

## FAX COVER SHEET

TO	Daniel Orodener
COMPANY	State Land Use Commission
FAX NUMBER	18085873827
FROM	JasonMcFarlin
DATE	2019-12-03 23:33:35 GMT
RE	Docket #A89-642 - Wailuku & Piihana Project Districts

### COVER MESSAGE

Aloha Mr. Orodener: Please find attached correspondence and supporting documents for your review. Please let me know if you are unable to open these documents and acknowledge receipt.  
Mahalo, Jason B. McFarlin, Esq.

**JM Jason McFarlin**  
Attorney at Law

December 3, 2019

*Via facsimile: (808) 587-3827*

Mr. Daniel E. Orodener  
Executive Officer  
State Land Use Commission  
P.O. Box 2359  
Honolulu, Hawaii. 96804-2359  
*email: dbedt.luc.web@hawaii.gov*

Re: In the Matter of the Petition of C. Brewer Properties, Inc.  
Motion for Order Bifurcating LUC Docket No. A89-642  
Wailuku and Pi'ihana Project Districts  
Wailuku, Maui, Hawaii

Dear Mr. Orodener:

This letter will serve as notification that we have provided each owner of the Piihana Project Districts, Wailuku, Maui, Hawaii, with a copy of the Petitioners Wailuku Plantation LLC, Edgar Somera, Fay Somera, Larry S. Sky, Dayong Zhao, Xiu Xiang Fang, Bong HWA Shi Jordan, WenXiao Liu and Elise Travis' Motion for Order Bifurcating Docket No.: A89-642.

Enclosed please find the following documents as reference:

- 1) Copy of personalized letter sent to each owner;
- 2) Copies of owner's signatures returned, (signed in counterpart) on the Letter of Representation for Jason B. McFarlin, Esq., authorizing him to represent the parties for the sole purpose of matters related to "Petitioners Wailuku Plantation LLC, Edgar Somera, Fay Somera, Larry S. Sky, Dayong Zhao, Xiu Xiang Fang, Bong HWA Shi Jordan, WenXiao Liu and Elise Travis' Motion for Order Bifurcating Docket No. A89-642". So far 3 owners have signed (Wen Xiao Liu, Dayong Zhao, Elise Travis), and 2 owners contacted me telling me they will sign soon (Edgar and Faye Somera).
- 3) Copy of mailings via certified mail, return receipt requested, to owners who have not signed (Edgar and Faye Somera, Bong Jordan).
- 4) Copy of Email to Larry Sky. I am following up with him and other owners who have not signed yet.

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

Sincerely,



Jason B. McFarlin, Esq.

62 N Market St. #305 • Wailuku, HI 96793 • Phone (808) 269-0625 • Fax (888) 892-3422  
Email: [jason@mcfarlinlawyer.com](mailto:jason@mcfarlinlawyer.com)

**JM Jason McFarlin**  
Attorney at Law

October 30, 2019

*Via: U.S. Mail, Certified, Return Receipt Requested*

To All Property Owners of

(2) 3-4-032-018

(2) 3-4-032-001

Re: Docket No. A89-642  
C. Brewer Properties, Inc.

Dear Property Owners:

The State of Hawaii, Land Use Commission is requiring us to complete this Motion to Bifurcate. (Bifurcate definition: "to divide into two branches or parts")

The reason we need to bifurcate, is to make the approval process with the State of Hawaii and County of Maui easier by allowing us to gain approvals without the Wailuku Project District owners being involved.

Previously, the Wailuku Project District and Piihaha Project District were owned by one entity, C Brewer Properties, Inc. Now the Piihaha Project District is solely owned by Wailuku Plantation LLC (Vernon Lindsey's Company), as well as YOU (current lot owners within the Piihaha Project District).

As such, we need every owner identified in the LETTER OF REPRESENTATION attached to sign & authorize Jason B. McFarlin Esq. to represent YOU solely for the purpose of this Motion. This Motion is attached for your reference.

Please review and sign the enclosed Letter of Representation and return it to this office upon receipt. You may scan and email it, fax it or send via U.S. Postal Service to the address below. If you have questions or concerns, please don't hesitate to contact me.

Mahalo in advance,

*Jason McFarlin Esq.*

Jason B. McFarlin, Esq.  
Attorney for Vernon Lindsey and  
Wailuku Plantation LLC

Cc: Letter of Representation  
Motion to Bifurcate

62 N Market St. #305 • Wailuku, HI 96793 • Phone (808) 269-0625 • Fax (888) 892-3422  
Email: [jason@mcfarlinlawyer.com](mailto:jason@mcfarlinlawyer.com)

**JM Jason McFarlin**  
Attorney at Law

October 30, 2019

*Via email: jason@jcmfarlinlawyer.com*

Jason B. McFarlin, Esq.  
62 N. Market Street, Suite 305  
Wailuku, HI 96793

Re: LETTER OF REPRESENTATION for Jason B. McFarlin, Esq.

Dear Mr. McFarlin:

We are appointing you Jason B. McFarlin, to represent the parties as stated below, for the sole purpose of matters related to *"Petitioners Wailuku Plantation LLC, Edgar Somera, Fay Somera, Larry S. Sky, Dayong Zhao, Xiu Xiang Fang, Bong HWA Shi Jordan, WenXiao Liu and Elise Travis' Motion for Order Bifurcating Docket No. A89-642"*.

Edgar Somera & Fay Somera  
TMK No. (2)3-4-032-018  
522 Kulaiwi Drive  
Wailuku, Hawaii. 96793

Larry S. Sky  
TMK No. (2) 3-4-032-001  
80-21 Soi Nai Tai, Moo2  
Rawai Phuket 83130. THAILAND

\_\_\_\_\_  
Edgar Somera. Date

\_\_\_\_\_  
Larry S. Sky Date

\_\_\_\_\_  
Fay Somera Date

Dayong Zhao  
TMK No. (2) 3-2-032-001  
1771 Piihana Road  
Wailuku, HI 96793

Bong HWA Shi Jordan  
TMK No. (2) 3-4-032-001  
P.O. Box 330158  
Kahului, HI 96733

\_\_\_\_\_  
Dayong Zhao Date

\_\_\_\_\_  
Bong HWA Shi Jordan. Date

WenXiao Liu  
TMK No. (2) 3-4-032-001  
P.O. Box 330158  
Kahului, HI 96733

Elise Travis  
TMK No. (2) 3-4-032-001  
214 Heleuma Place  
Wailea, Maui, Hawaii 96753

*Elise Travis* 10/31/19  
\_\_\_\_\_  
Elise Travis Date

\_\_\_\_\_  
WenXiao Liu Date

# JM Jason McFarlin Attorney at Law

October 30, 2019

*Via email: [jason@mcfarlinlawyer.com](mailto:jason@mcfarlinlawyer.com)*

Jason B. McFarlin, Esq.  
62 N. Market Street, Suite 305  
Wailuku, HI 96793

Re: LETTER OF REPRESENTATION for Jason B. McFarlin, Esq.

Dear Mr. McFarlin:

We are appointing you Jason B. McFarlin, to represent the parties as stated below, for the sole purpose of matters related to "*Petitioners Wailuku Plantation LLC, Edgar Somera, Fay Somera, Larry S. Sky, Dayong Zhao, Xiu Xiang Fang, Bong HWA Shi Jordan, WenXiao Liu and Elise Travis' Motion for Order Bifurcating Docket No. A89-642*".

Edgar Somera & Fay Somera  
TMK No. (2)3-4-032-018  
522 Kulaiwi Drive  
Wailuku, Hawaii. 96793

Larry S. Sky  
TMK No. (2) 3-4-032-001  
80-21 Soi Nai Tai, Moo2  
Rawai Phuket 83130. THAILAND

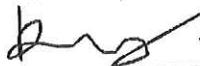
\_\_\_\_\_  
Edgar Somera. Date

\_\_\_\_\_  
Larry S. Sky Date

\_\_\_\_\_  
Fay Somera Date

Dayong Zhao  
TMK No. (2) 3-2-032-001  
1771 Piihana Road  
Wailuku, HI 96793

Bong HWA Shi Jordan  
TMK No. (2) 3-4-032-001  
P.O. Box 330158  
Kahului, HI 96733

 11/15/19  
\_\_\_\_\_  
Dayong Zhao Date

\_\_\_\_\_  
Bong HWA Shi Jordan. Date

WenXiao Liu  
TMK No. (2) 3-4-032-001  
P.O. Box 330158  
Kahului, HI 96733

Elise Travis  
TMK No. (2) 3-4-032-001  
214 Heleuma Place  
Wailea, Maui, Hawaii 96753

\_\_\_\_\_  
WenXiao Liu Date

\_\_\_\_\_  
Elise Travis Date

Jason B. McFarlin, Esq.  
Letter of Representation  
Page 2 of 2

This Letter of Representation may be executed in counterparts and all counterparts so executed shall be deemed to be one and the same instrument, binding on all of the parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterparts for all purposes. Duplicated and unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

# JM Jason McFarlin Attorney at Law

October 30, 2019

By email: [jason@jasonmcfarlin.com](mailto:jason@jasonmcfarlin.com)  
Jason B. McFarlin, Esq.  
62 N. Mark Street, Suite 305  
Waikiki, HI 96794

Re: LETTER OF REPRESENTATION for Jason B. McFarlin, Esq.

Dear Mr. McFarlin:

We are appointing you Jason B. McFarlin, to represent the parties as stated below for the sole purpose of matters related to *Permanency Hearing Presentation* by: Edgar Somera, Fay Somera, Larry S. Shi, Hongyung Choo, and Hong HWA Shi, along with Blue Travis, Waikiki Law and Blue Travis' Attorney for Order Benefiting Nucleus No. 159-954.

Edgar Somera & Fay Somera  
TMR No. (2) 3-2-012-018  
522 Kalia Road  
Waikiki, Hawaii 96793

Larry S. Shi  
TMR No. (2) 3-4-012-001  
80-21 Soi Nui Tai, Maali  
Kawaikouhi 96726 HAWAII

Edgar Somera \_\_\_\_\_ Date

Larry S. Shi \_\_\_\_\_ Date

Fay Somera \_\_\_\_\_ Date

Hongyung Choo  
TMR No. (2) 3-2-012-001  
1771 Piikoi Road  
Waikiki, HI 96793

Hong HWA Shi  
TMR No. (2) 3-4-012-001  
P.O. Box 130158  
Kahala, HI 96741

Hongyung Choo \_\_\_\_\_ Date

Hong HWA Shi \_\_\_\_\_ Date

Blue Travis  
TMR No. (2) 3-4-012-001  
P.O. Box 130158  
Kahala, HI 96741

Blue Travis  
TMR No. (2) 3-4-012-001  
214 Helani Place  
Waikiki, Hawaii 96793

Blue Travis \_\_\_\_\_ Date  
Blue Travis \_\_\_\_\_ Date

Blue Travis \_\_\_\_\_ Date

WAILUKU  
250 IMI KALA ST  
WAILUKU, HI 96793-9998  
149300-0555  
(800) 275-8777  
11/13/2019 12:42 PM

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11/13/2019

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Street and PO Box No.: **1771 Pihana Road**  
City, State, ZIP+4: **WAILUKU HI 96793**

7019 1640 0002 1978 4407

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
Domestic Mail Only

KAHULUI, HI 96733

Certified Mail Fee \$3.50

Postage \$1.00

Total Postage and Fees \$4.30

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11/13/2019

Sent To: **BONG HWA SHI JORDAN**  
Street and PO Box No.: **PO Box 330158**  
City, State, ZIP+4: **KAHULUI HI 96733**

7019 1640 0002 1978 4414

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
Domestic Mail Only

WAILUKU, HI 96793

Certified Mail Fee \$3.50

Postage \$1.00

Total Postage and Fees \$4.30

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NOV 13 2019

11/13/2019

Sent To: **Edgar + Fay Semeta**  
Street and PO Box No.: **522 Kaniwi Drive**  
City, State, ZIP+4: **WAILUKU HI 96793**



SENDER COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Edgna + Faye Somera  
 522 Kuluwi Drive  
 Wailuku HI 96793

9590 9402 5301 9154 9476 73

2. Article Number (Transfer from service label)

7019 1640 0002 1978 4414

PS Form 3811, July 2015 PSN 7530-02-000-9055

COMPLETE THIS SECTION ON DELIVERY

A. Signature  
*X Edgna Somera*

Agent  
 Addressee

B. Received by (Printed Name)  
 Edgna Somera

C. Date of Delivery  
 11/15/19

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

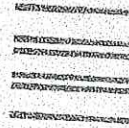
3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Mail Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Domestic Return Receipt

United States  
Postal Service

9590 9402 5301 9154 9476 73



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

Sender: Please print your name, address, and ZIP+4® in this box.\*

JASON McFARLIN  
62 W. MARKET #305  
WHITKIRK HI 96793

POSTNET  
9590 9402 5301 9154 9476 73

From: judy harrison <judy.harrison808@yahoo.com>  
Subject: Fwd: Motion to Bifurcate  
Date: October 31, 2019 at 6:39:41 AM HST  
To: Jason McFarlin <jason@mcfarlinlawyer.com>

Judith D Harrison, R(S), SFR  
Notary Public  
RS-47928  
Maui Lifestyle Realty  
291 Hookahi St., Suite 107  
Wailuku, Hi 96793  
Sent from my iPhone

Begin forwarded message:

From: larry sky <one5thave@yahoo.com>  
Date: October 30, 2019 at 10:04:46 PM HST  
To: judy harrison <judy.harrison808@yahoo.com>  
Subject: Re: Motion to Bifurcate  
Reply-To: larry sky <one5thave@yahoo.com>

judy please call me on my ny atel 718 3016877 i dont know anything about this i did not download your docs please call me or email me your phone number or call bruce travis at 808 280 1333 and explain it to him im in thailand thanks larary sky

*Yahoo Mail stationery*

On Thursday, 31 October 2019, 02:11:11 am GMT, judy harrison <judy.harrison808@yahoo.com> wrote:

Aloha Mr. Sky:

Attached please find documents relating to your property for review, signature and return. Please let me know if you are unable to open these documents and acknowledge receipt.

Mahalo in advance,

Judith D. Harrison, R(S), SFR  
Notary Public  
RS-47928

*on behalf of* Jason B. McFarlin, Esq.

Aloha Mr. Sky:

Attached please find documents relating to your property for review, signature and return. Please let me know if you are unable to open these documents and acknowledge receipt.

Mahalo in advance,

Judith D. Harrison, R(S), SFR  
Notary Public  
RS-47928

*on behalf of Jason B. McFarlin, Esq.*  
[Download all attachments as a zip file](#)

\*

Let all Party Mtn Bifurcate-SIGNED.pdf

1016 kB

\*

Letter Req - Parties Mtn Bifurcate.pdf

130 kB

\*

Motion to Bifurcate 10.21.18 Revised .pdf

159kB

JASON McFARLIN 10654  
62 N Market Street, #305  
Wailuku, Hawai'i 96793  
Telephone: (808) 269-0625  
Facsimile: (888) 892-3422  
Email: jason@mcfarlinlawyer.com

Attorney for Petitioners  
WAILUKU PLANTATION LLC,  
EDGAR SOMERA, FAY SOMERA,  
LARRY S. SKY, DAYONG ZHAO,  
XIU XIANG FANG, BONG HWA  
SHI JORDAN, WENXIAO LIU and  
ELISE TRAVIS

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A89-642
	)	
C. BREWER PROPERTIES, INC.	)	PETITIONERS WAILUKU PLANTATION
	)	LLC, EDGAR SOMERA, FAY SOMERA,
To Amend the Agricultural Land Use District	)	LARRY S. SKY, DAYONG ZHAO, XIU
Boundary into the Urban Land Use District	)	XIANG FANG, BONG HWA SHI
for approximately 626 Acres Situate at	)	JORDAN; WENXIAO LIU and ELISE
Wailuku and Piihaha, Maui, Hawaii, Tax	)	TRAVIS' MOTION FOR ORDER
Map Key Nos.: 3-5-01: Portion 01, Portion	)	BIFURCATING DOCKET NO. A89-642;
17; 3-4-07:02; 3-3-01:33, 39, and Portion 16;	)	MEMORANDUM IN SUPPORT OF
3-4-32:10, 18 and Portion 01	)	MOTION; AFFIDAVIT OF JASON
	)	McFARLIN; CERTIFICATE OF SERVICE
	)	

**PETITIONERS WAILUKU PLANTATION LLC, EDGAR SOMERA, FAY SOMERA,  
LARRY S. SKY, DAYONG ZHAO, XIU XIANG FANG; BONG HWA SHI JORDAN;  
WENXIAO LIU and ELISE TRAVIS' MOTION FOR ORDER  
BIFURCATING DOCKET NO. A89-642**

Petitioners WAILUKU PLANTATION LLC ("Petitioner WP"), EDGAR SOMERA and  
FAY SOMERA (collectively, "Petitioner Somera"), LARRY S. SKY ("Petitioner Sky"),  
DAYONG ZHAO and XIU XIANG FANG (collectively, "Petitioner Zhao"), BONG HWA SHI  
JORDAN ("Petitioner Jordan"), WENXIAO LIU ("Petitioner Liu") and ELISE TRAVIS

(“Petitioner Travis”) together with Petitioner WP, Petitioner Somera, Petitioner Sky, Petitioner Zhao, Petitioner Jordan, Petitioner Liu and Petitioner Travis, (the “Petitioners”), by and through their undersigned counsel, hereby move the Land Use Commission of the State of Hawai‘i (the “Commission”) to:

(i) substitute Petitioner WP for the original petitioner in this Docket, C. Brewer Properties, Inc. (the “Original Petitioner”), with respect to the portion of the original Petition Area (as defined below) designated by TMK Nos. (2) 3-3-001:033, :039, and :016 (portion); (2) 3-4-032:010, :018, and :001 (portion) (the “Piihana Parcel”), and formally recognize Petitioner WP as a party to this Docket;

(ii) substitute Petitioner Somera for the Original Petitioner with respect to the portion of the Piihana Parcel designated by TMK No. (2) 3-4-032:018, and formally recognize Petitioner Somera as a party to this Docket;

(iii) substitute Petitioner Sky for the Original Petitioner with respect to the portion of the Piihana Parcel designated by TMK No. (2) 3-4-032:001 (portion), and formally recognize Petitioner Sky as a party to this Docket;

(iv) substitute Petitioner Zhao for the Original Petitioner with respect to the portion of the Piihana Parcel designated by TMK No. (2) 3-4-032:001 (portion), and formally recognize Petitioner Zhao as a party to this Docket;

(v) substitute Petitioner Jordan for the Original Petitioner with respect to the portion of the Piihana Parcel designated by TMK No. (2) 3-4-032:001 (portion), and formally recognize Petitioner Jordan as a party to this Docket;

(vi) substitute Petitioner Liu for the Original Petitioner with respect to the portion of the Piihana Parcel designated by TMK No. (2)-3-4-032-001 (portion), and formally recognize Petitioner Liu as a party to this Docket;

(vii) substitute Petitioner Travis for the Original Petitioner with respect to the portion of the Piihana Parcel designated by TMK No. (2) 3-4-032-001 (portion), and formally recognize Petitioner Travis as a party to this Docket;

(viii) bifurcate this Docket and issue a new docket number for the Piihana Parcel;

(ix) incorporate by reference all other pleadings, papers, legal memoranda, exhibits, and filings in Docket No. A89-642 into this matter; and

(x) confirm that although Petitioners and the Piihana Parcel shall remain subject to the same conditions as set forth in that certain Findings of Fact, Conclusions of Law, and Decision and Order dated January 30, 1990 (the "1990 D&O"), following issuance of a new docket number for the Piihana Parcel, Petitioners and the Piihana Parcel shall not be subject to any decision and/or order that may be issued by the Commission in this Docket, and likewise that any decision and/or order that may be issued by the Commission under the new docket number shall not affect or apply to any petitioners or property remaining in this Docket.

This Motion is brought pursuant to Hawai'i Administrative Rules ("HAR") sections 15-15-1, 15-15-70, and 15-15-71, and is supported by the attached memorandum of law, affidavit of Jason McFarlin, and the records and files contained in this docket.



Pursuant to HIR section 15-15-70(c), Petitioners hereby request a hearing on this Motion.

DATED: Wailuku, Hawai'i, \_\_\_\_\_.

---

JASON MCFARLIN

Attorney for Petitioners WAILUKU  
PLANTATION LLC, EDGAR SOMERA,  
FAY SOMERA, LARRY S. SKY,  
DAYONG ZHAO, XIU XIANG FANG,  
BONG HWA SHI JORDAN, WENXIAO  
LIU and ELISE TRAVIS

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of ) DOCKET NO. A89-642  
 )  
 C. BREWER PROPERTIES, INC. ) MEMORANDUM IN SUPPORT OF  
 ) MOTION  
 To Amend the Agricultural Land Use District )  
 Boundary into the Urban Land Use District )  
 for approximately 626 Acres Situate at )  
 Wailuku and Piihana, Maui, Hawaii, Tax )  
 Map Key Nos.: 3-5-01: Portion 01, Portion )  
 17; 3-4-07:02; 3-3-01:33, 39, and Portion 16; )  
 3-4-32:10, 18 and Portion 01 )  
 )  
 )

MEMORANDUM IN SUPPORT OF MOTION

**I. INTRODUCTION**

Petitioners WAILUKU PLANTATION LLC ("Petitioner WP"), EDGAR SOMERA and FAY SOMERA (collectively, "Petitioner Somera"), LARRY S. SKY ("Petitioner Sky"), DAYONG ZHAO and XIU XIANG FANG (collectively, "Petitioner Zhao"), BONG HWA SHI JORDAN, ("Petitioner Jordan"), WENXIAO LIU, ("Petitioner Liu") and ELISE TRAVIS ("Petitioner Travis"), together with Petitioner WP, Petitioner Somera, Petitioner Sky, Petitioner Zhao, Petitioner Jordan, Petitioner Liu and Petitioner Travis, (the "Petitioners"), move for an order (1) substituting Petitioners for the original petitioner in this Docket, C. Brewer Properties, Inc. (the "Original Petitioner") with respect to the portions of the original Petition Area (as defined below) designated by TMK Nos. (2) 3-3-001:033, :039, and :016 (portion); (2) 3-4-032:010, :018, and :001 (portion) (the "Piihana Parcel") owned by the Petitioners as described herein, and (2) bifurcating this Docket and issuing a new docket number for the Piihana Parcel.

Good cause exists for the substitution of the Petitioners for the Original Petitioner with respect to the Piihana Parcel as the Petitioners are the current fee owners of the Piihana Parcel. Moreover, bifurcation is appropriate because the owners of the Piihana Parcel and the Kehalani Parcel (as defined herein below) are not affiliated, do not have related plans of development for the respective parcels, and bifurcation will support just and efficient proceedings before the Land Use Commission of the State of Hawai'i (the "Commission"). Accordingly, Petitioners respectfully request that the Commission grant their Motion to Bifurcate Docket No. A89-642 (the "Motion").

## **II. RELEVANT BACKGROUND**

In 1989, the Original Petitioner filed a Petition for District Boundary Amendment to amend the Land Use District Boundary to reclassify approximately 626 Acres situate at Wailuku and Piihana, Maui, Hawai'i, specifically identified at the time as TMK Nos. (2) 3-5-001:001 (portion) and :017 (portion); (2) 3-4-007:002; (2) 3-3-001:033, :039, and :016 (portion); (2) 3-4-032:010, :018, and :001 (portion) (the "Petition Area") from the Agricultural District to the Urban District. On January 30, 1990, the Commission issued that certain Findings of Fact, Conclusions of Law, and Decision and Order dated January 30, 1990 (the "1990 D&O") reclassifying the Petition Area to the Urban District subject to certain conditions specified therein.

The Petition Area is comprised of two non-contiguous parcels, the Piihana Parcel and the Wailuku Project District No. 3, which is comprised of parcels formerly identified as TMK Nos. (2) 3-5-001:001 (portion) and :017 (portion); and (2) 3-4-007:002 (the "Kehalani Parcel").

The Original Petitioner, through mesne assignments, conveyed the Piihana Parcel and the Kehalani Parcel to Kehalani Holdings Company, Inc. ("Kehalani Holdings") and Kehalani Mauka LLC ("Kehalani Mauka"). In or around 2013, Kehalani Holdings and Kehalani Mauka conveyed

all of their interest in the Kehalani Parcel to RCFC Kehalani, LLC and all of their interest in the Piihana Parcel to RCFC Piihana, LLC (“RCFC Piihana”).

Then, through a series of conveyances in 2017, 2018, and 2019, RCFC Piihana conveyed the Piihana Parcel to Petitioner WP as follows:

- In 2017, 11.731 acres of the Piihana Parcel identified as TMK Nos. (2) 3-4-032:010, :001 (portion), and :018 (portion).
- In 2018, 41.706 acres of the Piihana Parcel identified as TMK Nos. (2) 3-3-001:016, :033, and :039.
- In 2019, 25.056 acres of the Piihana Parcel identified as TMK No. (2) 3-3-001:105.

Through these transactions, RCFC Piihana conveyed its entire ownership interest in the Piihana Parcel to Petitioner WP.

Following Petitioner WP’s acquisition of the Piihana Parcel, Petitioner WP sold portions of the Piihana Parcel to different landowners. The present ownership of the Piihana Parcel is as follows:

- Petitioner Sky, 0.56 acres, TMK No. (2) 3-4-032:001 (portion)
- Petitioner Somera, TMK No. (2) 3-4-032:018
- Petitioner Zhao, 0.764 acres and 0.833 acres, TMK No. (2) 3-4-032:001 (portion)
- Petitioner Jordan, 0.34 acres, TMK No. (2) 3-4-032:001 (portion)
- Petitioner Liu, 6,727 sq. ft, TMK No. (2) 3-4-032-001
- Petitioner Liu, 0.377 acre, TMK No. (2) 3-4-032-001
- Petitioner Travis, 0.525 acre TMK No. (2) 3-4-032-001

The Piihana Parcel is not yet developed. There are a number of exactions that Petitioner WP must fulfill before it can move forward with development. Petitioner WP continues to make meaningful progress towards developing the Piihana Parcel. Petitioner WP is currently working on obtaining financing for affordable housing units on the Piihana Parcel. Additionally, it is seeking bids for materials and construction for, among other things, offsite roadway

improvements, affordable housing, and construction of a bridge across Iao Stream. In comparison to the Piihana Parcel, the Kehalani Parcel is predominately developed. To date, there are over 1,500 completed residential units on the Kehalani Parcel, including affordable housing units.

### **III. ANALYSIS**

#### **A. SUBSTITUTION OF PARTY**

Substitution of the Original Petitioner with the Petitioners is appropriate. HAR section 15-15-71 provides as follows:

Upon motion and for good cause shown, the commission may order substitution of parties, except that in the case of death of a party, substitution may be ordered without the filing of a motion.

The Petitioners respectfully request the Commission order substitution of the parties and recognize Petitioners as formal parties in this Docket as follows:

- substitute Petitioner WP for the Original Petitioner with respect to the Piihana Parcel identified as TMK Nos. (2) 3-3-001:033, :039, and :016 (portion); (2) 3-4-032:010, :018, and :001 (portion), and formally recognize Petitioner WP as a party to this Docket;
- substitute Petitioner Somera for the Original Petitioner with respect to the portion of the Piihana Parcel identified as TMK No. (2) 3-4-032:018, and formally recognize Petitioner Somera as a party to this Docket;
- substitute Petitioner Sky for the Original Petitioner with respect to the portion of the Piihana Parcel identified as TMK No. (2) 3-4-032:001 (portion), and formally recognize Petitioner Sky as a party to this Docket;
- substitute Petitioner Zhao for the Original Petitioner with respect to the portion of the Piihana Parcel identified as TMK No. (2) 3-4-032:001 (portion), and formally recognize Petitioner Zhao as a party to this Docket; and
- substitute Petitioner Jordan for the Original Petitioner with respect to the portion of the Piihana Parcel identified as TMK No. (2) 3-4-032:001 (portion), and formally recognize Petitioner Jordan as a party to this Docket.
- substitute Petitioner Liu for the Original Petitioner with respect to the portion of the Piihana Parcel identified as TMK No. (2) 3-4-032-001 (portion), and formally recognize Petitioner Liu as a party to this Docket.

- Substitute Petitioner Travis for the Original Petitioner with respect to the portion of the Piihana Parcel identified as TMK No. (2) 3-4-032-001 (portion), and formally recognize Petitioner Travis as a party to this Docket.

Good cause exists to substitute the Petitioners for the Original Petitioner with respect to the Piihana Parcel because the Petitioners are the current fee owners of the Piihana Parcel.

**B. BIFURCATION OF DOCKET**

The Commission has the inherent authority to manage proceedings before it in a just and efficient manner. HAR § 15-15-01. Bifurcation would support just and efficient proceedings before the Commission. A bifurcation is appropriate for the following reasons:

First, although the Piihana Parcel and the Kehalani Parcel originally had a common owner, that is no longer the case. The owners of the Piihana Parcel and the Kehalani Parcel are not related or affiliated entities. Further, the owners of each parcel do not have related plans of development. Bifurcation will allow the respective owners of the Piihana Parcel and the Kehalani Parcel to move forward without being encumbered by unrelated and unaffiliated parties.

Second, bifurcation will allow the Commission to consider the Piihana Parcel separately from the Kehalani Parcel. As discussed above, although the Piihana Parcel is not yet developed, Petitioner WP has been continuously working to develop the Piihana Parcel and obtain the requisite entitlements and financing. Bifurcation will allow the Commission to consider Petitioner WP's proposed development project on its own merits without consideration of the Kehalani Parcel and the development thereon. Bifurcation will thus allow Petitioner WP's project to move forward without unnecessary barriers to success.

Given the substantial differences between development on the Piihana Parcel and Kehalani Parcel, it would be grossly unjust and inefficient for the Commission to consider the two parcels under one docket. None of the parties involved would suffer any prejudice from the bifurcation

as the Petitioners are not moving to amend the conditions applicable to the Piihana Parcel under the 1990 D&O. Petitioners are also not proposing to bifurcate the Docket for each tax map key parcel contained within the Piihana Parcel. By this Motion, Petitioners are merely asking the Commission to bifurcate this Docket and issue a new docket number for the Piihana Parcel.

**C. INSULATION FROM ORIGINAL DOCKET**

Because the 1990 D&O will continue to affect the Piihana Parcel even if this Motion is granted, the Petitioners request that the Commission confirm in the order that the Petitioners and the Piihana Parcel will be insulated from any decision and/or order that may be issued by the Commission in the original Docket, and likewise that any decision and/or order that may be issued by the Commission under the new docket number shall not affect or apply to any petitioners or property remaining in the original Docket. This will help to clarify that the fate of the Piihana Parcel and the Kehalani Parcel will be determined by the actions of their respective owners, notwithstanding that the parcels may be covered by the conditions of the same 1990 D&O.

**IV. CONCLUSION**

Based upon the foregoing, the Petitioners respectfully request that the Commission grant the Motion.

DATED: Wailuku, Hawai'i, \_\_\_\_\_

\_\_\_\_\_  
JASON MCFARLIN  
Attorney for Petitioners WAILUKU  
PLANTATION LLC, EDGAR SOMERA,  
FAY SOMERA, LARRY S. SKY,  
DAYONG ZHAO, XIU XIANG FANG,  
BONG HWA SHI JORDAN, WENXIAO  
LIU and ELISE TRAVIS

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A89-642
	)	
C. BREWER PROPERTIES, INC.	)	AFFIDAVIT OF JASON MCFARLIN
	)	
To Amend the Agricultural Land Use District	)	
Boundary into the Urban Land Use District	)	
for approximately 626 Acres Situate at	)	
Wailuku and Piihaha, Maui, Hawaii, Tax	)	
Map Key Nos.: 3-5-01: Portion 01, Portion	)	
17, 3-4-07:02, 3-3-01:33, 39, and Portion 16;	)	
<u>3-4-32:10, 18 and Portion 01</u>	)	

AFFIDAVIT OF JASON MCFARLIN

JASON MCFARLIN, being duly sworn on oath, deposes and says:

1. I am duly admitted to practice law in the State of Hawai'i and am the attorney for Petitioners WAILUKU PLANTATION LLC, EDGAR SOMERA, FAY SOMERA, LARRY S. SKY, DAYONG ZHAO, XIU XIANG FANG, BONG HIWA SHI JORDAN, WENXIAO LIU and ELISE TRAVIS, in the above-referenced Docket.

2. I have read *Petitioners Wailuku Plantation LLC, Edgar Somera, Fay Somera, Larry S. Sky, Dayong Zhao, Xiu Xiang Fang, Bong Hwa Shi Jordan, WenXiao Liu and Elise Travis' Motion for Order Bifurcating Docket No. A89-642*, know the contents thereof, and that the contents therein are true to the best of my knowledge, information, and belief.

3. I have personal knowledge of the matters set forth in the foregoing Motion and am qualified and competent to make this Affidavit.



4. I make this Affidavit pursuant to Section 15-15-39 of the Hawai'i Administrative Rules.

Further Affiant sayeth naught.

\_\_\_\_\_  
JASON B. MCFARLIN

This \_\_\_\_\_ page *Affidavit of Jason B. McFarlin* dated \_\_\_\_\_, was subscribed and sworn to before me by \_\_\_\_\_ on \_\_\_\_\_, in the \_\_\_\_\_ Circuit of the State of Hawai'i.

\_\_\_\_\_  
Name:  
Notary Public, State of Hawai'i

My commission expires:

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of	)	DOCKET NO. A89-642
	)	
C. BREWER PROPERTIES, INC.	)	CERTIFICATE OF SERVICE
	)	
To Amend the Agricultural Land Use District	)	
Boundary into the Urban Land Use District	)	
for approximately 626 Acres Situate at	)	
Wailuku and Piihaha, Maui, Hawaii, Tax	)	
Map Key Nos.: 3-5-01: Portion 01, Portion	)	
17; 3-4-07:02; 3-3-01:33, 39, and Portion 16;	)	
3-4-32:10, 18 and Portion 01	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document will be duly served upon the following persons by mailing said copy, postage prepaid, first class, in a United States post office ("M") or by hand delivery ("HD") in the manner indicated, addressed as set forth below:

DANIEL ORODENKER, Executive Officer Land Use Commission, State of Hawai'i 235 South Beretania Street Room 406, Leiopapa A Kamehameha Bldg. Honolulu, Hawai'i 96813	(M)
--	-----

DAWN T. APUNA, Esq. Deputy Attorney General Department of the Attorney General 425 Queen Street Honolulu, Hawai'i 96813	(M)
---	-----

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THAILAND

DATED: Wailuku, Hawai'i, \_\_\_\_\_.

\_\_\_\_\_  
JASON MCFARLIN

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