



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

LAND USE COMMISSION
STATE OF HAWAII
2011 MAY 24 P 12:32

| | | |
|--|---|-----------------------------------|
| In the Matter of the Petition of |) | DOCKET NO. A87-617 |
| |) | |
| BRIDGE 'ĀINA LE'A, LLC, Successor |) | ORDER DENYING D.W. 'ĀINA LE'A |
| Petitioner to PUAKŌ HAWAII |) | DEVELOPMENT, LLC 'S MOTION TO |
| PROPERTIES and D.W. 'ĀINA LE'A |) | AMEND CONDITIONS 1, 5, AND 7, AND |
| DEVELOPMENT, LLC |) | AMENDMENT TO MOTION TO AMEND |
| |) | CONDITIONS 1, 5, AND 7 |
| To Amend the Agricultural Land Use District |) | |
| Boundary into the Urban Land Use District |) | |
| for Approximately 1,060 Acres of Land |) | |
| Situated at Waikoloa, South Kohala, Island of |) | |
| Hawai'i, State of Hawai'i, Tax Map Key |) | |
| Nos.: 6-8-01: 25 (por.), 36 (por.), 37 (por.), |) | |
| 38 (por.), 39 (por.), and 40 (por.). |) | |

ORIGINAL

**ORDER DENYING D.W. 'ĀINA LE'A DEVELOPMENT, LLC 'S MOTION TO
AMEND CONDITIONS 1, 5, AND 7, AND AMENDMENT TO MOTION TO
AMEND CONDITIONS 1, 5, AND 7**



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**ORDER DENYING D.W. `ĀINA LE`A DEVELOPMENT, LLC 'S MOTION TO AMEND
CONDITIONS 1, 5, AND 7, AND AMENDMENT TO MOTION TO AMEND
CONDITIONS 1, 5, AND 7**

On August 31, 2010, Co-Petitioner DW `Āina Le`a Development, LLC (“DW”) filed a Motion to Amend Conditions 1, 5, and 7; and supporting materials.

On September 8, 2010, the Office of Planning (“OP”) filed a Memorandum in Opposition to Petitioner’s Motion to Amend Conditions 1, 5, and 7.

On September 8, 2010, Co-Petitioner Bridge `Āina Le`a , LLC (“Bridge”) filed a Statement of Position Regarding DW `Āina Le`a, LLC’s Motion to Amend Conditions 1, 5, and 7.

On September 10, 2010, the County of Hawai'i Planning Department ("County") filed a Statement of No Opposition to Petitioner's Motion to Amend Conditions 1, 5, and 7.

On November 18, 2010 and again on January 20, 2011, the Commission deferred action on DW's Motion to Amend Conditions 1, 5, and 7.

On January 20, 2011, the Commission voted in favor of a motion to revert the Petition Area pursuant to the pending Order To Show Cause in this docket.

On March 10, 2011, at its meeting in Honolulu, Hawai'i, the Commission adopted and approved its Proposed Findings of Fact, Conclusions of Law, and Decision and Order Reverting the Petition Area, pursuant to the pending Order To Show Cause.

On March 10, 2011, the Commission granted DW's Oral Motion to Continue Hearing on its Motion to Amend Conditions 1, 5, and 7.

On March 24, 2011, the Commission received DW's Amendment to Motion to Amend Conditions 1, 5, and 7.

On April 8, 2011, the Commission considered DW's Motion to Amend Conditions 1, 5, and 7, and Amendment to Motion to Amend Conditions 1, 5, and 7, at its meeting, in Honolulu, Hawai'i. Bruce Voss, Esq., appeared on behalf of Bridge. Alan Okamoto, Esq., and Mr. Robert Wessels appeared on behalf of DW. William Brillhante, Esq., appeared on behalf of Hawai'i County. Bryan Yee, Esq., and Jesse Souki appeared on behalf of OP.

Mr. Okamoto argued why the Motion to Amend Conditions, should be considered by the Commission to address problems that have arisen and why DW should be allowed to continue its efforts to complete its proposed project by amending Conditions 1, 5, and 7.

Mr. Voss stated that Bridge did not object to DW's Motion to Amend Conditions with the understanding that the Commission would work with OP and DW to establish reasonable conditions and time frames to help the proposed project succeed.

Mr. Brilhante stated that Hawai'i County took no position on the Petitioner's Motion to Amend Conditions 1, 5, and 7.

Mr. Yee stated that OP considered that the Motion to Amend Conditions was tied into the Motion for Reconsideration. OP would take no position on the Motion to Amend Conditions except that OP opposed the request to change the condition regarding the location of Department of Education's facilities outside of the Petition Area and onto currently Agricultural-designated lands. Mr. Yee also clarified that OP was not proposing conditions to the proposal from DW but would provide comments and collaboration.

Mr. Okamoto stated that Petitioner would withdraw the DOE site relocation condition and set aside acreage in the urban area for a school site and continue to address it in future negotiations.

After completion of oral argument by all parties and questions by Commissioners; the Commission deferred action on the matter until the next scheduled hearing on April 21, 2011.

On April 21, 2011, the Commission considered DW's Motion to Amend Conditions 1, 5, and 7, and Amendment to Motion to Amend Conditions 1, 5, and 7, at its meeting, in Honolulu, Hawai'i. Bruce Voss, Esq., appeared on behalf of Bridge. Alan Okamoto, Esq., appeared on behalf of DW. Bobbie-Jean Leithead-Todd., appeared on behalf of Hawai'i County. Bryan Yee, Esq., and Jesse Souki appeared on behalf of OP.

After the parties had an opportunity to present oral argument, and following discussion, a motion was made and seconded to retain Conditions 5 and 7 "as is" and that Conditions 1(b) and

1(c) of the existing Decision and Order be deleted in their entirety. There being a vote tally of 3 ayes, 5 nays, and 1 excused, the motion failed.

On May 13, 2011, the Commission considered DW's Motion to Amend Conditions 1, 5, and 7, and Amendment to Motion to Amend Conditions 1, 5, and 7, at its meeting in Honolulu, Hawai'i. Bruce Voss, Esq., appeared on behalf of Bridge. Alan Okamoto, Esq., appeared on behalf of DW. The County of Hawai'i did not send a representative. Bryan Yee, Esq., and Jesse Souki appeared on behalf of OP.

Following discussion, a motion was made and seconded to deny the DW's motion. There being a tally of 6 ayes, 1 abstention, and 2 excused, the motion passed.

ORDER

This Commission, having duly considered the pleadings, and oral and written statements and testimony, and oral arguments of the parties, and a motion having been made and seconded at a hearing on May 13, 2011, in Honolulu, Hawai'i, and the motion having received the affirmative votes required by HAR §15-15-13, and there being good cause for the motion,

HEREBY ORDERS:


1. DW's Motion to Amend Conditions 1, 5, and 7 as amended by its Amendment to Motion to Amend Conditions 1, 5, and 7, is HEREBY DENIED.

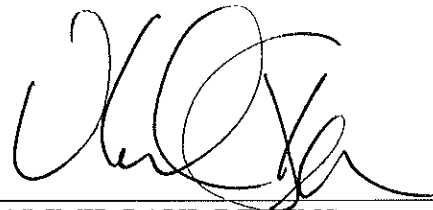
DATED: Honolulu, Hawai'i, this 24th day of May, 2011, per
motion on May 13, 2011.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII



Deputy Attorney General

By 
VLADIMIR PAUL DEVENS
Chairperson and Commissioner

Filed and effective on:

5/24/2011

Certified by:


ORLANDO DAVIDSON
Executive Officer



BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the matter of the Petition of)
)
 BRIDGE `ĀINA LE`A, LLC, Successor,)
 Petitioner to Puako Hawai`i Properties; and)
 DW `ĀINA LE`A DEVELOPMENT, LLC)
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 To Amend the Agricultural Land Use)
 District Boundary into the Urban Land)
 Use District for Approximately 1,060)
 Acres of Land Situated at Waikoloa,)
 South Kohala, Island of Hawai`i,)
 State of Hawai`i, Tax Map Key Nos.)
 6-8-001: 25 (por.), 36 (por.), 37(por.), 38 (por.),)
 and 40(por.))
 _____)

Docket No. A87-617

CERTIFICATE OF SERVICE

2011 MAY 24 P 12:32
 LAND USE COMMISSION
 STATE OF HAWAII

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **ORDER DENYING D.W. `ĀINA LE`A DEVELOPMENT, LLC`S MOTION TO AMEND CONDITIONS 1, 5, AND 7, AND AMENDMENT TO MOTION TO AMEND CONDITIONS 1, 5, AND 7** 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:

| | HAND DELIVERED | REGULAR MAIL | CERTIFIED MAIL |
|---|----------------|--------------|----------------|
| JESSE SOUKI, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai`i 96813 | X | | |

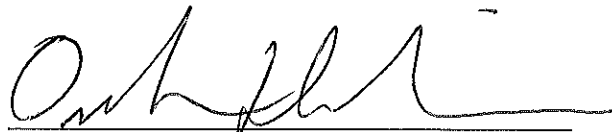
DOCKET NO. A87-617 BRIDGE `ĀINA LE`A, LLC and
 D.W. `ĀINA LE`A DEVELOPMENT, LLC

page 1

ORDER DENYING D.W. `ĀINA LE`A DEVELOPMENT, LLC`S MOTION TO AMEND CONDITIONS 1, 5, AND 7, AND AMENDMENT TO MOTION TO AMEND CONDITIONS 1, 5, AND 7
 CERTIFICATE OF SERVICE

| | HAND DELIVERED | REGULAR MAIL | CERTIFIED MAIL |
|---|---------------------------|-------------------------|---------------------------|
| BRYAN YEE, ESQ. Deputy Attorney General Hale `Auhau, Third Floor 425 Queen Street Honolulu, Hawai`i 96813 | | X | |
| BOBBY JEAN LEITHEAD-TODD County of Hawai`i Planning Director Aupuni Center 101 Pauahi Street, Suite 3 Hilo, Hawai`i 96720 | | X | |
| LINCOLN ASHIDA, Esq. County of Hawai`i Office of the Corporation Counsel Hilo Lagoon Center 101 Aupuni Street, Suite 325 Hilo, Hawai`i 96720 | | X | |
| Alan M. Okamoto, Esq. Nakamoto, Okamoto & Yamamoto 187 Kapiolani Street Hilo, Hawaii 96720 | | | X |
| Bruce D. Voss, Esq. Bays Deaver Lung Rose & Holma Alii Place, 16 th Floor 1099 Alakea Street Honolulu, Hawaii 96813 | | | X |

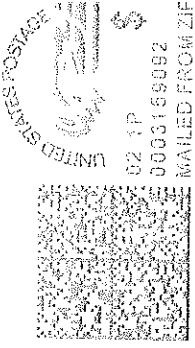
Dated Honolulu, Hawai`i, May 24, 2011.



ORLANDO DAVIDSON

State of Hawaii
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359

91 7108 2133 3935 6892 0877



Alan M. Okamoto, Esq.
Nakamoto, Okamoto & Yamamoto
187 Kapiolani Street
Hilo, Hawaii 96720

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Alan M. Okamoto, Esq.
Nakamoto, Okamoto & Yamamoto
187 Kapiolani Street
Hilo, Hawaii 96720

COMPLETE THIS SECTION ON DELIVERY

- A. Signature Agent
 Addressee
- B. Received by (Printed Name): _____ C. Date of Delivery: _____

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
- | | |
|---|---|
| <input type="checkbox"/> Certified Mail | <input type="checkbox"/> Express Mail |
| <input type="checkbox"/> Registered | <input type="checkbox"/> Return Receipt for Merchandise |
| <input type="checkbox"/> Insured Mail | <input type="checkbox"/> C.O.D. |

4. Restricted Delivery? (extra fee) Yes

2. Article Number
(transfer from service label)
91 7108 2133 3935 6892 0877
PS Form 3811, August 2001

Domestic Return Receipt

State of Hawaii
LAND USE COMMISSION
P.O. Box 2359
Honolulu, HI 96804-2359

91 7106 2333 3935 6872 0660



Bruce D. Voss, Esq.
Bays Deaver Lung Rose & Holma
Alii Place, 16th Floor
1099 Alakea Street
Honolulu, Hawaii 96813

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1. Return Address to:

Bruce D. Voss, Esq.
Bays Deaver Lung Rose & Holma
Alii Place, 16th Floor
1099 Alakea Street
Honolulu, Hawaii 96813

COMPLETE THIS SECTION ON DELIVERY

- A. Signature
 Agent
 Addressee
B. Received by: Receiver's Name Date of Delivery
C. Is delivery address different from above? Yes
If YES, enter addressee's address below: Yes No

- 3. Return to:
- 4. Restricted Delivery: Yes No

91 7106 2333 3935 6872 0660