



LAND USE COMMISSION
STATE OF HAWAII

2014 DEC -3 A 11: 39

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In The Matter Of The Petition Of)	DOCKET NO. DR14-51
)	
MAUI LANI NEIGHBORS, INC.)	ORDER DENYING PETITION
)	FOR DECLARATORY ORDER
For A Declaratory Order Under)	
§§ 15-15-98 Et Seq. Of The Land Use)	
Commission Rules And Hawai'i)	
Revised Statutes § 91-8)	
_____)	

ORDER DENYING PETITION FOR DECLARATORY ORDER

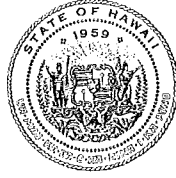
AND

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT
COPY OF THE DOCUMENT ON FILE IN THE OFFICE OF THE
STATE LAND USE COMMISSION, HONOLULU, HAWAII.

Date December 3, 2014

BY 
DANIEL ORODENKER
Executive Officer



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ORDER DENYING PETITION FOR DECLARATORY ORDER

On October 6, 2014, Maui Lani Neighbors, Inc. ("MLN"), through its attorney Tom Pierce, Attorney at Law, LLC, filed a Petition For Declaratory Order ("Petition"), pursuant to section 15-15-98 et seq., Hawai'i Administrative Rules ("HAR"), and section 91-8, Hawai'i Revised Statutes.¹ MLN sought a declaratory ruling

¹ In the Petition, MLN disclosed that it filed a First Amended Verified Complaint with the Second Circuit Court on September 9, 2014 (*Maui Lani Neighbors v. State of Hawai'i et al.*, Civil No. 14-1-0501(2)). On October 15, 2014, and by 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 ("Order, Filed 10/29/14"), the Second Circuit Court provided for the following:

- (1) the Motion for Partial Dismissal of Plaintiff's First Amended Complaint pursuant to HRCF Rule 8, or in the alternative, for failure to state a claim pursuant to HRCF Rule 12(b)(6) filed by the County of Maui is denied as to Count 1F;

from the Commission declaring that the proposed Central Maui Sports Complex uses proposed by the State of Hawai'i Department of Land and Natural Resources ("DLNR") violate Condition Numbers 5, 8, 16, 21, and 24 of the Commission's Decision and Order filed June 21, 2012, in Docket No. A10-789/A&B Properties, Inc.

On October 22, 2014, the State of Hawai'i Office of Planning ("OP") filed its Response to MLN's Petition.

On October 23, 2014, the County of Maui Department of Planning ("DP") filed its Preliminary Position Statement on MLN's Petition.

On October 23, 2014, the County of Maui, the County of Maui Planning Commission, the DP, and William Spence in his official capacity as the DP Director (collectively "County of Maui") filed a Petition to Intervene.

On October 28, 2014, the DLNR, the State of Hawai'i Board of Land and Natural Resources ("BLNR"), and William Aila, Jr., in his official capacity as chair of the BLNR (collectively "DLNR/BLNR") filed a Motion to Intervene.

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- (2) the matter of MLN's First Amended Complaint is stayed in its entirety pending further order of the Court;
 - (3) the Court shall defer to the State of Hawai'i Land Use Commission ("Commission") for determination as to any potential violation by any person or party of the Commission's Findings of Fact, Conclusions of Law, and Decision and Order ("Decision and Order") filed June 21, 2012, in Docket No. A10-789/A&B Properties, Inc.;
 - (4) nothing in the Court's order shall require the Commission to determine if a violation has occurred or the procedures to be used in making such a finding; and
 - (5) in the event the Commission determines that a violation of the Decision and Order has occurred, the Court requests that the Commission set forth its findings with specificity together with any recommendations that it may make.

On November 6, 2014, MLN filed (1) a Supplement to the Petition; (2) a Reply to OP's Response to MLN's Petition; (3) a Reply to Preliminary Position Statement of the DP; (4) a Statement of No Position on State of Hawai'i's Motion to Intervene; and (5) Petitioners' Opposition to County of Maui's Motion to Intervene.

On November 12, 2014, A&B Properties, Inc. ("A&B"), filed a Memorandum Re: MLN's Petition, a Request for Contested Case Hearing, and Notice of Intent to Intervene.

On November 13, 2014, the County of Maui filed a Response to MLN's Opposition to County Petition to Intervene.

On November 17, 2014, MLN filed a Reply to A&B's Memorandum Re: MLN's Petition, a Request for Contested Case Hearing, and Notice of Intent to Intervene.

On November 20, 2014, the Commission met in Kahului, Maui, Hawai'i, to consider the Petition pursuant to section 15-15-100, HAR. Tom Pierce, Esq., appeared on behalf of MLN.² The following individuals provided oral and/or written testimony: Neil Sorensen, Erin Potter, Lucienne DeNaie, Clare Apana, Mary Spencer on behalf of Aimee Kimura-Koch, Laura Amerio, Dave Jorgensen, Harley I. Manner, Jared Schmitz

² Prior to the receipt of public testimony, Commissioner Jonathan Scheuer disclosed that during 2004 to 2010, he was employed by the Office of Hawaiian Affairs, which owned and managed Waimea Valley through a limited liability corporation in which he was one of the managers, to work with a conservation easement on the property with Tom Pierce, counsel to MLN. There were no objections to Commissioner Scheuer's participation in the proceeding.

on behalf of Mark Hoenig, Sarita Velada, M. Pualani Kamaunu Basbas, Kaniloa Kamaunu, Holden Kepo`okela Gannon, and Taschia Wright.³ The Commission also heard testimony on the Petition from Amanda J. Weston, Esq., on behalf of the DLNR/BLNR; Bryan C. Yee, Esq., on behalf of OP; Kristin Tarnstrom, Esq., on behalf of the County of Maui; and Benjamin M. Matsubara, Esq., on behalf of A&B.

At the meeting, Mr. Pierce disclosed that he had filed a Motion for Reconsideration of Order, Filed 10/29/14 in Civil No. 14-1-0501(2) with the Second Circuit Court.

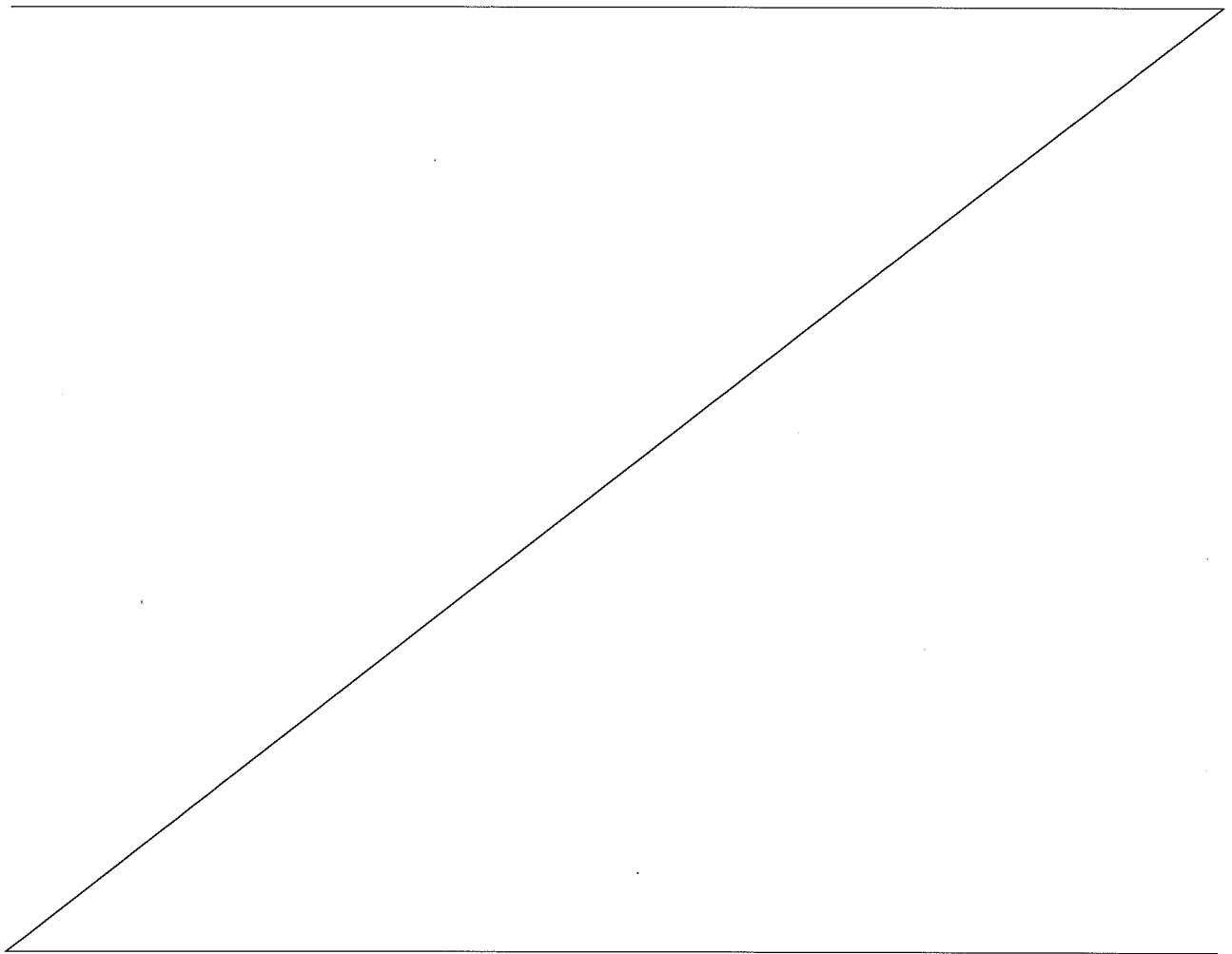
In its discussion of the Petition, the Commission noted, among other things, that in accordance with section 15-15-100(a)(1)(C), HAR, the issuance of a declaratory order in this matter may adversely affect the interest of the State in the pending litigation before the Second Circuit Court.

Thereafter, a motion was made and seconded to deny the Petition pursuant to section 15-15-100(a)(1)(C), HAR. Following discussion by the Commissioners, a vote was taken on this motion. There being a vote tally of 7 ayes, 0 nays, and 1 excused, the motion carried.

³ The Commission previously received written testimony on the Petition from Mark Vaught, Erin Rodrigues, and Vernon Kapua`ala, the latter of which included a petition of several hundred individuals and comments from some of them.

ORDER

Having duly considered the Petition and the written and oral arguments presented by MLN, as well as the pleadings filed by DLNR/BLNR, OP, the County of Maui, and A&B, and a motion having been made at a meeting conducted on November 20, 2014, in Kahului, Maui, Hawai'i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, this Commission ORDERS that the Petition be DENIED.



ADOPTION OF ORDER

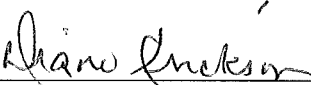
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

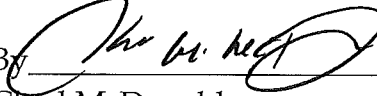
Done at Honolulu, Hawai'i, this 3rd, day of December, 2014, per motion on November 20, 2014.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII


Deputy Attorney General

By 
Chad McDonald
Chairperson and Commissioner

Filed and effective on:

12/3/14

Certified by:


DANIEL ORODENKER
Executive Officer



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CERTIFICATE OF SERVICE

I hereby certify that a ORDER DENYING PETITION FOR DECLARATORY ORDER was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular or certified mail as noted:

CERTIFIED TOM PIERCE, ESQ.
MAIL: PETER MARTIN, ESQ.
PO Box 798
Makawao, Hawai'i 96768
Petitioner Representative

DEL.: LEO ASUNCION, Acting Director
State Office of Planning
P. O. Box 2359
Honolulu, Hawai'i 96804-2359


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REGULAR MAIL: KRISTIN TARNSTROM, Esq.
Department of the Corporation Counsel
County of Maui
200 South High Street
Wailuku, Hawai'i 96793
Attorney for the County of Maui

REGULAR MAIL: WILLIAM SPENCE, Director
Department of Planning
County of Maui
200 South High Street
Wailuku, Hawai'i 96793

Dated: Honolulu, Hawai'i, December 3, 2014



DANIEL ORODENKER

Executive Officer