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LAND USE COMMISSION
STATE OF HAWAII

2016 APR 19 A 7 18

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Attorneys for Petitioners
PU'UNOA HOMEOWNERS ASSOCIATION, INC. and
DEVONNE LANE

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

IN THE MATTER OF

To issue a declaratory order that the proposed construction of a homeless encampment and commercial campground on 7.9 Acres of a 22.7 Acre Parcel Located at Hokiokio Place and Lahaina Bypass Road at Maui Tax Map Key No. (2) 4-7-003:031 (POR), Lahaina, Maui, Hawaii in the agricultural district) requires a boundary amendment.

) DOCKET NO. DR 15-54
)

**SUPPLEMENT TO PETITIONERS
PU'UNOA HOMEOWNERS
ASSOCIATION, INC. AND DEVONNE
LAND'S POSITION STATEMENT
CONCERNING AND OPPOSITION TO
CONSIDERATION OF RESCISSION OF
FEBRUARY 24, 2016 LUC DECISION ON
PETITION FOR DECLARATORY
ORDER, DATED APRIL 15, 2016;
CERTIFICATE OF SERVICE**

**SUPPLEMENT TO PETITIONERS PU'UNOA HOMEOWNERS ASSOCIATION, INC.
AND DEVONNE LAND'S POSITION STATEMENT CONCERNING AND
OPPOSITION TO CONSIDERATION OF RESCISSION OF FEBRUARY 24, 2016 LUC
DECISION ON PETITION FOR DECLARATORY ORDER, DATED APRIL 15, 2016**

PU'UNOA HOMEOWNERS ASSOCIATION, INC., and DEVONNE LANE, an individual and as a member of the Pu'unoa Homeowners Association, Inc., as interested persons

(hereinafter referred to jointly as “Pu’unoa”), supplement their Position Statement Concerning and Opposition to the April 20, 2016 Agenda Item V to consider rescission of February 24, 2016 Land Use Commission (“LUC”) Decision on Petition for a Declaratory Order, dated April 15, 2016 (the “Position Statement”), as follows:

The Land Use Commission Lacks Jurisdiction to Rescind Its Final Ruling

As noted in Pu’unoa’s Position Statement, the LUC’s Decision on Pu’unoa Homeowners Association, Inc. and DeVonne Lane’s (hereinafter referred to jointly as “Pu’unoa”) Petition for a Declaratory Order was heard on February 24, 2016 at which time the Commission voted 6-1 to grant the petition. At the same meeting, the LUC voted to deny Ho’omoana’s Petition to Intervene.¹ The Orders on those two decisions were issued on March 3, 2016. On March 29, 2016, Ho’omoana Foundation appealed the Order Denying Ho’omoana Foundation’s Petition to Intervene and the LUC’s final Declaratory Order to the Second Circuit Court pursuant to HRS §§ 91-8 and 91-14, HRCF Rule 72 and Article I, Section 5 of the Constitution of the State of Hawaii.

HRS § 91-14 sets forth the procedures for review of an agency order. “HRS § 91-14(a) controls an appeal to the circuit court from an administrative agency, and so long as the requirements of HRS § 91-14(a) are met, the circuit court is vested with jurisdiction to hear the appeal.” *Hawaii Gov’t Employees’ Association, Local 152, AFSCME, AFL-CIO v. State*, 63 Haw. 85, 87, 621 P.2d 361, 363 (1980). Additionally, HRS § 91-14(b) provides in pertinent part that proceedings for review shall be instituted in the circuit court within thirty days after service of the certified copy of the final decision and order of the agency pursuant to rule of court. The LUC’s final Declaratory Order was issued on March 3, 2016, pursuant to HRS § 91-8 and was a

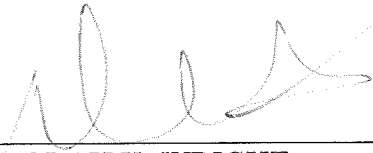
¹ Ho’omoana appealed the denial of its motion to intervene, apparently seeking contested case status before the LUC; however, it successfully opposed Pu’unoa’s Motion to Intervene before the Maui Planning Commission to prevent contested case status at that level.

final, appealable agency order. Ho'omoana Foundation filed its Notice of Appeal on March 29, 2016, along with its Statement of the Case and Designation of Record on Appeal. The Second Circuit Court further ordered that the LUC designate and transmit the entire record of the proceedings before it to the circuit court for review in connection with the appeal, within twenty (20) days of that order, or by April 18, 2016. The matter is now proceeding as an appeal to the circuit court pursuant to HRCF Rule 72. Rule 72(k) provides that "... [u]pon determination of the appeal, the court having jurisdiction shall enter judgment." Further, under HRCF Rule 72(i), the "... filing of a notice of appeal shall not operate as a stay of the decision, order or action appealed from, unless otherwise provided by statute or unless ordered, for good cause shown, by the circuit court." [emphasis supplied]

The LUC has further listed on its Agenda that it is going to "reconsider" the Petition to Intervene. The LUC's Order Denying Ho'omoana Foundation's Petition to Intervene was issued and filed March 3, 2016. The current agenda and "reconsideration" is coming up on April 20, 2016 – well beyond the ten days within which a reconsideration must be brought under Hawaii law. The noted reconsideration is clearly not timely and any such window to reconsider has since closed.

Once this matter was appealed to the Second Circuit Court, the LUC was divested of jurisdiction to rescind, reconsider or redo their final Declaratory Order. Jurisdiction clearly lies with the Second Circuit Court presently and any attempt by the LUC to unilaterally change a final Declaratory Order is baseless.

DATED: Wailuku, Maui, Hawaii; April 18, 2016.

A handwritten signature in black ink, appearing to read 'DK Wright', written above a horizontal line.

DEBORAH K. WRIGHT
KEITH D. KIRSCHBRAUN
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DEVONNE LANE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was duly served upon the following parties, at their last known address indicated below, by depositing a copy with the U.S. Postal Service, First Class Mail, postage prepaid, on April 18, 2016.

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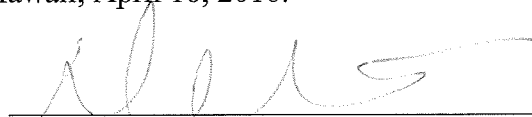
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DATED: Wailuku, Maui, Hawaii; April 18, 2016.



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