BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI’I

In the Matter of the Petition of )
) DOCKET NO. A87-617
BRIDGE ‘ÄINA LE’A, LLC, Successor ) ORDER DENYING D.W. ‘ÄINA LE’A
Petitioner to PUAKO HAWAI’I ) DEVELOPMENT, LLC ’S MOTION TO
PROPERTIES and D.W. ‘ÄINA 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.). )

ORDNER DENYING D.W. ‘ÄINA LE’A DEVELOPMENT, LLC ’S MOTION TO
AMEND CONDITIONS 1, 5, AND 7, AND AMENDMENT TO MOTION TO
AMEND CONDITIONS 1, 5, AND 7
BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAI'I

In the Matter of the Petition of ) DOCKET NO. A87-617
) ORDER DENYING D.W. 'ĀINA LE`A
BRIDGE 'ĀINA LE`A, LLC, Successor ) DEVELOPMENT, LLC `S MOTION TO
Petitioner to PUAKŌ HAWAI'I ) AMEND CONDITIONS 1, 5, AND 7, AND
PROPERTIES and D.W. 'ĀINA LE`A ) AMENDMENT TO MOTION TO AMEND
DEVELOPMENT, LLC ) 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.). )

----------------------------------------

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 Brilhante, 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.

APPROVED AS TO FORM

Deputy Attorney General

LAND USE COMMISSION

STATE OF HAWAI‘I

By

VLADIMIR PAUL DEVENS
Chairperson and Commissioner

Filed and effective on:

5/24/2011

Certified by:

ORLANDO DAVIDSON
Executive Officer

DOCKET NO. A87-617 BRIDGE ‘ĀINA LE‘A, LLC and
D.W. ‘ĀINA LE‘A DEVELOPMENT, LLC
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
BEFORE THE LAND USE COMMISSION

STATE OF HAWAI'I

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

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

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:

<table>
<thead>
<tr>
<th></th>
<th>HAND DELIVERED</th>
<th>REGULAR MAIL</th>
<th>CERTIFIED MAIL</th>
</tr>
</thead>
<tbody>
<tr>
<td>JESSE SOUKI, DIRECTOR</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Office of Planning</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>235 S. Beretania Street Rm. 600</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Honolulu, Hawai‘i 96813</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td>HAND DELIVERED</td>
<td>REGULAR MAIL</td>
<td>CERTIFIED MAIL</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>----------------</td>
<td>--------------</td>
<td>----------------</td>
</tr>
<tr>
<td>BRYAN YEE, ESQ. Deputy Attorney General Hale 'Auhau, Third Floor 425 Queen Street Honolulu, Hawai'i 96813</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>BOBBY JEAN LEITHEAD-TODD County of Hawai'i Planning Director Aupuni Center 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>LINCOLN ASHIDA, Esq. County of Hawai'i Office of the Corporation Counsel Hilo Lagoon Center 101 Aupuni Street, Suite 325 Hilo, Hawai'i 96720</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Alan M. Okamoto, Esq. Nakamoto, Okamoto &amp; Yamamoto 187 Kapiolani Street Hilo, Hawaii 96720</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Bruce D. Voss, Esq. Bays Deaver Lung Rose &amp; Holma Alii Place, 16th Floor 1099 Alakea Street Honolulu, Hawaii 96813</td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

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

ORLANDO DAVIDSON
Alan M. Okamoto, Esq.
Nakamoto, Okamoto & Yamamoto
187 Kapiolani Street
Hilo, Hawaii 96720
Bruce D. Voss, Esq.
Bays Deaver Lung Rose & Holma
Alii Place, 16th Floor
1099 Alakea Street
Honolulu, Hawaii 96813