

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. DR 14-51

PETITION FOR DECLARATORY ORDER;  
APPENDICES "A" – "E"; CERTIFICATE  
OF SERVICE

**Filed by:**

MAUI LANI NEIGHBORS, INC.

2014 OCT -6 A 11:01

**PETITION FOR DECLARATORY ORDER**  
**APPENDICES "A"-"E"**  
**CERTIFICATE OF SERVICE**

TOM PIERCE, ATTORNEY AT LAW, LLLC

TOM PIERCE, # 6983  
PETER N.MARTIN (of Counsel), #9705  
P.O. Box 798  
Makawao, Hawai'i 96768  
Tel No. 808-573-2428  
Fax No. 866-776-6645  
Email: tom@mauilandlaw.com

Attorneys for Petitioner  
MAUI LANI NEIGHBORS, INC.

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**PETITION FOR DECLARATORY ORDER**

Maui Lani Neighbors, Inc. (“**Petitioner**” or “**MLN**”), through its attorney Tom Pierce, Attorney at Law, LLLC, hereby submits this *Petition for Declaratory Order* (“**Petition**”) and hereby requests that the State of Hawai'i Land Use Commission (“**LUC**” or “**Commission**”) issue declaratory orders pursuant to Land Use Commission Rules (“**LUC Rules**”) §§ 15-15-98, *et seq.* and Hawai'i Revised Statutes (“**HRS**”) § 91-8.

**I. CONCURRENT ACTION IN CIRCUIT COURT**

1. MLN has filed separately for similar declaratory relief in the case styled *Maui Lani Neighbors v. State of Hawai'i et. al.*, Civil No. 14-1-0501 (2), in the Circuit Court of the Second Circuit, State of Hawai'i (“**Circuit Court**”). A copy of the *First Amended Verified*

*Complaint*, filed in the Circuit Court on September 9, 2014 (“**Complaint**”),<sup>1</sup> is attached hereto as **Appendix “A”** and hereby incorporated by reference.

2. The Circuit Court has original jurisdiction over property owners directly affected by zoning violations, subject to the doctrine of primary jurisdiction. *See Pavsek v. Sandvold*, 127 Hawai`i 390, 392, 279 P.3d 55, 57 (App. 2012), as corrected (Aug. 3, 2012) (holding that Hawai`i Revised Statutes § 46-4 creates a private right of action in favor of a real estate owner directly affected by an alleged zoning violation, but that the owner’s action is subject to the doctrine of primary jurisdiction).

3. MLN has requested preliminary injunctive relief from the Circuit Court. The Circuit Court has set an initial hearing date of October 15, 2014, for MLN’s injunctive relief request. Under the primary jurisdiction doctrine, the Circuit Court can grant preliminary injunctive relief but may still decide to defer to the Commission with respect to the declaratory relief requested in this Petition before having a trial on the merits.

4. MLN respectfully requests that the LUC defer to the Circuit Court’s ruling after the hearing on October 15, 2014, or any other pertinent later ruling of the court, on how to proceed before it addresses the declaratory relief requested herein.

## **II. NAME, ADDRESS AND TELEPHONE NUMBER OF PETITIONER**

5. MLN is a Hawai`i non-profit membership corporation duly organized under the laws of the State of Hawai`i. MLN’s corporate purpose includes supporting, promoting and advocating for sustainable and appropriate community planning, and legal state and county zoning consistent therewith, for the Central Maui region of the Island of Maui. MLN’s members consist of property owners within the Maui Lani master planned community, located in Central

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<sup>1</sup> Unless otherwise noted, capitalized terms as used herein are defined in the Complaint.

Maui, on the Island of Maui, State of Hawai`i. MLN currently consists of over one hundred (100) members who represent over sixty (60) lots located within Maui Lani.

6. Tom Pierce and the law firm of Tom Pierce Attorney at Law, LLLC, have been appointed to represent MLN pursuant to LUC Rules § 15-15-35. All correspondence and communications in regard to this Petition shall be addressed to, and served upon, Tom Pierce, Attorney at Law, LLLC, P.O. Box 798, Makawao, Hawai`i 96768.

7. As part of its Petition application, MLN has authorized this law firm to act on its behalf with respect to this matter. *See* notarized Authorization by MLN’s Vice President Harley Ichiro Manner, Ph.D., attached hereto as **Appendix “E”**.

8. The facts set forth herein are the same as the facts presented in the First Amended Complaint, identified herein, which includes a verification by Dr. Manner, which is hereby incorporated by reference.

### **III. STATEMENT OF PETITIONER’S INTEREST, INCLUDING REASONS FOR SUBMISSION OF THE PETITION**

#### **A. MLN Has Membership Standing**

9. MLN has membership standing. *See, e.g., Sierra Club v. Dep’t of Transp.*, 115 Hawai‘i 299, 334, 167 P.3d 292, 327 (2007) (“An association may sue on behalf of its members—even though it has not itself been injured—when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.”). MLN also has organizational standing to sue for injury based on its own nonprofit corporation interests.

10. A further statement of facts supporting MLN’s standing is found in the Complaint. *See* Complaint (attached as Appendix “A”) at ¶¶ 19-25.

**B. MLN Is An Interested Person**

11. MLN is an “interested person” under LUC Rules § 15-15-98(a) and HRS § 91-8 for the reasons set forth below.

12. LUC Rules § 15-15-98(a) provides that “[o]n petition of any interested person, the [C]ommission may issue a declaratory order as to applicability of any statutory provision or of any rule or order of the [C]ommission to a specific factual situation.” LUC Rules § 15-15-98(a); *see also* HRS § 91-8 (the statute on which LUC Rules §15-15-98(a) is based).

13. 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 § 91-7<sup>2</sup> 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). Moreover, the more stringent “injury in fact” and “aggrieved person” tests applicable to some judicial actions and contested cases under HRS Chapter 91 does not apply when evaluating whether a person is “any interested person.” *Asato*, 132 Hawai`i at 344, 322 P.3d at 239.

14. MLN is an “interested party” because MLN and its members may be affected by the applicability of the statutory provisions, rules, and orders (enumerated in Section IV., *infra*).

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<sup>2</sup> The same “any interested person” stranding analysis applies to both HRS § 91-7 (the statute discussed in *Asato* and *Life of the Land*) and HRS § 91-8.

#### IV. DESIGNATION OF THE SPECIFIC PROVISION, RULE, OR ORDER IN QUESTION

15. Under LUC Rules § 15-15-98(a), the Commission may make declaratory rulings “as to the applicability of any statutory provision or of any rule or order of the department or the commission.”

16. The applicability of the *Findings of Fact, Conclusions of Law, Decision and Order*, issued by the LUC on June 21, 2012 (“**LUC D&O**”) is in question. The LUC D&O is attached hereto as **Appendix “B”** and hereby incorporated by reference.

#### V. COMPLETE STATEMENT OF THE RELEVANT FACTS AND A STATEMENT OF THE ISSUES RAISED OR CONTROVERSY OR UNCERTAINTY INVOLVED

##### A. Brief Summary

17. MLN’s members reside in close proximity to the property affected by this Petition, Lot 12-A-3 of the Maui Lani Subdivision, File Number 3.2226, consisting of 65.378 acres, and designated as tax map key number (2) 3-8-007:104 (the “**Property**”).

18. On June 26, 2014, A&B Properties, Inc., (“**A&B**”)<sup>3</sup> conveyed the Property to the State of Hawai`i Department of Land and Natural Resources (“**DLNR**”).<sup>4</sup> DLNR proposes to develop the *Central Maui Regional Sports Complex* (“**Sports Complex**”) on the Property. The Sports Complex is proposed for intensive, urban-type, active, recreational uses (“**Sports Complex Uses**”) that will consist of the following infrastructure:

- Three (3) soccer fields;
- nine (9) baseball/softball fields;

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<sup>3</sup>A&B is a Hawai`i corporation, whose principal place of business is 822 Bishop Street, Honolulu, Hawai`i 96813. A&B Properties, Inc. is a wholly owned subsidiary of Alexander & Baldwin, Inc. (collectively A&B Properties, Inc. and Alexander & Baldwin, Inc. are referred to herein as “**A&B**”).

<sup>4</sup> DLNR is the department of the State of Hawai`i charged with the obligation to manage, administer, and exercise control over public lands, including parks. HRS § 171-3.

- lights for night time playing;
- over eight (8) acres of hardened surface area;
- parking for seven hundred (700) vehicles;
- multiple restroom facilities;
- concession stands;
- a water well and associated pumps for irrigation;
- a retention basin that will cover 5.8 acres, designed to handle the Sports Complex runoff, calculated by DLNR to require 8 acre-feet of basin capacity; and
- a retention basin that will cover fifteen (15) to thirty-four (34) acres that is designed to handle all of the surface water runoff from a 357 acre portion of a development called “Wai`ale” (“**Wai`ale project**”) being proposed A&B, calculated by A&B to require 176 acre-feet of basin capacity.

19. The Property is encumbered by conditions imposed by the LUC D&O, which encumber the Property, are recorded on title, and run with the land. These conditions are binding on A&B and its successors and assigns, including the current owner of the Property, the State of Hawai`i through DLNR.

20. The Sports Complex uses proposed by DLNR violate the express conditions of the LUC D&O, including Conditions 5, 8, 16, 21, and 24.

#### **B. LUC D&O**

21. On August 25, 2010, A&B filed the *Petition of A&B Properties, Inc. to Amend the Agricultural Land Use District Boundary into the Urban District for approximately 545.229 acres at Wailuku and Waikapū, County of Maui, State of Hawai`i, TMK: 3-8-05: portion of 23 and 37, 3-8-07:71, portion of 101 and 104*, Docket No. A10-789, filed August 25, 2010 (“**DBA Petition**”) with the LUC. The DBA Petition was a petition for a State of Hawai`i district boundary amendment, pursuant to HRS Chapter 205, from State “Agriculture” to State “Urban” for all of the land designated for the Wai`ale project, including the Property (the “**Petition Area**”).

22. Throughout the application process and the petition hearing, A&B—consistent with its representations to the LUC in the *Wai`ale Final Environmental Impact Statement* (“**Wai`ale FEIS**”)<sup>5</sup>—identified the Property as being part of the Wai`ale project, and therefore part of the “Petition Area” that was being evaluated by the LUC for the district boundary amendment.

23. A&B also represented to the LUC that the Property would be a critical part of the Wai`ale project, especially with respect to its use as a *buffer* between Wai`ale and Maui Lani, as well as its importance as the site for a retention basin to accept surface water runoff from a 357 acre portion of the Wai`ale development.

24. To assure consistency with County planning documents, A&B also represented at the LUC hearing that it would obtain *for the entire Petition Area* an amendment to the Maui Island Plan (2012), as necessary, after its adoption in final form by the County Council, as well as an amendment to the Wailuku-Kahului Community Plan (2002),<sup>6</sup> which A&B acknowledged was necessary.

25. A&B further represented to the LUC that the *entire Petition Area* would be submitted to the Maui County Council for a change in zoning, which would include *a comprehensive evaluation* of the impacts of the entire Wai`ale project, including an opportunity for appropriate County conditions. This evaluation process would, as A&B represented to the LUC, occur through the three-phase process that is necessary for a change in zoning to County “Project District.”

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<sup>5</sup>At the same time A&B petitioned the LUC for a district boundary amendment, it was preparing the Wai`ale environmental impact statement, which was reviewed and ultimately accepted by the LUC. Additional factual allegations regarding the Wai`ale FEIS can be found in the Complaint (Appendix “A”), at ¶¶ 70-79.

<sup>6</sup>The Maui Island Plan (2012) and the WK Community Plan (2002) are public documents available at <http://www.co.maui.hi.us/index.aspx?nid=1503> and <http://www.co.maui.hi.us/documents/17/69/240/wailuku.pdf>, respectively. Under Maui County Code § 2.80B.010, the Maui Island Plan (2012) and the Wailuku-Kahului Community Plan (2002) are “provisions that are intended to have the force and effect of law” and thus they are “statutory provisions” within the purview of MPC § 12-201-93 and HRS § 91-8.

26. Representations set forth in the Wai`ale EIS also include representations made by A&B to the LUC. The LUC was designated the accepting authority for the Wai`ale EIS and was ultimately accepted by the LUC. Notably, A&B made *no impact assumptions* with respect to the Property. Instead, A&B presented the Property as essentially a mitigation area—one that would: (a) provide an open space area that would provide a “*buffer*” between Maui Lani and Wai`ale; and (b) contain the massive retention basin designed to handle surface water runoff from 357 acres of the Wai`ale development.

27. At the hearing on A&B’s district boundary amendment petition before the LUC, A&B representatives, as well as the Maui County Planning Director emphasized to the LUC that decisions with respect to the park uses had not yet been made and would not be made and evaluated until the County initiated the comprehensive review process for the Wailuku-Kahului Community Plan (2002), or as would occur during the three-phase change in zoning process to County “Project District.”

28. Based on A&B’s representations, on June 21, 2012, the LUC issued the LUC D&O and re-designated the 545-acre Wai`ale Land from State Agriculture to State Urban by granting a district boundary amendment.

29. The conditions established by the LUC, which are part of the LUC D&O, encumber the entire Petition Area (which includes the Property), are recorded on title, and run with the land. Those conditions are binding on A&B and its successors and assigns, including the current owner of the Property, the State of Hawai`i through DLNR.

**C. Disposition Agreement and Conveyance of Property**

30. On June 18, 2014, A&B and DLNR entered into a Disposition Agreement regarding the conveyance of the Property (“**Disposition Agreement**”). The Disposition Agreement is attached hereto as **Appendix “C”** and hereby incorporated by reference.

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.

33. On June 26, 2014, A&B and DLNR executed and recorded with State of Hawai`i Bureau of Conveyances a “Warranty Deed with Reservation of Easements Covenants, Reservations and Restrictions” as Document No: A-52900488 (“**Deed**”). The Deed is attached hereto as **Appendix “D”** and hereby incorporated by reference.

34. Through the Deed, A&B conveyed the Property to DLNR subject to twenty-one (21) easements made in favor of A&B, of which seven (7) were recorded at the same time as the Deed was recorded.

35. The Deed and the seven (7) easements included a map showing the Property and the location of the easements on the ground. A true and correct copy of this map is attached as Exhibit “F” to the Complaint (*see* Appendix “A”). The map shows that a significant portion of the Property is encumbered by easements granted in favor of A&B for the purpose of A&B’s infrastructure for its proposed Wai`ale development.

36. Additional factual allegations regarding the conveyance of the Property and the easements in favor of A&B is in the Complaint (Appendix “A”) at ¶¶ 127-135.

**D. Other Relevant Facts**

37. A more complete statement of relevant background facts is set forth in the Complaint. *See* Complaint (Appendix “A”) at ¶¶ 50-214 and ¶¶ 229-234. These facts include among other things more detailed descriptions of: (1) the Property and its relationship to the Maui Lani neighborhood and the Wai`ale project; (2) the adoption of the Wailuku-Kahului Community Plan (2002) and the Maui Island Plan (2012) and their significance to the LUC D&O; and (3) the Wai`ale FEIS and its relationship to the LUC D&O.

**VI. STATEMENT OF THE PETITIONER’S INTERPRETATION OF THE STATUTE, RULE, OR ORDER OR THE POSITION OR CONTENTION WITH RESPECT THERETO**

38. 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.

**VII. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONER’S POSITION OR CONTENTION**

39. The Property is, and has always been, part of the Petition Area. The Conditions in the LUC D&O clearly encumber the Property. DLNR, as the successor-in-interest to the Property, is obligated to develop the Property consistent with the conditions in the LUC D&O.

40. The Sports Complex Uses proposed by DLNR violate the express conditions of the LUC D&O, including specifically Conditions 5, 8, 16, 21, and 24.

**A. Violation of Condition 5 of the LUC D&O**

41. Condition 5 required A&B to prepare a new traffic impact analysis report (“**TIAR**”) *before* seeking any land entitlements, including a change in zoning. Condition 5 also

required A&B and/or DLNR to execute a memorandum of agreement with the Hawai`i Department of Transportation (“**HDOT**”) “prior to final subdivision of the initial phase of onsite development.” The memorandum of agreement was intended to establish an agreement between the Property landowner and HDOT that would “mitigate impacts to state roadway facilities caused by the Project.”

42. While DLNR has prepared a TIAR, it did not include a comprehensive traffic impact analysis of the entire Wai`ale project as required by Condition 5 of the LUC D&O. DLNR has essentially segmented its impacts from those of the Wai`ale project, which violates Condition 5.

43. On information and belief, neither A&B nor DLNR has ever completed the memorandum of agreement with HDOT that is required by Condition 5.

**B. Violation of Condition 8 of the LUC D&O**

44. DLNR has identified two retention basins that are planned for the Property, one which will be 5.8 acres in size, and which is intended by DLNR to be constructed and operational *by December 2015*. Because these two retention basins will be located within five (5) miles of the Kahului airport, they are subject to *FAA Advisory Circular 150/5200-33B (Hazardous Wildlife Attractants On or Near Airports)*.

45. HDOT identified this Federal Aviation Administration issue to the LUC. Thereafter, the LUC placed a specific condition on the Property in the LUC D&O: Condition 8, entitled “Hazardous Wildlife Attractants on or Near Kahului Airport.” Condition 8 requires that the landowner enter into a memorandum of agreement with HDOT “to document hazardous wildlife attractant mitigation *prior to final subdivision approval* of the initial phase of onsite development....”

46. The County of Maui *has already granted final subdivision approval*, thus permitting the sale by the prior Property owner, A&B, to the current Property owner, DLNR. However, based on the information and belief, the MOA required in by LUC D&O Condition 8 was never in fact prepared.<sup>7</sup> The DLNR Sports Complex is thus currently in violation of Condition 8.

**C. Violation of Condition 16 of the LUC D&O**

47. Condition 16 of the LUC D&O requires the landowner of the Property to address the potential impacts on the endangered Blackburn’s sphinx moth and other endangered species in the Petition Area, including consulting with the DLNR, State of Hawai`i Department of Forestry and Wildlife (“DOFAW”), and the U.S. Fish and Wildlife Service (“USFWS”) to develop mitigation measures to avoid adverse impacts to endangered species, including, if determined necessary, obtaining approval of a Habitat Conservation Plan and Incidental Take License and Permit.

48. On information and belief, DLNR has failed to fulfill this obligation by consultation with DOFAW and USFWS, and is thus in violation of Condition 16 of the LUC D&O.

49. On information and belief, DLNR has not prepared a habitat conservation plan or an incidental take license and permit, and is thus in violation of Condition 16 of the LUC D&O.

**D. Violation of Condition 21 of the LUC D&O**

50. Condition 21 of the LUC D&O provides that the Wai`ale Land *shall* be developed “in substantial compliance with the representations” made by A&B’s representatives during the

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<sup>7</sup> On October 24, 2013, the County granted A&B final subdivision approval. 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. Lot 12-A-3 has recently been designated by the County as tax map key number (2) 3-8-007:104.

district boundary amendment (“DBA”) process. Any substantial deviation from the proposal made by A&B would be in violation of the LUC D&O.

51. A&B’s representations to the LUC include those made in the Wai`ale FEIS. The Wai`ale FEIS includes the Preliminary Engineering Report (“PER”), which provided assumptions on hardened surface area for the north portion of A&B’s proposed master planned community, Wai`ale, and the related surface water runoff calculations. Any substantial deviation from those assumptions, or from the originally planned retention basin, would violate the terms of the LUC D&O.

52. A&B also represented through the Wai`ale FEIS that the impacts related to the Wai`ale project, including the retention basin, would be further evaluated during subsequent land entitlement requests. These land entitlements, are, as confirmed by A&B, at minimum: (a) a request to the Maui County Council for an amendment to the Wailuku-Kahului Community Plan (2002) changing the designation for the Wai`ale Land from Agriculture to Project District; (b) a request to the Maui County Council for an amendment to the Maui Island Plan (2012); and, (c) an application to the Maui County Council for a change in zoning for the Wai`ale Land from Agricultural District to Project District.

53. Other representations of A&B made to the LUC were memorialized in the LUC D&O as Findings of Fact (“FOF”).

54. FOF ¶ 180 refers to A&B’s representations with respect to the drainage plan and retention basins for the Wai`ale project, and concludes that based on A&B’s design of the retention basin and other parts of the drainage system, stormwater runoff from the Wai`ale property would result in “a decrease in runoff from existing conditions.”

55. FOF ¶ 180 does not account for the more than eight (8) acres of hardened surface area that would result from development of DLNR's Sports Complex because the Sports Complex design had not been created when the surface water runoff assumptions were made by A&B's engineer.

56. Another representation made by A&B is memorialized in FOF ¶ 122, which expressly distinguishes between "passive recreational uses" and "active recreational uses" in its discussion of the four parks designated to be included within Wai`ale.

57. FOF ¶ 122 identifies for "active recreation" only the southern portion of the South Wai`ale Land, not the northern portion of the North Wai`ale Land where the Property is located.<sup>8</sup>

58. This southern portion of the Petition Area identified in FOF ¶ 122 was shown as one of the parks in the Wai`ale project in the Wai`ale FEIS, which the Wai`ale FEIS was presented by A&B to the LUC.

59. Finally, A&B's representations to the LUC include those made through the oral testimony of its representatives during the hearing on the LUC petition for a district boundary amendment.

60. Through the oral testimony, A&B confirmed an amendment to the Wailuku-Kahului Community Plan (2002) would be necessary for the 545 acre Petition Area, which includes *all* the land within the Wai`ale project, including the Property.

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<sup>8</sup> The Wai`ale project incorporates two contiguous land areas separated by Waiko Road, which runs east-west. The total acreage identified by A&B for the Wai`ale project at its inception was 545 acres. Of the 545 acres, a little over 422 acres of land is located immediately north of Waiko Road ("**North Wai`ale Land**"). A little over 122 acres of land is located immediately south of Waiko Road ("**South Wai`ale Land**"). *See also* Complaint (Appendix "A") at ¶¶ 50-57.

61. A&B also confirmed an amendment to the Maui Island Plan (2012) would be necessary for the Petition Area, if the final adopted version resulted in inconsistencies with A&B's proposed uses.

62. A&B also confirmed a three-phase change in zoning process would occur wherein the Petition Area would be subjected to careful scrutiny as the Maui County Council evaluated whether to permit a change in zoning from Agricultural to Project District.

63. DLNR has failed to meet the representations made to the LUC in violation of Condition 21.

**E. Violation of Condition 24 of the LUC D&O**

64. DLNR as a landowner of the Property encumbered by the LUC D&O is required to make annual reports with the LUC in connection with the status of the development of the Property and the landowner's progress in complying with the conditions imposed by the LUC, as required by Condition 24.

65. In violation of Condition 24, DLNR has failed to prepare an annual report to the LUC with respect to its proposed new and different uses for the Property. As a result, the LUC has not received notice which would have alerted the LUC to the above-noted violations.

**VIII. NAMES OF OTHER POTENTIAL PARTIES**

66. It is MLN's contention that the sole potential party to this Petition is the State of Hawai'i ("State"), through the State of Hawai'i Board of Natural Resources ("BLNR"), the decision making body of DLNR. This is because the State is the owner of the Property, which is the portion of the Petition Area that is at issue, and because the State is contractually responsible

for the conditions at issue herein, as a result of the agreements between the State and A&B made through the Disposition Agreement.<sup>9</sup>

67. The County of Maui and A&B were parties to the DBA Petition, Docket No. A10-789, filed by A&B on August 25, 2010. However, because of the circumstances identified in the allegation above, and the form of the relief requested herein, which only relates to the State, it is MLN's contention that neither the County of Maui nor A&B should be parties to this Petition for Declaratory Relief.

**IX. STATEMENT OF WHETHER THE PETITION FOR DECLARATORY RULING RELATES TO ANY DOCKET FOR DISTRICT BOUNDARY AMENDMENT OR SPECIAL PERMIT**

68. This Petition relates to the DBA Petition, Docket No. A10-789, filed by A&B on August 25, 2010. The DBA Petition was granted by the LUC in the LUC D&O on June 21, 2012.

**X. CONCLUSION**

For the foregoing reasons, Petitioner respectfully request that the Commission grant the declaratory relief requested herein.

DATED: Makawao, Maui, Hawai'i, October 2, 2014.



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

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<sup>9</sup> With respect to Condition 24 of the LUC D&O, DLNR and A&B apparently mistakenly assume that only the petitioner is required to make annual statements. However, the obligation to make an annual statement as to a portion of the Petition Area exists for both A&B and DLNR.