

BEFORE THE LAND USE COMMISSION LAND USE COMMISSION
STATE OF HAWAII
OF THE STATE OF HAWAII

2014 OCT 23 A 11: 22

In the Matter of the Petition of) Docket Nos. DR14-51
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)
MAUI LANI NEIGHBORS, INC.,) PRELIMINARY POSITION
) STATEMENT OF THE
) DEPARTMENT OF PLANNING
For Declaratory Order Under §§ 15-15-98 of the) COUNTY OF MAUI
of the Land Use Commission Rules and Hawaii)
Revised Statutes § 91-8)

PRELIMINARY POSITION STATEMENT OF THE DEPARTMENT OF PLANNING,
COUNTY OF MAUI

The Department of Planning (Department), County of Maui, finds that the Petition for Declaratory Order (Petition) by Maui Lani Neighbors , Inc. (MLN) relating to the development of the Central Maui Regional Park (CMRP), based on its statement of facts in the Complaint (provided in MLN's Appendix A) is unfounded and not supported by the Department. Therefore, the Department supports a decision by the State Land Use Commission to maintain the District Boundary Amendment (DBA) from Agricultural to Urban and find no violation of its order in Case No. A10-789.

The Department encourages the Land Use Commission to decide MLN's petition on the merits. If a hearing is set in the above-captioned action, the Department, the Maui County Planning Commission, and William Spence as Director of the Department (defendants in the Circuit Court action, *see* MLN's Appendix A) will seek to intervene. Below the Department presents its preliminary position statement on the MLN's petition, but expressly reserves the right to make changes, as well as more extensive findings, as more facts come to light.

Further, the Department supports the Maui Planning Commission's decision to approve the County Special Use Permit (CUP) for the Central Maui Regional Park at its March 25, 2014 regularly scheduled meeting and that it correctly interpreted Title 19 of the Maui County Code and applied it accordingly.

It is important to note that the DBA is based on the entire Wai'ale Master Plan of approximately 545 acres and not solely the 65 acre CMRP. The MLN is applying DBA conditions that are intended for 545 acres comprehensively and misconstruing them into a 65 acre interpretation.

The Petition alleges that the DLNR has violated five conditions of the LUC Decision and Order -

Conditions 5, 8, 16, 21, and 24. The Department herein submits its preliminary position on this petition.

Condition 5: Highway and Road Improvements. "Petitioner shall fund, construct and implement all transportation improvements and measures required to mitigate impacts to state roadway facilities caused by the Project as set forth in an MOA agreed to and executed between the DOT and Petitioner. Petitioner shall submit to the DOT prior to the application for a zone change an updated TIAR."

Allegation: "...required A&B to prepare a new traffic impact analysis report (TIAR) before seeking any land entitlements, including a change in zoning... also, required A&B and/or DLNR to execute a memorandum of agreement with HDOT..."

Department's Position: Petitioner misstates Condition 5 in its allegations. Condition 5 does not state that a new TIAR is required prior to seeking any land entitlements. It states: "Petitioner shall submit to the DOT *prior to application for a zone change* an updated TIAR." At the time Condition No. 5 was written in 2012, it was anticipated that a change of zoning would be required for the entire 545 acre project. No zone change, however, is required for the park land because the use is permitted under the existing County Agricultural zoning with a County Special Use Permit. Tying the TIAR to any/all land entitlements is incorrect. The DLNR did submit an updated TIAR that specifically and concisely addressed the impacts the CMRP would have on traffic in the immediate area. The updated TIAR is not required to address the full 545 acre development at this time. Again, it must be noted that MLN is quoting LUC D&O conditions intended for 545 acres and substituting them into 65 acres.

In addition, the condition requires that the MOA with DOT be done "prior to final subdivision approval of the initial phase of onsite development by Petitioner." First, the park is being developed by the State not the Petitioner. Second, and as above, the condition refers to the initial phase of the larger, 545 acre project, not a small portion of the project set aside for a public purpose.

Condition 8: Hazardous Wildlife Attractants on or Near Kahului Airport. "As deemed necessary by the DOT... Petitioner shall fund and implement a program to control any birds nesting or occupation and any insect, pest, or wildlife attractants (open swales, storm drains, retention and detention basins... serving the Project. Petitioner shall enter into an MOA with DOT to *document* hazardous wildlife attractant..."

Allegation: *The MOA was not submitted prior to subdivision approval.*

Department's Position: Condition 8 requires the Petitioner to *document* wildlife as attracted by the retention basin as *deemed necessary* by the DOT. The retention basin has not been built yet so it is undetermined how or what the retention basin will attract until it is operational. The Department is unaware that the DOT deemed this documentation of wildlife as necessary. The Department would like to point out that the water in the proposed retention basin is designed to percolate or evaporate within 48

hrs and therefore dry probably 99.9% (or more) of the time, and thereby unlikely to be an attractant 99.9% of the time.

Condition 16: Endangered Species. "To address the potential impacts on the endangered Blackburn's sphinx moth and other endangered species in the Petition Area, Petitioner shall consult with the DLNR, DOFAW, and the USFWS to develop mitigation measures..."

Allegation: *"On information and belief, DLNR has failed to fulfill this obligation by consultation with DOFAW and USFWS and is thus in violation of Condition 16 of the LUC D&O."*

Department's Position: The Department has been made aware that the current land owner has made efforts to address this condition. However, since the State DLNR is required to develop mitigative measures, they are better able to address this allegation.

Condition 21: Compliance with Representations. "Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification."

Allegation: *"... the LUC D&O provides that the Waiale Land shall be developed in "substantial compliance with the representations made by A&B's representatives during the DBA process. Any substantial deviation from the proposal made by A&B would be in violation of the LUC D&O."*

Department's Position: The Department finds that the CMRP is in substantial compliance with the LUC D&O, and is not aware of any representations that have been violated.

Condition 24: Annual Reports. "Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and DP, and their respective successors..."

Allegation: *"...DLNR has failed to prepare an annual report to the LUC."*

Department's Position: The Department received an annual report from A&B properties on August 29, 2014, addressed to the LUC. The 65 acres was purchased by the State from A&B Properties in June 2014, thus the State has been the owner of the 65 acres for approximately 3 months, and cannot be said to be late for an annual, 12-month review.

If you have any questions, you may contact Staff Planner Paul Fast at paul.fasi@mauicounty.gov or (808) 270-7814.

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