

LAND USE COMMISSION  
MEETING MINUTES

November 18, 2010

Ballroom #1 &2, King Kamehameha's Kona Beach Resort Hotel  
75-5660 Palani Road,  
Kailua-Kona, Hawai'i 96738

COMMISSIONERS PRESENT:

Kyle Chock  
Duane Kanuha  
Ronald Heller  
Normand Lezy  
Charles Jencks  
Thomas Contrades

COMMISSIONERS EXCUSED:

Lisa Judge  
Nicholas Teves, Jr.  
Vladimir Devens

STAFF PRESENT:

Orlando Davidson, Executive Officer  
Diane Erickson, Deputy Attorney General  
Scott Derrickson, Staff Planner  
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER:

Holly Hackett

AUDIO TECHNICIANS:

Walter Mensching

**CALL TO ORDER**

Vice-Chair Contrades called the meeting to order at 9:10 a.m.

**ACTION**

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

Vice-Chair Contrades announced that this was a hearing and action meeting to consider the Order to Show Cause issued December 9, 2008; Rescinded upon condition precedent by Order filed September 28, 2009; Reinstated by Order finding failure of

condition precedent filed July 15, 2010, and to consider DW `Āina Le`a's Motion to Amend Conditions 1, 5, and 7.

Vice-Chair Contrades stated that the Commission would hear evidence and argument on the Show Cause Order, both substantive and procedural and then after hearing such evidence and argument, decision-making on the Show Cause Order in A87-617 would be deferred due to the limited number of Commissioners available today and pending advice from legal counsel. Vice-Chair Contrades expressed that there would be a subsequent opportunity to present arguments on this matter; and that the Motion to Amend Conditions 1, 5, and 7 would be deferred so no arguments would be heard at this meeting.

#### APPEARANCES

Michael Carroll, Esq., and Bruce Voss, Esq., represented Bridge `ĀinaLe`a LLC  
Alan Okamoto, Esq., and Jarel Yamamoto, Esq., represented DW `ĀinaLe`a  
Development LLC  
Robert Wessels, DW `ĀinaLe`a Development  
William Brillhante, Esq., represented Hawaii County Department of Planning  
Daryn Arai, Hawaii County Department of Planning  
Bryan Yee, Esq., represented State Office of Planning  
Abbey Mayer, Director, State Office of Planning

#### PUBLIC WITNESSES

1. Byron Harris

Mr. Harris described the solar installation work that his company had performed on the proposed Project and provided his reasons why the Commission should allow it to continue.

There were no questions for Mr. Harris.

2. Philip Harris

Mr. Harris provided the background and history of his company and its relationship to the proposed Project and provided his reasons for supporting it.

There were no questions for Mr. Harris.

3. Olithia Lai

Ms. Lai shared her perceptions of how the proposed Project would benefit the Big Island and should be granted an extension.

There were no questions for Ms. Lai.

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

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4. Coreena Salmo

Ms. Salmo stated that she was representing the ILWU Local 142 and shared the reasons why her organization supported the proposed Project.

There were no questions for Ms. Salmo.

5. Walter Fullerton

Mr. Fullerton stated that he was the architect for the proposed Project and provided his perception of why it should be allowed to continue.

There were no questions for Mr. Fullerton.

6. Kevin Woods

Mr. Woods stated that he was General Manager for Honsador Lumber and described how and why his company supported the proposed Project.

There were no questions for Mr. Woods.

7. Pua Correa

Ms. Correa expressed that she was a Realtor and provided her perception of how the proposed Project could benefit the community.

There were no questions for Ms. Correa.

8. John Harner

Mr. Harner provided his perspective of how the proposed Project could benefit the community and stated that he supported it.

There were no questions for Mr. Harner.

9. Gretchen Lambeth

Ms. Lambeth stated that she was a Realtor and shared her reasons why the Commission should grant more time to the proposed Project.

There were no questions for Ms. Lambeth.

10. Ed Brown

Mr. Brown stated that he was the Regional Manager for Goodfellow Bros. and described the progress that had been made on the proposed Project and why more time should be granted.

Mr. Yee requested clarification of how Goodfellow Bros. had been compensated for its services and how it had provided credit to the proposed Project. Mr. Brown provided his understanding of how Goodfellow Bros. performed its work and had made financial arrangements with the Petitioner for payment and credit.

There were no further questions for Mr. Brown.

11. Robert Martinson

Mr. Martinson stated his affiliation with Bank of America Home Loans and described how he had been working to provide approved loan funding for the proposed Project

Commissioner Heller requested clarification on the number of units that had to be pre-sold to qualify for financing the proposed Project.

Mr. Martinson stated that he required 9 pre-sold contracts.

There were no further questions for Mr. Martinson.

12. Keolani Kiawe

Ms. Kiawe described the community problems that she felt the proposed Project would help solve.

There were no questions for Ms. Kiawe.

13. Peter Dahlberg

Mr. Dahlberg described the technology of the proposed Project's sewage treatment plant and updated information on the progress of its installation.

Mr. Yee requested clarification on the capacity of the treatment system that was going to be installed. Mr. Dahlberg stated that the plant was designed for the initial phase of the proposed Project and did not have the capacity to handle the entire proposed Project.

Commissioner Jencks requested clarification on the installation and permitting status and ability of the system to handle the needs of the Petition Area. Mr. Dahlberg provided his understanding of the installation and permitting status and capabilities of the sewage treatment plant that was being installed. Mr. Dahlberg submitted written material describing the sewage treatment plant membrane system.

There were no further questions for Mr. Dahlberg.

14. Christian Renz

Mr. Renz stated that he was a first-time homebuyer and shared the reasons why he supported the proposed Project.

There were no questions for Mr. Renz.

15. George Robertson

Mr. Robertson stated that he represented the Puako Community Association and provided his organization's reasons for opposing further extensions to the proposed Project.

There were no questions for Mr. Robertson.

16. Randy Vitousek

Mr. Vitousek stated that he was the attorney for the Mauna Lani Resort Association and provided the concerns and position that his organization had regarding the proposed Project.

There were no questions for Mr. Vitousek.

17. William Campbell

Mr. Campbell described why he supported the proposed Project.

There were no questions for Mr. Campbell.

18. Daisy Mitchell

Ms. Mitchell provided her reasons for supporting the proposed Project.

There were no questions for Ms. Mitchell.

19. Liz Singer

Ms. Singer stated her support for the proposed Project.

There were no questions for Ms. Singer.

20. Keith Whitney

Mr. Whitney described his awareness of the development problems that the Petitioner faced and provided his reasons for supporting the proposed Project.

There were no further Public Witnesses.

## PRESENTATION OF EXHIBITS

### Petitioner

Mr. Okamoto stated that he had previously submitted Exhibit II to the Commission and offered Exhibits JJ, KK, a petition (Exhibit LL) .

There were no objections and no other exhibits were offered by the Parties.

The Commission went into recess at 10:05 a.m. and reconvened at 10:23 a.m.

## PETITIONER'S WITNESSES

### 1. James Leonard- Project Planner

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

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Mr. Leonard described his professional experience and how he had prepared the Environmental Impact Statement (EIS) for the proposed Project and communicated with the Office of Environmental Quality Control and other agencies during its preparation. Mr. Leonard described how he had accomplished preparing the EIS and explained the issues that needed to be resolved during and after its completion.

Mr. Okamoto offered II, JJ, and KK into evidence again.

There were no objections by the Parties to the submittals.

Mr. Yee requested clarification on the dates used in Exhibit KK. Mr. Leonard responded that he believed a typographical error had been made and that the site visit and the letter reporting it had been done on November 17, 2010; and described the circumstances surrounding the error.

Mr. Yee requested clarification on how responses to comments on the EIS were handled and the area that the EIS covered. Mr. Leonard replied that responses had been sent to the County but not to the parties making the comment before the final EIS's acceptance and described the territory and items covered by the draft and final EIS.

Commissioner Lezy requested clarification on why the letters responding to the draft EIS comments were not timely. Mr. Leonard explained the procedures he used for handling response letters.

There were no further questions for Mr. Leonard.

## 2. Robert Wessels

Mr. Wessels provided an update on the construction progress in the affordable housing portion of the Petition Area and used 5 photographs (not submitted as exhibits) in his presentation; and described the marketing and financing methods that were being used for the affordable housing portion of the proposed Project.

Mr. Wessels stated that he had a petition requesting an extension for the proposed Project that he wanted to submit. Discussion ensued over the nature of the petition and how it would be treated and identified as a Petitioner's Exhibit. There were no objections to the additional Exhibit by the Parties and it was identified as Exhibit "LL".

Mr. Brilhante requested clarification on County financing efforts that were being pursued and the status of the Waikoloa Village access connector road and Queen Kaahumanu Highway improvements. Mr. Wessels described the CFD bonding efforts that had been made and updated the progress on the access road and highway improvements. Mr. Wessels stated that it was his understanding that completion of highway and access road improvements was required to obtain a certificate of occupancy.

Mr. Yee requested clarification on the Petition Area infrastructure that had been completed. Mr. Wessels provided his perception of the work that was completed and to be finished on infrastructure in the affordable housing portion of the Petition Area and stated that the lines for the sewer, water and electricity, and roadways were not yet complete, and would be done in phases to coincide with building construction.

Mr. Yee requested clarification on the design plans for the sewage treatment plant and electrical connection for the Petition Area. Mr. Wessels described how the sewage treatment plant would use modules to accommodate the necessary capacities for the affordable housing component of the proposed Project and how the HELCO electrical connection would occur and accommodate just the affordable housing component.

Mr. Yee requested clarification on the ExIm financing for the affordable housing component of the proposed Project. Mr. Wessels described how he planned to use the funding for construction and provided his understanding of the funding arrangements and requirements between his project and ExIm.

Mr. Yee requested clarification on Capital Asia and other funding arrangements. Mr. Wessels described how Capital Asia structured its financing and why local investors were not allowed.

Mr. Yee requested clarification on when the Condominium Property Regime (CPR) would be filed for the affordable housing component of the Project and what occurred at the pre-sale meeting. Mr. Wessels stated that the CPR process had been delayed due to illness of the attorney who was responsible for making the filing and described the events that happened at the pre-sale meeting.

Mr. Yee requested clarification on Petitioner's CFD financing effort. Mr. Wessels stated that \$125 million was being sought for the entire project and that he expected to be advised in 30 days by the County on its approval.

The Commission went into recess at 11:55 a.m. and reconvened at 12:12 p.m.

Mr. Voss requested clarification on financing and the impacts that the Order to Show Cause had. Mr. Wessels described why he thought lenders would not finance him due to the Order to Show Cause.

Commissioner Lezy requested clarification on when certificates of occupancy could be expected on the 16 affordable housing units that were already constructed and on the number of non-binding reservations received for the first development increment of the affordable housing component. Mr. Wessels stated that he hoped certificates of occupancy would be issued in the first quarter of 2011 and that approximately 128 non-binding reservations had been received that qualified for the current financing requirements and he expected the documents for pre-sale to be ready soon.

Commissioner Lezy inquired what the estimated highway improvement costs to Queen Kaahumanu Highway were and how much Goodfellow Bros. was owed and being paid. Mr. Wessels responded that the highway improvement cost was about \$2 million and that Goodfellow Bros. was being paid about \$1 million per month and was owed about \$4- 4.3 million ; and was providing some services but no active grading was being done.

Commissioner Lezy requested clarification on the number of current investors involved in the Capital Asia funding arrangement. Mr. Wessels responded that about 619 current investors were involved; and described how the investment plan operated outside the jurisdiction of the SEC and why U.S. investors were not allowed; and how he relied on the investment funds to sustain his operations.

Commissioner Heller requested clarification on the status of the CPR for the proposed Project and on what undivided interest an investor would acquire. Mr. Wessels confirmed that no CPR was in effect and described what interest an investor received in exchange for their money before and after a CPR was established and what the total number of potential investors could be.

Commissioner Heller requested clarification on the anticipated revenue generated from investors in the affordable housing component of the proposed Project. Mr. Wessels described how investment money needed to be balanced to achieve his desired results.

Commissioner Heller requested clarification on the electrical connection to HELCO and sewage treatment plant installation for the affordable housing component of the Petition Area. Mr. Wessels responded that he did not have a firm date for electrical connection and described the efforts that were being made for his infrastructure work.

Commissioner Heller inquired if there was a firm occupancy date for the 16 constructed affordable units and what the objection period against the EIS was. Mr. Wessels could not provide a date and explained the circumstances that made it difficult for him to estimate and stated that he thought the contest period for the EIS was 60 days from its publication on November 8, 2010.

Commissioner Jencks asked if Mr. Wessels had submitted condominium documents for review by the DCCA. Mr. Wessels replied that he had not.

Commissioner Jencks inquired whether the plans submitted for the wastewater treatment plant to the Department of Health had been reviewed and approved. Mr. Wessels responded that the plans still had to be reviewed and approved.

Commissioner Jencks asked whether an application had been submitted to the PUC regarding what would be charged for the plant. Mr. Wessels indicated he had not made an application yet.

Commissioner Jencks inquired whether an application had been submitted to the PUC regarding a fee structure for water supply. Mr. Wessels responded that he had not applied to the PUC yet.

Commissioner Jencks indicated that to get a certificate of occupancy, the increment to be occupied would need to be fully landscaped and Hawai'i County would require landscaping to be substantially complete. Commissioner Jencks inquired whether that work had started yet; and whether any landscaping plans had been submitted for review and approval. Mr. Wessels replied that only drafting and design work had been done and no plans had been submitted.

Commissioner Jencks indicated that access to the highway would need to be completed and accepted by the State for a certificate of occupancy and asked whether Mr. Wessels had authorized ordering any signal mechanisms or

anything to facilitate the construction of the intersection. Mr. Wessels responded that he had not.

Commissioner Jencks noted that the lack of application submittals and receipt of approvals from the various regulatory agencies and the construction time could take longer than the estimated first quarter of 2011. Mr. Wessels agreed that it could.

Commissioner Jencks expressed concern that Mr. Wessels' estimates for first quarter 2011 were overly optimistic. Mr. Wessels responded that he was making an estimate and was hopeful that it could be adjusted based on the progress achieved.

There were no further witnesses offered by any of the Parties and no further questions or discussion.

#### CLOSING ARGUMENTS

Petitioner DW `Aina Le`a Development LLC

Mr. Okamoto stated that he had reviewed Mr. Voss' motion and agreed with its conclusions. Mr. Okamoto described the progress that had been made on the proposed Project and argued why the Order to Show Cause should be lifted.

Petitioner Bridge `Aina Le`a LLC

Mr. Voss reviewed the background history of the Order to Show Cause and made comparisons to other Projects and argued why he felt the Order to Show Cause should not be enforced and what possible consequences could result from not allowing the Petitioner to continue.

Hawaii County

Mr. Brillhante described the progress in the Petition Area that the County had observed and argued why the County supported the proposed Project and why

the developer should be allowed to continue; and how status reports could be provided to advise the Commission of the proposed Project's development.

State Office of Planning

Mr. Yee noted that litigation concerns should not be a basis for decision-making and stated OP's position was that the Petition Area should be reverted for the failure to keep their promises, misrepresentations and violations of conditions.

Mr. Yee requested that a briefing schedule be set for the motion regarding the Order to Show Cause that was pending and argued why the Petition Area should be reverted to its original classification.

There were no further questions or presentations.

Vice-Chair Contrades adjourned the meeting at 1:18 p.m.