

DEPARTMENT OF PLANNING  
 COUNTY OF MAUI  
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**BEFORE THE LAND USE COMMISSION  
 OF THE STATE OF HAWAII**

In the Matter of the Petition of:	)	Docket No. A89-642
	)	
C. BREWER'S PROPERTIES, INC.	)	DEPARTMENT OF PLANNING, COUNTY
	)	OF MAUI'S POSITION STATEMENT ON
To Amend the Agricultural Land Use District	)	WAILUKU PLANTATION, ET AL'S MOTION
Boundary into the Urban District For	)	FOR ORDER BIFURCATING DOCKET NO.
Approximately 626 Acres Situate at	)	A89-642; CERTIFICATE OF SERVICE
Wailuku and Piihana, Maui, Hawaii, Tax	)	
Map Key Nos.: 3-5-001: Portion 01,	)	
Portion 17; 3-4-07:02; 3-3-01:33, 39, and	)	
Portion 16; 3-4-32:10, 18 and Portion 01	)	
_____	)	

**THE DEPARTMENT OF PLANNING, COUNTY OF MAUI'S POSITION STATEMENT ON  
 WAILUKU PLANTATION, ET. AL'S MOTION FOR ORDER BIFURCATING  
 DOCKET NO. A89-642**

In accordance with §15-15-70 of the State Land Use Commission (LUC) Rules, the Maui County Planning Department (Department) files this Position Statement in response to Wailuku Plantation, et. al.'s Motion to Bifurcate that requests the following: 1) substitute Petitioners, 2) bifurcate the docket and issue a new docket for the Piihana parcel, 3) incorporate by reference all other pleadings, papers, legal memoranda, exhibits, and filings in Docket A89-642 or 4) confirm that following the issuance of a new docket number, that 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 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.

The Department of Planning respectfully requests a deferral of action by the Commission until a comprehensive analysis of the representations made, and conditions of approval, can be allocated between the Wailuku and Piihana Project Districts so that it can be verified that no required action is left with uncertainty of who will be responsible for its satisfaction. The Department of Planning may be in a position to support bifurcation, provided that the owners of the Wailuku and Piihana Project Districts submit a comprehensive analysis of the outstanding conditions and commitments remaining, and which owners are responsible for fulfilling those commitments. The movants have represented that it is their understanding that the pending motion is to bifurcate the docket without any change to existing representations or conditions, meaning that all conditions would apply to both the Wailuku and Piihana Project Districts equally after bifurcation.

In the event that the Commission moves forward with bifurcation without deferral for a comprehensive analysis and allocation of representations made, and conditions of approval, the Department of Planning requests that the Commission impose the following conditions on the bifurcation:

1. That the Petitioners provide current costs for the remaining project development and outstanding improvements within six months of bifurcation, as well as a detailed schedule for necessary approvals and development.
2. That within six months of bifurcation, the Piihana Project District owners verify the financial capability to complete the Piihana project as represented, consistent with §15-15-50(c)(9) of the Commission's rules.
3. That within six months of bifurcation, the Piihana Project District Petitioners submit a detailed report explaining how substantial compliance with conditions is being achieved

### **Petitioner Substitution and Recognition as Parties**

The Petitioners are seeking to create a separate docket for the Piihana project owners and

to formally recognize the new Petitioners as parties to this docket, substituting them for the former owners of the Piihana parcel. The Department notes that it is concerned about a variety of ongoing violations on the property.

As an example, two of the new Petitioner's lots are listed for sale on the MLS, and there was no notification provided to the LUC, as is required by Condition number 11, which states, "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 development of the Property." See **Exhibit 1**, which is a listing of such properties for sale. One lot can be identified as TMK (2) 3-4-032:056 and is owned by Larry S. Sky and the other lot can be identified by TMK (2) 3-4-032:057 and is owned by Elise Sari Travis. Because of the Petitioner's failure to notify the LUC about the intent to sell the two properties, it can be said that the Petitioners are in violation of the condition.

The Department is aware that the Piihana Project District now consists of 45 lots, some of which have been sold or are being offered for sale. This is based on the property consisting of multiple land commission awards that predated subdivision requirements. For Tax Map Key (2) 3-4-032:001, 45 separate lots have been identified that may be assigned a Tax Map Key, obtain a water meter, and be bought and sold (**Exhibit 2**). At the Status Hearing on September 26, 2019, the Petitioner represented that eight lots were sold to seven owners, representing approximately three acres. On August 28, 2020, the Department received notice that on August 27, 2020, the Petitioner notified the LUC that another lot, TMK (2) 3-4-032:010 consisting of 0.05 acres was sold. Several new owners have yet to be formally recognized as parties in this proceeding, specifically Edgar Somera, Fay Somera, Larry S. Sky, Dayong Zhao, Xiu Xiang Fang, Bong Hwa Shi Jordan, Wenxiao Liu and Elise Travis. The constant turnover of lots lends to confusion of who is responsible for what with respect to the docket. Bifurcation still has not yet been decided upon, so it is difficult to determine owner responsibility for which conditions of the original D&O.

In addition, the Department is uncertain whether the new owners are aware of the

representations made back in 1990, and the conditions that the LUC and County have imposed that must be met prior to development of each parcel, though those conditions are recorded on the property and run with the land. In the original D&O, under the "Findings of Fact" section, number 28 states, "Petitioner will offer either finished lots, house and lot packages, or a combination thereof." Number 137 states, "Petitioner believes that its request to reclassify the entire Property to the Urban District is appropriate at this time because the magnitude of the Project requires initial construction of infrastructure for the entire Project prior to beginning on-site construction of the housing units, which construction of infrastructure is estimated to require approximately five years." The Department notes that these representations were not heeded by Piihana's current owners/new Petitioners. In addition, it should be noted that there are already structures onsite that were built without permits, which is in violation of Condition number 10, which states that "Petitioner shall develop the Property in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of the Property." Photographs of structures that are already present onsite are attached as **Exhibit 3**. The Department wishes to note that one of the Petitioners, Bong Hwa Shi Jordan, already resides in one of the unpermitted dwellings that exists. The structure is also in violation of a floodplain easement held by the County of Maui as required as part of the Iao Stream Flood Control Project. The Department requests a separate status update to discuss the existing violations found onsite that conflict with the Land Use Commission's approval of the District Boundary Amendment.

Finally, the Department is concerned that selling portions of the whole project to individuals who may have no interest in, or capacity to participate in the coherent development of the Piihana Project District make the coordinated development of the Piihana Project District less feasible with each additional sale.

### **Bifurcation of Docket**

Given that there are different owners of the Piihana Project District and Wailuku Project

District areas, the Department acknowledges the benefits of bifurcation of this docket and the issuance of a new docket number for the Piihana Project District. The Piihana Project District area is not contiguous with the Wailuku Project District, is largely undeveloped, and has not received county level land use approvals or necessary building permits to build associated infrastructure. The responsibility for maintenance of each project area lies with the different owners. Because the properties are maintained by different owners, there are different development approaches and schedules. There are violations occurring in one part of the project district that are the responsibility of one group of owners but not the other. There will be costs associated with the future development of the Piihana Project District that RCFC Kehalani may not be willing to undertake, further contributing to the logic of bifurcating the docket. The Department may be in a position to be supportive of this request, provided that all substantive representations and conditions of the original 1990 D&O are clearly distributed amongst parties for each docket. Because the Petitioners are seeking bifurcation, the Department is requesting that the Petitioners provide an accounting of which representations and conditions apply to which owners, submit the proper requests to the Commission to amend, delete or leave in place the representations and conditions contained in the D&O, and allocate the conditions and representations amongst the appropriate Petitioners.

In addition, consistent with §15-15-50(c)(9) of the Commission's rules, the Department recognizes benefits of bifurcation; however, for Piihana Project District, which has not been initiated, it is necessary to establish that development, as represented, is financially feasible. In order to determine the viability of the project, the Department is requesting that within six months of bifurcation, the Petitioners provide current cost estimates to satisfy all existing obligations associated with the D&O, as well as details of construction scheduling, and a financing plan.

In Petitioner's letter dated December 3, 2019, the Petitioners provided an update on financing and bids being sought; however, no details or timeline were provided. The last estimated preliminary order-of-magnitude costs for the infrastructure was approximately \$92.73 million and construction cost for housing and related improvements was estimated at approximately \$400

million in 1989 dollars, as indicated in the D&O.

For every petition for District Boundary Amendment, the Petitioner is asked to provide a statement describing the financial condition with a current certified balance sheet and income statement as of the end of the last calendar year. Because there are new Petitioners and they are requesting a new docket, the same information should be provided, in order for the LUC and other agencies to verify the feasibility of project development. In addition, an estimated construction timeframe should be provided.

#### **Incorporate pleadings, papers, legal memoranda, exhibits, and filings from Docket A89-642**

In order to successfully develop the Piihana Project District, the Petitioners need to have an understanding of what transpired for Docket 89-642; therefore, the Department requests the incorporation of pleadings, papers, legal memoranda, exhibits and filings from the docket. The Department noted in its April 29, 2019 letter to Vernon Lindsey of Wailuku Plantation LLC that the Petitioner also needs to understand that in addition to State requirements, there are other County land use entitlements that have been obtained, specifically Project District Phase I approval/Change of Zoning and Project District Phase II approvals with conditions that must be adhered to. The Department provided copies of the approvals to Mr. Lindsey and that information should also be made available to the other Petitioners. We note that prior to any development within the Piihana Project Area, a Project District Phase III approval will be necessary.

#### **Insulation from Original Docket**

The Department is not opposed to the LUC's confirmation that the Petitioners and the Piihana Project District will be insulated from any D&O issued by the Commission in the original docket, and that any D&O issued under the new docket number shall not affect or apply to any petitioners or property remaining in the original docket. A bifurcation assumes that what will occur in one docket will not affect the other. Because the Petitioner acknowledged they are not seeking to

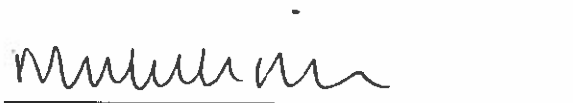
amend the original conditions of the 1990 D&O, as previously mentioned, the Department may be in a position to support bifurcation, as long as the representations are distinguishable and the conditions of approval are clearly divided amongst the dockets. Also, the Department requests that construction timing and financing information for the Piihana Project District are thoroughly explained and submitted to the Commission for review and approval within six months of bifurcation.

### **Conclusion**

If the Commission moves forward with bifurcation without deferral for additional information, the Department requests the following conditions be applied to the bifurcation:

- 1) That the petitioners provide current costs for the remaining project development and outstanding improvements within six months of bifurcation, as well as a detailed schedule for necessary approvals and development.
- 2) That within six months of bifurcation, the Piihana Project District owners verify the financial capability to complete the Piihana project as represented, consistent with §15-15-50(c)(9) of the Commission's rules.
- 3) That within six months of bifurcation, the Piihana Project District Petitioners appear before the Commission and provide an Annual Report on how substantial compliance with conditions is being achieved.

DATED: Wailuku, Hawaii, September 2, 2020.



MICHELE MCLEAN, AICP  
Planning Director  
Department of Planning

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Agricultural District Boundary into the Urban )		
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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>	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served on the following on the date indicated below:

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DATED: Wailuku, Hawaii, September 2, 2020.

  
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MICHELE MCLEAN, AICP  
Planning Director  
Department of Planning

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