

BEFORE THE LAND USE COMMISSION 2014 NOV 17 A 7:41

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 A&B PROPERTIES, INC.'S MEMORANDUM RE: PETITION FOR DECLARATORY ORDER FILED OCTOBER 8, 2014; REQUEST FOR CONTESTED CASE HEARING AND NOTICE OF INTENT TO INTERVENE AND CERTIFICATE OF SERVICE, FILED 11/12/2014; CERTIFICATE OF SERVICE

**Filed by:**

MAUI LANI NEIGHBORS, INC.

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PETITION FOR DECLARATORY ORDER FILED OCTOBER 8, 2014; REQUEST FOR  
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CERTIFICATE OF SERVICE, FILED 11/12/2014  
CERTIFICATE OF SERVICE**

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Maui Lani Neighbors, Inc. ("Petitioner" or "MLN"), through its attorney Tom Pierce, Attorney at Law, LLC, submits this reply to the *A&B Properties, Inc.'s Memorandum Re: Petition for Declaratory Order filed October 6, 2014; Request for Contested Case Hearing and Notice of Intent to Intervene and Certificate of Service*, filed November 12, 2014 ("A&B Memo"). (Abbreviations defined in MLN's *Petition for Declaratory Order*, filed October 8, 2014 ("Petition"), are adopted herein.)

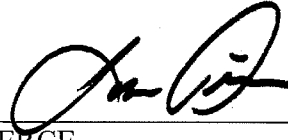
A&B through its Memo (1) requests a contested case hearing, (2) provides notice of its intent to intervene, and (3) enters a general denial with respect to MLN's Petition. MLN briefly responds below.

With respect to A&B's desire to intervene and its entry of a general denial of the allegations in the Petition, the LUC should take note of the following. First, MLN's Petition does not seek declaratory relief against A&B. This is made clear in allegation 38, which provides as follows: "Petitioner requests a declaratory order *that the Sports Complex uses proposed by DLNR* violate the express conditions of the LUC D&O, including Conditions 5, 8, 16, 21, and 24." Petition ¶ 38 (emphasis added). Therefore, the need for A&B to intervene is questionable because its rights are not at issue.

However, A&B's desire to intervene and protect its rights with respect to the petition area underlines the fallacy of the County of Maui's and DLNR's separate argument that the 65 acre Property it purchased from A&B is essentially unrelated to the Petition Area of which it is a part, and the conditions place on that Petition Area, including the Property.

A&B also requests a contested case hearing because the "subject matter and the nature of the allegations are technical in nature." Actually, whether or not DLNR has violated the conditions is not that technical. The facts and necessary conclusions are quite simple: Did DLNR initiate construction on the sports complex before complying with the timelines set forth the LUC D&O? And, is DLNR proceeding in a manner consistent with the representations made by the Petitioner, A&B? Nevertheless, MLN agrees a contested case hearing is necessary, and requests an evidentiary hearing. However, the evidentiary hearing should proceed at the earliest practicable time because the Maui Lani homeowners, and the public generally, are suffering irreparable harm from DLNR's illegal construction activities. DLNR intends to have Phase One of the sports complex construction activities substantially complete by late Spring 2015.

DATED: Makawao, Maui, Hawai'i, November 13, 2014.



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Attorneys for Petitioner Maui Lani Neighbors, Inc.

**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 13, 2014:

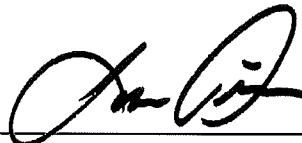
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DATED: Makawao, Maui, Hawai'i, November 13, 2014.



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