

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 OFFICE OF PLANNING'S RESPONSE TO MAUI LANI NEIGHBORS, INC., PETITION FOR DECLARATORY ORDER, FILED 10/22/2014; EXHIBIT "A" CERTIFICATE OF SERVICE

Filed by:

MAUI LANI NEIGHBORS, INC.

**PETITIONERS' REPLY TO OFFICE OF PLANNING'S RESPONSE TO MAUI LANI NEIGHBORS, INC., PETITION FOR DECLARATORY ORDER, FILED 10/22/2014
EXHIBIT "A"
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 *Office of Planning's Response to Maui Lani Neighbors, Inc. Petition for Declaratory Order*, filed October 22, 2014 ("OP's Response").

Abbreviations defined in MLN's *Petition for Declaratory Order*, filed October 8, 2014 ("Decl. Petition") are adopted herein.

MLN responds on three basic matters raised by OP in its response.

1. OP's Participation In This Action

MLN looks forward to the Office of Planning ("OP") presenting its position. However, MLN hopes that OP and DLNR have put in place sufficient protective measures to assure that DLNR does not assert improper influence over OP. This is necessary, in light of the fact that the former OP Director, Jessie Souki, is now the Deputy Director of DLNR.

2. **Timing Of The Evidentiary Hearing And A Ruling By The LUC**

OP requests sufficient time to conduct discovery and prepare for the hearing. MLN appreciates OP's interest in assuring sufficient preparation so that it may make well-founded recommendations to the LUC. However, this must be tempered with the fact that the Second Circuit Court has stayed MLN's case in its entirety pending the LUC's determination.¹ As long as the Court's order remains in effect, it is now incumbent on the LUC to issue its ruling as soon as is practicable. This is imperative to protect the homeowners of Maui Lani from irreparable harm. Irreparable harm is occurring now as DLNR forges ahead with the clearing and grading of the Property without the appropriate zoning in place and without a community plan amendment—all as were required by the LUC pursuant to Condition 21. Therefore, the LUC should schedule the evidentiary hearing for December 10 and 11, 2014.

3. **MLN Is An Interested Person**

OP appears to suggest that MLN's members have not fulfilled the "interested person" requirement set forth in HAR § 15-15-98(a) with respect to Conditions 8, 16 and 24. As explained below, OP's position is entirely misplaced and unsupported by the law. If the LUC were to conclude that MLN lacked an actual interest with respect to Conditions 8, 16 and 24, it would constitute reversible error on appeal.

First, OP bases its suggestion on the fact that MLN did not identify Conditions 8, 16 and 24 in its complaint. This contradicts the well-settled law with respect to notice pleading. First, there is the fact that MLN was filing its complaint at the earliest practicable moment in an effort to obtain a temporary restraining order from the Circuit Court. It did not have an obligation to

¹ See Second Circuit Court's *Order Denying in Part Defendant County of Maui's Motion to Dismiss Plaintiff's First Amended Complaint Pursuant to HRCF Rule 8 or in the Alternative HRCF Rule 12(B)(6), Staying all Further Activities and Proceedings in this Matter, and for Deferral to the State of Hawai'i Land Use Commission*, filed October 29, 2014, attached hereto as **Exhibit "A"**.

identify to the Court each and every condition that it believed DLNR was violating. MLN's research continued after it filed its complaint, and thus the additional conditions were identified later.

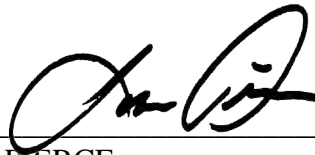
The law is clear. MLN through its complaint was not required to name with specificity each condition, or, in fact, *any* of the conditions. *See, e.g., Hall v. Kim*, 53 Haw. 215, 219, 491 P.2d 541, 544 (1971). In *Hall v. Kim*, the Court explained that the Hawai'i Rules of Civil Procedure "do not require a claimant to set out in detail the facts upon which he bases his claim." *Id.* 53 Haw. 215, 219, 491 P.2d 541, 544 (1971) (quoting and citing the U.S. Supreme Court in *Conley v. Gibson*, 355 U.S. 41, 47-48, 78 S.Ct. 99, 103, 2 L.Ed.2d 80 (1957) with respect to the identical Federal Rule of Civil Procedure).

Second, OP's suggestion is entirely contrary to the repeated holdings of the Hawai'i Supreme Court's on the "interested person" requirement, which is a much lower threshold than the "injury in fact" test applied by the courts. The Hawai'i Supreme Court confirms that "any interested person" means one who, without restriction, ***may be affected by the issue or interest in question.*** *Asato v. Procurement Policy Board*, 132 Hawai'i 333, 343, 322 P.3d 228, 238 (2014) (interpreting synonymous language set forth in HRS § 91-7² relating to declaratory rulings by circuit courts of agency rules); *see also Life of the Land v. Land Use Com'n of State of Hawaii*, 63 Haw. 166, 177-78, 623 P.2d 431, 441-42 (1981) (explaining that a person who has interests that "may have been adversely affected," is an interested person). This is an extremely low threshold requirement intended to assure that persons before administrative agencies, such as the LUC, will be heard on the merits by those agencies and not denied a hearing based on procedural obstacles.

² The same "any interested person" standing analysis applies to both HRS § 91-7 (the statute discussed in *Asato* and *Life of the Land*) and HRS § 91-8.

It is notable that in *Life of the Land*, the Hawai`i Supreme Court found that the persons there met the interested person test “even though they were neither owners nor adjoining owners of land reclassified by the Land Use Commission.” Id. at 177, 623 P.2d at 441. In contrast, here, MLN’s members are, in fact, land owners of land that adjoins the Petition Area. The *Asato* Court explains: “[B]ased on the plain language of HRS § 91–7, then, any interested person is one who is, **without restriction** ‘affected’ by or ‘involved’ with the validity of an agency rule.” *Asato*, 132 Haw. at 343, 322 P.3d at 238 (quoting *AlohaCare v. Ito*, 126 Hawai`i 326, 360, 271 P.3d 621, 655 (2012) (Acoba, J., concurring and dissenting)) (emphasis added; internal citations, brackets and some quotations omitted).

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



TOM PIERCE
PETER N. MARTIN
Attorneys for Petitioner Maui Lani Neighbors, Inc.

Tom Pierce

FILED

2014 OCT 29 AM 10:40

N. MARTINS, CLERK
SECOND CIRCUIT COURT

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

MAUI LANI NEIGHBORS, INC., a Hawai'i
Nonprofit Corporation,

Plaintiff,

vs.

STATE OF HAWAII; STATE OF
HAWAII DEPARTMENT OF LAND AND
NATURAL RESOURCES; STATE OF
HAWAII BOARD OF LAND AND
NATURAL RESOURCES; WILLIAM
AILA, JR., in his official capacity as chair of
the State of Hawai'i Board of Land and
Natural Resources; COUNTY OF MAUI;
COUNTY OF MAUI PLANNING
COMMISSION; COUNTY OF MAUI
DEPARTMENT OF PLANNING;
WILLIAM SPENCE in his official capacity
as County of Maui Planning Director; JOHN
DOES 1-10, JANE DOES 1-10, AND DOE
PARTNERSHIPS, CORPORATIONS,
GOVERNMENTAL UNITS OR OTHER
ENTITIES 1-10

Defendants.

Civil No: 13-1-0646(2)
(Other Civil Action)

**ORDER DENYING IN PART
DEFENDANT COUNTY OF MAUI'S
MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT
PURSUANT TO HRCP RULE 8 OR IN
THE ALTERNATIVE HRCP RULE
12(B)(6), STAYING ALL FURTHER
ACTIVITIES AND PROCEEDINGS IN
THIS MATTER, AND FOR DEFERRAL
TO THE STATE OF HAWAII LAND USE
COMMISSION; CERTIFICATE OF
SERVICE**

ORDER DENYING IN PART DEFENDANT COUNTY OF MAUI'S MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT PURSUANT TO HRCP RULE 8 OR IN THE ALTERNATIVE HRCP RULE 12(B)(6), STAYING ALL FURTHER ACTIVITIES AND PROCEEDINGS IN THIS MATTER, AND FOR DEFERRAL TO THE STATE OF HAWAII LAND USE COMMISSION

These matters came before the Court for hearing on October 15, 2014. Amanda J. Weston, Esq. and Linda Chow, Esq., Deputy Attorneys General, appeared on behalf of the State of Hawai`i, State of Hawai`i Department of Land and Natural Resources, State of Hawai`i Board of Land and Natural Resources, and William Aila, Jr. as Chair ("State"). Kristin Tarnstrom, Esq., Deputy Corporation Counsel, appeared on behalf of the County of Maui, County of Maui Planning Commission, County of Maui Department of Planning, and William Spence as Planning Director ("County"). Tom Pierce, Esq. and Peter Martin, Esq. appeared on behalf of the Plaintiff.

After reviewing all pleadings, hearing argument, and for good cause having been shown:

IT IS ORDERED that the Motion for Partial Dismissal of Plaintiff's First Amended Complaint pursuant to HRCP Rule 8, or in the alternative, for failure to state a claim pursuant to HRCP Rule 12(b)(6) filed by Defendant County of Maui is DENIED as to Count 1F.

IT IS FURTHER ORDERED that this matter is stayed in its entirety pending further order of the Court.

IT IS FURTHER ORDERED that the Court shall defer to the State of Hawai`i, Land Use Commission (LUC) for determination as to any potential violation by any person or party of the Decision and Order entered by the LUC in Docket No. A-10-789 dated June 21, 2012.

IT IS FURTHER ORDERED that nothing in this Court's order shall require the LUC to determine if a violation has occurred or the procedure to be used in making such a finding.

IT IS FURTHER ORDERED that in the event the LUC determines that a violation of the Decision and Order entered by the LUC in Docket No. A-10-789 dated June 21, 2012 has occurred, the Court requests that the LUC set forth its findings with specificity together with any recommendations that it may make.

DATED: Wailuku, Maui, Hawai'i,

OCT 28 2014



[Handwritten signature]

Judge of the above-entitled Court

OCT 28 2014
CIRCUIT COURT SECOND CIRCUIT
STATE OF HAWAII



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document was duly served upon the following parties at their last known address by U.S. MAIL, postage pre-paid or by court jacket.

Tom Pierce, Esq.
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[VIA COURT JACKET]

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[VIA U.S. MAIL]

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[VIA COURT JACKET]

Attorney for Defendants County of Maui, County of Maui Planning Commission, Maui Department of Planning and William Spence in his official capacity.

OCT 29 2014

DATED: Wailuku, Maui, Hawai`i, _____

/sdd/ N. Martins

Clerk of the above-entitled Court

CERTIFICATE OF SERVICE

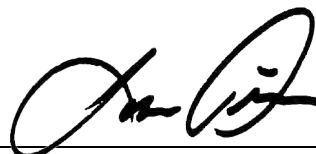
The undersigned hereby certifies that a true and correct copy of the foregoing document shall be duly served upon the following via email and United States Mail, postage prepaid, on November 4, 2014:

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



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