

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

BEFORE THE LAND USE COMMISSION OF THE STATE OF HAWAII

Docket No. A12-795

IN THE MATTER of the Petition of:

RESPONSE and OBJECTIONS TO PETITIONER'S  
PROPOSED FINDINGS OF FACTS, CONCLUSION OF  
LAW & DECISION AND ORDER

WEST MAUI LAND COMPANY, INC. )  
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

**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

LAND USE COMMISSION  
STATE OF HAWAII  
2012 NOV 14 P 12:25

**INTERVENOR'S RESPONSE and OPPOSITION TO PETITIONER'S PROPOSED FINDING OF FACTS,  
CONCLUSIONS OF LAW AND DECISION & ORDER**

Petitioner Bolomet files this Response and Opposition to the Petitioner's Proposed Finding of Facts (FF), Conclusion of Law (CL) and Decision and Order (DO) submitted by Petitioner on October 30, 2012 (hereinafter "Petitioner's FFCLDO" or when referenced to specific parts: "Petitioner's FF", "Petitioner's CL", or "Petitioner's D&O").

Petitioner Bolomet focuses primarily on Agriculture, Soil, Flora & Fauna, Cultural, Archaeology, Water, Sustainability, Workforce housing and Environmental & Historical & Cultural Impacts from Mauka to Makai (the Mountain to the Sea). Intervenor Bolomet defers to Intervenor Michele Lincoln, County of Maui and the State of Hawaii and to this Commission on the many other important issues that this Commission must address in its Findings of Facts, Conclusion of Law and Decision and Order.

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

**I. PROCEDURAL MATTERS**

Petitioner pg. 45. On July 10, 2012, Petitioner filed motions to exclude the testimony of Intervenor Routh Bolomet's witnesses on International Law as it pertains to ~~and~~ Title, to exclude Intervenor Routh Bolomet's exhibits, and to exclude expert opinion testimony of witnesses for whom written direct testimony was not provided. (Tr 7.19.12 @pg. 10)

Petitioner pg. 46. On July 17, 2012, State Office of Planning filed Joinders to Petitioner's Motion to Exclude Witnesses on International Law as it pertains to ~~and~~ Title and to Exclude Intervenor Routh Bolomet's Exhibits 1-13 and 15 to 17 of the exhibits submitted on or before July 2, 2012, and a Statement of No Position on Petitioner's Motion to Exclude Expert Testimony for which No written direct Testimony was provided. (Tr 7/19/12).

**1-1 Intervenor's Objection:** The exclusion of Bolomet's Exhibits were pertaining to "Title and ownership" and it was based on exhibits submitted on or before July 3, 2012. However, Pro se Intervenor Bolomet's crude attempt to frame her case with exhibits whose original intent were multi-fold to demonstrate that the Intervenor had a

a) superior title to the lands included in the Petition Area base HRS 172.11 as a Lineal Descendent Heir to the Royal Patent lands included in the Petition Area. b) that these lands as Foreign Allodial Titled lands, do not fall into the jurisdiction of the Land Use Commission based on U.S. Constitutional Law, Kingdom of Hawaii Constitutional Law, and International Law. c) To demonstrate how the Hawaii Revised Statutes, Water Codes and Hawaii State Constitution are based on Kingdom of Hawaii Constitutional Laws that protect Cultural Resources, Religious and Traditional land usage and practice Rights as under the PASH ruling, pertaining to Hawaii State Constitution Article XII section 7. (Pg.51 line 19 thru Pg. 51 line 20)

1-2 However the Chairman ruled that the Petitioner's warranty deed, chain of title was superior and all of the excluded exhibits were only pertaining to "Title and Ownership" issues, despite Intervenor's poor explanations of how these exhibits could also demonstrate cultural and traditional rights to farm, the inter-relationship of mountain to sea and to water as a cultural resource and all the aforementioned. (Pg. 16 line 14 thru Pg. 18 Line 11)

Petitioner's. 70. Intervenor Routh Bolomet did not offer into evidence the written direct testimony of any witnesses.

**3. Intervenor's Response and Objection: Intervenor Bolomet had two expert witnesses: Robin Knox and Michael Lee, who provided timely written testimony.**

**1. & 2. Intervenor's Response:** *Haines vs. Kerner*, 404 U.S. 519-421: pro se litigants are held to less stringent pleadings standards than bar licensed attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims.

*Platsky v. C.I.A.* 953 F2d. 25; the court errs if court dismisses the pro se litigant without instructions of how pleadings are deficient and how to repair pleadings.

*Anastassoff v. United States*, 223 F.3d 898 (8th Cir. 2000): litigants' constitutional rights are violated when courts depart from precedents where parties are similarly situated. Plaintiffs understand the Court can lose jurisdiction at any time should the Court fail to fulfill their duty as an Officer of the Court.

The ruling of the court in this case held; *"Where a plaintiff pleads pro se in a suit for protection of civil rights, the court should endeavor to construe the Plaintiff's pleading without regard to technicalities."* In *Walter Process Equipment v. Food Machinery* 382 U.S. 172 (1965) it was held that in a "motion to dismiss", the material allegations of the complaint are taken as admitted."

## II. Finding of Facts

Petitioner's FF 5. The Petition Area slopes away from Lui Street at the mauka end towards an old cane haul road in a "westerly" direction.

1. **Intervenor's Response:** This is perfect for farming, with longer light throughout the day which is needed for the photosynthesis of the plant. (Singleton Tr. 8/23/12 )

Petitioner's FF 8. The Petition Area is listed as Other Important Agricultural Lands according to the "Agricultural Lands of Importance to the Sate of Hawaii" (ALISH). ~~This is the lowest classification of lands for agricultural uses. Reflecting the soils and management challenges facing any person who wishes to conduct farming operations on the Petition Area.~~ (Singleton WDT at pg. 14, Petitioner Ex. 7).

**2-1. Intervenor's Response & Objections. I object;** This statement is a false representation of "ALISH". ALISH are lands meeting many criteria to include:

- 2-2 Land currently used for agricultural production;

2-3 \*Land with soil qualities and growing conditions that support agricultural production of food, fiber, or fuel- and energy-producing crops;

2-4 \*Land identified under agricultural productivity rating systems, such as the agricultural lands of importance to the State of Hawaii (ALISH) system adopted by the Board of Agriculture on January 28, 1977;

2-5 \* Land types associated with traditional native Hawaiian agricultural uses, such as taro cultivation, or unique agricultural crops and uses, such as coffee, vineyards, aquaculture, and energy production;

2-6 \* Land with sufficient quantities of water to support viable agricultural production; (Public Works Maps show under ground irrigation and drainage infrastructure already in place, Clare Apana Exhibit 2a, b, c, d, e filed entered on August 24, 2012)

2-7 \* Land whose designation as important agricultural lands is consistent with general, development, and community plans of the county; (this location offers easy access to nearby communities, offers food security and sustainable local jobs & can also offer farm work force housing.)

2-8 \* Land that contributes to maintaining a critical land mass important to agricultural operating productivity; (Though small, this is perfect for low impact diversified farming, that would have more of a neighborhood outreach rather than a big machinery chemical farm production).

2-9 \* Land with or near support infrastructure conducive to agricultural productivity, such as transportation to markets, water, or power. (While there may be a lot of Ag designated lands on Maui, not all Ag lands are so perfectly situated as this petition area is for a low impact diversified organic farm because it is close to neighborhoods, markets, water and power, thus offering food security and sustainability to the Lahaina community, while providing jobs and economic stimulus to the community and making it possible to build and offer farm housing to the farm staff. The old Pineapple and Sugar Cane Farm model is dying out because it is not sustainable- Petition pg 14 paragraph 4 line 1-4).

**2-10 Of the 8 ALISH criteria this property meets 7 of the criteria.** (State of Hawaii Department of Agriculture: Important Agricultural Lands (IAL).

2-11 In Petitioner's exhibit 7 figure 7 on pg 20, the State of Hawaii Dept. of Agriculture Map shows in their "Key" 3 designations: Prime Agricultural Lands, Other Important Agricultural Lands, Unclassified Lands.

2-12 The Petition Area is in the second classification **Other Important Agricultural Land** designation which is **not the lowest**, in fact it is where all the sugar cane used to be grown.

Petitioner FF 9: The productivity of the land underlying the Petition Area was classified as B72i by the University of Hawaii Land Study Bureau. The Bureau's Classification system rates lands on the scale of "A" to "E" reflecting land productivity characteristics. Lands designated as "A" are considered to be of the highest productivity with "E" rated lands ranked as the lowest in productivity. The B72i designation means that the land is ~~moderately suited to machine tillability and productive if irrigated. In the absence of irrigation, the land would have a lower productivity classification.~~ (Singleton WDT @pp. 14-15).

**3-1 Intervenor's Response and Objections.**—I object to the mischaracterization of the rating system. As a farmer I can tell you that 1) "B" is a high productive rating, 2) the rating already takes into consideration that this soil needs water, B72"i", therefore it is false statement to say that "in the absence of irrigation, the land would have a lower productivity classification".

Rodney Fuk states that "A" & "B" ratings are "Prime" Ag Land ratings. (R. Funakoshi Tr. 9/7/12 95:4-23)

**3-2** In an "A" classification property during drought and no water, all plants will die as well. This rating has to do with soil structure which can be built with composting, micro-organisms and enzymes; "B" is a very, very good soil to work with" as visible during the drive through inspection on September 2, 2012. On the upper mauka land connected to the LCA to Keohokalole (which is part of the Petition Area) robust fruit and mango trees thrive in the irrigated environment.

**3-3** But as Mr. Singleton testified, he grows vegetable crops using advanced "soil-less" techniques on Maui. (Singleton WDT pg 3 line 2-3), so soil quality and tillability is not always an important factor if you grow in hot houses and without soil as Mr. Singleton does.

**3-4** Clare Apana Testifies: On her present organic farm in Pupukea, Routh took decomposed soils and grew the soil back to health and abundant fertility. I've never seen anyone grow

weeds that can be 24 feet high, but she has taken that place and regenerated the soil. So when she says she knows what can be done, she's telling the truth because she's done it. Okay. (Clare Apana Public Test 8/23/12 pg. 13 line 9 – 22)

~~Petitioner FF 14: The Petition Area would not be a candidate for designation as important agricultural land because it is not a large contiguous tract of land, it is sandwiched in an urban area, it has a lot of rocks in the soil, and it is not a good place to engage in commercial farming. (Tr Wm. Spence 7/20/12 at pp133-134)~~

**4-1. Intervenor's Response & Objections.** Objection: false statement. **First of all these lands already have an IAL designation under "Other Important Agricultural Lands – Other IAL" Pet. Ex 7, pg 20 fig. 7. Mr. Wm. Spence is not an expert on the criteria for IAL (see Intervenor's Response and Objections: FF #2.)**

4-2 Third, Mr. Spence is not an expert on Agronomy, soil sciences, Traditional Hawaiian Ag practices or current small commercial farm operations

4-3 But later he answers Commissioner Biga when he asks: So what are you saying; it's possible to have sustainability, ag being grown there? Mr. Spence: **Sure.** (Wm. Spence Tr. 7.20.12 pg 135 line 24 & 25 thru 136 line 1).

~~Petitioner FF 15. The Petition Area is very unlikely to be used for agriculture because of the limited crop selection allowed by the soils, the proximity of the Petition Area to residential neighborhoods, the difficulty in obtaining uniform water infrastructure to the crops and the financial risk in engaging in agriculture on the Petition Area. (Singleton Tr. 8/23/12 at pp. 160-169 and 192-193)~~

**5-1. Intervenor's Response and Objection; I object and strike the entire statement.** Mr. Singleton's entire testimony was designed to paint a picture that commercial and sustainable agriculture is impossible on this land, yet Mr. Singleton goes onto to explain how on his farm in

Kula, where he grows on “above the ground beds” (not in the soil) (Singleton Tr. 8/23/12 pg. 181 line 16). He supports 14 full time employees on 1 ¾ acre production area. (Singleton Tr. 8/23/12 pg. 181 line 21-25 thru p. 182 line 1). Mr. Singleton states that he was able to yield up to \$400,000 per acre. (Singleton Tr. 8/23/12 pg. 180 line 18-20), **and that is on AG land that is not using soil.**

5-2 Intervenor Bolomet asked Mr. Singleton if he was aware that a farmer could get \$6.75 per oz. for herbs and micro-greens, that’s \$100 per pound. He said “he understood this very well”. He also went on to say that he knew the President of the Maui Farmer’s Union, Vince Mina, who raised and supported his family of 5 on a 2000 sq. ft operation raising sprouts on tables: (Singleton Tr. 8/23/12, p. 182 line 7 – 25 thru p 183 line 1-9)

5-3 So the only way to make Mr. Singleton’s statement that; it is “very unlikely to be used for agriculture because of the limited crop selection allowed”, a truthful and accurate one is if Mr. Singleton said, “he” was incapable of making this Petition Area into a profitable commercial Ag business or this land is incapable of supporting a large commercial sugar cane business anymore.”.

5-4 To an organic farmer who is schooled in the art & culture of agriculture, we realize that Mr. Singleton is unfamiliar with sustainable practices. He thinks organic agriculture leads to starvation of the people (Singleton Tr 8/23/12 pg. 179 line 9-12). Admittedly Mr. Singleton is only using the sugar cane commercial model and schooled in the Western Chemical Agriculture that is now leaving Hawaii because it is proven to not be able to sustain itself or the communities around this type of operation. (Petition pg 14 paragraph 4 line 1-4)

5-5 When asked if Mr. Singleton was of aware of the different Hawaiian Cultural farming methods used on the Petition Area, he answered he had no idea. (Singleton Tr. 8.23.12 pg. 184 line 9-16. )

5-6 When asked if he was familiar with the agricultural history of the area as it relates to Capt. Cooks journals describing a completely self sufficient population in the 1790’s, the lush and full agriculture that even King Kamehameha I’s armies/ warriors were fed located right below the



Petition Area? Mr. Singleton Answered: "okay." (Singleton 8/23/12 Tr. Pg. 185 line 14 thru pg. 186 line 3.)

5-7 When Bolomet asked: Would it surprise you to know that I come from a family both sides of farmers, and we've been doing this successfully for hundreds of years?

Singleton: (A): That's just great. Wonderful.

5-8 When asked if Mr. Singleton was familiar with Certified Organic requirements, he said he was, he read the law. When asked if he practiced any of the laws he answered "no".

(Singleton Tr. 8/23/12 p186 line 4-10).

5-9 When asked if Mr. Singleton was aware of Dr. Cho's soil growing and balancing methods that has been around and used for 100's if not thousands of years; he answered, " I don't know". (Singleton Tr. 8.23.12 pg. 184 line 2-8.

5-10 When asked if Mr. Singleton was familiar with the soil remediation plan made by Dr. Melendrez and former USDA Soil and Research Scientist and former Director of the Rodale Institute, for the sugar and pineapple lands that were denigrated? He Answered: I am not sure what you're talking about. (Singleton Tr. 8/23/12, p. 186 line 16-25 thru 187 line 1-8)

5-11 Mr. Singleton stated that he was familiar with the Rodale Institute thru his Legume Research, but was unfamiliar with Rodale's Director of Research Dr. Paul Hepperly, who is known world wide by the organic community and sustainable farming community and who works closely with the USDA, who assisted with the set up of The First Lady, Michelle Obama's organic garden, **who is heralded for his work on and won the Rachel Carson award for Greenhouse gasses (emissions control/carbon monoxide) and our food system** which found if every single farm in the US was turned to Organic, the carbon monoxide (Greenhouse gasses) would be pulled from the air into the soil to help the plants and would solve all the emissions?. (Singleton Tr. 8/23/12 pg. 178 line 7 – 25, pg 179 1-7)

5-12 (Singleton Tr. 8/23/12, p 192 line 6-9). A small profitable sustainable farm that has diversified crops can be as little as 2000 sq ft. growing sprouts (Written Pub. Test. Vince Mina 8/23/12), or my farm that was able to make \$52 per sq ft per month on 10,000 sq. ft. (Intervenor Bolomet questioning Singleton Tr. 8/23/12, pg 183 line 6 -10). Or 2 acres like organic farmer William Green Leaf also an Officer for the Maui and the State Farmer's Union. (Written Public Test. William Greenleaf 8/21/12) When you do an small intensive organic farm operation; 16.7 acres is a huge operation.

5-13 By Mr. Singleton's figure's of 14 employee's for 1  $\frac{3}{4}$  acres that comes out to 8 employees per acre x 16.7 acres= 133.6 sustainable jobs. Realistically though we are talking more like 60 to 72 sustainable jobs that are a direct farm related job to 16.7 acres. Using Mr. Singleton's figures of \$400,000 per acre x 12.7 acres (using low impact, non-chemical organic farm method formulas to figure out productive land usage that do not waste land for large machinery, non-productive farm buildings and extra wide roads), This property can easily sustain 60 to 72 farm jobs, provide housing for these farmer and grow food for Lahaina that will offer food security and good will to the community.

5-14 Mr. Singleton is suggesting that the only kind of commercial farming that is viable are Sugar Cane or pineapple mono cropping farms, the same model the Petitioner makes clear is making a mass exist from the Hawaiian Islands (Pet. Pg 14 paragraph 4 line 1-4).

5-15 Mr. Singleton testifies that it is "difficulty in obtaining uniform water infrastructure to the crops"(Pet. FF #15). However, Maui Public Works Plans/Maps for LCA 9795b:1, shows there is an abandoned, but **existing 4" underground irrigation water line** "whose water source was not from the county water", on the property, **(1) new 6" irrigation water lines, (1) new 6" potable water line in a concrete jacket, and a 30" drain line, all on Intervenor's Bolomet's** gggggGreat Grandfather's apana/land (Clare Apana Written Pub. Test. 8/23/12) exhibit 2a, b, c, d, e), thus negating the argument that there isn't access to water on the property. Furthermore, the water department does not give commercial farms a 5/8" water meter, that is a residential meter. Ag water meters are normally a minimum of 1" and max. 2", but perhaps the Maui County had a different plan since they put in 6" diameter water pipes. (Public Works

Maps, Clare Apana Ex. 2a,b,c,d, e). Show water lines that were installed by the Maui County and provides the infrastructure to support State Sustainability Plans that and Sustainable Ag

5-16 In addition: Cultural Practitioner Kahu Michael K. Lee testifies in his cultural practice he can identify water sources from the thriving green Kiawe trees that have long tap roots. He testified that there is a spring on Intervenor's Bolomet's gggggGreat Grandfather's apana, 9795b:1 (M. Lee 10/5/12 Tr. Pg. 54) Which is a cultural resource protected by article 12 section 7.

5-17 Intervenor Bolomet agrees that for people with non-organic low impact farming knowledge and training, like Mr. Singleton and the Petitioner, it might be difficult to build a profitable model that can be built by Intervenor Bolomet, Farmer Vince Mina and Farmer Bill Greenleaf. (Singleton Tr. 8/23/12, pp 160-169).

5-18 Intervenor Bolomet agrees that it does require a financial investment to set up an ag business, however having already done so she has worked out the most cost efficient way to do so. In addition to Bolomet's experience with farm set up, she will also contact habitat for humanity for low cost farm housing options. Because water infrastructure are already on the property (Clare Apana Written Pub. Test. 8/23/12) exhibit 2a, b, c, d, e) and can be fed by nearby perimeter water sources (Pet. EIS EX 7 pg 49-50) and a county water meter, utilities are easily hooked into (Pet. EIS Ex 7 pg. 56 -6a, Electrical, Telephone & CATV Services), that these are Kuleana lands, there are no property taxes for

Petitioners FF 43. Although the Petition Area is zoned and classified as agricultural, given the constraints placed on the property by the soils and the proximity to existing residential subdivisions, the Petition Area is an undesirable site for agriculture use. (Singleton WDT at p. 15; Tr 8/23/12 at pp. 162 and 192-193.)

**6-1 Intervenor 's Response and Objections: I object and strike the entire statement on the premise it is based on the sugar cane/ pineapple model that has already proven itself unsustainable on any land in Hawaii, no matter what kind of soil or what location. (Petition pg 14 paragraph 4 line 1-4).**

Petitioner FF 48. The six criteria that must be reviewed in determining whether the reclassification is consistent with policies and criteria are: 1) Conformance with the Hawaii State Plan and adopted functional plans; 2) conformance with urban district standards; 3) impact on areas of state concern; 4) conformance with county general plan; 5) the economic ability of the Petitioner to complete the proposed Project; and 6) whether the lands were in intensive agriculture use for two years before the date of the Petition or whether the lands have a high capacity for intensive agricultural use. (HAR 15-15-77(b)).

1) Conformance with the Hawaii State Plan and Adopted Functional Plans.

**7-1 Intervenor Reponse and Objections: Today's farming has changed from the failed unsustainable Chemical laden Sugar Cane and Pineapple model to one that is low impact, diversified, organic and close to the city centers for neighboring residents and restaurant chefs to have access to. People want to know more about how their food is grown today, and where possible, they want to know their farmers. As a result, for many of the same reasons that the Petitioner states these lands are good for housing, are many of the reasons why it is good for low impact, diversified organic agriculture.**

**7-2 William Greenleaf of Green Leaf Farm submits in Public Testimony: Small scale (2-5 acre) is the future of growing farms and farmers. Young people want to work the land in a personal, intimate and small scale model. They want to experience and encourage diversity in their plantings and in the nature of what the land produces as a result of regenerative farming.**

**7-3 My wife and I farm 2 acres in a Kula 200. We grow enough food to feed ourselves and 20 of our neighbors on our 2 acre plot of land. Give me 16.7 acres and I'll show you a farm industry that employs 60-100 Maui citizens. The youth and "20 somethings" on Maui want to live on Maui. Many see value and possibility in farming and value adding to earn money and be in relationship with the land. The model before massive monoculture was small**

acre farms that supported families and created healthy community. We need to protect the future of what worked. (Farmer Wm. Greenleaf Written Public Test 8/22/12).

**7-4 Conformance with the Hawaii State Sustainable Plan 2050: Ultimately the State meets more of their objects by maintaining the Petition Area in Agricultural zoning but limiting it to only low impact organic agricultural district, then does 68 homes, of which only 10 homes are truly affordable according to the salary census of Lahaina. A sampling of some of the objectives low impact Agricultural meets are: Agriculture, Visitor Industry, potential growth activities, protecting physical environment to include land base, shoreline and marine resources, protecting land air water quality, minimal solid and liquid waste, transportation, socio-cultural advancement; housing, health, education, individual rights and personal well being... to name a few.**

**7-5 §226-103 Economic priority guidelines.** (a) Priority guidelines to stimulate economic growth and encourage business expansion and development to provide needed jobs for Hawaii's people and achieve a stable and diversified economy:

Encourage investments which:

- (i) Reflect long term commitments to the State;
  - (ii) Rely on economic linkages within the local economy;
  - (iii) Diversify the economy;
  - (iv) Reinvest in the local economy;
  - (v) Are sensitive to community needs and priorities; and
  - (vi) Demonstrate a commitment to provide management opportunities to Hawaii residents.
- (6) Encourage the formation of cooperatives and other favorable marketing or distribution arrangements at the regional or local level to assist Hawaii's small scale producers, manufacturers, and distributors.
- (A) An industry that can take advantage of Hawaii's unique location and available physical and human resources.
  - (B) A clean industry that would have minimal adverse effects on Hawaii's environment.
  - (C) An industry that is willing to hire and train Hawaii's people to meet the industry's labor needs at all levels of employment.
  - (D) An industry that would provide reasonable income and steady employment.

10. Enhance the quality of Hawaii's labor force and develop and maintain career opportunities for Hawaii's people through the following actions:

- (A) Expand vocational training in diversified agriculture, aquaculture,
- (F) Provide retraining programs and other support services to assist entry of displaced workers into alternative employment.

(b) Priority guidelines to promote the economic health and quality of the visitor industry:

(1) Promote visitor satisfaction by fostering an environment which enhances the Aloha Spirit and minimizes inconveniences to Hawaii's residents and visitors.

(4) Encourage visitor industry practices and activities which respect, preserve, and enhance Hawaii's significant natural, scenic, historic, and cultural resources.

**10) (3) (d)** Priority guidelines to promote the growth and development of diversified agriculture and aquaculture:

(1) Identify, conserve, and protect agricultural and aquacultural lands of importance and initiate affirmative and comprehensive programs to promote economically productive agricultural and aquacultural uses of such lands.

(2) Assist in providing adequate, reasonably priced water for agricultural activities.

(3) Encourage public and private investment to increase water supply and to improve transmission, storage, and irrigation facilities in support of diversified agriculture and aquaculture.

(4) Assist in the formation and operation of production and marketing associations and cooperatives to reduce production and marketing costs.

(5) Encourage and assist with the development of a waterborne and airborne freight and cargo system capable of meeting the needs of Hawaii's agricultural community.

(6) Seek favorable freight rates for Hawaii's agricultural products from interisland and overseas transportation operators.

(7) Encourage the development and expansion of agricultural and aquacultural activities which offer long-term economic growth potential and employment opportunities.

(8) Continue the development of agricultural parks and other programs to assist small independent farmers in securing agricultural lands and loans.

(9) Require agricultural uses in agricultural subdivisions and closely monitor the uses in these subdivisions.

(10) Support the continuation of land currently in use for diversified agriculture.

(e) Priority guidelines for water use and development:

(1) Maintain and improve water conservation programs to reduce the overall water consumption rate.

(2) Encourage the improvement of irrigation technology and promote the use of nonpotable water for agricultural and landscaping purposes.

(3) Increase the support for research and development of economically feasible alternative water sources.

(4) Explore alternative funding sources and approaches to support future water development programs and water system improvements.

**7-6 §226-104 Population growth and land resources priority guidelines.** (a) Priority guidelines to effect desired statewide growth and distribution:

(1) Encourage planning and resource management to insure that population growth rates throughout the State are consistent with available and planned resource capacities and reflect the needs and desires of Hawaii's people.

(2) Manage a growth rate for Hawaii's economy that will parallel future employment needs for Hawaii's people.

(3) Ensure that adequate support services and facilities are provided to accommodate the desired distribution of future growth throughout the State.

(b) Priority guidelines for regional growth distribution and land resource utilization:

(1) Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures, **and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles.**

(2) Make available marginal or nonessential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district.

Petitioner FF 52. The State Agricultural Functional Plan suggest (replace with "states") that agricultural properties are important and should be protected "unless agricultural uses are not present or feasible". (Tr. 7/19/12 pp 131 and 187-189)

**8-1 Intervenors Response and Objections:** The Petitioner has framed their Petition to have the Commission believe that agriculture is not feasible by focusing on Pineapple & Sugar cane Industry that has mostly left the islands due to its unsustainable practices. They also say it is because of the "very severe limitations of the soil" ((Biegel WDT at p9) , because it is "too narrow" despite the Petitioners Ag Expert Mr. Singleton testifying that he has seen old Hawaiian cultural planting taro in Waialua Valley, 200' above the stream beds, thus demonstrating if Hawaiians were ingenious enough to grow taro 200' above the stream beds, modern day Hawaiian can certainly find crops that thrive on the " gently sloped lands that are westerly facing". For Hawaiians and organic farmers who are inventive, they are able to overcome the "very severe limitations" Mr. Biegel and Mr. Singleton speak about, even if it means growing on benches not using the soil like Mr. Singleton does on his farm in Kula. (Singleton Tr. 8/23/12, p149 line 21-25 thru p150 line 1-6,) ((Singleton Tr. 8/23/12 pg. 181 line 16), (Pet. Ex 7 pg 16, 3a.), "lacks a cheap source of water or non-potable water", however, there are discounted ag water rates and there is a buried spring on the land that can be tapped into ((M. Lee 10/5/12 Tr. Pg. 54).

**8-2:** The State Agricultural Functional Plan also puts an emphasis on diversified farming, protecting ag lands because short term leases to farmers inhibits full investment and exploitation of the ag land's full potential by the leasing farmer, farm lands are usually too

expensive for new farmers and puts emphasis on efficient and equitable provisions of an adequate supply of water for agricultural use. (Hawaii State Agriculture Function Plan II-6 & 7)

Petitioner FF 53. The Petition Area has not been farmed commercially since 1990. (TR 7/19/12 p 190; Bigelow WDT At pp 4-5)

Petitioner FF 54. The Petition Area is not presently used for agriculture. (Tr 7/19/12 at p. 189; Bigelow WDT pp 4-5)

**9-1 Intervenor Response and Objections:** This was by the Kahoma Land Inc.'s choice, not because it was not "feasible". or had "severe limitations". This is the perfect piece of land for setting up a modern day ahupua'a agricultural complex that restores the old successful diversified agricultural practices and the terrain to support these practices as history demonstrates and is documented by (Pet. Ex 7E Kahoma's Place in Lahaina's Legacy- pg. 1-2. , yet has all the public utilities on the perimeter to be able to install modern amenities for farm housing, farm processing center, offices and where appropriate modern ag infrastructure assure crop success, like an automated irrigation system that can retrieve water from the perimeter water supply or using a pump to tap the spring on the property. As a bonus it is located near residential areas and many local businesses who can easily access local grown organic farm fresh produce. It is also located high above a the Tsunami areas. It can also contribute to eco tourism and to the lovely countryside sites the tourist on the sugar train will experience on their rides.

Petitioners FF 55. The soils of the Petition Area have very severe limitations for agricultural use. (Biegel WDT at p9).

Petitioner FF 58. Meeting the water needs for crops that could be grown on the Petition Area will be a severe limiting factor in farming the property (Singleton WDT at p. 11)



Petitioner FF 60. The soil conditions, water limitations and management challenges of the Petition Area make it unlikely that the property will be put into agricultural production now or in the future.

**10-1 Intervenor's Response and Objections:** The sentence before the quoted sentence is, "The capability classification of these soils "without irrigation" are IVs, IVc and VII. Soils with IV classification have very severe..... most plants have difficulty growing without water. Rory Frampton Testified that there is potable water available on the perimeter of the Petition Area site through the county. He also Testifies that he is familiar with farms hooked up to water and agrees it is possible to put in a county meter to irrigate the Petition Area. Clare Apana provided Maui County Public works plans/maps that show underground irrigation pipes already installed on LCA 9795b:1, thus making irrigation a non- issue. The county provides water meters . The Petitioner states that irrigation on the Petition site for their proposed Affordable Home Project will be irrigated with county water from the meter hooked up to the water supply that is located on perimeter of the Petition Area. (R. Frampton Tr 10/5/12, pg 183 line 1-22.), (Clare Apana Pub. Test. Ex. 2 a,b,c,d,e), (Petition Pg 26 (6)- 27).

Petitioner FF 56: The soils of the Petition Area are extremely stony, providing severe management challenges to small holder farms. (Singleton WDT at p7)

Petitioner FF 57: The stoniness of the soils of the Petition Area limits the types of crops that can be grown. (Singleton WDT pg 8)

**11-1 Intervenor's Response and Objections:** The ancestors of Intervenor Bolomet were able to use the stones found on the lands to build their auwais (water courses, aqueducts) and stone walls. The stones were even used to build heiaus (temples). Trace minerals from the lava rocks found in the area were used in gardens to assist plant growth and health.

**11-2** Petitioner's Exhibit 41 figure 7 shows that not all the soils are rocky. Petitioners Exhibit 41 Fig. 6 shows stones are water worn and rounded, which leads Intervenor Bolomet to conclude these were stone from an ancient auwai or part of the old Moali`I creek referred to in the boundary notes found in DEGA's Archaeological Assessment Pet. Ex 7D, pg. 40, 41, LCA

11150 Keone “water course” aka “auwai”, Kalo patch (wetland taro cultivation) and Kula land (for dry land cultivation), pg 42 , LCA 6424 Kanehoewaa, describes a “flowing stream”, “kihapai “ for planting sweet potato, moali`I stream and moali`I creek, pg 46, Grant 1891 to Baldwin Parcel No. 7 describes creek, Moali`I creek, stone wall next to it in Parcel no.8 lot, it describes Moali`I lava land, a “great Stone”, stone wall, a kula (dry land cultivation), Taro Patch (wet land taro)

11-3 In the Dega Archaeology report Pet. Ex 7D pg. 14 it describes Wm. Ap Jones Grant #2998 describes, kula land, stoney and barren surrounded by low stone wall and several graves marked by stones.

11-4 In the Dega Archaeology report Pet. Ex 7D pg. 12 & 13 it describes the auwai, the luxuriant groves, kalo patches, the highest state of cultivation, of different esculent roots and useful vegetables, watered at pleasure by aqueducts (auwais).

11-5 J. Arago visited Hawai`I with Capt. Louis de Freycinet in 1819: “The environs of Lahaina are like a garden. It would be difficult to find a soil more fertile.....”

11-6 Organic Farmers Wm. Greenleaf & Vince Mina agrees that small scale commercial farms are much easier to manage and can provide a good living to families and young people who want to live and work on small organic farms. 16.7 acres is not considered a small farm for a low impact diversified organic farmer- it’s just right. (Wm Greenleaf WPubTest. 8 /21/12 and Vince Mina WPubTest 8/23/12)

11-7 Petitioner’s Ag Expert admits he has no knowledge of the agriculture that took place by ancient Hawaiians in the Petition area. Pg 174, line 2-4.

11-8 Petitioner’s Ag Expert admits he wouldn’t be surprise to hear that there used to be lo`I terraces where taro was grown grown in the Petition Area, as well as auwais and ponds with fish on the property. (Singleton Tr. 8/23/12.pg. 175 line12-17)

**Also see Intervenor’s Response and Objections 3-1 thru 3-4.**

Petitioner FF 59. The proximity of the Petition Area to neighboring residential subdivisions creates management challenges to address chemical drift, dust generation and odor generation from agricultural operations.

Petitioner FF 60. The soil condition, water limitations and management challenges of the Petition Area make it unlikely that the property will be put into agricultural production now or in the future.

**12-1 Intervenor's Response & Objections:** Organic farmers do not use chemicals, they use micro-organisms to compost manures quickly so there are no offensive odors. "The British have been doing experiments using farm yard manures since 1860. It's famous work. It's all in the Scientific Books." You can sustain your crops many ways. You'd be fortunate to be on old sugarcane lands where they put a lot of it on there. (Singleton Tr: 8/23/12 p 189 line 18-21 and line 25, pg 190 line 1-11).

**12-2 Singleton agrees that there are ways to make the Petition Area Agriculturally profitable; using farm yard manure, hydroponics, organic farming, etc. Singleton Tr 8/23/12 pg 189 line 18-25 pg. 190 line 1-21**

Petitioner FF 61. The State Agricultural Functional Plan has (3) ~~two~~ fundamental objectives: a) viability in sugar and pineapple industries; and b) growth of market niche driven and Hawaii differentiated

Crops and products for export markets. (State Ag Plan at p. II-3)

**13-1: Intervenor's Response & Objections:** The petitioner has attempted to isolate the parts of the Ag functional plan that would demonstrate why this land would not conform to sugar and Pineapple production. However since the Ag Functional plan was written, the majority of this industry has left the State, and our agricultural focus has shifted to

part (c) of the Ag Plan; diversified crops; with more emphasis on local farming for food safety and bio fuels to meet our State's 2050 Sustainability goals.

13-2: State Ag Functional Plan p. II-3 also lists (13-2 thru 3-10): c) the greatest growth in diversified crops and products.

13-3: Growth in diversified crops and products requires: a) understanding the characteristics of potential markets & products; and b) ensuring the factors critical to achieving this growth potential are in place.

13-4: Future diversified crops & products are expected to be market niche driven.....There will be increase complimentarity of diversified crops and products with tourism/recreation industry. (Which is highly condusive to restoring the Historical Hawaiian Cultural Ag Practices that used to take place in the area per Article XII Section 7 of the Hawaii State Constitution).

13-5: p.II-4 states: Factors in achieving the potentials of diversified crops & products include independent, diversified farms for production; consolidated marketing activities; linked production, planning, processing and manufacturing; low chemical inputs; urban/resort compatibility; conservation of resources; exploitation of new agricultural environments;  
Exploitation of Hawaii's comparative advantages and positive image; and industry organizations.

13-6: This Functional Plan outlines actions, directed at some of the factors and conditions that are keys to achieving the "Vision of Hawaiian Agriculture".

13-7: p. II-5: Under "Research/Development/Technology Transfer: The means to do this include the development of new agricultural and aquaculture industries which either exploit the byproducts of sugar cane and pineapple, or which serve as an alternative user

of resources released by the sugar and pineapple industries.....” “the absence of detailed knowledge of the movement of pesticides into groundwater aquifers; incomplete information on the distribution of endangered species in areas under cultivation...”

13-8: p. II-6: Environmental Quality: There is a need to achieve more effective protection of Hawaii’s land, water and air quality without jeopardizing agricultural production.

13-9: p. II-6 &7: Issue Area: Land and Water: Land: There is a need to increase the productive agricultural use of the lands most suitable and needed for agriculture.

- \* Suitable land is not available for agricultural industries to expand or otherwise improve and modernize their operations.
- \* Many farmers are threatened by loss of their farm leases or are handicapped by only having short term leases. (See Heidi Bigelow Tr. 9/6\_\_\_\_)
- \* Land otherwise suitable and available for new or expanding agricultural uses is too costly, particularly for the new farmer.

13-10: p. 11-7: Water: There is continuous need for the efficient and equitable provisions of an adequate supply of water for agricultural use.

Petitioners FOF 63: ~~Reclassification of the Petition Area is consistent with the State Agricultural Functional Plan as neither of the fundamental objectives of that plan can be achieved on the Petition Area. (FOF 53-62)~~

14-1: Intervenor’s Response & Objections; I object to this entire statement and all those associated with it (FOF 53-62). This is a false statement as 13-1 thru 13-10 has demonstrated. The long term affects of rezoning this land to urban and solely using this land as an affordable housing option when there are ag options available that provide food security “and” work force housing, would only invite a trend of rezoning for more of our precious ag lands to urban that are conveniently located to utilities, commerce and customers, and encourage. So

rather than providing food security and work force housing, the Petitioner's proposal will invite "population density" without local resources to provide for the new population increase and environmental resources being overburdened and degradation following. Mr. Singleton stated it himself;

Pet. Ag Expert Singleton admits, "I will tell you that when population density goes up, environmental degradation follows right after that. (Singleton Tr 8/23/12 pg 184 line: 24-25 thru Pg. 185 line 1).

Petitioner FOF 64. The State Housing Functional Plan provides for meeting housing needs to a variety of income levels. (Tr. 7/19/12 at pp 131-132).

Petitioners FOF 65. The average median sales price for single family homes in Lahaina for the period from 2004 to 2011 was \$800,000. (Dodson WDT at p. 2)

Petitioners FOF 66. The median income for Maui households (family of 4 is \$77,000. (Dodson WDT at p. 2).

Petitioners FOF 67. Maui households earning the median income cannot buy a house in Lahaina priced at market rates. (Dodson WDT at pp 2-3).

Petitioners FOF 68. Lahaina has a lack of inventory of newly constructed homes and vacant lots for families earning between 80% and 160% of the median income. (Bigelow WDT at p. 14).

**15-1: Intervenors Response & Objections: Affordable local grown food happens when farm workers are provided two of the big 3 essentials in life: food, clothing & shelter. Incentive 1: Farm-Dwellings and employee housing. Allows landowners to develop farm dwellings and employee housing for their immediate family members and their employees. By providing food and shelter as well as a jobs, many of the objectives of the State & County Plans are met under the mandates of the Hawaii State Constitution. (Hawaii Dept. Agriculture: IAL incentives of Act 183 and Act 233)**

**15-2: Simply putting affordable housing on rezoned ag lands will not address that the housing will remain affordable after the 3-5 years. It will not guarantee that affordable homes will be always sold to the people in need currently living in Lahaina, it won't guarantee that the homeowners will never get a job away from Lahaina, thus needing to use more gas, and contribute to traffic congestion; in the end the Petitioner cannot guarantee that this Affordable housing program will always be an Affordable Housing Program continuing to meet in perpetuity the "general" criteria of "some" of the State, and County Plans. (Pet. Exhibit 7-1 pg. 9E).**

**15-3: §226-104 Population growth and land resources priority guidelines. (a) Priority**

guidelines to effect desired statewide growth and distribution:

(1) Encourage planning and resource management to insure that population growth rates throughout the State are consistent with available and planned resource capacities and reflect the needs and desires of Hawaii's people.

(2) Manage a growth rate for Hawaii's economy that will parallel future employment needs for Hawaii's people.

**15-4: By maintaining these important ag lands in ag zoning we are allowed to uphold 226-104 Population growth and land resource priority guidelines, offer workforce housing, sustainable jobs and food security. The people of Lahaina should not have to settle for something that "generally" meets the States Priorities and Objectives, when there is an option for something that is a better fit and can benefit more people.**

Petitioner FOF 87: No archaeological features or archaeological deposits were found on the Petition Area either during a pedestrian survey or from any of the 15 trenches that were excavated for subsurface investigation. (Dega WDT at p. 7; Petitioner ex. 7).

Petitioner FOF 91. The Claimed archaeological feature was examined and determined by expert archaeologist to be a push pile of rocks and boulders and not an archaeological feature. (Tr 10/5/12 at pp. 91-93; Petitioner Ex 41.)

**16-1 Intervenor's Response & Objections: Cultural Practitioner Kahu Michael K. Lee explains: When you consider a site culturally significant you take all the different stories of the areas as well as the archaeological finds, which is called primary source. The primary source for Hawaiians are their chants which defines the Hawaiian culture. An outside culture cannot come in and then dictate, "this is your culture". So to find out what is real, you look to the chants and practices. (Michael K. Lee Tr. 10/4/12 pg. 260 line 19-25 and 261 line 1-2)**

**16-2 Missionary families had journals that gave their perspectives on Hawaiian Cultural Practices; Kahunas did not share their secrets. The regular commoner would not have access to a lot of the whys and the how. (M. Lee Tr. 10/4/12 pg. 261 line 3-25)**

**16-3 Lahaina was the Capital of the Hawaiian Islands until 1843; this was the New York of the 1820's -30's. All your movers and shakers who had very high responsibilities within the kingdom government, royalty, ministers, missionaries....this was the place to be. (M. Lee Tr. 10/4/12 pg. 262 line 13-22)**

**16-4 Kahu Michael Lee explains that there are important heiau's to Tutu Pele on Princess Kamamalu's property LCA #7713, it's because she comes from the Kamehameha line and would be protected by her ancestors; she had the mana to own these lands with this powerful private heiau to Pele's son, Opeluhaalili. (p 257 line 1-25 thru 258 line 1-line 18) Heiaus were kept secret, they were a power source. (M. Lee 10/4/2012 Tr. P. 270 line 12-19)**

**16-5 Kahu Michael Lee explains that each ahu pua`a has an alter or heiau (254 line 5- 25)**

- 16-6 Kahu Michael Lee explains that heiaus can be as big as the ones found on the Big island or private ones can be as small as the table in front of him. (Lee tr 10/4/12, pg.255 19-25 thru 256 1-5)
- 16-7 Kahu Michael Lee explains that water is wealth and heiaus are a source of power. ( Lee Tr. 10/4/12 P. 255 line 19-21)
- 16-8 Diverting waters were punishable by death because it took away from other people's livelihood( Lee Tr. 10/5/12, pg.240: 16-20) Water is a cultural resource protected by article XII section 7.
- 16-9 Hawaiians keeping things secret were a survival strategy. They kept karst secret so they could hide in them during time of war, they'd get their water from there during times of drought for themselves and their plants. If you revealed a karst or spring location, an ali'i might come and take over that spring and build a heiau over it. Most heiau's are built over springs. (m. Lee 10/4/12 p. 25 line 1-21)
- 16-10 Another archaeological feature that was identified in the area was the Robert Connolly Kahoma 36 Terrace complex . Kahu Michael Lee explains that a complex features lo'i terraces from the mountain to the mid range and goes down right up to the railroad. He explains that it was by looking at different maps that he was able to determine this complex was in the Petition Area (M. Lee Tr. 10/4/12, pg. 253 line 11-25 thru p. 254 1-4, pg 48 line 1-25 thru 49 1-4).
- 16-11 On 10/19/1994 SHPD Chairperson identifies writes a letter to Mr. Jyo of the Army Corp of Engineers confirming the Robert Connolly Kahoma 36 Terrace complex is in the project area. TMK (2)4-5-10 as well as TMK (2) 4-5-9, 11, & 15 that are above below and on the side of the Petition Area. (Oct. 4, 2012 Ex. Theresa Donham Letter ex. 2b)
- 16-12 Rory Frampton who tried to persuade that the Kahoma 36 Terrace Complex was more mauka of the project site, admitted that he could not prove his two point of reference; the bridge and the pole #6 was the same reference Robert Connolly used. (Frampton Tr. 10/5/12 p 128 line 1-22- p. 130 line 17-25)
- 16-13 Petitioner's Cultural Expert Kimokeo Kapahulehua states: "It is appropriate to recognize that a thriving community required having their own temples so that the residents could conveniently go to worship their Gods on their own accord. (K. Kapahulehua Tr. 7/19/12)
- 16-14 Kimokeo stated that he would not be surprised to learn that Opeluhaalili was born on the Petition Area. (K. Kapahulehua Tr. 7/20/12 pg. 0084 line 17-19)
- 16-15 When asked about the little libation stone (pohaku), he said he was not surprised that it matched up to the large libation stone and it was used in an awa ceremony on the property. (K. Kapahulehua Tr. 7/20/12 pg. 0084 line 19-24)



16-16 When asked to explain to the commission what Aka ku meant; he admitted he could not.

It is here that he admitted he was not a cultural practitioner. (K. Kapahulehua Tr. 7/20/12 pg. 0084 line 25- p. 0085 line 1-6)

16-17 When asked if he'd be surprised to learn that there is a heiau dedicated to Opeluhaalili on the Petition Area, he said he wouldn't be surprised. When asked if he'd be surprised to learn there's a karst system that goes from the mountain to the sea under the petition area, he said it wouldn't surprise him and he went on to explain how in his report it explains about a fish pond called Lehoula and how the mo`o kaihahine can travel from one place to another, in ancient times and beliefs. (The mo`o swims thru the karst system from one stream to another, one pond to another.) (K. Kapahulehua Tr. 7/20/12 pg. 0084 line 25- p. 0085 line 8-17)

16-18 When asked if in the konohiki system dealt with everything from land to sea; he replied, "In Hawaiian culture, we're connected from what we call kalani ka honua ka moana, from the heavens to the earth to the sea. He was also asked if he drew a line from the mountain all the way down to the sea, then we'd find a Hina Stone at low tide, then if you drew a line right next to the outcrop where you put the ku stone, he answered; In ancient times, we have a hina stone located, and we also have a kuula located within the area. (K. Kapahulehua Tr. 7/20/12 pg. 0085 line 25 thru 0086 line 1-13).

16-19 Kimokea explains; I don't see any of that. I'm not saying that this was not there, my report reflects on precontact. (K. Kapahulehua Tr. 7/20/12 pg. 0087 line 7-8).

16-20 In Michael Dega's Archaeology report there are 7 of 11 LCA Data Notes missing. 7 of the

Of the 11 LCA Data notes are from the Makila Ahupua`a 7 ½ miles away. (Pet. Ex 7D, pg 31-40)

16-21 Kahu Michael Lee explains that 7 of the 11 LCA's listed in Michael Dega's archaeology report is from Makila Ahupua`a 7.5 miles away. (M. Lee Tr. 10/5/12 pg. 76 10-25 77 pg 1-8)

16-22 On October 4, 2012 a letter was sent to Theresa Donham the head archaeologist at SHPD, listing all the inaccuracies found in the Petitioners Archaeology Report found in Petition Ex 7D, asking SHPD to rescind the approval letter signed off by Melanie Chinen, Administrator State Historic Preservation Division. A copy of that letter was submitted on October 4, 2012 as a Bolomet exhibit.

16-23 Mr. Frampton admits he is not a Cultural Practitioner nor is he Hawaiian by blood. (Frampton Tr 10/5/12 p. 135 Line 22 -25)

On Sept. 19, 2012, Hinano Rodrigues and Jenny Pickette arrive after the digging had begun and after Intervenor Michele Lincoln left the excavation area. They did a visual inspection of the area Intervenor Bolomet claimed her GGGGGGreat Uncle Henry's Iwi was located. They did no digging. Upon visual inspection they found no pohaku markers on the soil surface. (Frampton p 162 line 9-25)

16-24 Kahu Michael Lee explains the difference between an expert and a cultural practitioner is the expert learned from books; he may know rites, and words, but he does not know how to utilize them and he does not apply them daily, weekly or monthly. A cultural practitioner knows the hidden meanings, and he actually uses the rites and words in daily, weekly and monthly religious ceremony, so there is a religious component to a cultural practitioners practice and and experts. Also, only a cultural practitioner is protected by the Hawaii State Constitution Article XII section 7. (Lee Tr 10/5/12 pg 41 line 6 -25 thru 43: 1-8)

#### Burials:

Petitioner FOF 89: In July 2012, an archaeological feature and burials were claimed to exist on the petition area. (Tr. 7/19/12 p. 30).

Petitioner FOF 91: The claimed archaeological feature was examined and determined by expert archaeologist to be a push pile of rock and boulders and not an archaeological feature. (Tr. 10/5/12 pp. 91-93); Petitioner Ex. 41)

Petitioner FOF 92: The locations of the claimed burials were excavated to bedrock. No evidence was found of burials, either presently existing or which may have existed in the past. (Tr 10/5/12 at p 92; Pet. Ex 41)

Petitioner FOF 93: The State Historic Preservation Division again concluded that no historic properties will be affected by the project. (Tr 10/5//12 at p. 92; Pet. Ex 41).

17-1 Petitioner Archaeologist did not contact Cultural Practitioner, the person who identified the burial locations, or any of the lineal descendents to attend the excavation. (Frampton Tr 10/5/12 pg. 158 line 16-23)

17-2 GPS Location was not taken at the time Kahu Lee pointed the burial sites out to Mr. Frampton, so there is no proof that they actually excavated in the spots Kahu Lee pointed out the burials would be found. (Frampton Tr. 10/5/12 p160 1-11)

17-3 The map provided in Ex. 41, Fig. 5 pg. 9 shows the excavation site to be lower then the area Kumu Lee pointed out on his Sept. 8, 2012 meeting.

17-4 Kahu M. Lee said he knew of a man named Wilmont Kahaiali`I who was witness to burials found in a karst on the property. (Lee Tr. 10/5/12 pg. 67:22-24 thru 68:12-16)

17-5 Rory Frampton admitted they did not screen or sift any of the dirt to look for bones that may have degraded since it was not in a coffin and would have been in the ground at least before missionaries came and started burying their dead in coffins. (Frampton Tr 10/5/12 p. 158:6-15)

17-6 Rory Frampton could not say how many years it takes before bones bio degrades and turns to dust when not in a coffin. (Frampton Tr. 10/5/12 P. 161:21-25)

17-7 Mr. Frampton testified that he agreed that looking for burial markers that was put on the original grade 150+ years ago would yield zero results if there is fill over the original surface and a lot of changes to the topography happened. (Frampton Tr 10/5/12 p.164 line 1-21)

17-8 Dega's Archaeology reports under "Project Area Description" that neighbors supplied information saying there was boulders and approximately 2.5 meters of fill located throughout the property; as well as 20 damaging floods from 1879 when describing Kahoma Stream Flood Control Project (Petitioner Ex 7d pg 7 & 8)

17-9 Petitioners Cultural Experts states that "the banks of Kahoma Stream also served as gravesites to past residents in the area (Shun Report). (Petitioner Ex 7E, pg. 6 paragraph 6, line 3)

Petitioner FOF 94, The State office of planning of Planning determined the Project was generally consistent with the State of Historic Preservation Functional Plan. (Tr. 9/7/12) pp 71-71)

18-1 Intervenor's Response & Objections: State Office of Planning, Rodney Funakoshi stated he does not work with a cultural practitioner to confirm the submitted papers are correct and that they rely on SHPD to make sure everything in the Archaeological Inventory Survey is correct. (R. Funakoshi Tr. 9/7/12 pg 91 line 15-25, 92 line 1-25, 93 line 1-16.

Petitioner FOF 95: Reclassification of the Petition Area is consistent with the State Historic Preservation Functional Plan as there are no historic properties affected by the Project (FOF 86-94)

19-1 Intervenor's Response and Objection: For all the reasons stated in 16 & 17 above, this statement should be stricken and if the Commission feels they cannot make a judgement based on Cultural Expert and Practitioner Michael Lee's Testimony, then they should demand the Petitioner provide a full Archaeological Study. The State and the County does not have the Petitioners Cultural and Archaeological, Flora & Fauna work checked for accuracy, but the State Constitution under Article XII Section 7 protects my cultural, religious and traditional rights, and the commission has the duty and mandate to

uphold these mandates. So to wholesale this process to an agency that provided an approval letter on an Archaeological Assessment that does not include 7 of the 11 LCA's in the Petition Area, but rather LCA's from an Ahupua`a 7.5 miles away and has not acknowledge a 36 Terrace Complex that the former Chairman of SHPD had already acknowledge was part of the Petition AREA is a blaten disregard for the Constitutional mandate set upon as the responsibility of this commission.

Petitioner FOF 97,98,99, 100, 101, 2)- Strike all

20. Intervenor's Response and Objections: For all the reasons provided above in 7-4, 7-5, all of 13 & 14.

Petitioner FOF 102 – 127

21. Intervenor's Response and Objections: For all the reasons in Petitioner's FOF 102-127, this would make for an excellent site for a diversified low impact organic farm and work force housing for farm workers and why the Land Use Commission should maintain these lands in Agricultural Zoning.

Petitioner FOF 130. The Petition Area does not decrease the areas available for foreseeable urban growth. (FOF 128-129

22. Intervenor's Response and Objections: However it will decrease the amount of agricultural lands that is so perfectly located to all the infrastructure that would make it very cost effective to set up as a low impact diversified organic farm.

Petitioner 132, 136, 137-

23. Intervenor's Response and Objections: For all these reasons, this would make for an excellent low impact, diversified organic farm that will provide farm workforce housing, food security, sustainable long term jobs, good for surrounding commerce as a food source.

Petitioner 139. The Final Environmental Assessment was reviewed by the accepting agency which rendered a Finding of No Significant Impact (FONSI). (Petitioner Ex 7.) Petitioner's FOF 175, 176, 177,

24-1. Intervenor's Response and Objections: That was before it was revealed that SHPD had signed off on an inaccurate, incomplete, misleading Archaeological Assessment; before it was revealed that both the State and Maui County Office of Planning relied on SHPD to assure them that there were no cultural, historical or archaeological impacts. That was before it was revealed that neither of these agencies consulted with an organic farm consultant to check the viability of setting up a diversified farm on the property, no one checked to see that the

Flora that was being called weeds were in fact Hawaiian Medicinal Herbs, and the Pueo and its habitat, no matter what species is a protected cultural resource. There apparently is no agency checking the work provided by the Petitioner is accurate and will in fact have no impact on Hawaiian Cultural, Historical or Archaeological Resources, Practices or Traditional Rights. (R. Funakoshi Tr. 9/7/12 88:17-25- 89:1, 94:17-25 thru 95:1-3 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) (M. Lee Tr. 10/4/12 thru 10/5/12 the entire transcript describes what our cultural practices are, what our resources are that are being impacted, the cultural assessment and archaeological sites identified by him and how and why his cultural assessment as a cultural practitioner supersedes an experts opinion and how our cultural practices, traditions, resources and history are protected under Hawaii State Constitution Article XII Section 7.

## **24-2. EA and FONSI were Not Approved by Qualified Environmental Professionals**

The County of Maui, Department of Housing and Human concerns has reviewed the final Environmental Assessment for this project and issued a Finding of No Significant Impact (FONSI) determination. The petition before you relies heavily upon the Environmental Assessment and FONSI to address environmental concerns. The County of Maui, Department of Housing and Human concerns did not provide the qualifications of persons making the FONSI determination. An arising concern within the environmental profession is that environmental decisions are being made by person not qualified to make such decisions. This has been specifically identified in published literature as the root cause of the failure of the National Environmental Policy Act (which is analogous to HRS §343) to protect the environment. This is also happening in Hawaii with determinations pursuant to HRS §343 where the agencies making determination are not required to demonstrate that they have environmental professionals who are qualified to make such determinations.

The following environmental concerns were not adequately addressed:

1. The Community plan designated this area as open space. This area should remain as open space to provide ecological benefits (reducing impervious surfaces). Agricultural uses with conservation planning could continue the ecological benefits whereas the project as proposed would increase impervious surface in a flood prone area.
2. Because this is defined as an affordable housing project, it is exempted from requirements of Community Plan Amendment and change in zoning processes, therefore LUC may be only review These exemptions allow waiving of county permit fees and requirements for things that will create an urban setting that is livable; the county assess these fees to support programs that make the environment livable.
3. Any change to urban district should require open space for stormwater management recreational use and require public open space parks to Park to have comfort station and parking,
4. The EA and FONSI are inadequate:
  - a. "Environmental assessment" means a written evaluation to determine whether an action will have significant impact.
  - b. "Finding of no significant Impact" means a determination based on an environmental assessment that the subject action will not have a significant effect and, therefore, will not require the preparation of an environmental impact statement.
  - c. Significant effect means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the beneficial uses of the environment, are contrary to

state environmental policies or long-term environmental goals as established by law, or adversely affect the economic welfare, social welfare, or cultural practices of the community and the state.

This development would have significant irrevocable effects to the environment as there is not adequate wastewater or drainage to protect water quality. This is not consistent with state Coastal Zone Management policy to control point and nonpoint source pollution and attain state water quality standards. Compliance with County of Maui drainage standards does not ensure that drainage is adequate to prevent flooding or that water quality is protected.

5. The claim of the stream not being navigable water was not supported in the petition by a determination from the Corps of Engineers and should be revisited to assure Clean Water Act compliance with any proposed changes to the existing drainage and streambed.

6. The impacts (due to increased impervious surfaces and wastewater and stormwater infrastructure discharges to the Kahoma Floodway, natural drainage or improved drainages) extend to cultural impacts due to loss of cultural access to traditional plants and marine organisms as a result of pollution from sewage effluent, storm runoff and groundwater contamination.

7. I testified to EPA in the matter of the Lahaina Underground Injection Control Permit to inject wastewater. I urged to act quickly to enact real reductions in the loads of pollutants being injected into the groundwater from the Lahaina WWRF. These injected pollutant loads, along with other land-based pollutants, are causing rapid reef decline and endangering public health. While adding 68 more homes, might sound minimal, when added cumulatively with all the projects that already exist and the other homes already approved in Lahaina will merely add to an already problematic scenario. THE EA did not adequately explore these environmental impacts. There is widespread consensus both within the scientific community and the community at large that we know the following:

a. Maui has a more than 20 year history of nuisance algae blooms that have contributed to the degradation of coral reefs, one the island's most important cultural, natural and economic assets.

b. • Algae store and use nutrients from land-based sources for growth, resulting in flourishing blooms.

c. • Nutrient fueled algal blooms are a major cause of decline of coral reef ecosystems.

d. Multiple nutrient sources (agriculture and urban activities, injection wells, septic tanks and cesspools) contribute to impact on coral reefs.

e. The cost of nuisance algae to Maui's economy is estimated in excess of \$20 million/year for the Kihei region alone, via noxious odors and reduced aesthetic values of that coast.

f. An ecological shift from productive coral reef to algal beds is underway at sites around Maui

g. Sources of pollutants include nutrients from chemical agricultural and urban lands that are transported to nearshore waters where these nutrients contribute to the unusual abundances of algae.

h. • Another source of nutrients is treated wastewater disposed of by injection into the groundwater that then seeps into the ocean at the shoreline of popular Kihei and Kaanapali beaches and to the ocean side of the Kahului Treatment Plant. Nutrients in the injected effluent contribute to great abundances of algae at these sites.

i. Algal blooms in other sites are likely sustained by nutrients from land-based fertilizers, septic tanks and / or cesspools.

j. The rapid decline of coral reef ecosystems represents a crisis requiring immediate action. The current level of scientific understanding is sufficient to support immediate management actions.

k. Treatment technologies and land management practices exist that can reduce land-based nutrient loads from these various nutrient sources.

l. If we do not act now to reduce nutrient inputs from land-based sources, the algal blooms will continue, and likely become more severe as Maui's population increases.

m. Ample evidence to support these consensus statements exists both in the scientific literature and data. (See references and information on the web at <http://www.hawaii.edu/kahekili/algalworkshop.html>)

8. The EA did not discuss the water quality impairments known to exist.

a. Pursuant to Clean Water Act §305(b) and 303(d), the Hawaii Department of Health (DOH) reports to EPA and to the U.S. congress whether or not waters are meeting Clean Water Act goals that are also promulgated state water quality standards.

i. In the 2008/2010 State of Hawaii Water Quality Monitoring and Assessment , DOH reports that the Kahoma Stream water quality is currently reported to as "impaired" (not meeting goals) , more information needed, middle priority for the agency , and Total Maximum Daily Load study is required.

ii. DOH also reports that nearshore ocean waters are impaired at and around Mala Wharf where the project stormwater would discharge. Although there is some data, additional studies are needed and TMDLS are required.

iii. The nearshore ocean waters receiving the effluent from the Lahaina Treatment Plant near Kaanapali are also listed s impaired and TMDLS are required.

b. Pursuant to Clean Water Act. If a waterbody is on the list an agency action is required to identify the Total Maximum Daily Load and the load allocations for nonpoint source discharges, and the wasteload allocations for point source discharges. The DOH is telling EPA and Congress that we already have too much pollution.

Stormwater pollution and wastewater loading at the Lahaina plant need to be reduced from current levels. Any new project no matter how small is adding mass to the pollutant load that is already too

high. There is currently no watershed plan or other plan to reduce pollutant loads for this area. (Robin Knox WDT 8/2/12)

Petitioner 157. The reclassification would result in a reduction of 0.00007% fo the land within the agricultural district on Maui. (Singleton WDT at P. 13)

**25. Intervenor's Response and Objections: Petitioner who is associated with Kahoma lands and Makila LLC has many Ag lands that they choose to not farm. There are other Ag land controllers that are choosing not to farm the lands they control. The real question should be, what is the percentage of ag lands in production in Lahaina? What kind of local grown food resources do we have for the residents of Lahaina? (See FF 53)**

Petitioner's FOF 161-167:

161. The Project will be developed as an architecturally integrated area with low-rise residential structures. (Petitioner Ex. 7).

162. A biologic resources study of the Project was conducted by Robert W. Hobdy, Environmental Consultant, in August 2005. (Hobdy WDT at p. 3; Petitioner Ex. 7).

163. No endangered plant species were found on the Petition Area. (Hobdy WDT at p. 7).

164. A single, small tree tobacco, which might act as a host to the Blackburn's Sphinx Moth, was observed in 2005. (Hobdy WDT at p. 7).

165. No sign of the Blackburn's Sphinx Moth or its larvae were found. (Hobdy WDT at p. 7).

166. The vegetation of the property is dominated by non-native, abundant species. (Hobdy WDT at pp. 5-6).

167. From a botanical standpoint, nothing in the Petition Area warranted protection either as a plant species or as plant habitat. (Hobdy WDT at p. 6; TR 8/23/12 at p. 127).

26. Intervenor's Response & Objections: I object and strike all the above as it is inaccurate information that leaves intervenors La`au lapa`au cultural in jeopardy. Mr. Hodby did not take a year round sampling of the terrain and its flora and fauna, and does not have the knowledge of Hawaiian Medicinal Plants to warrant an opinion that is necessary to protect Intervenor's cultural practice under Article XII Section 7. (Hodby Tr. 8/23/12 135:1-25, thru 138 1-4, 138:21-25, 139:1-25 thru 142: 1-25)

Petitioner FOF 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, is in relation to Cultural, Archaeological and Historical and Cultural Practices performed and practiced by Intervenor Routh Bolomet, Kahu Michael Lee and Clare Apana to name a select few.

27-1. Intervenor's Response and Objections; These Finding of Facts are based on the assumption that we are mere practitioners of our culture, traditions and religious rights that are protected under article XII section 7. Intervenor Bolomet and Kahu Lee are also lineal descendent of these lands, which makes them heirs in perpetuity and who rights are protected under HRS 172.11. These FOF were address in the aforementioned Intervenor's Response & Objections.

27-2. Petitioner's FOF 199: Michael Lee did not learn any use of the Petition Area for a cultural practice from his parents or teachers. (TR 10/5/12 at pp27-28); he learned it from his Grandfather and many well know Kahu in Hawaii Cultural Practices. None of which Petitioner's Experts had the privilege of learning from or were taught chants, Kauna, the Kumulipo and all the other many hidden secrets that you cannot learn in books or in the Universities. (Lee Tr. 10/4/12 P. 211:19 thru P. 213:1-24, Tr. 10/5/12 P. 28:2-25 thru 30:1-:13)

Petitioner FF 203

203. There is minimal flow in the Kahoma Stream Flood Control Channel except during extreme storm events. (TR 7/19/12 at p. 172).

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28-1. Intervenor's Response and Objections: Water diverted are illegal by kanawai to block streams, steams and water are a protected cultural resource under article XII Section 7. (Lee Tr. 10/4/12 p249:16-20)

28-2. Frampton Testifies that his friend from Pioneer Mills admits that all pumps that supplied water to this area was cut off leaving no water flowing in the natural stream anymore. (Frampton Tr. 10/5/12 p85:2-12)

Petitioners FOF 206, 207, 208, 209, 210, 211, 212, 213,214, 215, 218,225: Pertaining to drainage, runoff and retention basin, waste water and water quality.



**29. Intervenor's Response and Objections: R. Frampton testified that there have been no hard surface v. open space percolating studies. (Frampton Tr 10/5/12 183:23-25)**

**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 MHill

<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.

Petitioner's FOF 215, 216, 217:

215. The West Maui region is served by the County of Maui, Department of Water Supply, Domestic Water System. (TR 8/23/12 at pp. 238-239; Petitioner Ex. 7).

216. The sources of water for the Lahaina portion of the West Maui region are four deep wells referred to as Napili Wells 1, 2 and 3 and Honokohau Well A. Water from the wells is supplemented by surface water drawn from Honolua Ditch and Kanaha Valley and treated at water treatment plants. (Petitioner's Ex. 7).

217. Existing County waterlines serve the residential subdivisions adjacent to the Petition Area. (Petitioner Ex 7)

217. Existing County waterlines serve the residential subdivisions adjacent to the Petition Area. (Petitioner Ex. 7).

218. The Preliminary Civil Engineering and Drainage and Soil Erosion Control Report prepared by R.T. Tanaka Engineers,

Inc. for the Project in October 2007 (and updated in June 2012) estimates the average daily demand for the Project at 59,400 gallons per day. (Tanaka WDT at p. 7; Petitioner Exs. 7 and 21).

219. The size of the distribution line for the Project will be governed by fire flow requirements. (Tanaka WDT at pp. 8-9).

220. Fire flow demand of 1,000 gallons per minute was used for the design for the main distribution line. (Tanaka WDT at p. 8).

221. An 8" waterline will be utilized to provide the required fire flow. (Tanaka WDT at p. 8).

222. The County of Maui Department of Water Supply is prepared to supply water for the Project. (TR 9/6/12 at p. 113).

223. The County of Maui Department of Water Supply has excess capacity of potable water available for additional projects. (TR 9/6/12 at p. 115).

224. The County of Maui Department of Water Supply will be able to add capacity to stay ahead of demand for the foreseeable future in the West Maui area. (TR 9/6/12 at p. 117).

**30. Intervenor's Response & Objections: The Petition area is ripe for low impact diversified organic farming operation with adequate water for irrigation and farmer work force housing for all these reasons.**

Petitioners FOF 226, 232 re: Reclassification of Petition area not having a significant impact on the maintenance of valued cultural historical or natural resources (FOF 178-225 & FOF 228-231)

**31. Intervenor's Response & Objections: For all the aforementioned reasons, the intervenor disagrees and objects and strikes these FOF.**

Petitioner FOF 227 thru 232

**32. Intervenor's Response & Objections: : For all the aforementioned reasons, the intervenor disagrees and objects and strikes these FOF.**

Petitioner 244-248:

244. The construction of single-family residences and ohana units in the Project will result in construction worker labor revenues of \$8,400,000. (Riecke-Gonzales WDT at p. 3).

245. The total economic benefit to Maui will exceed the amount of the construction labor as some materials used to build the structures will be purchased locally. (Riecke-Gonzales WDT at pp. 6-7).

246. Reclassification of the Petition Area will provide employment opportunities and economic development. (FOF 243-245).

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**33. intervenor's Response & Objections: : The aforementioned provide temporary unsustained employment. A farm provides sustainable employment. Lands that are ag zoned are allowed to also provide farm workforce housing. 16.7 acres has a potential of providing 60 to 72 full time sustainable jobs.**

CONCLUSION OF LAW

1. The Intervenor disagrees that the Petition meets the decision making criteria based on the aforementioned reasons and therefore should maintain these lands as agricultural zoning, as it will better meet the mandates of the Hawaii State Constitution, the Hawaii State Plan, Sustainability Plan of 2050 and many of the concerns and objectives of the County.
2. 3,4,5, The Petition does not recognize or propose to protect any of the historical, cultural or archaeological features and resources protected under Article XII section 7.

Intervenor Routh Bolomet and Kahu Michael Lee are not only Cultural Practitioners but also lineal descendents who's rights and claims are protected under HRS 172.11

6. The best way to uphold Article XI, Section 1 is to maintain the Petition Area zoned Ag and have it only be used for low impact diversified organic farming.

7. As demonstrated above, the best way to meet Article XI, Section 3 is to maintain this Petition area as Agriculture Zone.

8. Using this land as a low impact diversified organic farm will protect the State of Hawaii's precious resource.

9. Based upon the facts and circumstances of this case, it would be unconstitutional to reclassify these lands to urban when it is ripe for being prime diversified low impact organic farm operation that provides sustainable employment, food security, workforce housing, close to commerce and consumers and meets more of the State's and County's Plan objectives than the Petition proposal for Urban rezoning. It will also contribute and provide the tourist industry with more sites that features Hawaiian cultural farming practices when restored to its former glory as noted in the many journals from the 1790's thru the 1800's.

### DECISION AND ORDER

IT IS HEREBY ORDERED that the Petition Area, consisting of about 16.7 acres of land, situated in Lahaina, Maui, Hawaii, bearing Tax Map Key No. (2) 4-5—010:005 and shown approximately on Exhibit "A" attached hereto and incorporate herein by reference, shall be and hereby be denied reclassification to State Land Use Urban District and State Land Use District Boundaries shall not be amended.

Based upon the findings of fact and conclusion of law stated herein, it is hereby determined that the reclassification of the Petitioner Area will significantly affect or impair the preservation or maintenance of natural systems and habitats or the valued cultural, historical, agricultural and natural, resources of the area.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing order this \_\_\_\_\_ day of \_\_\_\_\_, 2012. This order may be executed in counterparts. This order shall take effect upon the date this order was certified by the Commission.

Done at \_\_\_\_\_, Hawaii, this \_\_\_\_\_ day of \_\_\_\_\_, 2012, promotion on \_\_\_\_\_, 2012.

APPROVED AS TO FORM:

\_\_\_\_\_  
DEPUTY ATTORNEY GENERAL  
State of Hawaii

\_\_\_\_\_  
LAND USE COMMISSION  
State of Hawaii

\_\_\_\_\_  
Chairperson and Commissioner

\_\_\_\_\_  
Vice-Chair and Commissioner

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Commissioner

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Commissioner

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Commissioner

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Commissioner

FILED AND EFFECTIVE ON \_\_\_\_\_, 2012.

CERTIFIED BY: \_\_\_\_\_  
Executive Officer  
Land Use Commission

## 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:

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Dated, Honolulu, Hawai'i this day of Nov. 13, 2012



Routh Bolomet

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