

No. 07-1372

---

IN THE  
**Supreme Court of the United States**

---

STATE OF HAWAII, *et al.*,  
*Petitioners,*

*v.*

OFFICE OF HAWAIIAN AFFAIRS, *et al.*,  
*Respondents.*

---

ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF HAWAII

---

JOINT APPENDIX

---

NEAL KATYAL  
*Counsel of Record*  
600 New Jersey Ave., NW  
Washington, DC 20001  
(202) 662-9000

SHERRY PHYLLIS BRODER  
841 Bishop St., Suite 800  
Honolulu, HI 96813  
(808) 531-1411

WILLIAM K. MEHEULA  
WINER, MEHEULA &  
DEVENS LLP  
707 Richards Street  
Penthouse One  
Honolulu, HI 96813  
(808) 528-5003

*Counsel for Respondents*

SETH P. WAXMAN  
*Counsel of Record*  
JONATHAN E. NUECHTERLEIN  
JONATHAN G. CEDARBAUM  
JUDITH E. COLEMAN  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
1875 Pennsylvania Ave., NW  
Washington, DC 20006  
(202) 663-6000

MARK J. BENNETT  
*Attorney General*  
LISA M. GINOZA  
DOROTHY SELLERS  
WILLIAM J. WYNHOFF  
State of Hawaii  
425 Queen St.  
Honolulu, HI 96813

*Counsel for Petitioners*

---

PETITION FOR A WRIT OF CERTIORARI FILED APRIL 29, 2008  
CERTIORARI GRANTED OCTOBER 1, 2008

## TABLE OF CONTENTS

	Page
Docket Entries: <i>Office of Hawaiian Affairs, et al. v. Housing &amp; Community Development Corp. of Hawaii, et al.</i> , Hawaii Supreme Court No. 25570 .....	1a
Excerpts of Record on Appeal Index: <i>Office of Hawaiian Affairs, et al. v. Housing &amp; Community Development Corp. of Hawaii, et al.</i> , First Circuit Court of the State of Hawaii No. 94-0-4027 .....	15a
Excerpts of First Supplemental Record on Appeal Index: <i>Office of Hawaiian Affairs, et al. v. Housing &amp; Community Development Corp. of Hawaii, et al.</i> , First Circuit Court of the State of Hawaii No. 94-0-4027 .....	17a
Hawaii House of Representatives, Concurrent Resolution No. 179 (1993).....	19a
Plaintiffs' First Amended Complaint, filed Aug. 11, 1995 with Exhibit A: Letter dated September 23, 1994, from Attorney General Robert A. Marks to Mr. Clayton Hee (Summons omitted) .....	28a
Testimony of Davina Pomaiki'i McGregor (Transcript), Nov. 20, 2001, filed July 2, 2003.....	43a
Reply Brief of Plaintiff-Appellant Office of Hawaiian Affairs in the Hawaii Supreme Court, filed Jan. 26, 2006 .....	98a
Reply Brief of Plaintiffs-Appellants Aluli et al. in the Hawaii Supreme Court, filed Jan. 26, 2006.....	138a

## JOINT APPENDIX

## DOCKET ENTRIES

*Office of Hawaiian Affairs, et al. v. Housing &  
Community Development Corp. of Hawaii, et al.*  
Hawaii Supreme Court No. 25570

EVENT DATE	JNL CD	TITLE OF DOCUMENT(S) FILED	PAGE NO(S).
01/07/2003	NA	NOTICE OF APPEAL OHA's (1/3/03)	1-117
01/07/2003	OT	OTHER Aluli/Osorio/Kaaia/Kiili's Notice of Appeal (1/3/03)	118- 234
01/17/2003	LT	LETTERS OR CORRE- SPONDENCE dated 1/17/03 to Ronald Heller from Deputy Clerk (In- complete CADS)	235
01/17/2003	OT	OTHER CADS (Civil Appeals Docketing Statement) (Excluded) (No or- der/judgment & COS)	236- 240
01/27/2003	RT	REQUEST FOR TRAN- SCRIPT OF PROC (un- dated) Kunihiro [ECD: none indicated]	241
01/29/2003	RT	REQUEST FOR TRAN- SCRIPT OF PROC (un- dated) Tsukayama [ECD: 3/13/03]	242

2a

02/05/2003	OT	OTHER OHA's 2nd Notice of Ap- peal (2/3/03)	243- 367
02/05/2003	OT	OTHER Aluli/Osorio/Kaaiai/Kiili's 2nd Notice of Appeal (2/3/03)	368- 492
02/05/2003	LT	LETTERS OR CORRE- SPONDENCE dated 2/5/03 to William Meheula from Deputy Clerk (No CADS)	493
02/05/2003	RT	REQUEST FOR TRAN- SCRIPT OF PROC (1/17/03) Takaki 12/4/01 [ECD 2/28/03]	494
02/05/2003	OT	OTHER ***** (VOLUME #2 starts pg 495) *****	-
02/26/2003	OT	OTHER CADS (Civil Appeals Docketing Statement) (OHA's 2nd NA) (Ex- cluded)	495- 618
02/26/2003	OT	OTHER AMENDED CADS (Civil Appeals Docketing State- ment) (OHA's) (Ex- cluded)	619- 738

## 3a

03/04/2003	RA	RECORD ON APPEAL 4bxs-1D, 1DD] [Files; 1TR-11/28/01] 19Vol – CV 94-4207 see SROA	739- 897
03/04/2003	NC	NOTICE OF ENTERING CASE ON CAL	898- 899
03/06/2003	OT	OTHER RETURNED MAIL (ROA 3/4/03): Hayden Aluli “Not delivrrble” [called atty-will p/u]	-
03/06/2003	OT	OTHER ***** (VOLUME #3 starts pg 900) *****	-
03/14/2003	JS	JURISDICTIONAL STATEMENT by plaintiffs-appellants OHA	900- 1033
03/14/2003	JS	JURISDICTIONAL STATEMENT Plaintiffs-Appellants	1034- 1165
03/17/2003	RT	REQUEST FOR TRAN- SCRIPT OF PROC (3/14/03) Hulihee 12/4/01 [ECD 5/12/03]	1166
03/18/2003	XT	EXTENSION TO FILE TRANSCRIPT Ext of time (4/7/03) to file transcript Kunihiro, ap- proved	1167

4a

03/21/2003	OT	OTHER CADS (Civil Appeals Docketing Statement) (Aluli's) (Excluded)	1168- 1291
04/09/2003	CX	Clerk Extension Phone: Sherry Broder (for OHA) req for ext to file OB from 4/13 to 5/13/03	-
04/11/2003	LT	LETTERS OR CORRE- SPONDENCE From Sherry Broder re: ext of time to file OB (5/13/03) granted by clerk	1292
04/11/2003	RT	REQUEST FOR TRAN- SCRIPT OF PROC (4/10/03) Kunihiro 11/20/01, 11/21/01 [no ECD date]	1293
04/11/2003	OT	OTHER ***** (VOLUME #4 starts pg 1294) *****	-
04/11/2003	OB	OPENING BRIEF by Pia Aluli, Jonathan Oso- rio, Charles Ka'ai'ai & Keoki Maka	1294- 1496
04/21/2003	RT	REQUEST FOR TRAN- SCRIPT OF PROC (4/10/03) Takaki ["Done"]	1497

5a

04/21/2003	RT	REQUEST FOR TRAN- SCRIPT OF PROC (4/11/03) Hulihee ["Com- pleted"]	1498
04/25/2003	CX	Clerk Extension phone-Bill Wynhoff: 30- day Ext to File Answer- ing Brief from 5/21/03 to 6/20/03	-
04/25/2003	LT	LETTERS OR CORRE- SPONDENCE From William Wynhoff, AG confirming ext to file answering brief granted by clerk	1499
05/12/2003	XB	EXTENSION TO FILE BRIEF OHA & Bd of Trustees ExP Mtn to Ext Time to File OB 30 days, 5/13 to 6/12, APPRVD	1500- 1511
05/23/2003	XB	EXTENSION TO FILE BRIEF Appellees Mtn fr Ext to File AB to OB of Aluli/Osorio/etc 6/20 to 7/20; APPROVED	1512- 1520
05/23/2003	XB	EXTENSION TO FILE BRIEF OHA/Bd of Trustees Mtn to File Extended Open- ing Brief; 50pp; APPROVED	1521- 1533

6a

06/06/2003	XB	EXTENSION TO FILE BRIEF Motion ext time (7/12/03) to file OHA's opening brief, approved	1534- 1543
06/09/2003	AF	AFFIDAVITS Supp of Sherry Broder in support of OHA motion ext time to file opening brief	1544- 1551
06/12/2003	XT	EXTENSION TO FILE TRANSCRIPT Court Reporter Kuni- hiro's Req to Ext Time to File TRs to 6/17/03; APPROVED	1552
06/20/2003	XB	EXTENSION TO FILE BRIEF 2nd Mtn to Ext Time to File AB to OB of Aluli, Osorio et al 7/20 to 8/19; APPRVD	1553- 1561
07/01/2003	RT	REQUEST FOR TRAN- SCRIPT OF PROC (6/25/03) Kilroy [completed]	1562
07/08/2003	XB	EXTENSION TO FILE BRIEF OHA's ExParte Mtn for Ext of Time to File Open- ing Brief (8/11/03) - APPROVED	1563- 1572



## 7a

07/17/2003	XB	EXTENSION TO FILE BRIEF 3rd Motion ext time (9/18/03) to file AB to OB filed 4/11/03, approved	1573- 1581
08/11/2003	OT	OTHER ***** (VOLUME #5 starts pg 1582) *****	-
08/11/2003	OB	OPENING BRIEF by pltff-aplnt OHA	1582- 1849
09/10/2003	CX	Clerk Extension Phone ext (10/20/03) to file answering brief by Bill Wynhoff	-
09/11/2003	LT	LETTERS OR CORRE- SPONDENCE From William Wynhoff confirming ext to file opening brief granted by clerk	1850
09/16/2003	XB	EXTENSION TO FILE BRIEF Motion ext time (10/20/03) to file opening brief, approved	1851- 1860
09/26/2003	OT	OTHER Motion to file answering brief of more than 35 pages (70 pgs) approved	1861- 1869
10/14/2003	AB	ANSWERING BRIEF	1870- 1955

## 8a

10/23/2003	XB	EXTENSION TO FILE BRIEF Pltffs-Aplnts' Motion for Ext of Time to File Reply Brief (12/26/03) – APPROVED	1956- 1964
10/27/2003	XB	EXTENSION TO FILE BRIEF Motion ext time (12/26/03) to file OHA's reply brief, approved	1965- 1974
12/05/2003	XB	EXTENSION TO FILE BRIEF 2nd Mtn Ext Time to File Pl-Aplnts Aluli etal RB fm 12/26/03 to 1/26/04; APPROVED	1975- 1983
12/11/2003	XB	EXTENSION TO FILE BRIEF OHA & Bd of Trustees Mtn to Ext Time to File RB from 12/26/03 to 1/26/04; APPRVD	1984- 1994
12/11/2003	OT	OTHER ***** (VOLUME #6 starts pg 1995) *****	-
01/21/2004	RX	Rcv Mtn to Extend Rec'd OHA & Bd of Trustees' exparte mtn to file extended reply brief (30 pgs)	-

9a

01/21/2004	ME	MEMO IN OPPOS/ SUPPORT/ RESPONSE Opposition to OHA's Mo- tion to file extended reply brief	1995- 1999
01/22/2004	XB	EXTENSION TO FILE BRIEF Pltffs-aplnts OHA & Bd of Trustees' exparte mtn to file extended reply brief	2000- 2012
01/22/2004	PM	Procedural Motion Order Grant in part pltffs- aplnts' mtn to file ex- tended reply brief to 25 pgs	2013
01/26/2004	RB	REPLY BRIEF by aplnts ALULI, OSORIO, KA'AI'AI, & KI'ILI	2014- 2031
01/26/2004	RB	REPLY BRIEF by pltffs-aplnts OHA & Bd of Trustees	2032- 2071
02/18/2004	OR	ORDERS Assignment No. 04-05 (SC)	2072
02/19/2004	OT	OTHER Certificate of recusal (Duffy)	2073

10a

03/04/2004	OT	OTHER ADDRESS UPDATE: 707 Richards St PH1 Hon 96813	-
07/31/2006	SR	SUPPLEMENTAL RECORD ON APPEAL 11TRs (12/4/01 – Takaki, 12/4/01 – Hulihee, 11/27/01 - three fr Kilroy, 11/29/01 – three	2074- 2078
07/31/2006	OT	OTHER (ctd) for Kilroy, 11/30/01, 11/20/01 & 11/21/01)	-
02/09/2007	SR	SUPPLEMENTAL RECORD ON APPEAL 2NC SROA (EXH LIST ONLY fr Shelf 77 & 78 that is RETAINED)	2079- 2147
02/27/2007	LT	LETTERS OR CORRE- SPONDENCE Inform chnge Addr: Winer Meheula & Devens OceanVwCtr, 707 Rich- ards St, PH1, Hon 96813	2148
02/27/2007	OT	OTHER RETURN MAIL -- 2nd SROA fld 2/9/07-resent: Wm Meheula, 707 Rich- ards St, PH-1, Hon 96813	-
11/14/2007	NO	MINUTE ORDER/NO ORAL ARGUMT Minute Order (NOA) [SERVED]	2149

11a

11/14/2007	SR	SUPPLEMENTAL RECORD ON APPEAL THIRD [2bxs of Exhib- its]	2150- 2153
11/21/2007	OT	OTHER RETURNED MAIL (SR 11/14/07): William Me- heula, remailed to Ocean View Center,	-
11/21/2007	OT	OTHER (contd) 707 Richards St., PH1, Honolulu, HI 96813	-
11/21/2007	OT	OTHER Appellants Mtn for Re- tention of Oral Argument	2154- 2194
11/23/2007	OT	OTHER OHA's motion for reten- tion of oral argument	2195- 2234
11/27/2007	OT	OTHER Aplees Housing's MTN Strike Aplnts' Stmt of Reasons filed 11/21/07 & 11/23/07; AG	2235- 2243
11/28/2007	LT	LETTERS OR CORRE- SPONDENCE Ltr dated 11/27/07 re Rle28j – Citation of Sup- plemental Authorities; Broder	2244- 2245

12a

11/28/2007	LT	LETTERS OR CORRESPONDENCE from Sherry Broder re Citation of Supplemental Authorities	2246- 2247
11/29/2007	ME	MEMO IN OPPOS/ SUPPORT/RESPONSE Aplnts' Memo in Op- positn Aplees' MTN to Strike 11/21/07 Stmt Rea- sons, etc; Meheula	2248- 2255
11/29/2007	LT	LETTERS OR CORRE- SPONDENCE Re Rle28j: Briefs on Re- serve Questions; Meheula	2256- 2283
12/03/2007	LT	LETTERS OR CORRE- SPONDENCE Re Rle28J Citation of Supplemental Authori- ties; Sherry Broder	2284
12/03/2007	ME	MEMO IN OPPOS/ SUPPORT/RESPONSE Aplnt OHA's Memo in Opposition to Aplees MTN Strike Aplnts Stmt of reason; Broder	2285- 2291
12/04/2007	LT	LETTERS OR CORRE- SPONDENCE re HRAP Rle28j - Cita- tion of Supplemental Au- thorities; Wynhoff, AG	2292- 2294

13a

12/17/2007	AJ	ASSIGN OF SUBST JUDGE/JUSTICE (Derrick Chan, 1CC, in place of Duffy) [SERVED]	2295
12/20/2007	OR	ORDERS GRANTING part & DENYING part Aplees MTN to Strike Aplnts' Stmnt of Reasons -- MORE-	2296- 2297
12/20/2007	OT	OTHER [CNTD]--support MTNs Retentn Oral Argmnt DENYING Plntf <sup>2</sup> MTN RetentnOrlArgmt [SRVD]	-
01/31/2008	OP	OPINION Vacated & remanded w/ instructions, by CJ Moon	2298- 2390
02/01/2008	RC	RECEIPT (DOCUMENT TRANSMITTED) for Opinion of the Court	2391
02/21/2008	RO	Rcv Other Motions RECD -- Ltr asking fr decision concerning claim fr ceded land; J Maunu- pau	-
03/24/2008	SJ	SC Judgment on Appeal Opinion of Supreme Court Was Entered on 1/31/08 [SERVED]	2392- 2396

14a

03/25/2008	RC	RECEIPT (DOCUMENT TRANSMITTED) for Judgment on Appeal	2397
05/05/2008	LT	LETTERS OR CORRE- SPONDENCE from William Suter, USSC: Petition for Writ of Certiorari Was Filed 4/29/08 &	2398
05/05/2008	OT	OTHER (ctd) Placed on Docket 5/2/08 as No. 07-1372	-
10/06/2008	LT	LETTERS OR CORRE- SPONDENCE US Supreme Court en- tered Order GRANTING Petn fr Writ of Certio- rari; Suter, Clerk	2399



**EXCERPTS OF RECORD ON APPEAL INDEX**  
*Office of Hawaiian Affairs, et al. v. Housing &  
 Community Development Corp. of Hawaii, et al.*  
**First Circuit Court of the State of Hawaii**  
**No. 94-0-4027**

	<b>TITLE OF DOCUMENTS</b>	<b>Page</b>
1994		
NOV 04	Complaint for Declaratory and In-junctive Relief; Summons	01-08
1995		
MAY 10	Notice of Dismissal (Rule 28) (Initial Complaint 11-04-1994) As to: Yamamoto, Al; Mills, Clarence; Esaki, Dennis; Aotani, Edward; Imai, Eugene; Keomaka, Edison	09
MAY 10	Notice of Dismissal (Rule 28) (Initial Complaint 11-04-1994) As to: Murakami, Hideo; Housing Financing Dev Corp[;] Conant, Joseph; Min, John; Schultz, Jeanne; Sanders, D.R. Johnnie	10
MAY 12	Return Receipt (R-28) (Del Date: 5/11/95)	11
MAY 17	Pltffs' Objection to Notices of Dismissal Filed 5/10/95; Affidavit of Sherry P. Broder; Exhibit A	12-17

- MAY 30 Order Withdrawing Notice of Dismissal (Initial Complaint 11-4-1994) 18  
 As to: Murakami, Hideo; Housing Financing Dev Corp[;] Conant, Joseph; Min, John; Schultz, Jeanne; Sanders, D.R. Johnnie (Cond Service filed within 4 mos)
- MAY 30 Order Withdrawing Notice of Dismissal (Initial Complaint 11-4-1994) 19  
 As to: Yamamoto, Al; Mills, Clarence; Esaki, Dennis; Aotani, Edward; Imai, Eugene; Keomaka, Edison (Cond Service filed within 4 mos)
- JUN 02 Return and Acknowledgment of Service (Srvd: Complaint etc. on Robert A. Marks thru Noreen Kaneda, secy for Attney Gen 11/28/94 per Randilyn Riney) 20
- JUL 14 Plaintiffs' First Amended Complaint for Declaratory & Injunctive Relief; Exhibit A; Summons 21-36

\* \* \*