

**WRIGHT & KIRSCHBRAUN**

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**Deborah K. Wright**  
**Keith D. Kirschbraun**  
**Douglas R. Wright**

LAND USE COMMISSION  
STATE OF HAWAII  
2015 OCT 13 A 9:42

October 9, 2015

VIA U.S. POSTAL SERVICE FIRST CLASS  
and E-MAIL: [luc@dbedt.hawaii.gov](mailto:luc@dbedt.hawaii.gov)

State Land Use Commission  
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 Clerk:

Please find enclosed the original and one copy of the following:

1. MAKILA PLANTATION HOMEOWNERS ASSOCIATION, INC.'S *AMENDED* NOTICE OF INTENT TO INTERVENE; and
2. CERTIFICATE OF SERVICE RE: NOTICE OF INTENT TO INTERVENE and MAKILA PLANTATION HOMEOWNERS ASSOCIATION, INC.'S *AMENDED* NOTICE OF INTENT TO INTERVENE.

I have also enclosed my firm's check in the amount of \$50.00 representing the filing fee required pursuant to Hawai'i Administrative Rules §15-15-45.1(c).

Sincerely,

WRIGHT & KIRSCHBRAUN  
A Limited Liability Law Company

  
DOUGLAS R. WRIGHT

Enc.

DEBORAH K. WRIGHT 4444  
KEITH D. KIRSCHBRAUN 4971  
DOUGLAS R. WRIGHT 9643

WRIGHT & KIRSCHBRAUN  
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1885 Main Street, Suite 108  
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Email: firm@wkmaui.com

Attorneys for MAKILA PLANTATION  
HOMEOWNERS ASSOCIATION, INC.

2015 OCT 13 A 9:43  
LAND USE COMMISSION  
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In The Matter of The Petition of	)	DOCKET NO. A 15-799
	)	
MAKILA LAND COMPANY, LLC	)	
	)	CERTIFICATE OF SERVICE RE:
To Amend The Agricultural Land Use District	)	NOTICE OF INTENT TO INTERVENE and
Boundaries Into The Rural Land Use District	)	MAKILA PLANTATION HOMEOWNERS
For Approximately 231 Acres Of Land,	)	ASSOCIATION, INC.'S <i>AMENDED</i>
Consisting of Tax Map Key Nos. Nos. (2) 4-7-	)	NOTICE OF INTENT TO INTERVENE
013:001, 002, 003, 004, 005, 006 (por.), 007	)	
(por.), 008 (por.), 009, 010, 011, 012, And	)	
Into The Urban Land Use District For	)	
Approximately 40 acres of land, consisting	)	
of Tax Key Nos. (2) 4-7-013: 006 (por.), 007	)	
(por.), 008 (por.) at Launiupoko, Polanui,	)	
Lahaina, Island and County of Maui, State of	)	
Hawai'i	)	
	)	

CERTIFICATE OF SERVICE

A true and correct copy of (1) NOTICE OF INTENT TO INTERVENE IN LUC  
DOCKET NO. A15-799 MAKILA LAND COMPANY LLC, filed by David Jenkins for the  
Makila Plantation HOA on September 30, 2015, and (2) MAKILA PLANTATION

HOMEOWNERS ASSOCIATION, INC.'S *AMENDED* NOTICE OF INTENT TO INTERVENE dated October 9, 2015, and submitted for filing contemporaneously herewith, are being served on the following parties pursuant to Hawai'i Administrative Rules §15-15-52(b), at their last known addresses indicated below, by depositing a copy with the U.S. Postal Service, Wailuku Branch, postage prepaid, first class mail, on October 9, 2015:

JENNIFER A. LIM  
CARLSMITH BALL LLP  
ASB Tower, Suite 2200  
1001 Bishop Street  
Honolulu, Hawai'i 96813

Attorney for Petitioner  
MAKILA LAND CO., LLC

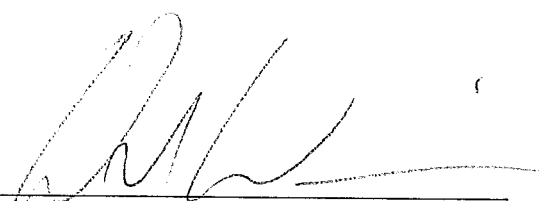
LEO R. ASUNCION, JR., AICP  
Acting Director  
Office of Planning  
State of Hawaii  
235 South Beretania Street, 6th Floor  
Honolulu, Hawaii 96813

BRYAN C. YEE, ESQ.  
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Department of the Attorney General  
425 Queen Street  
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WILLIAM SPENCE  
Director, County of Maui  
Department of Planning  
2200 Main St., Ste 315  
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PATRICK K. WONG, ESQ.  
Corporation Counsel  
Department of the Corporation Counsel  
County of Maui  
200 S. High St. Wailuku, HI 96793

DATED: Wailuku, Maui, Hawaii; October 9, 2015.



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DEBORAH K. WRIGHT  
KEITH D. KIRSCHBRAUN  
DOUGLAS R. WRIGHT

Attorneys for MAKILA PLANTATION  
HOMEOWNERS ASSOCIATION, INC.

DEBORAH K. WRIGHT 4444  
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Attorneys for MAKILA PLANTATION  
HOMEOWNERS ASSOCIATION, INC.

2015 OCT 13 A 9:42  
LAND USE COMMISSION  
STATE OF HAWAII

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In The Matter of The Petition of	)	DOCKET NO. A 15-799
	)	
MAKILA LAND COMPANY, LLC	)	
	)	MAKILA PLANTATION HOMEOWNERS
To Amend The Agricultural Land Use District	)	ASSOCIATION, INC.'S <i>AMENDED</i>
Boundaries Into The Rural Land Use District	)	NOTICE OF INTENT TO INTERVENE;
For Approximately 231 Acres Of Land,	)	CERTIFICATE OF SERVICE
Consisting of Tax Map Key Nos. Nos. (2) 4-7-	)	
013:001, 002, 003, 004, 005, 006 (por.), 007	)	
(por.), 008 (por.), 009, 010, 011, 012, And	)	
Into The Urban Land Use District For	)	
Approximately 40 acres of land, consisting	)	
of Tax Key Nos. (2) 4-7-013: 006 (por.), 007	)	
(por.), 008 (por.) at Launiupoko, Polanui,	)	
Lahaina, Island and County of Maui, State of	)	
Hawai'i	)	

MAKILA PLANTATION HOMEOWNERS ASSOCIATION, INC.'S  
*AMENDED NOTICE OF INTENT TO INTERVENE*

MAKILA PLANTATION HOMEOWNERS ASSOCIATION, INC. ("Makila HOA"), by  
and through David Jenkins, President of the Makila HOA, filed a Notice of Intent to Intervene  
with the Land Use Commission of the State of Hawai'i ("LUC") on or about September 30,

2015. Makila HOA, by and through its counsel, Wright & Kirschbraun, A Limited Liability Law Company, hereby submits an *Amended* Notice of Intent to Intervene pursuant to §§15-15-43 and 15-15-52(b) of the Hawai'i Administrative Rules.

Makila HOA hereby gives notice of its intent to intervene in this proceeding and respectfully submits the following in support of its Notice of Intent to Intervene:

1. Intended Intervenor Name and Mailing Address.

Makila Homeowners Association, Inc.  
c/o Management Consultants of Hawaii  
P.O. Box 10039  
Lahaina, Hawaii 96761-0039

For purposes of the pending Petition filed by Makila Land Company, LLC, Docket No.

15-799 (“Petition”), service shall be made upon: Douglas R. Wright, Esq.  
Wright & Kirschbraun, LLC  
1885 Main Street, Suite 108  
Wailuku, Hawaii 96793

2. Nature and Extent of Interest in Petition.

Makila HOA is an agriculturally zoned subdivision consisting of seventy-three (73) lots, several of which share approximately 1.6 miles of the Petition property boundary east (mauka) of the proposed project site. Although the Petition makes it abundantly clear that it is not yet final and that an amended petition will be filed with the LUC, Makila HOA has been able to initially identify several significant direct and immediate impacts upon the Makila HOA property owners distinguishable from that of members of the general public. Makila HOA reserves the right to supplement and amend these concerns in its formal petition to intervene following the filing of the final Petition with the LUC and the publishing of the notice of hearing pursuant to HAR §15-15-51(c). Makila HOA

has identified the following concerns, provided in summary form for purposes of the Amended Notice of Intent to Intervene:

- i) Spot Urban Development. The Petitioner developed surrounding agricultural subdivisions on good agricultural land. Buyers were required to, and voluntarily did, accept related agricultural activities. The Petition now seeks to drop a 40 acre urban development in the middle of these lands. Although the developer was intimately involved in lobbying for several years for the change of his land to a more valuable designation in the community's growth plan, urban development was not achieved. The MIP only contemplates possible rural development, not urban. In fact, the Petition runs contrary to the MIP in several significant ways, among which includes spot urbanization and being contrary to the goal of "infill" urban development. Urban sprawl is not an acceptable goal and has a direct and immediate impact on Makila HOA, an adjoining agricultural subdivision.
- ii) Water Supply. The Petition has identified private water companies as the source of its water supply for this new, large development. The water supply for Makila HOA is the same as that is proposed in the Petition for the massive new development, being: potable water supplied through wells drilled to the aquifer and provided by Launiupoko Water Company, and water for agricultural use is available from two surface stream flows provided by Launiupoko Irrigation Company. Water supply is already strained when used for agriculture, and Makila HOA has not even been fully built yet. Adding up to 225 additional lots to a private water supply that seems to struggle with providing water to 73 lots seems irresponsible. The adequacy of the potable, well-water is unknown and the

developer has not identified a new source of fresh drinking water for this development, intending to “share” this important resource with existing demands. Having a safe, reliable source of water is fundamental to the residences and farms at Makila HOA and reviewing, providing input and questioning the proposed development which will impact the availability to existing customers is a significant direct and immediate impact on Makila HOA owners.

- iii) Permanent removal of Agriculture land and change in the character of the community. The owner of the land which is the subject of the Petition was the developer of the Makila HOA lands, which were sold, marketed and accepted as agriculture lands by the purchasers of the land from this developer. The agriculture rating of the Petition land is “B”, which is Good. The requested boundary line amendment will permanently remove “Good” agricultural land from the Island’s supply of available agricultural lands. The Petition claims that there will still be the “opportunity” for small scale farming, however, this is a farce. On such small lots, and without the protection of agricultural “Right to Farm” statutory protection farming will practically cease to exist on these lands. For example, a one acre lot (the largest of the stated developed rural lots) will likely yield only half of that land for farming after the building site and infrastructure are considered. The reality of income-producing farms on such a small part of the acre remains to be seen – will beekeeping be permitted in this residential neighborhood, or will the CC&R’s restrict farming to pretty flowers? If it were agricultural lands, the “opportunity” to farm would be a right. Further, although the developer has done some denser 2+ acre lot developments in



surrounding areas known as Launiupoko, these developments are still classified as agricultural lands, but on land classified as “E”, or having a Poor productivity rating. The permanent removal of Good agricultural lands is not a stated goal of the community or the state and is in direct conflict with the agricultural use of the surrounding lands. Fallow land is not a waste when it preserves a significant opportunity for productive agricultural use. Removing the land from agricultural use, as proposed in the Petition, is the waste. After all, the owner has *chosen* to leave it fallow instead of putting it to use as it is presently and properly zoned.

- iv) 50% Open Space. The Petition at p. 11 clearly states that “approximately 50 percent of the Project area will be kept in open space for agriculture, community gardens, trails, parks, natural areas and other non-buildable reserve areas.” The Petition goes on to highlight this point by stating that “[*t*]he *remaining portions* of the Petition Area will be developed with approximately 150 rural residential lots ...” Petition at p. 11 (emphasis supplied). The only way to interpret this is that there will be reserved about 50% of the total lands for open space and the rest will be the development, including all of the residential and urban lots proposed. However, when the project was pitched to Makila HOA a week after the Petition had already been submitted to the LUC (*see subsection ix) below*), and a few questions asked by owners, it was revealed that the developer intends to meet the 50% open space goal by including portions of the residential lots (i.e. backyards that will not be built upon). This is a material change that the developer seems to have intended *before* it submitted the Petition to the LUC. This change will

impact the density, community space supposedly offered and the aesthetics of the proposed neighboring project.

- v) Traffic. Congestion on the way into Lahaina is common knowledge. The addition of 200+ new homes with urban elements will only serve to exacerbate the problem – all at the doorstep of Makila HOA. Additional cars will involve a new stoplight, loitering, noise, congestion and trash. Makila HOA will be the single biggest recipient of all of these unwanted problems. Access to and from Makila HOA will be significantly hindered for owners, guests, employees and emergency services.
- vi) Fire Safety. The extension of a significant development further from the centralized urban district and emergency services raises a significant fire safety concern and the readiness and availability of such services in an emergency. For example, and upon information and belief, water is currently supplied to Makila HOA via an eight-inch main. An eight-inch service main is relatively small and, in addition to the concern of the availability of private water, the pressure and delivery of water through this small main to an entire development with an increased population by many factors is irresponsible and threatens the safety of existing owners. As a corollary to the fire safety and emergency services, the increased population presents a new challenge to evacuation plans along existing, limited routes already intended to serve the residents of Makila HOA.
- vii) Endangered Birds. Many of the surrounding neighbors, of which Makila HOA is one, recognize the presence of, and seek local rules to protect, the population of local endangered birds. Further development will serve to increase the interaction

between these environmentally sensitive birds and human development (such as cars, lights, homes, etc.). Makila HOA respectfully requests to be involved in the study and review of information submitted to the LUC concerning any endangered birds.

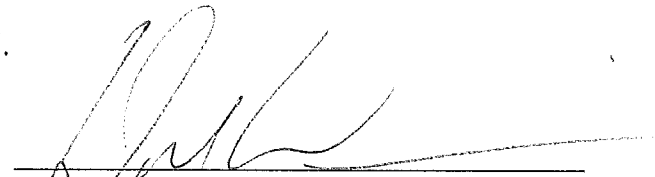
- viii) Sewage Treatment. The Petition makes conclusory reference to the construction of a private package waste water treatment facility. The location of the facility, treatment mechanism and volume of effluent and location of discharge is not disclosed. Due to the possible proximity to owners of Makila HOA, issues of noise, smell, runoff and groundwater contamination concern Makila HOA.
- ix) Misrepresentations to the LUC concerning neighbor buy-in. The Petition states that an effort was made to reach out to the community, including Makila HOA, prior to the submission of the Petition to the LUC, but that no comments had been received. This is only a half-truth, at best. On or about September 4, 2015 (one week prior to submission) the developer contacted Makila HOA and scheduled a time to make a presentation about a forthcoming project. The scheduled date was September 17, 2014, nearly one week after the Petition had been submitted to the LUC. The developer's statement that no comments had been received appears to imply that there were no objections when, in fact, no comments had been received (at least from Makila HOA) because no meaningful information had yet been provided to them. The appearance of an improper or incomplete communication suggesting neighbor disinterest in the Petition tends to suggest that Makila HOA should be included in the review of information submitted to the LUC so that the developer does not have a free opportunity to continue speaking or making other

suggestions on Makila HOA's part. This misrepresentation was reiterated directly to the LUC at the hearing held September 30, 2015, bolstering Makila HOA's concern that it be allowed to speak for itself before the LUC.

Other intervenors will not adequately represent the interests of Makila HOA whose members are located closest in proximity to the proposed project and share a significant property line with the development under consideration. Issues of safety, change in the character of the community, and reliability of basic services directly impact the owners of Makila HOA.

**WHEREFORE**, Makila HOA respectfully submits this *Amended* Notice to Intervene as a party in this proceeding with all rights attendant thereto.

DATED: Wailuku, Maui, Hawaii; October 9, 2015.



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DEBORAH K. WRIGHT  
KEITH D. KIRSCHBRAUN  
DOUGLAS R. WRIGHT

Attorneys for MAKILA PLANTATION  
HOMEOWNERS ASSOCIATION, INC.