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LAND USE COMMISSION
STATE OF HAWAII
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BEFORE THE LAND USE COMMISSION

OF THE

STATE OF HAWAII

In the Matter of the Application of)	DOCKET NO: A12-795
)	
West Maui Land Co. Inc. and)	INTERVENER'S REPLY TO
Kahoma Residential LLC)	OFFICE OF PLANNING'S OBJECTIONS TO
33 Lono Avenue)	INTERVENER'S PROPOSED
Kahului, HI 96732;)	FINDINGS OF FACT,
TMK (2) 4-5-10:005)	CONCLUSIONS OF LAW, AND
Proposed Reclassification: Agriculture to)	DECISION AND ORDER
Urban)	CERTIFICATE OF SERVICE

INTERVENER'S REPLY TO OFFICE OF PLANNING'S OBJECTIONS TO INTERVENER'S
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

Michele Lincoln, Intervener in the proposed reclassification of Agriculture District to Urban District, to amend the Land Use District Boundary of certain land situated at Lahaina, Island of Maui, State of Hawaii submits the following reply to Office of Planning's objections to Intervener's proposed findings of fact, conclusions of law, and decision and order to the Land Use Commission of the State of Hawaii.

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

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

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

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

A. Intervener acknowledges that no single project can achieve all the goals, objectives, policies and priority guidelines of the Hawaii State Plan. However, the Project should have more redeeming qualities than the adverse effects it will have on the community. HRS 205-4 is the statute that involves land areas greater than 15 acres being under the jurisdiction of the LUC not the State's OP or County's OP or the County Councils. Laws are made to protect people and Commissioners are appointed to insure that land reclassification is in the best interest of the public for present and future generations. The Hawaii Statute 205-4(e) 1 requires that OP and County Planning Dept. appear and make recommendations but good governance did not give decision making powers to these entities for a reason, thus the creation of the LUC.

B. 1) OP contends that the Project Area is not suitable for commercial agriculture, based on Professor Paul Singleton's opinion. Though the expert has knowledge about farming practices and soil it does not imply that he is a successful agriculture businessman. The Petition Area has a

soil rating of B72i which is in the highest productivity category. The Petition Area has access to water by way of a water-meter, like the existing neighborhood. Eco-tours would be viable in its proximity to tourist areas. The Petition does not achieve the objectives of HRS 226-7 (a) (2) (b) (4) (5) (12) (16), the growth and development of diversified agriculture and establishing strong relationships between the agriculture and visitor industries and increase public awareness, as well as, facilitate the transition of agriculture lands in economically non-feasible agriculture production, to economically viable agriculture uses.

B. 2) Diversified farming is viable and sustainable, providing long-term employment opportunities. Construction-related jobs will be available with the Projects underway including Villages of Leiali'i, Pulelehua, Kaanapali 2020, Weinberg's Kahoma Village and all the other entitled and/or proposed West Maui residential projects. The provision of employment opportunities and economic development under HAR 15-15-77 (b) (3) (E) and the HRS 226-108 sustainability objective is not met by the Petition and thus **justifies the denial** of the request for urban classification.

C. The Petition Area definitely has characteristics that would differentiate it from other vacant parcels of property. The location of this Open Space is near the Historical Pioneer Mill Smokestack and next to homes that are 80 to 100 years old. This is one of the few remaining Pioneer Mill Plantation Camps. The Petition Area was the source of food supply for the Kingdom of Hawaii's first capitol. The Petition area is located by hundreds of residential units, light industrial and shopping areas. The need for Parks and Recreational areas is vital and lawful under HRS 226-4 (2), HRS 226-12, HRS 226-23(4, 5, 6, 10) HRS 205-2. The Petition Area is located in Flood Zone X by the Kahoma Flood Channel Retention Basin Wall. Public safety is an issue and the Project does not conform to HRS 226-26 assurance of public safety and adequate

protection of life and property for all people. The Petition Areas proximity to the Kahoma Flood Channel is within the States CZM, HRS 205A-2 encourages protection of Open Space resources. Storm water runoff from impervious surfaces verses natural absorption is a mitigating factor as well for the protection of the reef at Mala. In regards to the County Council exemptions to the Project, they are implemented **if** the land is rezoned from Agriculture to Urban use. If the Petition Area is not rezoned the County Council did not allow for it to be removed from the West Maui Community Plan's Open Space Designation. If the Petition Area was less than 15 acres then that would have impact on a decision but as it is over 15 acres it is just another piece of evidence for the LUC to consider. The Petition Area is the last of the significant Open Space corridors in the congested Lahaina District. In light of these facts, the noncompliance with HRS 226-12 and HRS 205-17 and HRS 226-104 (b) (1) (5) (10) (12) (13) HAR 15-15-77(a) (4), the loss of the West Maui Community Plan's Open Space **does justify denial** of the request for urban classification.

D. The State addresses the impacts of the Project which include conditions. The State is not acknowledging the negative impact to the existing community but only how it relates to State's responsibilities. Any recommendation they give is reflective of the State's impact and not of the people. The existing neighborhood's increased traffic will have a negative impact and is of a concern for public safety. The overburdened Lahaina Public Schools will be negatively affected by the cumulative housing projects and quality of education will suffer as a result of lacking infrastructure. The lack of school capacity **does justify the denial** of the request for urban classification as it does not meet the HAR15-15-18 (2) (B).

1) The LUC decision making criteria HRS 226-16 addresses the water resource capacities and coordinates development of land use activities with existing and potential water supply. The fact

that the County of Maui does not require a “show me the water” for 100% affordable housing, is not an LUC decision making criteria. OP’s proposed conditions for the availability of water, does not meet the objectives for the LUC decision making criteria. Either there is water for the Project, or there is not water for the Project. The Project’s available water meters should not be in conflict with already urban zoned residential development projects that are underway. The lack of a water commitment **does justify denial** of the request for urban classification.

2) The Lahaina Wastewater Treatment Plant does not have capacity to accept the Projects wastewater and waste-load. OP’s contends that it would be a regional concern requiring a regional resolution. Basic wastewater services cannot be provided as proposed in the Petition, therefore the Petition does not meet the standards for determining the boundaries of the State Land Use in accordance with HAR 15-15-18(2) (B). The lack of availability of wastewater systems **does justify the denial** of the request for urban classification.

E. 1) The Petition is for an affordable housing project, that is not in and of itself the decision making criteria for the LUC. The importance of affordable housing projects will not be belabored here, however, the need for **this** affordable housing project will be. The County’s Director of Housing and Human Concerns confirmed that Puleleua and other pre-approved projects for West Maui would be able to meet the SMS housing projected needs and that the Petition Area proposed subdivision would not be necessary to meet the criteria for the need for affordable housing. Villages of Leiali’i and Weinberg’s Kahoma Village located in the Lahaina District will meet the affordable housing needs presently and for years to come. The lack of need of this affordable housing project **does justify the denial** of the request for urban classification.

2) The Petitioner provided cultural testimonies that confirm this was where the people lived and farmed and “they were the ones that really helped the King.” The Petition Area is a perfect

example of historical record where the plantations took over during the 1800's and the farming practices compromised Hawaiian Archaeological features. The State Historic Preservation Functional Plan places importance on the preservation of historic properties and rural histories. Rural History is evident and not addressed in the Petition. The State Historic Preservation Division (SHPD) is another resource for the LUC to determine boundary amendments but is not infallible and therefore the dispute over the existing features and burials within the Petition Area must be taken into consideration. OP concludes that the development will not have significant impact of the Pueo's existing habitat. It will have an impact for the owls that live in the Petition Area and hunt there. The Petitioner's biologist is not a Hawaiian Cultural Expert so the importance of a Pueo in relationship to the Hawaiian's aumakua was not taken into consideration. The Project does not meet the HRS 226-25 cultural objectives in this Petition which **does justify the denial** of the request for urban classification.

In conclusion, though the State's Office of Planning and the County of Maui's Planning Department, and the Petitioner support reclassification, it does not make it the right thing to do or the best thing to do. In order to amend a district boundary, the Land Use Commission must find that the amendment "conforms to the Hawaii State Plan" HRS 205-17, HRS 226-2. Any project presented to the LUC will achieve some of the goals, policies, and priority guidelines, so the LUC determines the benefits for the community as a whole for present and future generations. Upon clear preponderance of the evidence, the proposed boundary amendment is **not** reasonable. The Petition is violative of section 205-2 and is not consistent with the policies and criteria established 205-16 and 205-17. The lack of supporting evidence of the Petition, **does justify denial** of the request of urban classification.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document(s) was duly served upon upon the following by U.S. Postal Service:

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Dated: 11-18-12 Michele Lincoln 
