

LAND USE COMMISSION
SITE VISIT
September 7, 2016- 10:00 a.m.
Gay & Robinson Building, 1 Kaumakani Avenue
Kaumakani, HI 96769

COMMISSIONERS PRESENT: Edmund Aczon
Gary Okuda
Arnold Won
Kent Hiranaga
Jonathan Scheuer
Linda Estes
Nancy Cabral
Dawn Chang

COMMISSIONERS EXCUSED: Aaron Mahi

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Diane Erickson, Deputy Attorney General
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

CALL TO ORDER

Chair Aczon called the site visit group to order at 10:00 a.m. and asked Executive Officer Orodener to conduct a briefing for the site visit. Mr. Orodener described the protocols to be observed during the site visit and stated that the meeting on this matter would be held at 1:00 p.m. at the State Office Building in Lihue.

The site visit group boarded vans and conducted the site visit as prepared by the Petitioner. The group completed the site visit at 11:05 a.m. The names of those attending the site visit are on file with the Commission.

At the conclusion of the site visit, it was adjourned by Chair Aczon at 11:05 a.m.

LAND USE COMMISSION
MEETING MINUTES
September 7, 2016- 1:00 p.m.
Conference Rooms A & B - 2nd Floor
State Building, 3060 Eiwa Street
Lihue, HI 96766

COMMISSIONERS PRESENT: Edmund Aczon
Gary Okuda
Arnold Wong
Kent Hiranaga
Aaron Mahi
Jonathan Scheuer
Linda Estes
Nancy Cabral
Dawn Chang

COMMISSIONERS EXCUSED: None

LUC STAFF PRESENT: Daniel Orodener, Executive Officer
Diane Erickson, Deputy Attorney General
Bert Saruwatari, Staff Planner
Riley Hakoda, Staff Planner/Chief Clerk

COURT REPORTER: Jean McManus

CALL TO ORDER

Chair Aczon called the meeting to order at 1:00 p.m. and stated that the Commission appreciated the morning site visit for DR16-56; and recognized Senate President Ronald Kouchi in the audience.

APPROVAL OF MINUTES

Chair Aczon asked if there were any corrections or additions to the August 25, 2016 minutes. There were no corrections or comments. Commissioner Mahi moved to approve the minutes. Commissioner Cabral seconded the motion. The minutes were unanimously approved by voice vote (9-0).

TENTATIVE MEETING SCHEDULE

Executive Officer Orodenker provided the following:

- The regular tentative meeting schedule has been distributed in the handout material for the Commissioners.
- The Hawaii Congress of Planning Officials (HCPO) will be held from September 21-23, 2016 on Kaua`i and the LUC will conduct a meeting to adopt the form of the order for the Kaua`i IAL DR16-56 Robinson Family Partners on September 23, 2016, as action is taken on the docket.
- The October 12, 2016 meeting is scheduled for Docket No. A81-525 Y-O Limited's Motion for Satisfaction of Condition for Affordable Housing.
- November 9-10, 2016 will involve the remand hearings on A89-649 Lanai Resort Partners.
- November 15-16, 2016 are reserved for A89-649 Lanai Resort Partners remand hearings.
- Please continue preparation for SP09-403 Waimanalo Gulch Sanitary Landfill's return to the LUC.
- There is activity on the Big Island and on Kauai that will probably appear before the Commission in late November or early 2017.
- The remaining meeting dates are awaiting scheduling.
- Any questions or conflicts, please contact LUC staff.

HEARING AND ACTION – DR16-56 Robinson Family Partners, (Kaua`i)

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

Chair Aczon stated that this was an action meeting on Docket No. DR 16-56 Robinson Family Partners Petition for Declaratory Order to Designate Important Agricultural Lands for approximately 20,888 acres at Makaweli, Kaua`i.

Chair Aczon asked if Petitioner was aware of the reimbursement policy of the LUC. Mr. Matsubara, counsel for Petitioner, responded that Petitioner was aware and would comply with the policy.

Chair Aczon updated the record, and described the procedures for the hearing. There were no questions or comments on the procedures.

Chair Aczon stated that he intended to declare that the documents submitted by the Department of Agriculture, State Office of Planning, Kauai County and Petitioner's response would become part of the record in this matter. Mr. Tabata stated that Petitioner had no objections. Mr. Matsubara stated that he had just received a topographical map of a portion of

the Petition Area and a photo of Comiskey Park Stadium submitted by the DOA and questioned whether it was a DOA Exhibit. Mr. Yamamoto verified that it was. Mr. Matsubara stated that he had no objection to the exhibit.

Chair Aczon declared that all the materials would become part of the record.

APPEARANCES

Benjamin Matsubara, Esq. and Curtis Tabata, Esq., for Petitioner Robinson Family Partners (“RFP”)

Jodi Higuchi, Esq., for Kaua`i County Planning Department (“County”)

Michael Dahilig, Planning Director, County

Leanora Kaiaokamalie, Planner, County

Dawn Takeuchi Apuna, Esq. for State Office of Planning (“OP”)

Rodney Funakoshi, Land Use Administrator, OP

Lorene Maki, Planner, OP

Earl Yamamoto, State of Hawai`i Department of Agriculture (“DOA”)

Chair Aczon stated that a couple of Commissioners would like to make disclosures before the proceedings began.

Commissioner Okuda disclosed that he represents a Party in litigation with Mr. Matsubara’s firm and stated that he was making the disclosure to provide an opportunity to object to his continued participation in the proceedings. Mr. Matsubara stated that he had no objections.

Commissioner Estes disclosed that she has been a long-time acquaintance of a member of the Robinson family and stated that she would like the Parties to be aware of this friendship. There were no objections to Commissioner Estes’ continued participation.

PUBLIC TESTIMONY- DOCKET NO. DR16-56

Chair Aczon asked if there were any Public Witnesses who wished to testify.

PUBLIC WITNESSES

1. Richard Ruiz

Mr. Ruiz described his affiliation with the Gay & Robinson Makaweli Ranch and stated that he supported the IAL Petition. Mr. Ruiz used Petitioner’s map of the Petition Area to describe the terrain and working conditions that he experienced on the job.

Mr. Matsubara asked whether there was adequate rainfall and if cattle could graze on the steep terrain as depicted in the DOA exhibit. Mr. Ruiz stated that the rainfall supported vegetation growth and described how cattle were grazed and managed in steep terrain conditions.

Commissioner Cabral requested clarification on whether the cattle were in the open range on the top pasture area. Mr. Ruiz described how open range and fencing were used to manage the cattle and stated that there were no nearby neighboring cattle ranches.

There were no further questions for Mr. Ruiz.

2. Roger Taniguchi

Mr. Taniguchi stated that he supported the Petition and described cattle grazing habits in the Petition Area.

There were no questions for Mr. Taniguchi.

3. Colin Robinson-Ague

Mr. Robinson-Ague stated that he supported the Petition. Mr. Matsubara asked what Robinson generation he was. Mr. Robinson-Ague replied that he was a 7th generation Robinson.

There were no further questions for Mr. Robinson-Ague.

4. Randy Uehara

Mr. Uehara stated that he was Vice President of the Taro Growers Association and that he had other current and past affiliations within the agricultural community. Mr. Uehara described his work history and how “green panic” grass was used to graze cattle and how the Robinson family had experimented with raising various crops and had been excellent stewards of the land; and why in his opinion the Commission should grant the Petition.

Commissioner Chang requested clarification on past taro growth in the area. Mr. Uehara described how taro farming in the area was conducted in the past and present.

Commissioner Okuda requested clarification on how the Robinson family had been “good stewards” of the land. Mr. Uehara described the efforts that the Robinson family had made to positively sustain its business and contribute to the community as “good stewards”.

Commissioner Scheuer requested clarification on whether Mr. Uehara was aware of the differences in the mauka/makai lands involved. Mr. Uehara replied that he was not. Commissioner Scheuer raised concerns about where the boundary line differences were and how to prioritize the agricultural land use for protection within the State IAL program. Mr. Uehara provided his perspective of why assisting farmers was important and why the Commission should grant the Petition.

There were no further questions for Mr. Uehara.

5. Ronald D. Kouchi- Hawai`i State Senate President

Senator Kouchi described his support for the Petition.

Commissioner Estes commented that Senator Kouchi’s testimony had been

unsolicited.
There were no questions for Senator Kouchi.

There were no further public witnesses.

Chair Aczon called for Petitioner to make its presentation.

PRESENTATIONS

PETITIONER

Mr. Matsubara provided a background history and summary of the Important Agricultural Lands (IAL) procedure and the Petition; and Mr. Tabata described the features of the Petition Area. They also described why the Petitioner was seeking the IAL designation and argued why the Commission should grant the Petition.

Mr. Matsubara stated that he had witnesses to present. Chair Aczon acknowledged Mr. Matsubara's request to present his witnesses.

PETITIONER WITNESSES

1. Bruce Robinson

Mr. Robinson, after being sworn in, described his family's farming history and involvement in the community for the Commission and commented on the DOA exhibit.

Commissioner Scheuer asked if the Comiskey-like terrain was farmable. Mr. Robinson replied that it was.

Commissioner Okuda requested clarification on how "good stewardship" was practiced with the Petition Area. Mr. Robinson described the efforts and activities that were used to manage and care for the Petition Area.

Commissioner Wong requested clarification on the consequences of not granting the "IAL" designation; whether the 85/15 credit was being sought; and whether ranching operations would continue if the "IAL" designation was not granted. Mr. Matsubara described the advantages of having an "IAL" designation, stated that the 15% credit was not being sought; that ranching operations had been found to be the best use of the land and would continue despite not receiving the "IAL" designation; and argued that the agriculture use designation of the property would be perpetuated if the "IAL" designation was granted.

Commissioner Hiranaga requested clarification on whether there was higher loss of cattle experience in the upper slope area. Mr. Robinson replied that there was little loss of cattle since the cattle were sure-footed; and that cattle ranching had been found to be the best use of the land.

There were no further questions for Mr. Robinson.

Mr. Tabata provided argument on the legal authorities involved with the IAL designation and cited recent legal decisions rendered in the Ho`opili and Koa Ridge cases to support his position.

Commissioner Scheuer requested clarification on how the legal authorities described by Mr. Tabata supported his argument. Mr. Tabata provided additional details of how the IAL designation would help protect and perpetuate agricultural use of the land into the future. Mr. Tabata stated that although he was not a tax attorney, he was aware that there were tax credits associated with the IAL designation as well. Mr. Matsubara also added details of how the IAL designation would sustain agricultural activity.

Commissioner Hiranaga sought clarification on the 85/15 portion of Mr. Tabata's reply; and how the percentages of land holdings for IAL designation were determined. Mr. Matsubara described how the 85/15 aspect of IAL legislation had been interpreted for its use in the Petition and the mechanics involved with removing the IAL designation if need be in the future. Mr. Matsubara stated that the Petitioner was not seeking the 15% portion of the incentive and clarified what the percentages discussed in the Petition referred to.

Chair Aczon asked if the Commissioners had any further questions. There were none.

2. Tom Whitten, PBR Hawaii

Mr. Witten, after being sworn in, described his and his company's professional roles in assisting in the IAL petition, how the Petition Area had been assessed and evaluated; and how it was determined that the various criteria for an IAL designation had been met.

Commissioner Cabral sought clarification on how conservation designated land was protected from cattle grazing, and what types of water resources were available. Mr. Whitten described how cattle grazing was managed and where various water resources were and what capacities they contained.

Commissioner Scheuer requested further clarification about water resources and what type of demands were served by the water resources. Mr. Whitten provided a historical background of water resources in the area and described how past demands for serving the needs of sugar cane production had driven the water delivery system. Mr. Whitten was not able to provide a response to how much water had been diverted by the system, and provided his perspective on why certain areas were excluded from the IAL petition.

Commissioner Chang sought clarification on whether DLNR's comments were sought regarding the Petition's Mauka Area lands. Mr. Matsubara replied that the Petition had been served to the State Office of Planning and deferred the question for OP to respond to. Commissioner Chang also asked if there was evidence of any historic trails in the area and whether access to traditional and cultural activities was available; and whether there were *Kuleana Lands* involved. Mr. Robinson replied that the conservation land was a water shed area and was closed off to only allow permitted activity: and that there were no *Kuleana Lands* in the Petition Area.

Commissioner Wong requested clarification on why portions of A and B rated lands were not included in the Petition. Mr. Whitten shared how the evaluation of what land areas would be included and how overall landowner priorities helped determine what would be involved in the Petition.

Commissioner Hiranaga requested clarification on why the large acreage of land that DOA was concerned about was included in the IAL petition. Mr. Whitten described how the aspects of having a contiguous land area factored in the petition.

Commissioner Hiranaga asked how conflicting comments in a past Oahu IAL petition were handled and sought clarification on how State agencies' comments were processed. Mr. Witten described how the conflicting perspectives assisted in the planning and land management process and ensuring better sustainability. Mr. Matsubara commented that the Public Testimony witnesses had provided information on how the land was used and how it fit into the overall ranch operation.

Commissioner Estes commented that Kauai County and OP had supported the IAL petition.

Commissioner Scheuer requested clarification on what was included in the smaller areas of exclusion and on the scoring for the County's IAL program. Mr. Whitten replied that the homestead area was not included; and deferred to the County to describe the different threshold percentages used.

There were no further questions for Mr. Witten.

Chair Aczon stated that the meeting would recess till September 20, 2016, with additional information to follow and recessed the meeting at 2:53 p.m.

