



BEFORE THE LAND USE COMMISSION
STATE OF HAWAI'I

In The Matter Of The Petition Of)	DOCKET NO. A12-795
)	
WEST MAUI LAND COMPANY, INC, a)	FINDINGS OF FACT,
Hawai'i Corporation, and KAHOMA)	CONCLUSIONS OF LAW, AND
RESIDENTIAL LLC, a Hawai'i Limited)	DECISION AND ORDER
Liability Company)	
)	
To Amend The Agricultural Land Use)	
District Boundaries Into The Urban Land)	
Use District For Approximately 16.7 Acres)	
of Land at Lāhainā, Island of Maui, State of)	
Hawai'i, Tax Map Key No.: (2) 4-5-10:005)	
_____)	

LAND USE COMMISSION
STATE OF HAWAII
2013 JAN 14 A 9:16

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawai'i

1/14/13 by

Executive Officer



BEFORE THE LAND USE COMMISSION
STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. A12-795
)	
WEST MAUI LAND COMPANY, INC, a)	FINDINGS OF FACT,
Hawai`i Corporation, and KAHOMA)	CONCLUSIONS OF LAW, AND
RESIDENTIAL LLC, a Hawai`i Limited)	DECISION AND ORDER
Liability Company)	
)	
To Amend The Agricultural Land Use)	
District Boundaries Into The Urban Land)	
Use District For Approximately 16.7 Acres)	
of Land at Lāhainā, Island of Maui, State of)	
Hawai`i, Tax Map Key No.: (2) 4-5-10:005)	
_____)	

LAND USE COMMISSION
STATE OF HAWAII
2013 JAN 14 A 9:16

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

West Maui Land Company, Inc. and land owner, Kahoma Residential LLC (collectively “Petitioner”), filed a Petition for District Boundary Amendment (“Petition”) on April 4, 2012, pursuant to Chapter 205, Hawai`i Revised Statutes (“HRS”) and Chapter 15-15, Hawai`i Administrative Rules (“HAR”), to amend the State Land Use District Boundary to reclassify approximately 16.7 acres of land situated at Lāhainā, Maui, State of Hawai`i, identified as Tax Map Key No. (2) 4-5-10:005 (“Petition Area”), from the State Land Use Agricultural District to the State Land Use Urban District to allow for the development of the Kahoma Residential Subdivision Affordable Housing Project (“Project”).

The Land Use Commission of the State of Hawai'i ("Commission"), having heard and examined the testimony, evidence and argument of counsel and the parties present during the hearings, along with the pleadings filed herein, hereby makes the following Findings of Fact, Conclusions of Law, Decision and Order.

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On April 4, 2012, Petitioner filed a Petition for Land Use District Boundary Amendment, Exhibits 1-15, Affidavit of Mailing and Certificate of Service.
2. On April 5, 2012, the Petitioner filed notice with the Commission that it was not pursuing a Chapter 201-H, HRS, Petition for Land Use Boundary Amendment and instead intended its Petition to be processed under Chapter 205, HRS.
3. On April 11, 2012, the Petitioner filed a large scale map of the property made the subject of this matter.
4. On April 16, 2012, the Petitioner filed an Affidavit of Service of Petition for Land Use District Boundary Amendment and Affidavit of Sending Notification of Petition Filing.
5. On April 17, 2012, the Executive Officer of the Commission notified Petitioner by letter that the Petition was deemed a proper filing and accepted it for processing as of April 16, 2012.
6. On April 23, 2012, Routh Bolomet ("Bolomet") filed a Notice of Intent to Intervene.

7. On April 27, 2012, Michele Lincoln ("Lincoln") filed a Notice of Intent to Intervene.
8. On May 1, 2012, Lincoln filed a new Notice of Intent to Intervene.
9. On May 4, 2012, Bolomet filed an addendum to the April 23, 2012 Notice of Intent to Intervene.
10. On May 14, 2012, a notice of hearing was published in the Honolulu Star Advertiser, the Maui News, West Maui Today, the Garden Island, and the Hawai'i Tribune Herald.
11. On May 16, 2012, the State Office of Planning filed its Position Statement on the Petition.
12. On May 17, 2012, the Maui County Planning Department filed its Position Statement on the Petition.
13. On May 23, 2012, the Commission mailed a Pre-Hearing notice to parties and potential interveners Bolomet and Lincoln, setting a pre-hearing conference meeting for June 6, 2012.
14. On May 25, 2012, the Commission received a copy of written correspondence to James Geiger, Esq., counsel for Petitioner, from Bolomet.
15. On May 29, 2012, Bolomet filed an Addendum to the April 23, 2012 Notice of Intent to Intervene.
16. On May 29, 2012, Lincoln filed a Petition to Intervene.
17. On May 30, 2012, the State Office of Planning filed statements of no opposition to the interventions of Lincoln and Bolomet.
18. On May 30, 2012, Bolomet filed a Motion to Waive Intervener's \$50 Filing Fee.

19. On May 30, 2012, the Commission mailed the notice and agenda for its June 6-8, 2012, meeting to the Parties, potential interveners, and the Statewide, Maui, and O`ahu mailing lists.
20. On June 4, 2012, the Maui County Planning Department filed statements of no objection to the interventions of Lincoln and Bolomet, a List of Witnesses, a List of Witnesses, and County of Maui Exhibits 1 to 5 including testimony.
21. On June 4, 2012, Petitioner filed statements of opposition to the interventions of Lincoln and Bolomet, a List of Witnesses, and a List of Exhibits.
22. On June 6, 2012, the Commission held hearings in Kahului, Maui. The Commission received oral and/or written testimony from the following individuals: Victoria Kaluna-Palafox; Mikihala Roy; and Kaniloa Kaumanu.
23. On June 6, 2012, the Commission Chair acted on Bolomet's Motion to Waive Filing Fee for Intervention and determined that the fee should be waived because Bolomet was unemployed.
24. On June 6, 2012, the Commission, following motion and discussion, granted Bolomet's Intervention.
25. On June 6, 2012, the Commission, following motion and discussion, granted Lincoln's Intervention on the criteria of impact on natural systems or habitat, maintenance of agricultural resources, provision of housing and commitment of state funds and resources. At that time, Lincoln submitted her resume to the Commission and other parties.

26. On June 6, 2012, a Pre-Hearing conference was held in Kahului, Maui, and conducted by Commission staff to identify the issues and positions of the parties, arrange for the exchange of proposed exhibits and names of witnesses, establish deadlines for the submission of Position Statements by the Interveners, the submission of Exhibit Lists, Witness Lists and Exhibits by all parties, the submission of Rebuttal Exhibit Lists, Rebuttal Witness Lists and Rebuttal Exhibits by all parties, and the submission of written direct testimony for all expert witnesses, and such other matters to expedite the orderly conduct and disposition of the hearings. All parties in the proceeding, including Bolomet and Lincoln, were in attendance.
27. On June 6, 2012, Petitioner filed and served on the parties Exhibit 15A which was a corrected copy of their previous Exhibit 15A.
28. On June 15, 2012, the Commission's Pre-Hearing Order was issued and mailed to all parties requiring: (a) Interveners to file Position Statements by June 19, 2012; (b) requiring all parties to file Exhibit Lists, Witness Lists and copies of Exhibits by June 19, 2012; (c) requiring all parties to file Rebuttal Exhibit Lists, Rebuttal Witness Lists and Rebuttal Exhibits by June 29, 2012; and, (d) requiring all parties to file the written direct testimony of all expert witnesses by July 2, 2012. (Pre-Hearing Order (June 15, 2012)).
29. On June 19, 2012, Petitioner filed a Witness List, an Exhibit List, and Petitioner's Exhibits 15A through 25.
30. On June 19, 2012, OP filed a Witness List, an Exhibit List, and OP Exhibits 3 through 5.

31. On June 19, 2012, Intervener Lincoln filed a Position Statement, a Witness List, an Exhibit List, Lincoln Exhibits 1 through 7, and Lincoln Video Exhibits 1 and 2.
32. On June 19, 2012, Intervener Bolomet filed a Position Statement, a Witness List, an Exhibit List, and Bolomet Exhibits 1 through 17.
33. On June 22, 2012, the Order Granting Routh Bolomet's Petition to Intervene and Motion to Waive Intervener's \$50 Filing Fee was issued.
34. On June 22, 2012, the Order Granting Michele Lincoln's Petition to Intervene was issued.
35. On June 22, 2012, the Commission received a copy of correspondence from Petitioner to Intervener Bolomet regarding filings to the Commission.
36. On June 25, 2012, Lincoln filed amended video exhibits consisting of Lincoln Video Exhibits 1 through 4.
37. On June 25, 2012, Bolomet filed a Response to James Geiger Letter dated 6/12/12, Motion for Extension, a Witness Substitution List, an Exhibit List, and Bolomet Exhibits 1 through 5, 5a, 5b, 6-8, 8a, and 9 through 17.
38. On June 27, 2012, Petitioner filed an Affidavit of Publication for Notice of Hearing.
39. On June 29, 2012, Petitioner filed a Memorandum in Opposition to Routh Bolomet's Motion for An Extension to Enter Exhibits, a Rebuttal Exhibit List, a Rebuttal Witness List, Petitioner Exhibits 26 through 36, and Written Direct Testimonies of Charles Biegel, P.E., Robert W. Hobdy, Anthony Riecke-Gonzales, Keith K. Niiya, P.E., Paul Singleton, Ph.D., Kimokeo Kapahulehua, David J. Perzinski, Michael F.

Dega, Ph.D., Sherri Dodson, Leonard Nakoa, III, Josh Guth, Dylan Payne, Kirk T. Tanaka, P.E., Heidi T. Bigelow, and Rory Frampton.

40. On June 29, 2012, Bolomet filed Amendments to Witness and Exhibit Lists, Rebuttal Witness List, Rebuttal Exhibit List and Exhibits (unidentified).
41. On June 29, 2012, Lincoln filed Intervener's Rebuttal Statement, Rebuttal Exhibit, and Witness Testimonies and Profiles.
42. On July 2, 2012, the County filed a Rebuttal Testimony; an Exhibit List - Amendment #1, and Exhibits 6-8; Exhibit List – Amendment#2; and Testimony of: Rowena Dagdag-Andaya, Jo Ann Ridaao, David Taylor; Resume for David Taylor, and 2011 Supplemental Traffic Report by Austin Tsutsumi & Associates.
43. On July 2, 2012, Lincoln filed Intervener's Amended Exhibit List and Intervener's Written Testimony.
44. On July 2, 2012, Bolomet filed a Response to James Geiger June 28, 2012, letter; Amendments to June 29, 2012 filing; and testimonies of Routh Bolomet, Aran Cardiz, Wilmont Kahiaalii and Robin Knox; and Formal Resume for Robin Knox.
45. On July 2, 2012, OP filed Testimony in Support of Petition with Conditions.
46. On July 3, 2012, Bolomet filed an Amendment to Robin Knox's Testimony; and June 29, 2012 Index.
47. On July 10, 2012, Petitioner filed a Motion to Exclude the testimony of Intervener Routh Bolomet's witnesses on international law and title, a Memorandum in Support of Motion, and Petitioner's Request for Hearing; a Motion to Exclude Intervener Routh Bolomet's Exhibits 1-13 and Exhibits 15-17, Declaration of James Geiger,

Exhibits A-D, and a Request for Hearing; and a Motion to Exclude expert testimony from witnesses for whom no written direct testimony was provided, Memorandum in Support of Motion, and Petitioner's Request for Hearing .

48. On July 11, 2012, the Commission mailed the notice and agenda for its July 19-20, 2012, meeting to the Parties, potential interveners, and the Statewide and Maui mailing lists.
49. On July 17, 2012, State Office of Planning filed Joinders to Petitioner's Motions to Exclude Witnesses on International Law and Title and to Exclude Intervener Routh Bolomet's Exhibits 1 to 13 and 15 to 17, and a Statement of No Opposition on Petitioner's Motion to Exclude Expert Testimony for Which No Written Direct Testimony Was Provided.
50. On July 17, 2012, Bolomet filed a Motion to Deny Petitioner's Request to Exclude Routh Bolomet's Witnesses and Exhibits, and not grant leniency due to ADA and Pro Se status as protected under federal law.
51. On July 18, 2012, County of Maui Planning Department filed a Joinder in Petitioner's Motion to Exclude Intervener Bolomet's Witnesses on International Law and Title; a Joinder in Petitioner's Motion to Exclude Intervener Routh Bolomet's Exhibits 1-13 and 15-17; and No Opposition to Petitioner's Motion to Exclude Expert Testimony from Witnesses for Which No Written Direct Testimony Was Provided.
52. On July 19, 2012, the Commission received written correspondence from James and Terresina Patterson; Su Campos; Shirley Enebrand; Steven Geller; Brie Protzeller;

Noel Agmata, Jr. and Sr.; Cory Segi; Lynn and Mo Jacobs; Cindy Romera; and Kahu Mikihala Roy.

53. On July 19-20, 2012, the Commission held hearings in Kahului, Maui. The Commission received oral and/or written testimony from the following individuals: Mike Gerry; Bobby Pahia; Johanna Kaumanu; and Elena Walker
54. On July 19, 2012, Bolomet filed, at the Commission's meeting on Maui, a Motion to Present Evidence of Lineal Descendency to Awardee. The Commission heard discussion and argument on the Motion; and, the Chair denied the motion indicating the Commission was not the proper jurisdictional body to make determinations as to title, and that Petitioner had presented sufficient prima facie evidence regarding adequacy of its title.
55. On July 19, 2012, during its hearing, the Commission heard discussion and argument on Bolomet's Motion to Extend Time for filing of her exhibits and expert witness testimonies. The Chair granted Bolomet until August 1, 2012, to submit all documents to the Commission. The Chair also granted Petitioner, OP, and the County until August 10, 2012, to rebut and submittals by Bolomet.
56. On July 19, 2012, the Commission heard discussion and argument on Petitioner's Motion to Exclude Intervener Bolomet's Witnesses on International Law and Title. The Chair determined that the witnesses related to the issues of farming, water, native Hawaiian culture, traditions and practices would be allowed and that the following specific witnesses on international law and title would be denied (David Keanu Sai, Dexter Kaiama, Aran Ardaiz, Leon Siu, James Geiger, and David Louie).

57. On July 19, 2012, the Commission heard discussion and argument on Petitioner's Motion to Exclude Intervener Bolomet's Exhibits 1-13 and 15-17. The Chair ruled that Bolomet Exhibits 1-9, 11, and 13 would be excluded as they dealt with title issues; Bolomet Exhibit 10 was voluntarily withdrawn; and Bolomet Exhibits 12, 14, 15, and 17 were allowed. Chair reminded Bolomet that the deadline for complete submittal of these documents was August 1, 2012, and that the relevance of each exhibit would need to be established prior to their admission into evidence.
58. On July 19, 2012, the Commission admitted into the record Petitioner's Exhibits 1-14, 15a-34, and 36.
59. On July 19, 2012, the Commission admitted into the record County's Exhibits 1-13.
60. On July 19, 2012, the Commission admitted into the record OP's Exhibits 1-5.
61. On July 19, 2012, the Commission admitted into the record Lincoln's Exhibits 1 (except for page 11) -13, and excluded Exhibit 14.
62. On July 19, 2012, the Commission commenced the evidentiary hearing for this docket in Kahului, Maui, pursuant to the Notice of Hearing published in the *Honolulu Star-Advertiser*, the *Maui News*, *West Maui Today*, the *Garden Island*, and the *Hawai'i Tribune Herald*, on May 14, 2012. The following witness presented their testimony on behalf of Petitioner: Rory Frampton.
63. On July 20, 2012, the Commission received written correspondence from Elaine Aotaki.
64. On July 20, 2012, the Commission held its continued evidentiary hearing on this docket, during which the following witnesses presented their testimonies on behalf of

the Petitioner: Rory Frampton; Dillon Payne; Sherri Dodson; Kimokeo Kapahulehua; and Joshua Guth. The following witness presented testimony on behalf of the County: William Spence.

65. On July 25, 2012, the Commission mailed the notice and agenda for its August 2, 2012, meeting to the Parties, and the Statewide and Maui mailing lists.
66. On July 27, 2012, the Commission received correspondence from Richard Roshon.
67. On July 30, 2012, Lincoln filed a letter regarding the Commission's planned site visit of Petition Area. The Commission forwarded a courtesy copy to all parties.
68. On August 1, 2012, Bolomet filed Amended Testimony of Michael K. Lee and exhibits, testimony of Clare Apana, and Cultural Practitioner Testimony and exhibits (not included).
69. On August 1, 2012, the Commission issued an Order Granting Intervenor Bolomet's Motion for Extension to file written direct expert testimony by August 1, 2012.
70. On August 1, 2012, the Commission issued an Order Granting in Part Petitioner's Motion to Exclude Intervener Bolomet's Witnesses on International Law and Title, Petitioner's Motion to Exclude Intervener Bolomet's Exhibits 1 to 13 and 15 to 17, and Petitioner's Motion to Exclude Expert Testimony from Witnesses for Which No Written Direct Testimony Was Provided.
71. The Commission conducted a site inspection of the Petition Area on August 2, 2012.
72. On August 6, 2012, the Commission mailed to all Parties, an Errata Notice to LUC Order dated 8/1/2012 Granting in Part Petitioner's Motions.

73. On August 10, 2012, Petitioner filed Rebuttal Testimony of Rory Frampton and Exhibits 37-38.
74. On August 15, 2012, the Commission mailed the notice and agenda for its August 23-24, 2012, meeting to the Parties, and the Statewide and Maui mailing lists.
75. On August 16, 2012, the Commission received correspondence from Jessica Baker.
76. On August 21, 2012, the Commission received correspondence from William Greenleaf.
77. On August 23, 2012, Bolomet filed Michael Lee's Rebuttal to Rory Frampton's Rebuttal Testimony dated August 9, 2012. In addition, the Commission received correspondence from Clare Apana.
78. On August 27, 2012, the Commission received correspondence from Vincent Mina.
79. On August 28, 2012, the Commission received correspondence from the Catagal family, Ronald Balagso, Annette Martin, and Beatrice Blanta.
80. On August 29, 2012, the Commission mailed the notice and agenda for its September 6-7, 2012, meeting to the Parties, and the Statewide and Maui mailing lists.
81. On August 30, 2012, the Commission received correspondence from Mark Balisco.
82. On August 31, 2012, Petitioner filed its Rebuttal Exhibit List and Exhibit 39.
83. On September, 2012, the Commission received correspondence from Gloria Ball and Clare Apana.
84. On September 6, 2012, the Commission continued the hearing on the Petition in Kahului, Maui, and heard oral and/or received written public testimony from the following individuals: Lucienne De Naie and Clare Apana. The Commission entered

into the record Petitioner's Rebuttal Exhibit List and Exhibit 39. The following witness presented testimony on behalf of Petitioner: Heidi Bigelow. The following witnesses presented testimonies on behalf of the County: David Taylor and Jo Ann Ridao.

85. On September 7, 2012, Bolomet filed a Motion to Disallow Michael Dega's Incomplete Archaeological Assessment and Exhibits 1-3a, and 4 through 6.
86. On September 7, 2012, Bolomet filed the following: written correspondence from Clare Apana, Daniel Kanahale, Kaniloa Lani Kamaunu; copy of an e-mail from Stephen Gingerich, Ph.D.; papers referenced to Michael Lee and marked as exhibits 1-6; advertisement of Pule Kala and Kapu Kapu Ceremony for the Pu'uone of Wailuku and Waikapu, Traditional Hawaiian Ceremonies with Kahu Mike Lee in March 3-4, 2012.
87. On September 7, 2012, Lincoln filed Revised Testimony of Elle Cochran Exhibit 15 (substituted for Exhibit 9).
88. On September 7, 2012, the County filed Bio for Rowena Dagdag-Andaya (Exhibit 14).
89. On September 7, 2012, Petitioner filed Petitioner's Rebuttal Exhibit List and Exhibit 40.
90. On September 7, 2012, the Commission continued the hearing on the Petition in Kahului, Maui. The following witnesses presented testimonies on behalf of the County: Jo Ann Ridao and Rowena Dagdag-Andaya. The following witness presented testimony on behalf of OP: Rodney Funakoshi. The following witnesses

presented testimony on behalf of Intervener Lincoln: Jane Amai, Herman Naeole, Cynthia Catagal, and Michele Lincoln.

91. On September 11, 2012, the Commission's Certified Mail Return Receipt Requested sent to Intervener Bolomet was returned without signature.
92. On September 14, 2012, the Commission received correspondence from Cindy Blair.
93. On September 18, 2012, the Commission received notice from the U.S. Postal Service that Intervener Bolomet's post office box was closed and unable to forward.
94. On September 18, 2012, Petitioner filed a Memorandum in Opposition to Intervener's Motion to Disallow Michael Dega's Incomplete Archaeological Report, Appendices 1 and 2, Declaration of Jim Geiger, Exhibit 1, and Declaration of Ian Bassford..
95. On September 21, 2012, Petitioner filed Declaration of Michael Dega.
96. On September 24, 2012, OP filed a Memorandum in Opposition to Intervener Routh Bolomet's Motion to Disallow Michael Dega's Incomplete Archaeological Assessment.
97. On September 26, 2012, the Commission mailed the notice and agenda for its October 4-5, 2012, meeting to the Parties, and the Statewide and Maui mailing lists.
98. On September 27, 2012, the County of Maui filed a Joinder in Petitioner's Memorandum in Opposition to Intervener's Motion to Disallow Michael Dega's Incomplete Archaeological Report.
99. On October 4, 2012, the Commission continued the hearing on the Petition in Kahului, Maui, and heard oral and/or received written public testimony from the following individuals: Clare Apana. The following witness presented testimony on

behalf of Intervener Lincoln: Michele Lincoln. The following witnesses presented testimonies on behalf of Intervener Bolomet: Robin Knox and Michael Lee.

100. On October 4, 2012, the Commission heard discussion and argument on Bolomet's Motion to Disallow Michael Dega's Incomplete Archaeological Assessment. The Vice-Chair denied Intervener Bolomet's request to strike Petitioner's exhibits; indicating that Bolomet would retain the ability to argue the credibility of Mr. Dega's testimony during final argument.
101. On October 4, 2012, Petitioner filed Petitioner's Rebuttal Exhibit List and Exhibit 41. In addition, Intervener Bolomet filed an Amendment to Robin Knox Testimony, an Amendment to Michael K. Lee Testimony, and a Letter to Theresa Donham.
102. On October 5, 2012, the Commission continued the hearing on the Petition in Kahului, Maui. The following witness presented testimony on behalf of Intervener Bolomet: Michael Lee. The following witness presented rebuttal testimony on behalf of Petitioner: Rory Frampton. The Vice-Chair admitted into the record Petitioner's Exhibit 41.
103. The Commission held evidentiary hearings in this docket on July 19 and 20, August 23, September 6 and 7, and October 4 and 5, 2012. All hearings were conducted on the Island of Maui.
104. On October 5, 2012, the Commission closed the evidentiary portion of the proceedings.
105. On October 30, 2012, the Commission received the following: Petitioner and Maui County's Joint Proposed Findings of Fact, Conclusions of Law, and Decision and

Order; Intervener Lincoln's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and Intervener Lincoln's correspondence regarding errors in the July 20, 2012 hearing transcript.

106. On October 31, 2012, the Commission received Intervener Bolomet's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
107. On November 13, 2012, the Commission received e-mail correspondence from Cammie Smith (the substitute court reporter for the July 20, 2012, Commission hearing); after investigating Intervener Lincoln's concerns found no discrepancies in the transcripts.
108. On November 13, 2012, the Commission received written correspondence from Richard Rashon.
109. On November 14, 2012, the Commission received the following: Intervener Lincoln's Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Intervener Bolomet's Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; OP's Comments and Objections to Petitioner's and County of Maui Planning Department's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Petitioner's Objections to Intervenor Bolomet's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and Petitioner's Objections to Intervener Lincoln's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
110. On November 20, 2012, the Commission received the following: Intervener Lincoln's Reply to Petitioner's and County of Maui Planning Department's Joint

Objections to Intervener's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Intervener Lincoln's Reply to OP's Objections to Intervener's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

111. On November 21, 2012, the Commission received the following: Petitioner's Reply to Intervener Lincoln's Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Petitioner's Reply to Intervener Bolomet's Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Intervener Bolomet's Response to Petitioner's Objections to Intervener Bolomet's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Intervener Bolomet's Response to State OP's Objections to Intervener Bolomet's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Intervener Bolomet transmittal of Letter from OHA to SHPD and Confirmation of Receipt of E-mail from Theresa Donham; and Intervener Bolomet's Revised Findings of Fact, Conclusions of Law, and Decision and Order in Response to OP and Petitioner's Objections.
112. On November 23, 2012, the Commission received the following: Petitioner's Reply to OP's Concerns and Objections to Petitioner's and County of Maui's Joint Proposed Findings of Fact, Conclusions of Law, and Decision and Order, and Exhibit A.
113. On November 28, 2012, the Commission mailed the notice and agenda for its December 6, 2012, meeting to the Parties, and the Statewide and Maui mailing lists.

114. On November 29, 2012, the Commission mailed an amended notice and agenda for its December 6, 2012, meeting to the Parties, and the Statewide and Maui mailing lists.
115. On November 29, 2012, the Commission received the following: Department of Planning, County of Maui's Joinder in Petitioner's Reply to Office of Planning's Comments and Objections to Petitioner's and County of Maui Planning Department's Joint Proposed Findings of Fact, Conclusions of Law, and Decision and Order; Petitioner's Reply to Intervener Michele Lincoln's Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order; and Petitioner's Reply to Intervener Bolomet's Response and Objections to Petitioner's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
116. On December 6, 2012, the Commission held an action meeting in Kahului, Maui, to consider the Petition. There were no public witnesses. The parties presented oral argument on the matter. Thereafter, a motion was made and seconded to grant the Petition subject to conditions. The motion received four aye votes, three nays, with two excused, and therefore failed.

DESCRIPTION OF THE PETITION AREA

117. The Petition Area is located in Lāhainā, Maui, Hawai'i, and consists of approximately 16.7 acres.
118. The Petition Area is currently vacant.
119. The Petition Area is surrounded by areas of urban uses.

120. Single-family residences exist on lands mauka and to the south of the Petition Area. Multi-family properties are located on the land makai of the Petition Area. On the north of the Petition Area is the Kahoma Stream Flood Control Channel. Just north of the Kahoma Stream Flood Control Channel lies the Lāhainā Business Park which consists of light industrial and commercial properties.
121. The Petition Area slopes away from Lui Street at the mauka end toward an old cane haul road in a westerly direction at an average slope of 4.5%. The Petition Area ranges in elevation from 32 feet above sea level at its makai portion to 145 feet above sea level at its mauka portion.
122. The Petition Area is situated within Zone X, as designated on Flood Insurance Rate Maps dated September 25, 2009 for the island of Maui.
123. The Petition Area is listed as Other Important Agricultural Lands according to the Agricultural Lands of Importance to the State of Hawai`i (“ALISH”).
124. The productivity of the land underlying the Petition Area was classified as “B” by the University of Hawai`i Land Study Bureau. The Bureau’s classification system rates lands on the scale of “A” to “E” reflecting land productivity characteristics. Lands designated “A” are considered to be of the highest productivity with “E” rated lands ranked as the lowest in productivity.

DESCRIPTION OF THE PROPOSED KAHOMA RESIDENTIAL SUBDIVISION

125. The Project proposed by Petitioner would consist of 68 single-family housing units with on-site and off-site infrastructure improvements.

126. Lots within the Project would range in size from 5,000 to 12,000 square feet. Under Maui County Code, owners of lots that are 7,500 square feet or greater in area have the option of constructing an accessory dwelling or `Ohana unit on their lot. The total number of potential dwelling units at build out of the Project would be 99.
127. A 43,000 square foot grassed neighborhood park would be built in the center of the Project.
128. Ten of the 68 lots would be developed under the direction of Habitat for Humanity. Homes developed for Habitat for Humanity would be sold to partner families at no profit and financed with affordable loans. Target families would be those earning less than 80% of the household median income of households in Maui County, Hawai`i.
129. The remaining 58 lots would be sold either as a lot only or as a house/lot package. Petitioner has not determined the number of lot-only sales that would be offered for the Project.
130. All lots would be priced to be marketed to individuals and families whose gross annual family incomes are between 80% and 160% of the household median income for Maui County, Hawai`i as established by the United States Department of Housing and Urban Development as determined for 2011 or the date of sale, whichever is lower.
131. The Project would be serviced internally by a road located within a 58' right-of-way that would be dedicated to the County of Maui.
132. The mauka portion of the Project would connect to Lui Street while the makai portion of the Project would connect to an existing cane haul road known as the "Proposed

Kuhua Street Extension.” The Proposed Kuhua Street Extension would connect to Keawe Street to the north.

133. The Petitioner is required by County Council Resolution No. 11-126 to commence construction of subdivision improvements within three years and to complete construction within seven years of the adoption of the Resolution. Thus, construction of the infrastructure in the Petition Area must be started by December 2, 2014 and must be completed by December 2, 2022.
134. Development of the Petition Area would be required to be completed within ten years of Commission approval.
135. The Project was approved and certified as a HRS §201H-38 affordable housing project by way of Resolution 11-126 of the Maui County Council adopted on December 2, 2011.

PROPOSAL FOR RECLASSIFICATION FROM AGRICULTURAL TO URBAN

136. Before the late 1980's, the Petition Area was part of a larger parcel used for sugar cane cultivation.
137. In the late 1980's, the Kahoma Stream Flood Control Channel was constructed along the northern boundary of the Petition Area.
138. The construction of the Kahoma Stream Flood Control Channel severed the connection between the Petition Area and adjoining parcels.
139. To the south of the Petition Area lie the single-family residential subdivisions of Kelaweā Mauka and Kuhua Tract.

140. To the west, or makai, of the Petition Area lie light industrial uses, multi-family housing, and commercial shopping centers.
141. To the north of the Petition Area lies the Lāhainā Business Park, a light industrial/commercial area.
142. Since the construction of the Kahoma Stream Flood Control Channel, the properties adjacent to the Kahoma Stream Flood Control Channel on the north were reclassified from agricultural to urban and developed as a commercial and industrial area.
143. The Petition Area is currently zoned and classified as agricultural.

Consistency of Reclassification of the Petition Area With Policies and Criteria Established Pursuant to HRS 205-16, 205-17 and 205A-2.

144. Certain criteria that must be reviewed in determining whether the reclassification is consistent with policies and criteria include but are not limited to: impact on areas of state concern; conformance with county general plan; and, the economic ability of the Petitioner to complete the proposed Project.

The impact of the reclassification on areas of State concern.

145. A biologic resources study of the Petition Area was conducted by Robert W. Hobby, Environmental Consultant, in August 2005.
146. No endangered plant species were found on the Petition Area. The vegetation of the Petition Area is dominated by non-native, abundant species.

147. A single, small tree tobacco, which might act as a host to the Blackburn's Sphinx Moth, was observed in 2005. However, no sign of the Blackburn's Sphinx Moth or its larvae were found.
148. No mammal or bird species or habitats warranting protection were observed during the biological survey of the Petition Area.
149. While Hawaiian owls may have been seen in the Petition Area in the past, it would be difficult to establish habitat for the Hawaiian owl in the Petition Area.
150. Federally-listed threatened and endangered seabirds, the Newell's shearwater and the Hawaiian petrel, are known to fly over the Petition Area.
151. An Archaeological Assessment Report was completed for the Petition Area by Scientific Consultant Services, Inc. in November 2005.
152. The Archaeological Assessment Report was reviewed and approved by the SHPD on February 9, 2006.
153. Based on stratigraphic sequencing and the archaeologist's experience, it is unlikely that land alterations from sugar cane operations wholly obliterated archaeological features on the Petition Area.
154. It is likely that agricultural or habitation pursuits of significance occurred in the Petition Area before the land was used for sugar cane production.
155. The State Historic Preservation District reviewed the Project again in 2012 and stated that it believed no historic properties will be affected.
156. In July 2012, an archaeological feature and burials were claimed to exist on the Petition Area.

157. In September 2012, the claimed locations of the archaeological feature and for the burials were provided to Petitioner.
158. While Petitioner asserts the claimed archaeological feature was examined and determined by expert archaeologists to be a push pile of rock and boulders and not an archaeological feature; evidence was presented that refuted this analysis and the existence of a libation stone and assemblage of large stones suggests that the area may have contained significant features.
159. The locations of the claimed burials were excavated to bedrock. No evidence was found of burials presently existing. The excavation performed was inconclusive.
160. A Preliminary Civil Engineering and Drainage and Soil Erosion Control Report was prepared by R.T. Tanaka Engineers, Inc. for the Petition Area.
161. In compliance with the County of Maui drainage standards, the Project would incorporate drainage features to retain a 50-year, one-hour storm run-off volume increase anticipated to be generated by the Project.
162. A retention basin (drainage basin) would be located on-site near the west end of the Petition Area with an overflow outlet connecting to the Kahoma Stream flood control structure. In addition, the Project would include catch basins and/or grated drain inlets to collect runoff, non-perforated pipes to convey runoff to the drainage pond, drain manholes, and the rerouting of existing 30" and 36" drain lines between Lui Street and Kahoma Stream Flood Control Channel.
163. The Kahoma Stream Flood Control Channel forms the northern boundary of the Petition Area.

164. The Kahoma Stream Flood Control Channel drains to coastal waters about 0.8 miles down gradient from the Petition Area. The offshore and marine waters in the area are an important recreational and community resource, and provide habitat for marine biota, including sensitive corals and humpback whales that winter in the waters of the Hawaiian Islands Humpback Whale National Marine Sanctuary.
165. The County will be adopting, but has not yet adopted, rules governing the water quality of storm water runoff.
166. There is minimal flow in the Kahoma Stream Flood Control Channel except during moderate to heavy rainfall events.
167. The Project drainage system would need to comply with storm water runoff and water quality rules when construction permits are sought.
168. Petitioner would be required to obtain a National Pollutant Discharge Elimination System permit from the State Department of Health for storm water discharge associated with construction activity.
169. The Commission is empowered to preserve and protect customary and traditional rights of native Hawaiians. There remain unresolved issues regarding the potential impacts from stormwater discharge from the Petition Area to water quality in the Kahoma Stream and nearshore coastal waters where customary and traditional practices take place. Therefore, the Commission cannot determine the effects of the proposed reclassification on such practices.
170. The Lāhainā Wastewater Reclamation Facility's capacity for the Project is in dispute. Petitioner has presented testimony as to its adequacy while Intervener Bolomet has

presented expert witness testimony that refutes the current and future proposed adequacy of the facility.

171. Reclassification of the Petition Area may have a significant impact on the maintenance of valued cultural, historical or natural resources.
172. There remains an unresolved dispute regarding the possible existence of burial sites and a heiau within the boundaries of the Petition Area. Therefore, the Commission cannot determine the extent of impacts to such rights and any appropriate protective measures to mitigate those impacts.
173. The Petition Area is not presently used for agriculture.
174. The Petition Area is listed as “Other Important Agricultural Land” under the ALISH system.
175. The soils underlying the Petition Area are of the Pulehu-Ewa-Jaucis general association, used primarily for sugar cane cultivation.
176. A Traffic Impact Analysis Report was developed for the Project in October 2007 by Wilson Okamoto Corporation.
177. A Supplemental Traffic Assessment was prepared by Austin, Tsutsumi & Associates, Inc. in January 2011.
178. The Supplemental Traffic Assessment analyzed the impact of development on traffic within the area surrounding the Petition Area.
179. The Project will not generate enough traffic to require the preparation of a Traffic Impact Analysis Report.

180. Petitioner states that the Project will have no significant impact on the existing highways, streets and roads. A neighboring landowner testified regarding the existing inadequacy and safety of adjacent subdivision roads that they believe will be negatively impacted by the Project.
181. The State Department of Transportation reviewed the Project and concluded the Project will not require expenditure of funds for State highway improvements.

Conformance With County General Plan.

182. The Petition Area is designated Open Space by the West Maui Community Plan.
183. The Petition Area is zoned Agricultural by the County of Maui.
184. The County of Maui is undergoing a review and update of its land use plans. However, the County has not adopted any changes to its current County General Plan or Community Development Plan ordinances.
185. There are other lands adjoining Lāhainā which can be used, and have been designated, for urban growth in the future.
186. The Petition Area is not shown as urban growth on state and county general plans.
187. The Project, as proposed, is not consistent with County plans or zoning designations.

The economic ability of the Petitioner to carry out the commitments.

188. Petitioner provided financial statements pursuant to Section 15-15-50(c)(8), HAR. These financial statements were clearly marked “unaudited.”

189. An audited financial statement would be done by accounting specialists to determine whether the firm's statements were prepared in accordance with acceptable accounting principles and that they fairly present its financial position and operating results.
190. Without an audited financial statement the Commission cannot determine whether the Petitioner has the economic ability to carry out its representations and commitments relating to the Project.

Finding Concerning Request to Reclassify Petition Area From Agricultural to Urban.

191. Based on the criteria that the Commission must apply, Petitioner has not established by a clear preponderance of the credible evidence that the Petition Area should be reclassified from agricultural to urban.

RULINGS ON PROPOSED FINDINGS OF FACT

Any of the proposed findings of fact submitted by Petitioner or any other party not already ruled upon by the Commission by adoption, or rejected by clearly contrary findings of fact, are hereby denied and rejected.

Any conclusion of law improperly designated as a finding of fact should be deemed or construed as a conclusion of law; and finding of fact improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

1. Pursuant to Section 205-1, HRS, and Chapter 15-15, HAR, six affirmative votes are necessary for any boundary amendment.
2. Pursuant to Section 15-15-13(b), HAR, if the Commission's action on a petition for a boundary amendment fails to obtain six affirmative votes, findings of fact, conclusions of law, and decision and order denying the petition shall be filed by the Commission.
3. The motion to approve the boundary amendment failed to obtain six affirmative votes. Petitioner failed to carry its burden to show by a clear preponderance of the evidence that the land use district boundary amendment satisfies the Commission's decision-making criteria and should be approved.
4. Pursuant to Chapter 205, HRS, and under Chapter 15-15, HAR, and upon consideration of the Commission's decision-making criteria under Section 205-17, HRS, and because the Petition did not receive six affirmative votes, this Commission finds that credible evidence does not establish by a clear preponderance of the evidence that the reclassification of the Petition Area, consisting of approximately 16.7 acres of land in the State Land Use Agricultural District situated at Lāhainā, Maui, State of Hawai'i, and further identified as Tax Map Key No. (2) 4-5-10:005, from the State Land Use Agricultural District to the State Land Use Urban District for development of the Project, conforms to the standards for establishing the Urban District boundaries, is reasonable, is not violative of Section 205-2, HRS, and is consistent with the Hawai'i State Plan as set

forth in Chapter 226, HRS, and with the policies and criteria established pursuant to Sections 205-17 and 205A-2, HRS.

5. Article XI, Section 1, of the Hawai`i State Constitution requires the State to conserve and protect Hawai`i's natural beauty and all natural resources, including land, water, air, minerals, and energy sources, and to promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.
6. Article XI, Section 3, of the Hawai`i State Constitution requires the State of Hawai`i to protect agricultural lands, to promote diversified agriculture, to increase agricultural self-sufficiency, and to ensure the availability of agriculturally suitable lands. The Petition Area is currently within the State Land Use Agricultural District.
7. The Petition Area includes lands with open area recreational facilities and therefore it meets the standards for determining the boundaries of the State Land Use Agricultural District in accordance with Section 205-2(d), and Section 15-15-19, HAR.
8. Pursuant to Section 205-17(5), HRS, in its review of any petition for reclassification the Commission shall specifically consider “[T]he county general plan and all community, development, or community development plans adopted pursuant to the county general plan, as they relate to the land that is the subject of the reclassification petition.” In addition, pursuant to Section 15-15-77(b)(4), HAR, the Commission shall give consideration to general plan of the county in which the land is situated. The County of Maui ‘s West Maui Community Plan designates the Property as “Open Space” and its County Zoning designation is “Agricultural.” The proposed reclassification is not

consistent with either the current Maui County Community Plan land use designation or County zoning.

9. Article XII, Section 7, of the Hawai`i State Constitution requires the Commission to protect native Hawaiian traditional and customary rights.

“The State of Hawai`i 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.”

10. The State of Hawai`i and its agencies are obligated to protect the reasonable exercise of customarily and traditionally exercised native Hawaiian rights to the extent feasible.

DECISION AND ORDER


Based upon the findings of fact and conclusions of law stated herein, and the failure of the Petition for reclassification to receive six affirmative votes, it is hereby determined that the reclassification of the Petition Area is DENIED, and that the Petition Area, being the subject of the Petition in Docket A12-795 filed by West Maui Land Company, Inc. and Kahoma Residential LLC, consisting of approximately 16.7 acres of land in the State Land Use Agricultural District situated at Lāhainā, Maui, State of Hawai`i, and further identified as Tax Map Key No. (2) 4-5-10:005, shall remain within the State Land Use Agricultural District.

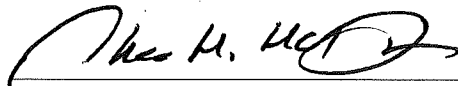
ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing order this 14th day of January, 2013. This order may be executed in counterparts. This order shall take effect upon the date this order was certified by the Commission.

Done at Honolulu, Hawai'i, this 14th day of January, 2013, per motion on December 6, 2012.

APPROVED AS TO FORM:


DEPUTY ATTORNEY GENERAL
State of Hawai'i


CHAD MCDONALD
Acting Chairperson and Commissioner

FILED AND EFFECTIVE ON January 14, 2013.

CERTIFIED BY: 
Executive Officer
Land Use Commission

Hand Delivery BRYAN C. YEE, Esq.
Deputy Attorney General
Department of the Attorney General
425 Queen Street, Hale `Auhau
Honolulu, Hawai`i 96813
Attorney for State Office of Planning

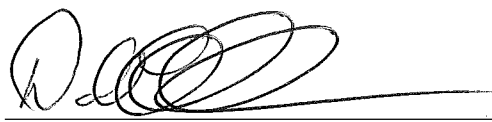
Regular Mail JAMES GIROUX, Esq.
Department of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawai`i 96793
Attorney for Maui County Department of Planning

Regular Mail WILLIAM SPENCE, Director
Department of Planning
County of Maui
200 South High Street
Wailuku, Hawai`i 96793

Certified Mail MICHELLE LINCOLN, Intervener
452 Aki Street
Davies Pacific Center
Lāhainā, Hawai`i 96761

Certified Mail ROUTH BOLOMET, Intervener
Pro Se Heir
P.O. Box 37371
Honolulu, Hawai`i 96837

DATED: 1/14/13, Honolulu, Hawai`i.



Daniel Orodener, Executive Officer