

LAND USE COMMISSION  
MEETING MINUTES  
July 1, 2010

Leiopapa A Kamehameha  
Conference Room 406, 4th Floor  
235 S. Beretania St.  
Honolulu, Hawai'i

COMMISSIONERS PRESENT: Vladimir Devens (arrived at 9:37 a.m.)  
Nicholas Teves, Jr.  
Ransom Piltz  
Ronald Heller  
Kyle Chock  
Thomas Contrades  
Duane Kanuha  
Lisa Judge

COMMISSIONER ABSENT: Normand Lezy

STAFF PRESENT: Orlando Davidson, Executive Officer  
Diane Erickson, Deputy Attorney General (arrived at  
9:40 a.m.)  
Bert Saruwatari, Staff Planner  
Scott Derrickson, Staff Planner  
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Hotai Zerba

**CALL TO ORDER**

Chair Piltz called the meeting to order at 9:35 a.m.

**APPROVAL OF MINUTES**

*(Please refer to LUC Transcript for more details on this matter.)*

July 1, 2010 LUC meeting minutes

Chair Piltz asked if there were any corrections or additions to the July 16-17, 2010 minutes. There were none. Commissioner Chock moved to approve the minutes. Commissioner Tevess seconded the motion. The minutes were unanimously approved by a voice vote (7-0).

Chair Piltz introduced Commissioner Ronald Heller to the audience.

### **TENTATIVE MEETING SCHEDULE**

Executive Officer Davidson provided the following:

- The regular tentative meeting schedule for the calendar year 2010 was distributed in the handout material for the Commissioners.
- The upcoming major items are set through the first meeting in September.
- Any questions or concerns- please contact LUC staff.

### **A87-617 Bridge `Āina Le`a, LLC and DW `Āina Le`a Development, LLC**

Chair Piltz announced that this was a hearing to consider the status reports of DW `Āina Le`a Development LLC and the County of Hawai`i.

### **APPEARANCES**

Bruce Voss, Esq., represented Co-Petitioner Bridge `Āina Le`a  
Alan Okamoto, Esq., represented Co-Petitioner DW `Āina Le`a Development LLC  
Gerald Yamamoto, Esq., represented DW `Āina Le`a Development LLC  
Robert Wessels, DW `Āina Le`a Development LLC  
Gerald Takase, Esq., Deputy Corporation Counsel, Hawai`i County  
Abbey Mayer, Director, State Office of Planning  
Bryan Yee, Esq., represented the State Office of Planning

### **PUBLIC WITNESSES**

#### 1. Bill Campbell

Mr. Campbell stated that he was a Board member of the Waikoloa Village Association and was representing the Association in support of the Petitioner. Mr. Campbell provided the reasons why his organization was in support.

*(Please refer to LUC Transcript for more details on this matter.)*

There were no questions for Mr. Campbell.

2. Bill Brillhante

Mr. Brillhante stated that he was the adjacent landowner to the DW `Āina Le`a Project and provided his reasons for supporting the Petitioner.

There were no questions for Mr. Brillhante.

3. Frank De Luz III

Mr. De Luz shared that his family were long-time residents of the area and provided his reasons for supporting the Petitioner.

There were no questions for Mr. De Luz,

4. Philip Harris

Mr. Harris stated that he was the owner of P.A. Harris Electric and described the nature of his business and the impact that supporting the Petitioner could have jobs and the economy in the area.

Mr. Okamoto requested clarification on Mr. Harris' business and on the availability of work on the Big Island. Mr. Harris described the scarcity of work and the difficulties that confronted construction workers and his business on the Big Island.

Hawaii County and OP had no questions.

Commissioner Devens asked if Mr. Harris was aware of when the Decision and Order (D&O) had been filed for the Petition, and how much more time and leeway the Commission should allow for the proposed project. Mr. Harris responded that he did not know when the D&O had been filed and discussion ensued over the history of the D&O, the ownership of the Petition Area and the amount of time that DW `Āina Le`a Development LLC had been involved with the proposed project. Mr. Harris expressed that the Commission should grant as much time as needed for the developer to move the Project forward.

*(Please refer to LUC Transcript for more details on this matter.)*

There were no further questions for Mr. Harris.

## PETITIONER'S PRESENTATION

Mr. Okamoto described the efforts that Petitioner had made to respond to the inquiries made by the Land Use Commission (LUC) on the project's progress and described why he felt that substantial compliance of D&O had occurred; and the types of problems and issues that DW `Āina Le`a had experienced in trying to obtain certificates of occupancy under the terms of the D&O conditions. Mr. Okamoto presented Mr. Wessels to answer details of the construction process and address the issues that were before the project.

Before Mr. Wessels began his presentation, Commissioner Kanuha requested clarification on exactly who the Petitioner was before the Commission since his understanding was that an assignment of ownership had been made but Co-Petitioners were appearing instead of a single entity. Mr. Okamoto responded by providing his perception of how the title transfer of 60 acres (Phase 1) of the Petition Area had occurred and how the balance of the remaining Petition Area acreage title remained in the possession of Bridge `Āina Le`a under the terms of the sales agreement.

Chair Piltz inquired if DW `Āina Le`a only owned 60 acres out of a thousand in the Petition Area. Mr. Okamoto confirmed that was the current ownership situation.

Mr. Yee expressed that one of the concerns that OP had was that the Petitioner had failed to properly communicate the change of ownership as required by the D&O conditions and had not explained the reason and nature for the delay and details of the extension of the sales agreement.

Commissioner Kanuha asked if it the current situation made any difference to Hawai`i County. Mr. Takase responded that he did not think so, and that Hawai`i County had been monitoring the development and understood the project was having problems with obtaining financing. Mr. Takase provided the reasons why Hawai`i County felt that progress was being made and why they remained optimistic about the matter.

Commissioner Judge referred to an OP filing that disclosed that the 60 acres that

*(Please refer to LUC Transcript for more details on this matter.)*

DW `Āina Le`a was working on had 333 owners and requested clarification on this situation. Mr. Okamoto referred to Petitioner's July 10 response letter and explained the details of the financing arrangements that the Petitioner had with Capital Asia and its investors.

Commissioner Heller requested further clarification on the joint venture agreements cited in Petitioner's July 10<sup>th</sup> letter. Mr. Okamoto replied that he had only looked at the agreement's general structure and deferred to Mr. Wessels to provide further details.

1. Robert Wessels

Mr. Wessels described how financing arrangements had been made with a Singapore firm (Capital Asia) and explained the "land bank" lending requirements that had to be met to obtain investor monies from that firm and how the funding transaction cycle operated.

Commissioner Contrades inquired when the Petitioner planned to advise the Commission that this type of financing was being pursued. Mr. Wessels answered that he thought that the Commission had been advised at the LUC hearing where Capital Asia had been discussed and that subsequent filings with other government agencies had occurred since October, 2009. Commissioner Contrades expressed his concerns about how the Petitioner's situation appeared to him.

Mr. Yee requested clarification on the ownership of the Petition Area and on the terms and conditions of the agreement of sale between DW `Āina Le`a and Bridge `Āina Le`a. Mr. Wessels explained how an extension till October, 2010 had been negotiated and described the problems with financing that the project was experiencing. Mr. Wessels asserted that backup funding had been arranged with Exim Corporation for \$98 million and that the funding was in place but the documents had not been executed; and explained how the combination of funds from Capital Asia and Exim Corporation would finance his sales agreement with Bridge `Āina Le`a and provide initial construction financing for his project. Mr. Wessels acknowledged that additional funding would be required to complete the remainder of the 1000 acres of the Petition Area.

*(Please refer to LUC Transcript for more details on this matter.)*

There were no further questions for Mr. Wessels regarding the financing arrangements for the proposed project.

Mr. Okamoto requested that Mr. Wessels provide information on what had been constructed since August 2009 on the project site and referred to photos provided in the status report to assist in the presentation. Mr. Wessels described the work that had been performed by Goodfellow Brothers to prepare the infrastructure for the site, and by Truestyle Pacific to construct the townhouse structures. The features depicted in the submitted exhibits were identified and explained by Mr. Wessels to describe how construction had proceeded and how the units were being prepared for future sale.

Mr. Wessels explained the challenges he was facing with obtaining a special use permit for the project's wastewater treatment plant and other infrastructure components and provided his estimates on completing the various parts of the project.

Mr. Takase requested clarification on when Mr. Wessels took over the project and whether there was any existing hesitation from the lenders in the project. Mr. Wessels responded that DW `Āina Le`a became involved on February 9, 2009 and provided a timetable of what and when he had done different parts of the project from then till the present. Mr. Wessels explained how Exim Corporation was aware of the LUC proceedings and was still ready to provide funding for the proposed project.

Mr. Takase asked if a timeframe for the completion of the affordable housing units could be provided. Mr. Wessels provided his estimates for the completion of the wastewater treatment plant, the highway intersection for the project, and the remaining items that required County approval.

Mr. Yee requested clarification on the representations made to the Commission regarding details of the financing for the project and the various roles that Capital Asia, Goodfellow Bros., Truestyle Builders and Exim Corporation had. Mr. Wessels described the amount of construction activity occurring in the Petition Area and gave reasons why activity had slowed down in the last 60 days.

Commissioner Judge excused herself at 10:45 a.m. and returned at 10:48 a.m.

*(Please refer to LUC Transcript for more details on this matter.)*

Mr. Yee asked when the EIS was expected and could be delivered for approval. Mr. Wessels deferred answering questions on the EIS to his project planner, James Leonard. Mr. Yee requested clarification on Condominium Property Regime approval that was submitted for the proposed project. Mr. Wessels provided his understanding of the government agencies that he believed were involved with the approval process and what he expected to accomplish to move forward after the approvals were received.

The Commission went into recess at 10:55 a.m. and reconvened at 11:08 a.m. (Commissioner Devens returned at 11:11 a.m.)

Chair Piltz announced that the current agenda item A87-617 would continue to be heard till noon and that agenda item A09-782 and the remaining agenda items would be heard from 1:30 p.m.

Mr. Okamoto requested that due to time and the information that the project planner, James Leonard, had regarding the EIS, that Mr. Leonard be allowed to appear before the Commission. Chair Piltz permitted Mr. Leonard to testify.

## 2. James Leonard

Mr. Leonard described his involvement with the project and the current status of the final EIS and the timetable he envisioned to process it.

Chair Piltz requested clarification on when the current EIS processing began. Mr. Leonard responded that he began in October/November of 2009 and that he had discovered that the initial EIS work that had been done did not cover the entire scope of the proposed project and that additional studies had been done to be sure that the EIS was complete.

Mr. Yee requested clarification on when the Draft EIS had been submitted for publication and the length of time it might take for approval. Mr. Leonard replied that the Planning Department had submitted it on May 10, 2010 to OEQC and published on May 23<sup>rd</sup> and reported what had been accomplished to complete the EIS process to date.

Mr. Okamoto stated that he had no more witnesses.

*(Please refer to LUC Transcript for more details on this matter.)*

Mr. Takase stated that Hawai'i County had no witnesses and had just supplied its third progress report. Commissioner Judge asked for clarification on the community financing and whether there was a reality or timeline to providing it. Mr. Takase responded that it was up to the land owner to move the process forward and to initiate and get the bonds ready to be marketed.

Commissioner Judge requested clarification of the Special Use Permit approval process. Mr. Takase estimated that it could take 2-3 months.

Commissioner Kanuha requested clarification to the reference "they" in the answers that were given. Mr. Takase identified that he was referring to DW `Āina Le`a with the understanding that Bridge `Āina Le`a was still the land owner till the project was complete and it was due to this reason that the County was supportive of DW `Āina Le`a. Commissioner Kanuha commented on the affordable housing requirement changes that had been made to accommodate the Petitioners for this docket and confirmed that zoning for the project was in place. Mr. Takase replied that he believed that an affordable housing component was included in the zoning and described the final housing agreement that the County almost had in place for the proposed project. Discussion ensued to clarify the use of the terms "special permit" or "special use permit". Mr. Okamoto stated that he had incorrectly inserted "use" in his correspondence and that the treatment plant would be located in the state land use agricultural area and would require a "special permit".

Chair Piltz requested clarification on the Hawai'i County affordable housing requirements. Mr. Takase replied the current standard that all projects were expected to comply with was 20%.

Commissioner Heller requested clarification on Hawai'i County's requirements to issue certificates of occupancy and the wastewater treatment plant issue. Mr. Takase provided his understanding of what was required for the certificates to be issued.

Commissioner Devens requested clarification on what the term "completion" meant as it related to completing the 16 affordable units. Mr. Okamoto provided his understanding of what "completion" meant and argued that the 16 units met his definition of the term.

*(Please refer to LUC Transcript for more details on this matter.)*

Chair Piltz requested clarification on the terms and conditions of the \$5.5 million Goodfellow Bros. loan. Mr. Wessels explained the details of the loan and noted that the loan did not allow Goodfellow a position in the project.

Commissioner Devens commented on how he would not have been in favor of rescinding the order to vacate the Order to Show Cause and why he felt the Commission might be setting a dangerous precedent on its present course but was willing to see how things would further unfold with the Petitioner. He shared his concerns over possible misrepresentations that had occurred during the course of the docket to achieve extensions of time to comply with LUC conditions and expressed that he shared Commissioner Contrades' feelings on this docket.

Commissioner Kanuha commented on how the current docket had come before the Commission to obtain relief from the affordable housing conditions that had been imposed upon it and had already received the entitlements and County permits/approvals to achieve them and questioned what the consequences of reverting the land use classification might be and the problems that would accompany such a decision. Commissioner Kanuha expressed that given the current conditions and what the Petitioner and the County had achieved, that the Commission should review its role and re-assess the way Petitions are monitored and allow the County to take more control.

Commissioner Judge noted her concerns about comments made in the Puakō Community Association letter to the LUC about the Draft EIS that appeared to conflict with the conditions of the D&O.

Mr. Yee stated the actions that OP recommended the LUC take and provided the reasons for making its recommendations.

Commissioner Teves excused himself at 11:38 a.m. and returned at 11:47 a.m.

Mr. Yee reviewed the history of the docket and provided seven OP concerns about the Petition that identified the misrepresentations, omissions and repeated violations that had occurred during the life of the Petition and; requested that the LUC make November 17, 2010 the deadline for the Petitioner.

*(Please refer to LUC Transcript for more details on this matter.)*

Chair Piltz noted that the Petitioner had heard the positions of OP and some of the LUC commissioners during the hearing and should be aware that performance was emphasized.

Mr. Okamoto argued that the Commission should consider that Petitioner DW `Aina Le`a could not control current world finance and business conditions and was making an earnest effort to obtain financing to move the project forward and provided the reasons for allowing the proposed project to continue.

Chair Piltz responded that the lack of performance by owners prior to Mr. Wessels had made this a difficult Petition for the Commission.

Commissioner Devens excused himself at 11:45 a.m. and returned at 11:55 a.m.

Mr. Takase stated the reasons why Hawai`i County was supporting the Petition and recognized the efforts and achievements of Mr. Wessels during the span of time that DW had worked on the proposed project. Discussion ensued over the way ownership impacted the performance and development efforts for the Petition Area.

Mr. Mayer testified to clarify OP's position on the docket and explained the reasoning and considerations that were applied in deciding how to proceed on the treatment of the Petitioner. There were no questions for Mr. Mayer.

Commissioner Devens moved to keep the Order to Show Cause pending and that the LUC schedule a hearing on or after September 17, 2010 on the Order to Show Cause and affirm that the November 17, 2010 date is a deadline and not a goal, and enter a finding that the condition precedent requiring 16 affordable housing units by March 31, 2010 had not been met. Commissioner Chock seconded the motion.

Commissioner Judge requested clarification on whether the motion included a review of all the conditions of the D&O. Commissioner Devens confirmed that all conditions would be subject to review.

The Commission was polled as follows:

Ayes: Commissioners Judge, Teves, Contrades, Kanuha, Heller, Devens, Chock and Chair Piltz.

Nays: None

*(Please refer to LUC Transcript for more details on this matter.)*

The motion passed 8-0 with 1 excused.

The Commission went into recess at 12:07 p.m. and reconvened at 1:38 p.m.  
(Commissioners Chock and Devens returned at 1:45 p.m.)

### **ACTION A09-782 Tropic Land LLC**

Chair Piltz announced that this was an action meeting to consider the Concerned Elders of Wai`anae's Motion to Waive Commission Rule 15-15-52 (e) and their Request for Intervention.

### **APPEARANCES**

William Yuen, Esq., represented Petitioner Tropic Land LLC  
Arick Yanagihara, Tropic Land LLC  
Dawn Takeuchi-Apuna, Esq. Deputy Corporation Counsel represented City and County of Honolulu  
Mike Watkins, City and County of Honolulu,  
Bryan Yee, Esq. represented State Office of Planning  
Abbey Mayer, State Office of Planning  
Martha Townsend, Esq. represented The Concerned Elders of Wai`anae  
Alice Greenwood, Director, The Concerned Elders of Wai`anae

### **PUBLIC WITNESSES**

1. Ka Makani Kaiāulu o Wai`anae  
Kahaka Pinero spoke on behalf of the following students who stood with him to testify:  
Kuaika Kaeo  
Christopher Strickland  
Aikake Delacruz  
Derolynn Perry  
Kimie Korenaga  
Janikkah Akiona  
Jordan De Cambra  
Brenda Perry  
Naomi Korenaga

*(Please refer to LUC Transcript for more details on this matter.)*

Mr. Pinero provided the reasons why his youth group was supporting the Concerned Elders of Wai`anae to protect the lands of Hawai`i.

There were no questions for Mr. Pinero or the students standing with him.

## 2. Walterbea Aldeguer

Ms. Aldeguer shared her concerns about the Petition Area and her personal experiences growing up in the area.

Ms. Townsend requested clarification on Ms. Aldeguer's involvement with the Concerned Elders of Wai`anae group. Ms. Aldeguer stated that she was a group member and described her participation in the activities of the Concerned Elders of Wai`anae group.

There were no other questions for Ms. Aldeguer.

## 3. Kimie Korenaga

Ms. Korenaga provided her opinions on why the Concerned Elders of Wai`anae should be allowed to participate in the hearing.

There were no questions for Ms. Korenaga.

## The Concerned Elders of Wai`anae Presentation- Waive Commission Rule

Ms. Townsend provided her reasons for waiving the commission rule and explained the steps that had been taken to mitigate the untimely filing action.

Mr. Yuen stated that Tropic Land opposed the Motion.

The City and OP had no objection to the Motion.

Commissioner Devens asked what the reason was for the delay. Ms. Townsend explained that it was a mistake in counting the days before the filing was due and described the actions taken to mitigate the error.

*(Please refer to LUC Transcript for more details on this matter.)*

Commissioner Chock moved to waive the Commission rule. Commissioner Heller seconded the Motion. The Commission was polled as follows:

Ayes: Commissioners Chock, Heller, Judge, Devens, Kanuha, Teves, Contrades and Chair Piltz.

Nays: None

The Motion passed 8-0 with 1 excused.

#### The Concerned Elders of Wai`anae Presentation – Petition to Intervene

Ms. Townsend provided her reasons to allow the Concerned Elders of Wai`anae's Petition to Intervene and described the benefits of having this group participate in the proceedings.

Mr. Yuen stated that Tropic Land objects to the Intervention.

Ms. Takeuchi-Apuna stated that the City had no objection to the Petition.

Mr. Yee stated that OP had no objection and supported the Petition to Intervene and described the impacts that OP shared concerns about. Mr. Yee noted that OP took issue with the asserted interest as a DHHL beneficiary and explained the details of his concern.

Commissioner Devens requested clarification on the Intervenor group. Ms. Townsend described the organization of the Concerned Elders of Wai`anae and what their interests in participating as an Intervenor would be.

Mr. Yee requested clarification on how the Concerned Elders of Wai`anae would be represented by an attorney. Ms. Townsend explained that she had prepared the documents to intervene but the Intervenor was actively looking for an attorney to represent them during the proceedings. Ms. Townsend expressed that she would continue to represent the Concerned Elders if no replacement attorney was found.

Commissioner Heller commented that he agreed with the OP concern over the DHHL beneficiary issue.

*(Please refer to LUC Transcript for more details on this matter.)*

Commissioner Devens moved to grant the Petition to Intervene. Commissioner Contrades seconded the Motion. There was no discussion.

The Commission was polled as follows:

Ayes: Commissioners Devens, Contrades, Heller, Judge, Chock, Kanuha, Teves, and Chair Piltz.

Nays: None

The Motion passed 8-0 with 1 excused.

Mr. Yuen requested appropriate procedural safeguards at the Petition hearing. Chair Piltz acknowledged this request. Executive Officer Davidson advised the Parties that the pre-hearing would be held on July 13 at a time yet to be determined.

The Commission went into recess at 2:08 p.m. and reconvened at 2:10 p.m.

#### Discussion on Administrative Rules

Executive Officer Davidson described the possible actions the LUC might take regarding the Administrative Rules. One was to take the current revised draft rules to a second public hearing, and the other was to draft the IAL rules and bring an entire set of rules before the Commission.

Commissioner Devens stated that his preference was to do a comprehensive review and complete all phases at the same time and provided examples why this method might be more effective. Discussion ensued on how LUC staff would proceed in reviewing the administrative rules.

By consensus, staff was directed to prepare a comprehensive revision to the rules, including IAL rules, to bring before the Commission.

Commissioner Teves excused himself at 2:15 p.m. and returned at 2:17 p.m.

#### ELECTION OF OFFICERS

Chair Piltz announced with regret that he would be resigning from the Commission effective July 2, 2010.

*(Please refer to LUC Transcript for more details on this matter.)*

Commissioner Kanuha expressed the gratitude and appreciation for Chair Piltz's service and moved to have the slate of Commissioner Devens for Chair and Commissioners Contrades and Judge as Vice-Chairs elected. Commissioner Teves seconded the motion.

There was no discussion.

The Commission was polled as follows:

Ayes: Commissioners Devens, Contrades, Heller, Judge, Chock, Kanuha, Teves, and Chair Piltz.

Nays: None

The Motion passed 8-0 with 1 excused.

Chair Piltz thanked his fellow Commissioners for their service and support. There being no further business or discussion, the meeting was adjourned at 2:25 p.m.

*(Please refer to LUC Transcript for more details on this matter.)*