



LAND USE COMMISSION
STATE OF HAWAII

2020 OCT -5 P 12:17

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.	)	ORDER DEFERRING DECISION-
	)	MAKING ON PETITIONERS
To Amend The Agricultural Land Use	)	WAILUKU PLANTATION LLC,
District Boundary Into The Urban	)	EDGAR SOMERA, FAY SOMERA,
District For Approximately 626 Acres	)	LARRY S. SKY, DAYONG ZHAO, XIU
Situate At Wailuku And Pi'ihana,	)	XIANG FANG, BONG HWA SHI
Maui, Hawai'i, Tax Map Key Nos.:	)	JORDAN, WENXIAO LIU AND ELISE
3-5-01: Portion 01, Portion 17;	)	TRAVIS' MOTION FOR ORDER
3-4-07: 02; 3-3-01: 33, 39, And	)	BIFURCATING DOCKET NO. A89-642;
Portion 16; 3-4-32: 10, 18 And	)	AND CERTIFICATE OF SERVICE
Portion 01)	
_____)	

ORDER DEFERRING DECISION-MAKING ON 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

AND

CERTIFICATE OF SERVICE

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawai'i.

October 5, 2020 by

Executive Officer



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STATE OF HAWAII

2020 OCT - 5 P 12:19

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ORDER DEFERRING DECISION-MAKING ON PETITIONERS WAILUKU
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TRAVIS' MOTION FOR ORDER BIFURCATING DOCKET NO. A89-642

On August 11, 2020, Wailuku Plantation LLC ("WP"), Edgar Somera and Fay Somera (collectively "Somera"), Larry S. Sky ("Sky"), Dayong Zhao and Xiu Xiang Fang (collectively "Zhao"), Bong Hwa Shi Jordan ("Jordan"), Wenxiao Liu ("Liu"), and Elise Travis ("Travis") (collectively "Movants") filed a Motion for Order Bifurcating Docket No. A89-642, a Memorandum in Support of Motion, an Affidavit of Jason

McFarlin, a Notice of Hearing on Motion, and a Certificate of Service (collectively "Motion for Order Bifurcating"), with the State of Hawai'i Land Use Commission ("Commission"), pursuant to Hawai'i Administrative Rules ("HAR") §§ 15-15-70 and 15-15-71.

In their Motion for Order Bifurcating, Movants requested the following:

- (i) substitute WP for C. Brewer Properties, Inc. ("C. Brewer"), the original Petitioner in this docket, with respect to the portion of the Petition Area designated by TMK Nos. (2) 3-3-001: 033, 039, and 016 (portion); (2) 3-4-032: 010, 018, and 001 (portion) (collectively "Pi`ihana Parcel" or "Pi`ihana Project District"), and formally recognize WP as a party to this docket;
- (ii) substitute Somera for C. Brewer with respect to the portion of the Pi`ihana Parcel designated by TMK No. (2) 3-4-032: 018, and formally recognize Somera as a party to this docket;
- (iii) substitute Sky for C. Brewer with respect to the portion of the Pi`ihana Parcel designated by TMK No. (2) 3-4-032: 001 (portion), and formally recognize Sky as a party to this docket;
- (iv) substitute Zhao for C. Brewer with respect to the portion of the Pi`ihana Parcel designated by TMK No. (2) 3-4-032: 001 (portion), and formally recognize Zhao as a party to this docket;
- (v) substitute Jordan for C. Brewer with respect to the portion of the Pi`ihana Parcel designated by TMK No. (2) 3-4-032: 001 (portion), and formally recognize Jordan as a party to this docket;
- (vi) substitute Liu for C. Brewer with respect to the portion of the Pi`ihana Parcel designated by TMK No. (2) 3-4-032: 001 (portion), and formally recognize Liu as a party to this docket;
- (vii) substitute Travis for C. Brewer with respect to the portion of the Pi`ihana Parcel designated by TMK No. (2) 3-4-032: 001 (portion), and formally recognize Travis as a party to this docket;

- (viii) bifurcate this docket and issue a new docket number for the Pi`ihana 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 Movants and the Pi`ihana Parcel shall remain subject to the same conditions as set forth in the Findings of Fact, Conclusions of Law, and Decision and Order dated January 30, 1990, following issuance of a new docket number for the Pi`ihana Parcel, Movants and the Pi`ihana 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.

On August 26, 2020, RCFC Kehalani, LLC ("RCFC Kehalani"), filed a Joinder in Movants' Motion for Order Bifurcating, Declaration of Randall F. Sakumoto, Exhibits "1"-"5," and a Certificate of Service.

On August 27, 2020, Jason B. McFarlin, Esq., counsel to the Movants, filed a letter informing the Commission that on February 14, 2020, approximately 0.05 acres, identified as TMK No. (2) 3-4-032: 010, within the Pi`ihana Project District was sold to Ronald S. Vilorio.

On September 2, 2020, Movants filed a Supplemental Certificate of Service of Movants' Motion for Order Bifurcating.

On September 2, 2020, the State of Hawai`i Office of Planning ("OP") filed a Response to the Movants' Motion for Order Bifurcating and a Certificate of Service.

Docket No. A89-642 C. Brewer Properties Inc.
Order Deferring Decision-Making On 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

On September 2, 2020, the County of Maui Department of Planning ("DP") filed a Position Statement on Movants' Motion for Order Bifurcating, Exhibits 1 through 3, and a Certificate of Service.

On September 3, 2020, Mr. McFarlin filed a letter informing the Commission that the most recent owner of the Pi`ihana Parcel, Ronald S. Vioria, had been provided with a copy of the Movants' Motion for Order Bifurcating and had authorized Mr. McFarlin to include him in the representation of the Movants for the sole purpose of matters related to the Movants' Motion for Order Bifurcating.

On September 3, 2020, Mr. McFarlin filed Ronald S. Vioria's Notice of Joinder in the Movants' Motion for Order Bifurcating ("Notice of Joinder") to substitute Mr. Vioria for C. Brewer with respect to the portion of the Pi`ihana Parcel designated by TMK No. (2) 3-4-032: 010, and to formally recognize Mr. Vioria as a party to this docket who joined in the Movants' Motion for Order Bifurcating.

On September 9, 2020, the Commission considered the Movants' Motion for Order Bifurcating at its meeting using the Zoom Webinar Virtual Meeting platform. Jason B. McFarlin appeared on behalf of the Movants. Randall F. Sakumoto, Esq., appeared on behalf of RCFC Kehalani. Michael Hopper, Esq.; Jordan Hart; and Adam Parness appeared on behalf of the DP. Dawn Apuna, Esq., and Rodney Funakoshi appeared on behalf of OP.

At the meeting, the Commission heard public testimony from James Buika on the Movants' Motion for Order Bifurcating.¹ Following the receipt of public testimony, the parties presented their cases on the Movants' Motion for Order Bifurcating.

Following discussion, a motion was made and seconded to (1) defer decision-making on the Movants' Motion for Order Bifurcating for a period of 60 days after which the Commission shall resume consideration of the matter at a hearing on November 19, 2020; (2) require that no later than November 5, 2020, Movants, RCFC Kehalani, OP, and the DP shall file with the Commission all written documents and position statements on the Movants' Motion for Order Bifurcating; and (3) authorize the Commission Chair to sign the Order in this matter on behalf of the Commission. Thereafter, an amendment to the motion was made and seconded to allow for the 60-day deferral period to be extended at the discretion of the Commission Chair for up to an additional 60 days if the parties are agreeable to an extension. There being a vote tally of 8 ayes and 0 nays, the amended motion passed.²

¹ The Commission also received written testimonies from Mr. Buika and Gary Elster and entered them into the record.

² There are presently eight sitting members on the Commission. The ninth seat is currently vacant. Docket No. A89-642 C. Brewer Properties Inc. Order Deferring Decision-Making On 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

ORDER

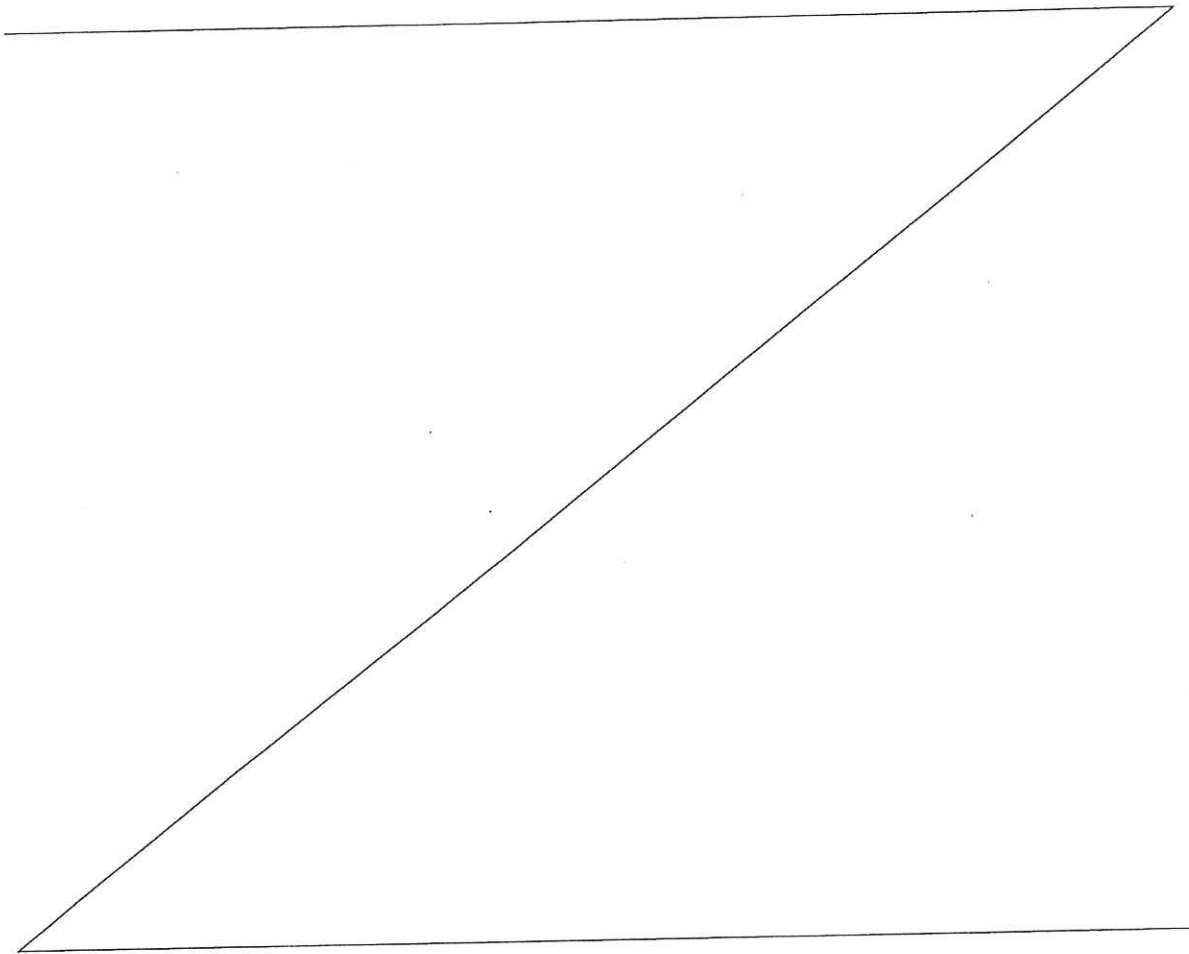
The Commission, having duly considered the oral and written arguments of the Movants, RCFC Kehalani, OP, and the DP in the proceeding, and an amended motion having been made and seconded at its meeting on September 9, 2020, using the Zoom Webinar Virtual Meeting platform, and the amended motion having received the affirmative votes required by HAR § 15-15-13, and there being good cause for the amended motion,

HEREBY ORDERS that decision-making on the Movant's Motion for Order Bifurcating be DEFERRED for a period of 60 days after which the Commission shall resume consideration of the matter at a hearing on November 19, 2020, where the parties shall address the Commission's concerns, including, but not limited to, the allocation of responsibility between Movants and RCFC Kehalani to comply with the representations and conditions in the docket, how they plan to meet or demonstrate that they have met the affordable housing requirement as well as their financial capability and development timelines to move forward and complete their projects.

IT IS ALSO ORDERED that no later than November 5, 2020, Movants, RCFC Kehalani, OP, and the DP shall file with the Commission all written documents and position statements on the Movants' Motion for Order Bifurcating.

IT IS FURTHER ORDERED that at the discretion of the Commission Chair, the 60-day deferral period may be extended for up to an additional 60 days if the parties are agreeable to an extension.

IT IS ALSO FURTHER ORDERED that the Commission Chair shall sign the Order in this matter on behalf of the Commission.



ADOPTION OF ORDER

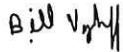
This ORDER shall take effect upon the date this ORDER is certified by this Commission.

Done at Honolulu, Hawai'i, this 5th day of October, 2020, per motion on September 9, 2020.

LAND USE COMMISSION

APPROVED AS TO FORM

STATE OF HAWAII



Deputy Attorney General

By



JONATHAN LIKEKE SCHEUER

Chairperson and Commissioner

Filed and effective on:

10/5/2020

Certified by:



DANIEL ORODENKER

Executive Officer



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the ORDER DEFERRING DECISION-MAKING ON 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 was served upon the following by either by hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
Mary Alice Evans, DIRECTOR Office of Planning 235 S. Beretania Street Rm. 600 Honolulu, Hawai'i 96813	X		
DAWN TAKEUCHI-APUNA, ESQ. Deputy Attorney General Hale Auhau, Third Floor 425 Queen Street Honolulu, Hawai'i 96813		X	
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 et al			X
MICHELE MCLEAN Director, County of Maui Planning Department 250 S. High St Kalana Pakui Bldg Ste 200 Wailuku, HI 96793		X	
MICHAEL HOPPER, Esq. Deputy Corporation Counsel 200 S. High St. Kalana O Maui Bldg 3rd Flr Wailuku, HI 96793			X
McCorrison Miller Mukai MacKinnon LLP RANDALL SAKUMOTO, Esq KELSEY S. YAMAGUCHI, Esq. Five Waterfront Plaza, 4th Floor 500 Ala Moana Boulevard Honolulu, Hawai'i 96813			X

	HAND DELIVERED	REGULAR MAIL	CERTIFIED MAIL
EVERETT DOWLING BRIAN IGE RCFC Kehalani, LLC 2005 Main Street Wailuku, Hawai'i 96793			X

Honolulu, Hawai'i, October 5, 2020.



DANIEL ORODENKER

Executive Officer