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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI‘I

BRIDGE AINA LE‘A, LLC, Plaintiff, vs. STATE OF HAWAII LAND USE COMMISSION, VLADIMIR P. DEVENS, in his individual and official capacity, KYLE CHOCK, 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	Civil No. 11-00414 SOM KJM STATE OF HAWAII'S MOTION FOR JUDGMENT AS A MATTER OF LAW MEMORANDUM IN SUPPORT OF MOTION CERTIFICATE OF SERVICE

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.

STATE OF HAWAII'S MOTION FOR JUDGMENT AS A MATTER OF LAW

The State of Hawai'i ("State")[1] moves for judgment as a matter of law. This Court should grant judgment as a matter of law in favor of the State for the following reasons: (1) plaintiff did not possess a valid interest in the 1,060 acre property at the time of the taking; (2) there cannot be a taking stemming from an erroneous finding of fact in a quasi-judicial proceeding; (3) plaintiff fails to establish a *Lucas* taking as a matter of law; and (4) plaintiff fails to establish a *Penn Central* taking as a matter of law.

Even if this Court finds that the issue of whether there is a taking remains to be decided, this Court should hold as a matter of law that the issue of just compensation should not go to the jury for lack of evidence and that, should a

[1] Defendants are State of Hawaii Land Use Commission ("Commission"), certain commissioners in their individual capacity, and all current commissioners in their official capacity. The only remaining claims involve the Commission and official capacity defendants, collectively referred to as the "State."

taking be found, plaintiff will only be entitled to receive nominal just compensation of $1.

Finally, should the issue of whether there is a taking go to the jury, this Court should hold as a matter of law that the only time period of the taking is between April 25, 2011, and June 25, 2012, or one of the alternative dates proposed.

This motion is brought pursuant to FRCP Rule 50 and is supported by the Memorandum in Support of Motion and is based upon the evidence presented during plaintiff's case-in-chief.

DATED: Honolulu, Hawai'i, March 19, 2018.

/s/ William J. Wynhoff
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI‘I

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MEMORANDUM IN SUPPORT OF MOTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Federal Cases

State Cases

State Statutes

Federal Rules

Other Authorities

I. INTRODUCTION

This Court should grant judgment as a matter of law in favor of the State for the following reasons: (1) plaintiff did not possess a valid interest in the 1,060 acre property at the time of the taking; (2) there cannot be a taking stemming from an erroneous finding of fact in a quasi-judicial proceeding; (3) plaintiff fails to establish a *Lucas* taking as a matter of law; and (4) plaintiff fails to establish a *Penn Central* taking as a matter of law.

Even if this Court finds that the issue of whether there is a taking remains to be decided, this Court should hold as a matter of law that the issue of just compensation should not go to the jury for lack of evidence and that, if a taking is found, plaintiff will only be entitled to receive nominal just compensation of $1.

Finally, if the issue of whether there is a taking goes to the jury, this Court should hold as a matter of law that the only time period of the taking is between April 25, 2011, and June 25, 2012.

II. STANDARD OF REVIEW

Motions for judgment as a matter of law are governed by FRCP Rule 50. Pursuant to FRCP Rule 50(a),

> If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:
>
> (A) resolve the issue against that party; and

> (B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

FRCP 50(a).

"[T]he standard for granting summary judgment 'mirrors' the standard for judgment as a matter of law, such that 'the inquiry under each is the same." *McAllister v. Hawaiiana Mgmt. Co., Ltd.*, 918 F. Supp. 2d 1044, 1053 (D. Haw. 2013) (quoting *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000)).

III. ARGUMENT

A. Plaintiff Did Not Possess a Valid Interest in the 1,060 Acre Property

As an initial matter, plaintiff did not possess a valid interest in the 1,060 acre property at the time of the taking that was affected by the reversion. *Boise Cascade Corp. v. United States*, 296 F.3d 1339, 1343 (Fed. Cir. 2002) ("This court has developed a two-step approach to takings claims. First, a court determines whether the plaintiff possesses a valid interest in the property affected by the governmental action., i.e., whether the plaintiff possessed a 'stick in the bundle of property rights.' If so, the court proceeds to the second step, determining 'whether the governmental action at issue constituted a taking of that 'stick.'" Internal citations and quotation marks omitted.

Here, plaintiff sold the 1,060 acres and its development rights to entities owned by Robert Wessel's prior to the reversion of the property in 2011. Plaintiff's property was not taken by the Land Use Commission because it had sold the property and the right to develop it before the reversion.

B. There Cannot Be a Taking Stemming From a Finding of Fact Made in a Quasi-Judicial Proceeding Later Found to Be Erroneous

The State is not aware of a single case in the country where a court or an administrative agency, sitting in a judicial or quasi-judicial capacity, effected a taking due to a finding of fact that was later found to be erroneous. The situation here is that the Land Use Commission, in reverting the property, found that there was no "substantial commencement" on the project. The statutory term "substantial commencement" had never been analyzed by any court up until the point, and the Land Use Commission had a reasonable basis for concluding that the finding was well supported by the evidence. The Supreme Court of Hawai'i held that the finding of fact was erroneous. Plaintiff contends this is a taking.

Plaintiff, in purchasing the property, was aware of the conditions on the property, the statutory process of reversion, and the right to appeal from an adverse decision. Plaintiff achieved its result through the process: the State provided plaintiff with a full process in which plaintiff's rights were ultimately vindicated. Plaintiff was given a process, and plaintiff received a process. That cannot be a taking.

What the Land Use Commission did is no different than what state trial courts and U.S. District Courts do all the time: make findings of fact that affect people's interest in property. For instance, in a divorce case, if a family court found that property should be divided one way that favored one spouse, but on appeal the Supreme Court found that the property should be divided in a way to favor the other, one would not say that the family court effected a taking, but merely that the family court made an erroneous finding. A contrary result would paralyze the judiciary in making decisions that affect property, one way or another, upon pains of paying just compensation.

Imagine, now, that the Land Use Commission's reversion was upheld on appeal. Why would this affect the takings analysis at all? Whatever uses were lost, whatever economic impacts incurred, whatever distinct investment-backed expectations frustrated—they would all be the same to plaintiff, except that the reversion would be permanent. There is no difference for the takings analysis between the reversion being upheld or vacated. The only common thread in both cases was that plaintiff was entitled to a process and received that process—to an ultimate positive or negative result.

In short, there is no justification to find a taking in this case. Judgment as a matter of law should be entered in favor of the State.

C. Plaintiff Fails to Establish a *Lucas* Taking as a Matter of Law

Plaintiff cannot show a *Lucas* taking. A *Lucas* taking occurs when a regulation completely deprives an owner of "*all* economically beneficial us[e]" of its property. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005) (emphasis in original) (quoting *Lucas*, 505 U.S. at 1019). Regulations that leave land without economically beneficial or productive options for its use typically "requir[e] land to be left substantially in its natural state." *Lucas*, 505 U.S. at 1018.

Moreover "[i]n the *Lucas* context, of course, the complete elimination of a property's value is the determinative factor." *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 538 (2005). "Anything less than a "complete elimination of value," or a "total loss," requires a *Penn Central* analysis. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 330 (2002).

There is no *Lucas* taking as a matter of law and the issue should not be submitted to the jury.

1. Plaintiff Had a Myriad of Permissible Uses for the Property in the Agricultural District

There is no *Lucas* taking because the many economically beneficial and productive uses for the land exist in the agricultural district.

In general, "the existence of permissible uses determines whether a development restriction denies a property owner economically viable use of his property." *Del Monte Dunes at Monterey, Ltd. v. City of Monterrey*, 95 F.3d 1422,

1432 (9th Cir. 1996), *aff'd*, 526 U.S. 687 (1999). The owner of land in an agricultural district has a plethora of permissible uses. *See* HRS § 205-4.5; HAR § 15-15-25. Hawai'i law allows owners of agricultural land to obtain permits for unusual uses on agricultural land that are not expressly permitted by statute. *See* HRS § 205-6. Hawai'i administrative law provides that parties may reapply for a boundary amendment. HAR § 15-15-76. Plaintiff's own expert testified that there are numerous potential uses. It cannot be said that the Commission's actions required the land to be left substantially in its natural state. *Cf. Palazzolo v. Rhode Island*, 533 U.S. 606, 631 (2001) ("A regulation permitting a landowner to build a substantial residence on an 18-acre parcel does not leave the property 'economically idle.'").

2. Plaintiff Retained More than a "Token Interest" in the Property

Even if plaintiff owned the 1,060 acres, it retained more than a "token interest" in the property in the agricultural district. "In the *Lucas* context, of course, the complete elimination of a property's value is the determinative factor."

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Here, plaintiff's own expert testified that the property retained millions of dollars of worth in the agricultural district. Again, the agricultural district provides landowners with significant uses. This is not a *Lucas* taking.

3. There is No Total Taking Under *Murr*

Under *Murr*, the denominator of the property is the entire 3,000 acre project area, not merely the 1,060 acre urban portion.

To determine the denominator, there are three factors. First, courts must "give substantial weight to the treatment of the land, in particular how it is bounded or divided, under state and local law. The reasonable expectations of an acquirer of land must acknowledge legitimate restrictions affecting his or her subsequent use and dispensation of the property."

Second, courts "must look to the physical characteristics of the" plaintiff's "property. These include the physical relationship of any distinguishable tracts, the

parcel's topography, and the surrounding human and ecological environment." You may consider whether "the property is located in an area that is subject to, or likely to become subject to, environmental or other regulations."

Third, courts "should assess the value of the property under the challenged regulation, with special attention to the effect of the burdened land on the value of other holdings. Though a use restriction may decrease the market value of the property, the effect may be tempered if the regulated land adds value to the remaining property, such as by increasing privacy, expanding recreational space, or preserving surrounding natural beauty." *Murr v. Wisconsin*, 137 S. Ct. 1933, 1945–46 (2017).

Here, the denominator of plaintiff's property is not just the 1,060 acres of urban land but the entire project area of 3,000 acres. Plaintiff purchased the entire 3,000 acres. The entire 3,000 acres are contiguous and constitute one area of land. All plans to develop the area viewed the project area as consisting of 3,000 acres, and included the use of agricultural land for a variety of purposes, including golf courses. There is no difference in the geographic or topological characteristics between the urban and agricultural portions of the project. It is clear that the entire area was subject to a variety of regulatory frameworks, including Chapter 343, HRS.

Because the denominator of plaintiff's property is the entire 3,000 acres, there can be no *Lucas* taking.

4. Temporary Takings Cannot Be *Lucas* Takings

Furthermore, because this is a temporary-takings case, *Lucas* does not apply. The U.S. Supreme Court has held that *Lucas* "was carved out for the 'extraordinary case' in which a regulation permanently deprives property of all value[.]" *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 332 (2002). Property "cannot be rendered valueless by a temporary prohibition on economic use, because the property will recover value as soon as the prohibition is lifted." *Id.* Here, even if the Commission's actions prohibited economic use of plaintiff's property—and it did not—it did so only temporarily, and the property recovered its value after the Property was unreverted to an urban land use designation. Furthermore, plaintiff was capable of reapplying for an urban designation.

D. Plaintiff Fails to Establish a *Penn Central* Taking as a Matter of Law

Because plaintiff cannot establish a *per se Lucas* taking as a matter of law, plaintiff is required to rely upon *Penn Central*. Because there is no *Penn Central* taking, plaintiff cannot establish any takings claim.

Penn Central identifies "several factors, not a set formula, to determine whether a regulatory action is functionally equivalent to the classic taking."

Guggenheim v. City of Goleta, 638 F.3d 1111, 1120 (9th Cir. 2010) (internal quotation marks omitted). Most regulatory taking cases are *Penn Central* cases that require consideration of the factors stated in the case:

> The economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations are, of course, relevant considerations. So, too, is the character of the governmental action. A "taking" may more readily be found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good.

Penn Cent., 438 U.S. at 124 (citations omitted).

The first two factors are closely related. *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1120 (9th Cir. 2010) ("Primary among those factors are the economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations.").

1. Distinct Investment Backed Expectations

The *Penn Central* factor of the extent to which the regulation interfered with distinct investment-backed expectations is fatal to plaintiff. Plaintiff purchased the property in 1999 for $5.2 million. In its first annual report in October 1999 and in other submissions to the Commission, plaintiff indicated that the affordable-housing condition needed to be amended to make development viable.

The affordable-housing condition was of record in 1999, and the price plaintiff paid reflected that condition. The court cannot protect plaintiff's hope to gain a speculative windfall by amending the condition. As stated in *Guggenheim*,

> "Distinct investment-backed expectations" implies reasonable probability, like expecting rent to be paid, not starry eyed hope of winning the jackpot if the law changes. . . . The Guggenheims might conceivably have paid a slight speculative premium over the value that the legal stream of rent income would yield, on the theory that rent control might someday end, either because of a change of mind by the municipality or court action. But that premium could be no more than a speculative possibility, not an "expectation." Speculative possibilities of windfalls do not amount to "distinct investment-backed expectations," unless they are shown to be probable enough materially to affect the price. The idea, after all, of the constitutional protection we enjoy in the security of our property against confiscation is to protect the property we have, not the property we dream of getting. The Guggenheims bought a trailer park burdened by rent control, and had no concrete reason to believe they would get something much more valuable, because of hoped-for legal changes, than what they had.

Guggenheim, 638 F.3d at 1120–21 (footnotes omitted).

Here as in *Guggenheim*, plaintiff purchased the property with an affordable-housing condition attached that plaintiff admitted would render the development of the property economically unviable. Plaintiff hoped that the condition would be amended but that is mere "starry eyed hope" of winning the jackpot, not a property right entitled to protection. *See also Esplanade Props., LLC v. City of Seattle*, 307 F.3d 978, 987 (9th Cir. 2002) (takings doctrine does not supply a plaintiff with

right to recovery where party "took the risk" when it purchased tract subject to regulations, hoping that it could overcome those hurdles to realize a return); *Mehaffy v. United States*, 499 Fed. App'x 18 (Fed. Cir. 2012) (affirming the grant of summary judgment in favor of the government solely on the reasonable-expectations factor, holding that "the property owner who buys land with knowledge of a regulatory restraint could be said to have no reliance interest, or to have assumed the risk of economic loss" (internal quotation marks omitted)).

Like in *Guggenheim*, the State is entitled to judgment as a matter of law for want of legally sufficient distinct investment-backed expectations.

2. Economic Impact

To show legally sufficient economic impact, the plaintiff must show that the regulation caused a serious financial loss. *Loveladies Harbor, Inc. v. United States*, 28 F.3d 1171, 1177 (Fed. Cir. 1994). Here there is no evidence that the commission's action affected Bridge in any way.[1]

First, as of at least 2007, Bridge had no plan, ability, or right to develop the property itself. Bridge sold those rights to Mr. Wessels. Bridge was not itself seeking financing.

[1] Other than (perhaps) interfering with Mr. Wessels' ability to perform his contracts with Bridge, an issue that it not relevant to the alleged taking.

Second, there is no evidence is that the commission's action interfered with Mr. Wessels' plans to develop the property. The County specifically affirmed that the commission action did not affect development rights. Exhibit 1134.

Third, the development could not (and cannot) proceed without a valid EIS. That lack, not the commission's action, is what is holding up development. The commission's action adds or subtracts nothing. It is well established that a plaintiff must show both causation-in-fact and proximate causation between the government action and the alleged deprivation to recover just compensation. *Esplanade Props., LLC v. City of Seattle*, 307 F.3d 978, 984 (9th Cir. 2002). As a matter of causation, plaintiff cannot establish damages because a valid EIS was never obtained.

The undisputed fact is that the development has not proceeded in any meaningful way for the last 29 years. Bridge's claim to economic impact depends, inter alia, on the magical thinking that if only the reversion had not occurred somehow the development would have succeeded. The facts on the ground – literally – belie this fantasy.

3. Character of the Government Action

The character of the government action cuts against plaintiff because the government action was the Commission's enforcement of a long-standing condition. *See Guggenheim*, 638 F.3d at 1120 (purpose of *Penn Central* is to

determine whether a regulatory action is functionally equivalent to a classic taking). This position is bolstered by the fact that the Commission gave plaintiff the condition it requested and that plaintiff's own counsel asked the Commission to treat plaintiff's application to amend the affordable-housing condition differently than all others.

In *Guggenheim*, the Ninth Circuit explained that "the character of the government action" measures how close the alleged taking is to a physical invasion as opposed to "merely" adjusting economic benefits and burdens:

> In addition, the character of the governmental action—for instance whether it amounts to a physical invasion or instead merely affects property interests through some public program adjusting the benefits and burdens of economic life to promote the common good—may be relevant in discerning whether a taking has occurred."

Citing Lingle v. Chevron U.S.A., Inc., 544 U.S. 528 (2005). See also *MHC Fin. Ltd. P'ship v. City of San Rafael*, 714 F.3d 1118, 1128 (9th Cir. 2013):

> As to the character of the City's Ordinance, a "'taking' may more readily be found when the interference with property can be characterized as a physical invasion by government, than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good." *Penn Cent.,* 438 U.S. at 124, 98 S.Ct. 2646 (internal citation omitted).
>
> Here, the Ordinance is much more an "adjust[ment of] the benefits and burdens of economic life to promote the common good" than it is a physical invasion of property, and it is only a slight modification to an already-existing

> rent control ordinance, so this factor also counsels against finding a *Penn Central* taking. *See id.*

The Commission's action is not the functional equivalent of a classic taking because there was no physical invasion, occupation, or restraint placed on the property, and plaintiff was permitted to use the property in many different ways, at all time, as discussed in the *Lucas* analysis *supra*.

Apparently plaintiff's major plan in this case was to show that it was treated differently or unfairly. Even assuming that is relevant, it failed to do so.

* None of plaintiff's exhibits as to other dockets were offered, much less admitted into evidence.

* There was no evidence whatsoever that other dockets were alike in relevant respects. In fact, the only evidence on the issue came from Scott Derrickson who specifically – and without contradiction – said the other dockets were not the same.

* Every commissioner testified – without contradiction – that they decided the matter only on the evidence and testimony presented and that they treated plaintiff fairly

* The Hawai‘i Supreme Court has already held that:

  1) "Neither DW nor Bridge, however, have demonstrated that they were treated differently than other similarly situated developers because the documents from the LUC cases involving the other developers were not properly included in the record on appeal"

  2) In any event, even assuming Bridge and DW had demonstrated different treatment, their equal protection argument still fails because they did not establish that the LUC was without a rational basis. As noted above, the LUC has broad discretion to attach conditions to orders granting reclassification petitions. *Lanai Co.,* 105 Hawai‘i at 317, 97 P.3d at 393. Given the long history of this property and the LUC's

> dealings with the landowners over the course of many years, we cannot say it was irrational for the LUC to exercise its broad discretion by imposing a completion deadline. Again, the LUC had good reason to be wary of any assurances being offered by Bridge and DW, given the history of the project.
>
> 3) There are some forms of state action, however, which by their nature involve discretionary decisionmaking based on a vast array of subjective, individualized assessments. In such cases the rule that people should be "treated alike, under like circumstances and conditions" is not violated when one person is treated differently from others, because treating like individuals differently is an accepted consequence of the discretion granted. In such situations, allowing a challenge based on the arbitrary singling out of a particular person would undermine the very discretion that such state officials are entrusted to exercise.

DW Aina Lea Dev., LLC v. Bridge Aina Lea, LLC., 134 Hawai`i 187, 220, 339 P.3d 685, 718 (2014). Exhibit 2084.

E. Even If, Assuming *Arguendo*, Plaintiff Presented Sufficient Evidence of a Taking, the Most Just Compensation Plaintiff Hypothetically Would Be Entitled to is $1

Even if this Court holds that plaintiff presented sufficient evidence for its taking claim to go to a jury, plaintiff has failed to introduce any admissible evidence of the amount of just compensation. The issue of just compensation should not go to the jury. If a taking is found, plaintiff should be awarded nominal damages of $1.

This issue was extensively briefed and also re-argued during the trial. No just compensation evidence was admitted. Any evidence that might arguably do to just compensation was subject to the court's limiting instruction.

F. If Taking Liability Goes to the Jury, the Time of the Taking Should Be Determined as a Matter of Law

Plaintiff's claim that the time of the temporary taking is 5.68 years cannot be supported by the undisputed facts.

A taking occurs "when government action effectively prevents economic development of a landowner's property." J. Margaret Tretbar, *Calculating Compensation for Temporary Regulatory Takings*, 42 U. Kan. L. Rev. 201, 213 (1993). Fluctuations or depreciation in value of property during the governmental decision-making process do not constitute a taking and are not chargeable to the government. *First English Evangelical Lutheran Church of Glendale v. Cnty. of Los Angeles, Cal.*, 482 U.S. 304, 320 (1987). The April 30, 2009 "voice vote" was not a final decision of the Commission, as this Court has already recognized. *See* Dkt. 131 at 18 n.1. Nor was it an action that inexorably led to the final order reverting the property on April 25, 2011.

And moreover Mr. Baldwin testified that Mr. Wessels purchased the affordable housing parcel in December 2009, months after the "voice vote." And then:

> He [Mr. Wessels] starting going forward very fast on the project. He started earth moving, he started planning, he started designing, he started moving forward with the project with the actual physical development of the project very quickly.[2]

[2] The quote is from a rough transcript of Mr. Baldwin's testimony. The State understands that the Court/jury's recollection of the testimony controls.

The only possible date that the taking could have begun was on April 25, 2011.

In turn, an appeal does not automatically vacate the judgment appealed from. *Solarana v. Indus. Elec., Inc.*, 50 Haw. 22, 30 (1967); *Wedbush, Noble, Cooke, Inc. v. S.E.C.*, 714 F.2d 923, 924 (9th Cir. 1983) ("It is fundamental that the mere pendency of an appeal does not, in itself, disturb the finality of a judgment."). On this point, *Holmquist v. King County*, No. 73335-4-I, 2016 WL 513178 (Wash. Ct. App. Feb. 8, 2016), is instructive. In *Holmquist*, the owners of property abutting Lake Washington prevailed in a quiet-title lawsuit against the City of Seattle. *Id.* at *1. The City filed a notice of supersedeas without bond. *Id.* As a result of the City's supersedeas, the public accessed and utilized the property. *Id.*

The City's appeal from the quiet-title judgment was unsuccessful. *Id.* at *2. The owners moved for damages in the trial court against the City for depriving them of the exclusive use and enjoyment of the property during the pendency of the City's appeal, which the trial court denied. *Id.* The appellate court reversed, holding that the City's supersession of the trial court's quiet-title judgment by supersedeas resulted in the denial of the exclusive use of their property. *Id.* at 5.

Here, in the underlying state case, the Hawai‘i circuit court entered an amended judgment on June 15, 2012 and a second amended judgment on February 8, 2013. Unlike in *Holmquist*, the State did not stay the effect of the judgment.

Thus, the November 25, 2014 decision of the Hawai‘i Supreme Court did nothing to return anything allegedly taken by the Commission that had not already been returned. The date of the first amended judgment is the date that any taking ended.

In the alternative, the taking, if any, necessarily could extend no further than March 28, 2013, the date that Judge Strance ruled that the environmental impact statement was inadequate and ordered all development tolled.

V. CONCLUSION

The State respectfully requests that this Court grant the State judgment as a matter of law on plaintiff's claim or, in the alternative, resolve the issue of just compensation against plaintiff and hold that, assuming that a taking is found, that plaintiff is entitled to just compensation of $1. The taking date should be set as a matter of law between April 25, 2011, and June 15, 2012, if at all.

DATED: Honolulu, Hawai‘i, March 19, 2018.

/s/ William J. Wynhoff
WILLIAM J. WYNHOFF
DAVID D. DAY
AMANDA J. WESTON
Deputy Attorneys General
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAI‘I

BRIDGE AINA LE'A, LLC, Plaintiff, vs. STATE OF HAWAII LAND USE COMMISSION, VLADIMIR P. DEVENS, in his individual and official capacity, KYLE CHOCK, 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.	Civil No. 11-00414 SOM KJM CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

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

Bruce D. Voss, Esq.
Michael C. Carroll, Esq.
Matthew C. Shannon, Esq.
John Dickinson Ferry, III, Esq.

DATED: Honolulu, Hawai‘i, March 19, 2018.

/s/ William J. Wynhoff
WILLIAM J. WYNHOFF
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Deputy Attorneys General
Attorneys for Defendants