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## LAND USE COMMISSION

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## STATE OF HAWAI'I

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ACTION

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A87-617 DW 'Aina Le'a

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(Bridge 'Aina Le'a) (Hawai'i)

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Adoption of Proposed Findings of Fact,

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Conclusions of Law, Decision and Order.

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A87-617 DW 'Aina Le'a (Bridge Aina Le'a)

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(Hawai'i)

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DW 'Aina Le'a's Motion to Amend

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Conditions 1, 5, 7.

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## TRANSCRIPT OF PROCEEDINGS

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The above-entitled matters came on for a Public

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Hearing at Conference Room 405, 4th Floor, Leiopapa A

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Kamehameha, 235 S. Beretania Street, Honolulu,

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Hawai'i, commencing at 9:30 a.m. on Thursday, March

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10, 2011 pursuant to Notice.

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REPORTED BY: HOLLY M. HACKETT, CSR #130, RPR

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Certified Shorthand Reporter

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## 1 A P P E A R A N C E S

2 COMMISSIONERS:  
THOMAS CONTRADES3 VLADIMIR DEVENS (Chairman)  
RONALD HELLER4 CHARLES JENCKS  
LISA M. JUDGE5 DUANE KANUHA  
NORMAND LEZY

6 NICHOLAS TEVES, JR.

7 EXECUTIVE OFFICER: ORLANDO DAVIDSON  
ACTING CHIEF CLERK: RILEY HAKODA

8 STAFF PLANNERS: BERT SARUWATARI, SCOTT DERRICKSON

9 DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

10 AUDIO TECHNICIAN: WALTER MENCHING

11

12 Docket No. A87-619 DW 'Aina Le'a (Bridge Aina Le'a)

13 For the Petitioner BRUCE VOSS, ESQ.  
Bridge Aina Le'a:

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15 For Co-Petitioner ALAN OKAMOTO, ESQ.  
DW 'Aina Le'a:

16

17 For Hawai'i County: WILLIAM BRILHANTE, ESQ.  
Deputy Corporation Counsel

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19 For the State: BRYAN YEE, ESQ.  
Deputy Attorney General  
20 JESSE SOUKI, Director  
Office of Planning

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1           CHAIRMAN DEVENS: This meeting is called to  
2 order. Today is March 10th, 2011. We're here in  
3 Honolulu for the State Land Use Commission hearing.  
4 First item on the agenda is the adoption of minutes.  
5 Commissioners, any corrections or changes to the  
6 minutes that have been circulated? Hearing none, is  
7 there a motion to adopt?

8           COMMISSIONER TEVES: Move to adopt.

9           CHAIRMAN DEVENS: Is there a second?

10          COMMISSIONER HELLER: Second.

11          CHAIRMAN DEVENS: Second. Any discussion?

12 Hearing none, all those in favor say aye.

13          VOTING: Aye.

14          CHAIRMAN DEVENS: Motion carries, unanimous.

15 Dan, you want to cover the upcoming schedule.

16          MR. DAVIDSON: Sure. Thank you, Chair. With  
17 the withdrawal of the Tropic Land motions, the  
18 previous schedule stands which would be oral argument  
19 and proposed action on April 7th and 8 here in  
20 Honolulu.

21          And then it's possible, we have the May 12 and  
22 13 meeting listed as Kaua'i only. That may be a  
23 slightly split meeting O'ahu/Kaua'i to adopt Tropic  
24 Land D&O final action. So other than that you have  
25 the schedule. And as always feel free to contact

1 either Riley or myself if you have conflicts or  
2 questions. Thank you.

3 CHAIRMAN DEVENS: Thank you very much, Dan.  
4 Just for the record the first item on the agenda was  
5 the Tropic Land matter in Docket No. A09-782. It was  
6 a Motion to Extend Time for the Filing of the Findings  
7 of Fact and Conclusions of Law to reopen the hearing.  
8 For the record that motion was withdrawn with the  
9 filing, I believe it was dated yesterday. Dan, is  
10 that correct?

11 MR. DAVIDSON: Correct.

12 CHAIRMAN DEVENS: Thank you. Moving on to the  
13 next item on the agenda. It's Docket No. A87-617 in  
14 the matter of Petition of Bridge 'Aina Le'a, LLC and  
15 DW 'Aina Le'a Development, LLC regarding the  
16 following: Adoption of Proposed Findings of Fact,  
17 Conclusions of Law and Decision and Order reverting  
18 the Petition Area.

19 Before we begin if we can have the parties  
20 make their appearances, please, starting with  
21 Mr. Voss.

22 MR. VOSS: Good morning, Chairman. Bruce Voss  
23 on behalf of the Petitioner Bridge 'Aina Le'a, LLC.

24 CHAIRMAN DEVENS: Good morning, to you.

25 MR. OKAMOTO: Good morning, Mr. Chairman and

1 members of the Commission. Alan Okamoto for DW  
2 Development, LLC.

3 CHAIRMAN DEVENS: Good morning to you, sir.

4 MR. BRILHANTE: William Brilhante, deputy  
5 corporation counsel for the County of Hawai'i.

6 MR. YEE: Good morning. Deputy Attorney  
7 General Bryan Yee on behalf of the Office of Planning.  
8 With me is Jesse Souki, director of the Office of  
9 Planning.

10 CHAIRMAN DEVENS: Good morning to you both.  
11 The Commission wanted to welcome and acknowledge the  
12 new director of the Office of Planning, Director  
13 Souki. Welcome.

14 On January 20th, 2011 the Commission voted to  
15 revert Petition Area to Agricultural Land Use  
16 designation for failure to meet conditions. The Chair  
17 then instructed the staff to prepare a proposed  
18 Findings of Fact, Conclusions of Law, and Decision and  
19 Order consistent with its decision for consideration,  
20 deliberation, and adoption.

21 The procedure for today will be as follows:  
22 The Commission will consider the Proposed Findings of  
23 Fact, Conclusions of Law, Proposed Decision and Order.

24 If the Commission adopts the proposed D&O,  
25 with or without amendments the document shall be

1 served upon the parties. The parties will then have  
2 until March 24, 2011 to file any exceptions that they  
3 may have to the Proposed D&O. Oral argument on any  
4 exceptions filed with the Commission will be scheduled  
5 for the April 7 and 8, 2011.

6 Are there any questions on the procedure.  
7 Hearing none, let me update the record in this matter.  
8 On February 17th, 2011 the Commission received written  
9 correspondence from the Co-Petitioner DW 'Aina Le'a  
10 Development, LLC requesting that it be given the  
11 opportunity to comment on the proposed Findings with  
12 regard to the Commission's decision on January 20,  
13 2011, and a hearing on its pending Motion to Amend  
14 Conditions.

15 On February 22, 2011 the Commission responded  
16 to the written correspondence from Co-Petitioner DW  
17 'Aina Lea Development, LLC.

18 On March 7, 2011 the Commission received  
19 written correspondence from Peter Hackstedde,  
20 president of the Puako Community Association.

21 On March 9, 2001 the Commission received  
22 Petitioner's Motion to Continue Hearing on Motion to  
23 Amend Conditions 1, 5 and 7 and Defer Action on  
24 Adoption of Proposed Findings of Fact, Conclusions of  
25 Law, Decision and Order, and Request for Hearing.

1           Before we address the Proposed Findings of  
2 Fact, Conclusions of Law and the D&O we'll first take  
3 any public testimony. Dan, do we have anybody signed  
4 up?

5           MR. DAVIDSON: There are no signups, Chair.

6           CHAIRMAN DEVENS: Commissioners, what's your  
7 pleasure on this matter? (Pause) The Chair has some  
8 changes that I'd like to propose to the draft that we  
9 have. It would be starting on paragraph 29 which  
10 reads, "On June 5, 2009 at the request of the  
11 Petitioners the Commission delayed the issuance of a  
12 written reversion order and allowed Petitioners to  
13 provide" -- and the word "additional" would be  
14 inserted. It would continue "in evidence" and insert  
15 "present, "and to present argument on the issue."

16           Paragraph 31. Propose that we insert the  
17 word "regarding" where it reads, "On July 30th, 2009  
18 the Commission received Petitioner Bridge's status  
19 report" instead of "on compliance" it would be  
20 "regarding compliance".

21           The second sentence in the same paragraph it  
22 reads: "Petitioner Bridge represented that if  
23 continued" instead of the word "continued to comply"  
24 insert the word was in compliance with all conditions  
25 set forth in the 2005 Order" and, insert the word

1 "the" representations made to the Commission."

2 Paragraph 34. The second line says, "hear  
3 further argument and evidence," delete "regarding any  
4 new information." So delete "regarding any new  
5 information" in that second sentence.

6 I think paragraph 36 is not relevant, should  
7 be deleted. Paragraph 37 the third line reads, "After  
8 September 17th, 2010," and it says "and found".  
9 Instead of the word "found" it should be "and affirmed  
10 that the November 17th, 2000 date," should continue on  
11 from there.

12 Paragraph 45 the second-to-last line reads,  
13 "Amend Conditions 1, 5 and 7. Mr. Wessels stated that  
14 EXIM Corporation had not," delete the word "yet". So  
15 it reads "had not funded."

16 Paragraph 52. Second line, "Prejudice as a  
17 result of" instead of the word "the" insert the word  
18 "any". So it would read, "prejudice as a result of  
19 any alleged procedural violations."

20 Paragraph 56. Instead of "on November 17,  
21 2010," should read as of November 17, 2010.  
22 "Petitioner's" and insert the word "had" failed, the  
23 word "had".

24 The next paragraph 57 reads, "As of January  
25 20, 2011," insert the word "over 22 years since the

1 reclassification was first granted..." comma, and it  
2 would continue on as written.

3 MR. DAVIDSON: Could you repeat that one,  
4 Chair.

5 CHAIRMAN DEVENS: Paragraph 57 reads, "As of  
6 January 20, 2011," insert the following, "over 22  
7 years since the reclassification was first granted,"  
8 comma. And it would read the same following that.

9 Paragraph 62 second line reads, "Conformance  
10 with the representations made in 2005 are in  
11 conformance with the" insert "applicable  
12 representations and conditions as of January 20,  
13 2011." So the word "imposed" would be also deleted.

14 So again that line would read, "Conformance  
15 with the representations made in 2005 are in  
16 conformance with the applicable representations and  
17 conditions as of January 20, 2011."

18 Under the Conclusions of Law, paragraph 6,  
19 last line says, "Condition 13 is not prevented"  
20 instead of the word "prevented" is not "precluded".  
21 The word "precluded" should be substituted in for the  
22 word "prevented".

23 That's all I had. Commissioners want to add  
24 anything, make any comments at this point?  
25 Commissioner Heller.

1           COMMISSIONER HELLER: Yes. Is it appropriate  
2 to suggest a couple other modifications?

3           CHAIRMAN DEVENS: Sure.

4           COMMISSIONER HELLER: Paragraph 14 of the  
5 Findings of Fact. At the end of the sentence I  
6 propose adding on "and that the affordable units would  
7 be spread throughout the project".

8           And then in paragraph 58 at the end of that  
9 sentence I would propose to add "all in the same  
10 area." And paragraph 61 --

11          CHAIRMAN DEVENS: I'm sorry. Paragraph 58. I  
12 want to make sure we've got the right numbering.  
13 Paragraph 58 is the one that reads. "As of July 1st,  
14 2001 Petitioners owed approximately \$5.5 billion."

15          COMMISSIONER HELLER: Oh, I'm sorry. I'm  
16 looking at -- I may be looking at the earlier draft.  
17 Paragraph 58 reads, "Of the 385 affordable dwelling  
18 units Petitioners have approximately 40 dwelling units  
19 at various stages of vertical construction."

20          CHAIRMAN DEVENS: Okay.

21          COMMISSIONER HELLER: And I was proposing to  
22 add to the end of that paragraph "all in one area".

23          MR. DAVIDSON: "All in the same area"?

24          COMMISSIONER HELLER: "All in the same area".  
25 Yes.

1           CHAIRMAN DEVENS: I'm sorry to have  
2 interrupted you.

3           COMMISSIONER HELLER: No, I appreciate the  
4 clarification. And paragraph 61 which reads,  
5 "Petitioners continue to be in violation of Condition  
6 1 of the 2005 Order and are unlikely to meet the  
7 requirements of Condition 1 in the near future."

8           I think rather than saying "unlikely to meet  
9 the requirements of Condition 1" it should be  
10 "unlikely to complete 385 affordable units in the near  
11 future."

12          MR. DAVIDSON: One more time.

13          COMMISSIONER HELLER: Yeah. Delete the words  
14 "meet the requirements of Condition 1" and substitute  
15 the words "complete 385 affordable units".

16          MR. DAVIDSON: "In the near future" or...?

17          COMMISSIONER HELLER: "In the near future"  
18 would stay there. The point being that even if 385  
19 units were completed now that would still not be  
20 compliance with Condition 1. Those were my  
21 suggestions.

22          CHAIRMAN DEVENS: Thank you, Commissioner  
23 Heller. Anything else, Commissioners? Is there any  
24 motion on this matter?

25          COMMISSIONER HELLER: I move that we adopt the

1 draft both with the changes suggested by the Chair and  
2 those that I've just suggested.

3 CHAIRMAN DEVENS: Commissioner Heller has made  
4 a motion to adopt with the changes that were  
5 discussed. Is there a second?

6 COMMISSIONER LEZY: Second.

7 CHAIRMAN DEVENS: Second by Commissioner Lezy.  
8 Any discussion? No discussion. Dan. Call for the  
9 vote.

10 MR. DAVIDSON: Motion to adopt the Findings as  
11 amended today.

12 Commissioner Heller?

13 COMMISSIONER HELLER: Yes.

14 MR. DAVIDSON: Commissioner Lezy?

15 COMMISSIONER LEZY: Yes.

16 MR. DAVIDSON: Commissioner Teves?

17 COMMISSIONER TEVES: Yes.

18 MR. DAVIDSON: Commissioner Kanuha?

19 COMMISSIONER KANUHA: No.

20 MR. DAVIDSON: Commissioner Judge?

21 COMMISSIONER JUDGE: Yes.

22 MR. DAVIDSON: Commissioner Contrades?

23 COMMISSIONER CONTRADES: Yes.

24 MR. DAVIDSON: Chair Devens?

25 CHAIRMAN DEVENS: Yes.

1 MR. DAVIDSON: Motion passes 6 -- excuse me --  
2 Commissioner Jencks?

3 COMMISSIONER JENCKS: No.

4 MR. DAVIDSON: Motion passes 6 to 2 with one  
5 excused. Thank you.

6 CHAIRMAN DEVENS: The next item we had on the  
7 agenda related to the same matter and it was DW 'Aina  
8 Le'a's Motion to Amend Conditions 1, 5 and 7 that was  
9 filed on August 31st, 2010.

10 Let the record reflect that the same parties  
11 are present for this matter. Dan, is there any public  
12 witnesses for this agenda item?

13 MR. DAVIDSON: We had no signups, Chair.

14 CHAIRMAN DEVENS: Given the prior action by  
15 the Commission, Mr. Okamoto, are you going to be  
16 withdrawing this motion? Or how is it that you  
17 propose to proceed? As I indicated before, the matter  
18 may become moot. It apparently appears to be moot at  
19 this point.

20 MR. OKAMOTO: Well, Chair Devens, at some  
21 point I'd like to be heard on it. We are attempting  
22 to have a discussion with the Office of Planning  
23 because of the change of administration. And I had  
24 filed a motion yesterday seeking to continue this  
25 particular motion until we can get some resolution

1 with the Office of Planning.

2           Director Souki has been very accommodating.  
3 We actually had one meeting with him. But  
4 understandably he's just starting his duties. So we  
5 don't at this point have a resolution of it.

6           I don't know necessarily that this motion is  
7 moot. I don't mean to be un--, well, we really feel  
8 that if we can address these conditions to the  
9 satisfaction of the Office of Planning it would  
10 introduce something before this Commission that would  
11 be worth looking at.

12           I understand the Commission's voted on the  
13 reversion. But this is the area that we feel for this  
14 docket would make a big meaningful difference as far  
15 as how we can proceed, accommodate all of the concerns  
16 of the parties and get us forward as far as providing  
17 some priority things like affordable housing, helping  
18 for now with the economy and providing some  
19 infrastructure this community really needs.

20           So I would ask the Commission's indulgence in  
21 allowing us to continue this item. I understand  
22 ultimately the Commission may --

23           CHAIRMAN DEVENS: I'm sorry, I missed that  
24 last part. What did you --

25           MR. OKAMOTO: I would ask for the Commission's

1 indulgence in allowing us to continue this particular  
2 matter until we can get --

3 CHAIRMAN DEVENS: The motion to amend?

4 MR. OKAMOTO: Yes, sir.

5 CHAIRMAN DEVENS: You know, the only problem I  
6 can foresee with that is that we have taken action on  
7 the reversion. So it wouldn't make any sense to defer  
8 this motion because it is a motion to amend conditions  
9 that no longer exist.

10 I understand the argument that you're  
11 presenting in terms of wanting to try and work it out  
12 and so forth. I'm aware that you had filed a Motion  
13 to Continue the Hearing on the Motion. Unfortunately  
14 because of the statutory requirements we couldn't put  
15 it on the agenda for today. I wish we could have.  
16 Our hands are tied on that matter. At this point I'm  
17 faced with the state of the record which is the action  
18 that has just taken place.

19 MR. OKAMOTO: Chair Devens, if I could address  
20 that.

21 CHAIRMAN DEVENS: Sure.

22 MR. OKAMOTO: From what I understand of the  
23 procedure today this is the adoption of proposed  
24 findings. The actual action of the Commission has not  
25 taken place yet.

1           CHAIRMAN DEVENS: Yes. And you'll have an  
2 opportunity to file exceptions. But the motion was  
3 made. The motion was carried. If you want to make  
4 any additional arguments on this motion, your Motion  
5 to Amend now, we certainly will hear it.

6           MR. OKAMOTO: Okay. If I could, Mr. Chairman,  
7 I'd like to do two things. I'd like to ask  
8 Mr. Wessels to make a very brief statement to this  
9 Commission as far as the argument. And I will follow  
10 up with a brief conclusion regarding why we feel an  
11 amendment of conditions is appropriate.

12           I don't believe it's moot yet. I understand  
13 that ultimately this motion may not be approved by the  
14 Commission. But we'd like to be heard out. We'd like  
15 the Commission to consider this motion. It's been  
16 pending since August 31st of last year.

17           CHAIRMAN DEVENS: Your preference at this time  
18 is to continue the motion.

19           MR. OKAMOTO: I would have, but...

20           CHAIRMAN DEVENS: Let me consult with our AG  
21 and see if you can do that orally at this time.

22           MR. OKAMOTO: All right. And for the record I  
23 would make the oral motion at this time.

24           CHAIRMAN DEVENS: That's what I heard. Thank  
25 you. Why don't we call for a short recess on this.

1 Give us a few minutes, Mr. Okamoto.

2 (Recess in place)

3 CHAIRMAN DEVENS: Mr. Okamoto, we can go back  
4 on the record. Mr. Voss, or other parties, did you  
5 guys want to add anything to this matter, make your  
6 record?

7 MR. VOSS: Well, it's a little difficult  
8 honestly, Chair, because I don't-- I'm sorry, what?

9 MS. ERICKSON: Could you use the mic.

10 MR. VOSS: I apologize, Diane. Honestly,  
11 Chair, it's a little difficult for me to respond in  
12 any coherent way because I'm not clear what procedure  
13 the Commission is going to be following today.

14 CHAIRMAN DEVENS: I can explain it to you. We  
15 have a motion to amend Conditions 1, 5 and 7 that was  
16 filed by DW 'Aina Lea. And he's now, Mr. Okamoto has  
17 now moved orally to continue that motion.

18 So if you want to add anything to those two  
19 items you can make your record at this point.  
20 Otherwise I'm going to see what the Commission wants  
21 to do with this.

22 MR. VOSS: Thank you. I'll attempt to be  
23 brief here. Previously there was a motion. As I  
24 understand it the inclination or question of the  
25 Commission Chair is to deny this motion or ask the DW

1 to withdraw it because it is moot.

2 Last January 20th there was a motion pending  
3 before this Commission to rule on the procedural and  
4 substantive irregularities of the OSC proceedings.  
5 And the Commission first voted to revert and then  
6 voted that the Motion to Declare the OSC, the  
7 underlying OSC as moot.

8 With all due respect you couldn't possibly do  
9 it any more backwards than that. That is procedurally  
10 deeply, deeply flawed.

11 This Commission has an obligation to hear and  
12 rule on all the motions filed by the parties. With  
13 all due respect you can't just say, "This is moot  
14 because we think we are going to be doing something on  
15 April 7th."

16 Therefore, even asking the party to withdraw  
17 the motion is, again, with all due respect deeply  
18 wrong and shows a Commission predisposition towards  
19 this motion when everyone on this Commission is  
20 supposed to be an impartial arbiter of the issues  
21 before it.

22 So I would join in the motion, the request to  
23 continue DW's motion before this Commission and would  
24 ask the Commission to review its rules, review the  
25 statutes, and continue this proceeding in compliance

1 with the applicable rules before we are in a situation  
2 three years from now after litigation coming back to  
3 repair the damage. Thank you, Chair.

4 CHAIRMAN DEVENS: Mr. Voss, let me reassure  
5 you that every single one of the Commissioners on this  
6 Commission votes their own conscience and has never,  
7 to my knowledge, ever been predisposed to anything.  
8 And that they hear all the evidence, they digest the  
9 evidence, they weigh the credibility of the witnesses,  
10 give the appropriate weight to the evidence as  
11 presented by the parties and then they vote  
12 accordingly.

13 So let me reassure you that has always been  
14 the process as far as I've been on this Commission  
15 'til today.

16 COMMISSIONER LEZY: Chair, with your  
17 indulgence.

18 CHAIRMAN DEVENS: Commissioner Lezy.

19 COMMISSIONER LEZY: I'd just like to ask  
20 Mr. Voss. You've asked the Commission to review its  
21 statutes and rules. Can you identify which statutes  
22 and rules in particular you believe the Commission is  
23 potentially not going to comply with here?

24 MR. VOSS: Well, we have, Commissioner, we  
25 have elaborated those at length in our proceedings,

1 but I think there is one that I think is potentially  
2 most clear that I would like the Commission to go back  
3 and look at. And since you asked the question if  
4 you'll indulge me for just a minute.

5           Section 205(4)(h) reads, "No amendment of a  
6 land use boundary shall be approved unless the  
7 Commission finds by a preponderance of the evidence  
8 the proposed boundary is reasonable, not violative of  
9 section 205-2 and part 3 of this chapter and  
10 consistent with the policies and criteria of sections  
11 205-16 and 205-17."

12           That statute goes on to say, as you know, that  
13 six affirmative votes are required for any boundary  
14 amendment.

15           This action or proposed action of the  
16 Commission amends a land use boundary. It changes the  
17 classification of the land use boundaries of the  
18 Petition Area from Urban to Agricultural. And in so  
19 doing it is a boundary amendment.

20           And under the plain language of the statute  
21 you must comply with section 205-17. And 205-17 makes  
22 clear that it is not a mechanical application of  
23 whether or not representations have been made and not  
24 complied with.

25           Chapter 205-17 says that you must consider,

1 shall, in the Hawai'i Supreme Court in the context of  
2 the Land Use Commission statute that said previously  
3 that "shall" is mandatory. "You shall consider the  
4 impact of the reclassification on employment  
5 opportunities, on economic development, on provision  
6 for housing opportunities for all income groups and  
7 the county General Plan as it applies to the Petition  
8 Area."

9           And No. 6 under 205-17 is indeed the  
10 "representations and commitments made by the  
11 Petitioner." But my point, Commissioner, is that that  
12 is only one factor the Commission must consider when  
13 deciding whether or not to amend the boundaries  
14 whether you're going from ag to urban or urban to ag.  
15 We haven't been given an opportunity to see the  
16 Proposed Decision and Order.

17           As I understand it from this colloquy the sole  
18 basis upon which the Commission is proposing or about  
19 to act is based on the alleged failure to meet a  
20 condition, Condition 1, of the amended Decision and  
21 Order.

22           With all due respect, if that's what the  
23 Commission is about to do you're in plain violation  
24 of this particular statute as well as the other rules  
25 and statutes that we have cited before. And I

1 appreciate the Commission's indulgence in letting me  
2 say that.

3 COMMISSIONER LEZY: Thank you.

4 CHAIRMAN DEVENS: Mr. Brilhante, did you want  
5 to add anything for the record?

6 MR. BRILHANTE: Yes, Mr. Chair. Thank you  
7 very much. At this point in time the county is going  
8 to take no position as it relates to DW 'Aina Le'a's  
9 Motion to Amend the Conditions.

10 However, we're requesting the opportunity that  
11 if that matter does come before the Commission, if the  
12 oral motion or oral request to defer this matter is  
13 granted, then the County reserves the right to be able  
14 to present a position to the Commission.

15 As it relates to the second item, the  
16 Petitioner's request for an oral deferral of this  
17 matter, we take no objection to that.

18 CHAIRMAN DEVENS: Thank you very much.  
19 Mr. Yee.

20 MR. YEE: The Office of Planning has no  
21 position on the request to defer the action. We'll  
22 defer to the Commission on that.

23 With respect to the Motion to Amend we've said  
24 it's moot, and we still think it's moot. I will  
25 note -- if I could just note a couple of other things.

1 One is that Bridge 'Aina Le'a's concerns regarding a  
2 205-(4) (h) may be more appropriately addressed in the  
3 Exceptions to the Order which you adopted. They're  
4 really not relevant to the Motion to Amend Conditions  
5 1, 5, 7 or the Motion to Continue. They're just two  
6 different kinds of issues.

7 I will affirm that DW 'Aina Le'a has asked to  
8 meet with the Office of Planning. And we've said we  
9 would meet with them. We are cognizant, however, and  
10 I don't know if you picked up on this -- we're  
11 cognizant that satisfaction is not to the Office of  
12 Planning.

13 Satisfaction is to the LUC's satisfaction. So  
14 we are fully aware that any discussions we have with  
15 them is not dispositive of any matter. If you have  
16 any questions I'll be happy to answer them.

17 CHAIRMAN DEVENS: Thank you. Commissioners?  
18 Commissioner Judge.

19 COMMISSIONER JUDGE: Thanks, Mr. Yee. So your  
20 position on the action item No. 6 is that it's moot?

21 MR. YEE: The motion to amend is moot, yes.

22 COMMISSIONER JUDGE: Okay. Thank you.

23 CHAIRMAN DEVENS: Any other questions?  
24 Mr. Okamoto, based upon the prior action we just took  
25 I do believe the motion would be moot because I don't

1 know what you would be trying to amend if it's already  
2 in the process of being reverted.

3           However -- and I do want to give you a chance  
4 to make the argument that your preference is to  
5 continue your motion. Why don't we see what the  
6 Commission wants to do on that. But me personally I  
7 would be inclined to want to grant that to at least  
8 give you a chance to make your record on this matter.

9           MR. OKAMOTO: Thank you, Sir.

10           CHAIRMAN DEVENS: So there's an oral motion on  
11 the table being made by Mr. Okamoto on this matter.  
12 So I understand we need to take a vote on that. Dan,  
13 if you can call for the roll call vote. I'm sorry.  
14 Let me step back.

15           I'm going to move to grant Mr. Okamoto's  
16 Motion to Continue the Hearing on his Motion to Amend  
17 Conditions 1, 5 and 7. Is there a second on that  
18 motion?

19           COMMISSIONER HELLER: Second.

20           CHAIRMAN DEVENS: There's a second. Any  
21 discussion? Hearing none, Dan.

22           MR. DAVIDSON: Motion to continue hearing on  
23 Motion to Amend Conditions.

24           Commissioner Teves?

25           COMMISSIONER TEVES: Yes.

1 MR. DAVIDSON: Commissioner Lezy?

2 COMMISSIONER LEZY: No.

3 MR. DAVIDSON: Commissioner Kanuha?

4 COMMISSIONER KANUHA: No.

5 MR. DAVIDSON: Commissioner Judge?

6 COMMISSIONER JUDGE: Yes.

7 MR. DAVIDSON: Commissioner Jencks?

8 COMMISSIONER JENCKS: Yes.

9 MR. DAVIDSON: Commissioner Contrades?

10 COMMISSIONER CONTRADES: Yes.

11 MR. DAVIDSON: Commissioner Heller?

12 COMMISSIONER HELLER: Yes.

13 MR. DAVIDSON: Chair Devens?

14 COMMISSIONER DEVENS: Yes.

15 MR. DAVIDSON: Motion passes with 6-2 with  
16 one excused, Chair.

17 CHAIRMAN DEVENS: So Mr. Okamoto, I guess the  
18 thought process is that we should take this matter up  
19 probably at the same time that we take up any  
20 exceptions that are filed to the Proposed Findings.  
21 Does that make sense to you?

22 MR. OKAMOTO: Yes, sir.

23 CHAIRMAN DEVENS: We'll try and schedule it  
24 that way. I'll let our executive officer do the  
25 scheduling, but we'll see if we can get it scheduled

1 that way at the same time.

2 MR. OKAMOTO: Okay. Thank you, very much.

3 CHAIRMAN DEVENS: Parties want to add anything  
4 more to the record on this matter?

5 MR. VOSS: Just a procedural question. If we  
6 could have clarification from Commission chaff as to  
7 when, since we have a very short timeframe to respond  
8 to the Proposed Decision and Order, when we would be  
9 getting a copy of that.

10 CHAIRMAN DEVENS: You can talk to Dan  
11 afterward.

12 MR. VOSS: Okay.

13 CHAIRMAN DEVENS: But the intent is to get it  
14 to you right away, of course.

15 MR. VOSS: Thank you.

16 CHAIRMAN DEVENS: Anything more the parties  
17 want to add to the record? Nothing more? That's all  
18 the items we have on the agenda, other than we have a  
19 litigation report, but that's going to be taken in  
20 executive session. So that'll conclude this portion  
21 of the hearing today. Thank you very much. Is there  
22 a motion to go into exec session for the litigation  
23 report?

24 COMMISSIONER LEZY: So moved.

25 COMMISSIONER JENCKS: Second.

1           CHAIRMAN DEVENS: Motion by Commissioner Lezy.

2   Second by Commissioner Jencks. Any discussion?

3   Hearing none, all those in favor say aye.

4           VOTING: Aye.

5           CHAIRMAN DEVENS: Unanimous.

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7           (The proceedings were adjourned at 10:10 a.m.)

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1 C E R T I F I C A T E

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3 I, HOLLY HACKETT, CSR, RPR, in and for the State  
4 of Hawai'i, do hereby certify;

5 That I was acting as court reporter in the  
6 foregoing LUC matter on the 10th day of March 2011;

7 That the proceedings were taken down in  
8 computerized machine shorthand by me and were  
9 thereafter reduced to print by me;

10 That the foregoing represents, to the best  
11 of my ability, a true and correct transcript of the  
12 proceedings had in the foregoing matter.

13

14 DATED: This \_\_\_\_\_ day of \_\_\_\_\_ 2011

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19 \_\_\_\_\_  
20 HOLLY M. HACKETT, CSR #130, RPR  
21 Certified Shorthand Reporter  
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