

**PRIVILEGED AND CONFIDENTIAL  
ATTORNEY/CLIENT COMMUNICATION**

LAND USE COMMISSION  
PENDING LITIGATION

Name	Court	Issue	Status
<p>Department of Environmental Services v. Ko Olina Community Association, et al.</p>	<p>ICA No. CAAP-10-0000157</p>	<p>This is an appeal from LUC imposition of time period condition on special permit for landfill. The City and County of Honolulu applied for a special permit to expand the footprint of the Waimanalo Gulch Sanitary Landfill (WGSL). The Planning Commission granted the special permit without imposing any expiration date. Because the area involved exceeds 15 acres, the matter came to the LUC for review. The LUC imposed a new condition, condition 14, that provided for closure of the WGSL on June 30, 2014. The Circuit Court upheld the LUC's decision, and the City appealed.</p>	<p>On May 4, 2012, the Hawaii Supreme Court held that Condition 14, the time limit condition, was not supported by substantial evidence in the record. The matter was remanded to the LUC for further hearings. The LUC remanded to the City Planning Commission for consolidation with the 2011 application to extend the operation time for the landfill. LUC is awaiting the City Planning Commission's decision and receipt of the consolidated transcript. However, the Planning Commission has declined. The City and Ko Olina have been engaged in discussions regarding this matter. The LUC receives periodic updates on the status of the discussions from the City. We are looking into what options the LUC has at this point.</p>
<p>Lanaians for Sensible Growth v. Castle &amp; Cooke Resorts, Inc., et al.</p>	<p>ICA No. CAAP 12-0001065 and 13-0000314 (consolidated)</p>	<p>Lanaians for Sensible Growth originally asked the LUC to revert property on Lanai from the urban to agricultural land use district because petitioner failed to satisfy conditions of approval – specifically</p>	<p>Opening and Answering Briefs have been filed. Neither the LUC nor OP filed briefs in this case because Lanai Resort Partners (Castle &amp; Cooke), adequately argued the case. The proceedings were stayed by</p>

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		<p>petitioner violated condition 10 of the LUC's decision and order and used potable water to irrigate a golf course. After the Hawaii Supreme Court in 2004 remanded the case to the LUC for further hearings if necessary as to the meaning of "potable" and "nonpotable" water and the meaning of Condition No. 10, the LUC held hearings and then concluded that it could not determine what the LUC originally intended by Condition No. 10. The LUC granted Castle &amp; Cooke's motion to amend Condition No. 10 to a specific chloride level of water that could be used to irrigate the golf course. On appeal, the circuit court entered judgment against the LUC. Castle &amp; Cooke appealed to the Intermediate Court of Appeals.</p>	<p>agreement of the parties at the request of Castle &amp; Cooke and Lanaians for Sensible Growth, so that they could pursue mediation. The first mediation meeting was scheduled for December 3, 2013. Neither LUC nor OP actively participated in the mediation. Lanaians for Sensible Growth and the new owner of Castle &amp; Cooke Resorts, with agreement of OP and the LUC, requested and received from the Supreme Court, a recommitment of the matter to the Appellate Mediation Program until April 22, 2015, in order to continue mediation, because the mediator believed that they were close to a resolution. On April 20, 2015, we received notice that mediation failed. The Hawaii Supreme Court has reset the briefing schedule – Castle &amp; Cooke's reply brief and other appellees' answering briefs are due May 4 and June 1, 2015, respectively.</p>
<p>Sierra Club and Senator Clayton Hee v. Castle &amp; Cooke Homes, Hawaii, et al. (Koa Ridge)</p>	<p>ICA CAAP-13-0000765</p>	<p>This is an appeal from LUC's granting (for the third time) Castle &amp; Cooke Homes Hawaii's petition for a district boundary amendment at Koa Ridge and Waiawa. The circuit court upheld the LUC's decision and Sierra Club and Senator Hee appealed to the ICA. In this case Sierra Club and Senator Hee essentially argue that the LUC should have denied the</p>	<p>Briefing has been completed. On December 31, 2013, Sierra Club moved to transfer this matter to the Supreme Court and indicated that it would also move to transfer the Ho`opili case to the Supreme Court and consolidate the appeals. The Supreme Court granted the application for transfer but denied the motion to consolidate appeals. Oral argument is scheduled for</p>

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		petition because it involved land that was eligible to be designated as important agricultural lands (IAL) because it met the statutory criteria for IAL, despite the fact that the owner (Castle & Cooke) would not voluntarily request designation as IAL and that the land was designated by the City and County of Honolulu as within the urban growth boundary.	May 21, 2015..
Sierra Club and Senator Clayton Hee v. DR Horton et al. (Ho`opili)	ICA CAAP-13-00002266	Intervenors appealed LUC's decision and order granting a land use district boundary amendment, arguing that the LUC violated Article XI, section 3, of the State Constitution, Act 183, SLH 2005, relating to important agricultural land, and HAR § 15-15-77. As in the Koa Ridge case, appellants argue that the LUC should have denied the district boundary amendment for land that met the criteria for IAL, despite the fact that the owner would not voluntarily designate it IAL and that the City and County of Honolulu indicated it was in the urban growth boundary.	The circuit court upheld the LUC's decision. Briefing has been completed. Sierra Club and Senator Hee moved to transfer the case to the Hawaii Supreme Court and to consolidate this matter with the Koa Ridge case. D.R. Horton opposed the consolidation. On April 2, 2014, the Supreme Court <b>granted</b> the motion to transfer, but <b>denied</b> , without prejudice, the motion to consolidate this case with Koa Ridge. No oral argument has be set for this case.
Sierra Club et al. v. DR Horton et al.	ICA CAAP 13-0002408	Intervenors Friends of Makakilo filed a "cross appeal" from the LUC's granting of the land use district boundary amendment.	The circuit granted Horton's motion to dismiss untimely cross appeal and LUC's motion to dismiss cross appeal. Friends of Makakilo appealed the circuit court's decision. Friends of Makakilo filed an application to transfer the matter to the Hawaii Supreme Court, which was accepted

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			on May 1, 2014. Friends of Makakilo also filed a motion to consolidate this matter with 13-00002266, which was denied by the Supreme Court on August 5, 2014. On October 30, 2014, the Hawaii Supreme Court issued its opinion holding that Friends of Makakilo's cross-appeal was untimely and was properly dismissed by the circuit court. <b>This matter is now closed.</b>
Michelle Lincoln v. LUC, et al.	ICA CAAP-14-0000456	Intervenor appealed (1) LUC's granting of a motion to reconsider the LUC's denial of the petition for boundary amendment and (2) the subsequent granting, on reconsideration, of the petition for a land use district boundary amendment for 16.7 acres in Lahaina from the agricultural district to the urban district for an affordable housing project. The Intervenor/Appellant argues that the LUC erred in granting the reconsideration and did not justify why, on reconsideration, it changed its mind and granted the district boundary amendment.	On December 24, 2013, the Circuit Court entered final judgment in the appeal upholding the LUC's decision, finding that the LUC had an adequate basis for granting the reconsideration and adequately set forth the reasons why it decided to grant the district boundary amendment on reconsideration. Ms. Lincoln appealed to the Intermediate Court of Appeals on February 24, 2014. All briefing in the Intermediate Court of Appeals was completed by October 13, 2014. On October 29, 2014, Routh Bolomet, who did not file any appeal or any briefs, filed a motion to dismiss the case based on the court's lack of jurisdiction over her. Ms. Bolomet's motion to dismiss was denied on November 26, 2014. The ICA merit panel considering the case are Foley, Fujise and Riefurth. No oral argument has been set.
Bridge 'Aina Le'a,		Petitioner appeals from LUC's reversion	See discussion under DW 'Aina Le'a,

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<p>LLC v. Land Use Commission</p>		<p>of property from urban to agriculture for failure to satisfy conditions</p>	<p>below</p>
<p>Bridge 'Aina Le'a v. Land Use Commission and individual commissioners</p>	<p>Civil No. 11-1-1145-06 KKS (First Circuit Court), NOW 11-cv-00414-ACK-BMK (U.S. District Court, Hawaii)</p>	<p>Filed in First Circuit Court, but removed to federal court. Action for: (A) <u>injunctive relief</u> enjoining the defendants from taking any further action relating to (1) reverting the property, (2) interfering with Bridge's right to develop the property in accordance with the 1989 decision and order, (3) enforcing the "arbitrary" conditions in the 1989 order; (B) <u>declaratory relief</u> that (1) the LUC's actions in reverting the property were illegal, invalid and unconstitutional, (2) Bridge or its successors are entitled to "continue to develop the property in accordance with the 1989 decision, (3) LUC's actions have caused irreparable harm to Bridge; (C) an order <u>estopping</u> the LUC from interfering with Bridge's right to develop the property; (D) <u>damages</u> in the amount of \$35.7 million plus pre- and post-judgment interest; and (E) costs and attorneys' fees.</p>	<p>The LUC filed a motion to dismiss the case against the individual commissioners on the basis of quasi-judicial immunity. Judge Mollway ruled to hold this case in abeyance until the State lawsuit finishes its course. LUC filed an interlocutory appeal on the issue of dismissing the individual commissioners in their individual capacities. Oral argument was held on June 10, 2014, in Honolulu. The Ninth Circuit Court of Appeals issued an order waiting until the Hawaii Supreme Court decided the case before it.</p> <p>On November 25, 2014, the Hawaii Supreme Court issued its decision holding: 1) the LUC erred in reverting the land without complying with the district boundary amendment procedures of HRS § 204-5 because the landowners had substantially commenced use of the land in accordance with representations made to the LUC; 2) the circuit court erred in including portions of other LUC dockets as part of the administrative record; and 3) the circuit court erred in concluding that Bridge's and DW's procedural and substantive due process rights were violated. The Supreme Court noted that if DW and Bridge had NOT substantially commenced use of the</p>

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			<p>land, then the LUC's procedures in reverting the land would have been correct.</p> <p>A status conference was held in federal court on March 20, 2015. The State's motion to dismiss has been set for hearing on June 29, 2015. Meanwhile a settlement conference has been set for May 29, 2015.</p>
<p>DW 'Aina Le'a Development, LLC v. Land Use Commission</p>	<p>CAAP 13-0000091</p>	<p>Petitioner appeals from LUC's reversion of property from urban to agriculture for failure to satisfy conditions</p>	<p>Judge Strance reversed and vacated the LUC's decision reverting the property for failure to satisfy conditions. LUC appealed to the Intermediate Court of Appeals. This case was consolidated with the Bridge case mentioned above. All briefs have been filed. The Hawaii Supreme Court accepted the transfer of the case on January 28, 2014. Oral argument was held June 25, 2014. The Hawaii Supreme Court issued its opinion in this case on November 25, 2014. The Court held: 1) the LUC erred in reverting the land without complying with the district boundary amendment requirements of HRS section 205-4 because the land owners had substantially commenced use of the land in accordance with representations made to the LUC; 2) the circuit court erred in including portions of other LUC dockets as part of the administrative record and 3) the circuit court erred in concluding that Bridge's and DW's procedural and substantive due process rights and equal protection rights were violated. The Supreme Court noted</p>

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			that if DW and Bridge had NOT substantially commenced use of the land, then the LUC's procedures in reverting the land would have been correct.
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