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

ORIGINAL

BEFORE THE LAND USE COMMISSION OF THE STATE OF HAWAII

Docket No. A12-795

IN THE MATTER of the Petition of:

WEST MAUI LAND COMPANY, INC.)
A Hawaii Corporation, and Kahoma Residential LLC, a Hawaii Limited Liability Company

Proposed Reclassification: Agricultural to Urban For TMK (2) 4-5-10-005

INTERVENOR'S RESPONSE TO STATE OP JOINER MOTION TO RECONSIDER DECISION & ORDER ADOPTED JANUARY 14, 2013; MOTION THAT THE LUC NOT TAKE PETITIONS THAT CONTAIN ALLODIAL TITLED LANDS; MOTION SEEKING AN ORDER CHARGING THE PETITIONER ALL COSTS ASSOCIATED WITH THESE HEARINGS; EXHIBIT 1

CERTIFICATE OF SERVICE

LAND USE COMMISSION
STATE OF HAWAII
2013 FEB -6 P 2:59

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

R.P 1840	L.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

INTERVENOR'S RESPONSE TO STATE OP JOINER MOTION TO RECONSIDER DECISION & ORDER ADOPTED JANUARY 14, 2013;

I, Routh Bolomet, Intervener, ask the Commission to Deny the State OP & Maui County Motion to Reconsider Decision & Order Adopted January 14, 2013. I also ask that you deny the OP's request that 1) Finding of Fact (FOF) 170, 186, 187 and 190 and Consclusion of Law (COL) 7 be deleted: and 2) the Commission substantiate FOF 169, 170, 171, 172 with specific factual findings.

Furthermore I ask that the Commission amends the FOF 170, 186, 187, 190 and COL to include the findings and conclusions offered herein, adds to the Decision & Order that the Petition was also denied because the Commission does not have jurisdiction on Allodial Title Lands.

Lastly I ask that for the reasons setforth that two motions be approved; 1) That states by clear preponderance of the law; that LUC, admits that it does not have authority to assert their jurisdiction over foreign allodial titled lands and that they agree to no longer accept and hear petitions containing allodial titled lands here in Hawaii nei. 2) That the LUC will fine and charge back all expenses to the Petitioner for all fees associated with these hearings to include my time.

Introduction:

- *The State OP, ask you to reconsider your Decision and Order based on HRS 205-17 and HAR 15-15-77 stating that the Petition conforms to goals, policies and priority guidelines in the Hawaii State Plan related to housing and physical growth and development, because it provides affordable housing in proximity to urban areas with existing urban services and facilities.*

However they fail to say affordable homes are defined as **affordable rental as well as for ownership; and can be provided on ag lands through the Important Agricultural Land Acts 183 & 233 Incentive 1,** short term construction jobs can be part of setting up the infrastructure and building the affordable homes on ag land, for many of the reasons the Petitioners is claiming this Petition meets the Objectives and Priorities of the STATE, County and Functional Plans, keeping this land ag for a low impact diversified organic commercial farm operation meets and exceeds what the Petitioner's proposes. **For this reason/s the State OP argument should be invalidated.**

- *The State OP states the Petition conforms to applicable Urban District standards for similar reasons and is no longer suitable for inclusion in the Agricultural District because commercial agriculture production is unlikely for the Petition Area due to its lot configuration and being surrounded by urban uses;*

As the Petitioner says in their Petition, they "Generally Meet" the guidelines; and while the petition may "conform" to some applicable Urban District Standards; Keeping this land agriculture **still meets many more of the Agricultural Goals set forth in the Important Agricultural Land (IAL).**

The fact of the matter is that this is a Petition Application that focus' on the Petitioner's strengths to build homes, not the strengths and attributes of the Petition Area. When rezoning a property from Ag to Urban, it must find that this ag **"land"** no longer has the feasible capacity to produce agricultural products**, not** that the Petitioner has failed to work the land. Willful neglect on the part of the Petitioner does not make this property less suitable for an agricultural district; it merely is a demonstration of how the Petitioner cheats the system by taking the discounts provided to working farmers who pass on the discounts to the consumer by keeping food costs down.

Not one of the Petitioner's experts could tell the Commission what could be grown on this property, they simply focused on the old model of pineapple and sugar cane farming which history shows these models to be unprofitable since they are competing with 2nd and 3rd world nations where labor prices are much lower. But, as an organic farmer, I and other currently working organic Maui farmers told you what was possible with the property. **So this argument presented by the State OP is invalid.**

- *The State OP suggests that Petition impacts on identified areas of State concern can be mitigated through conditions imposed on the Petition to address foreseeable impacts on school facilities, surfaces and coastal water quality and eco systems and any archaeological, historical or cultural resources;*

The letter provided by intervener Bolomet to DLNR archeologist Theresa Donham at SHPD as part of the proof that the Dega Archaeology report was inadequate and misrepresentative of the petition area, included a letter from Keith Ahue, DLNR Chairperson and SHPD on October 19, 1994, to Mr. Jyo: Director of Engineering Dept. of the Army, it clearly states in paragraph 2 confirming: *"This complex, referred to as the Kahoma Stream Terrace System Complex, was located in the construction impact area of the flood control project."* (referring to TMK 4-5-09, 10, 11, and 15) the area bordering east of the Petition site, all of the Petition site, bordering West and Southwest of the Petition site. **It was in *all* of the Petition area, not just part of it.**

Furthermore, this comes back to the fact that this is allodial titled land that the Petitioner at no time provided proof that the award was voided and therefore inured by law to the lineal descendents of the Awardee of which I am and at no time have I given permission for the Petitioner to change anything on this property as required by 15-15-50 (5) (a) & (b).

Even if the LUC had authority to assert their jurisdiction over these lands, then they would have to meet the criteria setforth in Ka Pa`akai vs. LUC. In it are very clear instructions that cultural resources must be protected which includes the coastal waters, the ecosystems, the karst below, any archaeological, historical or iwi that may be on the property. With all that is on this property archaeologically, historically, culturally and the remaining iwi Kupuna, there isn't any room left for 68 affordable homes. **For these reasons, the State's belated request for mitigation should be denied.**

- *The Petition now conforms to the County of Maui's General Plan 2030, Maui Island Plan, as the Petition Area lies with in the urban growth boundary of the adopted Maui Island Plan, and the project is exempt from obtaining a community plan amendment or zone change;*

The County Charter (Section 8-8.5) and Maui County Code (Title 280B) set up the regulatory regime for the General Plan and Community Plans.

section 280B.030

states *that " Notwithstanding and other provision, all community plans, zoning ordinances, subdivision ordinances .... shall comply with the general plan"*

However in the same section it also states that "Community plans authorized in this chapter are and shall be part of the general plan of Maui County."

In the Maui County Charter it states: Section 8-8.5 paragraphs 5 and 6

5. The community plans created and revised by the citizen advisory committees shall set forth, in detail, land uses within the community plan regions of the county. The objectives of each community plan shall be to implement the policies of the general plan. Each community plan shall include implementing actions that clearly identify priorities, timelines, estimated costs, and the county department accountable for the completion of the implementing actions.

6. *The community plans generated through the citizen advisory councils and accepted by the planning commission, council, and mayor are part of the general plan. (Amended 2002)*

NOTE: Since the West Maui community Plan was adopted through that process, it is legally part of the general Plan (ie Maui Island Plan)

280B.070 states:

C. The following community plans are incorporated by reference and adopted pursuant to this chapter:

4. West Maui Community Plan - Ordinance No. 2476 (1996), as amended;

NOTE: So we know that the West Maui Plan is considered part of the Maui Island Plan. This section does not say that any land use changes in the Maui Island Plan boundaries supersedes those found in community plans.

Here is one example from a county press release:

It refers to many properties that are currently AG in the current Community Plans. Again and again, Council members told the public that these lands would still have to undergo review and amendment in the Community Plan and zoning process in order to change from AG to Rural. An exact quote from the County Planning Dept. produced FAQ on the topic:

FREQUENTLY ASKED QUESTIONS OF THE PROPOSED RURAL GROWTH BOUNDARY FOR YOUR AGRICULTURAL SUBDIVISION

Zoning:

Would the zoning of a property automatically change by simple virtue of being located within Rural Growth Boundaries?

Answer: No, the designation of a rural growth boundary does not automatically change a property's County zoning. A program to comprehensively change the zoning from Agriculture to Rural may be initiated by the County a number of years from now and after the community plans are revised.

What this statement says to me is that:

If land is placed in the Urban Growth Boundary in the adopted MIP, but is in another category in the current Community Plan or is in another County Zoning category, it cannot be considered "rezoned" until the Community Plan is revised and then zoning can be changed.

This would imply that the County does not contend that the MIP Growth Boundaries supersede existing Community Plans.

Council members also referred again and again that final decisions on whether lands included in the MIP Growth Boundaries would be given the go ahead to be developed would be made at the Community Plan level.

- *Petitioner has indicated that the project will be completed with Petitioner's funds and conventional financing;*

Economic ability of the Petitioner to complete the proposed Project has not been proven by the Petitioner. The statement indicates that the $2.5 million dollars the Petitioner has will not pay for the infrastructure cost if lending is not attained. Furthermore, if any Federal money will be used in this project federal criteria must be met such as Section 106 of NHPDA 1966 and no such correspondence was submitted.

With the economic challenges that lay ahead for Hawaii and America in general, it would be unwise to assume that anyone can get financing just because they say so. There has been recent delays due to economic factors on other Lahaina Projects that resulted in recent requests for extensions on deadlines. Many economic forecasts predict that while prices may go up due to inflation, salaries are not getting higher or keeping up with inflation, which we all know first hand every time we go to the gas pump or the grocery store. Even with the new proposed minimum wage income increases, this will not impact the "supposed" targeted customer base enough if all other costs continue to sky rocket at a higher and faster ratio then salaries.

Most importantly; if the Petitioner includes any allodial titled lands as part of their asset base without proving the titles have been voided, then this would be fraud and could not be counted as part of the collateral they may put up to attain their needed *conventional financing*. Due to all the laws on allodial titles I put forth so far, these

lands can only inure to the lineal descendents which the West Maui Land LLC, Kahoma Residential LLC and Kahoma Land LLC is not a lineal descendent to and no one in my family to date has agreed to work with WMLC, Kahoma Residential LLC or Kahoma Land LLC or any of their other companies; so our land assets cannot be counted as part of their asset base or used for collateral to obtain any financing.

It is both imprudent and irresponsible for the State OP to ask the LUC to accept the Petition without proof of financial capability supported by an "audited" financial statement.

- *The Petition Area has not been used for intensive agricultural use for over two years, and the property has been largely uncultivated for the last two decades.*

While this may be a true statement; it is put forth to imply it is because the land hasn't been used for commercial farming, it can't be farmed; when in fact it is by the Petitioner own admission they never farmed it giving no explanation for their willful neglect of the lands; which can lead us all to believe that they never had any intention of farming this agricultural lands, they only ever had intention of building homes on it!

Choosing to **keep the lands out of agriculture does not diminish <u>whether the lands have a high capacity for intensive agriculture use. (HAR 15-15-77(b)).</u>** These lands have the capacity for intensive agricultural use, as shown by the B72i rating which is prime land that needs irrigating.

The Petition area also meets 7 of 8 ALISH criteria. The location of this property with its ability to connect to county power, water, CATV, Telephone, and it's proximity to commerce and residential and bus lines makes this a perfectly" **feasible"** property for any low impact diversified organic farm business of which profitable models on Maui exist today; and would be a huge assets to the community. **Making this point invalid.**

A. **FOF 186 and 187 and COL 8, Conformance with County of Maui General Plan 2030**

State OP joins with the Petitioner in asking the Commission to break the rules to allow evidence in after the evidentiary period giving preferential treatment to the Petitioner over the lineal descendent of the lands located within the Petition area, which would be an abuse of discretion and descriminatory. **Is it because the Attorney General's Office and the State Office of Planning says it's okay that the laws and rules can be over looked , that the Commission now has the green light to break the laws and rules?**

Even if this were legal, the fact still remains that on the Maui County Website it still tells the public that; "*the designation of a rural growth boundary does not automatically change a property's County zoning. A program to comprehensively change the zoning from Agriculture to Rural may be initiated by the County a number of years from now and after the community plans are revised*".

If Section 8-8.5 paragraphs 5 and 6 explains that the community plans which are the objectives of each community and that **the West Maui community Plan was adopted through that process, and is legally part of the general Plan (ie Maui Island Plan), how then can the State OP override this which is law?**

If the Maui County Press release assures the public that rezoning does not automatically change when there is a new MIP, how then can the State OP tell the Commission to not look at the West Maui Community Plan which are the details of the general plan community by community? With this request does the State OP and Attorney General's office suggest to the Commission that they are not only giving the Commission the green light to overturn the laws in place, but are expecting them to in this case?

If the Commission were to do this it would send a very loud and strong message that the favor goes to the highest bidder, not to the rules and laws the rest of us are held to!

"Courts [Commissioners] are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion; it is a mere legal discretion, a discretion to be exercised in discerning the course prescribed by law, and, when that is discerned, it is the duty of the court [Commissioners] to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge [Commissioners/ Petitioner or State or County OP]; always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law." [Emphasis in original]. Littleton v. Berbling, 468 F.2d 389, 412 (7th Cir. 1972), citing Osborn v. Bank of the United States, 9 Wheat (22 U.S.) 738, 866, 6 L.Ed 204 (1824); U.S. v. Simpson, 927 F.2d 1088, 1090 (9th Cir. 1991).

B. **FOF 190, Unaudited Financial Statements and Financial Capacity:**

Once again despite Hawaii's Rules of Evidence, the State OP gives the green light to circumvent the law and asks the Commission to give preferential treatment to the Petitioner.

Rules of Evidence:

HAWAII RULES OF EVIDENCE
ARTICLE I.
GENERAL PROVISIONS

Rule 102 Purpose and construction. These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined. [L 1980, c 164, pt of §1]

RULE 102 COMMENTARY

This rule is identical with Fed. R. Evid. 102. It parallels similar provisions in the Hawaii Rules of Court, see HRCrP 2, HRCP 1, and HFCR 1. Except for Articles III and V, these rules have as their model the Federal Rules of Evidence (Fed. R. Evid.), 28 U.S.C. app., at 539 (1976), as amended, 28 U.S.C.A. Fed. R. Evid. (Supp. 1979). Accordingly, the commentary to each rule (except in Articles III and V) indicates whether the rule is identical with or differs from the counterpart federal rule. The intent is to make applicable, as an aid in construction, the federal decisional law construing identical or similar Fed. R. Evid. provisions. Other sources for these rules, noted from time to time in the commentaries, are the Uniform Rule of Evidence and the Cal. Evid. Code (especially for Article III).

Rule 305 Prima facie evidence. *A statute providing that a fact or a group of facts is prima facie evidence of another fact establishes a presumption within the meaning of this article unless the statute expressly provides that such prima facie evidence is conclusive. [L 1980, c 164, pt of §1]*

The Petitioner expects the Commission to make decisions based on the evidence he provides. If the evidence is not authenticated, how then can the Commission use it as Prima Facie evidence? In the case of this Petition it is even more important to verify facts to be real & truthful, since there are many examples within the Petition that demonstrate information is not accurate.

Rule 901 Authentication requirements:

"[W]hen real evidence is offered an adequate foundation for admission will require testimony first that the object offered is the object which was involved in the incident [being litigated]." Simply stated, the authentication requirement forces the proponent to prove, usually by means of extrinsic evidence, that an object is the very thing it purports to be.

Documentation submitted into the Hawaii Court of Law requires some form of authentication. Whether it be a certified copy of a document, an expert or an object or an audited copy of a financial statement; the courts and even the Petitioner's Attorney Mr. Geiger, required some type of authentication or that it not be allowed into evidence; Many relevant documents that I did not know how to argue the relevancy of was denied entry into the evidentiary portion of the hearings. Yet something as important as proving the financial soundness of their very company who ask the Commission to take important agricultural lands out of circulation forever, is suggested by the State OP as something too much to ask and unfair for this Petitioner, Pending Petitioners and Future Petitioners. There is no logical, reasonable or just argument that exists to allow an unverified document especially as important as a financial statement which proves the Petitioner is capable of completing the proposed project they ask the Commission to entertain. My question is; "how can the commission make a decision as important as a boundary amendment without verifiable and authenticated facts?"

This is an absurd request that should be denied for this Petitioner, present Petitioners

and future Petitioners; the last thing we need is more projects that take double or triple the time to completion and /or the inability to sustain the project through set backs like First Wind in Kahuku on Oahu! So the Petitioner might have a lot of dollars, but the request makes no sense(cents)!

Had the Petition been reviewed by certified cultural practitioners it would have been found inadequate before the hearings started. Had the SHPD verified the LCA boundary notes and read Dega's archaeology report thoroughly, it would have found some of the LCA's to be for an area 7 + miles away; if SHPD researched its in house files it would have found the letter from the former DLNR Chairman Keith Ahue that stated in fact, that the Kahoma terrace complex (a huge archaeological area that dates back hundreds of years if not longer), encompassed all of the Petition site and therefore the archaeological report inadequate, incomplete, inaccurate and in the end not meeting the standards set forth in completing an EIS, nor land that was eligible to have 68 affordable homes built upon it without decimating important cultural resources, history and important archaeological findings to Pele Clan Family members and the History of Lahaina.

It is not enough to write a report of hopes, dreams and promises of more job and cheap homes; the purpose of rule 15-15-50 is to provide accurate information so that a just decision in compliance with the Commission's Constitutional and Legislative mandates can be made.

The State OP suggest that if the LUC didn't catch the inconsistencies in the beginning during the Petition review, 15-15-50(f), then it should be allowed to slide through the system because, "they had their chance". However, when the person reviewing the documents reviewed them under the pretense, assumption and assurances by the Petitioner, the State OP, the Maui County Planning Department, SHPD and all the experts who provided "expert reports", to be accurate and true, why would they suspect anything less then a true representation supported by all the declarations of

truth and assurances which is supposed to provide the reviewer with a measure that can lead to untruths and consequences? Unless the reviewer is an expert in each of these subject areas, there is little chance that all inaccuracies will be caught; this is a huge flaw in the system from the State to the County and all agencies in between.

It was because I and my experts are practitioners or lineal descendents and know the family stories that we saw the flaws and inconsistencies in the Petition almost instantly. It's because Intervener Michele Lincoln lived for years in the neighborhood that she was able to identify inconsistencies in the Petition. And this is why the law makes a provision for intervention; so the Commission can have all the facts and all the many ways the facts are perceived by those who will be most likely affected by their decision and approvals.

So besides those who would most likely be affected by the Commission's decision & are able to point out the weak points or flaws in the plan, are the authors of the Petition themselves. Whether by mistake or design, there just seemed to be too many flaws for an expert and the Petitioner's staff who testified, "this is what they do all the time and for many, many years", to not catch what two first time interveners caught the first time out of the gate. This makes me highly suspicious of the Petitioners motives and if there might be some behind the door agreements the Petitioner may have with the State OP and Maui County Planning Department and all those linked to these offices. I contend that it is for this reason, that authentication requirements are a must and should never be assumed as an option! **For these reasons the State OP argument should be invalidated and denied!**

C. FOF 170 Lahaina Wastewater Reclamation Facility

The State OP ask you to also disregard the concerns with the Lahaina Waste water reclamation Facility and suggest just meeting the minimal standards are enough to protect the Cultural Resources in the Ocean as well as the CZM's .

C. FOF 170: In order to address the water quality issues through the requirement to fund improvements through a fair share contribution, it is not just the additional wastewater flow capacity that needs to be addressed. The current pollutant load must be reduced in order for additional projects to discharge pollutants. The allowable pollutant load established under the Clean Water Act-mandated Total Maximum Daily Load will determine the level of pollutant removal efficiency needed. Compliance with a water quality-based effluent limitation will require improvement to pollutant removal efficiency at existing plant capacity in addition to expanded flow capacity for new projects. This might require employment of new or additional technologies. Given that the Hawaii Department of Health has not set a high priority for determining the TMDL, it maybe some time before anyone can determine what improvements are required and whether they are feasible. If the LUC cannot determine impacts of these water quality problems to the traditional gathering of resources, or know what the prescribed mitigation would be, the LUC cannot approve the boundary amendment as it would not meet the criteria that the commission is /required to follow in this decision (look at /the LUC decision to cite the criteria). The Petitioner has not provided any proof that traditional gathering resources will not be harmed, they just expect the Commission to take their word for it until we later find out they were wrong and it's too late to reverse the damaging effects.

D. COL7, Open Area Recreational Facility as Standard for Agricultural District

Intervenor Michele Lincoln will address this area as part of the community plan Open Space Designation during her oral arguments. However I do have to interject that Kahoma land LLC., on an adjacent agricultural zoned parcel, leases out their illegally quiet titled lands to a "Zip Line Company where little more then grass grows". The Train

runs thru the Petition Area for tourism despite the Petitioner not using it for Agricultural uses and still takes advantage of the discounted Agricultural tax rate. So once again the State OP and the Attorney General's office is asking that one set of standards be held for the Petitioner and another set of standards be held for everyone else. I don't believe this upholds the spirit of the law nor the intent.

"It is monstrous that courts [any Hawaii State Agency or their Agents] should aid or abet the lawbreaking police officer [State Agents]. It is abiding truth that '[n]othing can destroy a government more quickly than its own failure to observe its own laws or worse, its disregard of the charter of its own existence.'" Justice Brennan quoting Mapp v. Ohio, 367 US 643, 659 (1961) in Harris v. New York, 401 US 222, 232. (1971)

E. Failure to Resolve Factual Disbutes

FOF 158: Based on the SHPD Letter From Keith Ahue, DLNR Chairperson to Mr. Ray H. Jyo of the Army Corp. of Engineers date 10/19/94. It "definitively" says the the Kahoma Complex Terrace is within the Petition area, above it, below it and beside it. Because there has been modern day destruction by the Plantation users in the past or because of the construction of the Kahoma Flood Channel, it does not erase the cultural, historical and archaeological significance of the area that doesn't warrant full restoration.

OP Rodney Funakoshi testified that the State OP relies on SHPD for archaeology issues. R. Funakoshi Tr. 9/7/12 pg 91 line 15-25, 92 line 1-25, 93 line 1-16. **If that is so, then State OP must rely on the letter from SHPD DLNR Chairman, Keith Ahue written on 10/19/94 which clearly states the entire Petition area is part of the Kahoma Terrace Complex.**

We all know that the Commissioners are not a body of archaeological experts that worked in the field with Robert Connoley, the Bishop Museum Archaeologist who in the '70's, was responsible for the archaeological study of the Kahoma Terrace Complex. All the Commission can do is to take the evidence submitted, review the combined information found in Mr. Dega Archaeology report .**(Petitioner Ex 7d pg 7 & 8),** where he writes that "an anonymous person confirms that there is 8' to 12' of fill over the original grade" , as well as, there is 2.5 meters of fill over the property which leads one to understand that **the archaeological sites lay below the fill**, not that they don't exist! In combination with the Testimony of Cultural Practitioner Kahu Michael Lee who reconfirmed the Cultural, Historical and archaeological significance of the Petition site, he revealed there was a memorial heiau to Pele's son Opeluhaalili and a ceremonial stone within that heiau he refers to as a libation stone. With this much evidence it is not difficult to arrive at the conclusion that there is very much a Cultural, Historical, and Archaeological Finds on the Petition Area. Kahu Michael Lee also definitively declared that he and I, intervener Routh Bolomet are the 18th GGGGGGGGgreat grandchildren of Opeluhaalili, (Micheal Lee amended written testimony Aug. 1, 2012). With all this information provided we ask that the Commissioners change the word in their determination from, ""may" have contained significant features, **to "does" contain significant features.**"

FOF 169 & FOF 170:

The Land Use Commission cannot make a determination at this time. The Hawaii Department of Health (DOH) reports to the Environmental Protection Agency and Congress in the 2012 Integrated Water Quality Report that the waters of Kahoma Stream, Mala Wharf, and the near shore ocean waters of the effluent mixing zone of the Lahaina Treatment Plant are reported to be impaired and not supporting legally protected uses. http://hawaii.gov/health/environmental/water/cleanwater/integrated%20draft%20report/IntegragedReport.pdf. The waters of Kahoma stream are impaired and do not meet the turbidity standard. The assessment of the primary potentially affected marine areas is summarized in Table 1 and shows numerous standards are not being attained, therefore the uses of the waters

are considered impaired. Pursuant to Section 303(d) of the Clean Water Act (P.L. 97-117), impaired waters require a Total Maximum Daily Load (TMDL) be established to determine allowable pollutant loads that support the protected uses. DOH is reporting that uses are not adequately protected; that inadequate information exists to assess all criteria; that TMDL is required; that allowable pollutant loads have not be determined, and are not high on the priority list for completion. Therefore, at this time, neither the County nor the LUC can determine if the required wastewater treatment and storm water design criteria are adequate to protect the resource.

The State OP ask that because of these unresolved issues, **that are not as a result of the Commission,** the Petition should be approved anyway, along with the 1000's of other homes that are slated to be built in Lahaina or are pending for LUC approval. However the Constitutional Mandate of Article XII section 7 does not allow for the "will" of the Petitioner, Maui County Planning Office nor the State OP to supersede the Commissions Constitutional mandates, no matter how skillfully they use the law to ask the Commission to do so.

FOF 171: Reclassification of the Petition area **"will"** have significant impact on the maintenance of valued cultural, historical and natural resources if the proposed 68 affordable homes are built directly on the kahoma terrace complex confirmed to be within, above, below and besides the Petition Area, by SHPD/ DLNR Chairperson Keith Ahue 10/19/94. Intervener Bolomet asks for the commission to change their statement from "may" to "will" in their determination which can be supported by Keith Ahue's letter and Robert Connoley's Archaeological Study of the Kahoma Terrace Complex.

FOF 172: Article XII section 7 does not require the Commission to resolve these issues; the missing boundary notes that were conveniently left out of the Petitioner's Archeaology report clearly speaks of burials in the Petition area, my burial registration with SHPD (filed with LUC 6/29/12) is confirmation of another burial, and the family members of the Keaweiwi family who has numerous request looking for their iwi Kupuna within SHPD is another confirmation that burials exists. So it's not **"if"** there are

burials within the Petition Area, **it's how many;** for this reason, the Commission must uphold their Constitutional mandate to protect this site.

While there may be unresolved issues that reside outside of the Commission's control, and with the EPA and DOH, the cultural, archaeological resources and historical relevance of this property are confirmed so that the Commission can confidently change their determination to one substantiate by definitive statements that substantiate their conclusions.

F. Mitigation Through Conditions:

The State OP suggest that you can approve this Petition with Conditions to Mitigate the Libation Stone and Heiau. However, since the whole property was identified as being part of the Kahoma Complex Terrace, what needs to be discussed is not if there are going to be 68 affordable homes on this property, but who will be paying for the restoration and preservation of the entire property as a historical, cultural and archaeological significant property; which means there can be no homes placed upon this property and no mitigation conditions that could provide otherwise. Since this may not be the appropriate venue for this negotiation, I ask that Commission do what is within their authority and to deny the Petitioner's, State OP and Maui County Planning Office request for mitigation through conditions and to deny the Motion for Reconsideration.

II. Conclusion:

I've addressed all of the State OP concerns; however there still remains several issues:

1) I am concerned that the LUC, Attorney General's Office, State Office of Planning, Maui County Planning Department, to Maui County Council & DLNR refuses address;

the fact that these lands are foreign allodial titled lands. Because the issue is is ignored does not mean that the issue doesn't exist.

On numerous occasions I have tried to introduce evidence and a motion to introduce my geneaology and probate papers to show that I am the lineal descendent of these lands that inure to the lineal descendents. I have introduce US Supreme Court ruling that specifically states that the United States, its agents and agencies do not have the authority to assert their jurisdiction onto these lands. I have submitted HRS 172.11 that states allodial title lands inure to the lineal descendents of the Awardee and confirms the Land Commission award is ***binding to the Awardee forever***, and is prima facia evidence of ownership under Kingdom Law of 1872, Chapter 21 section 1. I have provided other case rulings that show that no person or State has prevailed over changing, controlling or taking allodial titled lands. Yet despite all my efforts to do so, I was blocked saying that this is not the venue to discuss "ownership even though LUC does not deny my geneaology". So does that mean the LUC is saying that this is only the venue for certain Constitutional laws to prevail, not all Constitutional laws?

The Supremacy Clause Article IV, Clause 2 of the United States Constitution, establishes the U.S. Constitution, Treaties, and laws made pursuant to the U.S. Constitution, **shall be** "the Supreme Law of the Land". The Text decrees these to be the highest form of law in the U.S. legal system and mandates that all State Judges must follow Federal Law when a conflict arises between Federal Law and either the State Constitution or State law of any State. ***(Note that the word "shall" is used, which makes it a necessity, a compulsion).***

In LUC Rule 15-15-50(a)(c)(5) The Petitioners Property interest in the Property. The Petitioner **"shall"** attach as exhibits to the Petition the following:

A. A true copy of the deed, lease, option agreement, development agreement, or any other document conveying to the Petitioner a property interest in the subject property.

B. If the Petitioner is not the owner in fee simple of the subject property, written authorization of the fee owner to file the;

No one in my family conveyed, nor gave permission to Petitioner to file this Petition A12-795 on their or our behalf.

When I learned about this case I contacted Mr. Geiger 3 times to get chain of title information on how his Petitioner's claim superseded my lineal descent interest from the Awardees located in the Petition Area. It wasn't until I submitted a copy of my letter to Mr. Geiger, the Petitioner Attorney, into the LUC on May 25, 2012, that Mr. Geiger finally sent over his Client's/ Petitioner's paperwork that clearly showed by all the laws above, they did not meet the criteria to supersede my lineal descendency to these parcels located within the Petition Area.

In the case of Foster & Elam vs. Neilson the Petitioner states that the US Supreme Court ruling of 1829 was overturned. While there were discussions that followed this landmark case, the discussions were around "dominion" since the US through the Treaty of France, had dominion over the lands that "surrounded the property" in question.

However, as it pertains to the Petition area, like Foster & Elam vs. Neilson, these Allodial Titled lands given by King Kamehameha III, of the Kingdom of Hawaii, does not have any treaties that transferred ownership or dominion over to the U.S. Government.

As it pertains to the grants that were given to Baldwin in this Ahupua`a, the grants were not given by the Awardee, thus making them invalid as a perpetual agreement and reverts back to the Awardee of the Ahupua`a which is my relative.

In the **Treaty of Guadalupe Hidalgo** (*Tratado de Guadalupe Hidalgo* in Spanish), officially **Treaty of Peace, Friendship, Limits and Settlement between the United States of America and the Mexican Republic,**[1] is the peace treaty between the U.S. and Mexico that ended the Mexican–American War (1846–48).

Articles VIII and IX of this treaty ensured safety of existing property rights of Mexican citizens living in the transferred territories.

Treaty of Mesilla

The Treaty of Mesilla, which concluded the Gadsden purchase of 1854, had significant implications for the treaty of Guadalupe Hidalgo. Article II of the treaty annulled article XI of the treaty of Guadalupe Hidalgo, and article IV further annulled articles VI and VII of Guadalupe Hidalgo. **Article V however reaffirmed the property guarantees of Guadalupe Hidalgo, specifically those contained within articles VIII and IX.**[27]

27. ^ Mills, B. p. 122

So if in Treaties the U.S. Government acknowledges the allodial titles of the lands, why would they not acknowledge these allodial titled lands that are protected under the Kingdom of Hawaii Constitution and International Law?

Another example of the Hawaii State Supreme Court upholding Kingdom of Hawaii Laws is demonstrated in the PASH decision which states that the Hawaii Supreme Court drew on 150 years of laws and Hawaiian Judicial Precedence to come to their decision that upheld Article XII section 7. When this concept was tested again in what is known as PASH II, the decision was upheld again.

So how then can this Commission circumvent the very Constitutions they swore to uphold (US Constitution and Hawaii State Constitution)? To do so would be an act to overturn Supreme Court rulings- is the State prepared to undo the precedence set by Foster & Elam v. Neilson, the Guadalupe -Hidalgo Treaty of 1848 & the Treat of Mesilla where the "first patent is superior even to the state law" as agreed by federal law (the

treaty). Other cases like PASH recognized third party interest who didn't even have a lineal claim yet were recognized at the time of the original patent as having access and usage rights. Barker v Harvey, Summa Corp v California. The value of PASH II is that it recognized customary and traditional rights could not be extinguished by land owner developing it. Land owner claimed that such recognition of rights constituted a "taking" and as such required the state to pay fair value. The supreme court held to the decision citing the precedence set in Pele Defense Fund v Paty. So, in esse,nce the Supreme Court recognizes and continues to hold that "customary and traditional rights cannot be diminished nor extinguished" which is no different then lineal descendancy rights to Awardee Allodial titled lands, by later conveyance documents to the LCA/RP issued by the State of Hawaii, the Republic of Hawaii, Territory of Hawaii, nor the Provisional government. The LUC must find as the Supreme Court did in Pele Defense Fund and PASH II and adhere to the purpose and objectives for which the LUC was formed and only focus on lands their have authority to assert their jurisdiction upon.

Despite the fact that the Land Use Commission had forbidden me from submitting my proof of lineal descendency to the Royal Patents and allodial titled lands situated within the Petition Area, I did provide within the US Law, within the Commissioners Oath and Hawaii Statutes why this Land Use Commission body does not have the authority to assert their jurisdiction over these Allodial Titled Lands, which leaves the Commission only one option, to deny the Petitioner's and the State OP & Maui County Planning Dept. Joiner Motion for Reconsideration, deny their request for any of amendments and to declare that this body does not have authority to assert their jurisdiction over these foreign allodial titled lands.

At this point I would like to make a motion that unless the LUC can prove that they have authority to assert their jurisdiction over foreign allodial titled lands here in Hawaii, that from here on out they cease and desist from accepting any petitions that involve foreign allodial titled lands.

2) In regards to the new Maui Island 2030 Plan:

The process began in 2005 with recruitment of General Plan Advisory Committee (GPAC) and then included GPAC review of two documents:

The County wide Policy Plan adopted by Maui Council in late 2009 and taking effect March 2010. The Maui Island Plan (MIP) was reviewed by GPAC from Jan 2007 to Feb 28 2009.

The public review periods of MIP was from Jan 2007 to its final adoption in December 2012, which is 5 years. Within this time period:

The MIP was publicly discussed and reviewed from Jan 2007 to Feb 2009 by GPAC **during 56 public meetings** where testimony was given.

The MIP section of the process began public review in Jan 2007.

The County Planning Departments, County Attorney and other County Departments then reviewed the GPAC recommendations and sent forth two drafts: GPAC and Planning Director's to the Maui Planning commission

The MIP was then reviewed by the Maui Planning Commission (MPC) for 6 months: April to Oct 2009. Approximately 15 public meetings were held were testimony was accepted.

The MPC then forwarded their suggested revisions and they were reviewed by the County Planning Departments, County Attorney and other County Departments and three drafts: GPAC, MPC and Planning Director's were sent forward to Maui County Council's Planning committee chaired by Sol Kahoohalahala in 2010.

The County Council Planning committee reviewed the MIP during 2010. Many public meetings were held. The Committee made its recommended revisions on 7 of the Plan's 10 chapters, **in general respecting public input.**

After the 2010 elections, four new members joined the Council and there was a new mayor who came into office and very much a friend of the developers, The Mayor appointed Will Spence at County of Maui Planning Director.

A new Council committee, the General Plan Committee, chaired by Gladys Baisa, was formed to complete review of the Maui Island Plan.
THIS COMMITTEE DECIDED TO START THE WHOLE PROCESS OVER WITH CHAPTER 1 OF THE MAUI ISLAND PLAN in Jan 2011.

While public testimony was taken during the process, **much of the testimony from the general public was ignored.**

The New Planning Director, Will Spence, recommended changes in the both the MIP policies and growth maps **that had not been supported by the previous Planning Director OR previous Council Planning Committee.**

The new Council General Plan Committee supported most of these changes, **even ones made at the eleventh hour, like removing all green spaces from the maps and what looks like** designating some of these spaces to their friends: the developers.

They sent their recommendations to the full Council in **November 2012 and the council passed the plan with few changes from the Committee version.**
The Council was told that there would be legal ramifications if green spaces were left on maps. It was strange that the County's legal experts had not brought this up before in the 5 year MIP review process. Green spaces are still shown on "advisory diagrams" but the meaning of these "diagrams" is unclear. Not all recommended green areas were specifically designated for development; some were left in agriculture or open space on **Community Plan maps.**

Three other previous Planning Directors (Foley, Hunt and Aoki) supported the green spaces being on the maps. **The action by Arakawa's planning department does make it more difficult to protect open spaces as their status is uncertain.**

In the end, the 3 years of public testimony to GPAC and MPC was ignored in many, BUT NOT ALL, of the final land use decisions. Some policies and land use decisions supported by public testimony ARE still in the final adopted plan.

The County Charter (Section 8-8.5) and Maui County Code (Title 280B) set up the regulatory regime for the General Plan and Community Plans states that "Community plans authorized in this chapter are and shall be part of the general plan of Maui County."

In the Maui County Charter it states: Section 8-8.5 paragraphs 5 and 6

5. The community plans created and revised by the citizen advisory committees shall set forth, in detail, land uses within the community plan regions of the county. The objectives of each community plan shall be to implement the policies of the general plan. Each community plan shall include implementing actions that clearly identify priorities, timelines, estimated costs, and the county department accountable for the completion of the implementing actions.

6. The community plans generated through the citizen advisory councils and accepted by the planning commission, council, and mayor are part of the general plan. (Amended 2002)

NOTE: Since the West Maui community Plan was adopted through that process, it is legally part of the general Plan (ie Maui Island Plan)

280B.070 states:

C. The following community plans are incorporated by reference and adopted pursuant to this chapter:

4. West Maui Community Plan - Ordinance No. 2476 (1996), as amended;

NOTE: So we know that the West Maui Plan is considered part of the Maui Island Plan. This section does not say that any land use changes in the Maui Island Plan boundaries supersedes those found in community plans.

Having been a part of this LUC process and knowing the people who directly participated in the Maui County and West Maui Community Plan Process; I find it disheartening to see what looks like less then Pono legal maneuvers that take place so that the Developer Community and their friends in office seem to get what would be the most profitable to themselves rather than, producing the projects that fit within **the "Will of the People"** (which by the way, can also be profitable). The rules and laws are in place to protect the will of the people, it is up to this Commission to uphold the laws that mandate this action, so despite the political maneuvering that goes on behind doors, the people are protected and their will shall prevail in the process!

"No higher duty rests upon this court [Commission] than to exert its full authority to prevent all violation of the principles of the Constitution." See Downes V. Bidwell. 182 U.S. 244 (1901), Harlan dissenting.

"Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law: it invites every man to become a law unto himself; it invites anarchy". "To declare that in the administration of the criminal law (or civil law) the end justifies the means - to declare that the Government may commit crimes in order to secure the conviction of a private criminal – [or to grant a boundary amendment where the LUC does not have the jurisdiction over the land to do so] would bring terrible retribution. Against that pernicious doctrine this Court [Commission]

should resolutely set its face." Justice Louis Brandeis in Olmstead v. U.S., 277 US at 485. (1928)

I should hope that the State Office of Planning, The Attorney General, the County Council or the Petitioner **is not asking** the Commissioners who swore to do otherwise; which essentially is to not follow the law or uphold their oath to guard the US Constitution and the Hawaii State Constitution and laws!

"Many citizens because of their respect for what only appears to be a law are cunningly coerced into waiving their rights due to ignorance." — U.S. v. Minker

3) Coerced to waive my rights.... While I might not be a lawyer and fully versed in the laws or administrative procedures that run this Hawaii State Government; what I read of the law is straight forward and leaves me no room, but to stand up for my rights as protected under the U.S. Constitution, Hawaii State Constitution, Kingdom Laws and International Laws for myself, my family and all Kanaka Maoli and Allodial Titled Lineal Descendents despite the cunning coercion to try to have me waive my rights.

It was both disturbing and enlightening to see how citizens are coerced into waiving their rights by the big bullies on the legal block. Mr. Geiger, Attorney to the Petitioners West Maui Land, and Kahoma Residential who was receiving their Petition Area lands from Kahoma Land LLC., on September 18, 2012 filed a memorandum with the LUC to put them on notice that at the end of the hearings he would be seeking an order to have me pay for portions of the extended unnecessary hearings. Here are excerpts from Mr. Geiger's 9/18/12 letter that demonstrate how the legal bullying/ coercion occurs that are designed to have citizens waive their rights and get out of the developers way or else!

E. Conclusion.

The Commission has seen many interventions. The Commission, likewise, has reviewed many boundary amendment petitions. It is unlikely that the Commission has seen a proceeding such as this where an intervenor has unnecessarily prolonged a matter by attempting to offer irrelevant evidence, by arguing with witnesses instead of questioning witnesses, and by making misrepresentations of what was said, both before the

Intervenor Bolomet adds to the delay and cost by making an improper argument based on clear misrepresentations of statements made by persons who are not present to provide testimony to this Commission or to be subject to examination by the parties or the Commission on that testimony. There is no basis procedurally, legally or factually to grant Intervenor Bolomet's Motion.

There is a basis for this Commission to address Intervenor Bolomet's inappropriate behavior. Upon the conclusion of the hearing, Petitioner will seek an order from this Commission that Intervenor Bolomet be taxed with a portion of the costs of these proceedings because she, by her actions and by her

misrepresentations, caused these proceedings to be unnecessarily lengthened.

DATED: Kahului, Hawaii, SEP 18 2012.

JAMES W. GEIGER
Attorney for Petitioner

Despite my inartful approach to presenting my case and law, I believe my evidence is protected under the US Supreme Court rulings for Pro Se litigants, and the essence of my claim and argument is substantiate by the laws, statutes and rules presented, the testimony and the evidence submitted, and therefore would allow the Commissioners the latitude of denying the petition under law no matter how much pressure they may have from external forces to do otherwise!

This is truly a moment in our history where we the people have the voice and the power to make our islands pono again. This is when your answers and actions as Commissioners are being watched by many and as Mr. Geiger so artfully stated in his

September 19, 2012 memorandum, "The Commission has seen many Interventions....It is unlikely that the Commission has seen an Intervention such as this...Intervener Bolomet adds to the delay & costs....there is a basis for this Commission to address Intervener Bolomet's inappropriate behavior-.... To be taxed for a portion of the costs of these proceedings...".

The Decision and Order has been decided, with the arguments set forth as to why the Commission should uphold this Decision and Order. So Mr. Geiger's reasoning for the delays are no longer valid, in fact the extended hearings resulted because the Petition was not complete, was not truthful, and clearly showed the Petitioners failure to meet the criteria set forth in the rules to have a boundary amendment, it clearly showed amongst other things, the flawed archaeology report that appears to be designed to suppress hidden Hawaiian history and treasures as well as iwi Kupuna; which was neither attempted to be corrected or apologized for. Had I my family not found the evidence within SHPD's own files that clearly proved that this property had significant archaeological, cultural and historical significance and the Kahoma Terrace Complex laid within the Petition area, this Petitioner and the Developers would have successfully decimated and buried more of my family's history with the blessings of the Land Use Commission which they would have used to justify and divert their liability to as they demonstrated with the SHPD letter that approved their insufficient archaeological report.

If there is a basis and procedure within the 15-15-49**(e)** rules to deal with me, should not these same procedures be placed upon the Petitioner who willfully, negligibly, liabilously provided false information that if went unnoticed would have decimated even more of the Hawaiian Cultural Resources, History and Archaeology protected under Article XII section 7.

Mr. Geiger was putting this Commission on notice that he intended to seek an order demanding I reimburse the commission and I'm sure would have also later lead to a civil

suit for damages upon the Petitioner. Shouldn't Mr. Geiger and the Petitioner be held to much higher standards then I, who participated in this proceedings to protect my families land, iwi Kupuna, Cultural Resources, History and important archeological finds that still remain on the property?

The Petitioner wanted the Commission to make me an example and to send a message out to any other intervener who would dare to stand up to him or these Petitioners; that the consequences would be dire for them. I think the message should be sent both ways; why should tax payers hard earned money pay for false or incomplete petitions? The law provides consequences to those who dare to circumvent the law and to take hostage the government that is in place to serve and promote the safety and well being of the people. These consequences range from fines to losing their license to practice law in the State. To not hold Mr. Geiger and the Petitioner to the Highest Standards would be discrimination to Allodial Land Lineal Descendent, Kanaka Maoli and Interveners.

I make a motion seeking an order that charges all costs associated with this Petition and hearings unless the Commission feels the State and the County should share in the burden to Mr. Geiger and the Petitioner. I further request that all my cost be reimbursed for my time and expenses; For it was not out of volunteerism that I came to the LUC, it was out of duty to defend my Culture, our resources, our history, our archaeological treasures and our family lands; had I not, the loss would have been much graver then the mere loss of land.

Pro Se litigants entitled to Fees:

"every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State....subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution. ..shall be liable to the party injured...."

Pro se litigants may be entitled to Attorney fees and costs under the Civil Rights Attorney's Fee Award Act of 1976, 90 Stat. 2641, as amended 42 USC 1988 U.S.

Constitutional Issues: **The Fifth Amendment, provides in pertinent part that "nor be deprived of life, liberty, or property, without due process of law..." Due process is denied when a meaningful hearing is denied as in this cause.** The Seventh Amendment, provides in pertinent part that "In suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved..." This language does not include a single reference to "manipulation" of a jury by the Court in a conspiracy with lawyers to design a verdict suitable to the Court through the use of lawyer rules, judicial rules, court rules, or otherwise trumped-up legal technicalities and instructions which effectively "handcuffs" the jury. All of these activities are no more or less than a denial of the right to a jury of peers with the constitutional authority to judge both the facts and law in a case. The Thirteenth Amendment, provides in pertinent part that "Neither slavery nor involuntary servitude, except as a punishment for crime....., shall exist within the United States, or any place subject to their jurisdiction". These judges through their private conduct in conspiracy with the lawyer defendants, caused the Court to effectuate this Plaintiff to "Compulsory Involuntary Servitude", an act punishable under Title 18 1584 as a criminal act. The Fourteenth Amendment Due Process Clause and Equal Protection clause (Section 1), **expressly declares no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law...**" The Fourteenth Amendment, Section 3, provides in pertinent part that **"No person shall hold any office, civil or military, under the United States or under any State.....who, having previously taken an oath,....as an executive or judicial officer of any State to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same....**" USC 14th Ammendment (Deprived of the use of property) Tracy v. Ginzberg 205 US 170, 27 S Ct. 461 Wagner v Leser, 239 US 207, 36 S Ct 66 Fuentes v. Shevin 407 US 67, 92 S Ct 1983 Leis v Flynt, 439 US 438, 99 S Ct 698, 11 Ohio Ops 3rd 302 Kent.Dept. of Corrections v. Thompson, 490 US 454, 109 S Ct 1904 What constitutes property protected under constitution? Slaughter-House Cases, 16 Wall 36 Buchanan v Warley, 245 US 60, 38 S Ct 16 Liggett Co. v Baldridge, 278 US 105, 49 S Ct 57 Board of Regents v Roth, 408 US 564, 92 S Ct 2701 **On Due Process Violation** 5th and 14th Butler v. Perry, 240 US 328, 36 S Ct 288 Brinkerhoff- Faris Trust v Hill, 281 US 673, 50 S Ct 451 Curry v. McCanless, 307 US 357, 59 S Ct 900 *Rochin v California, 342 US 165, 72 S Ct 25, Alr2d 1396 *Ivanho Irrig. Dist. v. McCracken, 357 US 275, 78 S CT 1174 *Bartkus v Illinois, 359 US 121, 79 S Ct 676 *Gault 387 US 1, 87 S Ct 1428 *Wolff v McDonnell, 418 US 539, 94 S Ct 2963 **Bordenkircher v. Hayes, 434 US 357, 98 S Ct 663 **Rostker v. Goldberg, 453 US 57, 101 S Ct 2646 **States v. Goodwin 457 US 368, 102 S Ct 2485 **Colorado v. Connelly, 479 US 157, 107 S Ct 515 **DeShaney v. Winnebago, 489 US 189, 109 S Ct 998 **Collins v Harker, 112 S Ct. 1061 Jurisdiction of the case (Basic element of due process) Powell v. Alabama, 287 US 45, 53 S Ct 55, 84 ALR 527 Sense of fairplay shocked is not due process (Congress Barred) Galvan v Press, 347 US 522, 74 S Ct 737 Groban 352 US 330, 77 S Ct 510 Kinsella v United States, 361 US 234, 80 S Ct 297 Bodie v Conneticut, 401 US 371, 91 S Ct 780 Ross v Moffitt, 417 US 600, 94 S Ct 2437 United States v. Salerno, 481 US 739, 107 S Ct 2095 14th Ammendment is the due process denial right Collins v. Harker 112 S Ct 1061

Hebert v Louisiana, 272 US 312, 47 S Ct 103 Georgia Power v Decatur, 281 US 505, 50 S Ct 369 Discrimination as Violation of Due Process (5th Ammendment) Bowling v Sharpe, 347 US 497, 74 S Ct 693 Schneider v Rusk, 377 US 163, 84 S Ct 1187 Shipiro v Thompson 394 US 618, 89 S ct 1322 United States v Moreno, 413 US 528, 93 S Ct 2821 Johnson v Robinson 415 US 361, 94 S Ct 1160 Buckley v Valeo, 424 US 1, 96 S Ct 612 Mathews v De Castro, 429 US 181, 97 S Ct 431 Fullilove v Klutznick, 448 US 448, 100 S Ct 2758 Lyng v Castillo, 477 US 635, 106 S Ct 2727 Fourteenth Ammendment and 42 USCS 1983 Statutory requirement under color of law: Lugar v Edmondson Oil, 457 US 922, 102 S Ct 2744 Civil Rights Issues: A Continuance of Constitutional Issues Title 42 USC 1983 provides in relevant part that: **"every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State....subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution. ..shall be liable to the party injured...."** A Title 42 1985 action which seeks compensatory and punitive damages in conjunction with equitable relief as in this case is considered a legal claim, entitling Plaintiff to a jury trial. See An-Ti v. Michigan Technological Univ., 493 F. Supp. 1137. **Plaintiff alleges a "class based", invidiously discriminatory animus is behind the conspirators' action as the Court records reflect. That the actions were clearly a product of bias and prejudice of the Court.** See Griffen v. Breckridge, 403 U.S. 88, 102 (1971) The U.S. Supreme Court acknowledged in Bray v. Alexandria Women's Health Clinic 113 S.Ct.753 (1993**) that the standard announced in Griffen was not restricted to "race" discrimination**. It is therefore reasonable to assume that 1985 (3) may be used for "class-based" claims other than race which is alleged in this case. **The defendant lawyers acting in conspiracy with state actors under color of law have become state actors in this case. The U.S. Supreme Court has ruled that "private parties", lawyers in this case, may be held to the same standard of "state actors" where the final and decisive act was carried out in conspiracy with a state actor or state official.** See Dennis v. Sparks, 449 U.S. 24, 101 S.Ct., 183 also See Adickes v. S.H. Kress & Co., 398 U.S. 144, 90 S.Ct. 1598. **Plaintiff's Complaint is based in part on discrimination and political affiliations by lawyers and lawyer-judges,** under 42 USCA 1983 & 1985. See reversal case Acevedo-Diaz v Aponte (1993, CA1 Puerto Rico) 1 F3d 62, summary op at (CA1 Puerto Rico) 21 M.L.W. 3212, 14 R.I.L.W. 389. Section 1985(3) under Title 42 **reaches both conspiracies under color of law and conspiracies effectuated through purely private conduct. In this case Plaintiff has alleged a class-based, invidiously discriminatory animus is behind the conspirators' action as the court records reflect. That actionable cause is the treatment of a non-lawyer pro se litigant as a distinct "class-based subject" of the Court, wherein denial of equal protection of the laws and denial of due process was clearly the product of bias and prejudice of the Court.** See Griffen v. Breckenridge, 403 U.S. 88, 102 (1971). The U.S. Supreme Court acknowledged in Bray v. Alexandria Women's Health Clinic 113 S.Ct. 753 (1993) that the standard announced in Griffen was not restricted to "race" discrimination. It is therefore reasonable to assume that 1985(3) may be used for "class-based" claims other than race as alleged in this case. It is also important to note in Bray the U.S. Supreme Court's interpretation of the requirement under 1985(3) **that a**

private conspiracy be one "for the purpose of depriving... any person or "class" of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, which the Court said mandates "an intent to deprive persons of a right guaranteed against private impairment. The U.S. Supreme Court in Griffen emphasized 1985(3) legislative history was directed to the prevention of deprivations which shall attack the equality of rights of American citizens; that any violation of the right, the animus and effect of which is to strike down the citizen, to the end that he may not enjoy equality of rights as contrasted with his and other citizens' rights, shall be within the scope of remedies... Id. at 100. Supreme Court has ruled that "private parties" may be held to the same standard of "state actors" in cases such as the instant cause where the final and decisive act was carried out in conspiracy with a state official. See Dennis v. Sparks, 449 U.S. 24, 101 S. Ct., 183 and Adickes v. S.H. Kress & Co., 398 U.S. 144, 90 S. Ct. 1598. Jurisdictional Issues: It is proper for this District Court to take Jurisdiction of any civil action authorized by law to be commenced by any person. See Title 28 Section 1343 (1)(2)(3)(4) . Jurisdiction is proper under Title 28 Sections 1332, 1335, 1357, 1441 and 1603. The First issue is "Convenience" and second issue is the "interest-of- justice" standard under 28 USCA 1406. Dismissal Issues: The Complaint should not be dismissed unless it appears to a certainty that Plaintiffs would be entitled to no relief under any state of facts that could be proved in support of the claims. See Gomez v Toledo (1980, US) 64 L Ed 2d 572, 100 S Ct 1920. The allegations of a Complaint prepared by a state prisoner acting pro se are generally taken as true for purposes of motion to dismiss. See Hughes v Rowe (1980, US) 66 L Ed 2d 163, 101 S Ct 173. RULE 60 The final judgement of this Court should be vacated under Rule 60(B). The Court is requested to weigh the interest in substantial justice against the simple need for preserving finality of the judgement. See Expenditures Unlimited Aquatic Enterprises, Inc. v. Smithsonian Institute, 1974, 500 F.2d. 808, 163 U.S. App.D.C.140. See also Brown v. Clark Equipment Co., D.C. Mc. 1982, 961 F.R.D. 166. **Court -a judgement to dismiss because of some trumped up technicality giving excuse to dismiss a non-lawyer pro se litigant's complaint with merit in a lawyer dominated Court hearing. In support of Plaintiffs Motion to vacate Judgement,** the following cases are offered; Picking v. Pennsylvania Railway, (151 F2d.240) Third Circuit Court of Appeals. 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." Rico Case Law: The defendants constitute an illegal enterprise in acts or threat of acts in violation of Civil Rico Federal Racketeering Act USC 18, 1961-1963 et seq. The following are particular violations: 18 USC 241: Conspiracy against Rights of Citizens: 18 USC 3: **Accessory after the fact, knowing that an offense has been committed against the United States, relieves, receives, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment.** 18 USC 242: **Deprivation of Rights color of law of rights protected under the Constitution of the U.S.** 18 USC 512: Tampering with a witness 18 USC 1341: **Mail fraud** 18 USC 1343: Wire fraud 18 USC 1503: **Obstruction of justice** 18 USC 1510: Obstructing of criminal

investigation 18 USC 1513: **Retaliating against a witness, victim or informant** 18 USC 1951: Interference with interstate commerce 18 USC 1621: **Perjury** 18 USC 1001: **Fraud Continued statute of limitation in ongoing activity (conspiracy) (bankruptcy fraud)**

On Judicial Immunity Civil Rights Vol 4, US Supreme Court Digest Page **555 Judges not totally Immune** 87 SCT 1213 Pierson v. Ray 94 SCT 1683 Scheur v. Rhodes 96 SCT 984 Imbler v. Pathtman 98 SCT 2018 Monell v. Social SVS 98 SCT 2894 Butz v. Economov **On Absolute Immunity for Judges A complaint is actionable against Judges under Title 42 U.S.C. 1985 (3), whose immunity does not extend to conspiracy under color of law. Section 1985(3) reaches both conspiracies under color of law and conspiracies effectuated through purely private conduct. On Judges [Officer of the Court, Elected Officials and Appointee] violation of oath of office; Many judges [Officers of the Court, Elected Officials, State Agents and Appointees] have a total disregard for their oath of office under Title 28 Section 453, All judges take this oath of office swearing to uphold the U.S. Constitution.** Arbitrary Exercise of Government Powers Missouri v. Mackey, 127 US 205, 8 S Ct 1161 Minneapolis v. Herrick, 127 US 210, 8 S Ct 1176 Lepper v. Texas 139 US 462, 11 S Ct 577 Giozza v Tiernan, 148 US 657, 13 S Ct 721 Duncan v Missouri, 152 US 377, 14 S Ct 570 Pro Se litigants entitled to Fees:

"The people are the masters of both Congress and the courts, not to overthrow the Constitution, but to overthrow the men who would pervert it!"
— *Abraham Lincoln*

As I read the request of the State OP written by the Attorney General's office in joiner with Petitioner and Maui County, I couldn't help to hear that they are collectively asking you to overthrow the U.S. and Hawaii State Constitutions; I am asking you to overthrow the men who would pervert the Constitutions that you swore to uphold!

"I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country. As a result of the war, corporations have been enthroned and an era of corruption in high places will follow, and the money power of the country will endeavour to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed."
— Abraham Lincoln (1865)

"If you will not fight for the right when you can easily win without bloodshed; if you will not fight when your victory will be sure and not too costly; you may come to the moment when you will have to fight with all the odds are against you and only a small chance of survival. There may even be a worse case: you may have to fight when there is no hope of victory, because it is better to perish than to live as slaves."
— Winston Churchill

"Let us not fear the law[s] which are the artfully chosen words, concepts and principals set forth by our ancestors and forefathers; let us embrace it and hold it as a shield that protects and deflects those who attack and subvert the very liberties, rights and property provided to us by God, our Fore Fathers and our ancestors who painstakingly designed the foundation and guidepost that were put in place to protected the innocent and naive from the foreseeable future that greed, corruption and unlawful power could be used to enslaves the masses under the veil of illusion sold as truth!" Routh Bolomet January 31, 2013

Conclusion:

For all the reasons aforementioned, I ask this Commission to deny State OP's, Petitioner's and Maui County Office of Planning Joiner request to delete FOF 170, 186, 187 and 190 and COL 7.

I also ask that the requested revisions be made to FOF 158, 169, 170, 171, and 172 as stated above and that aa a statement be added that this Petition is also denied because the Commission does not have the authority to assert their jurisdiction on Foreign Allodial Title lands like these herein the Petition Area.

I ask that my motion for that the LUC make it a written policy to not accept Petitions that include Foreign Allodial Title lands for which they have no authority to assert their Jurisdiction become effective immediately.

I ask that my motion for all expenses to include my own, associated with this Petition A12-795 be charged to Mr. Geiger and the Petitioner unless the Commission so finds that the Maui County Planning Office, State OP, Attorney General's Office and SHPD should also share in the reimbursement. I further ask that fines should be levied so as to send a strong message to those who chose to circumvent the US, Hawaii State and Kingdom of Hawaii Constitutional laws and ordinances, and until such fines and reimbursements are paid in full, no petitions will be accepted or reviewed (including suspension on current petitions if any), by Mr. Geiger and his Firm, and the Petitioner's many interrelated LLC and business affiliations to include, but not limited to West Maui

Land Co., Kahoma Residential, and Kahoma Land LLC. If these firms should try to file bankruptcy or circumvent this ruling, then the fines should be levied upon the managers personally and those who hold interest in these companies and any petitions they are associated with or their family members are associated with should also be suspended until full payment of fines and reimbursements are complete.

The burden of proving by clear preponderance of the law falls on the shoulders of the Petitioner. I stand in agreement with Intervener Michele Lincoln in that, "even if the findings of facts and conclusion of law were eliminated" and the entire issue of the Community Plan and the Commissions Constitutional obligations ignored, the Petitioner will still have failed to meet its burden; and this Commission still could not provide why they have the authority to assert their jurisdiction over the foreign allodial titles found within the Petition Area.

In my opinion, reconsideration is a swinging door meant to be used by all for accessing rights through the law. I cannot find reasonable cause to deny the applicant that right. However, they are REQUIRED to show good cause for a reconsideration of fact or issue previously disclosed during hearing. I believe it is clear that they have not and the points has been adequately adjudicated, and for this reason there is no genuine issue.

The Petition does not meet the decision making criteria for land use reclassification and justifies the issued Decision and Order. The Petitioner does not meet the HAR 15-15-84 criteria in their Motion for Reconsideration of Decision and thus justifies the denial for reconsideration. The Decision and Order of the State Land Use Commission issued on January 14, 2013 shall remain **DENIED** along with the State OP and Petitioner Joiner requested amendments and the motions herein; BEING THE SUBJECT OF THE Petition Docket A12-795 filed by West Maui Land Company and Kahoma Residential LLC.

DATED: HONOLULU, HAWAI'I, February 6, 2013

Routh Bolomet, INTERVENER / Heir Through Lineal Descendency

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing documents was duly served upon the following by US Postal Service:

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

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

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

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

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

Dated, Honolulu, Hawai`i this day of February 6, 2013

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

Exhibit 1:

Routh Bolomet
PO Box 37371
Honolulu, Hawaii 96712
808-638-7824 (Change of Number)

Mancini, Welch & Geiger LLP
The Kahului Building
33 Lono Ave., Suite 470
Kahului, Hawaii 96732-1681
808-871-8351
808-871-0732 fax

May 25, 2012

Dear Mr. Geiger,

This is to notify you that the chain of titles and deeds you promised to provide me proving that West Maui Land Company has ownership of "all the LCA's" in your proposed affordable housing associated with Docket No. A12-795 still has not been received.

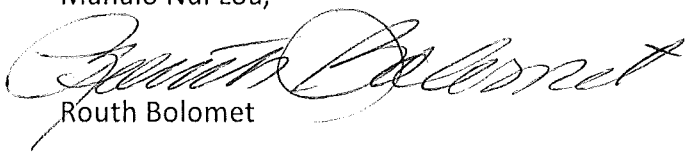
When we spoke in March you had promised me that you would provide me these papers in a week, and again earlier this week you made the same promise on May 22, 2012. Your reasoning for failing to deliver these promised papers proving West Maui Land Company was in fact the owner of these LCA's in March is because I insisted on following through with the petition. However, I did wait to file my "Intent to Petition to Intervene" until the last moment (which was after the time frame that you promised me you'd send me these documents), in hopes that I would receive your paperwork that may in fact prove your ownership superseded my lineal descent ownership given to us by the probate courts. It is my understanding that it is not my duty to prove my ownership to the LUC, but rather you have to prove your ownership and controlling interest to the LUC to move forward. Your producing these papers in a timely fashion as we asked for in our first request and now our second request can be a determining point for us moving forward with our Petition to Intervene. I am assuming you have all the papers required to prove ownership as it is a criteria for putting in an application to request re-zoning of the Maui Council and the LUC, yet neither agency seems to have a copy of your proof of ownership when I asked to see your proof of ownership that accompanied your application.

My last day to file is May 29, 2010, should I not receive your proof of ownership for all the LCA's you are claiming ownership to in the Kahoma Affordable Housing project, that satisfies myself and the other lineal descendents that your claim supersedes our ownership, I will proceed with my Petition to Intervene under the assumption that you cannot prove ownership of these properties.

So would you kindly provide me with the promised information/chain of title/ titles proving your ownership of the above LCA's involved in the Kahoma Affordable Housing project, Docket No. A12-795; with it we can decide to go forward with the petition or not. Our goal is to make sure that we do not waste West Maui Land Company's, or the Land Use Commission's time or precious resources if our lineal descent claim's does not supersede yours. This is our third request.

I see you have a fax #, I will be back in my office on Monday (yes Memorial Day) for a couple of hours if you wish to provide me these papers by fax, (you'll have to call me so I can turn on the fax machine) or you can do it today if you want to scan and email it to me, which will be even better so I and my advisors will have enough time to review your paperwork over this holiday weekend. Both delivery systems have the ability to time stamp to prove your time of delivery.

Mahalo Nui Loa,



Routh Bolomet

Michele Lincoln, Petitioner e-mail LincolnMichele@yahoo.com
Jessie K. Souki, Director, State of Hawaii Office of Planning e-mail jesse.k.souki@dbedt.hawaii.gov
Will Spence, Director of Planning, County of Maui e-mail william.spence@co.maui.hi.us
Scott Derrickson AICP, State of Hawai`I State Land Use Commission
email SDerrick@dbedt.hawaii.gov (808) 587-3921