



BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the matter of the Petition of)	Docket No. A87-617
)	
BRIDGE `ĀINA LE`A, LLC, fka,)	ORDER FINDING FAILURE TO
Puako Hawai`i Properties; and DW)	MEET CONDITION PRECEDENT
`ĀINA LE`A DEVELOPMENT, LLC)	FOR RESCINDING ORDER TO
)	SHOW CAUSE
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.))	
_____)	

LAND USE COMMISSION
 STATE OF HAWAII
 2010 JUL 26 P 3:46

ORDER FINDING FAILURE TO MEET CONDITION PRECEDENT
 FOR RESCINDING ORDER TO SHOW CAUSE

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawai`i.

July 26, 2010 by

Bert Arune
 Executive Officer



BEFORE THE LAND USE COMMISSION

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ORDER FINDING FAILURE TO MEET CONDITION PRECEDENT
FOR RESCINDING ORDER TO SHOW CAUSE

By Order and clarification dated September 24, 2009, and filed September 28, 2009, the Land Use Commission ("Commission") issued Order Rescinding Order to Show Cause Upon Condition Precedent and Accepting DW Aina Le`a Development, LLC as Co-Petitioner;"provided, as a condition precedent, the Petitioner completes 16 affordable units by March 31, 2010; and further ordered that the County of Hawai`i provide quarterly reports to the Commission in connection with Petitioner's progress in complying with this condition."

The County of Hawai`i submitted written reports to the Commission on December 16, 2009; April 6, 2010; and June 24, 2010.

On May 4, 2010, the State Office of Planning (“OP”) filed written comments on Petitioner’s progress in this Docket.

On May 6, 2010, the Commission made a site visit.

DW `Āina Le`a Development , LLC (“DW”) submitted a written report to the Commission on June 14, 2010

On June 30, 2010, OP filed Office of Planning’s Memorandum Regarding July 1, 2010 Status Conference.

At its meeting on July 1, 2010, in Honolulu, Hawai`i, the Commission considered the County of Hawai`i’s and DW’s reports and OP’s submissions. Alan Okamoto, Esq. and Robert Wessels appeared on behalf of DW. Bruce Voss, Esq. appeared on behalf of Bridge `Āina Le`a, LLC. Gerald Takase, Deputy Corporation Counsel, appeared on behalf of the County of Hawai`i. Bryan Yee, Deputy Attorney General, and Abbey Mayer appeared on behalf of OP.

At the meeting DW addressed the actions it has taken since September 2009 to comply with the condition precedent to complete 16 affordable units by March 31, 2010. Sixteen affordable units have been constructed, but no certificates of occupancy have been obtained. Water, sewer, and electricity are not available to the units at this time. DW stated its belief that it has complied with the condition precedent. DW further described the other activities it has undertaken and its progress toward meeting the November 17, 2010 deadline of having certificates of occupancy for 385 affordable units at the project.¹

¹ On November 5, 2005, the Commission amended the Decision and Order entered in 1991 in this Docket to provide in pertinent part as Condition No.1b “Petitioner shall obtain, and provide copies to the Commission, the certificates of occupancy for all of the Project’s affordable housing units within five (5) years of November 17, 2005.”

The County of Hawai'i stated its position that it believes that DW has satisfied the requirements of the condition precedent by completing construction of 16 affordable units by March 31, 2010.

OP argued that the condition precedent has not been satisfied because no one can live in the 16 affordable units that have been constructed. OP emphasized that there is no water, sewer, electricity or paved road access to the 16 affordable units. OP further argued that DW's representation that the leach field for the 16 affordable units was permitted by the Department of Health was incorrect; that construction of a leach field rather than a wastewater treatment plant violated Condition No. 9 of the 1991 Amended Findings of Fact, Conclusions of Law, and Decision and Order in this Docket; that DW failed to notify the Commission of intent to voluntarily alter the ownership interest in the property covered by the Petition in violation of Condition No. 14; that Bridge `Āina Le`a has an ownership interest in the property contrary to the representation made to the Commission that closing of the transaction between DW and Bridge `Āina Le`a was to be October 31, 2009. OP further noted that in DW's June 10, 2010 letter, DW characterized the November 17, 2010 deadline for obtaining certificates of occupancy for 385 affordable housing units contained in the November 5, 2005 Decision and Order in this Docket as a "goal" rather than a deadline set by the Commission based on representations made by the Petitioner at that time.

Following discussion, a motion was made and seconded as follows: to keep the Order to Show Cause pending; the Commission schedule a hearing on or after September 17, 2010 on the Order to Show Cause; the Commission affirm that the November 17, 2010 date is a deadline and not a goal; and the Commission enter a finding that the condition precedent requiring 16

affordable homes be completed by March 31, 2010, has not been met. There being a vote tally of 8 ayes and 1 absent, the motion carried.

ORDER

This Commission, having duly considered the written reports and statements and oral arguments of the parties, and a motion having been made at a meeting on July 1, 2010, 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. The Order to Show Cause in this Docket shall remain pending.
2. A hearing on the Order to Show Cause shall be scheduled on or after September 17, 2010.
3. The November 17, 2010 date for obtaining certificates of occupancy for 385 affordable homes established in the Amended Decision and Order dated November 25, 2005 is a deadline and not a goal; and,
4. The condition precedent for the rescission of the Order to Show Cause set forth in the Commission's Order filed September 28, 2009, has not been met.

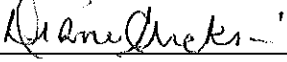
ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 15th day of July, 2010

This ORDER may be executed in counterparts. This ORDER shall take effect upon the date this ORDER is certified by this Commission.

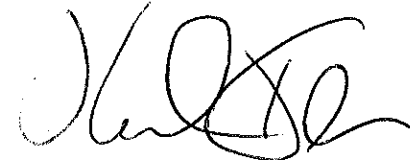
Done at Kona, Hawai'i, this 15th day of July, 2010, per motion on July 1, 2010


APPROVED AS TO FORM


Deputy Attorney General

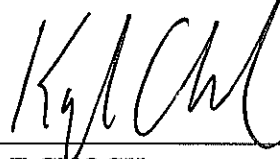
- LAND USE COMMISSION


- STATE OF HAWAI'I

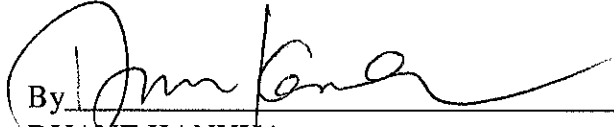
- By 
VLADIMIR PAUL DEVENS
Chairperson and Commissioner

- By 
THOMAS CONTRADES
Vice- Chairperson and Commissioner

- By _____
LISA M. JUDGE
Vice-Chairperson and Commissioner

- By 
KYLE CHOCK
Commissioner

- By  _____
- RONALD HELLER
- Commissioner

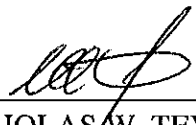
- By  _____
- DUANE KANUHA
- Commissioner

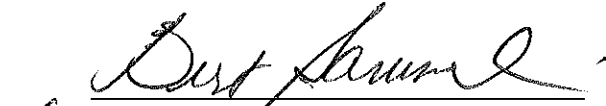
Filed and effective on:

- By (Excused) _____
- NORMAND LEZY
- Commissioner

7/15/10

Certified by:

- By  _____
- NICHOLAS W. TEVES JR.
- Commissioner


 ORLANDO DAVIDSON
 Executive Officer

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this ____ day of _____, 2010

This ORDER may be executed in counterparts. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified by this Commission.

Done at _____, Hawai'i, this _____, day of _____, 2010, per motions on July 1, 2010

APPROVED AS TO FORM

Deputy Attorney General

- LAND USE COMMISSION
- STATE OF HAWAII

- By _____
- VLADIMIR PAUL DEVENS
- Chairperson and Commissioner

- By _____
- THOMAS CONTRADES
- Vice- Chairperson and Commissioner

- By Lisa Judge
- LISA JUDGE
- Vice-Chairman and Commissioner

- By _____
- KYLE CHOCK
- Commissioner



BEFORE THE LAND USE COMMISSION

STATE OF HAWAI'I

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BRIDGE `ĀINA LE`A, LLC, fka,) CERTIFICATE OF SERVICE
Puako Hawai`i Properties; and DW)
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6-8-001: 25 (por.), 36 (por.), 37(por.), 38)
(por.), and 40(por.))
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Order Finding Failure to Meet Condition Precedent for Rescinding Order to Show Cause 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
ABBEY SETH MAYER, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai`i 96813	X		

	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, July 15, 2010.



 ORLANDO DAVIDSON