

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' SUPPLEMENT TO PETITION FOR DECLARATORY ORDER, FILED OCTOBER 6, 2014; EXHIBITS "F" – "N"; CERTIFICATE OF SERVICE

**Filed by:**

MAUI LANI NEIGHBORS, INC.

**PETITIONERS' SUPPLEMENT TO PETITION FOR DECLARATORY ORDER, FILED  
OCTOBER 6, 2014  
EXHIBIT "F" – "N"  
CERTIFICATE OF SERVICE**

TOM PIERCE, ATTORNEY AT LAW, LLLC

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Maui Lani Neighbors, Inc. ("**Petitioner**" or "**MLN**"), through its attorney Tom Pierce, Attorney at Law, LLLC, submits this supplement to its *Petition for Declaratory Order*, filed October 6, 2014. Abbreviations set forth in MLN's *Petition for Declaratory Order* (the "Petition") are incorporated herein.

The purpose of this supplement is to provide the LUC with a copy of the Second Circuit Court's recent order staying the court action until the LUC has ruled on the instant petition, as well as to inform the LUC regarding the nature of DLNR's current development activities on the Property.

**A. The Court's Order**

Attached hereto as **Exhibit "F"**, is a true and correct copy of the order entered by the Second Circuit Court on October 29, 2014, in the court action filed by MLN. The Order provides in pertinent part as follows:

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.

Court Order at 2.

**B. Recent Activities of DLNR**

Subsequent to MLN filing the instant petition, DLNR has initiated development activities on the Property (as shown through the exhibits identified below). These development activities show absolute disregard for endangered species and potential Hawaiian burials, and an utter lack of sensitivity towards the nearby homeowners. More importantly, these development activities are illegal and would never have occurred without sufficient protective measures that would have been assured if DLNR had followed the law. Pertinent to the LUC, DLNR illegally fast tracked its sports complex project, rather than fulfilling the various conditions placed on the Petitioner by the LUC through the LUC D&O. Among those conditions is Condition 21, which required DLNR to develop the Property consistent with A&B's representations to the LUC. A&B represented to the LUC that the Property would not be developed until it went through a community plan amendment process and change in zoning process. If DLNR had fulfilled its obligations under Condition 21, Maui Lani homeowners would have had a meaningful opportunity to engage in numerous hearings, and had an opportunity to change the outcome,

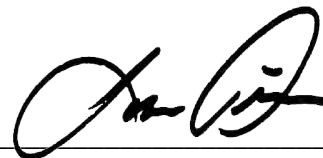
including to assure sufficient protections were put in place to protect the public and the Maui Lani homeowners.

**Exhibits “G” and “H”** depict the location of the dust fences being erected by DLNR in late October, early November 2014, within inches of the boundaries of over sixty Maui Lani homeowners. These dust fences will tower over these homeowners’ backyards, including eliminating light into their homes. DLNR has not communicated to the Maui Lani homeowners at all regarding these dust fences, and has not stated how long they will be erected.

**Exhibits “I” and “J”** show clearing being conducted by DLNR in October 2014. DLNR has, or is in the process of, wiping out a Kiawe forest that could have provided shade and helped hold the sand dunes in place, if this Property were designed as a passive park, which MLN believes would have occurred, if DLNR had gone through the required community plan amendment process and the change in zoning process.

**Exhibits “L”, “M” and “N”** show the proximity of DLNR’s development activities to the Maui Lani homeowners. Exhibit “M” is taken from within a Maui Lani home. The photograph shows a broken window in the foreground, and the excavator conducting clearing activities in the background. Exhibit “N” shows the homeowner’s backyard and the substantial piece of wood lying on the ground that caused the damage.

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



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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  
WAILUKU, MAUI, HAWAII  
JUDGE OF THE ABOVE-ENTITLED COURT



## 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.  
P.O. Box 798  
Makawao, Hawai'i 96768

[VIA COURT JACKET]

Attorney for Plaintiff Maui Lani Neighbors, Inc.

Amanda J. Weston, Esq.  
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[VIA U.S. MAIL]

Attorney for Defendants 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. in his official capacity.

Kristin Tarnstrom, Esq.  
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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



**EXHIBIT G**



**EXHIBIT H**



**EXHIBIT I**



**EXHIBIT J**



**EXHIBIT K**



**EXHIBIT L**



**EXHIBIT M**



**EXHIBIT N**

## **CERTIFICATE OF SERVICE**

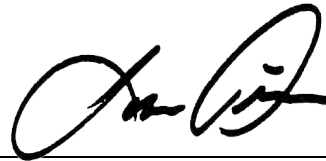
The undersigned hereby certifies that a true and correct copy of the foregoing document shall be duly served upon the following via email and United States Mail, postage prepaid, on November 4, 2014:

Patrick K. Wong  
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425 Queen Street  
Honolulu, Hawai`i 96813

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



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TOM PIERCE  
PETER N. MARTIN (of Counsel)  
Attorneys for Plaintiff  
MAUI LANI NEIGHBORS, INC.