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LAND USE COMMISSION

STATE OF HAWAI'I

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TRANSCRIPT OF PROCEEDINGS

The above-entitled matters came on for a Public Hearing/Action Meeting at Maui Cultural & Arts Center, Kahului, Maui, Hawai'i, commencing at 10:20 a.m. on Wednesday, June 6, 2012, pursuant to Notice.

REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR  
Certified Shorthand Reporter

## A P P E A R A N C E S

## COMMISSIONERS:

KYLE CHOCK

THOMAS CONTRADES

RONALD HELLER

LISA M. JUDGE

NORMAND LEZY (Chairman)

CHAD McDONALD

JAYE NAPUA MAKUA

NICHOLAS TEVES, JR.

INTERIM EXECUTIVE OFFICER: BERT SARUWATARI

CHIEF CLERK: RILEY HAKODA

STAFF PLANNER: SCOTT DERRICKSON

ALSO PRESENT: EXECUTIVE OFFICER: DAN ORODENKER

DEPUTY ATTORNEY GENERAL: SARAH HIRAKAMI, ESQ.

AUDIO TECHNICIAN: WALTER MENCHING

Docket No. A10-789 A&amp;B Properties, Wai'ale

For the Petitioner: BENJAMIN MATSUBARA, ESQ.  
CURTIS TABATA, ESQ.

For the County: MICHAEL HOPPER, ESQ.  
Deputy Corporation Counsel  
DANNY DIAZ, Planning Dept.

For the State: BRYAN YEE, ESQ.  
Deputy Attorney General  
RODNEY FUNAKOSHI  
Director Office of Planning

## A P P E A R A N C E S, cont'd.

Docket No. A12-795 West Maui Land Company, Inc.-

Kahoma Residential, LLC (Maui)

For the Petitioner:

JAMES GEIGER, ESQ.  
HEIDI BIGELOW,  
West Maui Land

For the County:

JAMES GIROUX, ESQ.  
KURT WOLLENHAUPT,  
Planning Dept.

For the State:

BRYAN YEE, ESQ.  
Deputy Attorney General  
RODNEY FUNAKOSHI, OP

## I N D E X

(Docket A10-789 A&B Properties, Inc. Waiale)

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1 CHAIRMAN LEZY: (gavel) Good morning. This  
2 is a meeting of the state of Hawai'i Land Use  
3 Commission. First item on the agenda is adoption of  
4 minutes of the May 21, 22 meeting. Commissioners, any  
5 revisions? Hearing none, do I have a motion?

6 COMMISSIONER JUDGE: Move to approve.

7 COMMISSIONER McDONALD: Second.

8 CHAIRMAN LEZY: All in favor? (Aye). All  
9 opposed? Mr. Saruwatari, the tentative meeting  
10 schedule.

11 MR. SARUWATARI: There's really nothing to  
12 report. The next set of meetings will be on the  
13 possible adoption of the orders for Castle & Cooke and  
14 D.R. Horton-Schuler.

15 CHAIRMAN LEZY: Thank you. Before we move  
16 on to the substantive items that are on the list  
17 today, I'd like to introduce to the parties and the  
18 public the Commission's new Executive Officer Dan  
19 Orodenger who will be stepping in shortly. Welcome  
20 aboard and we're glad to have you.

21 MR. ORODENER: Thank you. I appreciate  
22 it. I look forward to working with the Commission.

23 CHAIRMAN LEZY: Next item on the agenda is  
24 an action meeting on Docket A10-789 A&B Properties, to  
25 approve the form of the order in this matter. On May

1 21, 2012 the Commission met in Kahului, Maui, Hawai'i  
2 and voted to grant Docket No. A10-789 to amend the  
3 Agricultural Land Use District Boundary into the Urban  
4 District for approximately 545.229 acres at Wailuku  
5 and Waikapu, county of Maui, state of Hawai'i TMK:  
6 3-8-05: portion of 23 and 37, 3-8-07:71 and portion of  
7 101 and 104.

8 Mr. Saruwatari, is there anybody signed up  
9 for public testimony?

10 MR. SARUWATARI: Nobody signed up.

11 CHAIRMAN LEZY: Is there anybody in the  
12 audience who'd like to provide public testimony on  
13 this matter? Step forward, sir. 'Morning.

14 KANILOA KAMAUNU  
15 being first duly sworn to tell the truth, was examined  
16 and testified as follows:

17 THE WITNESS: Yes.

18 CHAIRMAN LEZY: Please state your name and  
19 address and proceed.

20 THE WITNESS: My name is Kaniloa Kamaunu.  
21 I'm from 222 Waihe'e Valley Road, Wailuku, Maui. I'm  
22 here in actually protest to the action that is being  
23 taken by the Commission, and for the urban boundaries  
24 for 500 acres of property that I still believe is in  
25 controversy due to the land tenancy.

1           I don't believe that the subject of  
2 standing has been taken into consideration. As I  
3 reiterated once before, this seems to have the look of  
4 a legal process. Then all sides need to be carefully  
5 taken into consideration for the purpose of the  
6 changes that are going to come about.

7           As far as we know in this area, the  
8 excavation has been done many times and they're *still*  
9 coming up with iwi kupuna. So that needs to be  
10 addressed.

11           This is not going to stop. As many times  
12 as they have excavated, they have dug, they still are  
13 coming up with burials. And I know I was told that  
14 this is not the Land Use's privy and it goes to the  
15 Burial Council.

16           I have objection to that also because as  
17 has been clarified by the council chair or commission  
18 for burial council, that they have no authority to  
19 make recommendations.

20           And we've seen the process that the Burial  
21 Council comes into play after awards have been granted  
22 which really doesn't do anything. It really binds  
23 them, because now instead of them being our process to  
24 be able to protect our kupuna, they become nothing  
25 more but just a place for us to vent our frustrations

1 because they have no authority to do anything.

2 And if this process is allowed to follow  
3 through, even they are a state entity recognized, it  
4 does nothing because they're gonna excavate, they're  
5 gonna pull up some more bodies. That's already been  
6 proven. It's happening today.

7 This area just came up in the Burial  
8 Council that they have an area which they -- one of  
9 the projects they dug around. And now because they  
10 dug around that area that was specified to be  
11 protected, now they're in fear that it will collapse.

12 And yet that's why I'm saying, you know,  
13 we're told about the Burial Council but they have no  
14 teeth. They come in after the fact. These gentlemen  
15 will go in and they'll do their work and my iwi  
16 kupuna, which I have relatives there, are going to be  
17 taken away without any type of protection.

18 Again, I reiterate the law of 1860. It's  
19 the sepulcher law. It determines any disturbance by  
20 prior to or to the event of disturbance or internment  
21 there is a law which protects them and states the  
22 penalty is a thousand dollars per person per iwi or  
23 kupuna found. And it is also two years of hard labor.

24 This, of course, was from the 1860's. So  
25 we're looking over a hundred years. But these things,



1 they -- what I'm trying to say is they have vested  
2 rights that was legislated, was adjudicated in law.  
3 Even though t's a Kingdom of Hawai'i you have to  
4 address that the state does not have authority to  
5 permit these gentlemen to go in and remove them. This  
6 is -- by the time the burial council gets to it it's a  
7 done deal.

8           We have hundreds of parties being excavated  
9 and taken. And sad to say some of the building's  
10 sidewalks have iwi kupuna because some of them are  
11 crushed and put into sand, used for cement, and may  
12 also be scattered through our beaches that have  
13 excavated sands from our area.

14           This is an atrocity. But again we try to  
15 go through the process but we get no satisfaction.  
16 Our kupuna... (pausing) excuse me. It's hard. And,  
17 ah, business as usual. So I have to oppose the action  
18 that's being taken today on behalf of myself, my  
19 kupuna iwi that are there, and once more recite our  
20 vested rights that are given to them which are a  
21 foreign substance to the state of Hawai'i because they  
22 do not fall in the jurisdiction because they belong to  
23 a foreign government which is the Kingdom of Hawai'i.

24           We know that Hawai'i is only occupied by  
25 the United States. They really have no claims to

1 land. They really do not claim ownership of that.  
2 They have no U.S. patents here because they cannot  
3 grant patents. The patents that are here are Royal  
4 Patents. A lot of these areas that are going to be  
5 used have LCA's which mean they've been adjudicated in  
6 court.

7           Hawai'i Supreme Court has already said that  
8 they will not go behind an adjudicated case pertaining  
9 to lands because of the royal patents, which are  
10 significant. But it needs to be -- that's what I'm  
11 saying, this is bigger than this.

12           And for this action to happen this is  
13 insufficient because not enough work has been done to  
14 protect our rights as living and to protect those that  
15 have gone. Because the EIS's have been given are  
16 inadequate.

17           The archaeologist or the person claims to  
18 be the archaeologist on the Project is not accredited.  
19 She has a principal investigator but he has never come  
20 forward to testify on the work that she has done. She  
21 can only be an expert witness on how she did the work.  
22 She cannot interpret the intricacies of those findings  
23 because she's not certificated. She hasn't been able  
24 to go through the process.

25           Being so, her expertise is only so far.

1 She cannot make comment on what the findings and the  
2 facts mean because she is not certified. And if she's  
3 not certified then the principal investigator should  
4 have given her a letter to authorize her to read what  
5 he has.

6 Or he should have showed up to these  
7 Commission meetings to be able to be spoken to instead  
8 of someone that's not adequately or is not certified  
9 to do so. So this is my testimony. Thank you.

10 CHAIRMAN LEZY: Parties, questions?  
11 Commissioners, any questions? Thank you for your  
12 testimony, Mr. Kamaunu. Parties, appearances?

13 MR. MATSUBARA: Chairman Lezy, members of  
14 the Commission --

15 CHAIRMAN LEZY: Hang on just a minute,  
16 Mr. Matsubara. Would you like to provide some  
17 testimony? Is there anybody else who would like to  
18 provide testimony? If you would, please, step up to  
19 the front row. Is there anybody else who wishes to  
20 provide public testimony? Morning.

21 JOHANNA KAMAUNU  
22 being first duly sworn to tell the truth, was examined  
23 and testified as follows:

24 THE WITNESS: Yes.

25 CHAIRMAN LEZY: Please state your name,

1 your address and proceed.

2 THE WITNESS: Johanna Kamaunu, Waihe'e  
3 Valley, 22 Waihe'e Valley Road, Wailuku, Maui,  
4 Hawai'i. I add my objection to the decision that you  
5 folks have made on this Project.

6 You know, early in the 1900's large  
7 landowners realized they had responsibility to the  
8 forests and the watersheds of these islands. And they  
9 made laws to protect it. The whole reason was because  
10 they were losing waters on the lower parts of the  
11 land. They needed to have the water. They needed  
12 that.

13 But, unfortunately, the so-called  
14 landowners at *this* time have not provided that same  
15 kind of concern for those waters and yet they continue  
16 to develop those waters.

17 The least that you could do as this body is  
18 to provide some considerations regarding the  
19 production of water in this area or at least the  
20 preservation of the watershed in these areas.

21 Maui County has been delinquent in their  
22 responsibilities to that. And that in the last few  
23 wildfires that we've had that raged across this  
24 mountainside, they let it burn, burn itself out rather  
25 than to go in and put the fire out.

1           They may argue the cause of water, the need  
2 for freshwater. But still that's where you're going  
3 get water from. And if you're not going to protect it  
4 then you're not going to have that availability.

5           Like I said, in the early 1900s the  
6 governing powers at that time, as well as the large  
7 landowners, agreed to protect the watersheds, agreed  
8 to enforce laws that would provide waters for the rest  
9 of the land.

10           These current landowners are not doing  
11 that. And yet they continue to draw from those  
12 resources. You need -- you have the ability to  
13 require, as they continue to make developments in this  
14 area, that they are not found deficient after the  
15 Project's completed. You have thousands of  
16 development homes and other businesses coming up in  
17 this area. Where are they going to get their water  
18 from once we start depleting our resources here?

19           I heard a Commissioner recite in this, this  
20 body what the parameters of your office are. And the  
21 main focus was to protect the resources, protect the  
22 land. The least you can do in this particular case is  
23 to do that.

24           I know you've seen that our needs probably  
25 were not as important as the rest, as this Project,

1 but you cannot deny that the need for water will be a  
2 continuing need. It's gonna grow. And if you don't  
3 do something to protect it or to make conditions  
4 according to that, we're going to be in more trouble  
5 later on.

6           So that's my objection. If you're gonna  
7 continue with this case, that you do something to  
8 afford those conditions that will provide for our  
9 resources to continue to be productive, then I can  
10 live with this for now, but I cannot support this. I  
11 cannot support knowing full well that you'll deplete  
12 our resources.

13           I do not support this knowing that it  
14 affords the county and the state to be delinquent in  
15 their responsibilities to us.

16           You know, if anything, I see these men  
17 sitting at this table, their positions mainly, they're  
18 nothing more than high-priced pimps for our resources.  
19 We need to do something serious to protect it. We're  
20 losing the water.

21           We're losing the resources and there's  
22 nothing that can recover it once you give it away.  
23 I'm sorry for the description but that's the way it  
24 looks to me.

25           We're losing this. And there's no benefit

1 coming from this Project to those of us who have spent  
2 hundreds of years on this land. And there's no  
3 protection to our families in the future to have these  
4 waters, these resources available to them.

5 We come here continually to plea for these  
6 things. And it seems that we have not enough to  
7 persuade you otherwise. My request at this time is to  
8 at least, at very least, provide some conditions that  
9 will require these people to put more responsibility  
10 in making sure that these resources are productive.  
11 Thank you.

12 CHAIRMAN LEZY: Parties, questions  
13 Commissioners, questions? Thank you for your  
14 testimony. Is there anybody else who wishes to  
15 provide public testimony? If so step forward, please.

16 THE WITNESS: Aloha.

17 CHAIRMAN LEZY: Aloha.

18 VICTORIA NOHEALANI KALUNA  
19 being first duly sworn to tell the truth, was examined  
20 and testified as follows:

21 THE WITNESS: Always.

22 CHAIRMAN LEZY: Please state your name and  
23 address and proceed.

24 THE WITNESS: My name is Victoria Nohealani  
25 Kaluna. I'm married to Palafox. My address is the

1 12.5 mile marker, Makanewa, Ukumehame, in the moku of  
2 Lahaina.

3 I sit here this morning, my first visit to  
4 this place. And all my mana'o and all the things I  
5 have to say within this place is all about authority.  
6 Where does this authority come from?

7 I request for cease and desist of these  
8 activities that you do for the pure fact that in  
9 Kolowai Pa'a'aina we have constitutions that you are  
10 breaking. I cannot see why eha he'e na kanaka needs  
11 to sit here and explain ourselves to you how wrongful  
12 doing this is for when the land is once destroyed, as  
13 these developers have been doing for many, many, years  
14 already, we have no benefit. Nothing.

15 The waters of life have been taken away  
16 from us without permission. We sit here in this room  
17 and we speak of why should we think that what you are  
18 doing is proper. I cannot sit and hear things like  
19 this because all that is within this building to me is  
20 against my kanaka constitutional right.

21 By removing the iwi's of these lands you  
22 are stripping the living kanaka of their flesh. How  
23 mean you are to do that to us for all these hundreds  
24 of years. We have come before you humbly, this  
25 entity. And in the law of nations it is, corporate is



1 not life. They are brought together by other  
2 entities. They are made up.

3 I am real. I am a pure kanaka. I have  
4 children. I have bred pure Hawaiian children, but  
5 this state says that there's no more Hawaiians. And  
6 people have said by 2045 that there will be no more  
7 Hawaiians.

8 This Project that you bring in this area of  
9 the sand dune is all my kupuna iwis. I am direct  
10 lineal descendant. I ask you as a kanaka of this land  
11 to cease what you are doing. Because what you are  
12 doing is killing, it is death. What you have been  
13 bringing here to our place has never worked in a  
14 positive manner for us. It doesn't feed myself and my  
15 children for generations. I live Ukumehame and I grow  
16 my own food because I'm afraid that what these new  
17 stores going to bring. They going bring poison to my  
18 body.

19 I ask please stop what you're doing and  
20 feel that energy. If it was you there, would you not  
21 want us to help to protect you in your last place of  
22 noho? Because for me even if there was a foreigner in  
23 this sand dune, we will stand and protect that person.  
24 It does not necessarily have to be eha e kanaka.

25 Thank you for your time and your energy in

1 coming here and allowing us to share this mana'o and  
2 this information with you. Thank you.

3 CHAIRMAN LEZY: Parties, questions?

4 Commissioners, questions? Thank you, ma'am.

5 MIKAHALA ROY

6 being first duly sworn to tell the truth, was examined  
7 and testified as follows:.

8 THE WITNESS: I do.

9 CHAIRMAN LEZY: Please state your name,  
10 address and proceed.

11 THE WITNESS: Aloha. My name is Mikahala  
12 Roy. My address is P. O. Box 596 Kailua-Kona,  
13 Hawai'i, 96745. I wonder if I may ask for you to read  
14 this docket entry please again.

15 CHAIRMAN LEZY: I'm sorry?

16 THE WITNESS: Could you please read the  
17 entry that you read regarding this case, the  
18 application?

19 CHAIRMAN LEZY: What Docket Number this is?

20 THE WITNESS: Yes, and the whole...

21 CHAIRMAN LEZY: This is Docket A10-789 A&B  
22 Properties, Inc.

23 THE WITNESS: And the matter is?

24 CHAIRMAN LEZY: The matter is to Amend the  
25 Agricultural Land Use District Boundary into the Urban

1 District for approximately 545.229 acres at Wailuku  
2 and Waikapu, county of Maui, state of Hawai'i,  
3 TMK:3-8-05: portion of 23 and 37, 3-8-07:71, portion  
4 of 101 and 104.

5 THE WITNESS: Thank you.

6 CHAIRMAN LEZY: You're welcome.

7 THE WITNESS: I'm a resident of Kona,  
8 Hawai'i, but I have ties to Maui. And I'm Kahu of  
9 Ahuena He'iau. My father, David Kehele Mauna Roy,  
10 Jr., restored the first temple, religious temple of  
11 the Hawaiian Islands in the modern era.

12 In the '70s he presented here on the island  
13 of Maui to defend the history of the Alapa Warriors.  
14 He contributed to the bulk of information that now  
15 will serve the children of this land, whatever race  
16 they are.

17 It is paramount that in any land truth be  
18 known and history be told. Here our history streams  
19 in the wind. It is potent, it is true, it is spirit.  
20 We all, no matter what blood flows in our veins,  
21 understand this.

22 This place that we are speaking of here in  
23 this application needs to be protected and identified  
24 for future children's knowledge, for future world  
25 knowledge. Because here is where a great battle took

1 place that describes a lifeway of interaction of  
2 relatives of these lands that talk about the people of  
3 these lands. They talk about a heritage of  
4 interaction socially on all levels, but most  
5 importantly spiritually.

6           Therefore, A&B has no right to come before  
7 you with this application, none whatsoever. You have  
8 the responsibility. The occupying state has the  
9 responsibility to uphold the vestiges of Hawaiian  
10 culture; that at the top of the list is spirit. You  
11 must uphold that.

12           And I as a descendant may live anywhere in  
13 this world, but I, when I'm connected to these  
14 burials, will feel them. And I thank the people of  
15 Maui who are courageous enough to go down to these  
16 places and step up and say they will not leave there  
17 because they are feeling the hurt so badly.

18           I salute these people. I will enforce  
19 these people who come forward. And I will be there  
20 for them and these burials as long as I live, as long  
21 as I'm here to contribute.

22           This is wrong. Do not allow this. Do not  
23 allow this any further. My father's testimony was  
24 testimony that I grew up with about these warriors.  
25 They were the zenith. They were the finest of the

1 greatest trained warriors. And I'm sure if you're  
2 Japanese you can relate to the Samurai. You can  
3 relate to any of the cultures of the world for the  
4 finest. They all come down to spirit. It all starts  
5 there.

6           So I ask your deepest place in you, I ask  
7 your high selves consider this. Do not allow this.  
8 Stop this because it's an atrocious thing for me to  
9 come here years after my father did, and see what has  
10 come as a result of all the years that have passed,  
11 and to hear that cultural specialists have even said  
12 to -- brought up to the idea that battles were not  
13 taking place or did not take place in sand. Cultural  
14 specialists? Words that define someone who's supposed  
15 to be a knowledgeable person to Hawaiian knowledge?

16           I will say to you as an `oiwi, that's not a  
17 reflection of Hawaiian knowledge. That's a matter of  
18 your record I understand. So do not allow this.  
19 Thank you.

20           CHAIRMAN LEZY: Parties, questions?  
21 Commissioners, questions? Thank you, ma'am.

22           THE WITNESS: Clare Apana, Wailuku, Maui.

23           CHAIRMAN LEZY: Let me swear you in, Ms.  
24 Apana.

25 xx

1 CLARE APANA

2 being first duly sworn to tell the truth, was examined  
3 and testified as follows:

4 THE WITNESS: Yes.

5 CHAIRMAN LEZY: Please go ahead.

6 THE WITNESS: At this juncture I find that  
7 I still have so much to tell you. I want to remember  
8 this. You made no provision for the future burials,  
9 and you made no provision for saving the sand dunes.  
10 Even after one of your Commissioners read your mandate  
11 you did not follow it. Not one condition. That's  
12 pretty sad.

13 So I spoke to Mr. Vincennes after the last  
14 testimony. And I said, "Are you serious? Tell me  
15 you're going to keep sand mining through here?" And,  
16 he said, "Oh, no, no, no, no, no." And I said, "What,  
17 you're gonna grab and grade and take all the burials  
18 and the sand out?"

19 He said, "Oh, no. Not here." I wanted  
20 every one of you to hear this because perhaps they  
21 were willing to do that. Mr. Vincennes said he was.  
22 You could have protected this area. You could have  
23 put a condition in there to stop that from ever  
24 happening. Because undoubtedly they will sell this  
25 property. And the next person will not protect the

1 sand dunes because you did not protect the sand dunes.  
2 You couldn't even follow two of your mandates.

3 I'm so ashamed to say that this is how our  
4 state is run. But I do want to tell you that luckily  
5 for our 'aina and for our people, you may not be the  
6 last judges of this land. You may not be the last  
7 ones to make this decision, but you had your chance to  
8 make a decision that would have been at least  
9 somewhat, somewhat fair and you chose not to. And  
10 that doesn't go unrecorded in the Big Book upstairs.

11 I'm disappointed to say that I live in a  
12 state where you cannot follow your own mandates. And  
13 you waste the time of people, honest citizens coming  
14 to testify before you to bring the true knowledge.  
15 And you would put forth an expert who cannot even sign  
16 her own report. And you accept her as an expert  
17 instead of taking our own testimony for our own  
18 history 'a'ole.

19 You're gonna take something fake. Well,  
20 that's exactly what I think this Commission is at this  
21 time. You're really not for the people. You can't  
22 even follow your own mandate. But I'm not sorry that  
23 I spoke up for my culture, my history, for the iwi,  
24 for the sand because someone had to tell you the  
25 truth, but you chose to ignore it. Not one condition.

1 Not one. That's very, very sad.

2 So I thank you for letting us speak as long  
3 as we wanted to as long as we had things to say. But  
4 it's sad that it fell on really, really deaf ears even  
5 by law.

6 I hope that the next projects you do you'll  
7 remember somewhere within your heart and soul that you  
8 didn't follow your own mandates and you did not  
9 protect our cultural rights. And you did not protect  
10 the 'aina. You did not protect the iwi as mandated by  
11 our constitution and your own mandate. Thank you very  
12 much.

13 CHAIRMAN LEZY: Parties, questions?  
14 Commissioners, questions? Thank you for your  
15 testimony, Ms. Apana. Good morning.

16 ROUTH BOLOMET  
17 being first duly sworn to tell the truth, was examined  
18 and testified as follows:

19 THE WITNESS: Yes, I will.

20 CHAIRMAN LEZY: Please state your name,  
21 your address and proceed.

22 THE WITNESS: My name is Routh Bolomet. My  
23 address is P. O. Box 37371 Honolulu, Hawai'i 96837.  
24 I'm here to speak today because this weekend I  
25 recently found out that my kupunas were awardee in



1 these lands. You'll see them in your maps under  
2 "Napela".

3 I am a lineal descendant, therefore you do  
4 not have any kind of warrantee deeds that supersede my  
5 titles. Under your laws there's a case called Foster  
6 vs. Nielsen. In it the lands on one side of the  
7 Mississippi were land grants or patents that were put  
8 out by the Spanish. This was in the Florida district.  
9 There were Spanish grants and there were French  
10 grants.

11 And when the U.S. took over they gave the  
12 -- there were treaties to hand over the lands. But  
13 the allodial titles that were given by the Spanish and  
14 the French prior to these treaties were not  
15 transferred in those treaties.

16 So when there was a case that went to the  
17 Supreme Court, all the way up to the Supreme Court,  
18 the Supreme Court ruled that the U.S. had no  
19 jurisdiction over foreign allodial titles.

20 Please tell me what is different about *that*  
21 case, which is in the confines of the United States,  
22 versus on these lands where you're illegally occupying  
23 our lands? It's very emotional for our families to  
24 see people that seem to be quite intelligent ruling  
25 for businesses rather than for the people.

1           What I learned about the United States  
2 Constitution was that it was for the people and by the  
3 people. And we keep forgetting that. We keep  
4 thinking it's for the businesses. And I know the  
5 trend has moved to that. We can all look at the  
6 trends. Look at our environment. Look at what is  
7 happening to our health. All of that is because we  
8 have chosen to support businesses rather than  
9 supporting the people.

10           Look at what's happening to all of us. We  
11 are all the victims of the bottom line. The bottom  
12 line doesn't look after the people. So if you  
13 continue down this route you are setting yourself up  
14 for many tort suits. There's absolutely no grounds  
15 for you guys to make these decisions today on any  
16 allodial titles.

17           So I'm asking you to reconsider your  
18 decisions and make sure that you do not do this for  
19 any future allodial titles, which you do not have any  
20 jurisdiction for, or let's say, you do not have the  
21 authority to assert your jurisdiction. Thank you.

22           CHAIRMAN LEZY: Parties, questions?  
23 Commissioners, questions? Commissioner Makua.

24           COMMISSIONER MAKUA: Can you explain to us  
25 the process that happens after you find your title,

1 your patent and you realize somebody else owns that  
2 land today. Can you explain to us where do you then  
3 go and what happens.

4 THE WITNESS: Well, there's several  
5 processes. If we have imminent harm, then we can use  
6 your court system to get a remedy. We can go back  
7 onto our lands without anybody's permission.

8 And we choose to do it as peacefully as  
9 possible by using your laws to help you use your  
10 enforcement to make sure your people understand  
11 they're breaking the laws. That has been the steps  
12 that we have used up to date.

13 But in many cases it's been quite  
14 unsuccessful. And there's a lot of people being tied  
15 up in cases for many, many years. And I'm involved in  
16 another case which involves the Charles Kanaina  
17 heirs. And it's been going on for over 96 years. How  
18 many resources and people's lives? People have died  
19 fighting for their lands.

20 Just to let you know I'm not like those  
21 people. I am not like my ancestors. I will not wait  
22 96 years. I *will* take back my lands. And I'll use  
23 every resource we need to use and every law that you  
24 have to make sure this doesn't continue. It stops.  
25 So do you have any other questions?

1           COMMISSIONER MAKUA: For me after our last  
2 meeting I don't believe everybody understands how real  
3 the right of those titles are.

4           THE WITNESS: Then you need to study  
5 international law because you're exercising it by  
6 trying to stomp all over our allodial titles. You  
7 need to go beyond your rules if you're going to be  
8 making decisions that affect international law.

9           You've got the Apology Bill that protects  
10 our rights. You've got cases that went to the  
11 international courts in 2001 that protects our rights,  
12 that says Hawai'i is still sovereign, and the United  
13 States continues to occupy these lands illegally.

14           Your own HRS laws gives you no authority to  
15 supercede our laws. So if you're gonna take the  
16 positions of authority to make decisions on lands that  
17 you have absolutely no authority, it behooves you to  
18 know the laws. It's your responsibility to. They  
19 should be trained. Everybody that takes these  
20 positions should be trained properly. The attorneys  
21 that are manipulating through the different laws and  
22 using loopholes, they know the laws very well.  
23 They're not fooling anybody because I watched the way  
24 they squirmed through all the loopholes. But I'm not  
25 going to stop. And you guys will not get these lands.

1           So we can either start turning it around  
2 now or we can start turning around some big tort  
3 suits. Because too much has happened, too much harm  
4 has happened to our people. So until somebody can  
5 show me how A&B's warrantee deeds supersede my  
6 allodial titles and all of my kupunas' allodial  
7 titles, all of my relatives' allodial titles? We're  
8 starting to form a wall. You're not gettin' past us.  
9 Any more questions?

10           CHAIRMAN LEZY: Thank you for your  
11 testimony. Parties, questions? Commissioners? Thank  
12 you. That concludes public testimony on this docket  
13 matter. Appearances, please, parties.

14           MR. MATSUBARA: Chairman Lezy and Members  
15 of the Commission. Benjamin Matsubara and Curtis  
16 Tabata on behalf of A&B Properties. With me today is  
17 Grant Chun, vice president of A&B Properties and  
18 Daniel Yasui, director of planning and development.

19           CHAIRMAN LEZY: Good morning.

20           MR. HOPPER: Good morning, Mr. Chair,  
21 members of the Commission. Michael Hopper with the  
22 Department of Corporation Counsel representing the  
23 Maui County Department of Planning. With me is Danny  
24 Dias, staff planner.

25           CHAIRMAN LEZY: Good morning.

1 MR. YEE: Good morning. Deputy Attorney  
2 General Bryan Yee on behalf of the Office of Planning.  
3 With me is Rodney Funakoshi from the Office of  
4 Planning.

5 CHAIRMAN LEZY: 'Morning. Parties,  
6 anything else we need to discuss?

7 MR. MATSUBARA: Nothing further, Mr. Chair.

8 MR. YEE: Nothing further.

9 CHAIRMAN LEZY: Thank you. Commissioners,  
10 before you is the Form of the Order granting the  
11 Petition in this matter. The Chair will entertain a  
12 motion.

13 COMMISSIONER JUDGE: I have a question.

14 CHAIRMAN LEZY: Sure. Commissioner Judge.

15 COMMISSIONER JUDGE: Thank you. At the  
16 last meeting I had asked, there was a condition  
17 formed, that the two parties would agree upon it. Did  
18 that occur?

19 MR. YEE: Yes.

20 MR. MATSUBARA: That's correct. There was  
21 an agreement. It's been incorporated as a condition.

22 COMMISSIONER JUDGE: Thank you.

23 CHAIRMAN LEZY: Any additional questions?

24 COMMISSIONER JUDGE: So I'll go ahead and  
25 I'll make the motion to adopt the Order for Docket

1 A10-789 A&B Properties, Inc..

2 CHAIRMAN LEZY: Second?

3 COMMISSIONER HELLER: Second.

4 CHAIRMAN LEZY: Discussion?

5 Mr. Saruwatari, if you'd poll the Commission, please.

6 MR. SARUWATARI: Motion to Approve the Form  
7 of the Order. Commissioner Judge?

8 COMMISSIONER JUDGE: Yes.

9 MR. SARUWATARI: Commissioner Heller?

10 COMMISSIONER HELLER: Yes.

11 MR. SARUWATARI: Commissioner Teves?

12 COMMISSIONER TEVES: Yes.

13 MR. SARUWATARI: Commissioner McDonald?

14 COMMISSIONER McDONALD: Yes.

15 MR. SARUWATARI: Commissioner Contrades?

16 COMMISSIONER CONTRADES: Yes.

17 MR. SARUWATARI: Commissioner Makua?

18 COMMISSIONER MAKUA: 'A'ole.

19 MR. SARUWATARI: Commissioner Chock?

20 COMMISSIONER CHOCK: Yes.

21 MR. SARUWATARI: And, Chair Lezy?

22 CHAIRMAN LEZY: Yes.

23 MR. SARUWATARI: Chair, we have eight votes  
24 in support of the Petition -- I'm sorry, seven votes  
25 in support of the Petition.

1 CHAIRMAN LEZY: Thank you very much.  
2 Parties, anything else before we move on?

3 MR. MATSUBARA: Nothing further. Thank you  
4 very much. Thank you for your time.

5 CHAIRMAN LEZY: Let's take a five minute  
6 break for our court reporter.

7 (Recess was held. 10:05-10:15)

8 XX  
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1           CHAIRMAN LEZY: (gavel) The next item on  
2 the agenda is an action meeting on Docket A12-795 West  
3 Maui Land Company, Inc. Kahoma Residential, LLC, Maui,  
4 to consider Petitions to Intervene by Routh Bolomet  
5 and Michelle Lincoln.

6           Before we move into the substantive matters  
7 here, the Chair will entertain a Motion to Amend the  
8 Agenda to add Routh Bolomet's Motion to Waive  
9 Intervenor's Filing Fee.

10          COMMISSIONER CHOCK: Chair, move to amend  
11 the agenda.

12          COMMISSIONER TEVES: Second.

13          CHAIRMAN LEZY: All in favor? (aye). All  
14 opposed? Motion passes. The motion -- Ms. Bolomet's  
15 motion is added to the agenda. Parties, please  
16 identify yourselves for the record.

17          MR. GEIGER: Good morning, Chair,  
18 Commissioners. My name is James Geiger. I'm here on  
19 behalf of the Petitioner. Also present is Heidi  
20 Bigelow who is a representative of West Maui Land  
21 Company, Inc. And with us also is Rory Frampton who  
22 is our consultant on this Project.

23          CHAIRMAN LEZY: Thank you.

24          MR. GIROUX: Good morning, Chair and  
25 Commissioners. James Giroux with corporation counsel.

1 And representing the Planning Department with me is  
2 Kurt Wollenhaupt, planner.

3 CHAIRMAN LEZY: Good morning.

4 MR. YEE: Good morning. Deputy Attorney  
5 General Bryan Yee on behalf of the Office of Planning.  
6 With me is Rodney Funakoshi from the Office of  
7 Planning.

8 CHAIRMAN LEZY: Morning.

9 MS. LINCOLN: Michelle Lincoln, 452 Aki  
10 Street in Lahaina. And I'm an intervenor -- or  
11 potential intervenor. Sorry.

12 CHAIRMAN LEZY: Good morning.

13 MS. BOLOMET: Routh Bolomet, potential  
14 intervenor. Want my address?

15 CHAIRMAN LEZY: No, that's fine.  
16 Ms. Bolomet, is Ms. Kamaunu going to sit with you at  
17 counsel table?

18 MS. BOLOMET: If you have any questions  
19 about things that I'm saying, I would like her to  
20 assist you in understanding.

21 MS. KAMAUNU. Yes, I'm providing them some  
22 support.

23 CHAIRMAN LEZY: Okay. We'll deal with that  
24 as it comes up. Thank you. Allow me to update the  
25 record in this matter.

1           On January 18, 2012 the Commission received  
2           Petitioner's Notice of Intent to File a Petition for  
3           Land Use District Boundary Amendment.

4           On February 3, 2012 the Commission received  
5           Petitioner's Affidavit of Mailing Notice of Intent to  
6           File Petition, Exhibits A through C and Affidavit  
7           Regarding Publication of Notice of Intent to File  
8           Petition, Exhibits A through E.

9           On February 8, 2012 the Commission received  
10          a Petition to Intervene from Routh Bolomet.

11          On April 4, 2012 the Commission received  
12          the Petition for Land use District Boundary Amendment,  
13          Exhibits 1 through 15.

14          On April 5, 2012 the Commission received  
15          notice from Petitioner that it was not seeking a 201-H  
16          Petition for Land Use District Boundary Amendment.

17          On April 11, 2012 the Commission received a  
18          Tax Map Key of the Petition Area from Petitioner.

19          On April 16, 2012 the Commission received  
20          Petitioner's Affidavit of Service of Petition for  
21          Land Use District Boundary Amendment, Affidavit of  
22          Sending Notification of Petition Filing.

23          On April 17, 2012 the Commission mailed a  
24          letter advising Petitioner that its filing had been  
25          deemed complete.

1           On April 23, 2012 the Commission received a  
2 new Notice of Intent to Intervene from Routh Bolomet.

3           On April 24, 2012 the Commission received a  
4 corrected new Notice of Intent to Intervene from  
5 Michelle Lincoln.

6           On May 1, 2012 the Commission received a  
7 new Notice of Intent to Intervene from Michelle  
8 Lincoln.

9           On May 4, 2012 the Commission received an  
10 addendum to the April 23, filing Notice of Intent to  
11 file Petition to Intervene from Routh Bolomet.

12           On May 16, 2012 the Commission received a  
13 Statement of Position from the State Office of  
14 Planning.

15           On May 17, 2012 the Commission received a  
16 Statement of Position from the Maui County Planning  
17 Department.

18           On May 25, 2012 the Commission received a  
19 copy of a letter to James Geiger and Routh Bolomet.

20           On May 29, 2012 the Commission received: an  
21 Addendum to the April 23, 2012 filing of Petition to  
22 Intervene from Routh Bolomet and a Petition to  
23 Intervene from Michelle Lincoln.

24           On May 30, 2012 the Commission received  
25 State Office of Planning's Statement of No Objection

1 to the Petitions to Intervene of both Routh Bolomet  
2 and Michelle Lincoln.

3           On June 4, 2012 the Commission received  
4 Maui County's List of Witnesses, List of Exhibits and  
5 Exhibits 1-5 including testimony for State Land Use  
6 District Boundary Amendment, Maui County Statement of  
7 No Objection to Routh Bolomet's Petition to Intervene;  
8 Maui County's Statement of No Objection to Michelle  
9 Lincoln's Petition to Intervene; Petitioner's  
10 Opposition to Michelle Lincoln's Petition to  
11 Intervene; Petitioner's Opposition to Michelle  
12 Lincoln's Petition to Intervene; Petitioner's List of  
13 Exhibits, and Petitioner's List of Witnesses.

14           Allow me to briefly describe our procedure  
15 for today in this docket. First, I will call for  
16 those individuals desiring to provide public testimony  
17 to identify themselves.

18           All such individuals will be called in turn  
19 to our witness box where they will be sworn in prior  
20 to their testimony.

21           Following completion of the public  
22 testimony portion of the proceedings, Ms. Bolomet will  
23 make her presentation. After the completion of  
24 Ms. Bolomet's presentation we'll receive any argument  
25 from Petitioner, Maui County and the State Office of

1 Planning.

2 After we've received the comments of the  
3 Petitioner, the county and the state, we'll conduct  
4 deliberations on Ms. Bolomet's petition. After  
5 completion of deliberations regarding Ms. Bolomet's  
6 petition, Ms. Lincoln will make her presentation.

7 After the completion of Ms. Lincoln's  
8 presentation we'll receive any comments from  
9 Petitioner, Maui County and the State Office of  
10 Planning. After we receive the comments of  
11 Petitioner, County and the State, we'll conduct our  
12 deliberations on Ms. Lincoln's Petition.

13 Are there any questions regarding our  
14 procedures for today?

15 MR. GEIGER: No, sir.

16 CHAIRMAN LEZY: Hearing none, Commissioner  
17 Judge.

18 COMMISSIONER JUDGE: Thank you, Chair. I'd  
19 like to ask or make a motion to go into executive  
20 session to consult with the Board's attorney on  
21 questions, issues pertaining to the board's powers,  
22 duties, privileges, immunities and liabilities.

23 COMMISSIONER CHOCK: Second.

24 CHAIRMAN LEZY: All in favor? (aye) All  
25 opposed? Folks, you can stay here. We'll go outside.

1 (Executive session was held.)

2 CHAIRMAN LEZY: (11:35) Mr. Saruwatari, is  
3 there anybody signed up for public testimony?

4 MR. SARUWATARI: We have three individual.  
5 The first is Victoria Palafox followed by Mikahala  
6 Roy.

7 CHAIRMAN LEZY: For the folks that are  
8 providing public testimony, we're here today for a  
9 very limited issue. It's the issue of whether or not  
10 the folks who have asked for permission to intervene  
11 in this matter will be given leave to intervene.

12 There will be, trust me, a number of  
13 hearings here on the substantive matters that are  
14 raised in this Petition. And people who wish to  
15 provide public testimony on the substantive matters  
16 regarding the Petition will have many opportunities to  
17 do so.

18 So we would ask today, please, limit your  
19 public testimony to the issue that's before the  
20 Commission. And that is whether or not the Petitions  
21 to Intervene should be granted or denied.

22 VICTORIA NOHEALANI KALUNA-PALAFIX  
23 being first duly sworn to tell the truth, was examined  
24 and testified as follows:

25 THE WITNESS: Always.

1           CHAIRMAN LEZY: Please state your name and  
2 address again and proceed.

3           THE WITNESS: My name is Victoria Nohealani  
4 Kaluna. I'm married to Palafox. I live at 12  
5 and-a-half mile marker Makanewa, Ukumehame located in  
6 Lahaina. Mahalo again for this opportunity to sit and  
7 I know and I thank you about the limited time I have.

8           So my main point as I noho and I sit here,  
9 I'll describe my connection to these lands of West  
10 Maui, Lahaina. My grandfather is Kukuahuakamoku. He  
11 was the kahuna for Moku'ula who took care of  
12 Kamehameha I's five-stone mahaku. That's very -- that  
13 has a lot of mana.

14           I sit here before you and I support the  
15 families of these kuleana, of these royal patent  
16 lands. And I speak again, talking of constitutional  
17 Hawai'i Nei. And I speak to you about treason which I  
18 feel is what is going on at this moment in time. I  
19 have no part in this part of treason. But my purpose  
20 and reason for coming here is to help you, those who  
21 do not understand.

22           And I hope you know that when your name's  
23 Mr. Geiger, goes upon these papers and when hate comes  
24 and teaches our governing entity of what the Hawaiian  
25 nation is, you will speak no more. This is for true.



1           Because we have lawyers sitting here and  
2 entities of higher source that should know about the  
3 constitution, the law of the lands, the law of  
4 nations. And you should be akamai to what Hague has  
5 for us as a nation.

6           So my testimony today is to cease all that  
7 you do. This is a pure warning because you know what  
8 you're doing is illegal. Thou shall not steal. Thou  
9 shall not commit false witnesses. Thou shall not  
10 kill. These are the English 10 Commandments that come  
11 before us in pure written form. We kanaka never had a  
12 written language.

13           Again, I ask you be sure you know what you  
14 are basing your votes upon because we are still a  
15 nation. A man, Mr. Thurston, Stevens and Dole, has no  
16 right to have moved on this entity called state of  
17 Hawai'i. You don't see the kanaka people sitting  
18 here. It's not because we don't care. We care. But  
19 this place is so illegal. This place should not be.  
20 I don't see a table of nobles here. I thank you.

21           CHAIRMAN LEZY: Parties, questions?  
22 Commissioners, questions? Thank you, ma'am.

23           MR. SARUWATARI: Mikahala Roy followed by  
24 Kaniloa Kamaunu.

25 xx

1 MIKAHALA ROY

2 being first duly sworn to tell the truth, was examined  
3 and testified as follows:

4 THE WITNESS: I do.

5 CHAIRMAN LEZY: Please state your name,  
6 your address and proceed.

7 THE WITNESS: My name is Mikahala Roy. My  
8 address is P. O. Box 596 Kailua-Kona, Hawai'i 96745.  
9 I am grateful to Akua, which is the name for most high  
10 God. And beneath that most high God is a pantheon of  
11 our representatives of the divine world. I'm grateful  
12 to them for reuniting me with my relative. Routh  
13 Bolomet is a relative of mine for I'm a Kanaina also.

14 And in a delightful experience in a mutual  
15 learning experience over the weekend in which I was  
16 taken to the property that you're going to be talking  
17 about today. And I'm delighted because I can feel the  
18 essence and the spirit of my ancestors talking to me.

19 We hear by forms of `aumakua, the first  
20 wildlife around us consists of birds like the Pueo.  
21 While there was one on the property that spoke to me  
22 and said, "Mikahala, you will speak and contribute and  
23 say that you are one of this vast estate of Charles  
24 Kanaina."

25 There are so many numerous heirs to this

1 estate, it will make all of our heads be full with  
2 names. And then there are those that come after. I  
3 have a grand-nephew by the name of Kilinahe which is  
4 absolutely a name in this genealogy. They are royal.  
5 They do not deserve to be treated in this fashion.

6           So I testify today in absolute defense and  
7 discussion of support for these two intervenors that  
8 seek status. In support to the testimony before me I  
9 will say I come from the land that housed the family  
10 of Lorrin Thurston.

11           And what Lorrin Thurston has done to the  
12 United Kingdom of the Hawaiian Islands under  
13 Kamehameha the Great whose temple I uphold, should not  
14 be allowed to be done in a place where truth prevails.  
15 Ha is the breath. Wai is spirit of most high God.  
16 In this place the truth will be told and that is what  
17 is coming forward today in defense of the royal lines  
18 and in defense of the children yet to come.

19           We need to be the best we can be for them  
20 and for the world, for the earth. It starts right  
21 here at home. That's who I am and that's how I  
22 contribute. And I will stand by to contribute in any  
23 fashion I may. Thank you.

24           CHAIRMAN LEZY: Parties, questions?  
25 Commissioners, questions? Thank you for your

1 testimony, ma'am.

2 MR. SARUWATARI: Kaniloa Kamaunu.

3 KANILOA KAMAUNU

4 being first duly sworn to tell the truth, was examined  
5 and testified as follows:

6 THE WITNESS: Yes.

7 CHAIRMAN LEZY: Please state your name,  
8 your address and proceed.

9 THE WITNESS: Again, my name is Kaniloa  
10 Kamaunu. I'm from 222 Waihe'e Valley Road, Wailuku,  
11 96793. As what has been proposed here today as far as  
12 reflecting upon those that are intervening, she claims  
13 to be lineal descendancy to the parcels that are  
14 there, the parcels which have Land Commission Awards  
15 and royal patents. Being such it allows her to  
16 intervene. I'm not sure about the other party because  
17 I don't know her. But as far as Routh Bolomet is  
18 concerned she does have descendancy to that land.

19 Being such, again, I will reiterate this  
20 being as such a legal forum that the party has come  
21 forward. She has made her claim as far as being  
22 attached to the property through her lineage. Being  
23 such, if this continues to go on the her side needs to  
24 be heard.

25 It needs to be presented because, again,

1 you go into the laws which afford her to be here: HRS  
2 7-1. We have HRS 172-11 and 12 which talk about the  
3 land patents. We talk about -- even though the parcel  
4 may be claimed by these people that have been  
5 purchased, they only have a color of title.

6 TMK, even though it's mentioned, by right  
7 has no title. All this does is give the county the  
8 right or to say the right to charge the person a fee  
9 so that they can show that they actually have  
10 authority over the person. They really don't have  
11 authority over the title because the title does not  
12 belong to the state of Hawai'i, nor does it belong to  
13 the United States.

14 Being such they created a TMK to show their  
15 ties to the property. But if you investigated the TMK  
16 it does not warrant it to map out what portion of the  
17 property is being taxed. It has no legal entity as  
18 far as claiming its property. Basically you're paying  
19 a fee for that parcel or part of that parcel.

20 The title they are claiming is in question  
21 again because it's the color of title, they exchange a  
22 piece of paper saying a deed was transferred to them  
23 and a payment was made. Is it legal? It is in this  
24 sense as far as the western contents is concerned.

25 But if you're going into: Is it lawful?

1 "Lawful" states that there's a part of the conscience  
2 if there is a question lawfully you have to  
3 investigate to make sure that you're lawful.

4 Is this a legal action that you're taking  
5 according to your, according to your rules of law or  
6 the creation of law? It is legal. Is it lawful? No.  
7 Because then you have to show your authority over the  
8 right to sit in these proceedings and to make a legal  
9 judgment.

10 And being that you're Commissioners  
11 assigned to this, that means you don't have the  
12 certification to be able to make *legal* decisions  
13 because you're laymen.

14 Unless you can show credentials that you  
15 have some study in law and that the state affirms that  
16 and certifies such, then action taken here is  
17 questionable because we have been sworn in to give  
18 truthful testimonies. And I have done that.

19 Being such, the parties receiving the  
20 information shall always have the power and authority  
21 to make such legal judgments.

22 If not, then this is a fiasco because it is  
23 giving authority to you as laymen, not certified by a  
24 state and county as legal authorities to give these  
25 people the opportunity to take possession of property

1 they legally -- going back to the title -- they have  
2 to tie themselves through Land Commission Award.

3 'Cause according to 172-11 the person that  
4 was awarded the title will always be the person that  
5 has the title. The word "enure" reflects that even  
6 though the person be dead -- this is what the law  
7 says -- even though the person be dead that the land  
8 will enure back to the original owner, such being  
9 whoever the legal owner of the LCA that's being  
10 presented by Routh, is always the legal and rightful  
11 owner because, again, as the Supreme Court of Hawai'i  
12 has stated, if it's been adjudicated in law, which  
13 they did in the Kingdom of Hawai'i.

14 And we had this come up where Corp. Counsel  
15 in one case stated, "Oh, it's an old law." They never  
16 said that the law was not good. All they said was "an  
17 old law".

18 And by right a law has vested rights  
19 contained and such cannot be taken away. So, see,  
20 there's complications and I must question: Do you  
21 understand the complications of the titles? Do you  
22 understand enough to make a judgment that gives them  
23 clear reign to do what they want? I have to say  
24 'a'ole. Because it took me several years to  
25 understand the tenure of Hawai'i's title. And I'm

1 still learning.

2 But to be able to show only a color of  
3 title because money and a piece of paper has been  
4 changed to make it a legal form, it is. Is it lawful?  
5 It isn't. 'Cause again it's a color of title. It has  
6 nothing more than just a façade. But in the court of  
7 the state of Hawai'i they recognize this as being  
8 legal.

9 It is not considered lawful because again  
10 "lawful" intends that you do your best according to  
11 your duties to make sure that what they present to you  
12 is correct. But, again, are you afforded the  
13 knowledge to be able to make such recommendations and  
14 such thoughts to be able to make it lawful? Many  
15 questions that need to be answered.

16 And I believe Routh gets the opportunity to  
17 intervene is only correct. Because she does have  
18 standing. She does have something at stake. And that  
19 it will be injurious to her. Thank you.

20 CHAIRMAN LEZY: Parties, questions?  
21 Commissioners, questions? Thank you. That concludes  
22 public testimony on these matters. This first item  
23 here is Ms. Bolomet's Motion to Waive the Filing Fee.  
24 I find tha I can decide that issue as a procedural  
25 matter myself.



1           Ms. Bolomet, do you have any sort of  
2 financial hardship that would prevent you from being  
3 able to pay the \$50 filing fee?

4           MS. BOLOMET: The hardship that I'm  
5 claiming I'm not bringing these cases forward. I  
6 am --

7           CHAIRMAN LEZY: Ms. Bolomet, my question to  
8 you is do you have any financial --

9           MS. BOLOMET: When I'm not working -- I'm  
10 self employed. When I'm not working I do not have  
11 income. So, yes, as long as I'm doing a second work.

12          CHAIRMAN LEZY: Are you currently employed?

13          MS. BOLOMET: No.

14          CHAIRMAN LEZY: All right. The Chair will  
15 find, then, that you're entitled to a waiver of the  
16 \$50 filing fee.

17          MS. BOLOMET: Thank you.

18          CHAIRMAN LEZY: The next matter is  
19 Ms. Bolomet's Petition to Intervene. A couple of  
20 initial matters. Mr. Geiger, Petitioner still opposes  
21 the petition?

22          MR. GEIGER: On the basis that we put  
23 forward in our moving papers. Obviously we had  
24 thought that Ms. Lincoln might be heard first. So  
25 therefore, there would only be an intervenor.

1 CHAIRMAN LEZY: I'm just asking whether  
2 you, as we sit here right now, you continue to oppose.

3 MR. GEIGER: Yes. For the same reasons,  
4 yes.

5 CHAIRMAN LEZY: And, County and State you  
6 are not opposing the intervention, correct?

7 MR. GIROUX: That's correct.

8 MR. YEE: That's correct.

9 CHAIRMAN LEZY: Ms. Bolomet, you've  
10 submitted a very detailed paper in support of your  
11 position on intervention. Is there anything you'd  
12 like to add to that briefly?

13 MS. BOLOMET: Yes, I would. Based on what  
14 I saw in the vote that I saw happen with my other  
15 property, I understand why my ancestors came to me,  
16 had me put together this next testimony I'm about to  
17 read.

18 Just as Commissioner Makua said, perhaps  
19 you don't understand the laws that will affect your  
20 decision. And though I'm not asking you to be judge  
21 and jury if I am the owner or the lineal descendant of  
22 these properties, I think you need to understand that  
23 on what grounds you may have or not have authority to  
24 assert jurisdiction.

25 I'm not asking you to, to judge if I'm the

1 owner or Kahoma's the owner. I know I'm the owner.  
2 But I know that you guys need a little bit of help so  
3 I'm going to read to you what I think will assist you  
4 in understanding the laws from which I'm basing -- not  
5 just your laws -- but some of the international laws  
6 that I'm basing --

7 CHAIRMAN LEZY: Ms. Bolomet, the only issue  
8 we're here to consider today is intervention.

9 MS. BOLOMET: Correct.

10 CHAIRMAN LEZY: Not the substantive basis  
11 for your intervention. And as I mentioned to you  
12 you've already filed a very detailed --

13 MS. BOLOMET: This is in addition --

14 CHAIRMAN LEZY: -- Petition -- I'm sorry,  
15 let me finish.

16 MS. BOLOMET: Sorry.

17 CHAIRMAN LEZY: Okay. That's one thing we  
18 need to be clear about with the intervenors here. Is  
19 that if you are granted a right to intervene in this  
20 case you're going to have to follow the exact same  
21 rules that everybody else follows, which includes  
22 allowing the Commissioners to say what they need to  
23 say. Fair enough?

24 MS. BOLOMET: Fair enough.

25 CHAIRMAN LEZY: As I started to say you

1 filed a very detailed paper in support of your  
2 Petition for Intervention. Depending on how things  
3 come out here today, you will be allowed in great  
4 detail to present your substantive case here. All  
5 that we need to have you explain to us today is why  
6 you have a right to intervene under the rules that  
7 govern this Commission. I believe you've addressed  
8 that in detail in your papers.

9           So what I'd like to ask you to do is if  
10 there's anything that you think you need to expand on  
11 on that limited issue, then please do. But it's not  
12 going to be helpful to us for you to explain the legal  
13 underpinnings of your larger position in this case.

14           MS. BOLOMET: Well, I would like to simply  
15 talk about my genealogy. And I am the sixth grand  
16 child of Ka'aaua is one of the awardees on these --  
17 that these lands belong to. He was my sixth  
18 great-grandfather. Princess Kamamalu was the daughter  
19 of Mataio Kekuanaoa. His wife was Kalima who's also my  
20 grandmother.

21           When Princess Kamamalu passed away before  
22 her father, all her lands went to her father. When  
23 her father passed away 50 percent went to my  
24 grandmother. So through those two I have the Princess  
25 Kamamalu lands and I also have the Ka'awa lands.

1           Then we have Keaohokalolei. We also have  
2 Keawaiwi. There are lineal descendants for all the  
3 lands there. And so I'm here to represent those  
4 lineal descendants, but I also believe that the  
5 Commission doesn't understand that when you took an  
6 oath to uphold the laws and your mandates, the state  
7 protects you for what you do if there's mistakes.

8           But from what I understand you hold  
9 personal liability for what you fail to do. And you  
10 need to go and check with your attorney on that  
11 because this is what I'm finding is that you do become  
12 liable for not holding up the laws that you're  
13 supposed to hold up. You took that oath.

14           So I'm asking you to consider everything  
15 that I put into my first, my Petition. And if you  
16 would like to hear more, I do have more that has not  
17 been included in that, that my ancestors asked me to  
18 share with you so that you have clarity and it makes  
19 it easier for you to make the correct decision.

20           CHAIRMAN LEZY: Commissioners, questions  
21 for Ms. Bolomet? Just a tip, Ms. Bolomet. If you are  
22 allowed intervention I'd just say you're not getting  
23 off on the right foot by threatening the Commission  
24 regarding personal liability for the actions that they  
25 take. And I think it would probably behoove you to

1 keep in the back of your mind that maybe it's not a  
2 good idea to do so with those types of things going  
3 forward.

4 MS. BOLOMET: Okay.

5 CHAIRMAN LEZY: Commissioner Judge.

6 COMMISSIONER JUDGE: Thank you.

7 Ms. Bolomet, we heard in your earlier testimony, you  
8 know, your concerns about the ownership and that there  
9 are other avenues that you're seeking regarding your  
10 land ownership issues. I'm just looking at the paper  
11 that you submitted regarding the waiver of the \$50  
12 filing fee.

13 And on Page 3 No. C. it says that the only  
14 reason that you are intervening is regarding the chain  
15 of title. And I'm just concerned about that because  
16 this body doesn't -- has no jurisdiction over title  
17 issues. So if you're intervening because of the title  
18 reasons, this body has no jurisdiction over that.

19 MS. BOLOMET: I'm intervening because there  
20 was a rule that says that they have to prove they have  
21 controlling interest in these lands in order for you  
22 to have the authority to make a ruling on these lands.  
23 That's what I understood the rules to be. And I asked  
24 Mr. Geiger at least three times for their proof that  
25 their ownership, their warrantee deed superceded my

1 allodial title.

2 I looked at everything I could find. And  
3 all I found was that Pioneer Seed had a lease at one  
4 time with some of the landowners, some of the allodial  
5 title owners. When Pioneer Seed's lease was expired  
6 there was no more renewal of lease. There wasn't a  
7 selling of the lease. But what happened during that  
8 time in history was when the government was changing.  
9 And so the U.S. started to apply their rules over  
10 these allodial titles. So Pioneer Seed assumed the  
11 lands.

12 The current people that have these lands,  
13 if you look at the chain of title, there was only a  
14 \$10 fee that was used to create that -- a conveyance  
15 fee to create that to give the illusion that they had  
16 authority over those lands.

17 COMMISSIONER JUDGE: So is it your intent  
18 during this intervention to just try and show that you  
19 have proper title and that you are a landowner in  
20 this? Is that the intent of your intervention?

21 THE WITNESS: My intent is to, is to show  
22 that Kahoma does not have control of these titles, so  
23 that their Petition cannot be seen or heard by you.  
24 And, you know, there is imminent harm that's affecting  
25 us throughout these hearings. And if it's to go

1 forward we will have continued imminent harm.

2 COMMISSIONER JUDGE: Okay. Like I said I  
3 don't believe that's the intent of our intervention  
4 rules. I mean we don't have jurisdiction over  
5 settling the title issue that you're looking for.  
6 There's another -- there's another avenue for that.

7 And I'm not a land use attorney or  
8 anything, but I don't believe that this is the avenue  
9 for you to clarify that issue. It's not this  
10 intervention process.

11 MS. BOLOMET: I understand that and I'm not  
12 asking you to clarify that. What I'm asking you to do  
13 is to notice that the Kahoma does not have control of  
14 these lands. So if I were to go and ask the LUC to  
15 change the zoning on your house, do I have -- even if  
16 I make a chain of title -- do I really have control of  
17 your house, you know? I made the chain of title, but  
18 I don't have the, what it takes to meet the  
19 requirements for me to come to you to ask you to make  
20 a decision on these lands. That's what I'm bringing  
21 up.

22 COMMISSIONER TEVES: Mr. Chairman? I have  
23 a question.

24 CHAIRMAN LEZY: Commissioner Teves.

25 COMMISSIONER TEVES: This is mostly for



1 staff. Have we determined from Petitioner who holds  
2 title to this property? Is it Scott or Bert who's  
3 handling this?

4 MR. SARUWATARI: I believe the Petition was  
5 deemed accepted.

6 COMMISSIONER TEVES: So the title is  
7 determined. And the Petitioner does have title.

8 MR. SARUWATARI: He met that criteria in  
9 the Commission Administrative Rules Chapter 15-15.

10 THE REPORTER: Excuse me. Did you say,  
11 "Met the criteria in" what?

12 MR. SARUWATARI: In the Commission's  
13 Administrative Rules Chapter 15-15.

14 CHAIRMAN LEZY: Any other questions?  
15 Mr. Geiger, would you like to add anything?

16 MR. GEIGER: No. I believe the  
17 Commissioners asked the questions that are necessary  
18 to support our opposition.

19 MS. BOLOMET: May I say something else?

20 CHAIRMAN LEZY: Briefly.

21 MS. BOLOMET: I disagree with Commissioner  
22 Judge. Because according to your rules I do have a  
23 standing as a party of interest in this. And that's  
24 according to your rules, with my allodial titles.

25 CHAIRMAN LEZY: Thank you. Commissioners,

1 what's your pleasure?

2 COMMISSIONER CHOCK: Chair, move to approve  
3 intervention.

4 COMMISSIONER MAKUA: Second.

5 CHAIRMAN LEZY: We have a motion by  
6 Commissioner Chock and second by Commissioner Makua.  
7 Discussion?

8 COMMISSIONER CHOCK: Chair.

9 CHAIRMAN LEZY: Commissioner Chock.

10 COMMISSIONER CHOCK: I'm in support of your  
11 intervention. However, I would like to echo some of  
12 the concerns raised by some of my colleagues with  
13 respect to this forum not being the appropriate forum  
14 or venue for determining who is the appropriate title  
15 holder based on our rules and our staff's work that's  
16 been done to get us to this point.

17 I think your intervention would be much  
18 more helpful on the basis of other issues that may  
19 impact your particular interest in the property and  
20 the proposed Project versus the actual status of the  
21 title of the property in question.

22 I think there's another venue that's  
23 perhaps more appropriate through the courts to address  
24 that. But that would certainly not be the LUC's  
25 responsibility. But having said that I do support

1 your intervention.

2 MS. BOLOMET: Thank you.

3 CHAIRMAN LEZY: Further discussion? Would  
4 you poll the Commission, please.

5 MR. SARUWATARI: We have a motion to  
6 approve Petition to Intervene filed by Routh Bolomet.  
7 Commissioner Chock?

8 COMMISSIONER CHOCK: Yes.

9 MR. SARUWATARI: Commission Makua?

10 COMMISSIONER MAKUA: Aye.

11 MR. SARUWATARI: Commissioner Judge?

12 COMMISSIONER JUDGE: No.

13 MR. SARUWATARI: Commissioner Teves?

14 COMMISSIONER TEVES: No.

15 MR. SARUWATARI: Commissioner McDonald?

16 COMMISSIONER McDONALD: Yes.

17 MR. SARUWATARI: Commissioner Contrades?

18 COMMISSIONER CONTRADESS: No.

19 MR. SARUWATARI: Commissioner Heller?

20 COMMISSIONER HELLER: Yes.

21 MR. SARUWATARI: And, Chairperson Lezy?

22 CHAIRMAN LEZY: Yes.

23 MR. SARUWATARI: Chair, we have five votes  
24 in support of the motion. Motion passes.

25 CHAIRMAN LEZY: You have been granted

1 intervention status.

2 MS. BOLOMET: Thank you.

3 CHAIRMAN LEZY: And, again, as a reminder  
4 to you you're required to follow all of the rules that  
5 any other party has to follow.

6 And, again, I would strongly encourage you,  
7 Ms. Bolomet, to try to temper your very strong  
8 feelings, which I can understand, to make sure that as  
9 you present yourself before the Commission you do so  
10 with decorum and the respect we give to you, you give  
11 back to us.

12 MS. BOLOMET: Absolutely.

13 CHAIRMAN LEZY: Please contact the staff  
14 with regard to dates to submit your hearing filings,  
15 witness list, exhibit list, those kinds of things  
16 Okay? You can call them probably next week would be  
17 better.

18 MS. BOLOMET: Thank you.

19 CHAIRMAN LEZY: Okay. The next item is  
20 Ms. Lincoln's Petition to Intervene. I will pose the  
21 same set of initial questions. Mr. Geiger, you  
22 continue to oppose?

23 MR. GEIGER: Only to the extent that we'd  
24 like it limited to the three issues that were  
25 particularly raised in the intervention.

1           CHAIRMAN LEZY: County and state, you have  
2 no position, correct?

3           MR. GIROUX: That's correct.

4           MR. YEE: That's correct.

5           CHAIRMAN LEZY: Ms. Lincoln, are you  
6 agreeable to the limitations that the Petitioner has  
7 proposed to the three issues that you've identified?

8           MS. LINCOLN: No, I am not.

9           CHAIRMAN LEZY: Is there something beyond  
10 the three issues that you've identified in your  
11 Petition?

12           MS. LINCOLN: I like the state motto that  
13 "The life of land is perpetuated in righteousness."  
14 And I do not know all the different issues that will  
15 be brought up. I will not do anything to delay or  
16 make your proceedings any longer than they have to be.  
17 But if some issue comes up and you're discussing it I  
18 do have common sense. I'm not educated but I do have  
19 common sense.

20           And I do live in that area. And I just  
21 noticed at the county council meetings they would ask,  
22 for example, Mr. Frampton, the West Maui  
23 representative for the West Maui Land. And they would  
24 ask him a question. And I'm thinking in my mind,  
25 "Well, ask him this." And they didn't really push

1 things to find out things.

2           So I guess I just don't want to have, ask a  
3 question and then Mr. Geiger be able to say, "Oh, no  
4 that's not part of this." I just want to be able to  
5 sure -- and I'm not gonna ask anything I don't know  
6 anything about.

7           But if there is something -- I'll give you  
8 an example: I wasn't able to make it to the first  
9 county council meeting but the second one regarding  
10 this.

11           I happened to call State Land Use and  
12 say -- one of you guys answered the phone, and said,  
13 "How come it's in front of the county council if it's  
14 over 15 acres? I thought you guys had to decide on  
15 it." And he said, "Oh, well, they're going through  
16 county council. It's just one of those steps they  
17 have to go through."

18           I'm like, "Okay." I go, "When it does come  
19 to you what kind of question will you ask?" And they  
20 said, "Oh, we're going to ask questions like where's  
21 the water coming from, where the sewage." I'm, like,  
22 "Okay."

23           Then I called the water department. I'm,  
24 like, okay, what -- you know, "What sort of this thing  
25 with this Project? Why did you approve it? Is there

1 enough water?" And they said, "No, there's not enough  
2 water meters, but because it's the 201-H process we  
3 had to issue a Show Me the Water Permit."

4 So then I called Bob Carrol, the chair of  
5 the land, and go, "Why were they given the Show Me the  
6 Water permit if there's not enough meters?" And I  
7 went through the process. But I don't know.

8 And he was kind of scolding me like, "Well,  
9 you should have brought that up before." And I'm,  
10 like, I'm just a lay person. I don't even know the  
11 questions to ask. I guess I just don't want to be  
12 limited by -- if I ask a question I don't want the  
13 lawyers saying, "Oh, no. Remember the criteria here."  
14 But I'm not gonna do anything.

15 CHAIRMAN LEZY: You should know,  
16 Ms. Lincoln, that since I've been on the Commission  
17 I've never seen an intervenor who was granted  
18 unlimited intervention, meaning that you're able to  
19 address all issues that may arise during the course of  
20 a hearing.

21 Typically intervenors are granted a right  
22 of intervention in instances where they have a  
23 particularized interest in the Petition Area at issue.

24 MS. LINCOLN: Okay.

25 CHAIRMAN LEZY: So let me just finish by

1 saying that you should probably be prepared for the  
2 fact that if you are granted intervenor status that  
3 will be on a limited basis.

4 MS. LINCOLN: I understand.

5 CHAIRMAN LEZY: Is there anything you'd  
6 likely to add?

7 MS. LINCOLN: Okay. Can you tell me  
8 exactly in lay person's term, then, what they want me  
9 to limit my testimony on? I'll just see if there's  
10 some other area that I think I might want to include.

11 CHAIRMAN LEZY: Mr. Geiger.

12 MR. GEIGER: The criteria that we believe  
13 her intervention falls under is the impact on natural  
14 systems or habitat, maintenance of agricultural  
15 resources, and the provision of housing. That, I  
16 believe, is a fair reading of the items she raised in  
17 her intervention.

18 And just for Petitioner's benefit, as the  
19 Commission knows, there are six criteria which the  
20 Commission must review this Petition under. Those are  
21 three of the six criteria.

22 MS. LINCOLN: What are the other three that  
23 I would be able to testify on?

24 CHAIRMAN LEZY: Maybe Mr. Yee will help you  
25 out. Let's take two minutes, Mr. Yee, go over that



1 information with Ms. Lincoln?

2 MS. LINCOLN: You don't have to read the  
3 whole thing, just briefly what I would not be able  
4 to...

5 CHAIRMAN LEZY: Let's go off the record for  
6 two minutes. He'll show it to you.

7 MS. LINCOLN: And can I just hand out -- I  
8 made like a little resumé since I saw the county did.  
9 You guys don't have to read it now. But just so you  
10 can kinda see where I'm coming from.

11 CHAIRMAN LEZY: You can give that to our  
12 clerk.

13 (Recess in place.)

14 CHAIRMAN LEZY: (12:20) Ms. Lincoln, you  
15 have a complete understanding now of those six  
16 criteria?

17 MS. LINCOLN: I do. And the only thing I  
18 would ask is if I could also be included in item D on  
19 the list. Since I did bring up traffic concerns that  
20 would be covered under item D on the list. That would  
21 be the only additional.

22 MR. YEE: For the Commission's information  
23 she's referring to the commitment of state funds and  
24 resources.

25 CHAIRMAN LEZY: All right. Mr. Geiger, you

1 have a problem with that?

2 MR. GEIGER: No. That would be fine.

3 CHAIRMAN LEZY: All right. With that in  
4 mind do we have a motion?

5 COMMISSIONER HELLER: So moved. "Request"  
6 to Petition subject to the limitations stated.

7 COMMISSIONER McDONALD: Second.

8 CHAIRMAN LEZY: Discussion?

9 Mr. Saruwatari, poll the Commission, please.

10 MR. SARUWATARI: On the motion to approve  
11 the Petition to Intervene filed by Michelle Lincoln  
12 with the limitations stated by the Movant:  
13 Commissioner Heller?

14 COMMISSIONER HELLER: Yes.

15 MR. SARUWATARI: Commissioner McDonald?

16 COMMISSIONER McDONALD: Yes.

17 MR. SARUWATARI: Commissioner Judge?

18 COMMISSIONER JUDGE: Yes.

19 MR. SARUWATARI: Commissioner Teves?

20 COMMISSIONER TEVES: Yes.

21 MR. SARUWATARI: Commissioner Contrades?

22 COMMISSIONER CONTRADES: Yes.

23 MR. SARUWATARI: Commissioner Makua?

24 COMMISSIONER MAKUA: Aye.

25 MR. SARUWATARI: Commissioner Chock?

1 COMMISSIONER CHOCK: Yes.

2 MR. SARUWATARI: And, Chair Lezy?

3 CHAIRMAN LEZY: Yes.

4 MR. SARUWATARI: Chair, we have eight votes  
5 in support of the motion. Motion passes.

6 CHAIRMAN LEZY: Ms. Lincoln, you heard the  
7 discussion I had with Ms. Bolomet. I would encourage  
8 you along the same lines, please, again contact staff  
9 next week with regard to submission of your hearing  
10 papers.

11 MS. LINCOLN: What exactly am -- who am I  
12 supposed to call and what am I supposed to submit  
13 exactly?

14 CHAIRMAN LEZY: You can call our executive  
15 officer. And he will be expecting your call. He will  
16 discuss with you the deadlines that you have in order  
17 to submit the papers that you have to share with the  
18 Commission and with the other parties regarding any  
19 witnesses you intend to offer, exhibits you intend to  
20 offer, things along those lines. Okay?

21 MS. LINCOLN: All right. Thank you.

22 CHAIRMAN LEZY: Anything else, folks?

23 MR. GEIGER: Chair, just a matter of  
24 clarification. You had indicated in connection with  
25 the last intervention that generally the interventions

1 are limited. I wasn't clear under the Commission's  
2 actions whether Ms. Bolomet's intervention was limited  
3 in its intervention. So I'm just asking for  
4 clarification.

5 CHAIRMAN LEZY: And that would be the one  
6 intervention that I've seen since I've been on the  
7 Commission that was not limited.

8 MR. GEIGER: Okay. Thank you. I just  
9 wanted clarification.

10 CHAIRMAN LEZY: Thank you. Anything else?  
11 Thank you very much. We're adjourned.

12

13

14 (The proceedings were adjourned at 12:20 p.m.)

15 --oo00oo--

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## C E R T I F I C A T E

I, HOLLY HACKETT, CSR, RPR, in and for the State  
of Hawai'i, do hereby certify;

That I was acting as court reporter in the  
foregoing LUC matter on the 6th day of June 2012;

That the proceedings were taken down in  
computerized machine shorthand by me and were  
thereafter reduced to print by me;

That the foregoing represents, to the best  
of my ability, a true and correct transcript of the  
proceedings had in the foregoing matter.

DATED: This\_\_\_\_\_ day of\_\_\_\_\_2012

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HOLLY M. HACKETT, HI CSR #130, RPR  
Certified Shorthand Reporter

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