter. And I want to state
16 that for the record, and I believe I have standing
17 and good cause. And that's -- I'm open to questions.

18 CHAIRPERSON WONG: Thank you. I'm going to
19 ask the Commissioners first if you have any questions
20 For the witness. Vice Chair Scheuer.

21 VICE CHAIR SCHEUER: Aloha, Lori.

22 THE WITNESS: Aloha, Commissioner.

23 VICE CHAIR SCHEUER: If you're willing and
24 interested to respond, how do you believe that if the
25 Commission granted the Petition sought by the

1 Petitioner, that is the designation of these
2 Important Agricultural Lands, how your interest might
3 somehow be harmed?

4 THE WITNESS: I believe my interest as a
5 Native Hawaiian beneficiary of Department of Hawaiian
6 Home Lands, homesteader, as a community member will
7 be impacted because all that's supporting me is
8 information on the internet, and all I could do was
9 Google last night.

10 Upon doing some quick searches, I realized
11 that the IAL law -- I went back to the Act -- has
12 many components, and what seems to be simple is very
13 complex.

14 And within all that complexity, my interest
15 is not being represented as a community member. I
16 understand that the state, the county, has all
17 oversight within this law, and this is a Declaratory
18 Ruling.

19 I also know you have the flexibility at
20 this point in time to allow me to intervene in the
21 process because there are no other processes set up
22 that currently address my interests within this
23 process today.

24 And so given that, because the county at no
25 point in time has convened a working group to address

1 the IAL law, so it's kind of putting the cart before
2 the horse today.

3 So, you know, best management practices is
4 one thing that adversely impact me on all -- on all
5 issues, whether -- you know, but it's really what I
6 call sloppy in that there's really no clear
7 directives or processes that allow me, as a person,
8 to have a say except for this point in time today.

9 Thank you for asking, Commissioner. I
10 appreciate that.

11 VICE CHAIR SCHEUER: Mahalo.

12 CHAIRPERSON WONG: Commissioner Estes.

13 COMMISSIONER ESTES: I'm just curious.
14 Let's say you have a contested case hearing and you
15 win, what do you win?

16 THE WITNESS: I win the ability to insert
17 myself in a process and in actions that adversely
18 impact my community.

19 CHAIRPERSON WONG: Commissioner Chang.

20 THE WITNESS: Can I expound on that?

21 Yesterday you had a farmer sitting here.
22 He obviously came in from the field. I know his
23 family. He sat here sniffing. It wasn't because he
24 was sick, it's because everybody within a certain
25 buffer of practices that are being managed within the

1 proposed area is being exposed to allergens and other
2 things.

3 But how are we to address that? And how is
4 that connected to the designation? Well, it's
5 directly correlated.

6 I went back to the 2005 working group plan,
7 and I read in there why we're here today. And why
8 there's so many complex overlay issues that actually
9 are contradictory to each other.

10 And so that's what I plan to achieve during
11 my contested case is to bring up all the
12 contradictions within the multilayers of this IAL
13 that was never worked out at the level it should have
14 been worked out.

15 I'm just makaaainana, high school graduate.
16 But my mother told me I can read, so that's how I see
17 that there's so many things that need to be addressed
18 before you just give a ruling out. Thank you for
19 asking.

20 COMMISSIONER ESTES: I'll just say this, he
21 wasn't the only one sniffing, so was I.

22 CHAIRPERSON WONG: Commissioner Chang.

23 COMMISSIONER CHANG: Aloha, Lori.

24 THE WITNESS: Aloha.

25 COMMISSIONER CHANG: I appreciate the fact

1 that you're back here today. And I know how
2 important this is for this community.

3 Some of what we kind of explained after we
4 came back from Executive Session -- because we took
5 very seriously both Walter and you, and we heard what
6 the community had to say.

7 And what we clarified was: One, this is
8 currently not a contested case hearing. This is a
9 Declaratory. And in the discussion with Walter --
10 and I'm sorry that you had a family emergency -- but
11 Walter did come up and -- we have very limited powers
12 in the IAL, you're right.

13 Currently we can either grant the Petition,
14 we can deny the Petition, or we can request a
15 hearing, we can move towards a hearing. But with
16 respect to some of the kind of conditions that I know
17 that you talked about, and you listed several
18 concerns about the windbreak, impacts to the ocean,
19 the working group, buffer zone, the pu'u access. You
20 had some really good points.

21 What we explained to Walter is that we
22 don't have the authority to make those conditions on
23 whatever we approve. That the IAL designation, what
24 it does do, it creates an additional -- I guess I'll
25 say for lack of a better word -- layer of protection

1 to otherwise change the land use zoning designation
2 out of ag would just require majority of this LUC.

3 With the IAL designation, it would require
4 two-thirds.

5 MS. ERICKSON: Two-thirds in either case.

6 COMMISSIONER CHANG: Even if it's ag, but
7 IAL requires higher amount? It the same?

8 MS. ERICKSON: Two-thirds.

9 COMMISSIONER CHANG: So that would be the
10 distinction is that with the IAL designation, and
11 what we heard from Tom Schnell yesterday was that for
12 them -- and in my questioning, it would -- for them
13 to change that designation, would require this
14 additional -- would require additional process.

15 So I appreciate your -- the concerns that
16 have been raised by the community. We would like to
17 hear what the Petitioner proposes, how they propose
18 to address that, but we may not be able to give the
19 relief that you're asking for in this matter.

20 We only may be able to either grant the
21 Petition, deny the Petition or go to hearing on
22 whether to grant or deny. But we may not be able to
23 give the community the kind of relief that you're
24 asking for, you know, the additional windbreaks or
25 the working group.

1 But I think this is the opportunity for us
2 to ask the Petitioner how do they plan to address
3 some of these important community issues. But we may
4 not have the authority to make any of those requested
5 community's concerns into a condition. So that's
6 substantive.

7 Procedurally, as we explained to Walter,
8 once a request for contested case hearing comes in,
9 based upon the recent Supreme Court decision, we will
10 have to stop this proceeding, and then you'll have
11 the opportunity to file a Petition and address what
12 your interest, standing issue -- because at this
13 point in time the only person that is a party to this
14 action is just Monsanto.

15 They are the only parties. County and
16 Office of Planning is not a party to this Declaratory
17 Action, so only Monsanto.

18 So that's, I believe, that's what we
19 discussed yesterday with Walter. We will have to
20 stop this proceeding. We will then permit you to
21 submit your application requesting the contested case
22 hearing within the ten days, give the Petitioner an
23 opportunity to respond to that, as well as let the
24 Deputy AG respond to that.

25 But as I think -- as the Chair mentioned

1 too, under the statute, we got a time period that we
2 have to take action, 90 days. If we don't take
3 action within the 90 days, it is granted by default.
4 They get -- their Petition is granted without any
5 conditions.

6 So I guess this is ultimately your decision
7 how you want to proceed, but I just wanted to share
8 with you procedurally what we explained to Walter.
9 And substantively our limited powers under this
10 particular Declaratory Action.

11 THE WITNESS: Thank you, Commissioner
12 Chang. If I can respond.

13 Respectfully hearing what you just said, it
14 seems to me that the only recourse for this board
15 then today would be to deny. I believe that the
16 facts and conclusions under the law that allow this
17 Commission today to deny that permit given the
18 testimony, and given the complexities and
19 contradictions within the law, you most certainly
20 have that recourse to deny today.

21 I'm here because I don't have the
22 confidence that all Commission members see it my way,
23 as well as that you do have all of the reasons before
24 you today to deny.

25 And so that's why I'm taking the stand at

1 this point. I would need to intervene in order to
2 make that into a briefing of whatever. And, of
3 course, I'm going to need help with that. I realize
4 the turn around time is very short on the 90 days.

5 That's part of all these types of laws, you
6 know, even if it's 205 and the rest of the laws that
7 we have, all of these default, where no decision is
8 made you get your permit.

9 Well, there's a lot of negative impacts
10 that come from those actions. But they're just
11 defaulted.

12 As with this law, it gives the authority to
13 our Planning Director on Maui without a procedure or
14 protocol to make decisions on my behalf on a
15 different island.

16 It's done all the time. The director just
17 exempt projects and we have to live with it.

18 And so, yeah, I still have to stand strong,
19 and I really appreciate my Commission members being
20 here today to at least entertain my intent.

21 Thank you. I appreciate that. Thank you,
22 Dawn.

23 CHAIRPERSON WONG: Any other questions?

24 MS. LIM: Just a point of clarification.

25 You mentioned permit. You said that this

1 permit could go through. What permit?

2 MS. BUCHANAN: I'm sorry, I was thinking in
3 general.

4 MS. LIM: But we're talking specifically
5 here, so what approval is the Petition --

6 MS. BUCHANAN: I'm just saying --

7 MS. LIM: I know I'm cutting you off.

8 What permit, what permission is Monsanto
9 seeking?

10 MS. BUCHANAN: Well, I stand corrected.
11 It's not a permit, you're asking for a designation.

12 MS. LIM: So if the Commission elects to
13 find that the soil qualifies for the designation,
14 what is it that Monsanto will be allowed to do on
15 this property that it's not allowed to do right now?
16 Do you know.

17 MS. BUCHANAN: I don't know. You have to
18 ask me that question again. I don't understand what
19 you're asking me.

20 MS. LIM: Is the property designated as IAL
21 today.

22 MS. BUCHANAN: Yes.

23 MS. LIM: Is the property designated as IAL
24 today? It's not. That's the request that is before
25 the Commission.

1 MS. BUCHANAN: Yes.

2 MS. LIM: Is the property being farmed
3 today.

4 MS. BUCHANAN: Is it being farmed today?
5 Portions of it are, I saw on the site visit
6 yesterday. Yes, ma'am.

7 MS. LIM: Is it your understanding that IAL
8 designation will allow any additional uses to take
9 place on that property.

10 MS. BUCHANAN: I believe the IAL says that
11 you have incentives. That you do have.

12 MS. LIM: Will it allow any additional uses
13 on the property.

14 MS. BUCHANAN: Yes.

15 COMMISSIONER CHANG: Excuse me. And I do
16 understand the frustration by Monsanto wanting some
17 clarification. But I don't believe this is an
18 appropriate line of questioning for Ms. Buchanan.
19 But I do understand wanting to be very clear that Ms.
20 Buchanan understands the process.

21 MS. LIM: Petitioner is concerned when a
22 potential intervenor -- and I say that without in any
23 way acknowledging that there is even a legal ability
24 to intervene, but when an alleged potential
25 intervenor suggests there is a permit at issue, there

1 is no permit at issue, and that must be corrected on
2 the record. I'll stop.

3 COMMISSIONER CHANG: I appreciate that. I
4 think that's fair.

5 I think what I understood she was talking
6 in general. But I think that, one, this isn't the
7 venue to vent all the other things as well.

8 But I think we, the Commission, needs to
9 just proceed.

10 COMMISSIONER OHIGASHI: I have a question.

11 CHAIRPERSON WONG: Commissioner Ohigashi.

12 COMMISSIONER OHIGASHI: I just wanted some
13 clarity. It's 90 days from the date of the filing of
14 the Petition, so that would make our drop-dead date
15 December 28th, this year.

16 There is -- we're all volunteers, as was
17 explained yesterday. We don't do this for a living.
18 We don't get paid for doing this, not from here.

19 We do have a schedule set out, and the
20 decision has to be made in the county that it's
21 supposed to be, that it's been done.

22 So there it is highly unlikely that any
23 further hearing can be held given the quorum
24 requirements and nature of the Commission.

25 I hope you understand that if you delay

1 this, it may result in the automatic designation of
2 the IAL without even a hearing, and that with no
3 conditions.

4 I hope you understand that. And that the
5 request that you're making, or the conditions you're
6 proposing, even if there was a hearing, may not
7 necessarily be granted. I'm just trying to --

8 THE WITNESS: Thank you, Commissioner. I
9 really appreciate your feedback. Thank you.

10 CHAIRPERSON WONG: Commissioner Okuda.

11 COMMISSIONER OKUDA: Ms. Buchanan, everyone
12 in the audience, I just like to state what I think my
13 position is.

14 You know, whether we're volunteers or not,
15 we will put in the time necessary to do what's
16 necessary to process the Petition. We will put in
17 the time to ensure that everyone's due process
18 rights, the rights to have hearings handled in a
19 timely manner is held, okay.

20 So I want to make that clear that whatever
21 is necessary for us to do, we will do it. I've seen
22 that commitment among all the Commissioners.

23 Also, when we give you our understanding of
24 what we believe the ramifications are, or time
25 deadlines, of course, you know, that is not a ruling

1 by the Commission. It, of course, is subject to
2 further briefing and things to be submitted on the
3 record so that everyone's due process rights are
4 protected.

5 But I really have to join the concerns the
6 other Commissioners are raising here that we don't
7 want anyone later on to say, oh, we didn't warn
8 people that what they're asking for actually possibly
9 could result in something more negative.

10 And, again, we're -- none of us are
11 prejudging anything in this Petition, and we're not
12 prejudging positive or negative any of the parties
13 here. But one of the things this Petition contains
14 is a waiver of the statutory right to get
15 basically -- I don't want to call it preferential
16 treatment in rezoning, but some commentators would
17 say preferential treatment. That is being waived by
18 current Petition.

19 There is no guarantee that if this Petition
20 is not acted on, that that concession by the
21 Petitioner might go away. And also there's no
22 guarantees that, you know, even if this Petition is
23 denied, things will get better in the future.

24 I just wanted to make that clear. But I
25 really want to make clear that we will do whatever is

1 necessary under the law to protect everyone's due
2 process rights no matter what our personal
3 circumstances are. Thank you.

4 THE WITNESS: Thank you, Commissioner
5 Okuda. I really appreciate that.

6 VICE CHAIR CABRAL: Aloha. I think we're
7 all trying to tell you that -- sort of want to share
8 our frustration with your frustration, the
9 frustration I feel from you folks, and folks all live
10 here. And I used to live here on Molokai in 1975 and
11 worked at Hotel Molokai, so I really have aloha for
12 the island, and brought my kids back when we used to
13 rodeo at Molokai Ranch.

14 I think our frustration, or my frustration
15 is that what you're asking for in terms of conditions
16 on this, we have been told by our legal advisor the
17 law does not allow us to do that.

18 So I feel like we're stuck between a rock
19 and a hard place. And I don't know -- there's more
20 to the laws, and there's court decisions that have
21 been made or could be made, and so I don't know, and
22 I cannot force the Petitioner.

23 But I don't know, I can't tell from what's
24 been said if these concerns -- at what level and to
25 what degree these concerns have been taken to the

1 Petitioner in the past. And if they've tried to
2 address them, or if they're in a position now to say
3 that they will address them.

4 Because I feel like addressing your
5 concerns is outside of our power, and that to me
6 would lead to everybody's further frustration, you
7 know, to try and take that. Because it may be a lot
8 of time and not really get us anywhere.

9 So I don't know if the Petitioner -- the
10 Petitioner obviously heard everything we heard
11 yesterday.

12 And I don't know if they're in a place to
13 say something or not. Put you on the spot. I don't
14 know if they can -- okay, my Chair says, be quiet.
15 But I appreciate your concerns. And so I don't know
16 how this can be addressed, so I'm not sure if we can
17 address them.

18 THE WITNESS: Thank you, Commissioner
19 Cabral. I really appreciate that feedback, I really
20 do.

21 CHAIRPERSON WONG: Vice Chair Scheuer.

22 VICE CHAIR SCHEUER: Aloha, Lori. So I'm
23 just going to try and recap my inelegant but
24 simplified understanding of where I think we are.

25 I agree that there are wholly contradictory

1 issues in the IAL process, which I spoke to yesterday
2 after you left about why an area of historic
3 importance to the Hawaiian people for agriculture
4 might not be included as important agricultural, one
5 of many contradictions.

6 That said, there is, at least from what
7 I've heard from Monsanto's counsel say just now, at
8 least a contention that one cannot be granted a
9 contested case in a Declaratory ruling process as
10 opposed to other kinds of legal process.

11 So that's like an open legal contention.

12 Even if it turned out one could, there's
13 still the deadline issue which might not be able to
14 be overcome.

15 And even if one could overcome the
16 contested case issue and the deadline issue, there's
17 also the contention of whether or not this Commission
18 can put any conditions other than ones voluntarily
19 agreed to by the Petitioner.

20 So my brief summary is that if you -- and
21 this is just my opinion, not legal advice or
22 anything, I'm not an attorney -- but if we actually
23 granted you what you seek, the outcome might be the
24 opposite of what you actually desire, with aloha and
25 respect.

1 THE WITNESS: Thank you Vice Chair, I
2 appreciate that feedback.

3 CHAIRPERSON WONG: Commissioner Okuda.

4 COMMISSIONER OKUDA: Can I just make a
5 statement for the record, and people can correct me
6 if I'm stating it wrong.

7 First of all, any statement we make is not
8 intended to be a waiver of our attorney/client
9 privilege that we hold with our Deputy Attorney
10 General.

11 And the second points, even though we may
12 be expressing certain opinions about what we view the
13 law and the legal outcome is, we are not making any
14 final statements, because we recognize the fact that
15 parties have a right to present arguments and
16 evidence to us before we make any final decision.

17 So I just want to make it clear that we're
18 not prejudging anything here.

19 COMMISSIONER CHANG: Chair, can I just make
20 one recommendation.

21 Lori, would it be helpful -- you seem to be
22 very -- you do want to request contested case and
23 we're raising all kinds of issues about what is --
24 what could happen.

25 Would it be helpful if we cannot speak to

1 you, if you spoke to the Executive Director, Dan, to
2 talk about what are some of the potential -- just,
3 you know, what are the potential consequences about
4 if we don't grant it -- I mean if we don't take
5 action?

6 Because right now, as Commissioner Okuda
7 stated, they have agreed to waive what they are
8 entitled to, they could request a change in zoning
9 for some of their other lands, but they have agreed
10 to waive that in this proceeding.

11 So would it be helpful for you to meet with
12 Dan and talk story with him about what are the --
13 because you seem to be set on wanting the contested
14 case hearing. And I think all of us talking isn't
15 going to get us that much closer.

16 CHAIRPERSON WONG: On that note, let's take
17 a five-minute recess, please.

18 (Recess taken.)

19 CHAIRPERSON WONG: Okay. Ms. Buchanan.

20 THE WITNESS: Yes, Mr. Chair.

21 CHAIRPERSON WONG: Just wanted to check
22 again that you're requesting for a contested case
23 hearing.

24 THE WITNESS: That is correct, Mr. Chair.

25 CHAIRPERSON WONG: You are requesting?

1 THE WITNESS: Yes, sir, Mr. Chair.

2 CHAIRPERSON WONG: So there has been a
3 request for contested case hearing. As such, Ms.
4 Buchanan --

5 THE WITNESS: Yes, sir.

6 CHAIRPERSON WONG: -- because of the
7 request, you have to file a Petition with the
8 Commission, Land Use Commission, to say you want a
9 contested case hearing, because of our timeline it's
10 very short.

11 THE WITNESS: And I apologize, yes.

12 CHAIRPERSON WONG: So this is the brief,
13 you have the right.

14 I'll give you October 26th to file your
15 briefs to the Land Use Commission, and also to
16 provide to the Petitioner, Office of Planning, Maui
17 County and whoever else is on our list.

18 THE WITNESS: Okay.

19 CHAIRPERSON WONG: Then, Ms. Lim, I'll give
20 you until November 2nd to file any rebuttals on that
21 brief.

22 MS. LIM: Respectfully, may I hear from the
23 Commission or its counsel on where within the
24 Commission's rules this ability to grant intervention
25 for Declaratory Order for IAL Petition is found?

1 I've searched high and low, because we want
2 to be sure that our rebuttal matches whatever those
3 legal requirements are.

4 MS. ERICKSON: Petitioner has the ability,
5 represented by counsel, to look into that. And that
6 can be part of your rebuttal to the Petition to
7 Intervene.

8 COMMISSIONER OHIGASHI: Mr. Chair, I have a
9 question.

10 Does the briefing has to state that -- the
11 brief filed would have to address the issue of
12 whether or not a hearing is required, or hearing --
13 contested case hearing is permitted first step.

14 Second, step would it also include
15 statement as to whether the intervenor has status on
16 standing to do so. I mean both sides would have to
17 address those things.

18 So those would be -- I guess would
19 obviously be alternative for the Petitioner.

20 CHAIRPERSON WONG: That's correct. Thank
21 you.

22 COMMISSIONER OHIGASHI: I just want to
23 know --

24 CHAIRPERSON WONG: Doing both.

25 Any other? Commissioner Okuda.

1 COMMISSIONER OKUDA: Mr. Chair, with
2 respect to the Petition to Ms. Buchanan as the moving
3 party would have to file, even though we recognize
4 what the Supreme Court says about pro se or
5 unrepresented parties, I would request that it state
6 the specific authority, not just simply conclusory
7 statements, but specific legal authority which
8 demonstrates, number one, the right to a contested
9 case; and number two, on the issue of standing.

10 So that we have no confusion in the record
11 what the basis is for requesting a contested case
12 hearing.

13 And number two, what the legal basis is for
14 asserting standing. And also with the warning that I
15 don't believe we have an obligation, or any agency
16 has an obligation under the Supreme Court decisions
17 to search the record for items which aren't properly
18 advocated or documented by moving party.

19 CHAIRPERSON WONG: I totally agree on that
20 also. Commissioner Ohigashi.

21 COMMISSIONER OHIGASHI: Will there be a
22 hearing on determining whether or not to grant the
23 Petition or deny the Petition, in regard to the
24 filing?

25 CHAIRPERSON WONG: I think we're going to

1 seek advice of counsel and then get back to all the
2 parties on that issue.

3 Anything else?

4 COMMISSIONER CHANG: One last point.
5 Notwithstanding what the LUC -- I think Ms. Buchanan
6 will do -- she will -- it is her burden, and she's
7 going to properly file whatever she needs to.

8 You've heard some of the guidance that
9 Commissioners have given, but we're just looking for
10 a really comprehensive record related specifically to
11 the IAL Petition, Declaratory Action and your
12 request. Thank you.

13 THE WITNESS: Thank you, Mr. Chair,
14 Commissioner Chang.

15 CHAIRPERSON WONG: Anything else? If
16 not --

17 MS. LIM: If I may, for the record, I do
18 want to, pursuant to 15-15-63, make sure that
19 included in this record as evidence are all of the
20 IAL matters that have ever been before this
21 Commission. All of the filings, all of the
22 transcripts, all of the decisions and orders -- and
23 I'll read them out loud if you want -- that's all
24 part of record in this matter, that's all public
25 record, everything that's filed already is public

1 record, is part of this. But I want to make that
2 very clear. Do you need me to read those out? It
3 starts at DRO8-37.

4 CHAIRPERSON WONG: No, I don't think --

5 MS. ERICKSON: May I ask a clarification?

6 Are you stating at this point that you want
7 this Commission to incorporate in this proceeding all
8 of the prior IAL dockets?

9 MS. LIM: I am, yes, including the
10 proceeding that the Commission made a decision on
11 last week.

12 COMMISSIONER OKUDA: Mr. Chair, at this
13 point in time, I would request that that not take
14 place. As far as incorporating, by reference,
15 everything that went on before. And let me state the
16 reason why, and later on I can supplement my reason
17 by giving you specific citations to Hawai'i Supreme
18 Court decision.

19 I think you can look at how the Supreme
20 Court has treated motions for summary judgment, which
21 basically the Supreme Court has said you can't just
22 throw at the judge the whole case file and say, okay,
23 judge, an issue of fact, go look for yourself.

24 So I believe if there's specific things in
25 the record which any of the parties here want to

1 address under the Supreme Court cases, there's and
2 obligation to point that out, so that, you know, we
3 don't accidentally overlook something.

4 So if there are specific items from prior
5 documents -- dockets, rather, which support or
6 justify a point, then it should be specifically
7 identified and spelled out, and whatever memorandum
8 that are filed.

9 We're well aware of the records that have
10 been taken into account, but taking what amounts to
11 judicial notice of everything of that has been done,
12 I'm not sure if that's a proper process. And I don't
13 think the rules provide for something like that.

14 MS. LIM: You have able counsel to decide
15 whether or not the rules provide for that.

16 I do believe that subsection J would allow
17 that, but we don't need to fight about that here.

18 What I am hearing is that whatever
19 pleadings, should Petitioner desire to continue with
20 this voluntary process, whatever pleadings Petitioner
21 makes we should identify with specificity, if there
22 are other any other public Commission documents that
23 we want incorporated into the record, if that's what
24 I'm hearing from you, Commissioner Okuda, Petitioner
25 has no problem doing that.

1 COMMISSIONER CHANG: For me, I just want to
2 be very clear.

3 The next proceeding that we're going to is
4 limited to the request on contested case hearing. It
5 is not on the substantive determination of the IAL
6 designation in this particular Petition. It is only
7 whether Ms. Buchanan has standing in this particular
8 matter.

9 So I think, you know, we would look to
10 relevant documents that address that limited
11 question.

12 MS. LIM: Understood.

13 CHAIRPERSON WONG: So just again, there has
14 been a request for contested case hearing by Ms.
15 Buchanan. October 26th, please file your briefs.
16 Petitioner, please, and anyone else, file rebuttal by
17 November 2nd to the Land Use Commission, both, for
18 everything. If there's nothing else --

19 COMMISSIONER CHANG: One more point. I
20 would like -- I have a hard time not talking -- but
21 if there's anybody else who wants to intervene in
22 this request, we would just ask that you file by
23 October 26th as well. That beyond that time, because
24 we do want to make a decision. So if anybody else
25 wants to intervene in filing a request for contested

1 case hearing, those same deadlines would apply.

2 (Interruption from audience.)

3 CHAIRPERSON WONG: I have Commissioner
4 Okuda first.

5 COMMISSIONER OKUDA: I would respectfully
6 disagree with that request. In the proceedings here
7 there were specific questions asked of people who
8 were present in the audience. This Commission
9 hearing was duly noticed under the rules and the
10 statute. People had the opportunity to make their
11 position and say their peace. That was done here.

12 We are acting based on a request that was
13 made during the proceedings that we had. The public
14 testimony period was closed off.

15 So I would respectfully ask that this
16 process be limited only to Ms. Buchanan who appeared
17 and made the request. And again, that's not without
18 prejudging what is going to be the outcome of this
19 request.

20 As far as anyone else, anyone else has
21 whatever rights the statute in the administrative
22 rules provide, and those persons, if they want to
23 assert their rights, should determine for themselves
24 and follow the proper procedure for which we are able
25 to give specific advice on.

CHAIRPERSON WONG: Anything else?

Okay, meeting is adjourned.

(The proceedings adjourned at 9:02 a.m.)

CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, JEAN MARIE McMANUS, do hereby certify:

That on October 19, 2017, at 8:07 a.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 19th day of October, 2017, in Honolulu, Hawaii.

/s/ Jean Marie McManus
JEAN MARIE McMANUS, CSR #156