

## LAND USE COMMISSION

## STATE OF HAWAII

Hearing held on February 6, 2019

Commencing at 10:00 a.m.

Courtyard by Marriott Oahu North Shore

55-400 Kamehameha Hwy, Laie, HI 96762

AGENDA

I. Call to Order

II. Adoption of Minutes  
January 9-10, 2019 Site visit Minutes  
January 23-24, 2019 MinutesIII. Hearing and Action  
DR18-63 MALAEKAHANA WEST HUI, (Oahu)

IV. Adjournment

BEFORE: Jean Marie McManus, CSR #156

APPEARANCES:

JONATHAN SCHEUER, Chair  
NANCY CABRAL, Vice Chair  
AARON MAHI, Vice Chair  
DAWN N.S. CHANG  
LEE OHIGASHI  
ARNOLD WONG  
EDMUND ACZON

STAFF:

RANDALL S. NISHIYAMA, ESQ.  
Deputy Attorney General

DANIEL ORODENKER, Executive Officer  
RILEY K. HAKODA, Planner/Chief Clerk  
BERT SARUWATARI, Planner  
RASMI AGRAHARI, Planner

DAWN APUNA, ESQ.  
Deputy Attorney General  
RODNEY FUNAKOSHI, Planning Programing Administrator  
For State Office of Planning

NOA CHING, Planner  
Department of Agriculture  
State of Hawaii

RAYMOND YOUNG, Planner  
FRANK HALL, Planner  
Department of Planning and Permitting  
City and County of Honolulu

KALANI MORSE, ESQ.  
Attorney for Malaekahana West Hui, LLC

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1 CHAIRPERSON SCHEUER: Aloha mai kakou, good  
2 morning.

3 This is the February 6, 2019 Land Use  
4 Commission meeting. Our first order of business is  
5 the adoption of the January 9th through 10th, 2019  
6 site visit, and the January 23rd through 24th,  
7 2019 minutes.

8 Are there any corrections or comments on  
9 the minutes?

10 COMMISSIONER ACZON: I move to accept.

11 VICE CHAIR MAHI: Second.

12 CHAIRPERSON SCHEUER: A motion has been  
13 made by Commissioner Aczon and seconded by  
14 Commissioner Mahi. Any discussion?

15 I will thank Riley for compiling these very  
16 complicated minutes.

17 Any further discussion? All in favor?  
18 Anybody opposed? The minutes are unanimously  
19 adopted.

20 Our next agenda item tentative meeting  
21 schedule. Mr. Orodenger.

22 EXECUTIVE OFFICER: Thank you, Mr. Chair.

23 On February 20th, we will be on Maui in the  
24 afternoon from 2:00 to 4:00 at Maui Arts and Cultural  
25 Center for Ka'ono'ulu Ranch Motion.

1           We will then reconvene at 6:00 p.m. at Maui  
2 County Center -- I've been told it's now the new high  
3 school in Kihei, not the Kihei high school.

4           Then we have March 13th, which we are  
5 asking the Commissioners to hold because we have some  
6 outstanding motions that may fit into that date.

7           March 27 we will be on the Big Island for  
8 Lanihau HHFDC status reports.

9           On March 28th we will be at NELHA for  
10 Waikoloa Mauka Adoption of Order and Bencorp Motion  
11 to revert on Order to Show Cause.

12           And on April 10th we will be on Oahu for  
13 the Waiawa matter.

14           On April 23rd and 24th, please note that's  
15 a Tuesday and Wednesday, we will be on Oahu for the  
16 Hawai'i Memorial Park matter.

17           And then in May, May 8th and 9th currently  
18 open.

19           May 22nd and 23rd we will be on Kaua'i for  
20 the Hokua and Kealia matters. That takes us to June.

21           CHAIRPERSON SCHEUER: Thank you.

22           Are there any questions for Dan?

23           Our next agenda item is hearing and action  
24 meeting on DR18-63, Malaekahana Hui West, LLC's  
25 Petition to issue a Declaratory Order designating as

1 Important Agricultural Land approximately 230.33  
2 acres of its lands on Oahu, Hawai'i, identified by  
3 TMK 5-6-006:0018 (por.)

4 Will the Petitioner please identify itself  
5 for the record?

6 MR. MORSE: Thank you, Chair. May it  
7 please the Commission, I am counsel Kalani Morse  
8 representing Malaekahana Hui West, LLC.

9 CHAIRPERSON SCHEUER: Let me please update  
10 the record now.

11 On December 21st, 2018, the Commission  
12 received the Petitioner's position for Declaratory  
13 Order to designate Important Agricultural Lands, and  
14 Exhibits A through E, with a hard copy and a digital  
15 file.

16 A request for comments to the LUC about the  
17 Petition were mailed by the Petitioner to the Office  
18 of Planning, State Department of Agriculture, and to  
19 the City and County of Department of Planning and  
20 Permitting on the same day.

21 On December 31st, 2018, the Commission  
22 mailed the January 9 through 10, 2019 site visit  
23 agenda notice to the Parties and to Statewide and  
24 Oahu mailing lists and received Petitioner's \$1,000  
25 filing fee.

1           On January 10th of this year the Commission  
2 received a site visit map and performed a site visit.

3           On January 18th, the Commission received  
4 the Office of Planning and Department of Planning and  
5 Permitting's comments on the Petition.

6           On January 22nd, the Commission received  
7 Department of Agriculture's comments on the Petition.

8           On January 29th, the Commission mailed the  
9 February 6, 2019 agenda notice to the Parties and to  
10 the Statewide and Oahu mailing lists.

11           And on February 4th, the Commission  
12 received Petitioner's Naming of Witness List.

13           Mr. Morse, does your client agree with the  
14 Commission's policy regarding the reimbursement of  
15 hearing expenses?

16           MR. MORSE: We do.

17           CHAIRPERSON SCHEUER: Thank you.

18           Let me briefly describe our procedures for  
19 today on this docket.

20           I'll first call for any individuals  
21 desiring to provide public testimony to identify  
22 themselves. Anybody here who wishes to provide  
23 public testimony?

24           In case anybody comes in, we will swear  
25 them in, then we will complete the testimony portion

1 after that.

2 After that the Petitioner will make their  
3 presentation. Following the Petitioner's  
4 presentation, we will receive any public comments  
5 from the County, if they show up, the Office of  
6 Planning and the Department of Agriculture.

7 And thereafter the Commission will conduct  
8 our deliberations. And I will also note from time to  
9 time I will call for short breaks.

10 Are there any questions on our procedures  
11 for today?

12 MR. MORSE: None.

13 MS. APUNA: No questions.

14 MR. CHING: No questions.

15 CHAIRPERSON SCHEUER: Mr. Morse, the Chair  
16 intends to declare that the documents submitted by  
17 the Department of Agriculture, Office of Planning,  
18 City and County of Honolulu Department of Planning  
19 and Permitting, any written public testimony, and  
20 Petitioner's response are part of the record in this  
21 matter. Do you have any objections to this?

22 MR. MORSE: None.

23 CHAIRPERSON SCHEUER: Thank you. Hearing  
24 none, the documents are made part of the record.

25 Final check. Anybody in the audience wish



1 to provide public testimony? Seeing none.

2 Mr. Morse, you can proceed with your  
3 presentation.

4 MR. MORSE: We would like to introduce our  
5 first witness, Mr. Tom Schnell.

6 CHAIRPERSON SCHEUER: Mr. Schnell, if you  
7 would please come forward. I will swear you in, then  
8 Mr. Morse can proceed with your questioning.

9 And for the written transcript, I'm going  
10 to note that an exhibit has been handed to us,  
11 printout from a PowerPoint entitled "Malaekahana Hui  
12 West" with the name of the docket on it dated  
13 February 6, 2019.

14 Mr. Schnell, do you swear or affirm that  
15 the testimony you're about to give is the truth?

16 THE WITNESS: Yes, I do.

17 CHAIRPERSON SCHEUER: Please proceed.

18 TOM SCHNELL

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

22 DIRECT EXAMINATION

23 BY MR. MORSE:

24 Q If you could please, for the record, state  
25 your full name, title and identify your employer.

1           A       Tom Schnell. I'm a planner with a private  
2 planning firm PBR Hawai'i.

3           Q       How long have you worked at PBR Hawai'i?

4           A       Since 1998.

5           Q       Are you a principal with the firm?

6           A       I am.

7           Q       As a principal what services do you  
8 provide?

9           A       I oversee production of various projects  
10 and planning-type projects. Principally I've been  
11 working on IAL petitions for the last three years.  
12 Before that I was assisting with IAL petitions.

13                   Our firm has done 11 of the ag assessment  
14 reports from, I think there's been 16 petitions for  
15 declaratory rulings before the Land Use Commission.  
16 We worked on 11 of those.

17                   So I've been involved in some aspect of  
18 those. And in last few years I've taken over the  
19 running of those types of projects.

20           Q       Share briefly about your relevant  
21 education.

22           A       Master's degree in urban and regional  
23 planning from the University of Hawaii.

24           Q       Do you possess or hold any licenses  
25 relevant to your job as a planner?

1           A       Member of the American Institute of  
2 Certified Planners.

3           Q       How long have you been a member of that  
4 institute?

5           A       Since 1998.

6           Q       And you've been a certified planner as  
7 long?

8           A       Yes.

9           Q       I believe a resume was sent in and  
10 submitted to the Commission prior to this hearing,  
11 and it was a resume that belonged to you.

12                   Is that a true and correct copy?

13          A       It is.

14          Q       What -- I guess you've testified before the  
15 Land Use Commission before as an expert witness?

16          A       I have on IAL petitions, also State Land  
17 Use District Boundary Amendment petitions.

18          Q       What was your role in helping to prepare  
19 the Petition currently before the Commission today?

20          A       I oversaw and supervised the production of  
21 the ag assessment report. I think it's Exhibit D in  
22 the Petition.

23                   PBR Hawai'i we prepared the maps and report  
24 and also prepared the text of the report.

25          Q       Thank you, Mr. Schnell.

1           We would like to move, Chair, to submit Mr.  
2 Schnell, and tender him as an expert in land use  
3 planning.

4           CHAIRPERSON SCHEUER: Are there any  
5 concerns from the Commissioners? He's admitted that  
6 way. Please proceed.

7           MR. MORSE: Thank you.

8           Q     If you could just tell us a little bit  
9 about the agricultural uses that are going on in the  
10 Petition Area.

11          A     Sure.

12               First of all, good morning. Sorry I didn't  
13 get to say good morning. Thanks for having us here  
14 in Laie. I'm going to run through a PowerPoint  
15 presentation of the property and the IAL criteria and  
16 the maps that we prepared. So I'll start with that  
17 now.

18               This is just my name, so it's not in your  
19 booklet, but we saved a page by not putting my name  
20 in the book.

21               Just as an overview, we're talking about  
22 Malaekahana Hui West owns approximately 455.62 acres  
23 in Malaekahana and Keana. The proposed designation  
24 is 230.33 acres as IAL. This represents a total of  
25 50.6 percent of the total landholdings.

1 Kamehameha Highway is up here (indicating).  
2 If you recall on the site visit, I think most of you  
3 entered from this road, also another access road over  
4 this way. We met around this area, and we came down  
5 here, and then we drove up into this area and into  
6 the middle and back down here (indicating).

7 So this is a photo from the site visit at  
8 one of the stops. The site visit was on January 10,  
9 2019. This is, as you can see, Aaron, who is  
10 pointing here at my right side, and we were standing  
11 in a field of basil.

12 Not all of these pictures are from the site  
13 visit, but I did go to the property previous to the  
14 site visit and took some of these pictures. Cucumber  
15 field on this side. Close up of one of the cucumbers  
16 growing. This is an eggplant field.

17 This is a plant called curry leaf, not sure  
18 if it's Vietnamese or Indian curry leaf. And this is  
19 marungay here. I think it has various names, maybe  
20 I'm mispronouncing it. Sorry if I am.

21 There is also various ag in this structure.  
22 On the picture on this side you can see the shade  
23 house constructed over this entire field. Inside of  
24 the shade house is grown peppercorn.

25 There are ag roads here. You can see a

1 little bit of the ironwoods here. The fields are  
2 divided into crops, and a lot of ironwood trees.

3 We didn't stop at this, but there is  
4 dryland taro growing on the property. And this is on  
5 the Petition Area. We verified this yesterday. And  
6 so when we talk about the eight criteria, I do want  
7 to mention that there is dryland taro currently  
8 growing on the property.

9 This is a photo of a farmer out in the  
10 basil field. I believe basil is one of the few crops  
11 that are actually exported. Most of the crops are  
12 truck crops that are grown on Oahu, obviously, and  
13 sold on Oahu.

14 I believe the farmers have different  
15 associations with supermarkets, restaurants, even  
16 Costco. You might recognize the brand Whole Farms.  
17 Some of the produce is sold under the brand Whole  
18 Farms.

19 This was taken in early January of a field  
20 that was ready to be planted. It's probably planted  
21 at this time. It was freshly filled then. You see  
22 bananas in the background.

23 There is adequate agricultural  
24 infrastructure on the site. This is two of the three  
25 wells. Pump station here. This is another well pump

1 station here. Also one other well on the property.  
2 On the Petition Area there is a total of four wells  
3 on the entire property though.

4 This is an agricultural processing facility  
5 that's in the Petition Area. We drove by this  
6 briefly on the site visit. You might have missed it  
7 because we were driving kind of where your view would  
8 have been behind you on the site visit, but we did  
9 drive by this.

10 So I'll get into the main portion criteria  
11 and the maps that we prepared. This is a little bit  
12 more detail.

13 Malaekahana Hui West owns approximately  
14 455.62 acres and 453.43 is in the State Ag District.  
15 There's 2.19 acres in the State Urban District. I  
16 can show you later on the State Land Use Urban map,  
17 but it's right up in this area, not this area here  
18 (indicating.) The yellow line is the boundary line,  
19 but there is a sliver of urban land on the property  
20 side of the boundary line.

21 In total we are proposing out of a total  
22 landholding of 230.33 acres, that's 50.6 percent of  
23 the total landholdings, but all of the IAL area is in  
24 the State Ag District.

25 I'll go through the standards and criteria.

1 I won't go through them right now. At the end I'll  
2 summarize these standard criteria. I'm sure you're  
3 all familiar, eight criteria. To identify Important  
4 Agricultural Lands, a petitioner doesn't have to meet  
5 all eight criteria, but it's a decision-making on the  
6 Land Use Commission's part on what the emphasis is  
7 and how many of them they meet.

8 I think the testimony of OP and State  
9 Department of Ag follows the same kind of outline of  
10 plans with the criteria, and you should have that in  
11 your packages, or I'm sure DOA or OP will talk about  
12 that.

13 So one of the criteria is land that's  
14 currently in ag use. Currently there are five tenant  
15 farmers on the property, and in total they're leasing  
16 about 139.55 acres of the property, primarily used  
17 for diversified ag.

18 I showed you a variety of the crops.  
19 That's not all of the crops that are on the property.  
20 My understanding is that the farmers grow according  
21 to season, according to what's marketable. It  
22 varies, but all primarily sold on Oahu except for the  
23 basil.

24 The other part of the Petition Area, it  
25 includes areas that are used for ag infrastructure



1 such as the processing facilities, pump sites. There  
2 are areas that are not currently cultivated, but may  
3 be in the future.

4 There are sections that are steep slopes,  
5 and I'll talk about that in a minute. But those  
6 areas are all important to the viability of ag on the  
7 property, the total of about 90.78 acres that I would  
8 classify as "other" within the Petition Area.

9 On the topography -- we did this topography  
10 map, and the light green areas are the more gentle  
11 slopes, less than ten percent. You can see a little  
12 bit darker areas as it goes up in the darkness of  
13 green, indicates greater slopes.

14 I better refer to my notes regarding the  
15 slopes, hold on.

16 So there are some steep slopes on the  
17 property. You can see the dark green areas here.  
18 What's notable too is that this part is not in the  
19 Petition Area, and that was purposefully excluded  
20 from the Petition Area because of the slopes and the  
21 accessibility there.

22 But there is a plateau right here that is  
23 farmable (indicating). It's not being farmed right  
24 now, but I believe this is LSB B lands up on this  
25 plateau.

1           We didn't go up in this area because it was  
2 too muddy, but in this area one farmer has a cucumber  
3 crop here. This area is preferable for that farmer I  
4 think because of the shade and microclimate that this  
5 slope and ridge line creates. So it provides good  
6 growing conditions for that type of crop, for  
7 cucumber.

8           (Raymond Young arrived.)

9           The Land Study Bureau rating of the  
10 property, if you combine the A and B ratings of  
11 176.86 acres of the property is either A or B, that's  
12 about 76 percent of the total property is fairly, I  
13 would say, very highly rated according to the LSB  
14 designations.

15           Going to the Agricultural Lands of  
16 Importance to the State of Hawaii, there's a high  
17 percentage that are in the prime category, and the  
18 other category, if you added those both together,  
19 83 percent of the property, not the property, but the  
20 Petition Area is classified under the ALISH system.

21           The property receives a mean annual solar  
22 radiation of 209 to 220 watts per square meter per  
23 hour. This demonstrates the intensity of the  
24 sunlight with the darker areas being higher  
25 intensity, and obviously parts back more in the

1 valley have less sunlight intensity.

2           The property contains agricultural  
3 infrastructure and water resources. I mentioned the  
4 wells, so there are -- there's a well here  
5 (indicating) and there was a picture of the well pump  
6 station there. There's a well up here, and actually  
7 there's two wells here (indicating). You can see  
8 well pump numbers are designated here, and there's  
9 another well that's not in the Petition Area over  
10 here, but this well also does provide water to the  
11 Petition Area. (Indicating.)

12           There's a processing storage facility that  
13 I mentioned. I think it's right about here where we  
14 went up this road and came around this way, but the  
15 well is here (indicating). I think many of you saw  
16 it.

17           And then the processing facility is here.  
18 It's on a series of ag roads through the property.  
19 There are some gates to limit access to increase  
20 productivity or limit, I guess, people from going  
21 into the fields.

22           We have two accesses to Kamehameha Highway,  
23 one is over here, one is over here, that is easement  
24 for this property (indicating). So the property has  
25 ready access to highways, transportation and markets.

1           There's also electrical power on the  
2 property. It was shown on one of the slides showing  
3 the pump stations. I forgot to mention that, but  
4 there is electric power to power the pumps and other  
5 facilities.

6           Talking about the State Land Use District,  
7 so this was the little sliver that I was talking  
8 about that was in Urban right here. The red line is  
9 the property line. The rest of the property and the  
10 Petition Area is all within the State Ag District.

11           For the Sustainable Communities Plan, this  
12 slide shows the 1999 version, currently the current  
13 enacted version. I believe there is an update  
14 languishing for a couple years, but basically  
15 designations are similar or the same.

16           So you can see on this map -- whoops, wrong  
17 map but --

18           Large majority of the property is  
19 designated as ag or agricultural. There's small  
20 portions up here that are designated as Military and  
21 Preservation. That might just be a mapping error.

22           These maps in the Sustainable Communities  
23 Plan are not that precise. There is an Urban Growth  
24 Boundary in this area for Kahuku. We are outside of  
25 that Urban Growth, outside the growth boundaries.

1           The City and County of Honolulu zoning is  
2 Ag, A-1 restricted.

3           And we will talk about -- a little bit  
4 about the DPP Important Agricultural lands. The  
5 city's process is underway. I think maybe you've had  
6 discussion about that previously. I think what I  
7 wanted to point out is that our Petition Area here is  
8 100 percent in agreement with the DPP's designation  
9 for this area as Important agricultural Lands.

10          DPP's also proposing actually the entire  
11 property, but we're proposing about 50.6 acres under  
12 the majority incentive of IAL statute to voluntarily  
13 designate our land as IAL.

14          Here are the standards a little bit more.  
15 We saw that the land is currently used for  
16 agricultural production.

17          Number two is that we demonstrated that the  
18 soil qualities and growing conditions, LSB ratings  
19 and the sunlight support agricultural production of  
20 food.

21          The land is identified under the ALISH  
22 system. I believe about 83 percent is under ALISH.  
23 Let me check. Yeah, 83 percent is identified under  
24 the ALISH system.

25          Number four, land types associated with

1 traditional Native Hawaiian agricultural uses. There  
2 is dryland taro growing on the property. This  
3 criteria also mentions other unique agricultural  
4 crops.

5 I'm not sure how "unique" is defined, but I  
6 would say the curry plants that are growing there,  
7 marungay, and maybe some of the other crops could be  
8 considered unique also.

9 Number five is land with sufficient  
10 quantities of water. We do have three wells on the  
11 IAL area. There's four wells on the total property.  
12 There's sufficient water to support viable  
13 agricultural production.

14 The land whose designation as Important  
15 Agricultural Lands is consistent with general,  
16 development, and community plans of the county.

17 I showed you the slide of Kualoa  
18 Sustainable Community Plan, and it's all designated  
19 as Ag, so I would say it's consistent.

20 Land that contributes to maintaining a  
21 critical land mass important to agricultural  
22 operating productivity. This is one of the criteria  
23 we would look for, designated critical area of land.  
24 That is why some of the sloped area were included so  
25 that we could have one large contiguous block of land

1 designated as IAL.

2 Last criteria is near support  
3 infrastructure conducive to agricultural  
4 productivity. You did see the processing facility.  
5 There are windbreaks and various other agricultural  
6 infrastructure.

7 That concludes my presentation.

8 Q Thank you, Mr. Schnell. Just a couple of  
9 follow-up questions, Chair.

10 So you walked us through the portion of the  
11 statute dealing with Important Agricultural Lands  
12 criteria and standards.

13 Are you familiar with other portions of  
14 that statute?

15 A I'm familiar. I don't have it in front of  
16 me, but I am familiar.

17 Q I want to get on the record your  
18 understanding of the voluntary landowner designation  
19 process in comparison to the designation process that  
20 involves the county and the county's mapping project.

21 A I believe the IAL statute was set up to  
22 allow voluntary designation of land for landowners to  
23 first voluntarily designate their lands through the  
24 petition process or the declaratory ruling process.

25 I believe also a provision that the county

1 shall designate Important Agricultural Lands after a  
2 period that landowners have an opportunity to  
3 voluntarily designate their lands.

4 And I also believe the statute says that if  
5 a landowner voluntarily designates at least  
6 50 percent of their lands as IAL, then it cannot be  
7 further designated by the county.

8 Q Final question. I believe you sort of  
9 stated this, but I want to get it clear.

10 Do you believe that the Petition Area that  
11 has been presented to the Commission today satisfies  
12 all of the standards and criteria set forth in the  
13 statute?

14 A I do think it satisfies all of the eight  
15 criteria.

16 Q No further questions.

17 CHAIRPERSON SCHEUER: At about 10:18 a.m.,  
18 we were joined by a representative of city and  
19 county. Please identify yourself for the record.

20 MR. YOUNG: Good morning, Chair and members  
21 of the Land Use Commission. My name is Raymond  
22 Young. I would like to apologize for my delay.

23 I'm with City and County Department of  
24 Planning and Permitting. With me hear today is  
25 co-planner Frank Hall.



1           Essentially we have no questions. We will  
2 let our position testimony we submitted stand.

3           CHAIRPERSON SCHEUER: You'll have a chance  
4 to present anything you want to present later.

5           Any questions for Mr. Schnell?

6           MR. YOUNG: No questions.

7           CHAIRPERSON SCHEUER: Office of Planning?

8           MS. APUNA: I do have a few questions.

9           CHAIRPERSON SCHEUER: Please proceed.

10          MS. APUNA: Thank you.

11                           CROSS-EXAMINATION

12 BY MS. APUNA:

13           Q       Mr. Schnell, you mentioned that there is  
14 dryland kalo on the property. Can you tell us more  
15 about that in terms of the location of that dryland  
16 kalo? How long has it been farmed?

17           A       I'm going to defer that question to Aaron  
18 who is the landowner who went to look at the taro  
19 yesterday, and is more in tune with what the farmers  
20 are growing.

21           Q       I have another question.

22                   I think in the petition it stated that the  
23 steeper slopes of the property that do not have  
24 agriculture on them are important to the productivity  
25 and preservation goals for the overall property,

1 including land stewardship, soil conservation,  
2 cohesion and continuity of ag uses, and maintain a  
3 critical land mass.

4 Can you explain how the non-sloped areas  
5 are important to ag productivity, and how they  
6 contribute to land stewardship, soil conservation,  
7 cohesion and continuity?

8 A Let me go back to the topography and slope  
9 map. I summarize in my testimony some of the points  
10 I want to make about the slope lands, referring back  
11 to my notes.

12 MR. MORSE: We're looking at Figure 3 in  
13 Exhibit D.

14 THE WITNESS: So the steep sloped areas you  
15 can see in the darker green I would say are  
16 relatively minor parts of the entire property. There  
17 is a plateau up there that's rated LSB B lands, and  
18 is not currently cultivated but could be cultivated.

19 For example, this ridge line that comes in  
20 here (indicating) provides shelter and shade for this  
21 area, shades certain part of the day, but developed  
22 windbreak because the windbreaks come this way, so  
23 good microclimate for crops in this area.

24 Q Thank you.

25 The Petition also states that 50 percent of

1 the lands are subject to city and county covenant  
2 restricting and dedicating those lands. Can you  
3 explain more or further with regard to this covenant  
4 and dedication?

5 A Sure. Thank you for the opportunity to  
6 clarify. I know there was some confusion in the  
7 Petition and also IAL report.

8 So I want to get the terms right, two  
9 different -- there are two different -- there is a  
10 tax dedication, and there is a land court dedication  
11 for ag use that the property owner has designated for  
12 the land.

13 And the tax dedication is under revised  
14 ordinances, not sure what the statute is, but it  
15 allows lower tax rate for dedication of ag land. I  
16 think mistakenly we stated in the Petition that that  
17 dedication expired in 2024. It expires in 2020. It  
18 goes in five-year increments.

19 So submitted in 2015 and expires in 2020.  
20 It's the intent of the owner to renew that tax  
21 credit.

22 The other one is a docket filed in land  
23 court for dedication of land, ag lands, and that is  
24 the one that expires in 2024, and I believe the  
25 intent is to remove that also.

1           Q       Thank you.

2                   CHAIRPERSON SCHEUER:   Department of  
3   Agriculture?

4                   MR. CHING:   No questions.

5                   CHAIRPERSON SCHEUER:   Commissioners?  
6   Commissioner Chang.

7                   COMMISSIONER CHANG:   Thank you, Mr.  
8   Schnell, for your testimony.   I just want to follow  
9   up on the questions by OP.

10                  In relationship to the land court  
11   dedication, ag dedication, where is that in  
12   relationship to the IAL, proposed IAL lands?

13                  THE WITNESS:   I need to refer to my notes,  
14   because it's not -- hold on one moment.

15                  So we don't have a map showing where it is  
16   on this map.   A large majority of it is in the  
17   Petition Area.   There is 133.5 acres of the Petition  
18   Area is designated under the tax ag dedication.

19                  For the other one, about half of the IAL  
20   area is also designated under the -- sorry -- about  
21   another half is designated under land court document  
22   for ag dedication.

23                  COMMISSIONER CHANG:   Land court, is that a  
24   conservation easement, is that a restriction on the  
25   land?

1           THE WITNESS: I believe Aaron Campbell may  
2 be able to address it more, but I believe it's a  
3 dedication of use of the land for ag.

4           COMMISSIONER CHANG: Is there a reason  
5 why -- maybe this is going to be better suited for  
6 Mr. Campbell, for Aaron.

7           Is there a reason why all of that land  
8 isn't included in the IAL?

9           THE WITNESS: I think Aaron can address  
10 that better, but the dedication, land court and tax  
11 purposes were done at different times, maybe using  
12 different criteria.

13           When we came in as PBR Hawai'i to look at  
14 agricultural lands of importance, or IAL area, we  
15 might have taken a different approach. But basically  
16 all the proposed IAL designation, the tax dedication  
17 credit and land court document pretty much all  
18 converge into this area. There's overlap in between  
19 all on the Important Agricultural Land area.

20           COMMISSIONER CHANG: Is there a reason why  
21 some of the land that's more on the makai side of the  
22 boundary of the IAL designation -- I know when we  
23 went up to do the site visit, there were lands in  
24 agricultural production -- why those aren't included  
25 in the IAL petition?

1           THE WITNESS: This whole area here is  
2 subject to flooding. Sometimes this road is closed  
3 due to flooding. And so we didn't think that that  
4 was the core area for agricultural production.

5           COMMISSIONER CHANG: Thank you very much.

6           CHAIRPERSON SCHEUER: Are there other  
7 questions, Commissioners? Commissioner Aczon.

8           COMMISSIONER ACZON: Just a quick  
9 clarification. Just to follow up on the tax credit.  
10 If the Commission do agree to grant the motion,  
11 there's going to be a condition that, with respect to  
12 this, to not take any credits describing -- with  
13 respect to the Petition Area.

14           Can you explain to me what is the  
15 difference?

16           THE WITNESS: I believe in the IAL statute  
17 there is a provision that the landowner, if it's  
18 designated IAL, could apply for certain incentives.  
19 I'm not clear on what those incentives are.

20           So landowners agreed to waive that  
21 provision in the IAL statute and will not be seeking  
22 those incentives.

23           COMMISSIONER ACZON: So the tax credit we  
24 are talking about awhile ago is not part of that?

25           THE WITNESS: That's separate.

1 COMMISSIONER ACZON: Thank you.

2 CHAIRPERSON SCHEUER: Commissioners?

3 Commissioner Cabral.

4 VICE CHAIR CABRAL: I understand, if I  
5 recall properly, that the land down closer to the  
6 entrance off the main highway is not as good for  
7 agriculture, it was sandy and/or salty or rocky, as I  
8 recall.

9 And since that is outside of your Petition  
10 Area, do you have -- do you know, or is there any  
11 idea what the future of that land might be in the  
12 planning stages for long-term future use of that  
13 land?

14 THE WITNESS: We have talked about this  
15 with Aaron, and I believe there are no plans for any  
16 kind of development in that area at this time. It's  
17 going to remain in ag, and I think Aaron will be able  
18 to explain a little bit more about the history of how  
19 that came about and why plans to continue ag in that  
20 area.

21 VICE CHAIR CABRAL: Okay, thank you.

22 CHAIRPERSON SCHEUER: Commissioners, are  
23 there further questions?

24 I have one question, Mr. Schnell. It's a  
25 small point, but if I understood the Petition and

1 your presentation today correctly, you seem to be  
2 saying that because dryland taro is currently  
3 cultivated on the property, that satisfies the  
4 criteria for traditional Native Hawaiian agricultural  
5 uses. Is that correct?

6 THE WITNESS: I wanted to point out that  
7 dryland taro is being cultivated in the Petition Area  
8 now. The report we prepared also mentions that there  
9 is a history of dryland taro cultivation, or taro  
10 cultivation in this area. I don't have documents of  
11 exactly where that was on the property historically.

12 I think it's up for the Commission to  
13 decide if that -- if we satisfy that criteria, but I  
14 did want to point out that we do have dryland taro on  
15 the property now.

16 CHAIRPERSON SCHEUER: As I understood your  
17 slide -- if you would go to that slide that related  
18 to that criteria, not the photo of the slide, but the  
19 criterion related to traditional Native Hawaiian  
20 agricultural uses.

21 And I don't want to spend a lot of time on  
22 this. What I want to just briefly explore, there is  
23 many ways to grow taro. Many kinds of kalo  
24 cultivated. Just because somebody is growing taro  
25 doesn't mean that it's a traditional agricultural



1 use. Would you agree?

2 THE WITNESS: I wouldn't agree or disagree,  
3 but go back to taro is grown there. I don't know if  
4 it's grown a traditional --

5 CHAIRPERSON SCHEUER: Do you know what  
6 variety of taro is growing?

7 THE WITNESS: I do not know.

8 CHAIRPERSON SCHEUER: Do you know what  
9 method?

10 THE WITNESS: I do not.

11 CHAIRPERSON SCHEUER: You don't know  
12 whether traditional methods or not?

13 THE WITNESS: I do not, but point out a  
14 part of that criteria mentions other unique  
15 agricultural crops. And I believe there are other  
16 unique agricultural crops grown there too.

17 CHAIRPERSON SCHEUER: I have nothing  
18 further. Any redirect?

19 MR. MORSE: None, Chair. Thank you.

20 CHAIRPERSON SCHEUER: Thank you, Tom.

21 Mr. Morse, please continue.

22 MR. MORSE: We would like to call to  
23 testify Aaron Campbell, manager for Malaekahana Hui  
24 West.

25 CHAIRPERSON SCHEUER: How long do you

1 anticipate?

2 MR. MORSE: We probably ought to take a  
3 break.

4 CHAIRPERSON SCHEUER: About how long do you  
5 anticipate with your next witness?

6 MR. MORSE: Maybe 15 minutes.

7 CHAIRPERSON SCHEUER: It's 10:44. We'll  
8 reconvene at 10:54.

9 (Recess taken.)

10 CHAIRPERSON SCHEUER: We are back on the  
11 record. Thank you everybody. And we have the next  
12 witness.

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

15 THE WITNESS: Yes.

16 AARON CAMPBELL

17 Was called as a witness by and on behalf of the  
18 Petitioner, was sworn to tell the truth, was examined  
19 and testified as follows:

20 CHAIRPERSON SCHEUER: Please proceed, Mr.  
21 Morse.

22 MR. MORSE: Thank you, Chair.

23 DIRECT EXAMINATION

24 BY MR. MORSE:

25 Q Mr. Campbell, if you could, just for the

1 record, state your full name, employer and title.

2 A Aaron Campbell, Malaekahana Hui West,  
3 manager.

4 Q Just for those who may have a concern, we  
5 know -- who did you purchase the property from?

6 A We purchased the property from Campbell  
7 Estate.

8 Q Is there any relation between you and the  
9 Campbell Estate?

10 A No.

11 Q Just coincidence then?

12 A Yes.

13 Q How long have you been manager of  
14 Malaekahana Hui West, LLC?

15 A Almost 13 years.

16 Q Can you just share with us briefly what you  
17 know about the history of the area and the land?

18 A So basically this was the start of the  
19 Campbell Estate holdings. As you know, when they  
20 came to that point within their trust, they had to  
21 sell off some of the holdings, and we actually found  
22 the property because we did a service project with  
23 Kahuku High School and Campbell Estate helped us.

24 We were refurbishing the football field,  
25 and that's how we came to know Campbell Estate. And

1 they made us aware of this piece of property a couple  
2 years after that project.

3 Q Are you familiar at all with some of the  
4 historical agricultural uses on the property?

5 A To my knowledge, this was part of the  
6 Kahuku Sugar Plantation back in the day when Uncle  
7 Junior used to be the manager up at Manager's Ridge.  
8 Talking story with him, he explained that this was  
9 part of the process when the sugar mill was the heart  
10 of the area.

11 Q And are you familiar with about when the  
12 plantation shut down?

13 A To my knowledge, the sugar mill closed in  
14 1971, and shortly thereafter Turtle Bay opened. And  
15 shortly after that I believe they started to lease  
16 this to individual farmers.

17 When we purchased it, all the farmers that  
18 are currently there were held over from Campbell  
19 Estate with the exception of one who passed away.

20 Q So you grew up in the area?

21 A I grew up in Laie, went to Laie Elementary  
22 and Kahuku High School, graduated in 1989.

23 Q You were not familiar with the property  
24 prior to?

25 A I was familiar with Kaaawa Road or

1 Malaekahana Road right there, but other than that not  
2 really familiar, no.

3 Q And how did you -- I know you mentioned  
4 that you got in touch with the Campbell Estate folks  
5 and moved forward with that purchase.

6 What did you learn about the ag operations  
7 on the property at that point?

8 A At that point our partnership needed  
9 someone to manage the land and it fell upon me.  
10 During the course of the last, almost 13 years, I've  
11 the opportunity to get to know the farmers. The  
12 major farmer is a Chinese individual. And then he  
13 has -- there are other farmers there, and I've gotten  
14 to know them through my relationship over the  
15 12 years with them.

16 Q Do you speak Chinese?

17 A Yes.

18 Q And you developed this relationship with  
19 the farmers. How does that overlap with your duties  
20 and responsibilities as manager for Malaekahana Hui  
21 West?

22 A So in the course of this relationship, I've  
23 gotten to have a lot of aloha for these farmers,  
24 because I think when you're not used to ag, you don't  
25 real -- for example, I never used to worry when it

1 was too hot, or when it was too much rain, but now  
2 I'm worried on both occasions because the farmers  
3 have a lot to lose in those instances.

4 Q What other kind of support do you provide  
5 to these farmers in your role as manager?

6 A We have infrastructure. They get their  
7 water from our wells, our irrigation structure that  
8 I'm responsible for. Any time the wells go down, I  
9 need to make sure to get them up and running in a  
10 timely manner. That's another point of high stress  
11 for the farmers, and subsequently for me.

12 So between that and obviously the leases  
13 and making sure that everything's in place and just  
14 monitoring the usage.

15 Q What kind of crops are you aware of being  
16 grown on the property?

17 A So the majority of the crops stay here on  
18 island. The farmers, especially Mr. You, has a very  
19 long standing distribution channel, they get sent out  
20 to all of our local supermarkets, Safeway, Tamura's,  
21 Foodland. So I'm familiar with that, with his  
22 distribution, and then -- yeah.

23 Q What types of produce are they?

24 A So we have cucumber. We have squash,  
25 bitter melon, papaya, apple banana. Sometimes we

1 have long bean, for example, planted. It's entirely  
2 dependent on what the market is demanding.

3 Q Do the farmers rotate the types of crops  
4 that they grow?

5 A Yes. And it's amazing how quickly these  
6 crops are rotated.

7 Q So you mentioned that most of it stays on  
8 island. What crops are you aware of that get  
9 exported?

10 A The crop that I'm aware of that gets  
11 exported is the basil, and primarily that's exported  
12 to California.

13 Q As far as you know, the rest of the crops  
14 are sold in local markets here?

15 A Yes.

16 Q Let's talk a little bit about the leases  
17 you have with these farmers. I know Mr. Schnell  
18 testified there were five farmers. How did you come  
19 to acquire these leases?

20 A The leases, as I mentioned before, were the  
21 same leases that Campbell Estate had with them, the  
22 longest 2021, to Mr. You. The other leases are  
23 month-to-month.

24 We have gone back and forth on that.  
25 Sometimes it's hard because the farmer never knows

1 what is going to happen, and we don't know what is  
2 going to happen. They have been known to even change  
3 the usage. However Mr. You is the longest one. I'm  
4 currently talking to him about reupping that lease.  
5 The issue with him is he's 87, so I have to figure  
6 out if his son is interested in carrying on, and  
7 we're going through that process right now.

8 Q So if one of the farmers were to come to  
9 you and say I need a different lease or longer lease,  
10 you would entertain that conversation?

11 A Absolutely.

12 Q And the goal in that conversation would be  
13 to do what?

14 A Goal in the conversation is to find a  
15 medium that's good for the both of us. Our intent is  
16 to help the farmer, but it's also not to overburden  
17 the farmer.

18 I've had farmers before that, you know,  
19 they're a little bit hesitant to take on a long-term  
20 lease because of that commitment. So we try to find  
21 a place where it's beneficial to them and to us.

22 Q Despite all of that, have all the farmers  
23 more or less been able to keep most of the ag or  
24 cultivable fields in the area of the fields  
25 productive?



1           A       Yes.

2           Q       Year round?

3           A       Yeah, with exception of huge rainfall, then  
4 you get a lot of crop loss. So subject to weather,  
5 yes.

6           Q       So what are Malaekahana Hui West's plans  
7 with respect to agriculture on the property in the  
8 future?

9           A       Well, we currently have no plans to do any  
10 development. We want to keep in current ag. I'm  
11 passionate about agriculture. The covenant that you  
12 talked about earlier requires me to stay in ag, which  
13 I'm happy to do.

14          Q       Could you explain for the Commission why  
15 you initially entered into that restrictive covenant  
16 and filed it with the land court?

17          A       I mentioned before I have aloha for the  
18 farmer. It was amazing for me that I grew up in this  
19 community and never felt I had an appreciation for  
20 the agricultural component of our area.

21                 When we purchased the property and I saw  
22 the plight of the farmer, you could say, I was really  
23 interested in that, because it's really amazing. So  
24 I felt that if we could help the community to  
25 understand what's in our backyard and to have an

1 appreciation for that, then we would be helping not  
2 only the farmer, but ourselves to support local  
3 agriculture.

4 That's why I created the agribusiness that  
5 we have which requires the covenant. So my passion  
6 is to the connection, the brilliance of kanaka maoli  
7 and their relationship to the aina.

8 And I want to, in a unique way, pass that  
9 information on, not only to kamaainas, but also to  
10 the guests who come to Hawai'i.

11 Q So is the intent that more awareness would  
12 lead to consumers purchasing more local produce?

13 A The intent is for, number one, I want  
14 people to leave our property with a greater  
15 appreciation for the unique relationship of Hawaiians  
16 to the land.

17 Number two, in the case of kamaaina, if I  
18 know Whole Farmers are in my backyard, and see it in  
19 Foodland, I'm more apt to support that because I know  
20 they're in my community.

21 Q So accessory use, can you describe that  
22 briefly for the Commission?

23 A Basically I had a quandary, because I  
24 thought doing a farm tour would be pretty awesome,  
25 but I also felt in today's world of iPads and iPhones

1 that's not very attractive to young people, so in  
2 reading through, you know, what is an allowable usage  
3 on the property, we came up with the "with accessory  
4 use", which is basically an educational tour through  
5 the farm, allowing people to see and feel and smell  
6 the farm, but not be in the way of the farmer.

7 Q So does the "with accessory use" have any  
8 sort of impact on the agricultural operations?

9 A It doesn't have any physical impact on the  
10 agricultural operation. What it does do is allow  
11 kamaaina and guests to have greater appreciation for  
12 the farmer, for the brand, to support that brand.

13 It also allows us, as landowner, additional  
14 revenue. When a pump goes down or a major  
15 infrastructure cost, I don't have to overly burden  
16 some of the farmers, because I have a little bit of a  
17 kitty that I can allow us to pick those types of  
18 expenses up.

19 Q Are there any future plans for increasing  
20 the "with accessory use", for changing it in any way?

21 A No.

22 Q I have no further questions.

23 CHAIRPERSON SCHEUER: City and county.

24 MR. YOUNG: Just one question.

25 -o0o-

## CROSS-EXAMINATION

BY MR. YOUNG:

Q Mr. Campbell, on your property, what product are being marketed locally under what brand?

A Our main farmer is You Soukaseum. Basically because of his advanced age, he has farmers who bring the produce to him. Then he packages and distributes because he has distribution channels. So we have him. We have Whole Farms.

And I would say that those two are the biggest brands because the remaining farmers, I don't know if it's because of their limited English, but most of what they do is they will take their produce to Mr. You, Mr. You will then pay them. Then he packages and does what he does. And he also has the transportation to deliver the produce to his distribution channels.

Q So I take it the brands are You Farms and Whole Farms?

A Yes.

MR. YOUNG: Thank you, Mr. Campbell. I have no more questions.

CHAIRPERSON SCHEUER: Office of Planning.

## CROSS-EXAMINATION

BY MS. APUNA:

1           Q       Thank you for your testimony.

2                   I was wondering if you could just expand  
3 more on the dryland taro. What portion of the  
4 property it's located and some of the history.

5           A       If you look up, I see that -- I call them  
6 fingers, two fingers that come into the mauka side of  
7 the property. In the lower finger there, and again  
8 there's the warehouse, Mr. You's warehouse. Down  
9 inside this area is also dryland taro. Up on this  
10 property here kind of goes down slopeage here, and  
11 it's growing primarily in there (indicating).

12                   I have also seen it all alongside here  
13 (indicating). And, again, it changes quite often.

14                   The taro is basically -- when I talk to Mr.  
15 You, it's a seed that they got from UH 20  
16 some-odd-years ago, and they grow it primarily for  
17 the luau leaf.

18           Q       And so it's for sell here on the island,  
19 not for export?

20           A       Not to export, to my knowledge. Most of it  
21 is sold here on the island.

22           Q       Do you know approximately how many acres?

23           A       I don't know.

24                   MS. APUNA: Thank you.

25                   CHAIRPERSON SCHEUER: Department of

1 Agriculture.

2 MR. CHING: No comments, no questions.

3 CHAIRPERSON SCHEUER: Commissioners?

4 Commissioner Chang.

5 COMMISSIONER CHANG: Good morning, Mr.  
6 Campbell. Thank you for your testimony.

7 I wanted to ask you some questions about  
8 the land court. Is it a conservation easement or ag  
9 easement?

10 THE WITNESS: Basically, to my knowledge,  
11 the CUP, the Conditional Use Permit which we  
12 received, the discretion is that the director can --  
13 so the director basically said, along with the CDUP  
14 approval, we would require to put 50 percent of your  
15 property into -- it's either the longer of ten years  
16 or the life of the agribusiness.

17 COMMISSIONER CHANG: That's for your tax  
18 credit? That's for the land?

19 THE WITNESS: That's for the "with  
20 accessory use". So the agribusiness on the property.

21 COMMISSIONER CHANG: So the land court,  
22 because you -- what was -- previously Mr. Schnell  
23 discussed this land court dedication.

24 THE WITNESS: Yeah. And, again, I don't  
25 know the legal terms, per se, I'm just going to tell

1       you what I understand.

2               So the CUP required us to dedicate, through  
3 deed, 50 percent of our land to active agricultural  
4 use, and that's for either ten years or the length of  
5 the agribusiness, whichever is longer.

6               COMMISSIONER CHANG:   So that was a  
7 condition of your SUP?

8               THE WITNESS:   CUP.

9               COMMISSIONER CHANG:   The CUP required you  
10 to record that on your deed?

11              THE WITNESS:   Yes, ma'am.

12              COMMISSIONER CHANG:   So this restrictive  
13 covenant was a consequence of the "with accessory  
14 use", your CUP?

15              THE WITNESS:   It was a consequence, but  
16 welcome consequence because it's already in  
17 agriculture and no sense to change that, pretty much  
18 a no brainer.

19              COMMISSIONER CHANG:   So the 50 percent that  
20 you have in ag under this CUP application or permit,  
21 is that the same as an IAL designation, or are there  
22 lands outside of that?

23              THE WITNESS:   When that was requiring as a  
24 condition to me, I basically just took a map and  
25 tried to meet the condition.   It wasn't based on any

1 kind of professional expert analysis, for example, in  
2 this process, learning about ALISH and all the  
3 different soil types, et cetera.

4 So that was just a random, this is the  
5 50 percent. So some of it, as looking at this is  
6 outside of it, and some of it is in it.

7 COMMISSIONER CHANG: So although -- so your  
8 Petition right now is to put in approximately the  
9 230 acres into IAL, but you also have some other  
10 lands that are outside the IAL that have also this  
11 restrictive agricultural covenant.

12 So even if it's not designated IAL, your  
13 CUP restricts that use to ag?

14 THE WITNESS: Yes.

15 COMMISSIONER CHANG: Do you know where --  
16 about how much is outside of the IAL designation?

17 THE WITNESS: I'm not sure how much, but I  
18 will tell you, to my knowledge, what my recollection,  
19 as long as we stay at 50 percent threshold, that  
20 boundary with CUP can be moved.

21 I would imagine that that would require us  
22 to do some kind of filing with DPP, but I have no  
23 interest in doing that. I'm just trying to meet the  
24 criteria here.

25 COMMISSIONER CHANG: I guess I am making an



1 assumption, might be a wrong assumption, that when  
2 you filed your CUP petition, you actually had to  
3 attach a map to it?

4 THE WITNESS: Yeah.

5 COMMISSIONER CHANG: And the map showed the  
6 50 percent that you were designating?

7 THE WITNESS: Yes.

8 COMMISSIONER CHANG: And that map had to be  
9 recorded with the Land Board?

10 THE WITNESS: Yes.

11 COMMISSIONER CHANG: So any change in that  
12 map, you would have to also file petition with the  
13 land court to do that?

14 THE WITNESS: I believe so, yeah.

15 COMMISSIONER CHANG: I guess what I'm  
16 trying to establish is that while you are coming in  
17 with IAL designation for 230 acres that are  
18 committing to ag, that there may be some additional  
19 land outside of the 230 acres that you're also  
20 committing to ag under that CUP?

21 THE WITNESS: Yes.

22 COMMISSIONER CHANG: Now, I'm going to ask  
23 you, there's some land up at the top that's not  
24 within -- appears to be on this map in agricultural  
25 cultivation.

1           Could you tell me why that's not part of  
2 your IAL designation?

3           THE WITNESS: When I sat with the experts  
4 and we tried to meet the criterion that was given to  
5 us, and we had met that criterion up to that point  
6 and stopped. And so I'm just trying to meet that  
7 criteria.

8           COMMISSIONER CHANG: I appreciate your  
9 honesty on that.

10           So you try -- so the acreage that you  
11 selected was based upon meeting the criteria,  
12 50 percent plus?

13           THE WITNESS: Yeah. I mean, obviously we  
14 talked about the front portion a little earlier. So  
15 my farmer who's there right now, he's complained to  
16 me because of the soil quality. It's very sandy, and  
17 a little bit too high of a salt content. And so that  
18 severely limits his ability to what crops he can  
19 grow. So obviously that's not IAL, right?

20           And so we have tried to include the portion  
21 to which you refer does have somewhat of a slopeage,  
22 it does go up and it connects to the two knolls that  
23 are quite high, the middle finger, this finger here  
24 and this top finger here (indicating) are very  
25 sloped, quite high.

1           So, again, we put in there what I feel is  
2 the most important ag lands up to meeting the  
3 criterion.

4           COMMISSIONER CHANG: One final question.

5           The growing of the taro, that's done by Mr.  
6 You?

7           THE WITNESS: Yeah. So Mr. You has farmers  
8 who farm with him, and so, yes, it's grown on the  
9 areas that is allocated to him, yes. I have also  
10 seen it on -- one of the farmers, another farmer,  
11 Laotian name, so maybe we shouldn't spell it.

12           COMMISSIONER CHANG: Thank you so much for  
13 answering my questions.

14           CHAIRPERSON SCHEUER: Commissioners?  
15 Commissioner Aczon.

16           COMMISSIONER ACZON: Good morning, Mr.  
17 Campbell.

18           THE WITNESS: Good morning.

19           COMMISSIONER ACZON: You mentioned there is  
20 no relation with Campbell Estate?

21           THE WITNESS: No, sir.

22           COMMISSIONER ACZON: Any relations with  
23 Campbell Soup?

24           THE WITNESS: My kids wish.

25           COMMISSIONER ACZON: Anyway, the total

1 acres, 455-plus acres Petitioner owns?

2 THE WITNESS: Uh-huh.

3 COMMISSIONER ACZON: You mentioned almost  
4 all of those are ag use.

5 THE WITNESS: Uh-huh, yes.

6 COMMISSIONER ACZON: So any further plans  
7 or any future plans on coming back to us asking for  
8 dba boundary amendment?

9 THE WITNESS: No dba boundary amendment,  
10 no.

11 COMMISSIONER ACZON: Any other plans  
12 besides agriculture on the other portion?

13 THE WITNESS: No.

14 COMMISSIONER ACZON: As you know, DPP  
15 recommended to the City Council for the full portion  
16 of land to be IAL; is that correct?

17 THE WITNESS: Yes.

18 COMMISSIONER ACZON: Just kind of since  
19 you're committed to that, why not do the whole thing?

20 So I guess my question is, what harm would  
21 it be if the entire parcel becomes IAL, what would be  
22 harm to the Petitioner?

23 THE WITNESS: Well, I feel as landowner we  
24 know the land the best, and so we want to, through  
25 this program -- oh, I don't know who's program this

1 is -- the voluntary dedication, whose it is.

2 MR. MORSE: Statute.

3 THE WITNESS: Statute gave us, so it allows  
4 us to have somewhat of a say in our own land. And I  
5 feel like that's something we appreciate. So we want  
6 to have the ability to have a say in what is  
7 designated.

8 COMMISSIONER ACZON: I really appreciate  
9 your commitment with farmers. So you're fully  
10 committed and not going to change anything, keep it  
11 farmed land?

12 THE WITNESS: Yes.

13 COMMISSIONER ACZON: Thank you.

14 CHAIRPERSON SCHEUER: Commissioner  
15 Ohigashi.

16 COMMISSIONER OHIGASHI: The market -- my  
17 question is more of an administrative question.  
18 Assuming we give IAL designation to this parcel, is  
19 the Decision and Order recorded with the land court,  
20 Mr. Orodenker?

21 CHAIRPERSON SCHEUER: Could you repeat the  
22 question?

23 COMMISSIONER OHIGASHI: I wanted to know if  
24 the D&O, if we approve this, would be recorded with  
25 the land court, or do we require it to be recorded

1 with the land court?

2 EXECUTIVE OFFICER: Yes.

3 COMMISSIONER OHIGASHI: The second  
4 question. Would that designation conflict with the  
5 existing land court filings that is required by the  
6 city? And would that create -- I'm not sure the term  
7 for it -- the Petitioner would know -- would that  
8 create a problem in terms of -- I'm just questioning  
9 that.

10 EXECUTIVE OFFICER: At this time, staff  
11 doesn't have an answer for that.

12 COMMISSIONER OHIGASHI: I was just curious.

13 CHAIRPERSON SCHEUER: Commissioners?

14 Mr. Campbell, I have a few questions for  
15 you. Thank you again for taking us on the site  
16 visit, appreciate it very much.

17 The questions I have for you relate to the  
18 portion of the Petition submitted to us which  
19 includes the landowner letter of authorization you  
20 have signed on behalf of the landowner that you're  
21 authorized to submit this Petition; is that correct?

22 THE WITNESS: Yes.

23 CHAIRPERSON SCHEUER: And if we grant this  
24 Petition, one of the conditions would be that we --  
25 you would be held to the landowner's representation

1 that you would not be using the provision of the IAL  
2 statute that allows you to convert some of your land  
3 in this process to urban use.

4 Do you understand that as well?

5 THE WITNESS: I thought that wasn't  
6 available any more, but okay.

7 CHAIRPERSON SCHEUER: You should ask your  
8 counsel about that. That's the representation that's  
9 been made in the Petition.

10 Because of those points, can you please  
11 explain your property interest and other owners of  
12 the property, because I understand you are not a full  
13 owner of the property.

14 THE WITNESS: No. I currently -- we  
15 purchased the property in a partnership. My partner  
16 passed away three years ago, so now I work with his  
17 two children, and the executor of that trust is  
18 co-manager with me.

19 But as co-manager in the LLC, I have full  
20 rights to sign and to do anything in relation to the  
21 land. So from a management level, I'm an equal, and  
22 the reason for that is I'm here. I actually know  
23 what is going on.

24 And it was like that with the older  
25 gentleman earlier, but more so now because they're

1 not here. And so anything that I tell them, they --  
2 I mean they may have an opinion, but...

3 CHAIRPERSON SCHEUER: So is the  
4 documentation of your authority to bind all owners  
5 regardless of percentage of what percentage you own,  
6 versus what other owners may own in the property? Is  
7 documentation of that authority in our report?

8 THE WITNESS: I don't believe so.

9 CHAIRPERSON SCHEUER: Thank you.

10 My second question regards development  
11 plans. You've repeatedly testified in response to  
12 Commission's questions that you have no future plans  
13 to develop the property.

14 Have you ever previously pursued  
15 urbanization of this property?

16 THE WITNESS: Yes.

17 CHAIRPERSON SCHEUER: Could you please  
18 explain?

19 THE WITNESS: Yes, absolutely. Just for  
20 some background. I attended Kahuku High School and I  
21 went to school on the mainland. And I actually went  
22 to law school and decided against being a lawyer. No  
23 offense to lawyers.

24 But in the process of that, I was quite  
25 educated when it came to development. And so one of



1 the concerns that I have had and continue to have is  
2 the lack of housing for my peers. And so one of the  
3 things that I'm very passionate about was how do we  
4 fix this issue, because a lot of my peers no longer  
5 live here. They have moved to the mainland.

6 So when this piece of property became  
7 available, my entire intent was to provide affordable  
8 housing. This was 12 years ago when the 201(g) was  
9 in place, which is the statute that allowed us to  
10 develop if we did have affordable market.

11 So I pursued that for about three years  
12 with my partner. In the pursuit of that process, I  
13 became very aware of how difficult that is to do in  
14 Hawai'i.

15 (Mr. Orodener leaves.)

16 Additionally, Hawai'i Reserves,  
17 Incorporated, to the south La'ie, and they actually  
18 asked us to back off, to not pursue housing. And so  
19 we did.

20 And during the course of that I have  
21 discovered that you can provide housing to our local  
22 people, but what is more important is providing them  
23 with jobs so that they can afford housing. So I have  
24 gained a new passion.

25 I currently employ 30 full-time and 60

1 part-time employees at my agribusiness, and I do pay  
2 them above average what you can get out there on the  
3 North Shore.

4 We have a tremendously successful business  
5 that I'm very proud of.

6 So my passion now is to provide jobs to our  
7 local people because it does no good providing  
8 housing if they can't afford to buy the house.

9 So in answer to your question, obviously,  
10 yes, it was with that intent. However, with  
11 experience and time comes wisdom, and I am a little  
12 wiser today. I do not want to take on the behemoth  
13 that is trying to rezone an agricultural piece of  
14 property. I do want to continue building an economic  
15 engine for my community.

16 CHAIRPERSON SCHEUER: Thank you very much.

17 I'm going to note right now for the record  
18 that our executive officer, Daniel Orodener, had to  
19 return to town in front of the legislature. So staff  
20 member Bert Saruwatari will be serving as executive  
21 officer from this point on today.

22 Anything further, Commissioner Chang?

23 COMMISSIONER CHANG: Just one question.

24 Looking at the map, my understanding when  
25 we did the site visit was those areas that are like

1 in little boxes, those are -- there is a subdivision  
2 because they were for the solar farms, so -- the  
3 wind.

4 THE WITNESS: Wind farm, those are part of  
5 CPR.

6 COMMISSIONER CHANG: Because you're so  
7 close to the 50 percent, are those little boxes, are  
8 they included in your 50.6 percent or are they  
9 excluded?

10 THE WITNESS: They're included, because  
11 wind farms are a bonafide agricultural use as well.

12 COMMISSIONER CHANG: Okay.

13 CHAIRPERSON SCHEUER: Anything further,  
14 Commissioners? Commissioner Cabral.

15 VICE CHAIR CABRAL: I understand that all  
16 of your 230 acres that's going into the IAL is in  
17 farming, but didn't you have some ranching land in  
18 use also? Some land in ranching or cattle anything  
19 up there too, or all just farm?

20 THE WITNESS: All just farming. We have  
21 never had any ranching or grazing.

22 VICE CHAIR CABRAL: Upper lands might work  
23 for that. Thank you.

24 CHAIRPERSON SCHEUER: Anything further,  
25 Commissioners?

1 Any redirect, Mr. Morse.

2 MR. MORSE: None, Chair, thank you.

3 CHAIRPERSON SCHEUER: Mr. Morse, what more  
4 do you have?

5 MR. MORSE: Petitioner rests.

6 CHAIRPERSON SCHEUER: City and County, you  
7 started to indicate when you first commented. Do you  
8 have anything that you want to add at this time?

9 MR. YOUNG: Nothing to our Position  
10 Statement.

11 Just like to inform the Commission where  
12 the county is in reference to the IAL projects.

13 CHAIRPERSON SCHEUER: Please go ahead.

14 MR. YOUNG: The Agricultural Task Force had  
15 their second meeting on this proposal, the report  
16 that was submitted to City Council by DPP on the  
17 31st, and they did vote to move the project forward  
18 to City Council with some incentives that they  
19 suggested. And I have a list of them here.

20 And also in response to Island Palm's  
21 request to remove some lands as it's being partially  
22 owned by the U.S. government, and in partnership with  
23 Island Palms that those lands removed from  
24 consideration for IAL, and that was also moved  
25 forward along with that recommendation to the City

1 Council.

2 And tomorrow will be the first meeting by  
3 the committee on zoning and housing, and zoning to  
4 discuss the city's report on IAL, and that would be  
5 at 9:00 o'clock tomorrow. Thank you.

6 CHAIRPERSON SCHEUER: Thank you.

7 Are there questions for the city and county  
8 by the Petitioner?

9 MR. MORSE: Just one quick question.

10 Mr. Young, are you aware whether or not  
11 those meetings involving the Agricultural Development  
12 Task Force, are you aware of whether or not they  
13 discussed this Petition or this particular piece of  
14 property at all?

15 MR. YOUNG: I did not attend the first one,  
16 but the second one, no, they did not discuss this.

17 CHAIRPERSON SCHEUER: Thank you. Office of  
18 Planning?

19 MS. APUNA: No questions.

20 CHAIRPERSON SCHEUER: Department of  
21 Agriculture?

22 MR. CHING: No questions.

23 CHAIRPERSON SCHEUER: Commissioners?  
24 Commissioner Chang.

25 COMMISSIONER CHANG: Thank you for being

1 here. Appreciate you being here to testify.

2 You said that you've come up with some  
3 incentives.

4 MR. YOUNG: Yes, not the department, but  
5 the Agricultural Task Force who has met on the 31st,  
6 and were available to getting this list. And I could  
7 hand this into the Commission, if you desire.

8 COMMISSIONER CHANG: Has those lists of  
9 incentives been made available to the Petitioner?

10 MR. YOUNG: Not to my knowledge.

11 COMMISSIONER CHANG: I'm trying to  
12 understand procedurally there's this matter before  
13 the LUC right now to put in this 50.6 percent into  
14 IAL. And that would preclude the city from putting  
15 any additional lands into IAL.

16 Would it also exclude them in taking  
17 advantage of any of those incentives should they  
18 proceed?

19 MR. YOUNG: I don't think they will be  
20 excluded provided the incentives are adopted by the  
21 Land Use Commission. These incentives are quite  
22 broad. They still need to be discussed with the  
23 agencies that would be affected, and I think tomorrow  
24 would be a time that hopefully these agencies would  
25 be able to provide some comment or position on it.

1           COMMISSIONER CHANG: But they wouldn't be  
2 precluded should those incentives pass? The  
3 Petitioner or anyone with IAL land designation would  
4 not be precluded from enjoying those incentives if  
5 they so chose?

6           MR. YOUNG: I think, based on what I see  
7 here -- of course, this is still in the very broad  
8 form. One of it has to do with listing city services  
9 and grants and programs in priority for IAL owners.  
10 However, my understanding is that those beneficial  
11 areas have to be a non-profit.

12           So assuming Mr. Campbell's operation  
13 somehow qualifies, I don't see any of these proposed  
14 incentives being excluded from their being taken  
15 advantage of.

16           COMMISSIONER CHANG: So those incentives  
17 aren't limited to only those landowners who  
18 participate in a city process? Those who have gone  
19 through LUC would still be able to take advantage  
20 those incentives?

21           MR. YOUNG: Yes, that would be the case,  
22 assuming the council moves ahead and doesn't, you  
23 know, finally specify exactly what these incentives  
24 are to be in exclusion of previous IAL designation or  
25 the Petition by the Petitioner.

1 COMMISSIONER CHANG: Thank you.

2 CHAIRPERSON SCHEUER: Commissioners?

3 Commissioner Ohigashi.

4 COMMISSIONER OHIGASHI: Just trying to  
5 follow up on Commissioner Chang's questions.

6 I'm going to give you a hypothetical,  
7 assuming that -- first question I have would --  
8 actually, you're saying that the Land Use Commission  
9 would have to adopt these incentives? It would be  
10 part of your IAL designation?

11 MR. YOUNG: I cannot speak to that because  
12 this is being recommended by a task force to the City  
13 Council. So whatever the City Council does could or  
14 may not be what you anticipated.

15 COMMISSIONER OHIGASHI: Assuming the LUC  
16 does not have to, and this is totally a city proposal  
17 for incentives on any kind of IAL proposal, would  
18 that exclude the Petitioner from increasing the  
19 amount of IAL lands based upon these incentives?

20 In other words, could the Petitioner expand  
21 or amend his Petition to -- in the future, to provide  
22 additional lands in exchange for these incentives?

23 MR. YOUNG: I couldn't speculate on the  
24 outcome of these proposed incentives, but I don't  
25 think the department would oppose Petitioner's



1 expansion of lands proposed by IAL beyond what is  
2 being petitioned today.

3 CHAIRPERSON SCHEUER: Just one moment.

4 Mr. Campbell, you can feel free to leave  
5 the witness box, if you want to.

6 Sorry, Commissioner Ohigashi.

7 COMMISSIONER OHIGASHI: If you had your  
8 license, you would have known that.

9 So the purpose of bringing up these  
10 incentives to the Commission at this point in time is  
11 for what purpose, since it hasn't been adopted, the  
12 policy hasn't been set, what purpose?

13 MR. YOUNG: My additional comment to it was  
14 just to update the Commission to the process that's  
15 going on at the city at this time.

16 CHAIRPERSON SCHEUER: Commissioner Aczon.

17 COMMISSIONER ACZON: Just to clarify, the  
18 Island Palms issue that you mentioned has nothing to  
19 do with this Petition, correct, Island Palms?

20 MR. YOUNG: That's correct. Totally  
21 different piece of property.

22 CHAIRPERSON SCHEUER: Commissioners, any  
23 other questions for the City and County of Honolulu?

24 Let me just clarify. Thank you for being  
25 here.

1           The city is not taking the position that  
2       there's anything inaccurate or flawed in the current  
3       Petition in front of us, correct?

4           MR. YOUNG:   Yes.   The department does not  
5       have anything to correct on what is being presented.

6           CHAIRPERSON SCHEUER:   Thank you.

7           Office of Planning, are you ready to  
8       proceed?

9           MS. APUNA:   Yes.

10          CHAIRPERSON SCHEUER:   Please go ahead.

11          MS. APUNA:   Office of Planning calls Rodney  
12       Funakoshi to testify.

13          CHAIRPERSON SCHEUER:   Aloha, Rodney.

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

16          THE WITNESS:   Yes.

17          CHAIRPERSON SCHEUER:   Please proceed.

18                       RODNEY FUNAKOSHI

19       Was called as a witness by and on behalf of the State  
20       Office of Planning, was sworn to tell the truth, was  
21       examined and testified as follows:

22                       DIRECT EXAMINATION

23       BY MS. APUNA:

24           Q       Can you please provide your position and  
25       your professional background?

1           A       Rodney Funakoshi, Administrator with Land  
2       Use Division of the State of Hawai'i, Office of  
3       Planning.

4           Q       Can you please summarize the state's  
5       position on this Petition?

6           A       I'll be fairly brief.

7                   The Office of Planning appreciates  
8       Malaekahana Hui West's voluntary participation in the  
9       IAL designation process which will help to realize  
10      government sustainability and food security for the  
11      State of Hawaii.

12                  Based on our review of the Petition, OP  
13      recommends that the Land Use Commission approve all  
14      230.33 acres in the Petition Area as IAL.

15                  Essentially, the Petitioner finds seven of  
16      the eight criteria, and we have, in our submitted  
17      report, kind of explained all of our rationale for  
18      that. And so basically too this has been covered in  
19      the hearing today, so I won't go over the criteria.

20                  Certain of the areas are considered less  
21      productive agricultural lands, but we are -- we do  
22      agree that the entire area does represent a critical  
23      mass, and for land stewardship types of concerns,  
24      that is appropriate to designate the entire area.

25                  We would like to include in our

1 recommendation that a condition be imposed waiving  
2 any and all rights to credits under HRS 205-45(h) as  
3 represented by the Petitioner.

4 So that concludes my testimony.

5 MS. APUNA: I have no further questions for  
6 Mr. Funakoshi. I do have a statement, but --

7 CHAIRPERSON SCHEUER: We will go through  
8 questioning of Mr. Funakoshi, then you can proceed  
9 with that.

10 Does Petitioner have any questions for OP's  
11 witness?

12 MR. MORSE: None.

13 CHAIRPERSON SCHEUER: City and county?

14 MR. YOUNG: None.

15 CHAIRPERSON SCHEUER: Department of  
16 Agriculture?

17 MR. CHING: No questions.

18 CHAIRPERSON SCHEUER: Commissioners?  
19 You're done. Thank you, Mr. Funakoshi, and you may  
20 proceed.

21 MS. APUNA: Thank you, Mr. Chair.

22 I'd just like to reiterate that the  
23 Commission's withholding or a stay of a decision  
24 based on DPP's recommendation would run counter to  
25 the IAL process.

1           Running parallel to each other, the county  
2 process is completely separate from, though  
3 simultaneous with the voluntary landowner petition  
4 process, while neither intersects or interferes with  
5 the other until one wins the race by receiving final  
6 IAL designation by this Commission.

7           HRS 205-45(i) clearly allows and authorizes  
8 the Commission to decide this Petition, stating,  
9 "Notwithstanding any other law to the contrary, land  
10 use commission may grant declaratory orders pursuant  
11 to this section before the commission receives from  
12 any county a map delineating recommended important  
13 agricultural lands."

14           All that this Commission is empowered to do  
15 today is to evaluate the qualifications of the  
16 Petition land for designation as IAL. It may either  
17 approve the entire or portion of the Petition Area,  
18 or it may deny the Petition in its entirety. The IAL  
19 statute and rules do not authorize the LUC to  
20 withhold a decision on a voluntary IAL petition until  
21 the county's maps are received.

22           The Commission should not thwart the  
23 efforts of the Petitioner to come forth voluntarily  
24 to designate its lands as IAL, in favor of the city's  
25 desire to designate more or different lands than the

1       Petitioner is offering. Thank you.

2               CHAIRPERSON SCHEUER: Thank you.

3               Are there any further questions for the  
4       Office of Planning?

5               MR. MORSE: None from Petitioner.

6               MR. YOUNG: None.

7               MR. CHING: No questions.

8               CHAIRPERSON SCHEUER: Commissioners?  
9       Department of Agriculture.

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

12              THE WITNESS: Yes.

13              CHAIRPERSON SCHEUER: State your name and  
14       please continue.

15                              NOA CHING

16       Was called as a witness by and on behalf of the  
17       Department of Agriculture, was sworn to tell the  
18       truth, was examined and testified as follows:

19                              DIRECT EXAMINATION

20              THE WITNESS: Noa Ching, Land Use Planner  
21       for Hawai'i Department of Agriculture.

22              Department of Agriculture stands on its  
23       written comments in support of the entire Petition  
24       Area of 230 acres.

25              In our support we note in the Petition Area

1 evidence of existing agriculture uses LSB in soil  
2 rating and adequate irrigation.

3 Happy to answer any questions.

4 CHAIRPERSON SCHEUER: Thank you. Any  
5 questions from the Petitioner for Department of  
6 Agriculture?

7 MR. MORSE: No question.

8 MR. YOUNG: No questions.

9 MS. APUNA: No questions.

10 CHAIRPERSON SCHEUER: Commissioners?  
11 Commissioner Cabral.

12 VICE CHAIR CABRAL: I would like to thank  
13 you for your very clear, concise, understandable  
14 statement.

15 CHAIRPERSON SCHEUER: Thank you. That's  
16 fine.

17 We are just at about another 50-minute  
18 mark. Do you have any final statements that you  
19 wanted to make, Petitioner?

20 MR. MORSE: It occurs to me -- again, thank  
21 you all for being here and hearing us out. It occurs  
22 to me that it may be a bit unorthodox, but given your  
23 question, Chair Scheuer, that regarding the  
24 documentation supporting the control that Mr.  
25 Campbell has over the property, we would be happy to

1       revisit that and offer more testimony in support, if  
2       the Commission is interested. Otherwise we can rest.

3               CHAIRPERSON SCHEUER: I am personally -- if  
4       this can be done briefly. I'm personally interested  
5       in that, because in other matters in front of the  
6       Commission, we have had significant questions  
7       regarding whether the people appearing before us  
8       actually had authority to bind the landowner. So who  
9       did you want?

10              MR. MORSE: We would like to recall Aaron  
11       Campbell for follow-up questions.

12              CHAIRPERSON SCHEUER: Please proceed.  
13       You're still under oath, Mr. Campbell.

14                      AARON CAMPBELL

15                              REDIRECT EXAMINATION

16       BY MR. MORSE:

17              Q       Regarding this Petition, what was the  
18       content of your conversation with your partners  
19       Malaekahana Hui West, LLC?

20              A       I made them aware of what was happening.  
21       And after counsel -- with counsel, they agreed with  
22       our plan to move forward regarding this Petition.  
23       And the documentation says that I am a co-manager  
24       with those rights that bind the LLC.

25                      But also they have given written and verbal



1 support for this Petition.

2 Q Did your law firm prepare a memo and  
3 documentation regarding what this process would  
4 entail?

5 A Yes.

6 Q Was that memo circulated to both yourself  
7 and your partners?

8 A Yes.

9 Q As you said earlier, but just to clarify,  
10 you received written confirmation from your partners  
11 that they wanted you to proceed with this process?

12 A Yes.

13 Q Despite whether you had that authorization  
14 or not, does your position as the manager of  
15 Malaekahana Hui West, LLC, grant you the sole  
16 authority to pursue these sorts of action?

17 A Yes.

18 Q And to bind the land according to the  
19 restrictive covenants?

20 A Yes.

21 Q As well as to bind it via this petition  
22 process?

23 A Yes.

24 MR. MORSE: Thank you. No further  
25 questions.

1           CHAIRPERSON SCHEUER: Last round. Any  
2 questions for Mr. Campbell from the county?

3           MR. YOUNG: No questions.

4           MS. APUNA: No.

5           MR. CHING: No questions.

6           CHAIRPERSON SCHEUER: Commissioners?  
7 Commissioner Chang.

8           COMMISSIONER CHANG: Mr. Campbell, in light  
9 of Mr. Young's testimony that the city is proceeding  
10 more timely with the IAL designation, including  
11 potential incentives, and I realize you may not have  
12 seen those incentives, is it still your position that  
13 you want to proceed with this Petition, or did you  
14 want to consult with your counsel about this city  
15 process?

16          THE WITNESS: Proceed.

17          CHAIRPERSON SCHEUER: Anything further,  
18 Commissioners?

19               We can do one of two things. I don't have  
20 a sense from this Commission whether we want to whip  
21 through in the next ten or 15 minutes, or take  
22 action. Do we want to proceed?

23               Commissioners, what is your desire?

24               Commissioner Aczon.

25          COMMISSIONER ACZON: Mr. Chair, I would

1 like to make a motion at this time.

2 CHAIRPERSON SCHEUER: Please go ahead and  
3 make the motion.

4 COMMISSIONER ACZON: I move that the Land  
5 Use Commission approve the Petitioner's request to  
6 designate Important Agricultural Lands for  
7 approximately 230.33 acres of Malaekahana, Laie,  
8 O'ahu, Hawai'i identified by TMK Nos. 5-6-006:018  
9 (por.) with the following conditions:

10 Number one, Petitioner shall comply with  
11 representations made to the Commission with respect  
12 to not claiming any credits described in HRS  
13 205-45(h) with respect to the Petition Area.

14 And secondly, within seven days of the  
15 issuance of Commission's Decision and Order,  
16 Petitioner shall record with the Bureau of  
17 Conveyances.

18 CHAIRPERSON SCHEUER: A motion has been  
19 made. Is there a second?

20 VICE CHAIR MAHI: Second.

21 CHAIRPERSON SCHEUER: Now seconded by  
22 Commissioner Mahi.

23 Commissioners, is there discussion?  
24 Commissioner Ohigashi.

25 COMMISSIONER OHIGASHI: I just have a

1 question.

2 Since we know it's land courted land, would  
3 it be filed in land court or filed in the bureau?

4 CHAIRPERSON SCHEUER: Would it be filed in  
5 land court or Bureau of Conveyances is your question.

6 I'm going to turn to our attorney general.

7 MR. MORSE: Petitioner is more than happy  
8 to file it in whatever appropriate land bureau is  
9 required to ensure that the order and ruling lines up  
10 with the actual deed wherever it's filed.

11 CHAIRPERSON SCHEUER: Does that address  
12 your concern, Commissioner Ohigashi, regarding the  
13 motions?

14 COMMISSIONER OHIGASHI: So it would be my  
15 understanding is that the motion is that Petitioner  
16 shall record the Decision and Order with the  
17 applicable --

18 CHAIRPERSON SCHEUER: With the Bureau of  
19 Conveyances or land court as may be applicable.

20 COMMISSIONER OHIGASHI: Okay.

21 CHAIRPERSON SCHEUER: Commissioner Aczon.

22 COMMISSIONER ACZON: So if it changed that  
23 at this time, would the other petitions that we  
24 approve would change because the previous petitions  
25 we have put the conditions under Bureau of

1 Conveyances?

2 CHAIRPERSON SCHEUER: Commissioner Cabral.

3 VICE CHAIR CABRAL: Land is recorded  
4 typically either the regular system or land court.  
5 There's a whole lot of historical reasons. Often  
6 they can be recorded in the land court and in a  
7 regular system through the Bureau of Conveyances. So  
8 I think by having the language that it be the  
9 applicable, because I would imagine that this --  
10 because it sounds like most of it's in regular  
11 system, but some might be in land court. Because of  
12 the agriculture designation previously obtained, I  
13 suspect it will be both systems.

14 So I think we can let the government figure  
15 that out, just make it as applicable, and I would  
16 probably not -- the other properties -- unless it had  
17 come up that they had done something with the land  
18 court in recording some portion of their land.

19 CHAIRPERSON SCHEUER: Thank you,  
20 Commissioner Cabral.

21 Let me say this. As the Chair right now, I  
22 would like to move to have any substantive comments  
23 on the Petition itself, but not to ignore procedural,  
24 as was indicated by Commissioner Cabral.

25 What came up in our proceedings today was

1 that there was recording with the land court related  
2 to Special Use Permit minor on this property, some  
3 documents, and there was some questions about unique  
4 to this Petition whether or not this recordation  
5 would have some relationship to that.

6 I believe that the language that has been  
7 clarified, that it shall be recorded with the Bureau  
8 of Conveyances or land court as may be applicable,  
9 adequately addresses it in this matter.

10 And we can also ask our deputy attorney  
11 general to further brief us on this general issue at  
12 a future time.

13 Are there any substantive discussion points  
14 on this Petition and the motion before us?  
15 Commissioner Cabral.

16 VICE CHAIR CABRAL: I might suggest to the  
17 Petitioner that this may be an opportunity to remove  
18 your connection to land court, if this is no longer  
19 pertinent.

20 CHAIRPERSON SCHEUER: I'm sorry, the  
21 conversation is among the Commissioners right now  
22 over the motion before us.

23 VICE CHAIR CABRAL: Nothing, thank you.

24 CHAIRPERSON SCHEUER: No offense,  
25 Commissioner.

1 Any other discussion, Commissioners?

2 Hearing none. Mr. Saruwatari, please poll  
3 the Commissioners.

4 ACTING EXECUTIVE OFFICER: The motion is  
5 two sections. One is recordation of Decision and  
6 Order; and second condition being related to not  
7 claiming any credits.

8 Commissioner Aczon?

9 COMMISSIONER ACZON: Yes.

10 ACTING EXECUTIVE OFFICER: Commissioner  
11 Mahi?

12 VICE CHAIR MAHI: Aye.

13 ACTING EXECUTIVE OFFICER: Commissioner  
14 Ohigashi?

15 COMMISSIONER OHIGASHI: Aye.

16 ACTING EXECUTIVE OFFICER: Commissioner  
17 Cabral?

18 VICE CHAIR CABRAL: Yes.

19 ACTING EXECUTIVE OFFICER: Commissioner  
20 Chang?

21 COMMISSIONER CHANG: Yes.

22 ACTING EXECUTIVE OFFICER: Chair Scheuer?

23 CHAIRPERSON SCHEUER: Aye.

24 ACTING EXECUTIVE OFFICER: Motion passes  
25 unanimously.

1                   CHAIRPERSON SCHEUER: Thank you, very much.  
2                   There is no further business, and we are  
3 adjourned.

4                   (The proceedings adjourned at 11:58 a.m.)  
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## CERTIFICATE

STATE OF HAWAII                    )  
  ) SS.  
COUNTY OF HONOLULU            )

I, JEAN MARIE McMANUS, do hereby certify:

That on February 6, 2019, at 10:00 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 6th day of February, 2019, in  
Honolulu, Hawaii.

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