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Reclassification of Land From Urban to Agricultural Did Not Result in Unconstitutional Regulatory Taking

The State of Hawaii Land Use Commission's reversion of 1,060 acres from a conditional urban land use classification to the prior agricultural use classification was not an unconstitutional taking because the landowner could still reap economic benefits from the property, the reclassification did not substantially affect the overall valuation or any potential sales, and the landowner should have anticipated reversion for failure to satisfy certain conditions. *Bridge Aina Le'a, LLC v. State of Hawaii Land Use Commission*, 950 F.3d 610 (2020). In 1989, the Commission approved the then-owner's request to convert 1,060 acres of largely vacant and barren, rocky lava-flow land from an agricultural to an urban use classification to accommodate development of a mixed residential

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owner Bridge Aina Le'a, LLC sued the Commission alleging, among other things, that the reversion constituted an unconstitutional taking. The U.S. Court of Appeals for the Ninth Circuit analyzed the claim under the separate *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992) and *Penn Central Transportation Company v. City of New York*, 438 U.S. 104 (1978) takings tests. Though the court analyzed the facts under both Supreme Court precedents, it explained there is no *Lucas* takings liability for less than total deprivation of value; where the owner retains some economic benefit, the *Penn Central* balancing test applies. Bridge's evidence did not satisfy *Lucas* because, even under the reversion, the land retained substantial residual value (estimated at over $6 million) and Bridge was permitted to use the land in economically beneficial ways, including through specially permitted uses such as a sewage treatment plant or rock quarrying. Indeed, Bridge's own witness recognized the land was "good for growing rocks." Under the *Penn Central* test, the court considered the economic impact of the reversion on Bridge, the extent to which the reversion interfered with Bridge's investment-backed expectations, and the character of the Commission's action, all of which weighed against a taking. The court took issue with Bridge's valuation evidence as well as its allegations that the reversion disrupted land sale agreements, ultimately concluding the economic impact was insufficient to constitute a taking. Regarding Bridge's investment-backed expectations, Bridge was bound by the conditions to the original Commission orders reclassifying the land, which ran with the land and required the landowner to build 385 affordable housing units by a date certain. Bridge was aware of the possibility of reversion for failure to meet those conditions, which it failed to do. Lastly, while government action that singles out a landowner from similarly-situated landowners raises the possibility of a taking, the Commission issued its reversion within the confines of Hawaii's generally applicable land use reclassification procedure. For all of these reasons, there was no taking under *Penn Central*.

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