

LAND USE COMMISSION  
MEETING MINUTES  
March 10, 2011  
Conference Room 405, 4<sup>th</sup> Floor  
Leiopapa A Kamehameha  
235 South. Beretania Street, Honolulu, Hawai`i 96804

COMMISSIONERS PRESENT: Vladimir Devens  
Charles Jencks  
Ronald Heller  
Thomas Contrades  
Duane Kanuha  
Lisa Judge  
Normand Lezy  
Nicholas Teves, Jr.

COMMISSIONER ABSENT: Kyle Chock

STAFF PRESENT: Orlando Davidson, Executive Officer  
Diane Erickson, Deputy Attorney General  
Scott Derrickson, Staff Planner (attended A87-617  
DW/Bridge `Āina Le`a portion)  
Bert Saruwatari, Staff Planner (attended A09-782  
Tropic Land LLC portion)  
Riley Hakoda, Staff Planner/Acting Chief Clerk

COURT REPORTER: Holly Hackett

AUDIO TECHNICIAN: Walter Mensching

**CALL TO ORDER**

Chair Devens called the meeting to order at 9:32 a.m.

**APPROVAL OF MINUTES**

Chair Devens asked if there were any corrections or additions to the February 24, 2011 minutes. There were none. Commissioner Teves moved to approve the minutes. Commissioner Heller seconded the motion. The minutes were unanimously approved by a voice vote (8-0).

## **TENTATIVE MEETING SCHEDULE**

Executive Officer Davidson provided the following:

- The regular tentative meeting schedule for the calendar year 2011 was distributed in the handout material for the Commissioners.
- Petitioner's Motion to Extend Time for Filing of Findings of Fact, Conclusions of Law, and Decision and Order in Docket No.A09-782 TROPIC LAND LLC has been withdrawn and its original scheduling on April 7-8, 2011 will be followed.
- It is possible that the May 12-13, 2011 meeting may be a split Kaua'i/O'ahu meeting to accommodate the consideration of the A09-782 Decision and Order.
- Any questions or concerns- please contact LUC staff.

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

Chair Devens announced that the first scheduled item on the agenda, Docket No.A09-782 TROPIC LAND LLC -Petitioner's Motion to Extend Time for Filing of Findings of Fact, Conclusions of Law, and to Reopen Hearing had been withdrawn with a filing on March 9, 2011. Because the motion was withdrawn, no action was taken by the Commission.

### **ACTION**

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

Chair Devens announced that this was an action meeting on A87-617 Bridge `Āina Le`a, Successor Petitioner to Puako Hawai'i Properties and DW `Āina Le`a Development LLC to consider the adoption of Proposed Finding of Fact, Conclusions of Law, Decision and Order.

### **APPEARANCES**

Bruce Voss, Esq., represented Co-Petitioner Bridge `Āina Le`a LLC  
Alan Okamoto, Esq., represented Co-Petitioner DW `Āina Le`a Development LLC  
William Brilhante, Esq., Deputy Corporation Counsel, Hawai'i County  
Bobbie Jean Leithead-Todd, Planning Director, Hawai'i County  
Bryan Yee, Esq., represented the State Office of Planning  
Jesse Souki, Director, State Office of Planning

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

Chair Devens described the planned procedures for the hearing and asked if there were any questions. There were no questions or comments in regards to the planned procedures for the hearing.

### **PUBLIC WITNESSES**

None

Chair Devens proposed his recommended changes to the draft of the Proposed Finding of Fact, Conclusions of Law, and Decision and Order. Commissioner Heller concurred with Chair Devens' recommended changes and proposed additional changes to the draft.

There were no further comments or additions.

Commissioner Heller moved to adopt the Proposed Finding of Fact, Conclusions of Law, and Decision and Order with the changes offered by Chair Devens and himself. Commissioner Lezy seconded the motion.

There was no discussion.

Chair Devens directed Mr. Davidson to poll the Commission on the adoption of the Proposed Finding of Fact, Conclusions of Law, and Decision and Order with the proposed changes.

The Commission voted as follows:

Ayes: Commissioners Heller, Lezy, Teves, Judge, Contrades, and Chair Devens.

Nays: Commissioners Kanuha and Jencks.

The Motion passed 6-2 with 1 excused.

### **ACTION**

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

Chair Devens announced that this was an action meeting on A87-617 DW `Āina Le`a Development LLC (Bridge `Āina Le`a) to consider DW `Āina Le`a's Motion to Amend Conditions 1, 5 & 7 filed August 31, 2010

## APPEARANCES

Bruce Voss, Esq., represented Co-Petitioner Bridge `Āina Le`a LLC  
Alan Okamoto, Esq., represented Co-Petitioner DW `Āina Le`a Development LLC  
William Brillhante, Esq., Deputy Corporation Counsel, Hawai`i County  
Bobbie Jean Leithead-Todd, Planning Director, Hawai`i County  
Bryan Yee, Esq., represented the State Office of Planning  
Jesse Souki, Director, State Office of Planning

## PUBLIC WITNESSES

None

Chair Devens asked Mr. Okamoto what action he wished to take on his Motion since it appeared to be moot after the prior action taken by the Commission.

Mr. Okamoto argued why his Motion was not moot and should be heard; and described how he planned to have Mr. Wessels make a brief statement to the Commission as to the argument and how he would follow-up and provide a brief conclusion regarding why Petitioner felt an Amendment to Conditions was appropriate.

Chair Devens noted that Mr. Okamoto's request to defer the hearing on his motion was untimely and was not on the agenda so could not be acted upon. Chair Devens requested clarification on whether Mr. Okamoto's preference was to continue his motion. Mr. Okamoto replied that it was and orally moved to continue the motion.

Chair Devens declared a recess at 9:52 a.m. and reconvened the meeting at 9:53 a.m.

Chair Devens inquired if the Parties had any comments.

Mr. Voss stated that he was not clear on what the Commission was procedurally doing. Chair Devens explained that the Motion to Amend Conditions 1, 5 and 7 filed by DW `Āina Le`a Development LLC was before the Commission and that Mr. Okamoto had orally moved to have that Motion continued.

Mr. Voss argued why he felt that the Commission's actions were procedurally flawed and stated that Bridge `Āina Le`a LLC joined in DW `Āina Le`a Development LLC's Motion to Continue.

Commissioner Lezy asked Mr. Voss to identify what statutes and rules he believed were applicable. Mr. Voss stated that Section 205- 4 (h) was the authority that the Commission should comply with and argued why it and other factors should be considered during its decision-making to amend district boundaries.

Mr. Brillhante stated that Hawai`i County would take no position on DW `Āina Le`a's Motion to Amend Conditions 1, 5 & 7, and requested that if the matter came before the Commission and if the oral motion were granted, that Hawai`i County reserved the right to present a position to the Commission; and that Hawai`i County had no objection to the oral request for deferral by the Petitioner.

Mr. Yee stated that the Office of Planning had no position on DW `Āina Le`a's request to defer and that it considered the DW `Āina Le`a's Motion to Amend Conditions 1, 5 & 7 to be moot. Mr. Yee argued how Section 205- 4 (h) should be applied and how it was not relevant to amending Conditions 1, 5 and 7 or the Motion to Continue. Mr. Yee affirmed that DW `Āina Le`a Development LLC had asked to meet with the Office of Planning and that OP recognized that the discussions would not dispose of any matters before the LUC.

Commissioner Judge requested clarification on the Office of Planning's position on the Motion to Amend Conditions 1, 5 and 7. Mr. Yee stated that the OP position was that it was moot.

Chair Devens moved to grant Mr. Okamoto's oral motion to continue the hearing on Petitioner's Motion to Amend Conditions 1, 5 and 7. Commissioner Heller seconded the Motion.

There was no discussion. The Commission voted as follows:  
Ayes: Commissioners Teves, Jencks, Judge, Contrades, Heller, and Chair Devens.  
Nays: Commissioners Kanuha and Lezy.

The Motion passed 6-2 with 1 excused.

Commissioner Lezy moved to enter Executive Session for a Litigation Report. Commissioner Jencks seconded the Motion. By a unanimous voice vote (8-0), the Commission elected to enter Executive Session. The Commission came out of executive session at 10:35 a.m.. There being no further agenda items, Chair Devens adjourned the meeting at 10:35 a.m.