

BEFORE THE LAND USE COMMISSION

STATE OF HAWAI'I

In the matter of the Petition of)	Docket No. A87-617
)	
BRIDGE AINA LE'A, LLC, fka,)	ORDER RESCINDING ORDER TO
Puako Hawai'i Properties)	SHOW CAUSE UPON CONDITION
)	PRECEDENT AND ACCEPTING DW
)	AINA LE'A DEVELOPMENT, LLC
To Amend the Agricultural Land Use)	AS CO-PETITIONER
District Boundary into the Urban Land)	
Use District for Approximately 1,060)	
Acres of Land Situated at Waikoloa,)	
South Kohala, Island, County and)	
State of Hawai'i, Tax Map Key Nos.)	
6-8-001: portion of 25, portion of 36,)	
portion of 37, portion of 38, portion of)	
40.)	
)	

ORDER RESCINDING ORDER TO SHOW CAUSE UPON CONDITION
PRECEDENT AND ACCEPTING DW AINA LE'A DEVELOPMENT, LLC AS CO-
PETITIONER

On August 27, 2009, the Land Use Commission (LUC) held a hearing in Waikoloa, Hawai'i to 1) receive additional evidence regarding any new information that was not available or presented to the LUC at the April 30, 2009, Order to Show Cause hearing that significantly affects the Petitioner's ability to perform its commitments and conditions for reclassification; 2) act on DW Aina Le'a Development, LLC's Petition to be Co-Petitioner with Bridge Aina Le'a, LLC or in the Alternative to be Given Party

Status or to Intervene; and 3) act on Bridge Aina Le‘a, LLC’s Motion to rescind Order to Show Cause dated December 9, 2008.

At the hearing Bruce Voss, Esq. appeared on behalf of Bridge Aina Le‘a, LLC. Alan Okamoto, Esq.; Jerel Yamamoto, Esq.; and Robert Wessel appeared on behalf of DW Aina Le‘a Development, LLC. Gerald Takase, Esq. and Bobbi Jean Leithead appeared on behalf of the County of Hawai‘i. Bryan C. Yee, Esq.; Abbey Seth Mayer; and Lorene Maki appeared on behalf of the State Office of Planning.

By letter dated July 10, 2009, the LUC Executive Officer requested additional information from both Bridge Aina Le‘a, LLC and DW Aina Le‘a Development, LLC regarding the proposed project. Specifically, the letter requested verification of the current master plan, a detailed plan for project implementation, and a status report on the compliance with the Conditions of the 2005 Decision and Order.

On July 30, 2009 the LUC received Petitioner’s Status Report on Compliance with the Conditions of the Decision and Order. On July 31, 2009 the LUC received DW Aina Le‘a Development, LLC's Status Report on Compliance with the Conditions of the Decision and Order. On August 19, 2009 the Commission received DW Aina Le‘a Development, LLC's Supplement to Status Report on Compliance with Decision and Order Conditions in Docket 87-617 and Bridge Aina Le‘a, LLC's Exhibits “EE, FF, & GG”. On August 19, 2009 the LUC received Petitioner’s Motion to Rescind Order to Show Cause Dated December 9, 2008; Declaration of Hoolae Paoa; and Certificate of Service. On August 20, 2009 the LUC received DW Aina Le‘a Development, LLC's Supplement to Status Report on Compliance with Decision and Order Conditions in Docket 87-617 and Bridge Aina Le‘a LLC's Exhibit “HH”.

At the hearing two (2) members of the public provided testimony. The first testifier represented the Puako Community Association and expressed concerns with affordable housing, sewage disposal, the Environmental Impact Statement, and time share units. The second testifier represented the Maui Lani Resort Association and expressed concerns with Condition 4 as well as general concerns with adverse impacts due to time frame of the original approval.

The representative for Bridge Aina Le'a, LLC turned over to DW Aina Le'a Development, LLC, the task of presenting further newly discovered evidence to the LUC to establish its ability to perform commitments and conditions for reclassification and to support its request to vacate the decision and order of April 30, 2009 reverting the Petition Area to the Agricultural District pursuant to the Order to Show Cause. DW Aina Le'a Development, LLC then presented evidence to the LUC as to how they are complying with the Conditions of the Decision and Order and to confirm its ability to perform representations and commitments made to fulfill the conditions for reclassification. Further evidence specific to the implementation of Condition 1, and Exhibits "EE, FF, and GG", were also presented and accepted into the record. Lastly, DW Aina Le'a Development LLC confirmed that they understand and are willing to comply with all of the conditions of approval and commits to fulfilling them. DW Aina Le'a Development LLC further confirmed that the facts and representations in its response to the LUC Executive Officer's letter of July 10, 2009 have not changed.

The County of Hawai'i testified in support of vacating the Order to Show Cause Reversion Order and allowing the proposed project to go forward. With DW Aina Le'a Development, LLC much progress has been made within the last four months. Both the

affordable housing component and the anticipated construction jobs are desirable. The State of Hawai'i, through its Office of Planning, did not testify. However, the State's position was that notwithstanding the recent progress in complying with the conditions for reclassification performed by DW Aina Le'a Development LLC, the property should remain reverted back to the Agricultural District for failure to comply with the conditions.

Following a hearing on these matters on August 27, 2009, and after careful consideration of the arguments, representations and confirmation of representations made and the records and file in the docket, the following motion was duly made and adopted by a vote of six ayes to three nays.

1. Rescind and vacate the Order to Show Cause adopted on April 30, 2009; provided that as a condition precedent, the Petitioner completes 16 affordable units by March 31, 2010. Further, that the County of Hawai'i shall provide quarterly reports to the Land Use Commission in connection with the status of the Petitioner's progress in complying with this condition.

So ordered.

DATED: September 24, 2009, Hawai'i.

LAND USE COMMISSION

Further, following action on the above-stated motion, and after careful consideration of the arguments made and the records and file in the docket, the following additional motion was duly made and adopted by a vote of eight ayes to one nay.

1. Accept DW Aina Le'a Development, LLC as Co-Petitioner.

So ordered.

DATED: September 24, 2009, Hawai'i.

LAND USE COMMISSION

In light of the foregoing motions, Petitioner Bridge Aina Le'a, LLC withdrew its motion to rescind order to show cause dated December 9, 2008.

CLARIFICATION AND ADOPTION OF ORDER

The undersigned Commissioners, who voted for in favor of both motions, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 24th day of September, 2009 and hereby further clarify the Commission's Order as follows:

1. The August 27, 2009 action of the Commission is intended to include the rescission and vacating of the Order to Show Cause action Reverting the Petition Area to the Agricultural District voted on by the Commission on April 30, 2009. 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 Honolulu, Hawai'i, this 24th, day of September, 2009, per motions on August 27, 2009.

LAND USE COMMISSION


STATE OF HAWAI'I

APPROVED AS TO FORM

Russell A. Suzuki
Deputy Attorney General

By 
RANSOM PILTZ
Chairperson and Commissioner

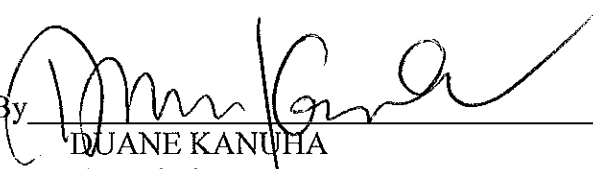
By (Nay)
VLADIMIR PAUL DEVENS
Vice- Chairperson and Commissioner

By 
REUBEN S.F. WONG
Vice- Chairperson and Commissioner

By (Nay)
KYLE CHOCK
Commissioner

By 
THOMAS CONTRADES
Commissioner

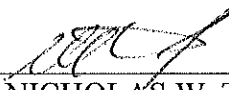
By 
LISA JUDGE
Commissioner

By 
DUANE KANUHA
Commissioner

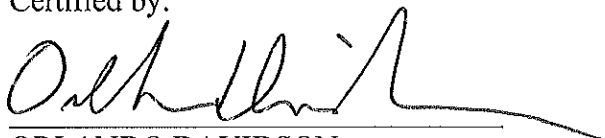
By (Nay)
NORMAND LEZY
Commissioner

Filed and effective on:

September 28, 2009

By 
NICHOLAS W. TEVES JR.
Commissioner

Certified by:


ORLANDO DAVIDSON
Executive Office



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Order 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:

DEL. Abbey Seth Mayer, Director
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CERT.

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Bays Deaver Lung Rose & Holma
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Dated: September 28, 2009, Honolulu, Hawaii.


Orlando Davidson, Executive Officer



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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, Hawaii.

September 28, 2009 by

Executive Officer