

**OFFICE OF PLANNING**

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

2014 OCT 22 A 8:43

LAND USE COMMISSION  
STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. DR14-51
	)	
MAUI LANI NEIGHBORS, INC.	)	OFFICE OF PLANNING'S RESPONSE
	)	TO MAUI LANI NEIGHBORS, INC.
For Declaratory Order Under §§ 15-15-98 <i>et</i>	)	PETITION FOR DECLARATORY
<i>seq.</i> of the Land Use Commission Rules and	)	ORDER; EXHIBIT 1; AND
Hawaii Revised Statutes, § 91-8; Lot 12-A-3	)	CERTIFICATE OF SERVICE
of the Maui Lani Subdivision; Subd. File	)	
No.: 3.2226; Tax Map Key No.: (2) 3-8-	)	
007:104	)	

**OFFICE OF PLANNING'S RESPONSE TO MAUI LANI  
NEIGHBORS, INC. PETITION FOR DECLARATORY ORDER**

The Office of Planning ("OP") recommends that the Land Use Commission ("LUC") hold a hearing on this Petition for Declaratory Order ("Petition") pursuant to Hawaii Administrative Rules ("HAR") 15-15-100(a), subject to the submittal of an affidavit from Maui Lani Neighbors, Inc. ("Maui Lani Neighbors").<sup>1</sup> The OP strongly recommends that the matter not receive a specific hearing date until all potential parties have a chance to intervene and a pre-hearing conference is held. OP especially notes that this matter may require a significant effort in

<sup>1</sup> The Petition for Declaratory Order clearly cannot be granted at this time as the facts are unknown; DLNR, OP, the County and A&B Properties, Inc. have not yet had an adequate opportunity to intervene, witnesses have not been identified and called, and records and files have not been reviewed.

identifying the relevant issues, reviewing the transcripts, pleadings, exhibits, and files in this case, and gathering the additional information needed to understand the facts.

On June 21, 2012, the LUC issued its Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A10-789 A&B Properties, Inc. (“Decision and Order”) amending approximately 545 acres of land from the agricultural district to the urban district.

At some point, a portion of the Petition Area appears to have been transferred to the Department of Land and Natural Resources (“DLNR”).

On September 9, 2014, Maui Lani Neighbors filed its First Amended Verified Complaint in the Second Circuit. Among the allegations in the First Amended Verified Complaint is that DLNR’s proposed Sports Complex will violate Conditions 5 and 21 of the Decision and Order.

On October 2, 2014, movant Maui Lani Neighbors filed a Petition for Declaratory Order. Copies were mailed to the attorneys for the DLNR, but not to OP, the Maui County Planning Department or A&B Properties, Inc. The Petition for Declaratory Order asks that the LUC declare that Conditions 5, 8, 16, 21, and 24 of the Decision and Order are being violated.

Condition 5 is regarding traffic. Condition 8 is regarding hazardous wildlife attractants. Condition 16 is regarding endangered species. Condition 21 is regarding substantial compliance with representations. Condition 24 is regarding the filing of annual reports.<sup>2</sup>

HAR 15-15-100(a) requires the LUC to determine within ninety (90) days whether to deny the petition, issue a declaratory order, or set the petition for hearing. If the matter is set for hearing, HAR 15-15-100(b) requires the LUC to issue its findings and decision within 120 days after the close of the hearing or forty-five (45) days after the last post-hearing brief is filed, unless

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<sup>2</sup> For purposes of the November 20, 2014 hearing, a detailed discussion of the allegations are not necessary, but will be addressed when a substantive hearing on this matter is held.

a different time is stated at the hearing. Accordingly, the hearing on November 20, 2014 is solely for the purpose of determining whether to deny the petition, issue a declaratory order, or set the petition for hearing.

With respect to denial, the most significant issue is whether the “issuance of the declaratory order may affect the interest of the State . . . in any litigation which is pending or may be reasonably be expected to arise.” HAR § 15-15-100(a)(1)(C). Maui Lani Neighbors made compliance with Conditions 5 and 21 the subject of litigation in its Second Circuit case, and asked the LUC to defer to the Circuit Court. Normally, such deferral would occur by refusing to consider the declaratory petition. But in this case the Circuit Court stayed the entire action and referred the matter to the LUC to issue a declaratory ruling.<sup>3</sup> Given the Circuit Court decision, OP recommends setting matter for a hearing.

A secondary issue is whether Maui Lani Neighbors has an actual interest in the enforcement of Conditions 8, 16, and 24. We note that although the First Amended Verified Complaint alleges violations of Conditions 5 and 21, the Petition for Declaratory Order alleges violations of Conditions 5, 8, 16, 21, and 24. The processing of the Second Circuit case appears sufficient to demonstrate Maui Lani Neighbor’s interests in conditions 5 and 21. If Maui Lani Neighbors did not believe that Conditions 8, 16, and 24 were important enough to raise before the Circuit Court, it is not clear that they have an actual interest in these conditions. OP recommends that Maui Lani Neighbors be required to submit an affidavit from one or more of its members describing their interest in these conditions, and an explanation of how one becomes a member of Maui Lani Neighbors.

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<sup>3</sup> A written order was not available at the time of this writing. But the court’s minute order is attached.

Once the LUC decides to set this matter for hearing, OP strongly recommends that potential parties be given an opportunity to intervene, that a pre-hearing conference then be held, and that OP be given sufficient time to go through the record and transcripts, consult with state, federal and county agencies, and gather information as to the events after the Decision and Order was issued.

With respect to intervention, interested parties are given at least fifteen days after the date of publication of the hearing notice. HAR § 15-15-53(a). The LUC, therefore, should provide potential parties with an opportunity to intervene. OP intends to request intervention, and DLNR may do likewise.

For these reasons, OP recommends that the LUC hold a hearing on this Petition, but that the matter not receive a specific hearing date until after all potential parties have a chance to intervene, the parties have an opportunity to gather information, and a pre-hearing conference is held.

DATED: Honolulu, Hawaii, this 22nd day of October 2014.

OFFICE OF PLANNING  
STATE OF HAWAII



LEO R. ASUNCION JR.

Acting Director



Court Minutes Text

Case Title: MAUI LANI NEIGHBORS INC VS STATE OF HAWAI'I ET AL

2CC14-1-000501

Div.: 2C02 CM DATE: 10-15-2014

Time: 0930A

Priority: 0 Judge I.D.: JPCAHIL

Video No.:

Audio No.:

Minutes:\*\*COURT REPORTER, CAMMIE GILLETT, AM SESSION\*\*

\*\* AT 9:32 A.M. \*\*

APPEARANCES: TOM PIERCE, ESQ.; PETER MARTIN, ESQ.  
AMANDA WESTON, ESQ.; LINDA CHOW, ESQ.  
KRISTIN TARNSTROM, ESQ.

AS TO THE COUNTY OF MAUI'S MOTION, ORAL ARGUMENT  
HAD. AFTER REVIEW, COURT DENIED THE MOTION AS TO  
COUNT 1-F. COURT STAYED ALL FURTHER PROCEEDINGS  
AND REFERRED IT BACK TO THE LUC. COURT ORDERED  
COUNSEL TO MEET AND CONFER AFTER COURT TODAY ON

THE FORMAT OF THE ORDER.  
ORDER TO BE SUBMITTED TO COURT AT THE CLOSE OF

More Minutes  
Text

Next Court  
Date

Court Minutes  
List

Case Info.



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## Court Minutes Text

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2CC14-1-000501

Div.: 2C02 CM DATE: 10-15-2014

Time: 0930A

Priority: 0 Judge I.D.: JPCAHILL

Video No.:

Audio No.:

**Minutes:** BUSINESS FRIDAY. IF PARTIES DISAGREE WITH THE ORDER, THEY ARE TO SUBMIT THEIR VERSION BY CLOSE OF BUSINESS MONDAY. ONCE THE LUC HAS ISSUED ITS DECISION, COUNSEL MAY CALL THE COURT FOR A IN PERSON STATUS CONFERENCE. COURT ORDERED THAT NO FURTHER DISCOVERY IS TO TAKE

PLACE UNTIL PARTIES HAVE MAPPED OUT THEIR DISCOVERY PLAN AND THE COURT HAS RULED ON THE PLAN. THE DISCOVERY MOTION CURRENTLY SET FOR 10/29/14 WILL GO FORWARD.

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[Case Info](#)

Docket No. DR14-51

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

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PATRICK WONG, ESQ.  
Department of the Corporation Counsel  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

DATED: Honolulu, Hawaii, this 22<sup>nd</sup> day of October, 2014.

  
LEO R. ASUNCION  
Acting Director  
Office of Planning