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LAND USE COMMISSION  
STATE OF HAWAII

2015 DEC -4 P 12: 52

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December 4, 2015

*Sent via U.S.P.S. First Class Mail  
and Email to: [luc@dbedt.hawaii.gov](mailto:luc@dbedt.hawaii.gov)*

Daniel E. Orodener, Executive Officer  
State of Hawai'i Land Use Commission  
Department of Business, Economic Development & Tourism  
P.O. Box 2359  
Honolulu, Hawai'i 96804

Re: **In the Matter of the Petition of Makila Land Company, LLC**  
**Docket No.: A 15-799**

Dear Mr. Orodener:

On behalf of the Makila Plantation Homeowners Association, Inc. ("Makila HOA"), please accept these comments in response to the Environmental Impact Statement Preparation Notice published in the Office of Environmental Quality Control's November 8, 2015 bulletin *The Environmental Notice*.

Please also accept this submission as a formal request that Makila HOA be consulted during the drafting of the Environmental Impact Statement.

This Project seeks to impose serious and permanent threats to West Maui's agriculture and community. In addition to Makila Plantation Homeowners Association, Inc.'s *Amended* Notice of Intent to Intervene, dated October 9, 2015, Makila HOA submits the following comments for consideration during the environmental impact assessment process:

**COMMENT 1. Systematic Dismantling of West Maui's Agricultural Land.**

There is a planned and coordinated effort to convert once-productive West Maui agricultural land into residential neighborhoods and urban development. Such opportunistic action permanently removes good agricultural land from the state's limited supply.

When West Maui's sugar cane industry collapsed in the 1990's, the available land supply was purchased and held as inventory for future development. A decision was made not to put it into productive agricultural use, letting its market value appreciate awaiting other development. Initially, one subdivision within the old sugar cane lands was proposed that conformed to the existing agricultural laws and zoning. Then another subdivision, but with smaller lot sizes, and so on and so on.

Daniel E. Orodener

State of Hawai'i Land Use Commission

Re: In the Matter of the Petition of Makila Land Company, LLC (Docket No.: A 15-799)

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*West Maui Land Company, Inc. (WML) facilitates all aspects of land management from initial acquisition, to subdivision, and real estate sales to the end buyer. Mahanalua Nui (also known as Launiupoko), Pu'unoa, Makila Plantation, Makila Ridge, and Makila Nui, Olowalu Makai/Mauka and Peahi Hui are our completed projects ...*

The cumulative effect of such piecemeal residential development is sprawl and spot zoning, with the gross reduction of agricultural land. The pending project is another step in the overall plan to convert agricultural land into residential neighborhoods.

*... while Kahoma Residential, Makila Rural, Haiku Town Acres, and Olowalu Town are current projects.*

Both of the above quotes were taken directly from West Maui Land Company's website: <http://www.westmauland.com/index/land-development>.<sup>1</sup> Apparently no longer interested in continuing the pretext to reenergize a community "with the goal to facilitate small-scale farming and ranching ... [and] diversified agriculture", the applicant now proposes to cut up the agricultural land into 200 – 225 homesites, including a change of more than 1.174 million square feet to urban, which is the State's most intensive Land Use District. See the same webpage.

**Good agricultural land should be cherished and protected, not discarded as waste.** Being an island in the middle of the world's largest ocean, good agricultural land should not be squandered. It is clear that the cumulative effect of West Maui Land Company's project development is to urbanize and extend planned development boundaries, wholly infringing and permanently decimating the possibility of future agricultural uses. The applicant has previously described to community members that the existing use and zoning is a "waste," i.e. the agricultural use of this land is a waste. This statement provides perspective. The only way such land could be described as a waste because you want to make more money from doing something that the current law does not permit. Why put only one house on several acres when there is space to build multiple houses and make a lot more money? There is clearly a disregard for the respectful use of, and need to protect, good agricultural land. It may be the applicant's opinion that the agricultural use is wasteful, but the State Legislature apparently disagreed when it put this environmental review process into place: "It is the purpose of this [Environmental Impacts Statements] chapter to establish a system of environmental review which will *ensure that environmental concerns are given appropriate consideration* in decision making along with economic and technical considerations." HRS §343-1 (emphasis supplied).

Should the applicant's project proceed with the district boundary amendment, a very strong argument will eventually be made, as it has been in the past (see *Kahoma* project) that the adjacent parcels should also be rezoned, citing to the fact that they are now surrounded by

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<sup>1</sup> All of the referenced projects, except for two, are on Maui's West Side. The *Kahoma Residential* (FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER, filed April 5, 2013) project was previously successful in obtaining a district boundary amendment from "agricultural" to "urban." In *Kahoma*, however, the project is within walking distance of Lahaina's urban core and was surrounded by existing intensive uses, including industrial.

residential neighborhoods, including rural, and within a short district of an urban zone. This application should not be reviewed in isolation, but considered in light of the overall strategy of the applicant to convert once prosperous agricultural land into homes and buried infrastructure stretching from the proposed Olowalu Town (A10-786, pending) to Kahoma Residential (A12-795).

**COMMENT 2. Direct, indirect and cumulative impacts.**

There are significant impacts associated with granting a district boundary amendment, thereby changing the character of the land and community from agriculture to a small town of 1,000 or so people.

Some of the direct consequences include such concerns as:

- i) Urban sprawl – expansion of infrastructure, public service
- ii) Traffic congestion
- iii) Increased pressure on existing fresh water supplies
- iv) Waste disposal
- v) Increased pressure on the coast due to a larger manmade footprint mauka, causing coastal wats be exposed to runoff and other pollutants
- vi) Construction runoff utilizing similar standards has led to excessive brown water flooding along DT Fleming and Honokahua Bay – reference is made to the recent debacles of the Mahana Estates subdivision and the engineering and site plans, previously approved and thought to be adequate utilizing Best Management Practices, which have resulted in marine ecosystem damage.<sup>2</sup> Now is the time to respectfully plan for the environment, instead of relying upon a one-size-fits-all construction standard and weak after-the-fact enforcement.

Some of the indirect impacts to consider include:

- i) Pollution of the land and ocean with waste, and the sky with lights
- ii) *De facto* reprioritization of the State Planning Goals (giving more weight to a private developer's return through the minimum affordable housing standards over the need to protect a valuable, limited resource necessary to the state for sustainability)
- iii) Change in the character of the community
- iv) Infringement or other harm to wildlife
- v) Commercialization and degradation of green space rewarded and appreciated by the County's largest industry: tourism
- vi) Proximity of residences so close to agriculture creates management challenges to address drift, dust and odor from agricultural operations.

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<sup>2</sup> See Rockett, Louise, "Environmentalists, county concerned about runoff from Mahana Estates," September 3, 2015 - See more at: <http://www.lahainanews.com/page/content.detail/id/531877/Environmentalists--county-concerned-about-runoff-from-Mahana-Estates.html?nav=19#sthash.Fegb4P8H.dpuf>; Rockett, Louise, "Scientists committed to addressing runoff issue at Honokahua Bay," September 3, 2015 - See more at: <http://www.lahainanews.com/page/content.detail/id/531895/Scientists-committed-to-addressing-runoff-issue-at-Honokahua-Bay.html?nav=19#sthash.cLalZ11v.dpuf>.

Some of the cumulative impacts may lead to:

- i) Encouraging broad development of agricultural land by hiding behind a limited justification of "affordable housing"
- ii) Setting precedent for the conversion of very good agricultural land for other uses
- iii) Change in the character of the community

**COMMENT 3. Significance of Permanently Removing Agricultural Lands.**

It was succinctly stated by Mark Twain to: "Buy land, they're not making it anymore." Neither the Applicant, State or County can make more agricultural land. Whatever exists is the most that we will have – its availability should not be lightly dismissed and it is not wasteful zoning. Converting agricultural lands, with all of the rights and opportunities appurtenant thereto, to rural and urban, where the same rights to farm may be considered an actionable nuisance, is dangerous and not in line with the state's goals. Good agricultural land should be used for agricultural ventures. Urban lands and marginal agricultural lands have been identified as being suited for other possible, higher density and higher impact, uses. The Applicant purchased the land and knew it was zoned for agricultural uses.

**COMMENT 4. Artificial ultimatum.**

The Applicant has presented an artificial ultimatum that the LUC must consider the private developer's economic benefit of building housing against the need to preserve and protect limited agricultural land. The Applicant is not entitled to have the state be complicit in helping him maximize his profits. It is possible to sell the land, retaining the agricultural character and district standards, for less than market value. It is really just a choice to be made. The applicant is familiar with abiding by agricultural district requirements; after all, the same applicant (or its principals) is engaged in a current agricultural development with 5 – 15 acre lots between Kai Hele Ku and Hokeokeo Place, makai of the proposed Makila Rural Community development. The applicant should not be allowed to "waste" good agricultural land by installing a town center and homes on lots too small for farming and without any "Right to Farm" protection. The district boundary does not need to be changed at the expense of the neighbors and community at large. The Applicant's profit is of no concern during this review process. Hiding behind housing is an attempt to force the Land Use Commission to choose between priorities. Here, the default is that the agricultural land district already exists, and there is nothing to stop the applicant from developing agricultural lots to be sold as affordable housing except the motivation to personally profit

**COMMENT 5. Hawaii State Plan.**

This project should be carefully scrutinized as to whether it furthers the Hawaii State Planning Act (Hawaii Revised Statutes, Chapter 226).

At least the following stated objectives, policies and priorities are relevant and should be kept in mind:

- *Growth and development of diversified agriculture throughout the State. HRS § 226-7(a)(2).*

- *An agriculture industry that continues to constitute a dynamic and essential component of Hawaii's strategic, economic, and social well-being. HRS §226-7(a)(3).*
  - *Encourage agriculture by making the best use of natural resources. HRS §226-7(b)(2).*
  - *Foster increased public awareness and understanding of the contributions and benefits of agriculture as a major sector of Hawaii's economy. HRS §226-7(b)(5)*
  - *Seek the enactment and retention of federal and state legislation that benefits Hawaii's agricultural industries. HRS §226-7(b)(6).*
  - *Strengthen diversified agriculture by developing an effective promotion, marketing, and distribution system between Hawaii's food producers and consumers in the State, nation, and world. HRS §226-7(b)(7).*
  - *Enhance agricultural growth by providing public incentives and encouraging private initiatives. HRS §226-7(b)(9).*
  - *Assure the availability of agriculturally suitable lands with adequate water to accommodate present and future needs. HRS §226-7(b)(10).*
  - *In addition to the State's priority on food, expand Hawaii's agricultural base by promoting growth and development of flowers, tropical fruits and plants, livestock, feed grains, forestry, food crops, aquaculture, and other potential enterprises. HRS §226-7(b)(12).*
  - *Promote and assist in the establishment of sound financial programs for diversified agriculture. HRS §226-7(b)(14).*
  - *Facilitate the transition of agricultural lands in economically nonfeasible agricultural production to economically viable agricultural uses. HRS §226-7(b)(16).*
  - *Increase and develop small-scale farms. HRS §226-7(b)(18).*
- and
- *Greater opportunities for Hawaii's people to secure reasonably priced, safe, sanitary, and livable homes, located in suitable environments that satisfactorily accommodate the needs and desires of families and individuals, through collaboration and cooperation between government and nonprofit and for-profit developers to ensure that more affordable housing is made available to very low-, low- and moderate-income segments of Hawaii's population. HRS §226-19(a)(1).*
  - *The orderly development of residential areas sensitive to community needs and other land uses. HRS §226-19(a)(2).*
  - *Stimulate and promote feasible approaches that increase housing choices for low-income, moderate-income, and gap-group households. HRS §226-19(b)(2).*
  - *Increase homeownership and rental opportunities and choices in terms of quality, location, cost, densities, style, and size of housing. HRS §226-19(b)(3).*
  - *Promote appropriate improvement, rehabilitation, and maintenance of existing housing units and residential areas. HRS §226-19(b)(4).*
  - *Promote design and location of housing developments taking into account the physical setting, accessibility to public facilities and services, and other concerns of existing communities and surrounding areas. HRS §226-19(b)(5).*

- *Facilitate the use of available vacant, developable, and underutilized urban lands for housing. HRS §226-19(b)(6).*

*and*

- *Encourage urban growth primarily to existing urban areas where adequate public facilities are already available or can be provided with reasonable public expenditures, and away from areas where other important benefits are present, such as protection of important agricultural land or preservation of lifestyles. HRS §226-104(b)(1).*
- *Make available marginal or nonessential agricultural lands for appropriate urban uses while maintaining agricultural lands of importance in the agricultural district. HRS §226-104(b)(2).*
- *Restrict development when drafting of water would result in exceeding the sustainable yield or in significantly diminishing the recharge capacity of any groundwater area. HRS §226-104(b)(3)*
- *Encourage restriction of new urban development in areas where water is insufficient from any source for both agricultural and domestic use. HRS §226-104(b)(4).*
- *In order to preserve green belts, give priority to state capital-improvement funds which encourage location of urban development within existing urban areas except where compelling public interest dictates development of a noncontiguous new urban core. HRS §226-104(b)(5).*
- *Pursue rehabilitation of appropriate urban areas. HRS §226-104(b)(7).*
- *Direct future urban development away from critical environmental areas or impose mitigating measures so that negative impacts on the environment would be minimized. HRS §226-104(b)(9).*
- *Utilize Hawaii's limited land resources wisely, providing adequate land to accommodate projected population and economic growth needs while ensuring the protection of the environment and the availability of the shoreline, conservation lands, and other limited resources for future generations. HRS §226-104(b)(12).*

*and*

- *Seek to use marginal or non-essential agricultural land and public land to meet housing needs of low- and moderate-income and gap-group households. HRS §226-106(1).*
- *Give higher priority to the provision of quality housing that is affordable for Hawaii's residents and less priority to development of housing intended primarily for individuals outside of Hawaii. HRS §226-106(8).*

*and*

- *Encourage balanced economic, social, community, and environmental priorities. HRS §226-108(1).*
- *Encourage planning that respects and promotes living within the natural resources and limits of the State. HRS §226-108(2).*
- *Promote decisions based on meeting the needs of the present without compromising the needs of future generations. HRS §226-108(5).*

It is clear that providing limited affordable housing should not come at the expense of permanently removing good agricultural land. Affordable housing with greater density concentration should be focused on making better use of existing urban areas and, if necessary, entry upon marginal agricultural land. The land under consideration has been underutilized because the Applicant chose not to use it for agricultural purposes. This doesn't change the soil classification that it is highly rated and good agricultural soil available for such uses.

**COMMENT 6. Decision-making criteria.**

The environmental impact review process should consider matters which are required to be addressed by the Land Use Commission when considering boundary amendments. The threshold for a change of the designated district (i.e. from agriculture to urban or rural) requires a finding upon the clear preponderance of the evidence that (1) the change is reasonable, (2) the change does not violate HRS §205-2, and (3) that the change is consistent with the Hawaii State Plan and the considerations set forth in HRS §205-17<sup>3</sup>. See *Hawaii Administrative Rules ("HAR"), Chapter 15, Section 15-15-77.*

Interestingly, one of the criteria for consideration set forth at §15-15-77(b)(6) is whether the land was in intensive agricultural use for two years prior to the filing of the petition. A developer could seemingly be rewarded for letting the land sit fallow (the exact opposite of what the state wants to encourage for good agricultural land) during this waiting period. The applicant has stated as much in its petition and EISPN. However, despite this perverted incentive NOT to use the agricultural land, that same section (HAR §15-15-77(b)(6) ) goes on to state that "... lands with a high capacity for intensive agricultural use shall not be taken out of the agricultural district unless the commission finds either that the action: (A) will not substantially impair actual or potential agricultural production in the vicinity of the subject property or in the county or

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<sup>3</sup> HRS § 205-17 states:

Land use commission decision-making criteria.

In its review of any petition for reclassification of district boundaries pursuant to this chapter, the commission shall specifically consider the following:

- (1) The extent to which the proposed reclassification conforms to the applicable goals, objectives, and policies of the Hawaii state plan and relates to the applicable priority guidelines of the Hawaii state plan and the adopted functional plans;
- (2) The extent to which the proposed reclassification conforms to the applicable district standards;
- (3) The impact of the proposed reclassification on the following areas of state concern:
  - (A) Preservation or maintenance of important natural systems or habitats;
  - (B) Maintenance of valued cultural, historical, or natural resources;
  - (C) Maintenance of other natural resources relevant to Hawaii's economy, including agricultural resources;
  - (D) Commitment of state funds and resources;
  - (E) Provision for employment opportunities and economic development; and
  - (F) Provision for housing opportunities for all income groups, particularly the low, low-moderate, and gap groups;
- (4) The standards and criteria for the reclassification or rezoning of important agricultural lands in section 205-50;
- (5) The county general plan and all community, development, or community development plans adopted pursuant to the county general plan, as they relate to the land that is the subject of the reclassification petition; and
- (6) The representations and commitments made by the petitioner in securing a boundary change.

State; or (B) is reasonably necessary for urban growth.” Sandwiching an intensive residential and urban development, along with the appurtenant infrastructure, between existing agricultural land only fractures the land, tending toward more urban development and less agricultural applications. No evidence or other justification has been offered that the conversion from agriculture to rural or urban is necessary for growth. To the contrary, the Maui Island Plan and Hawaii State Plan encourage making better use of existing urban lands through infill development and, recently, broadened use of ohanas.

This project offers very little in furtherance of the standards of review, nowhere near the requisite “clear preponderance of the evidence.” Trying to force a square peg into a round hole, the overstated compliance with the Maui Island Plan and housing does not fit legislated decision-making criteria.

Compliance with the Maui Island Plan is only a half-truth, of course, because the Maui Island Plan does not encourage the broad urban growth proposed by the applicant. The inclusion of urban growth in this location appears to run afoul of the express goals of the Maui Island Plan. How is it, then, that this Rural Growth boundary came to be included in the Maui Island Plan? It does not have uniform boundary or boundaries of significance given the land’s topography, such as streams, ridges, etc. The only singular characteristic of this Rural Growth boundary is that it is wholly owned by the applicant. Perhaps intensive lobbying, and a focus on the entire island-wide plan, diverted attention from this seemingly innocent “rural” development. The term “rural” can be deceptive, though, if attention is not paid to what this means: hundreds of ½ acre lots with a home and ohana and supporting infrastructure. “Typical subdivisions utilizing the one-acre and one-half acre minimum lot sizes ... often produce a landscape pattern more appropriately identified as large-lot residential.” *Maui Island Plan at p. 7-13.*

With regard to housing, the vast majority of the housing will be sold at market rates to anyone who can afford it, which does not practically help Maui’s working families.<sup>4</sup> The smaller “affordable housing” element needs to be scrutinized to determine the value of this representation.

HAR §15-15-18 sets forth several standards for determining “U” urban district boundaries. Makila HOA submits that this spot dense development does not satisfy any of the standards, other than that this is high quality land (see HAR §15-15-18(3), which is something we all agree upon. The urban aspect should be withdrawn in its entirety by the applicant.

HAR §15-15-21 sets forth three standards relevant to a rural “R” district. (1) The first suggests that the area consists of small farms. A “small farm” is undefined and this standard is a bit quizzical because, for all practical purposes, after a house, ohana and infrastructure is installed on a half-acre lot, there really isn’t any room left for a “small farm,” and rezoning would strip the farmer of the protection afforded by Right to Farm laws. (2) The second suggests that these

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<sup>4</sup> 52% of Maui home sales between January 2008 through September 2015 were to mainland and foreign buyers, at prices upwards of almost twice the average amount a local buyer was paying. See *Department of Business, Economic Development, and Tourism, State of Hawaii, “Residential Home Sales in Hawaii – Trends and Characteristics”, Figures 5 and 6 at p. 5, November, 2015 (“DBEDT Report”).*

smaller lots might be acceptable if intermingled with small farms and low density residential lots, such as exist in the nearby agricultural communities. It remains to be seen why a "rural" designation is justified, essentially extinguishing farming, considering that successful agricultural subdivisions already exist in the community. (3) The third contemplates land that is surrounded by or contiguous to an existing rural district and is not suited to low-density residential uses for small farms or agriculture. This last standard seems to be a catch-all for land that is not of an agricultural character. This factor does not apply because the subject land has already been identified as being good agricultural land.

**COMMENT 7. Scrutinize affordable housing claims.**

The Applicant asserts that low income housing (workforce housing) will be built as part of this project. This, of course, is not gratuitous but required by law. The overall plan to construct more housing is repeatedly touted in support of the merits of this project. Of course, the bulk of the land and residences will be at the more expensive market prices, outside the range of the affordable home buyer. Therefore, only a limited supply would be available to the affordable home buyer. What does this mean? Vague standards and criteria have been referenced, but such generalities do not allow for a meaningful consideration of what is being proposed. Context would be helpful in reviewing the proposal. Perhaps an example could be provided using some actual and relevant information. Would a family having a household income of \$80,000 be able to afford a home? If so, under what terms (i.e. financing, how many would be available at that price). What about the remaining residences, those not dedicated to affordable housing, at what price would they be sold (perhaps using the September 11, 2015 submission date) and to whom<sup>5</sup>? What percentage of the total homes and land do the market sales represent as compared to the whole development project (not including the land required to be set aside as open space)?

**COMMENT 8. Inconsistencies should be addressed.**

Further inquiry and review tends to reveal significant inconsistent representations made to the public at-large and/or public agencies. By way of example, with respect to OPEN SPACE the applicant's EISPN at page 12 states:

*Approximately 50 percent of the community will be open space for agriculture, community gardens, trails, parks, and natural areas. The open space area will include a 500-foot wide greenbelt on the Makai side of the community to ensure an open space buffer between the Lahaina Bypass and the proposed dwellings and commercial structures.*

However, the applicant does not report that this 50% open space will include restrictive covenants on private lots sold, restricting the building space and, therefore, including this portion of a lot contained in a deed restriction toward the "open space" count. The applicant's definition of "open space" seems deceptive or, at least, very different from what the general public and others would expect to be designated as open space, because, "yes" the applicant is counting portions of people's backyards in their open space claim.

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<sup>5</sup> 71.3% of homes sold on the West Side are to mainland and foreign buyers, and while local residents end up paying on average \$541,009, foreign buyers pay on average \$961,265! See DBEDT Report at Tables 1 and 2, respectively.

Another example concerns the applicant's representation concerning COMMUNITY OUTREACH that occurred "with nearby residents and stakeholders as well as West Maui associations, groups, and individuals between 2006 and 2008." The applicant asserts that the submission of the Makila Rural Community project is the product of the community outreach resulting in the Maui Island Plan. There are several problems with the combined representation:

- a. None of the owners in Makila HOA can recall the community involvement concerning, or subsequent disclosure of the applicant's plan, concerning the conversion of agricultural land to a dense ½ acre residential community with over 150 homes.
- b. The Maui Island Plan, at least as it relates to the subject project, appears to be the product of a one-sided lobbying effort by the applicant, mixed in with the rest of the island-wide planning. The Maui Island Plan identifying this "Rural Growth" area is actually contrary to the express goals and intentions of responsible long-term planning for Maui.
- c. The applicant relies on conditions that existed nearly a decade ago. The applicant was likely one of the only owners of adjacent property at the time and so there was likely little, if any, meaningful conversation from interested parties. To the extent that there was any input, the information is stale. Awareness of the need to protect agricultural lands, combined with the community concern about residential and commercial sprawl and the detrimental impact upon aesthetic and natural resources renders any such conversations from almost a decade ago stale.

#### COMMENT 9. MAUI ISLAND PLAN.

The Executive Summary for the Maui Island Plan, adopted December 28, 2012, stated that

**One particular facet of Maui was prioritized by nearly everyone who participated in our community meetings: the desire to maintain the small towns and open countryside that is such a large part of who and what Maui is, while at the same time providing vibrant urban areas that will provide an equally positive quality of life for those who make their lives in our larger towns. (emphasis supplied).**

Two key highlights in the Executive Summary strongly support the collective priority identified in the MIP as they relate to this project:

- ◆ Protection of Maui's Small Towns and Rural Character. Outside of growth areas development will be limited to preserve our agricultural lands and open space. This will "keep the country - country", a refrain repeated by many citizens.
- ◆ Affordable Housing. Housing for our workforce will remain affordable in perpetuity. Housing that is approved as "affordable" will not be converted to free market housing.

Does this project coincide with the unified need to protect the character and integrity of the landscape and use of the lands? How is it that this Rural Growth, with its defined boundaries benefitting only the applicant, was dropped into the middle of prime agricultural land? Is this what was truly understood and intended looking "forward several generations"?

The strong and clear vision of the MIP runs contrary to the project proposed by the applicant. Aside from the obvious spot urban element of the project, the 150 ½ acre homes and intrusion of infrastructure irreparably fractures otherwise good agricultural land and ignores the strong findings of the MIP:

- The quality of Maui's agricultural lands and favorable climate provide the island with an intrinsic competitive advantage that offsets, to some extent, the high cost of production. *MIP, at p. 4-18.* Maintain or increase agriculture's share of the total island economy. *MIP Objective 4.3.2.*
- The presence of affluent, non-resident buyers influences the housing market in several ways, all of which put upward pressure on prices. First, non-residents seeking a second home can typically outbid residents for houses and apartments being resold. Second, in a strong market, developing higher-priced units generally produces greater profit per unit. Therefore, a relatively large proportion of new residential units and lots are being developed for upper-end buyers. Finally, when the building industry is focused on the upper-end market there are fewer resources for affordable housing. *MIP, at pp. 5-3 - 5-4.*
- At the island and regional scale, increasing the density of housing is a more efficient use of land. It also saves on linear miles of roads, water lines, and other utilities that need to be built and maintained. Increasing the density of housing also preserves more land for agriculture and open space. *MIP, at pp. 5-4 - 5-5.*
- While agriculture ranks behind tourism and retail business in terms of market value, its contributions to the economy are significant. *MIP, at p. 7-3.*
- Unlike urban development, agriculture protects land use options for future generations. *MIP, at p. 7-3.*
- A desirable attribute of agricultural land, whether in active production or not, is that it is considered to be open space, often green and scenic. It thus plays an important role in Maui's beautiful landscape. *MIP, at p. 7-3.*
- Urbanization is not the only factor contributing to the loss of viable agricultural land. Commercial farming is a business venture where the ability to make a profit is a necessity. If the business is not profitable, it will stop operating and the assets will be used differently. Residential development and other factors within the agricultural district contribute to the loss of agricultural land productivity and profitability:

- **Diminished Production Capacity.** Fragmentation of agricultural parcels ... Once fragmentation begins, it leads the way to further development of agricultural land.
  - **Higher Land Costs to Farmers.** Non-agricultural land uses are viewed by many to be a more profitable investment than agricultural land uses. This perception, coupled with expanding infrastructure, lead to elevated land costs ... stifling the viability of agriculture and leaving the land available for urban or rural development.
  - **Conflicts with Non-agricultural Land Uses.** Agricultural activities often create noise, odors, dust, and other byproducts that residential neighbors view as nuisances. *MIP, at p. 7-4.*
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- Preserving agricultural lands is important for the long term sustainability of Maui. A few agricultural resource protection challenges and opportunities include ... Reduction of the conversion of prime and productive agricultural lands to non-agricultural uses. *MIP, at p. 7-7.*
  - Discourage developing or subdividing productive agricultural lands for residential uses in which the residence would be the primary use and any agricultural activities would be secondary uses. *MIP Policy 7.1.1.c.*
  - Focus urban growth, to the extent practicable, away from productive and important agricultural lands. *MIP Policy 7.1.1.e.*
  - Strongly discourage the conversion of productive and important agricultural lands (such as sugar, pineapple, and other produce lands) to rural or urban use, unless justified during the General Plan update, or when other overriding factors are present. *MIP Policy 7.1.1.f.*
  - Standards established by the State and County agricultural and rural districts could do more to protect the character of *existing* towns, rural resources, lifestyles, and heritage resources. Typical subdivisions utilizing the one-acre and one-half acre minimum lot sizes permitted within the County rural districts are often not compatible with the rural character of the immediate area, but often produce a landscape pattern more appropriately identified as large-lot residential. *MIP at p. 7-13 (emphasis supplied).*
  - Urban expansion generally involves the conversion of urban fringe agricultural lands to urban use. These lands typically lie in the path of development, are proximate to existing urban infrastructure and services, and offer favorable topography, which makes development cost-efficient ... While urban expansion is oftentimes the most efficient and cost-effective means of accommodating growth, it should be done carefully to prevent sprawl. The location and character of potential urban expansion should be closely scrutinized to prevent land use patterns that consume valuable farmland and open space, and blur the separation between existing communities. *MIP at p. 1-79.*

Daniel E. Orodener

State of Hawai'i Land Use Commission

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- As these towns grow it will be critical to define the physical limits of each town, and restrict growth outside of these limits, to maintain a sense of identity for each individual community while protecting agricultural land, natural resources, and recreation areas. *MIP at p. 7-21.*
- Ensure higher-density compact urban communities, infill, and redevelopment of underutilized urban lots within Urban Growth Boundaries. *MIP Policy 7.3.1.a.*

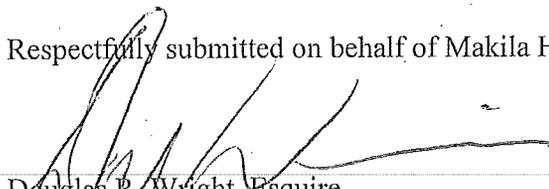
There is no indication that the proposed Makila Rural Community is a Conservation Subdivision Design ("CSD"), as recommended in the MIP for the development of agricultural lands. *See MIP at pp. 7-5 – 7-7, and 7-13 – 7-14.*

**COMMENT 10. Mitigation.**

Makila HOA requests consideration of at least the following possible mitigation measures:

- A. The dual goals of affordable housing and preserving agricultural lands can be achieved if larger lots are sold at lower prices. Deed covenants could also be inserted allowing for agriculture and the protections of the Right to Farm laws.
- B. Home cluster could be combined with a private agricultural park (as authorized pursuant to Maui County Code §19.30A.070) which could be run by the HOA or turned over to the State of Hawaii Department of Agriculture. Encourage the development of community gardens, including gardens on greenbelts that separate communities, as set forth in the MIP as *Implementing Action 4.3.1-Action 1*, and in accord with the objectives of a CSD.
- C. The stand-alone sewage treatment facility proposal should be withdrawn and any future development should be required to connect to the public wastewater system. Per the MIP, the existing Lahaina Wastewater System appears to have adequate capacity. *MIP, at 6-10.*
- D. The urban aspect of the project should be withdrawn.
- E. A renewed commitment to provide a majority (i.e. 51%) of open dedicated green space actually available for the public's use.
- F. Develop an independent water source.
- G. Provide resources for a third-party expert study of the impact of the marine environment selected by independent group of advisors, not the applicant.

Respectfully submitted on behalf of Makila HOA,

  
Douglas R. Wright, Esquire

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