

BEFORE THE LAND USE COMMISSION OF THE STATE OF HAWAII

Routh Bolomet- In Propria Persona- Lineal Heir to Lands Found in TMK (2)4-5-10 :005
P.O. Box 37371
Honolulu, Hawaii 96837
808-638-0121 OR
808-638-1910

Docket No. A12-795

IN THE MATTER of the Petition of:

**RESPONSE TO
PETITIONER'S OBJECTIONS TO
INTERVENOR BOLOMET'S FOF, COL, D&O**

WEST MAUI LAND COMPANY, INC.

**RESPONSE TO STATE OP OBJECTIONS
LETTER FROM OHA TO SHPD
CONFIRMATION OF RECEIPT EMAIL
FROM THERESA DONHAM**

**INTERVENOR BOLOMET'S REVISED
FOF, COL, D&O IN RESPONSE TO OP
& PETITIONER'S OBJECTIONS**

A Hawaii Corporation, and Kahoma
Residential LLC, a Hawaii Limited
Liability Company

CERTIFICATE OF SERVICE

To Amend Agricultural Land Use District
Into the Urban Land Use District
For State of Hawaii reference #:
To Amend Agricultural Land Use District
Into the Urban Land Use District
For TMK (2) 4-5-10-005

2012 NOV 21 P 2:10
LAND USE COMMISSION
STATE OF HAWAII

**LEGALLY KNOWN AS & Displayed on TMK Map (2) 4-5-10:005 & 006
as KINGDOM of HAWAII Foreign Allodial Titles:**

R.P 1840L.C.AW. 424 AP.1 & 2 to Kanehoewaa
R.P 5666 L.C.Aw. 4760 AP.1 to Lelehu

R.P. 2651	L.C.AW. 11150	AP. 4	to Keone
R.P. 1839	L.C.AW. 3702	AP. 2	to D. Malo
R.P. 1180	L.C.AW. 312	AP. 1	to T.Keaweiw'i
R.P. 4475	L.C.AW. 7713	AP.25	to V. Kamamalu

R.P. 3455	L.C.AW. 9795-B	Ap.1	to Kaaua
R.P. 4388	L.C.AW. 8452	Ap.4	to A.Keohokalole

Other Properties Identified in V. Kamamalu's Ahupua'a o` Aki and /or Ahupua'a o` Moali'i :

Grant 1891, Ap. 7 to D. Baldwin
 Grant 11073 to Pioneer Mill Company, Ltd.
 Grant 2998 to W.Ap. Johnes
 Being also a portion of Parcel 5-A Kahoma Stream Flood Control Project

**RESPONSE TO PETITIONER'S & MAUI COUNTY OBJECTIONS TO
 INTERVENOR BOLOMET'S FOF, COL, D&O**

As this is the first time Intervenor Bolomet has seen or written a FOF, COL D&O, it was her understanding that she was to let the testimonies, exhibits, and laws do the speaking. Without spending too much time on this section here are her answers to the Petitioner's and Maui County Objections.

As a side note it's frustrating to see that the State and County has already put their stamp of approval on this project despite the fact that this petition is based on False Facts & Constitutional Mandates are being overlooked in the grosses manner. It leaves me to ask; who is watching out to make sure the laws and Constitutional mandates are being enforced for the people, if every agency merely checks off a list that reports are being submitted, but accuracy is not being questioned or checked by, in this case by a Cultural Practitioner, an organic farmer who is an expert in diversified low impact farming methods that regenerates destroyed soils from the pineapple and sugar cane industries; or an Environmental Specialist whose credentials are equal to or supersedes Robin Knox's credentials.

Having said that I will attempt to add verbage that is more in harmony with what I interpret the LUC is looking for as it pertains to a proposal that the State Land Use Commission can adopt. First I will attempt to address the Peititioner's and County's objections.

A, B, C, D, E, F, G, H: Intervenor Bolomet recited testimony, laws or exhibits verbatim where possible, so as to not to do what the Petitioner has done; take what was said out of context from the whole testimony, law or exhibits to present a petition based on partial facts, or outright false claims.

Throughout the hearings and the Petitioner's FOF, COL D&O, gross misrepresentation of the truth; such as the Petition Area has no existing history, cultural significance or archaeological site and attempts to prove so by leaving out crucial documents from their archaeological report to hide the facts; or the "soil is poor" and therefore a commercial ag business cannot grow here, then the Petitioner's Ag Experts, goes onto explain how he can make \$400K per year growing on bench tables without soil using hydroponics; "the ALISH ratings state that these aren't important ag lands" when in fact A & B rated lands are both "prime" lands; "a commercial ag operations cannot exist on this property without it creating problems for the neighboring residents" yet buries the history of the land where non-chemical diversified agriculture went on for hundreds of years on this land before Pioneer Mills came in and the county diverted the Kahoma Stream; or that the property has no access to water for irrigation, yet tells the commission they will be irrigating the park they are proposing and other public areas with water from perimeter water main lines, but is too expensive for irrigation for agriculture. The truth is, there are discounted agricultural water rates, and ag water meters that are not 5/8", those are residential meters. If the County can issue meters on a first come first serve basis to this project, they certainly can issue a meter for agricultural use, because by State Constitutional mandates, the State Sustainability Plan, the Ag Functional Plan and all the others plans cited in this petition; Diversified Agriculture, Food Sustainability, Sustainable Ag Jobs, protecting the coastal zone, protecting Hawaiian History and Archaeology are all objectives and top priority.

The truth is, affordable homes are defined as affordable rental and for ownership; and can be provided on ag lands through the Important Agricultural Land Acts 183 & 233 Incentive 1, short term construction jobs can be part of setting up the infrastructure and building the affordable homes on ag land, for many of the reasons the Petitioner is claiming this Petition meets the Objectives and Priorities of the STATE, County and Functional Plans, keeping this land ag for a low impact diversified organic commercial farm operation meets and exceeds what the Petitioner's proposes and it is for these reasons the Intervenor asks the Commissioners to deny the Petitioner's Proposal and to keep these lands agricultural zoned.

H, I: Now that I have had my FOF, COL D&O critiqued, I will attempt to refine these sections in my proposal. However, my lack of law training and knowledge of where to access all the information that might better represent my points does not allow me to be able to produce the same quality of work the Petitioner and /or the County Counsel or State Deputy Attorney General may produce, none the less, which means they are equally privy to the laws and cases I present and therefore should not be disallowed or overlooked because it is being presented by an untrained citizen for whom the Constitutional Mandates were designed to protect. I will do my best to put forth the laws as stated in the Hawaii State Constitution, the U.S. Constitution, and all the State and County Plans that may help to support my position.

INTERVENOR'S RESPONSE TO STATE OFFICE OF PLANNING RESPONSE

1. ARGUMENT: A. Hawaii State Plan

Counter Argument: Intervenor Bolomet argues that the propose Petition to rezone Agricultural Lands to Urban is based on false assumptions that

- 1) there cannot be a commercial Ag business on the property for a variety of reasons;
- 2) there is no access to irrigation water
- 3) the short term construction jobs are the only type of jobs that can be generated and benefit from this land
- 4) the benefits of a prime location to commerce, residential, transportation can only benefit this proposed affordable housing project
- 5) affordable housing can only be achieved through this proposal, and does not look at the fact that housing can be provide on this land to farm staff;
- 6) there are no cultural or historical significance to this land and no archaeology report
- 7) this project will not have an affect on the CZM
- 8) This project will not be affected by the fact that the Lahaina Waste Water Treatment Plant is over capacity today, before this project is even approved to be built.

The fact of the matter is this is a proposal that focus on the Petitioner's strengths to build homes, not the strengths and attributes of the Petition Area. When rezoning a property from Ag to Urban, it must find that this ag land no longer has the feasible capacity to produce agricultural products, not the Petitioner doesn't know how to.

The Intervenor's argument is not that this project doesn't meet "some" of the objectives and goals the Hawaii State Plan chapter HRS226 contains; it's that **by keeping this land in agricultural zoning** with a low impact diversified organic commercial farming, **these and more of the objectives and goals can be met in HRS 226 & 205 and will supercede this affordable housing proposal.**

There are six criteria that must be reviewed in determining whether the reclassification is consistent with policies and criteria before rezoning can occur.

The six criteria include:

1) Conformance with the Hawaii State Plan and adopted functional plans states that agricultural properties are important and should be protected unless not in use or not feasible.

The Petition Area left as Agriculture and put back into the hands of low impact diversified organic farmers rather than, home builders, supersedes the “generally meets” standards that this affordable homes project offers;

2) Conformance with urban districts standards; *all the items that makes this affordable homes project meet the district standards are all the reasons why this is perfect for a low impact diversified organic farm; today people are more concerned with their health and interested in partnering with farmers to do what is right for the environment even when the consumer cannot do the work directly by themselves; people want to know their farmers, go to the farm to buy their produce fresh and chefs want to work directly with farmers who are right in their back yard;*

3) Impact on areas of State concern also include; *Food Security, Jobs: Construction and sustainable ag jobs, the Environment, Historical, Cultural, Archaeological Preservation, Individual and family self sufficiency, social and economic mobility, community and social well being;*

4) Conformance with County General Plan; *also address items above;*

5) Economic ability of the Petitioner to complete the proposed Project *(has not been proven by the Petitioner. Further if any Federal money will be used in this project federal criteria must be met such as Section 106 of NHPDA 1966 and no such correspondence was submitted);*

6) whether the lands were in intensive agriculture use for two years before the date of the Petition (Petitioner and current land steward, “**chose to keep the lands out of agriculture**”) or **whether the lands have a high capacity for intensive agriculture use. (HAR 15-15-77(b)).** *These lands have the capacity for intensive agricultural use, as shown by the B72i rating which is prime land that needs irrigating; quite frankly, all crops need water unless you’re growing cactus and even cactus needs some water. The Petition area meets 7 of 8 ALISH criteria. The location of this property with its ability to connect to county power, water, CATV, Telephone, and it’s proximity to commerce and residential and bus lines makes this a perfectly “feasible” property for a low impact diversified organic farm business.*

B. Agriculture:

In all aspects of these hearings the Petitioner’s and Intervenors were suppose to bring forth evidence based on “experts” testimony, the law and truthful exhibits. However

when it came to presenting evidence on agriculture, the Petitioner offered an expert on mono cropping, chemical laden ag that used a model that has over the last 30 years proven to be an unsustainable enterprise that has ultimately failed and left Hawaii; Pineapple and Sugar Cane (even the Petitioner states this in the Petition pg. 14 paragraph 4:1-4). The challenge that the Commissioners has is believing the Petitioners experts or the president of the Maui Farmers Union who is also the State vice president and another officer of the Farmers Union, Vince Mina and Wm. Greenleaf who submitted written testimony (Aug. 21 & 23, 2012) both of which are organic farmers making a living using diversified low impact organic farming techniques. No more is Intervenor Bolomet a lawyer, are the Petitioners or the attorneys fighting for approval of this petition qualified organic farmers that can assess whether this land can be used for viable diversified low impact organic agriculture as was testified to by Vince Mina and Wm. Greenleaf.

Intervenor Bolomet comes to the Commission representing hundred's of years of sustainable diversified agriculture through her ancestors, some of whom even worked the Petition area before and after the Mahele. Her ancestors were the master auwai builders and engineers that the high chiefs called upon to design the auwai water ways. Other's were master Mahi'ai (farmers), all of which passed on their knowledge to their descendents. So when a lineal descendent looks at the land and assesses the feasibility of it for agriculture, she is not looking at it from a chemical point of view, or the limitations of the shape, but rather the advantages of the shape, the size, the topography, the location, the wind, the sun's direction in relationship to the property, etc. It's through observation that she evaluates how to use the property, which crops to grow, and which micro climates to create so that growth certain crops, beneficial insects, flora and fauna can thrive. This is all part of the art and the culture of Mahi'ai (farming).

The only truthful part about the Petition area not being fit for farming is if you are using the Pineapple and Sugar Cane Model that the attorneys and Petitioners have been peddling as an attempt to make these ag lands non-productive so that housing can go upon these important ag lands. Is it not the mandate of the LUC to find what is best and meets the most objectives and goals of the State Constitution, Plans. By rezoning this land from ag to zoning the LUC essentially brings eminent harm to the lineal descendents who are currently in court or will shortly be in court to have their lands returned.

For those wanting to restore these lands as was culturally and historically used, the LUC will essentially strip them of any benefits or protections that an Agricultural Statues would afford them.

2. Employment Opportunities:

Maintaining these lands in agriculture and getting these lands back into the hands of the lineal descendants who knows how to breathe life back into these lands will bring forth short term construction jobs to build infrastructure, restore archaeological features, build farm workers housing and farm buildings in addition to the long term sustainable jobs from the farm itself and will provide additional opportunities for the tourist industry and nearby food service industries to benefit by.

3. Open Space: The County's decision to approve the Project as a HRS chapter 201H project is based on the County's support for 100% affordable housing. What is more affordable than housing provided with a sustainable agricultural job that still leaves the space relatively open, features historical and culturally significant agricultural practices that once resided on this land. It's a win-win for everyone; the neighbors, the farm staff, Hawaiian History and Culture, food security for the Lahaina community and local food service establishments.

D. Facility Systems:

Maintaining this land in Agricultural for low impact diversified organic farming will have less impacts than the affordable housing projects, with the exception of education; The education community can benefit greatly by an accessible local organic farm for student to learn and experience growing first hand and learning host cultural values in how to work with nature as the ancient Kanaka Maoli did on these lands.

The Petitioner admits in their Petition Ex.7 pg. 94 c.Agricultural Uses: That "Ag use would involve neither a commitment of resources nor short and long term adverse environmental effects related to residential and commercial development. It would not involve a significant increase of infrastructure or public service demands associated with project implementation and ag use at the project site would increase the potential for locally grown food crops".

1. Water: HRS 7.1 protects Allodial Title water rights:

§7-1 Building materials, water, etc.; landlords' titles subject to tenants' use. Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use. [CC 1859, §1477; RL 1925, §576; RL 1935, §1694; RL 1945, §12901; RL 1955, §14-1; HRS §7-1]

Waste water: 29-2 Robin Knox Aug 3, 2012 WDT states: The County of Maui is currently operating under several consent decrees from EPA related to the Lahaina area

sewage collection systems and wastewater reclamation facility. The primary causes of failure to comply with the subject Clean Water Act provisions are lack of infrastructure.

i. According to County of Maui engineering reports by CH2 M Hill

<http://www.co.maui.hi.us/documents/11/28/456/Phase%201%20Report.PDF>, the existing plant capacity is not adequate to comply with current Clean Water treatment redundancy capacity requirements.

ii. The petitioner says the wastewater facility has a permit, from EPA and DOH but does not clarify that the permits are for underground injection control and that there is no NPDES permit. Given that there is current EPA enforcement action and pending Clean Water Act litigation regarding the NPDES permit, it is predictable that the allowable effluent pollutant loadings at Lahaina will not be allowed to increase, requiring improved treatment capacity to add any additional discharges.

iii. The subject project does not propose to build a sewage treatment plant, and does propose to send sewage to the already inadequate Lahaina Wastewater Reclamation facility.

iv. The proposed project is affordable housing and receives exemptions from fees that would support the wastewater infrastructure that will be significantly burdened by the project.

E. Socio-economic Advancement

1. Housing

Department of Agriculture: IAL: Objectives of Act 183 and Act 233

1. To fulfill the constitutional mandate found in Article XI, Section 3 of the constitution of the State of Hawaii;
2. "...to identify and plan for the maintenance of a strategic agricultural land resource base that can support a diversity of agricultural activities and opportunities..."; and
3. "...to contribute to the viability of agriculture through the expansion of agricultural income and job opportunities and increase in food security for current and future generations...". (205-B)(3)(b)

What Needs to Happen Now that the Incentives Have Been Passed?

There are several actions to be taken by different parties that have begun or must begin in order for the objectives to be met in a timely manner. These are described below:

Hawai'i Department of Agriculture

- **Incentive 1: Farm Dwellings and employee housing.** Allows landowners to develop farm dwellings and employee housing for their immediate family members and their employees. Limit of 5% of total IAL or 50 acres, whichever is less. Plans for dwellings and employee housing shall be supported by agricultural

plans approved by HDOA. HDOA currently has a process in place to review agricultural development plans submitted for review by county planning and permitting departments. HDOA will have to establish criteria for determining if the housing and agricultural development plans are in consonance and a standard format for the submittal of agricultural development plans. We expect that this determination can be performed under the authority of the Chairperson of the Hawaii Board of Agriculture (who also serves as the director of HDOA) without the need for administrative rules.

2. Archaeological, Historic and Cultural Resources:

Lineal Descendent/ Intervenor Bolomet is the 6th generation great granddaughter of Kaaua who is the Awardee of 9597b: 1, & 2 found in the Petition Area in addition to V. Kamamalu and Keohokalole who are the two Awardees of the 3 Ahupua`a found in the project site. As a lineal descendent eminent harm becomes a reality as more of her cultural history and archaeological features are destroyed and /or hidden by producing archaeological assessments that are assessing the wrong area.

A letter requesting that the archaeological assessment be review was sent to Theresa Donham. When a follow up call was made several weeks later, intervenor Bolomet was told that Ms. Donham was still waiting for the Maui SHPD office to send the report to them.

To date there still has not been a response from SHPD.

On Monday 11/19/12, a letter was sent by Office of Hawaiian Affairs by Kamano`opono Crabbe, the CEO of OHA who requested that SHPD review the Archaeological Assessment that Mr. Dega provided for accuracy. (see attached letter).

Mr. Dega does have a reputation, but it is not for accurate reports as was testified to by just one person who regularly reads and evaluates his report (See Public Written Testimony Lucienne de Naie).

Mr. Keith Ahue who was the Chairperson and State Historic Preservation Officer wrote to Mr. Jyo, from the Army Corp of Engineers on October 19, 1994 confirming that the "complex, referred to as the Kahoma Stream terrace System Complex, was located in the construction impact area of the flood control project. The areas referred to in the letter are: TMK # (2) 4-5-09, 10, 11 and 15. the areas mauka (east) of the project site, south west of the project site and makai (west). This letter was an exhibit in Theresa Donham's letter and the boundary notes from the missing LCA data were included in October 4, 2012 correspondence (see confirmation letter from Ms. Donham saying that she

received this letter). The letter to Ms. Donham detailing the inaccuracy that Intervenor Bolomet found was submitted into evidence on Oct. 4, 2012.

Once again the problem with this evaluation is that everyone is okay with saying that SHPD approved the deficient report when it is blatantly wrong with the most obvious being that it is a report from Makila which is 7.5 miles away. It is not for the Land Use Commission or any agency of this State to wholesale out the responsibility of an incorrect report when it has been proven to the Commission and other agencies that it is incorrect. To do so violates the very mandates that this agency and the commissioners took an oath to uphold in the Hawaii State Constitution Article XII Section 7.

The Pueo has been sited by the Intervenor, Bolomet and Lincoln, Public Testifier H. Naeole, & Mikahala Roy and that was throughout the years and on June 6th. The Pueo is an Amakua to all of us there who were Kanaka and came when we came to the land as a sign that our ancestors were happy we heeded the call. Because the Pueo did not show up on the day that Mr. Hodby did his survey does not mean the Pueo will not come back when the land is restored to its former pre Pioneer glory, and will become a habitat once again for more Pueos.

Cultural Monitoring will not prevent eminent harm to the lineal descendents, nor will it protect Intervenor Bolomet's family's iwi from being disturbed, it will not stop the destruction of the archaeological features that still remain on the Petition Area.

II Conclusion:

Throughout this proceeding Intervenor Bolomet had to dig deep to find the truth that lay beneath the Petition and in a very short time frame. Initially she thought it was due to her ignorance that Petitioner's reports and claims did not make sense, but after confirming the laws and mandates set forth for this land, for agriculture, confirming with family members and neighborhood residence the history of the area, confirming with cousin and cultural practitioner Kahu Michael Lee, and other cultural practitioners what was on the Petition area and finally simply checking out the resources listed in the Archaeology report and reading nearly all of them and any reports related to the area at Maui SHPD, she found her suspicions of inaccuracies confirmed, such as; the archaeology report was in fact inaccurate and incomplete and in fact an archaeology report that was originally made from the Makila project, with the exception of field work. Failure by design or inadvertent omission to exclude important boundary notes which highlighted the archaeological features that were on the property, hides the very value of what these assessments were designed for.

When SHPD failed to not identify this problem and approved the report, the first time could be considered a mistake. However for the LUC and all State and county agencies to go along with this flawed report could lead the intervenor and the courts to view this action as collusion to obstruct justice with perverted evidence. It would be frowned upon by the courts for SHPD and the LUC to ignore all facts provided by Intervenor Bolomet and her Cultural Expert and Practitioner Kahu Michael Lee, and allow such an invasive project to move forward with a mere "cultural monitor" inclusion.

It is obvious that there is a trust factor that goes on between SHPD and the archaeologist, which despite many found inaccuracies by the public citizens like Lucienne De Naie, no real checking is happening.

Maui County Public works maps confirm, there is an irrigation infrastructure that is in place on Intervenor's Bolomet's great grandfather's property, LCA 9795b: 1 & 2 and could be hooked up to an ag meter and the same peripheral water main that the Petition was planning to hook into.

When Mr. Frampton finally admits he knows of farms on county meters for their irrigation water, to perpetuate the illusion this Petition Area is useless as viable ag lands, he purports that it would be too expensive; thus leaving out that there are ag discount water rates and ag properties are allocated larger meters than the 5/8" irrigation meter Mr. Singleton the Petitioner's ag expert talks about. All to give the illusion that water is not available and if it were available, it would be too expensive, therefore selling the idea that this ag land is useless for a commercial Ag operation.

The next illusion purported by the petitioner is that these lands has poor soil, yet in the Petition it says it is a B72i rating (A & B are Prime Ag Land Ratings).

Next the Petitioner fails to tell you that this Petition area meets 7 of the 8 ALISH standards.

The Petitioner also fails to tell you that this Petition area can build Ag Farm Housing for Employees thus meeting the affordable housing goal of the State and County. Under the Department of Agriculture **IAL's Objectives of Act 183 and Act 233 Incentive 1.**

The Petitioner uses the proven failed pineapple and sugar cane farm model to demonstrate why this prime ag land cannot have a feasible commercial ag operation on it.

Accepting this Petition to rezone lands that would use the deficient expert reports that can find nothing of agricultural, cultural, historical, archaeological, flora or fauna significance or would cause no environmental harm would be to allow your decision to be made on reports that perverts the course of justice as it pertains to:

- Fabricating or disposing of evidence
- conspiring with another to pervert the course of justice, and
- intending to pervert the course of justice.

Which the Intervenor is told is a criminal act.

The Petitioner's stance that it "generally meets" the State's Plans, County Plans, and all the other plans, **is not a good enough reason to reclassify Prime AG lands**, when these prime ag land can not only provide food security to the people of Lahaina, but can provide affordable housing to farmers and their families and both short term and much needed long term sustainable jobs.

In addition to maintaining the Petition Area as ag, the neighboring residence will have a sense of natural green open space with the installation of a low impact diversified organic farm that restored archaeological features that can be of interest to nearby schools who are interested in teaching sustainable cultural farm practices. eco tourism, and most importantly, provide local grown fresh foods that supports good health, social well being.

A low impact diversified organic farm hands down supersedes this project on every Plan's Objectives and Goals; and while it is true no project will be able to meet 100% of the goals and objectives, we must look at the State's Constitutional Mandates first, then to the different plans' goals & objectives, to see which proposal better serves the people of Lahaina, Maui in general and the State on a whole.

It is an honorable project to build affordable housing, but to do it on prime ag lands that are still very viable to provide food security to a land locked community in times of disaster, there has to be good reason to do that, and so far this proposal has not demonstrated that what it offers supersedes what the land potential is.

As a lineal Descendent of these allodial titled lands that are protected under HRS 172.11, (confirms the Land Commission award is binding to the Awardee forever, Kingdom Law of 1872, Chapter 21 section 1 and HRS 172.11 all allodial titled lands shall inure to the lineal descendents of the awardee), why would the theme principal and values be given more consideration or credence to the Petitioner who still needs to defend his color of title since they failed to meet *Hustace v. Kapuni* which articulates the due process requirements that must be met in quiet title lawsuits aimed at securing ownership of Native Hawaiian-owned land through adverse possession.

The Principals and values being:

- 1) individual & family self-sufficiency
- 2) social and economic mobility
- 3) community or social well being; Self sufficiency refers to the ability to express and maintain one's own self-interest. It is a description of the importance of **individual freedom**. Social & economic mobility refers to the importance of social and economic fulfillment as **determined by each individual**.

Community well being refers to a number of benefits for the community as a whole. It is a balance to individual self-interest, and incorporates concepts of tolerance, respect and the aloha spirit (HRS 226-3).

So wouldn't it stand to reason that a lineal descendent whose rights on the lands are protected by law should not get more consideration especially if a denial to the Petition leads to a proposal that meets more of the State and County's goals and objections?

The LUC, like all State and County agencies are supposed to uphold the Constitution, Article 12, Section 7, and the Supreme Court cases like *Ka Pa'akai v. LUC* where the Court put forth three steps for all agencies to adhere to when issuing permits, approvals, etc.

The LUC is "required under the Hawaii Constitution to preserve and protect customary and traditional practices of native Hawaiians." *Ka Pa'akai O Ka'aina v. Land Use Commission*, 94 Hawaii 31, 45 (2000). The LUC is under "an affirmative duty" to "protect these rights and to prevent any interference with the exercise of these rights." *Id.* In order to fulfill its duty to preserve and protect customary and traditional native Hawaiian rights to the extent feasible, the LUC must—at a minimum—make specific findings and conclusions as to the following:

(1) the identity and scope of “valued cultural, historical, or natural resources” in the...area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;

(2) the extent to which those resources—including traditional and customary native Hawaiian rights---will be affected or impaired by the proposed action; and

(3) the feasible action, if any, to be taken...to reasonably protect native Hawaiian rights if they are found to exist. *Ka Pa’akai at 47 (2000)*, See also *HRS Section 205A-4(a), Section 205A-5(b); Section 205A-2(b)(2)*.

Would it then not be a failure on the part of the LUC to do these three mandated steps because the information they relied upon, the archaeological survey, was deficient and only tested in filled areas...not determining the true extent and nature of invaluable Native Hawaiian cultural resources within the project area and the extent to which traditional and customary native Hawaiian rights are exercised in the petition area...

Burials are listed on the Keone LCA and was reported by Intervenor Bolomet on her GGGGGreat Grandfather’s property. A walk thru on the property to examine 8’ to 12’ of fill above the original grade does not fulfill SHPD’s obligation to investigate or protect these burials.

In *Paulette K. Kaleikini vs. Wayne Yoshioka et al.*, the Hawaii Supreme Court found that:

1) a declaration that the City and DLNR [Department of Land and Natural Resources] violated HRS §§ 6E-42 and/or 6E-8;

(2) a declaration that an AIS [Archeological Inventory Survey] must be prepared for the rail project prior to “decisionmaking on the project and/or commencement”;

(3) a declaration that the final EIS [Environmental Impact Statement] was “unacceptable” because it did not include an AIS;

(4) a declaration voiding “any and all state or county permits or approvals” for the rail project;

On August 24, 2012, the Hawai'i Supreme Court ruled unanimously that the City and the State had violated the law concerning the surveying of Native Hawai'ian burial sites. They said that,

"... the SHPD [State Historic Preservation Division] failed to follow its own rules when it concurred in the rail project prior to the completion of an archaeological inventory survey for the entire project. The rules establish a sequential process under which an archaeological inventory survey must precede the SHPD's concurrence in a project. As noted in the rules, “[t]he review process is designed to identify significant historic properties in project areas and then to develop and execute plans to handle impacts to the significant properties in the public interest.” HAR § 13-275-1(a) (emphasis added) the SHPD failed to comply with HRS chapter 6E and its implementing rules when it concurred in the rail project prior to the completion of the required archaeological inventory survey for the entire project. The City similarly failed to comply with HRS chapter 6E and its implementing rules by granting a special management area permit for the rail project and by commencing construction prior to the completion of the historic preservation review process.

Would the approval of this Petition to reclassify these lands from Ag to Urban by the LUC not be the same mistake made by the State and Honolulu County in the rail project, if they do so prior to meeting HAR 13-275?

Upon investigating the Petition Area, Intervenor Michele Lincoln was able to identify concrete telephone poles that were behind her house with the 6th one landing near the “heiau”. These pole corroborate with Robert Connolly Kahoma Terrace Complex study that starts above the Petition area in TMK # (2) 4-5-15 and extends down thru the Petition Area TMK #(2) 4-5-10 above the rail road tracks (the only rail road tracks that were in Lahaina since the rail tracks were put in), and to the 6th pole which is locate right below Michele Lincoln's back yard in the proximity of the Heiau. The location of the Kahoma Terrace Complex in proximity to the Petition site is further confirmed by former SHPD Chairperson & State Historic Preservation Officer Keith Ahue on Oct. 19, 1994 in a letter to Mr. Ray H. Jyo from the Army Corp of Engineers regarding the Kahoma Stream Flood control Project, Access Road Reconstruction. In it he confirmation that the Kahoma Stream Terrace System Complex is in fact in this area to include TMK's # (2) 4-5-09, 10, 11 and 15, which extend above the Petition area to below the Petition area and parallel to the southwest portion of the Petition Area.

She and her neighbor admit when they walked their dogs or walked with their children up to early 2000's, the top of one of the rock walls was still present and sometime before the archaeological assessment was knocked down by bulldozers.

If one systematically knocks down archaeological sites witnessed by neighbors even before they quiet titled lands in 2006, would this not be destruction of private property (lineal descendents private property), would this not be destroying archaeological evidence which would be subject to an "obstruction charge", which states that "charges can also be laid if a person alters or destroys physical evidence, even if he was under no compulsion at any time to produce such evidence"?

Is the Petitioner not asking the LUC to participate in obstructing justice by allowing a ruling to be made on an inaccurate and/or incomplete archaeological assessments, cultural reports, flora & fauna reports or any other reports that are deficient in that it inadvertently omitted, or are designed to ignored, diverted the commission's attention with the possible intent to hides the historical, cultural, archaeological, & burial information that Intervenor Bolomet and Cultural Expert and Practitioner Kahu Michael Lee presented?

By holding higher the Petitioner's seasonal report that took a mere "snap shot" of the flora & fauna value of the area; or by holding higher the approved EIS on the State or County level by persons' whose testified that they are not experts in Hawaiian Cultural Practices and rely on SHPD to verify accuracy of Archaeological reports, and who testified that they do not hold environmental credentials that supersedes Intervenor Bolomet's expert witness Robin Knox credentials on environmental expertise, is to uphold an untruth, rather than the Constitutional mandates that each commissioner swore to uphold during their oath of office.

The Petitioner's Environmental Experts submitted reports that disseminate any concern of endangerment to areas in or outside of the Petition Area as with the CZM and waste water plant being currently over capacitated without future plans for expansion, even though the danger still exists. Accepting these deficient reports cannot be qualified as a "feasible action to reasonable protect native Hawaiian rights if they are found to exist".

This proposed 68 affordable housing plan appears to be small in comparison to other already approved housing developments in Lahaina using the same waste management system, but no matter how small it is asking this commission to approve a proposal to rezone that will contribute to an already "over capacity" wastewater system that the county has not

made any commitments to expand upon would be to further participate in the already over burdened, over capacity problem that may contribute more to the problems of processing the very waste that is harming the reefs and oceans that Hawaii's tourist spent \$12.58 billion dollars in 2011 to see and to swim in. The whole point of the permitting process and process like these LUC proceedings is to project foresight that will protect the constitutional mandates that protects our industries like agriculture and tourism, our economic well being by making sure there are not only short term jobs, but long term sustainable jobs, that even the construction workers can do during lean economic times when construction jobs are not readily available, to protect the health and scenic beauty of our environment and natural resources that includes our soils, so that local grown food can be made readily available, our water and the well being of our residents that are of high priority to the State and Counties and the well being for the residents who already live and are invested in their communities.

In conclusion, denying the Petition to reclassify the Petition Area from Agricultural zoning to Urban zoning, does not fail to meet the Hawaii State Constitutional Mandate of Article XI section 1, 3, 7, 9 and Article XII section 7.

The only thing stopping the Petition Area from reaching its full Ag potential is the Petitioner and those they represent; not the imagined limitations set upon these lands by non-organic, low impact diversified farmers who can otherwise see the potential of this property fulfilling many of the goals of Important Ag Lands; ALISH, The Agricultural Functional Plans, the State Historic Preservation Functional Plans, State Housing Functional Plan, State Recreational Functional Plan, State Transportation Functional Plan and the Maui County Plans.

For all these reasons, Intervenor Bolomet respectfully ask the Commissioners of the Land Use Commission to deny this Petition to reclassify the Petition Area from Ag to Urban zoning.

See Theresa Donham receipt confirmation email

See OHA letter to Theresa Donham asking that the Dega Archaeology report for Petition A12-795 be reviewed for inaccuracies and incompleteness.

INTERVENOR BOLOMET'S REVISED FOF, COL, D&O IN RESPONSE TO OP & PETITIONER'S OBJECTIONS

The following additions are to be included in Intervenor Bolomet's FOF, COL, D&O in combination with the objections made to Petitioner's, County's, and State OP objections.

Conclusion of Law

434-1: Intervenor Bolomet from the onset of her being accepted as an intervenor attempted to explain why the LUC did not have jurisdiction over foreign allodial title properties such as those included in the Petition Area listed under TMK # (2) 4-5- 10: 005 & portions of 006. The laws set forth are not to demonstrate ownership, but rather to explain what makes these lands contain in the Petition Area "**foreign allodial title lands**".

434-2: JURISDICTIONAL REQUIREMENTS: It is well-settled that "every court must ... determine as a threshold matter whether it has jurisdiction to decide the issue(s) presented." Pele Defense Fund v. Puna Geothermal Venture, 77 Hawai'i 64, 67, 881 P.2d 1210, 1213 (1994). Moreover, subject matter jurisdiction may not be waived and can be challenged at any time. Bush v. Hawaiian Homes Comm'n, 76 Hawai'i 128, 133, 870 P.2d 1272, 1277 (1994).

434-3: Foster vs. Neilson: -27 U.S. (2 Pet.)253 (1829) The US and its agencies do not have authority to assert their jurisdiction upon foreign allodial titled lands.

434-4: The proof that Land Commission Awards which were granted Royal Patents by King Kamehameha III are acknowledged in Hawaiian Kingdom Constitutional Law and Mirrored in Hawaii State Revised Statutes 172.11.

434-5 NATURE OF LAND COMMISSION AWARDS: The Commissioners were not authorized to grant patents for land or to receive commutation. Their duty was to ascertain the nature and extent of each claimant's rights in land, and to issue an Award for the same which is prima facie evidence of title "and shall furnish as good and sufficient a ground upon which to maintain an action for trespass, ejectment or other real action against any other person or persons whatsoever, as if the claimant, his heirs or assigns had received a Royal Patent for the same," by Act approved July 20th, 1854. The holder of a Land Commission Award was entitled to receive a Royal Patent in fee-simple from the Minister of the Interior, on payment of the commutation to be agreed upon by His Majesty in Privy Council. In regard to this last, the Commissioners

themselves state that "The share of Government or the body politic, to commuted for by any confirmed claimant wishing to obtain a fee-simple title, this Board understands from the evidence before it, to be one-third part of the value of the land without improvement which third part of unimproved value, being paid by the confirmed claimant, should extinguish the private rights of the King in the land, and leave such claimant an allodium." By a recent ruling of the Supreme Court in the case of the Ahupua'a of Papa'ikou, the value of land for purposes of commutation should be appraised as of the date of the Act.

434-6: Chapter XXI:

CHAPTER XXI.

AN ACT

TO REGULATE THE ISSUING OF ROYAL PATENTS.

WHEREAS, Large numbers of Ahupuaas and Ilis of land in this Kingdom were awarded by the Commissioners to Quiet Land Titles, by name only, and not by survey or defined boundaries ;
And, Whereas, the Government commutation in many instances is not paid, nor the boundaries of such lands certified to ; **And**,
Whereas, in many cases the original holders of such awards have deceased, or the title to the said lands or to portions of said lands has passed into other hands ; **Therefore**,

Be it Enacted by the King and the Legislative Assembly of the Hawaiian Islands in the Legislature of the Kingdom assembled:

SECTION 1. Every Royal Patent hereafter issued upon an award of the Board of Commissioners to Quiet Land Titles, shall be in the name of the person to whom the original award was made, even though such person be deceased or the title to the real estate thereby granted have been alienated ; **And** all Royal Patents so issued shall inure to the benefit of the heirs and assigns of the holder of such original award.

434-7: Awards to Tenants : It may be observed here that Kuleana(s) in default of heirs "revert to the owner of the Ahupua'a or Ili of which the escheated Kuleana formed a part," by a law passed July 6th, 1866. *In the Petition Area, lands default of heirs would*

revert back to V. Kamamalu and Keohokalole, who were the Awardees of the 3 ahupua`a that crosses into the Petition Area.

434-8: HRS 172.11 mirrors and confirms the allodial titles relinquish by the King Kamehameha III and given in perpetuity to the lineal descendents of the Awardees: Land Commission award is binding to the Awardee forever, Kingdom Law of 1872, Chapter 21 section 1 and HRS 172.11

§172-11 Land patents on land commission awards; to whom, for whose benefit. Every land patent issued upon an award of the board of commissioners to quiet land titles, shall be in the name of the person to whom the original award was made, even though the person is deceased, or the title to the real estate thereby granted has been alienated; and all land patents so issued shall inure to the benefit of the heirs and assigns of the holder of the original award. [L 1872, c 21, §1; RL 1925, §568; RL 1935, §1587; RL 1945, §4641; RL 1955, §100-11; HRS §172-11]

Case Notes

Land commission award held good against later royal patent. 1 H. 69; 1 H. 90. Award cannot be collaterally attacked. 1 H. 90. Certificate of award of land commission, with its accompanying survey, are admissible in evidence. 2 H. 202.

Patents based as awards do not confer or confirm title of later holders. It is merely a quitclaim interest of the government in lands. 3 H. 783; 11 H. 587, 589.

Court is inclined not to disturb award of land commission long adjudicated. 5 H. 354. Mahele of 1848 considered and defined. 6 H. 195.

Award may be to deceased person; heirs must determine their own respective rights. 15 H. 648. Section does not authorize the issuance of grant to deceased person. 26 H. 382, 397.

Review of case law and effect of patent. 49 H. 429, 421 P.2d 570.

Cited: 35 H. 608, 630, 658.

434-9: If the State of Hawaii recognizes Kingdom Laws by mirroring the Kingdom on Laws on Royal Patents in HRS 172.11 and the U.S. Supreme Court recognizes that the US or its agencies do not have the authority to assert their jurisdiction on Foreign Allodial Titles, who then has given the LUC the authority to assert their jurisdiction over these lands in the Petition Area?

434-10: If all the Commissioners has taken an oath to office to uphold the Constitution of the United States whose lawful authority depends on their compliance, and recognition that the US Constitution is the Supreme Law of the Land, rulings of the U.S. Supreme Court are no different and also demands recognition and compliance. The

Supreme Law of the Land can be found in the decision of the U.S. Supreme Court *Old Wayne Mut. L. Assoc. v. McDonough*, 204 U.S. 8, 27

434-11: There are no treaties by the awardees with the United States giving them authority over these Foreign Allodial Title Lands in the Petition Area.

434-12: No more would the U.S. and their Government Agencies be allowed to assert their jurisdiction over foreign lands in Japan, India, Switzerland or any other Independent State, does the LUC have the authority to assert its authority to assert their jurisdiction of the Foreign Allodial Title Lands relinquished by King Kamehameha III in Royal Patents to the Awardee in perpetuity.

434-13: Allodial Title Lands & Eminent Domain

What is allodial title? In property law, allodial title is a concept describing a situation wherein in land, buildings, fixtures or any other real property is owned for the cost of nothing and free from any financial burdens including tax, mortgage and liens. A property with an allodial title is inalienable, it is an absolute property of its owner and is not subject to any law and authority. This means that it cannot be taken for any reason whatsoever by any operation of law; it is **Absolute property ownership**.

434-14: Property owned under true allodial title is described as being "fee simple," an absolute ownership right limited by four government powers of taxation, police power, eminent domain and escheat.

434-15: If the LUC can show by U.S. Constitutional Law why their authority supersedes the U.S. Supreme Ct. ruling of *Foster & Elam v. Neilson* to have the authority to assert their jurisdiction on these foreign allodial title lands, then for the reason that follow we ask that the LUC deny the Petitioner's request to reclassify these ag lands to urban zoning.

435-2: An "ahupua'a" is a land division usually extending from the mountains to the sea along rational lines, such as ridges or other natural characteristics. In re *Boundaries of Pulehunui*, 4 Haw. 239, 241 (1879) (acknowledging that these "rational" lines may also

be based upon tradition, culture, or other factors).

435-3: in *Pele Defense Fund v. Paty*, supra, we recognized that ancient Hawaiian gathering rights may have extended beyond the boundaries of individual ahupua'a in certain cases. 73 Haw. at 620, 837 P.2d at 1272. Nevertheless, neither Kalipi nor Pele precluded further inquiry concerning the extent that traditional practices have endured under the laws of this State. "In Kalipi, we foresaw that '(t)he precise nature and scope of the rights retained by s 1-1 would, of course, depend upon the particular circumstances of each case.' " *Pele*, 73 Haw. at 619, 837 P.2d at 1271 (quoting Kalipi, 66 Haw.at 12, 656 P.2d at 752).

437 Line 1: Insert after the Hawaii State Constitution, "**Article XII Section 7**", protects all.....

437-2: TRADITIONAL AND CUSTOMARY RIGHTS **Section 7**. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. [Add Const Con 1978 and election Nov 7, 1978]

437-3: Obligations Under Article XII, Section 7 of the Hawai'i Constitution and HRS s 1-1
In addition to the requirements of the CZMA, the HPC is obligated to protect customary and traditional rights to the extent feasible under the Hawai'i Constitution and relevant statutes. Article XII, section 7 of the Hawai'i Constitution (1978) provides:

437-4: The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.
(Emphases added.) HRS s 1-1 (Supp.1992) provides:

439: Insert last line after [94- Hawaii...] [Ka Pa`akai at 47 (2000), See also HRS section 205A-4(a), Section 205(b); Section 205A-2(b)(2).

440: If the LUC grants this Petition it will have failed to do these three mandated steps because the information they relied upon; the archaeological survey, was deficient and only tested in fill areas....not determining the true extent and nature of invaluable Native Hawaiian cultural resources within the project area and the extent to which traditional and customary native Hawaiian rights are exercised in the petition area.....

441: Insert resource "(Ex. 7D pg cover-53)"

441-2: If the Petitioner is going to Finance any part of this Proposed project with Federal Money (HUD, etc.), a Federal Agency correspondence re: Sec. 106 of the NHPDA must be submitted with the proposal; Intervenor Bolomet has not been able to locate that correspondence within the Petition.

442: Insert after last line: (Funakoshi Tr. 9/7/12 pg 91 line 15-25, 92 line 1-25, 93 line 1-16) (Joanne Ridao Tr 9/6/12 194 17-25, 195: 1-25, 197:18-25) (R. Frampton Tr 10/5/12 p. 183:23-25) (H. Bigalow Tr. 9/6/12 p 90:4 thru 95:1)

443: Insert after "5:" No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry. [Ren and am Const Con 1978 and election Nov 7, 1978]

443-1: Move "State Constitution Article I.... to 444 -1)

Replace with: THE OBLIGATION TO PRESERVE AND PROTECT CULTURAL AND HISTORIC RESOURCES: PUBLIC ACCESS SHORELINE HAWAII, by Jerry Rothstein, its coordinator; and Angel Pilago, Appellants-Appellees-Respondents, v. HAWAII COUNTY PLANNING COMMISSION, by Fred Y. Fujimoto in his capacity as its chairman; and Nansay Hawaii, Inc., a Hawai'i corporation, Appellees-Appellants-Petitioners. No. 15460.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS (CIV. NO. 90-293K) 8/31/ 1995

Obligations Under the CZMA

443-2: Within the scope of their authority, "all agencies" in Hawai'i must ensure that their rules comply with the objectives and policies of the CZMA. HRS ss 205A-4(b) and - 5. Moreover, the neighbor island county planning commissions and the Honolulu City Council are specifically required to give "full consideration ... to ... cultural ... (and) historic ... values as well as to needs for economic development" when implementing the objectives, policies, and SMA guidelines set forth in the CZMA. HRS s 205A-4(a) (emphasis added).

443-3: The following factors, inter alia, may constitute significant adverse effects: (a) "an irrevocable commitment to loss or destruction of any natural or cultural resource, including but not limited to, historic sites and view planes"; (b) effects upon "the economic or social welfare and activities of the community, County or State"; and (c) actions "contrary to the objectives and policies of (the CZMA) and the (SMA) Guidelines(.)" HPC Rule 9-10(H)(1), (4) & (10) (emphases added). See also HPC Rule 9-6(A)(2); HRS s 205A- 2(b)(2) (one of the CZMA's objectives and policies is to protect and preserve "those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian ... history and culture ")

(emphasis added). The interests asserted by PASH fall within these broad categories; therefore, they are entitled to protection under the CZMA. (FN20) See HRS s 205A-21 (finding that "special controls on development are necessary to avoid permanent losses of valuable resources and the foreclosure of management options, and to ensure ... adequate access");

444-1: State Constitution Article 1 Section 5:

444-2. Due Process and Equal Protection: Insert after title, "Equal Protection Clause are not subsumed by the Takings Clause and are immediately ripe for review by the Federal courts".

488-2: **Allodial Title Water Rights:**

§7-1 Building materials, water, etc.; landlords' titles subject to tenants' use. Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. **The people shall also have a right to drinking water, and running water,** and the right of way. **The springs of water, running water,** and roads **shall be free to all,** on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use. [CC 1859, §1477; RL 1925, §576; RL 1935, §1694; RL 1945, §12901; RL 1955, §14-1; HRS §7-1]

CERTIFICATE OF SERVICE

I hereby certify that a copy of Intervenor Routh Bolomet's, FINDING OF FACTS, CONCLUSION OF LAW & DECISION & ORDER HAVE BEEN DULY SERVED ON ALL PARTIES via personal delivery or by mail to the following addresses:

James W. Geiger -Mancini Welch & Geiger
33 Lono Avenue, Suite 470
Kahului, Hawai'i 96732
for: West Maui Land Company, Inc.
e-mail jwg@mrwlaw.com


Jesse Souki, Director Office of Planning
235 South Beretania, Rm 600
Honolulu, Hawai'i, 96813
e-mail jesse.k.souki@dbedt.hawaii.gov

Bryan C. Yee, Esq. Deputy Attorney General
425 Queen Street, Honolulu, Hawaii 96813

William Spence, Director of Planning
Department of Planning
County of Maui
c/o James Giroux, Esq. & Michael Hopper Esq.
Department of the Corporation Counsel
250 South High Street
Wailuku, Hawai'i 96793
e-mail william.spence@co.maui.hi.us

Michele Lincoln 452 Aki Street, Lahaina, Maui 96761
e-mail LincolnMichele@yahoo.com

Dated, Honolulu, Hawai'i this day of Nov. 20, 2012


Routh Bolomet

Pro Se Lineal Descendent of Foreign Allodial Titles found in TMK (2) 4-5-010:005 & 006

PHONE (808) 594-1888

FAX (808) 594-1865



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813

HRD12-6539

November 16, 2012

Ms. Theresa Donham
State Historic Preservation Division
Archaeology Branch Chief
601 Kamokila Blvd.,
Kakuhihewa Building Suite 555
Kapolei Hawai'i 96707

Re: Beneficiary Routh Bolomet's Concerns about the Kahoma Affordable Housing
Development Project TMK: [2] 4-5-10: 005 & 006

Aloha e Ms. Donham:

The following matter has been brought to the attention of our office. Routh Bolomet, a beneficiary of the Office of Hawaiian Affairs (OHA), has presented to OHA serious concerns about the adequacy of the archaeological survey of the Kahoma Affordable Housing Project located within Kahoma, Lāhainā District, Island of Maui, Hawai'i TMK: [2] 4-5-10: 005 & 006. We are asking your office to reconsider the "No effect on historic properties" determination of the Archaeological Assessment conducted by Scientific Consultant Services (SCS 2005) and accepted by your office, 2006.0230/DOC NO:0602MK10.

Ms Bolomet claims strong genealogical connections to ancestors associated with the subject parcel and is currently an intervener in the West Maui Land Company Land Use Commission (LUC) petition A12-795 to rezone the project lands from Agriculture to Urban zoning. She contacted you via email on October 4, 2012 and has not heard back from you concerning this matter.

Ms. Bolomet's concerns include; (1) Incorrect/Inaccurate Land Commission Award's (LCA's) information reported within the Archaeological Assessment only four of eleven LCA's within the subject parcel were mentioned in report, other LCA's are discussed in the report but they do not pertain to this immediate project area. It appears that the LCA information for the report was extracted from a previous study conducted by SCS in another area in Mākila Ahupua'a. These missing LCA's contain information within the boundary notes and descriptions

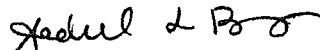
Ms. Theresa Donham
November 16, 2012
Page 2

that describe cultural sites in the area. (2) The test excavations conducted during the Archaeological Assessment did not, in most cases 13 of 15, extend beyond the limits of fill deposits placed on the parcel during the Kahoma Stream Flood Control Project. According to background research and previous archaeological studies cultural sites existed in the area prior to sugarcane cultivation and the Kahoma Stream Flood Control Project. Additionally Ms. Bolomet has genealogical/lineal connections to an awarded LCA parcel where her relative is buried. Cultural sites may well be located beneath these fill deposits in relationship to irrigation/agricultural use of the area as well as activities associated with habitation. (3) According to Ms. Bolomet's a neighbor of the subject parcel reported that she used to walk along the tops of rock walls that were within the subject parcel and in the early 2000's the area was bulldozed, prior to the archaeological survey, and these sites were destroyed. (4) During site visits conducted in June/July 2012 Ms. Bolomet along with her 'ohana located cultural sites on the subject parcel using cultural practices, these sites include a heiau and family burials.

The Cultural Impact Assessment (CIA) conducted by Hana Pono (Tau'a and Kapahulehua) for the proposed project contains historical narratives which included oral reports from the students of Lāhainaluna which stated; "The banks of the Kahoma Stream also served as gravesites to past residents of the area" (excerpted from the Kahoma Stream Flood Control Project-Army Corp. of Engineers Shun). During the neighboring Kahoma Stream Flood Control project at least ten individual burials were disinterred during construction. Additionally, several sites were identified in the Bishop Museum study conducted prior to the Kahoma Stream project of the area (Hammon 1973). The ethnographic and historical information available about the project area points to traditional agricultural and habitation activities, including burials, occurring along the banks of the Kahoma Stream. As the Ka'uaua and Kahoma Streams provided ample water to Lahaina prior to sugarcane cultivation, which diverted water sources, it was in traditional time's likely one of the most valuable resources in the Lāhainā area. This historical information as well as the previous archaeological documentation leads us to believe that extant sites, including burials, may exist on the parcel, albeit underneath a substantial amount of fill material.

Based on the aforementioned information we respectfully ask that at the minimum an archaeological/cultural monitoring requirement be attached to the proposed project. We also are asking that your office investigate Ms. Bolomet's concerns about the subject parcel. We look forward to hearing from your office in relation to Ms. Bolomet's concerns. Should you have any questions, please contact Lauren Morawski, Compliance Archaeologist at (808) 594-1997 or laurenm@oha.org.

'O wau iho nō me ka 'oia'i'o,



^{cor} Kamana'opono M. Crabbe, Ph.D.
Ka Pouhana, Chief Executive Officer

KP;lm

Routh

From: Theresa.K.Donham@hawaii.gov
Sent: Thursday, October 04, 2012 8:43 AM
To: Routh
Subject: Re: Theresa Dunnham (b).doc

Aloha Ms. Bolomet,
Letting you know that I recieved your email and letter. I am very busy in meetings today and it will take me awhile to go through your letter and attachments. I was not able to access your attachments using the password provided below. I will get back to you after I have had a chance to read through this. I will also need to get a copy of Dega's report from the Maui office. Thank you for your concern, I will prioritize this issue.
Theresa

"Routh" <Routh@2boio.com>

To <Theresa.K.Donham@hawaii.gov>

10/04/2012 08:23 AM

cc

Subject Theresa Dunnham (b).doc

Dear Ms. Donham,

Jenny Pickette suggest that I contact you regarding some inconsistencies and inaccuracies in the Archaeological Assessment by Michael Dega for the Kahoma Affordable Home Project.

Please find the attach letter.

the attachments can be found at pololei.com
under A12- 795

The User name is: A

The Password is: 12795

We placed links to maps so you can blow them up and see important details. I haven't had a chance to check the site since it was set up last night. I'll double check it this evening. if there are any problems with it, i will resend instructions .

Jenny Pickette was extremely helpful and her passion and enthusiasm for archaeology is infectious. I hope to learn more about the site and would like to learn more on what can be done for restoration and exploration.

Will be able to speak to you either late tomorrow or Monday.

Mahalo for your time.

Routh Bolomet[attachment "Theresa Dunnham (b).doc" deleted by Theresa K Donham/DLNR/StateHiUS]

11/21/2012