

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of: MAUI LANI NEIGHBORS, INC., for Declaratory Order Under §§ 15-15-98 *et seq.* of the Land Use Commission Rules and Hawai'i Revised Statutes § 91-8

Affected Landowner and Property: State of Hawai'i, by and through its BOARD OF LAND AND NATURAL RESOURCES; Lot 12-A-3 of the Maui Lani Subdivision; Subd. File No: 3.2226; TMK No: (2) 3-8-007:104

DOCKET NO. DR14-51

PETITIONERS' REPLY TO PRELIMINARY POSITION STATEMENT OF THE DEPARTMENT OF PLANNING COUNTY OF MAUI, FILED 10/23/2014; CERTIFICATE OF SERVICE

Filed by:

MAUI LANI NEIGHBORS, INC.

**PETITIONERS' REPLY TO PRELIMINARY POSITION STATEMENT OF THE DEPARTMENT OF PLANNING COUNTY OF MAUI, FILED 10/23/2014
CERTIFICATE OF SERVICE**

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Maui Lani Neighbors, Inc. ("**Petitioner**" or "**MLN**"), through its attorney Tom Pierce, Attorney at Law, LLLC, submits this reply to the *Preliminary Position Statement of the Department of Planning, County of Maui*, filed October 23, 2014 ("Planning Department's Position Statement"). (Abbreviations defined in MLN's *Petition for Declaratory Order*, filed October 8, 2014 ("Decl. Petition"), are adopted herein.)

The Planning Department's Position Statement is improperly filed, and filled with glaring procedural and factual misrepresentations, as briefly summarized below.

First, the Planning Department's Position Statement should be stricken for failing to comply with HAR § 15-15-35, entitled "Appearance before the commission." That section permits *one* representative for an agency. Already in this case there have been two different representatives both claiming to represent the Department of Planning: The County of Maui Department of Corporation Counsel (through the petition to intervene), and Staff Planner Paul

Fasi (through the instant position statement). This violates HAR § 15-15-35. The Planning Department's Position Statement should therefore be stricken.

Second, even if not stricken, the Planning Department's Position Statement entirely miscomprehends the nature of the issue presented to the LUC through MLN's Decl. Petition. In its first paragraph, the Planning Department asks that the subject property not be reverted from State Urban back to State Agricultural. MLN is not requesting an order to show cause why the land should not be reverted under HAR § 15-15-93. Rather, this is a petition for a declaratory order under Subchapter 14 of the LUC's rules. HAR §§ 15-15-98 to 104.1. MLN's point has, and remains as follows: DLNR should not be permitted to proceed with any form of development of the Property until it has complied with the law just like all other landowners, developers and citizens.

Third, the Planning Department takes a position that is entirely contrary to the position taken by A&B and DLNR through their own agreements with each other, when it states that: "MLN is applying DBA conditions that are intended for 545 acres comprehensively and misconstruing them into a 65 acre interpretation." This statement completely ignores the Disposition Agreement entered into between A&B and DLNR on June 18, 2014, which Disposition Agreement is attached to MLN's Decl. Petition, and was summarized in the Decl. Petition. The Disposition Agreement clearly shows that A&B and DLNR understood that the conditions in the LUC D&O affected the Property purchased by DLNR, namely:

31. The Disposition Agreement includes Section 4.5 wherein DLNR agreed that DLNR would be responsible for satisfying "Conditions 1, 2, 5, 6, 7, 8, 10, 12, 13, 14, 15, 16, 19, and 21 of the [LUC D&O] as such conditions relate to the [65 acre] Property only."

32. The Disposition Agreement also includes Section 4.3 wherein A&B agreed that it "shall be solely responsible to satisfy Conditions 3, 4, 9, 11, 17, 18, 20, 22, 23, and 24 [of the LUC D&O]" as to the remainder of the Petition Area. With respect to these

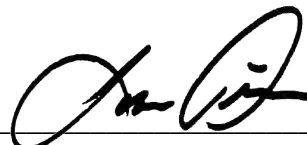
conditions, A&B and DLNR agreed to seek to remove them as encumbrances from the Property.

See Decl. Petition at 10, and Appendix “C” to Decl. Petition.

Fourth, the remainder of the Planning Department’s Position Statement is merely argument that is entirely unsupported by either fact or law. The Planning Department fails to acknowledge that many of the conditions were required to occur prior to A&B obtaining *any final subdivision*. Clearly, the LUC created this condition because it knew that subdivision of the Petition Area would permit it to be sold off to others, thereby complicating enforcement of the terms, which is exactly what has happened here. There is no dispute that the County granted A&B final subdivision approval for a three lot subdivision on October 24, 2013, through Subdivision File Number 3.2226, entitled the “Maui Lani Subdivision.” The approved subdivision includes “Lot 12-A-3,” which delineates the boundaries of the 65.378 acre Property. There is also no dispute that A&B passed this obligation on to DLNR through the Disposition Agreement. DLNR has the obligation to meet these requirements *now*, before any further development, not later when the condition terms will be of no consequence or benefit to anyone.

In conclusion, the Planning Department’s Position Statement should be stricken for failing to meet the requirements of HAR § 15-15-35, or alternatively, it should be entirely dismissed for its failure to be supported by fact or law, and considering its failure to accurately state for the LUC many fundamental, undisputed, procedural and factual matters.

DATED: Makawao, Maui, Hawai`i, November 3, 2014.



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CERTIFICATE OF SERVICE

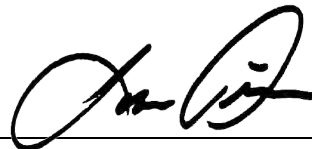
The undersigned hereby certifies that a true and correct copy of the foregoing document shall be duly served upon the following via email and United States Mail, postage prepaid, on November 4, 2014:

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DATED: Makawao, Maui, Hawai`i, November 4, 2014.



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