

Land Use Commission  
August 30, 2019

LAND USE COMMISSION  
STATE OF HAWAII

Land Use Commission  
State of Hawaii  
P.O. Box 2359  
Honolulu, Hawaii 96804-2359

2019 SEP 10 A 8:16

SUBJECT: 2019 Annual Report for Docket No. A-89-642  
Piihana Project District, Wailuku, Maui, Hawaii

Dear Honorable Chairman and Members:

In response to Condition 12 of the Findings of Fact, Conclusions of Law, and Decision and Order, dated January 30, 1990, we are pleased to submit the following report.

**BACKGROUND**

On January 30, 1990, the Land Use Commission (the "Commission") issued its Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A89-642, granting the reclassification of approximately 624 acres of land from Agriculture to Urban Land Use District. Situated at Wailuku and Piihana, County of Maui, State of Hawaii, comprised of approximately 545 acres of land identified on the Tax Maps of the State of Hawaii as Tax Map Key Numbers: 3-5-01:01 (portion), 17 (portion), and 3-4-07:02 (portion) (hereinafter referred to as "Wailuku Project District"); and 79 acres identified on the Tax Maps of the State of Hawaii as Tax Map Key Numbers: 3-3-01:16 (portion), 33, and 3-4-32:10, 18 and 01 (portion) (hereinafter referred to as "Piihana Project District") from the Agricultural to the Urban Land Use District.

Wailuku Plantation LLC ("Petitioner") is a petitioner along with RCFC Piihana, LLC, and (Collectively, "Co-Petitioner") has received approval to develop the property pursuant to Maui County's three-phase Project District zoning ordinance. Wailuku Plantation LLC has acquired all RCFC Piihana LLC's ownership interests in Piihana Project District and on July 22, 2019, submitted "Request to Change Status of Wailuku Plantation LLC to Sole Petitioner in Piihana Project District, Wailuku, Maui, Hawaii", to the State Land Use Commission.

The Phase I application for the Piihana Project District was submitted to the County of Maui in April 1990. This submittal petitioned the County to establish the Project District and define the zoning within them. The proposal was brought before the County Council for review and was approved in November 1991.

The Phase II application for the Piihana Project District was submitted to the County of Maui in December of 1991. This submittal further refined the designs of the project and

the project's impacts on the surrounding communities. This submittal also set standards for architecture, occupancy, and specific uses within the Project District. The Maui Planning Commission approved the Phase II submittal for the Piihana Project District on April 21, 1992.

### **PIIHANA PROJECT DISTRICT**

Financing is currently being obtained to build Affordable Housing within of the Piihana Project District. Bids for construction and materials are also being obtained for the Bridge, Roadways, and Affordable Housing. This site has a number of exactions that make the development of this project difficult. Such exactions include but are not limited to construction of a bridge across Iao Stream, water system improvements, offsite roadway improvements, a wastewater pump station and affordable housing requirements. The Petitioner Wailuku Plantation, LLC will keep the Commission updated on any progress on this topic and its effect on the original D&O.

### **UPDATE ON COMPLIANCE TO LUC CONDITIONS:**

- 1. Petitioner shall provide housing opportunities for low, low-moderate, and moderate income residents of the State of Hawaii by offering for sale or lease a number of units equal to at least thirty percent (30%) of the residential units in each of the Project Districts of the Property, at prices which families with an income range of up to one hundred and twenty percent (120%) of the County of Maui's median income can afford, and a number of units equal to at least thirty percent (30%) of the residential units in each of the Project Districts of the Property, at prices which families with an income range of one hundred twenty to one hundred forty percent (120% - 140%) of the County of Maui's median income can afford.**

**This condition may be fulfilled through construction and distribution of units in the Property or through other projects within the same Community Plan District as the Property, under such terms as may be mutually agreeable, between Petitioner and the Housing Finance and Development Corporation of the State and the County of Maui.**

**This condition may also be fulfilled, with the approval of the Housing Finance and Development Corporation and the County of Maui, through construction of rental units to be made available at rents which families in the specified income ranges can afford.**

**In addition, Petitioner may obtain the special credit, as determined by the Housing Finance and Development Corporation and the County of Maui, for the provision of more than ten percent (10%) of the total units of housing**

**affordable to persons with incomes less than eighty percent (80%) of Maui's median income and for the provision of housing for special needs groups, as determined by the Housing Finance and Development Corporation and the County of Maui.**

**Insofar as possible, the Petitioner shall implement this affordable housing requirement concurrently with the completion of market priced units for the residential project. The determination of median income, as the term is used in this condition, shall be based on median income figures published by the United States Department of Housing and Urban Development at the time that construction of such housing units is commenced.**

**Response:**

Petitioner is currently pursuing financing through USDA. Bids for construction and materials are also being sought. Petitioner acknowledges the provisions of this condition and will comply with said condition.

- 2. Petitioner shall prepare, or participate in the preparation of, a regional traffic impact study to address all traffic Impacts resulting from the Project in coordination with the State Department of Transportation and the County of Maui.**

**Petitioner shall participate on a pro rata share basis in the funding and construction of regional transportation improvements identified by, and to the satisfaction of the State Department of Transportation and the County of Maui, The Petitioner shall also fund and construct the transportation improvements in the immediate vicinity, and necessitated by the proposed development as identified by, and to the satisfaction of the State Department of Transportation and the County of Maui. In addition, Petitioner shall submit construction plans, traffic studies, and drainage reports associated with the Project Districts to the State Department of Transportation and the County of Maui for review and approval.**

**Response:**

As a part of the Phase I and Phase II approval processes, a long-range Traffic Master Plan was completed. This plan was submitted in 2018 to both the State of Hawaii, Department of Transportation (SDOT) and the County of Maui, Department of Public Works (DPW) in conjunction with the Phase I and Phase II applications. The DPW and SDOT will have the opportunity to review and approve the Project as development plans are prepared and finalized for Piihana.

Petitioner is inquiring with the Dept. of Public Works as to the status of the Long-Range Master Traffic Plan.

- Petitioner shall prepare drainage and erosion control plan and shall fund and construct the necessary drainage improvements.**

**Response:**

Preliminary drainage plans were produced as part of the Project District approval process. More detailed plans will be completed and submitted for approval as development plans are finalized for this project.

Petitioner will be following up on the status of the preliminary drainage plans.

- Petitioner shall provide the necessary water source and transmission facilities to service the Project.**

**Response:**

Petitioner Wailuku Plantation, LLC is working with the County of Maui, Department of Water Supply to obtain the required water for the Project.

- Petitioner shall pay its pro rata share to expand or improve the existing Kahului Wastewater Treatment Plant and/or route the wastewater to be generated by the Project to the proposed new Central Maui Wastewater Treatment Plant to the satisfaction of the County of Maui, Department of Public Works, and the State Department of Health. Petitioner shall also participate in the funding of the proposed new wastewater treatment plant and required transmission lines.**

**Response:**

Since the District Boundary Amendment, the County of Maui (COM) has enacted legislation that allows it to collect wastewater impact fees. Should the COM impose an impact fee for the Wailuku-Kahului Wastewater Reclamation Facility, Petitioner will pay such fees.

- Petitioner shall inform all prospective occupants of the Hawaii Right-to Farm act. Chapter 165, Hawaii Revised Statutes, which limits the circumstances under which pre-existing farming activities may be deemed a nuisance.**

**Response:**

Petitioner will prepare a disclosure form for its sales packages and will include restrictive covenants on all deeds for lots to be sold or leases for occupation in the Project disclosing the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, which limits the circumstances under which pre-existing activities may be deemed a nuisance.

7. **Petitioner shall provide its pro rata share for school facilities as may be required by and to the satisfaction of the State Department of Education.**

**Response:**

Since the District Boundary Amendment, the Department of Education has adopted school impact fees for the Central Maui School District. The Petitioner will pay applicable school impact fees.

8. **Petitioner shall provide its pro rata share for police, fire, park, and solid waste disposal as may be required by and to the satisfaction of the County of Maui.**

**Response:**

Petitioner is committed to provide its pro rata share for police, fire, park, and solid waste disposal. Piihana Project District includes areas for neighborhood parks.

9. **Petitioner shall perform further subsurface testing of the Piihana Project District to the satisfaction of the State Historic Preservation Office. Petitioner shall also submit a mitigation plan to the State Historic Preservation Office for review and approval.**

**Petitioner shall immediately stop work and contact the State Historic Preservation Office should any archaeological resources such as artifacts, shell, bone or charcoal deposits, human burial, rock or coral alignments, pavings or walls be encountered during the Project's development.**

**Response:**

Petitioner is in the process of hiring an archaeologist to create a satisfactory mitigation plan.

A key aspect of the plan is the creation of a Historical Preservation Easement designed to protect those areas within the Piihana Project District that are likely to contain significant archaeological material. Petitioner, Wailuku Plantation, LLC will continue to comply with this condition throughout the site development and construction of the Piihana Project District.

The completion of the mitigation plan shall coincide with the development of the adjacent areas within the Piihana Project District. This will allow for better integration of the plan to the specific overall plans for the area surrounding the dune. The Petitioner remains committed to insuring the preservation of the dune area. To date, no work has been performed in the subject area.

10. **Petitioner shall develop the Property in substantial compliance with the representations made to the Land Use Commission in obtaining the reclassification of the Property.**

**Response:**

Project District Phase II approval has been received from the County of Maui. Petitioner Wailuku Plantation, LLC is in the process of obtaining Project District Phase II approval documents from the COM.

11. **Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interest in the Property covered by the approved petition, prior to the development of the Property.**

**Response:**

The Commission was notified of the following conveyances in the *2017 Annual Report*.

Document #	Grantor	Grantee	Instrument	Date	TMK
A64220459	RCFC Piihana LLC	Wailuku Plantation LLC	D-Deed	08/01/17	2-3-4-032-001
A64220460	RCFC Piihana LLC	Wailuku Plantation LLC	D-Deed	08/01/17	2-3-4-032-010
A64220461	RCFC Piihana LLC	Wailuku Plantation LLC	D-Deed	08/01/17	2-3-4-032-018

The Commission was notified of the following conveyances in the *2018 Annual Report*.

Document #	Grantor	Grantee	Instrument	Date	TMK
A67110607	RCFC Piihana LLC	Wailuku Plantation LLC	D-Deed	05/17/18	2-3-3-001-033
A67110610	RCFC Piihana LLC	Wailuku Plantation LLC	D-Deed	05/17/18	2-3-3-001-039
A67110611	RCFC Piihana LLC	Wailuku Plantation LLC	D-Deed	05/17/18	2-3-3-001-016

The Commission was notified of the following conveyances in the *2019 Annual Report*.

Document #	Grantor	Grantee	Instrument	Date	TMK
A71651056	Wailuku Plantation LLC	WenXiao Liu	D-Deed	8/14/19	2-3-4-032-028

A71651057	Wailuku Plantation LLC	WenXiao Liu	D-Deed	8/14/19	2-3-4-032-058
A71040285	Wailuku Plantation LLC	Dayong Zhao	D-Deed	06/14/19	2-3-4-032-001
A70530040	RCFC Piihana LLC	Wailuku Plantation LLC	D-Deed	04/24/19	2-3-3-001-105
A69810091	Wailuku Plantation LLC	Bong Jordan	D-Deed	02/11/19	2-3-4-032-022
A69770069	Wailuku Plantation LLC	Edgar Somera Fay Somera	D-Deed	02/07/19	2-3-4-032-018
A69670058	Wailuku Plantation LLC	Elise Travis	D-Deed	01/28/19	2-3-4-032-057
A69570357	Wailuku Plantation LLC	Larry Sky	D-Deed <sup>1</sup>	01/18/19	2-3-4-032-001

- 12. Petitioner shall provide annual reports to the Commission, the Office of State Planning and the County of Maui Planning Department in connection with the status of the subject project and the Petitioner's progress in complying with the conditions imposed.**

**Response:**

This report is submitted in compliance with this requirement. Copies of the report are being provided to the Maui Country Office of Planning and Department of Planning.

- 13. C. Brewer Properties, Inc. shall enter into an agreement with the Department of Hawaiian Home Lands (DHHL) that Petitioner shall take no action within four years of the date of said Agreement, on Petitioner's Piihana and Wailuku Project Districts, which will jeopardize the ability of DHHL to apply for or obtain an allocation of sewage treatment capacity from the County. Said Agreement shall be recorded within thirty (30) days of the effective date of the Commission's Decision and Order and shall run with the land.**

**Response:**

As noted in previous Annual Reports, DHHL has completed its developments near the Piihana Project District, which was not impacted by the subject Project District.

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<sup>1</sup> Deed is incorrectly recorded in the Hawaii Bureau of Conveyances as Document 2-3-4-032-001. The correct TMK is 1-3-4-032-001

14. **In the event that Petitioner should sell its interest in its Piihana and Wailuku Project Districts, the petitioner shall subject the property to deed restrictions to run with the land which shall require the successors and assigns to comply with the terms and conditions set forth in the Commission's Decision and Order.**

**Response:**

In 2017, Co-Petitioner RCFC Piihana, LLC conveyed TMKs (2)3-4-032:010, (2)34-032:001(por.), and (2)3-4-032:018(por.) to Wailuku Plantation LLC. In 2018 TMKs (2)3-3-001:016 and 033 and (2)3-3-003:039 were conveyed to Wailuku Plantation LLC. In 2019 TMKs (2)3-3-001:105 was conveyed to Wailuku Plantation, LLC. Refer to Exhibit "A".

These sales also occurred in 2019 and are not included in Exhibit A: Wailuku Plantation LLC conveyed TMK 2-3-4-032-018 to Edgar and Fay Somera; TMKs 2-3-4-032-028 and 2-3-4-032-058 to WenXiao Liu; TMK 2-3-4-032-001 to Dayong Zhao; TMK 2-3-4-032-022 to Bong Jordan; TMK 2-3-4-032-057 to Elise Travis; TMK 2-3-4-032-001 to Larry Sky. The properties are subject to the terms and conditions set forth in the Commission's Decision and Order.

15. **The Commission may fully or partially release these conditions as to all or any portion of the Property upon timely motion, and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner,**

**Response:**

At this time, the Petitioner is not requesting release from any of the conditions.

If you have any questions, or require further information with regard to this Annual Report, please do not hesitate to contact my attorney, Jason McFarlin, Esq. at (808) 269-0625.

Very truly yours,



Vernon Lindsey  
Wailuku Plantation LLC

Enclosures

cc: Department of Planning (w/enclosures)  
Office of Planning (w/enclosures)



Land Use Commission  
August 30, 2019

# **EXHIBIT A**

**Letter to State Land  
Use Commission  
Dated July 19, 2019**

**JM** Jason McFarlin  
Attorney at Law

July 19, 2019

Mr. Daniel E. Orodener  
Executive Officer  
State Land Use Commission  
P.O. Box 2359  
Honolulu, Hawaii. 96804-2359

Re: Notice of Transfer of Ownership  
LUC Docket No. A89-842 Wailuku and Pi'ihana Project Districts  
Wailuku, Maui, Hawaii

Dear Mr. Orodener:

This office has been retained by Wailuku Plantation, LLC in matters related to the Piihana Project Districts.

In accordance with Decision and Order Condition 11 of LUC Docket No. referenced above we are hereby notifying the State Land Use Commission that the following parcels within the Piihana Project Districts have been sold:

Document #	Grantor	Grantee	Instrument	Date	TMK
A70530040	RCFC Piihana LLC	Wailuku Plantation LLC	D-Deed	04/24/19	2-3-3-001-105
A64220459	RCFC Piihana LLC	Wailuku Plantation LLC	D-Deed	08/01/17	2-3-4-032-001
A64220460	RCFC Piihana LLC	Wailuku Plantation LLC	D-Deed	08/01/17	2-3-4-032-010
A64220461	RCFC Piihana LLC	Wailuku Plantation LLC	D-Deed	08/01/17	2-3-4-032-018
A67110607	RCFC Piihana LLC	Wailuku Plantation LLC	D-Deed	05/17/18	2-3-3-001-033
A67110610	RCFC Piihana LLC	Wailuku Plantation LLC	D-Deed	05/17/18	2-3-3-001-039
A67110611	RCFC Piihana LLC	Wailuku Plantation LLC	D-Deed	05/17/18	2-3-3-001-016

Collectively, through these sales, Wailuku Plantation LLC has acquired all RCFC Piihana LLC's ownership interests within the Piihana Project District.

Piihana Project District's Most Recent Sale: On April 24, 2019, approximately 25.056 acres, identified as TMK 2-3-3-001-105 was sold to Wailuku Plantation LLC.

Please contact this office with any questions or concerns you may have at (808) 269-0625.

Sincerely,

Handwritten signature of Jason B. McFarlin Esq. in black ink.

Jason B. McFarlin, Esq.

cc: RCFC Piihana, LLC  
County of Maui Dept. of Planning