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A P P E A R A N C E S

COMMISSIONERS:  
KYLE CHOCK  
THOMAS CONTRADES  
VLADIMIR DEVENS (Chairman)  
LISA M. JUDGE  
JAYE NAPUA MAKUA  
NORMAND LEZY  
NICHOLAS TEVES, JR.

EXECUTIVE OFFICER: ORLANDO DAVIDSON  
ACTING CHIEF CLERK: RILEY HAKODA  
STAFF PLANNERS: BERT SARUWATARI, SCOTT DERRICKSON  
DEPUTY ATTORNEY GENERAL: DIANE ERICKSON, ESQ.

AUDIO TECHNICIAN: HOTAI ZERBA

Docket No. A09-782 Tropic Land, LLC

For the Petitioner: WILLIAM YUEN, ESQ.

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

Docket No. A87-617 Bridge 'Aina Le'a, LLC and DW 'Aina Le'a, LLC:

For Petitioner Bridge 'Aina Lea: BRUCE VOSS, ESQ.  
MICHAEL CARROLL, ESQ.

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

For the County: WILLIAM BRILHANTE, ESQ.

For the State: BRYAN YEE, ESQ.  
JESSE SOUKI, DIRECTOR  
Office of Planning

1           CHAIRMAN DEVENS: This meeting is called to  
2 order. Today is May 13, 2011. The hearing on these  
3 matters on the agenda today are being held here in  
4 Honolulu. The first item on the agenda is the Tropic  
5 Land matter.

6           This is an action meeting on Docket No.  
7 A09-782 Tropic Land, LLC to adopt Findings of Fact,  
8 Conclusions of Law, and Decision and Order in  
9 conformance with the Commission's action on this  
10 matter on April 21st, 2011.

11           We'll first have the appearances by the  
12 parties starting with Petitioner, Mr. Yuen.

13           MR. YUEN: William Yuen on behalf of  
14 Petitioner Tropic Land, LLC.

15           MR. YEE: Deputy Attorney General Bryan Yee on  
16 behalf of the Office of Planning. With me is Jesse  
17 Souki, director of the Office of Planning.

18           MS. GREENWOOD: Alice Greenwood, Concerned  
19 Elders of Wai'anae.

20           CHAIRMAN DEVENS: Good morning to you all.  
21 Let me update the record. On May 10, 2011 the City  
22 Department of Planning and Permitting informed the  
23 Commission staff that it would not be attending the  
24 hearing today.

25           On April 21st, 2011, the Petition failed to

1 receive six affirmative votes to reclassify  
2 approximately 96 acres currently in the Agricultural  
3 Land Use District into the Urban Land Use District at  
4 Lualualei, Waianae District Oahu, Hawai'i, Tax Map Key  
5 No. (1) 8-7-09:02 (por.)

6           Accordingly, and pursuant to section  
7 15-15-13(b) of its rules, the Commission must file its  
8 Findings of Fact, Conclusions, of Law, and Decision  
9 and Order denying the Petition. This document is now  
10 before the Commission for consideration, deliberation  
11 and action. Before we hear any motions on the matter,  
12 Commissioner Judge have you had an opportunity to  
13 review the record for any days that you may have  
14 missed in this matter?

15           COMMISSIONER JUDGE: Yes, Chair. I'm familiar  
16 with the record.

17           CHAIRMAN DEVENS: Are you prepared to vote on  
18 this matter?

19           COMMISSIONER JUDGE: Yes, I am.

20           CHAIRMAN DEVENS: I was remiss in not  
21 introducing our new commissioner, Commissioner Napua  
22 Makua from Maui. Want to welcome her. She's just  
23 been appointed by Governor Abercrombie for a full  
24 term. Welcome. Because Commissioner Makua has just  
25 come on board it's my understanding she's going to

1 abstain from this matter and the second matter. Is  
2 that correct?

3 COMMISSIONER MAKUA: Yes, that's correct.

4 CHAIRMAN DEVENS: Okay. Thank you. Anyway,  
5 Dan, I understand there's no public testimony in this  
6 matter?

7 MR. DAVIDSON: That's correct.

8 CHAIRMAN DEVENS: All right. Given that,  
9 parties want to add anything to the record? Mr. Yuen?

10 MR. YUEN: No.

11 MR. YEE: No. Nothing further.

12 CHAIRMAN DEVENS: Alice?

13 MS. GREENWOOD: No.

14 CHAIRMAN DEVENS: Call for a motion.

15 COMMISSIONER LEZY: Chair?

16 CHAIRMAN DEVENS: Commissioner Lezy.

17 COMMISSIONER LEZY: Thank you, Chair. I move  
18 to adopt the Proposed Findings of Fact, Conclusions of  
19 Law and Decision and Order as offered.

20 CHAIRMAN DEVENS: Is there a second?

21 COMMISSIONER CONTRADES: Second.

22 CHAIRMAN DEVENS: There's a second. Any  
23 discussion? There being none, Dan call for the vote.

24 MR. DAVIDSON: Motion to adopt Findings of  
25 Fact, Conclusions of Law, and Decision and Order in

1 A09-782.

2 Commissioner Lezy?

3 COMMISSIONER LEZY: Yes.

4 MR. DAVIDSON: Commissioner Contrades?

5 COMMISSIONER CONTRADES: Yes.

6 MR. DAVIDSON: Commissioner Judge?

7 COMMISSIONER JUDGE: Yes.

8 MR. DAVIDSON: Commissioner Chock?

9 COMMISSIONER CHOCK: Yes.

10 MR. DAVIDSON: Commissioner Teves?

11 COMMISSIONER TEVES: Yes. Approval as to form  
12 only.

13 MR. DAVIDSON: And Chair Devens?

14 CHAIRMAN DEVENS: Yes. And to clarify, that's  
15 what the motion was for, was as to form.

16 COMMISSIONER TEVES: Correct.

17 CHAIRMAN DEVENS: Motion carries.

18 MR. DAVIDSON: Motion carries 6 with 1  
19 abstention, 2 excused absences. Thank you.

20 CHAIRMAN DEVENS: Thank you very much. That  
21 concludes that matter on that agenda item. Mr. Yuen,  
22 you want to add anything on the record? Any of the  
23 parties want to add anything before we conclude?

24 MR. YUEN: No comments.

25 CHAIRMAN DEVENS: Thank you very much. We're

1 going to move on to the next item. (pause) Moving  
2 onto the next item. This is a deliberation and action  
3 meeting on Docket No. A87-617 in the matter of the  
4 Petition of Bridge 'Aina Le'a, LLC and DW 'Aina Le'a  
5 Development, LLC, regarding DW 'Aina Le'a, LLC's  
6 Motion to Amend Conditions and Amendment to Motion to  
7 Amend Conditions 1, 5, and 7.

8           Appearances for the parties please starting  
9 with Petitioner.

10           MR. VOSS: Good morning, Commissioners. Bruce  
11 Voss, Michael Carroll on behalf of Bridge 'Aina Le'a,  
12 LLC.

13           MR. OKAMOTO: Good morning, Chair Devens, and  
14 members of the Commission. Alan Okamoto representing  
15 DW 'Aina Le'a Development, LLC.

16           MR. BRILHANTE: Good morning, Chair and  
17 Commissioners. William Brilhante, deputy corporation  
18 counsel, county of Hawai'i representing the planning  
19 department of the county of Hawai'i.

20           MR. YEE: Good morning. Deputy Attorney  
21 General Bryan Yee on behalf of the Office of Planning.  
22 With me is Jesse Souki director of the Office of  
23 Planning.

24           CHAIRMAN DEVENS: Good morning to you all.  
25 Before we get into the substance of the motion I'd

1 like to move for an executive session. Is there a  
2 second?

3 COMMISSIONER LEZY: Second.

4 CHAIRMAN DEVENS: Any discussion? There being  
5 no discussion, all those in favor say aye.

6 (Commissioners voting)

7 CHAIRMAN DEVENS: Unanimous. We'll take a  
8 short break.

9 (Executive session recess was held. 10:10)

10 CHAIRMAN DEVENS: We're back on the record.  
11 Commissioner Judge, if I may ask you have you had a  
12 chance to review the record for any hearings you may  
13 have missed in this matter and are you prepared to  
14 deliberate and vote on the matter before us?

15 COMMISSIONER JUDGE: Yes, I'm prepared.

16 CHAIRMAN DEVENS: On April 21, 2011 a motion  
17 was made by Commissioner Kanuha which modified DW  
18 'Aina Le'a, LLC's Motion to Amend Conditions and  
19 Amendment to Motion to Amend Conditions 1, 5, and 7.  
20 The motion was acted upon and failed. However DW's  
21 motion remains before the Commission.

22 On April 21st, 2011 the Commission voted to  
23 adopt the Proposed Decision and Order as its Final  
24 Order as modified, to revert the Petition Area to the  
25 Agricultural District.

1           Let me describe the procedure for today.

2   First, we'll take public testimony, then we will --

3           MR. DAVIDSON:  No signups.

4           CHAIRMAN DEVENS:  -- Dan has just informed me  
5   there are no public witnesses signed up.  And after  
6   that we will take up this matter.

7           Given that there is no public testimony we can  
8   get to the matter before us.  Before we do that,  
9   Mr. Voss, I understand there was a letter that you had  
10  sent to our executive officer requesting and  
11  instructing us to retain our documents.

12           What was the purpose of that letter?  In fact  
13  it wasn't you.  It was Mr. Carroll that wrote the  
14  letter.  Mr. Carroll, what was the purpose of that  
15  letter?

16           MR. VOSS:  Go ahead.

17           MR. CARROLL:  In anticipation of litigation we  
18  just asked that everyone preserve their records just  
19  so we have a clear record in the event that this case  
20  does go up to litigation.

21           CHAIRMAN DEVENS:  What kind of clear record do  
22  you need of each Commissioner's personal records?

23           MR. CARROLL:  Well, just the fact that this is  
24  likely to going to litigation we'd ask that everyone  
25  maintain their records.

1 CHAIRMAN DEVENS: For what purpose?

2 MR. CARROLL: For litigation.

3 CHAIRMAN DEVENS: But what about litigation?  
4 The records are part of the record. And those are the  
5 records.

6 MR. CARROLL: Correct. But we're entitled to  
7 discovery in the event we file an actions.

8 CHAIRMAN DEVENS: What is being contemplated?  
9 Let Mr. Carroll answer. He's the one that wrote the  
10 letter in this case.

11 MR. VOSS: I'll answer on behalf of Bridge  
12 'Aina Le'a, LLC --

13 CHAIRMAN DEVENS: I'm asking Mr. Carroll to  
14 answer the question. He wrote the letter. Let's get  
15 an answer from Mr. Carroll.

16 MR. VOSS: With all due respect, the letter  
17 was written on behalf of Bridge 'Aina Le'a, LLC,  
18 Chair. And --

19 CHAIRMAN DEVENS: And it was signed by  
20 Mr. Carroll.

21 MR. VOSS: It was signed by Mr. Carroll.

22 CHAIRMAN DEVENS: Right. So I'm asking  
23 Mr. Carroll a question. Please let him answer the  
24 question.

25 MR. VOSS: Chair, under the rules you have no

1 right to interrogate a petitioner and ask that  
2 petitioner as to what his or her litigation plans are.

3 CHAIRMAN DEVENS: Mr. Voss, we're the  
4 Commission. We received the letter that was signed by  
5 Mr. Carroll. It gave us instructions. We don't know  
6 what the purpose was, what the intent was behind the  
7 letter. We're trying to find that out.

8 MR. VOSS: Okay. I will very briefly describe  
9 without disclosing any litigation plans. In any claim  
10 in which --

11 CHAIRMAN DEVENS: Mr. Voss, my question was  
12 directed to Mr. Carroll.

13 MR. VOSS: I'm answering on behalf of Bridge  
14 Aina Le'a.

15 CHAIRMAN DEVENS: I'm not asking you the  
16 question.

17 MR. VOSS: We'll you're going to get the  
18 answer anyway. In any --

19 CHAIRMAN DEVENS: Mr. Voss, if he's not going  
20 to answer the question then I don't want to hear it.  
21 Becuase the question was directed toward him.

22 MR. VOSS: Chair Devens, why are you being --  
23 why are you taking such an attitude towards this? I  
24 don't understand.

25 CHAIRMAN DEVENS: There's no attitude. We got

1 a letter. The Commissioners were puzzled as to why we  
2 received the letter. And so I'm trying to find out.

3 MR. VOSS: Fine. Let me confer with  
4 Mr. Carroll.

5 CHAIRMAN DEVENS: And any future letters along  
6 those lines that it be directed toward our counsel.  
7 We don't want you contacting any individual  
8 Commissioner or asking for any documents from them.  
9 We think that would be improper.

10 MR. CARROLL: Basically in our briefs what we  
11 have filed with the Commission in this proceeding we  
12 have laid out sort of the factual framework in which a  
13 claim would be asserted. Under 1983 we have a right  
14 to name any individual Commissioners. And given that  
15 we felt it was prudent to put -- give you guys on, put  
16 the Commissioners on notice that we would like  
17 everyone to make sure they preserve their records.  
18 And if they don't preserve their records we intend to  
19 ask for sanctions from the court.

20 CHAIRMAN DEVENS: Let me also put on the  
21 record: Mr. Voss, you had raised at the last hearing  
22 that you had recently discovered before that hearing  
23 that my law firm had been involved in a case involving  
24 Bridge. And I believe it was Hui Wailana. I may have  
25 the name wrong.

1           I had a chance to go back and talk to my  
2 partner, Mr. William Meheula. And he confirmed with  
3 me that I had not worked on that case. He also  
4 informed me that it was actually your firm, Bays  
5 Dever, that was representing Bridge in that  
6 proceeding, is that correct?

7           MR. VOSS: Yes.

8           CHAIRMAN DEVENS: In fact you yourself were  
9 one of the attorneys participating in that litigation  
10 is that correct as well?

11          MR. VOSS: Yes.

12          CHAIRMAN DEVENS: So you didn't just discover  
13 this. You actually had this information from many  
14 years ago and only brought it to our attention after  
15 we had dealt with the first two motions the last  
16 hearing, is that correct?

17          MR. VOSS: No. It's not correct.

18          CHAIRMAN DEVENS: The record will speak for  
19 itself.

20          MR. VOSS: And, again, Chair, these types of  
21 questions reflect, I believe, the animus that we have  
22 articulated in the briefs. With all due respect you  
23 have no right to interrogate a petitioner to support  
24 your personal belief. It's just -- it's simply --

25          CHAIRMAN DEVENS: Mr. Voss, it is not a

1 personal belief. It is something that you raised on  
2 the record about some litigation that you thought I  
3 had a pecuniary interest in. That was your argument.

4 MR. VOSS: And you did.

5 CHAIRMAN DEVENS: So I'm a making a record to  
6 clarify what information I have learned since then. I  
7 was shocked and dismayed to find out it was your firm  
8 that was defending or involved in a litigation with  
9 Bridge; and you, in fact, yourself were one of the  
10 attorneys participating in that litigation. You  
11 didn't disclose that to us. I find that less than  
12 candid. You were less than candid with this  
13 Commission.

14 And I want to make a record of that. That was  
15 not a personal belief. That is an issue that you  
16 raised, not me.

17 MR. VOSS: And we respectfully reserve our  
18 objection that you, under the applicable conflict  
19 rules, should not have voted on the Final Order  
20 reverting the land use boundaries to agricultural use.  
21 We have our respective positions. They will be argued  
22 in court. I think that's the appropriate place for  
23 them to address them. Not... here.

24 CHAIRMAN DEVENS: Well, I have every right and  
25 the discretion to make a record to make sure that

1 whoever is going to be reviewing this has a full and  
2 complete record.

3           Again, I was shocked to find out that you were  
4 actually involved in that case and you didn't disclose  
5 that to us.

6           MR. VOSS: And I respectfully --

7           CHAIRMAN DEVENS: You made it sound as if you  
8 had just discovered that my firm had been involved.  
9 That was clearly less than being candid with this  
10 body.

11           MR. VOSS: And I respectfully was shocked that  
12 you voted in the Final Order. Again, those are the  
13 respective positions that will be argued and litigated  
14 in court, Chair, not here.

15           CHAIRMAN DEVENS: We are moving on. We're on  
16 the motion. Parties want to add anything more?

17           MR. OKAMOTO: Nothing for DW.

18           CHAIRMAN DEVENS: County?

19           MR. BRILHANTE: Nothing for the County of  
20 Hawai'i.

21           CHAIRMAN DEVENS: OP?

22           MR. YEE: Nothing further.

23           CHAIRMAN DEVENS: The motion is before us.

24           COMMISSIONER CHOCK: Chair, I move to deny,  
25 Chair.

1 CHAIRMAN DEVENS: Is there a second?

2 COMMISSIONER LEZY: Second.

3 CHAIRMAN DEVENS: Any discussion? There being  
4 none, call for the vote then.

5 MR. DAVIDSON: Motion to Deny DW 'Aina's  
6 motion.

7 Commissioner Chock?

8 COMMISSIONER CHOCK: Yes.

9 MR. DAVIDSON: Commissioner Lezy?

10 COMMISSIONER LEZY: Yes.

11 MR. DAVIDSON: Commissioner Teves?

12 COMMISSIONER TEVES: Yes.

13 MR. DAVIDSON: Commissioner Judge?

14 COMMISSIONER JUDGE: Yes.

15 MR. DAVIDSON: Commissioner Contrades?

16 COMMISSIONER CONTRADES: Yes.

17 MR. DAVIDSON: Chair Devens?

18 CHAIRMAN DEVENS: Yes. And Commissioner Makua  
19 is abstaining.

20 MR. DAVIDSON: Makua abstained and two  
21 excused. The motion passes 6/0, Chair.

22 CHAIRMAN DEVENS: Parties want to add anything  
23 to the record?

24 MR. VOSS: Yes. With all due respect the  
25 Notice of Appeal has already been filed in circuit

1 court as to the Final Order. The Chair -- the  
2 proverbial horse is out of the barn and running  
3 through the meadow. With all due respect this vote  
4 does not cure the procedural defects. And I would  
5 interpret today's vote as an acknowledgement and  
6 admission by the Commission that it retains  
7 jurisdiction over the document -- this docket --  
8 notwithstanding the circuit court appeal. Thank you.

9 CHAIRMAN DEVENS: Anything else from the  
10 parties?

11 MR. YEE: Only that the Office of Planning  
12 reserves its position on the matter.

13 MR. OKAMOTO: Mr. Chair, DW will be filing an  
14 appeal notice shortly relating to the Final Decision  
15 and Order that was entered in the last meeting.

16 CHAIRMAN DEVENS: That's certainly your right.

17 MR. OKAMOTO: And that will be handled by the  
18 McCorriston firm. So we will be addressing this in  
19 that context of an admin appeal.

20 CHAIRMAN DEVENS: County?

21 MR. BRILHANTE: Likewise with the Office of  
22 Planning, the County of Hawai'i reserves its right on  
23 this motion.

24 CHAIRMAN DEVENS: Very well. Commissioners,  
25 any questions? Anything for the record? There being

1 none, that concludes the matter. We're adjourned.

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(The proceedings were adjourned at 10:20 a.m.)

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C E R T I F I C A T E

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

That I was acting as court reporter in the foregoing LUC matter on the 13th day of May 2011;

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

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

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

\_\_\_\_\_

HOLLY M. HACKETT, HI CSR #130, RPR  
Certified Shorthand Reporter

