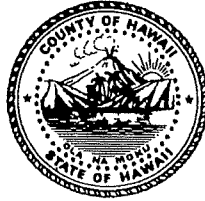


Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
(808) 961-8742

2017 MAY 22 A 9:22
LAND USE COMMISSION
STATE OF HAWAII

CERTIFIED MAIL

May 16, 2017

Mr. Alan M. Okamoto 7011 1570 0001 5776 7401
Nakamoto, Okamoto & Yamamoto
Attorneys at Law (Representing 'Āina Le'a, Inc. and 'Āina Le'a, LLC)
187 Kapiolani Street
Hilo, HI 96720-2687

Mr. John Baldwin, Manager 7011 1570 0001 5776 7425
Bridge 'Āina Le'a, LLC
PMB 29 Box 10001
Saipan, MP 96950

Dear Mr. Baldwin and Mr. Okamoto:

Change of Zone Ordinance No. 96 153 (REZ 734)

**Applicant: Bridge 'Āina Le'a, LLC and 'Āina Le'a, LLC et al and 'Āina Le'a Inc.
(formerly Puakō Hawai'i Properties)**

**Subject: Order to Toll (Cease) Work on the Subject Properties Related to
Civil No. 11-01-005K and Other Unresolved Issues Related to Entitlements and
Development of the Subject Properties**

Tax Map Keys: (3) 6-8-001:025, 036 through 040, and 069

The purpose of this letter is to inform you that the Planning Department (Department) has determined that the Applicant is in violation of the enclosed Third Circuit Court's Order dated March 28, 2013 (Civil No. 11-01-005K). The 2016 annual progress report (APR) submitted by Mr. Robert Wessels, Chairman of 'Āina Le'a, LLC and 'Āina Le'a Inc. ('Āina Le'a) on January 18, 2017 and a site inspection conducted by Department staff on August 5, 2016 (photos enclosed) confirm that 'Āina Le'a is conducting work on the subject properties, which violates the Court's Order. The Planning Department requires that the Applicant **immediately cease all work**, including but not limited to ground disturbance such as trenching and grading; grubbing and stockpiling; and construction on the subject properties, comprising approximately 3,000 acre property (Property). Work shall be prohibited on the Property until a Final Supplemental Environmental Impact Statement (SEIS) has been accepted by the Department.

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issued and consistent with land use approvals at the time they were issued. The Department indicated the County would continue to honor these permits provided that vesting of those approvals be consistent with prevailing County and State requirements. The Department clarified that this determination was conditioned on the facts as the Department knew them, and that no commitment or guarantee with regard to additional permitting or approval requirements would be made. The Department also indicated that 'Āina Le'a understood and acknowledged that they were proceeding with infrastructure and related occupancy improvement requirements over and across the subject property at their own risk and free will. **These letters were written with the understanding that an SEIS was being prepared by 'Āina Le'a to comply with the Court Order.**

Over a year has passed since the SEIS preparation notice revisions were provided to Mr. Leonard and there is no indication that 'Āina Le'a intends to complete the SEIS before proceeding with construction of the project, which is in clear violation of the Court Order. In fact the January 18, 2016 APR submitted by Mr. Wessels made no mention whatsoever of when the SEIS would be started or finished. It states, "Supplemental studies of flora and fauna, archaeological, cultural, and traffic were updated in 2016, which determined there were no significant variance to the Final Environmental Impact Statement for the project approved by the County of Hawai'i and published in 2010." To date, none of these studies have been provided to the Planning Department. The Court Order did not allow 'Āina Le'a to determine whether an SEIS needed to be completed, but rather remanded the matter to the Department to make that determination. It continues to be the position of the Department that 'Āina Le'a must prepare a Supplemental EIS before proceeding with work on the property.

Lack of Compliance with Ordinance Conditions

The secondary purpose of this letter is to clearly communicate the Planning Department's position on several other unresolved issues related to entitlements and development of the Property. The Department partly relies on annual progress reports (APR) submitted by the applicant to determine the status of a project and compliance with ordinance or permit approvals. It has been difficult for the Department to understand the status of the project and condition compliance because Bridge has not provided an APR and the information that has been provided by Aina Lea is often misleading or inaccurate. Like the SEIS Preparation Notice and 2015 APR, the 2016 APR again contains misleading and inaccurate information that has made it difficult for the Department to accurately determine the status of the project and condition compliance. The following are two specific examples of this:

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The *Agreement Regarding Easements and Utilities* executed on November 17, 2015 by Bridge and 'Āina Le'a indicates that 'Āina Le'a will use its best efforts to obtain an allocation of potable water from Waikoloa Water Co. (WWC) for parcels 38 and 39 (1,011 acres) based on the maximum number of residential units and dwellings permitted by the zoning of these properties, and for parcel 25 (27 acres) sufficient to support 500,000 square-feet of commercial gross leasable area.

Mr. Wessels 2016 APR indicates that potable water for Phase 1 of the project, including the affordable housing development, will be provided by WWC on a permanent basis upon approval by the Public Utilities Commission and that 'Āina Le'a is negotiating with WWC and other land owners in the area to jointly develop the 'Ōuli Well System to provide potable water to the remaining parcels. We reiterate that use of potable water from WWC is beyond the scope of the ordinance because it was never considered or approved by the County Council and is therefore not supported by the Department until the ordinance is amended by the County Council.

Condition C:

In their March 2, 2016 letter to the Planning Department, 'Āina Le'a requested reconsideration of the Department's conclusion that Condition C of Ordinance No. 96-153 was not satisfied by the September 21, 2009 deadline.

After further research into the matter, the Department has come to the same conclusion as stated in our letter dated February 2, 2016. We disagree with Mr. Okamoto's assumption that "Given the use of 'residential' in Condition C, the requirement focused on the RM zoned land. The requirement focused on those lands as a means to show meaningful development of the LUC Urban classified lands." It was not until 2008 that the LUC compelled the developer to show 'meaningful development' through its order to show cause. When Condition C was amended to its current form by the Hawai'i County Council in 1996, the LUC's Order was not a consideration. In fact, at the time the County Council was considering amending Condition C, the master plan for the 3,000-acre rezoned area called for Phase I development to include both Residential and Agricultural (RA) and Multiple Family Residential (RM) development. Thus, although not explicitly stated, it is the Department's determination that the term "residential subdivision" applied to the RA-zoned lands. This is especially the case when you consider that subdivision is not required to develop residential units on RM-zoned land. Whereas, subdivision is required to construct more than one residence on an RA-zoned lot. The bulk-lot subdivision

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Condition G:

This condition has not been complied with in a timely manner because a park plan created by the applicant was due prior to receipt of final subdivision approval or final plan approval of any subdivision or residential units within the subject property. To date the Department has not received or approved the required park plan.

Condition I:

This condition requires that the preservation measures in the approved burial treatment plan for Site 15033 be implemented in conjunction with any land alterations in the subject property. Site 15033 is on lands owned by Bridge. We cannot verify whether the applicant is complying with this condition because Bridge has not provided an annual progress report to the Department.

Condition K:

This condition has not been complied with in a timely manner because prior to final subdivision approval for any portion of the subject property, the applicant was required to secure concurrence from the Office of Housing and Community Development (OHCD) of the applicant's affordable housing requirements for the residential development of the property. To date the Department has not received indication from the applicant or OHCD that this condition has been met.

Condition O:

This condition required the applicant construct full channelized intersection improvements at the property's access at Queen Kaahumanu Highway prior to final subdivision approval of any increment gaining access from the respective intersection. The affordable housing development will gain access from the southern intersection which has not yet been constructed per the condition. Mr. Wessels indicated in the 2016 APR that the intersection plans have been revised to address State Department of Transportation (DOT) comments and have been delivered to the County for review, and that 'Āina Le'a is still waiting for the county's response and approval. The Department recently verified with DPW that the intersection plans have not been submitted to the County for review and are still under review by the DOT. According to the DOT, the applicant has not responded to their letter dated July 13, 2016 addressed to Christian Renz of 'Āina Le'a containing required plan revisions.

Condition Q:

This condition has not been complied with in a timely manner because the applicant has not made a past due fair share payment. This condition required that the applicant pay a fair share

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Condition V:

Please provide a report explaining how the applicant is complying with the State Land Use Commission's Decision and Order.

Based on the foregoing and pursuant to Condition AA, the Director will shortly initiate rezoning of the area to its original or more appropriate designation due to the applicant's noncompliance with the conditions of Ordinance No. 96-153. You will be notified of the date, time and location of the Planning Commission and County Council meetings for this matter once the agendas have been finalized.

If you have any questions, please feel free to contact Daryn Arai at (808) 961-8142 or Maija Jackson at (808) 961-8159.

Sincerely,



MICHAEL YEE
Planning Director

MJJ:mad

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Enc: Civil No. 11-01-005K Order
Photos from August 5, 2016 Site Inspection

cc: Kona Planning Office
Amy Self, Deputy Corporation Counsel
REZ 734, LUC 692, SUB 11-001070
✓ State Land Use Commission
State Office of Planning
State Department of Transportation
State Department of Health
HELCO
Department of Water Supply
Departmental of Public Works
Hawai'i Water Service Company
Cades Schutte