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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

BRIDGE AINA LE'A, LLC,)	Civil No. 11-00414 ACK BMK
)	
Plaintiff,)	ERRATA TO DEFENDANTS'
)	MEMORANDUM IN SUPPORT OF
vs.)	MOTION TO DISMISS COMPLAINT
)	FILED JUNE 7, 2011 (ECF 14)
STATE OF HAWAII LAND USE)	CERTIFICATE OF SERVICE
COMMISSION, VLADIMIR P. DEVENS,)	
in his individual and official)	
capacity, KYLE CHOCH, in his)	
individual and official)	
capacity, THOMAS CONTRADES, in)	
his individual and official)	
capacity, LISA M. JUDGE, in her)	
individual and official)	
capacity, NORMAND R. LEZY, in)	
his individual and official)	
capacity, NICHOLAS W. TEVES,)	
JR., in his individual and)	
official capacity, RONALD I.)	
HELLER, in his individual and)	
official capacity, DUANE KANUHA,)	
in his official capacity, and)	
CHARLES JENCKS, in his official)	
capacity, JOHN DOES 1-10, JANE)	
DOES 1-10, DOE PARTNERSHIPS 1-)	
10, DOE CORPORATIONS 1-10, DOE)	
ENTITIES 2-10 and DOE)	

GOVERNMENTAL UNITS 1-10,
Defendants.

ERRATA TO DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
COMPLAINT FILED JUNE 7, 2011 (ECF 14)

At pages 20 and 21 of their memorandum, defendants quoted *Kaniakapupu v. Land Use Com'n*, 111 Haw. 124, 140, 139 P.3d 712, 728 (2006) for the proposition that in considering an order to show cause to revert property for failure to comply with conditions the Commission must necessarily conduct a contested case and that in doing so "the LUC was performing an adjudicatory function which is inherent in a contested case hearing."

Defendants failed to note that the quoted language appears in the dissent. However, the stated proposition is a correct statement of law supported by the case.

In *Kaniakapupu*, Aha Hui Malama O Kaniakapupu ("Hui") filed
a:

"Motion for an Order to Show Cause Regarding Enforcement of Conditions, Representations, or Commitments" (motion for an order to show cause) pursuant to Hawai'i Administrative Rules (HAR) §§ 15-15-70 and 15-15-93. The Hui sought to have the LUC issue an order to show cause as to why the classification of the Midkiff/Myers Parcel should not be reverted to conservation district.

The LUC denied the motion and did not issue the OSC. The majority opinion held that denial of the motion to issue an OSC

was not a contested case hearing. The majority agreed, however, that if the motion for an OSC had been granted, then a contested case hearing on the OSC would have been required. *Kaniakapupu*, 111 Haw. at 134, 139 P.3d at 722. See discussion of the case in *Kaleikini v. Thielen*, 124 Haw. 1, 15-16, 237 P.3d 1067, 1081-1082 (2010). That contested case would have been adjudicatory function because that is "inherent in a contested case."¹

DATED: Honolulu, Hawai'i, July 27, 2011.

/s/ William J. Wynhoff
Deputy Attorney General
Attorney for Defendants

¹ This errata contains 305 countable words. Even if included in the original memorandum, the word count limit is not exceeded.

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ENTITIES 2-10 and DOE)	
GOVERNMENTAL UNITS 1-10,)	
)	
Defendants.)	
)	

CERTIFICATE OF SERVICE

I hereby certify that on the date the foregoing document is filed it will be served on the following persons electronically through CM/ECF:

Bruce D. Voss, Esq.

Michael C. Carroll, Esq.

Matthew C. Shannon, Esq.

E. Diane Erickson, Esq.

DATED: Honolulu, Hawai'i, July 27, 2011.

/s/ William J. Wynthoff
Deputy Attorney General
Attorney for Defendants