

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAII

In The Matter Of The Petition Of:) DOCKET NO. A87-617
)
BRIDGE AINA LE`A, LLC) FINDINGS OF FACT,
& BANTER, INC.) CONCLUSIONS OF LAW, AND
fka Puako Hawai`i Properties) DECISION AND ORDER
) GRANTING PETITIONER`S
To Amend the Agricultural Land Use) MOTION TO AMEND CONDITION
District Boundary into the Urban Land) 1 AND DENYING PETITIONER`S
Use District for Approximately 1,060) MOTION TO AMEND CONDITION
Acres of Land Situated at Waikoloa, South) 8 OF AMENDED FINDINGS OF
Kohala, Island, County and State of) FACT, CONCLUSIONS OF LAW,
Hawai`i, Tax Map Key Nos.: 6-8-001:) AND DECISION AND ORDER
portion of 25, portion of 36, portion of 37,) DATED JULY 9, 1991.
portion of 38, portion of 40.)
)

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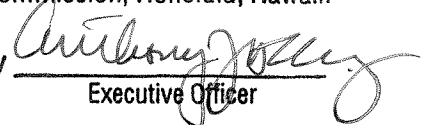
This is to certify that this is a true and correct
copy of the document on file in the office of the
State Land Use Commission, Honolulu, Hawaii.

NOV 25 2005

Date

by

Executive Officer



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AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION
AND ORDER DATED JULY 9, 1991.

The Land Use Commission ("Commission"), having examined the
Motion To Amended Conditions 1 And 8 of Amended Findings Of Fact,
Conclusions Of Law, And Decision And Order Dated July 9, 1991 (the "Motion")
filed by Bridge Aina Le`a and Banter Inc. (collectively "Petitioner") on September
1, 2005 and upon consideration of the matters discussed therein, together with
testimony of witnesses, additional documents made part of the record, the

positions of the County of Hawai`i and the State of Hawai`i Office of Planning, and the argument of counsel, at its meetings of September 30, 2005 in Waikoloa, Hawai`i, October 7, 2005 in Kapolei, Hawai`i, October 19, 2005 in Honolulu Hawai`i, and November 4, 2005 in Kapa`a, Hawai`i, hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

1. The Project as defined by the Petitioner consists of 1,924 residential units. Petitioner proposes to develop a minimum of 385 of those 1,924 residential units as affordable to the satisfaction of the County of Hawai`i. The Project also includes a 25-acre commercial parcel, a 30-acre school site to be dedicated to the Department of Education, 26 acres of neighborhood parks, a network of walking and cycling paths, and natural and open space buffers.

2. Bridge Aina Le`a, LLC is a sister company of Bridge Capital (USVI), LLC, an international real estate and lending development company. Banter Inc. is a wholly-owned subsidiary of Bridge Aina, Le`a, LLC. Bridge Capital (USVI), LLC provides financing for real estate secured loans, as well as acquires and develops improved and unimproved properties. As of June 30, 2005, Bridge Capital (USVI), LLC has total assets of \$175,398,411.

3. First Hawaiian Bank has indicated a willingness to extend Bridge Aina Le`a, LLC's credit on the Project to approximately \$80,000,000, which will provide over \$50,000,000 in additional development financing.

4. Petitioner has represented that the Project cannot be constructed with a 1,000-unit affordable housing requirement, because the cost of compliance effectively prevents the Petitioner from developing the Petition Area.

5. Petitioner has represented that if 60% of the Project's residential units are affordable to residents earning 120% of the island of Hawai'i's median income, then the total net cash flow deficit sustained by Petitioner would be \$556,300,000. Allocating this deficit among the Project's market priced units, this would amount to an average net cash flow deficit of \$720,000 per market priced unit.

6. Petitioner has represented that the Project will become economically feasible if the Commission amends the present affordable housing requirement under the Amended Findings of Fact, Conclusions of Law, and Decision and Order dated July 9, 1991 (the "Amended Decision and Order") to comport with the recently enacted requirements of the County of Hawai'i ordinance on affordable housing to develop twenty percent (20%) of the Project's residential units as affordable.

7. Petitioner has represented that if 10% of the Project's residential units are affordable to residents earning 120% of the island of Hawai'i's median income, and 10% of the Project's residential units are affordable to residents earning 140% of the island of Hawai'i's median income, then the total net cash flow deficit sustained by Petitioner would be \$63,900,000. Allocating this deficit amount to the Project's market priced units would amount to an average net cash flow deficit of \$166,000 per affordable unit.

8. Twenty percent (20%) of the 1,924 units proposed to be developed by the Petitioner is equal to 384.8 or 385 housing units.

9. Petitioner has committed to building no less than 385 affordable housing units on-site within the Petition Area.

10. Petitioner has committed to not use any affordable housing credits earned from housing previously developed by Petitioner's predecessor in interest to satisfy the affordable housing requirement for the Project.

11. Petitioner has represented that the infrastructure and concrete pad for the affordable housing portion of the Project will be the first part of the Project to be constructed, thereby enabling the market units and the affordable units to be constructed concurrently.

12. Petitioner has represented that it might be possible to obtain the certificate of occupancy for the 385th affordable housing unit within three (3)

years of the date of the Commission's order amending Condition No. 1 of the Amended Decision and Order. Petitioner has also represented that it is reasonable to obtain the certificate of occupancy for the 385th affordable housing unit within five (5) years of the issuance of such order, taking into account possible delays for permitting and other contingencies.

13. Petitioner has represented that the affordable units have been designed by Architects Hawai'i. The Project's affordable units will be built of an equal quality to the Project's market units. The quality of the affordable units will exceed the quality of typical affordable units previously built in the State of Hawai'i.

14. The occupants of the affordable units will be entitled to the same rights and privileges as other homeowners in the Project.

15. Petitioner has committed to and represented that they have begun to establish a pre-qualification program for prospective buyers of the Project's affordable units.

16. Petitioner has committed to building the Project's affordable units instead of paying an in-lieu fee to the County of Hawai'i because the need for affordable housing units in West Hawai'i is critical and the cost of paying the in-lieu fee is prohibitive.

17. The Commission received the affidavit of Thomas H. Yamamoto, former Chief Operating Officer of Nansay Hawai`i, Inc. in which he observes that, "the current plan by the present owner for the urban area is substantially similar to the conceptual plan that was previously submitted by Nansay and approved by the Commission, as both plans include two golf courses (four of the original six were previously planned for the portion of the Project situated in the State Agricultural District), residential housing units, parks, a commercial center, walking and cycling paths, and natural open space buffers."

18. Petitioner has represented that there is a need for moderately priced and affordable housing in West Hawai`i; and that this need will be satisfied by the Project. Petitioner has represented that the Project's market priced homes will be moderately priced.

19. At the Commission's meeting in Waikoloa, Hawai`i, on September 30, 2005, approximately thirty (30) individuals testified in support of the Petitioner's Motion, many citing the need for affordable housing in closer proximity to their respective places of employment in West Hawai`i, as well as health and safety concerns associated with daily commutes to work.

20. Petitioner has represented that the Project's market priced homes will be priced somewhere above the price of a new single-family home in

Waikoloa Village but below the price of a new single-family home in Mauna Lani.

21. Cole Capital/Westwood Development Group, LLC is the development partner of Bridge Aina Le`a and Banter Inc. Cole Capital/Westwood Development Group, LLC represented that they are committed to provide financing for the entire Project should the Commission reduce the number of affordable housing units required to be provided by the Petitioner to 385 units.

22. Petitioner has represented that if, for some reason, Cole Capital/Westwood Development Group LLC do not provide the financing for the Project, the Petitioner has the financial capability to develop the Project alone, if necessary. However, the Project would be built on a slower time table than if the Petitioner were to develop the Project with Cole Capital/Westwood Development Group LLC.

23. Goodfellow Brothers, Inc., a general contractor licensed in the State of Hawai`i, with offices on the island of Hawai`i, is committed to begin infrastructure construction work on the Petition Area in the event that the Commission reduces the affordable housing requirement to the current County of Hawai`i standard for affordable housing. Goodfellow Brothers, Inc. has declined offers to work on certain other construction projects in Hawai`i in the

hopes that Goodfellow Brothers, Inc. can secure a construction contract to develop the Petition Area.

24. Petitioner has represented that all contracts with the general contractor, subcontractors and other construction related consultants have been fully negotiated and will be executed within 30 days following the Commission's decision.

25. Petitioner has represented that it can start construction site work within 30 days following the Commission's decision.

26. Petitioner has represented that no additional discretionary governmental approvals remain outstanding, with the sole exception of the highway access approval by the State Department of Transportation.

27. The County of Hawai'i has indicated that all County discretionary approvals, with the exception of subdivision approval, are in place for the Project, as modified.

28. The County of Hawai'i concurs with the Petitioner's analysis that the development of golf courses previously approved by the County in 1991 within the 3,000 acre master planned area will be in compliance with Act 205 Session Laws of Hawai'i 2005.

29. Petitioner has represented that in light of the strong demand for housing in West Hawai'i, the development of time share units is not currently proposed for the Project.

30. Time share units were not defined or included as a component of the Project in the Decision and Order dated January 17, 1989 nor in the Amended Decision and Order.

31. Petitioner has represented that it has no plans to have any time share units within the Petition Area. Prior to the establishment of any time share units within the Petition Area, Petitioner shall submit any such time share program to the Commission for determination as to whether such time share ownership would be in substantial compliance with the Project as previously represented to the Commission as required by Condition No. 13 of the Amended Decision and Order.

32. Petitioner has committed to providing the Department of Education with a 30-acre site for public school facilities.

CONCLUSIONS OF LAW

1. County Resolution #229-00 of June 2, 2000, allows the development of 750 time share units in the Petition Area. However, the record in this docket, as evidenced by the decisions and orders issued by the Commission on January

17, 1989 and July 9, 1991 do not define the Project to include any time share units. Therefore, development of time share units within the Petition Area would not be in substantial compliance with the decisions and orders issued in this docket and the representations and commitments by the Petitioner.

ORDER

Having duly considered the oral and written arguments presented by the parties, and further representations made during the hearing, and a motion having been made and seconded at a hearing on November 4, 2005, in Kapa`a, Hawai`i, and the motion having received the affirmative votes required by section 15-15-13, HAR, this Commission HEREBY GRANTS Petitioner's Motion to amend Condition No. 1 of LUC Docket No. 87-617, with said Condition No. 1, as amended, to read as follows:

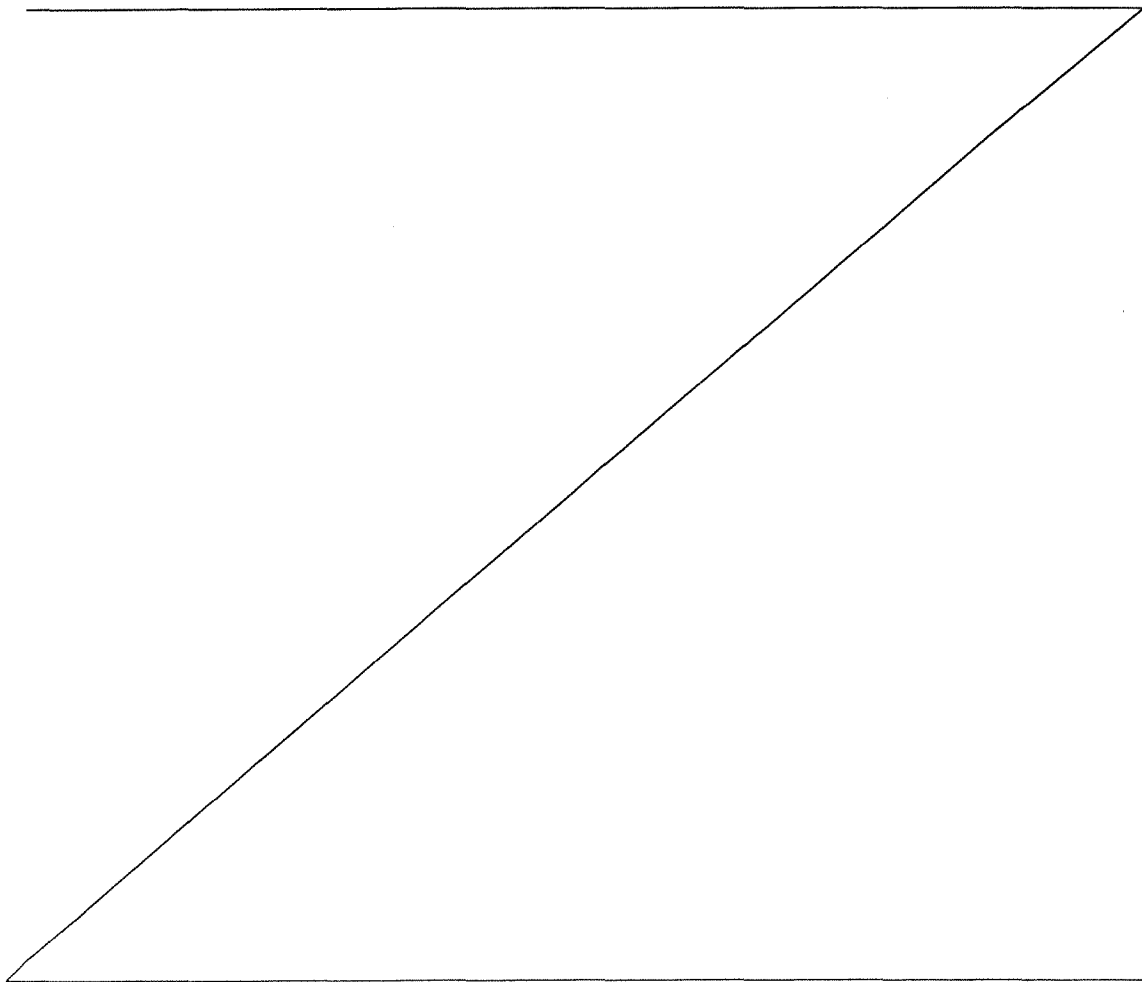
"1. Petitioner shall provide housing opportunities for low, low-moderate, and moderate income residents of the State of Hawai`i by offering for sale at least twenty percent (20%) of the Project's residential units at prices determined to be affordable by the County of Hawai`i Office of Housing and Community Development, provided, however, in no event shall the gross number of affordable housing units within the Petition Area be less than 385 units. The affordable housing units shall meet or exceed all applicable County of Hawai`i affordable housing standards, and shall be completed in substantial compliance with the representations made to the Commission.

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.

1c. Petitioner shall submit to the Commission the Petitioner's signed joint venture agreement and a mass grading contract within a reasonable amount of time, not to exceed one (1) year from November 17, 2005."

and this Commission HEREBY DENIES Petitioner's Motion to amend Condition No. 8 of LUC Docket No. 87-617.

All other conditions from the Decision and Order dated January 17, 1989 as amended by the Amended Decision and Order entered on July 9, 1991, are affirmed and continue in full force and effect.




ADOPTION OF ORDER

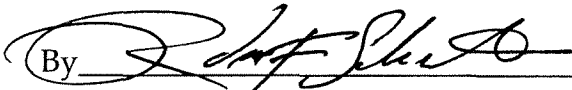
The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 25th day of November, 2005. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

Done at Honolulu, Hawai'i, this 25th day of November, 2005, per motion on November 4, 2005.

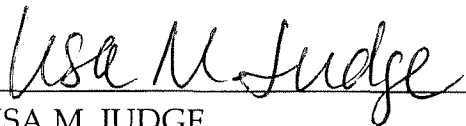
APPROVED AS TO FORM

LAND USE COMMISSION
STATE OF HAWAII

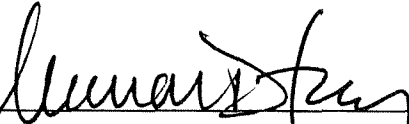

Deputy Attorney General


By 
RANDALL SAKUMOTO
Chairperson and Commissioner

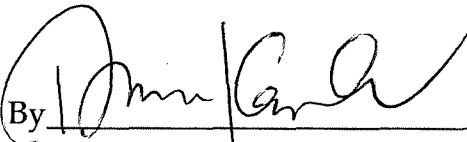
By (absent)
STEVEN LEE MONTGOMERY
Vice-Chairperson and Commissioner

By 
LISA M. JUDGE
Vice-Chairperson and Commissioner

By _____ (absent)
THOMAS CONTRADES
Commissioner

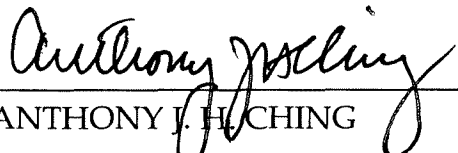
By 
MICHAEL D. FORMBY
Commissioner


By 
KYONG-SU IM
Commissioner

By 
DUANE KANUHA
Commissioner

Filed and effective on
NOV 25 2005

Certified by:


ANTHONY J. HUCHING

By 
RANSOM PILTZ
Commissioner

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portion of 25, portion of 36, portion of 37,)
portion of 38, portion of 40.)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Findings of Fact, Conclusions of Law, and Decision and Order Granting Petitioner's Motion To Amend Condition 1 and Denying Petitioner's Motion To Amend Condition 8 of Amended Findings of Fact, Conclusions of Law, and Decision and Order Dated July 9, 1991 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. LAURA THIELEN, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

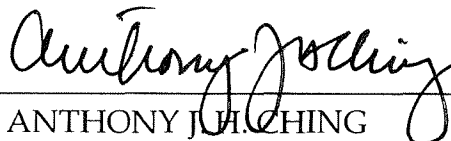
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Honolulu, Hawaii 96813

Dated: Honolulu, Hawai'i, NOV 25 2005.



ANTHONY J. CHING
Executive Officer