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 RESPONSE TO PETITIONER RCFC KEHALANI, LLC'S RESPONSE TO ORDER DEFERRING DECISION MAKING ON PETITIONERS WAILUKU PLANTATION, LLC, ET. AL'S MOTION FOR ORDER BIFURCATING DOCKET NO. A89-642; CERTIFICATE OF SERVICE
	)	
To Amend the Agricultural Land Use District Boundary into the Urban District for Approximately 626 Acres Situate at Wailuku and Piihana, Maui, Hawaii, Tax Map Key Nos.: 3-5-01: Portion 01; Portion 17; 3-4-007:02; 3-3-01:33, 39, and Portion 16; 3-4-32:10, 18 and Portion 01	)	
	)	

THE DEPARTMENT OF PLANNING, COUNTY OF MAUI'S RESPONSE TO PETITIONER RCFC KEHALANI, LLC'S RESPONSE TO ORDER DEFERRING DECISION MAKING ON PETITIONER'S WAILUKU PLANTATION, ET. AL'S MOTION FOR ORDER BIFURCATING DOCKET NO. A89-642

The County of Maui Department of Planning (Department) hereby submits its response to Petitioner RCFC Kehalani, LLC's Response to Order Deferring Decision Making on Petitioners Wailuku Plantation, et. al's Motion for Order Bifurcating Docket No. A89-642. The Department is submitting this response to outline several areas of concern with respect to compliance with the Decision and Order (D&O) in this docket as applied to the Kehalani Project District. A response to issues of concern was transmitted by Petitioner RFCF Kehalani, LLC, dated November 25, 2020, however it does not provide substantive information to address the concerns outlined below (SEE ATTACHED: Letter to Michael J. Hopper, Esq. dated November 25, 2020). **(Exhibit 1)**.

Affordable Housing

Condition one of the original D&O states:

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

It is further stated that the fulfillment of the condition could be accomplished through various means, as follows: 1) the construction and distribution of units in the Property or through other projects within the same Community Plan District as the Property; 2) construction of rental units to be made available at rents which families in the specific income ranges can afford, as per the approval of HHFDC and the County of Maui; 3) the obtainment of special credit, as determined by HHFDC and the County for the provision of more than 10 percent of the total units of affordable housing to persons with incomes less than 80 percent of Maui's median income and for housing for special needs groups, as per determination by HHFDC and the County.

With regard to the State Land Use Commission's (LUC) Order for Petitioners to address "how they plan to meet or demonstrate that they have met the affordable housing requirement as well as their financial capability and development timeline to move forward and complete their projects," the Petitioner RCFC Kehalani is stating that they are in compliance with affordable housing requirements. The Petitioner acknowledges that former Petitioner C. Brewer Properties, Inc. advised the LUC in its Annual Report to the LUC dated August 31, 1991, that it agreed to provide 50 percent of the homes in the combined project districts to be in affordable categories starting at 51 percent Area Median Income (AMI). The Hawaii Housing Finance and Development Corporation (HHFDC) was to be consulted with respect to the review and approval of the

tentative agreement. Petitioner RCFC is stating that it has been abiding by Condition number one of County Ordinance 2053 that establishes the Wailuku-Kahului Project District 3 zoning in order to fulfill the affordable housing requirement.

The County's position on the Petitioner's response is that the State LUC and County zoning processes are distinct, each established by its own legal authority. The Petitioner has been cooperating with the County Department of Housing and Human Concerns on the fulfillment of the affordable housing credits earned to date; however, in its response, Petitioner RCFC has not indicated that there has also been ongoing consultation with HHFDC. It is the Department's position that an approval of the Petitioner's special credit approach to satisfying affordable housing by HHFDC should be in the record, as well as any input that HHFDC has provided with respect to the project, and that LUC has the final approving authority of condition fulfillment.

Moreover, Petitioner RCFC and prior Petitioner's understanding of how to fulfill the affordable housing condition differs from what is actually required to fulfill requirement. The LUC condition states that 60 percent of the residential units shall be for affordable housing, with 30 percent of the residential units provided up to the 120 percent income range and 30 percent provided for the 120-140 percent income range. In its 1991 Annual Report, former Petitioner C. Brewer had indicated that it reached a tentative agreement with the County to provide 50 percent of the homes starting at 51 percent of the median family income.

The Petitioner's November 25, 2020, letter references statements from Director of Human Concerns in the minutes of an informative meeting of the Council's Planning and Economic Development Committee Meeting on August 21, 1991 as verification of an agreement to the configuration of development of affordable units, as described in DBA condition one. However, later in the same transcript, the same Director of Human Concerns goes on to clearly describe an anticipated agreement with the Petitioner in the future tense as something that would be needed for the Department to effectively regulate the development of affordable housing (Pages 12-15, minutes of Planning & Econ. Develop. Comm. – 8/21/91). Additionally, Mr. David Blane, representing C. Brewer Properties explains the DBA process with the LUC to Committee members, in reference to the condition (one) on affordable housing, "You still absolutely have to go and get the three-way,

or the two-way concurrence between the County and the HFDC." It is the Department's opinion that this information must be sufficiently documented for the record before final compliance can be determined.

The Department respectfully requests a clear accounting of how, when and where affordable housing units were developed and/or credits were used in order to satisfy condition one, and that the approvals of the approach to satisfying affordable housing by HHFDC and DHHC to the extent that they are required in the language of the condition, are provided for review by the Department and the LUC

Development Timelines

The Department has reviewed the Petitioner's summary of the infrastructure work which remains to be completed for the Wailuku Project District. The Department believes there are additional items yet to be completed. In the Department's letter to the LUC dated March 11, 2020, the Department stated that upon review of the Petitioner's 2019 Annual Report, there are outstanding issues that the County believes still must be addressed (**Exhibit 2**). Outstanding issues that have yet to be resolved include: the provision of land for and development of a community center, and providing the Department with an updated roadway master plan listing streets and progress made to date in road dedication to the County as overall compliance with roadway construction approved by the State Department of Transportation and County of Maui.

With regard to the development of the community center for Kehalani, at the November 2, 1989 LUC hearing for the DBA of Docket A89-642 under review in this Department statement, C. Brewer Properties, Inc. (Petitioner) through its witness's testimony stated that it would provide the land for and develop a community center. The DBA approval obligates the Petitioner to fulfill that representation.

During the November 2, 1989 LUC hearing regarding the Petitioner's request to reclassify approximately 624 acres of land from agriculture to urban to develop a residential community, the issue of a community center on the Wailuku portion was discussed. This discussion led to Finding of Fact No. 85 on page 22 of the Decision and Order, which states: "*85. Petitioner proposed to develop and dedicate approximately 110 acres of parks and open space as well as a community center within the Wailuku Project District.*"

That representation became a binding obligation through Condition No. 10 on page 50 of the D&O, which states: "*10. Petitioner shall develop the Property in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of the Property.*"

In the attachments Petitioner's November 25, 2020 letter, reference is made to a proposed resolution, which states in an October 23, 2020 letter to the Planning Director, on page 4, under the heading, "Next Steps", no 4., "RCFC shall petition the State Land Use Commission to determine whether the requirements of FOF 85, require it to construct a community center." The Department concurs that the LUC is the proper entity to verify if representations made by Petitioners to the LUC in obtaining approvals are expected to be enforced by the Department of Planning.

Second, with regards to roadway and infrastructure dedication to the County of Maui, the Department requests an updated master plan of roadways and sewer/wastewater lines in order to monitor the dedication process to the County. The Department believes that this request follows the intent of Conditions No. 2 and 5 on pages 48 and 49 of the D&O which speak to the review, funding, construction, and approval of roadways and wastewater transmission lines. The Department understands that there is overlap with conditions of zoning required from the County but emphasizes the independent authority of the LUC and the Maui County Council, emphasizing that such dedication of infrastructure is part of the obligations of the Petitioner prior to finishing the Kehalani Project District.

With regard to roadway infrastructure and sewer/wastewater line dedication to the County of Maui, the Petitioner's November 25, 2020 letter acknowledges the issue but provides limited detail and context, without clearly conveying any potential obstructions to completion, how those obstructions may be resolved and when satisfaction of applicable conditions is reasonably expected to be established.

Third, in 2019, the Petitioner's representative, Brian Ige, met with Department staff and provided plans for a pathway connection for mauka subdivision residents to Puu Kukui School through the adjacent property that is zoned to be the site of the community center (**Exhibit 3**). It is the Department's understanding that this connection is to be built concurrent with the development of Kehalani Master Plan Module 12 when

utilities are installed for the subdivision Because of the existing grade, the pathway connection must be made through the adjacent property, which has a less steep slope, for safer travel to and from the School. The connection would be built on land that RCFC controls and the Kehalani Homeowner's Association would be responsible for path maintenance. The Department acknowledges that in the Petitioner's response, the bike path and landscaping improvements are listed as part of the remaining infrastructure work, and there is an approximate cost provided. The Department would like a formal acknowledgment that this listing also includes the pathway connection to the School, or we ask that the Petitioner itemize the outstanding obligation.

The Petitioner's November 25, 2020 letter acknowledges the issue but emphasizes that the commitment was made outside of the LUC process. However, the pedestrian pathway is located within property identified as the Community Center site outlined in FOF 85, and serves the purpose of providing access for surrounding residents to and through the property, as would be reasonably expected for a community center facility integrated into a residential community. This facet of the community center development will remain an issue of concern for the Department, until a conclusion is established by the LUC on FOF 85.

DATED: Wailuku, Hawaii, December 1, 2020.

MICHELE MCLEAN, AICP
Planning Director
Department of Planning

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November 25, 2020

Via Email and First-Class Mail: Michael.Hopper@co.maui.hi.us

Michael J. Hopper, Esq.
Deputy Corporation Counsel
County of Maui
200 South High Street
Wailuku, HI 96793

Re: Kehalani – Wailuku Project District 3

Dear Michael:

Thank you for your email dated November 21, 2020, transmitting the list of issues that the Planning Department believes are outstanding. I've restated each of the issues you've raised and provided our respective responses immediately thereafter.

Affordable Housing: Clear explanation of how compliance maths work, and documentation of approval of approach by HHFDC with documentation of approval of approach and current compliance by DHHC. CONDITION 1.

In 2012, before RCFC Kehalani, LLC acquired any interest in the Wailuku Project District 3, it submitted a written request to the Department of Housing and Human Concerns ("Housing") seeking confirmation on the status of affordable housing credits which had been earned to date through the sale of units at affordable prices. In response, Housing issued its letter dated May 8, 2012, advising RCFC Kehalani that the project had earned 730 affordable housing credits as of April 1, 2012. In reliance upon this response, RCFC Kehalani completed its deed in lieu of foreclosure acquisition of the Wailuku Project District 3 on January 22, 2013. From and after 2013, RCFC Kehalani submitted and continues to submit each year a spreadsheet to Housing informing them of the affordable housing sales made to date. In response, Housing has responded each year with a letter confirming the status of compliance. According to Housing's letter dated July 23, 2013, the Wailuku Project District 3 had a deficit of unit sales within the 51% to 65% income group. This anomaly was promptly corrected, and since that time Housing's annual letters confirm there has been no deficit in affordable housing sales. Attached to each of Housing's annual letters is a spreadsheet that shows exactly how compliance was determined. In my email to you dated November 6, 2020, I transmitted a hyperlink

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EXHIBIT /

to all correspondence in my files between RCFC Kehalani and Housing from 2012 to the present, which include all of the correspondence referenced above.

It's not clear what is meant by "approval of approach by HHFDC", or why you believe that HHFDC approval may be required in this instance. LUC D&O condition #1, 2nd paragraph reads: *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.* As I read this, RCFC Kehalani has been fulfilling and continues to fulfill condition #1 through the construction and distribution of units in the Wailuku Project District 3. Unless and until RCFC Kehalani seeks to fulfill the condition using *other projects*, I do not interpret condition #1 as requiring HHFDC approval.

In terms of the Housing's approach to the affordable housing requirement, I found several excerpts from the Council's Planning and Economic Development Committee meeting held on August 21, 1991 to be informative. As you'll see from the attached excerpt, the change in zoning for Piihana Project District 2 and the change in zoning for Wailuku Project District 3 were discussed as consecutive agenda items during that meeting.

During that meeting then Director of Human Concerns, Stephanie Aveiro, testified before the committee that:

" . . . C. Brewer Properties is proposing to develop the two project sites that are to include 3,000 dwelling units. The proposal states that since they are proposing to provide more than 10 percent of the total number of affordable units to persons with incomes less than 80 percent of Maui's median income, the State Housing Finance and Development Corporation, that's HFDC, and the County of Maui has said that they may reduce by 10 percent the 60 percent affordable units required. C. Brewer is proposing to develop 15 percent of the affordable units at 80 percent and below of the median income. The total number proposed to be affordable units is 50 percent of the project or 1,500. The Department has no problems with the 50 percent figure, and in fact is pleased that 15 percent of the 50 percent will be sold or rented at the low and low-moderate income group levels. . . ." (see pages 9 and 10 of the minutes)

Other statements were made during that same meeting which clearly reflect the County's thinking in terms of the affordable housing requirements that were

appropriate for this project, including the following statement made by then Councilmember Rick Medina:

"Just want to point out one thing that C. Brewer has agreed to and that is to build homes in the 51 percent to 65 percent of median income. No other developer is following the current County Code which develops this particular percentage basis and I see that 5 percent of those homes are going to be built in that income range which I think is precedent setting in addition to the conditions that they are agreeing to. These conditions that have been imposed on C. Brewer are also more stringent than I've ever seen in the many years that I've been there, so I would support this project district . . ." (see page 38 of the minutes)

- Roadway master plan: details, progress towards deduction to County. Conditions 2 and 5.

As noted in the response which we filed with the LUC on October 21, 2020, the roadways dedication to the County of Maui has been in process since 2017. I understand that the draft dedication deeds were provided to the County about 3-years ago, and that RCFC Kehalani has been waiting for the County's review and approval since then.

- Sewer lines: progress towards dedication to County. Conditions 2 and 5.

My understanding is that the sewer lines to be dedicated to the County are within the same roadways that are to be dedicated. Therefore, they will be dedicated at the same time the roadways are dedicated.

- Community Center (development): what is status, what is proposed resolution. Condition 10 and Finding of Fact 85.

A proposed resolution dated October 23, 2020 was sent by RCFC Kehalani's attorney, Jeffrey Ueoka, to the County Planning Director and County Director of Parks & Recreation. My understanding is that the Planning Director intends to respond during the week of November 30, 2020. A copy of the October 23, 2020 proposal is attached for your reference.

- Pedestrian Pathway: connecting mauka subdivision residents to Puu Kukui School through the adjacent property, statement of status and proposed resolution. 2010 Petitioner's representative, Brian Ige, met with Planning Department staff providing pathway plans.

My understanding is that this pedestrian pathway is not a requirement of either the LUC D&O, or any zone change ordinance. That being said, because the pathway would be located on the property identified as the "community center site" in the above-referenced proposal dated October 23, 2020, and because the proposal involves the potential conveyance of this site to the County, RCFC Kehalani is not planning to take any further action on this pathway at this time.

I trust the foregoing responds to your list of issues, and hope that you are prepared to move forward with finalizing the stipulation regarding bifurcation that was circulated earlier. Thank you.

Very truly yours,

McCorriston Miller Mukai MacKinnon LLP

Randall F. Sakumoto

Enclosures
cc: RCFC Kehalani, LLC
Jeffrey Ueoka, Esq.

Hospice, and they need this zoning change according to the Building Department before they can locate this building on this property.

COUNCILMEMBER NISHIKI: Thank you.

CHAIRMAN BAGOYO: Okay, any further discussions? If not, those in favor of the motion signify by saying aye, oppose nay.

VOTE: AYES: Councilmembers Hokama, Medina, Lee, Kawano, Nishiki, and Chairman Bagoyo
NOES: None
EXC.: Councilmember Tanaka

MOTION CARRIED.

ACTION: ADOPTION OF RESOLUTION AS REVISED.

ITEM 6 - REQUEST TO ESTABLISH PROJECT DISTRICT 2 AND CHANGE IN ZONING FROM COUNTY AGRICULTURAL DISTRICT TO PROJECT DISTRICT 2 AT PIIHANA (C. Brewer) (C.C. 90-520)

The next item on our agenda is Item 6. And this is the request to establish Project District 2 and change in zoning from County Ag District to Project District 2 at Piihana. Applicant is C. Brewer, and before the Chair will entertain any questions, I'd like to ask anyone who wishes to testify regarding this particular request and we do have two who signed up to testify. And the first person is Hank Roberts. As you come forward, the Chair will allow you three minutes to testify and if you do need more than three minutes, we will ask you to come back after everyone has a chance to speak. And if you could state your name for the record.

MR. ROBERTS: Good morning. Thank you, Mr. Chairman. My name is Hank Roberts, and I have been looking at what has been happening with the idea of developing Maui on all levels. And when this came out, I was at the public hearing on the 24th of last month when David Blane introduced at a public hearing C. Brewer's plans and this I would like to encompass District 2 and District 3, which I assume is further on the agenda today. So I've done a little studying. I'd like to just put this into the record if I may. First a letter that I wrote to David Blane after the meeting, and in part, I'd first like to thank you for _____ remarks to me after last night's public meeting. And I feel that the leaders--the large landowners, the builders, the energy providers and the educators--should all think in the long term. For to prolong the inevitable and not to build for the future will surely deprive our children's children of same. Now the technologies out there are waiting, clean energy is already a matter of fact, and as a large

multi-million dollar corporation with a diversified portfolio, I ask you to lead the people of Maui into a clean and environmentally sound future. Do not burden them with the archaic concepts that have put us where we are today. I would like to take you up on your offer to meet with you and discuss in detail the many facts of the future and the cost effective alternatives of the long term. And I've also _____ our Planning Director, Brian Miskae, and I'd like to read in part a letter I enclosed with the correspondence. As Planning Director, I want to _____ you in all my correspondence for I feel strongly that Planning codes and zoning ordinances determine the future of what we will look like. And I'm becoming more aware that unless things change, all the energy we put into growth is going to be a heritage of misery. Because of the environment along, I would like to feel all future development should be designed for people and not cars. Small towns, if you will, for most of the needs of daily life can be met. A general area, three to four acres, within said subdivision. A five minute walk from a person's home. Examples here on Maui were, and I emphasize were, Makawao and especially Paia would still retain some of the needs. No aspect of modern life has generated more environmental damage than has our car-dependent transportation system. Maui has a chance to lead the way, but time is running out. And as I said at C. Brewer's meeting, this is for my grandchildren's children and your's, too, ladies and gentlemen, for the future is what we make it. Thank you very much.

CHAIRMAN BAGOYO: Thank you, Hank. Any questions? Thank you very much. Harry Olson.

MR. OLSON: I'm Harry Olson, architect, representing the American Institute of Architects. I want to speak in favor of the project. We need housing very badly, and unless we do something of this nature, housing costs are rising considerably. We have to have an inventory. Unless you have an inventory of housing, the costs will rise. If these people that are so against it want this to continue the way they want it, people will no longer be able to live on Maui. If you want people to be two classes of people, then speak up against the projects because what you are winding up with is the rich and the poor. And the poor on Maui will be people that earn up to $50,000. They will never be able to afford a home. Housing is very expensive on Maui today. And for those who have now, don't say not in my neighborhood. Try to think in terms of what can be done. I think this will be a first-class project. It will also provide economics and work which Maui needs desperately. You got rid of the hotels. Now there's no more hotels to be built. If you want the people to leave Maui, continue to say no because that is what is going to happen. People will have to leave in order to live. They could not

live on Maui. And I've been a citizen of this town, Wailuku, for 26 years, and I've seen a lot of things happen. Therefore, I would like to say that we would like to speak for the project.

CHAIRMAN BAGOYO: Thank you, Harry. Any questions?

COUNCILMEMBER NISHIKI: Harry, just one correction on your testimony in case you did not know. We, not me, but we, the majority just recently approved a ten story hotel expansion in Wailuku/Kahului . . . . A hotel that is going to probably block off much of the scenic view down here where the Maui Beach . . .

MR. OLSON: You're talking about Kahului?

COUNCILMEMBER NISHIKI: Yes, Kahului. The other situation is you made a general statement about hotels.

MR. OLSON: I never had a chance to speak against it.

COUNCILMEMBER NISHIKI: You may not know . . . but Sports Shinko now is going ahead with their hotel in Pukalani. So there are two despite that we have a moratorium that is existing . . . .

MR. OLSON: Yes, and I think that both hotels are wrong.

COUNCILMEMBER NISHIKI: Thank you.

MR. OLSON: That's my personal opinion. That's not the American Institute of Architects' opinion.

COUNCILMEMBER NISHIKI: No, I just wanted to clarify the fact that hotel building despite the moratorium is still occurring . . . not county-wide.

CHAIRMAN BAGOYO: Any other questions?

MR. OLSON: Mr. Nishiki, if you approved it, you are wrong.

COUNCILMEMBER NISHIKI: I didn't.

CHAIRMAN BAGOYO: Okay. Any other questions. If not, thank you very much, Harry. Okay, we do have the department heads here. We have the department head from Human Concerns. We also have Charmaine Tavares from the Parks and Recreation Department. If you have any questions . . . and we also have, of course, Brian Miskae, the Planning Director. And the applicant is here. Mr. Blane, if you could come forward. The members may have questions. Do you have any questions for the applicant? Just for the record, David, if you could state your name.

MR. BLANE: Yes. My name is David Blane representing C. Brewer Properties. And I will follow your agenda whether you wanted to have department heads first or whether we want to proceed with the conditions or . . .

CHAIRMAN BAGOYO: Any questions for the applicant? I believe the conditions are also attached to your binder. If not, it was circulated this morning, I believe. Any questions on Piihana project district.

COUNCILMEMBER MEDINA: Mr. Chairman, just for clarification on the conditions for the cost of the units, does that Condition 1 indicate that the 5 percent of the homes will be built for people who earn 51 percent to 65 percent of median income. And, David, that translates into 150 units.

MR. BLANE: Right, that would be 5 percent of the aggregate total, right, of the 3,000.

COUNCILMEMBER MEDINA: So as far as you're concerned, you could build a home at 51 percent of the median income which in Maui County is about $20,000.

MR. BLANE: No, it's the guidelines for the HFDC is the median income for a family of four which is I think $36,000 or $37,000. So the price of that unit in today's dollars . . . these prices are determined by the State HFDC, not by the applicant. And it would be roughly about $82,000 in today's _____. That would be for people in the 65 percent or less income bracket?

MR. BLANE: I believe that's at the 65. I'm not sure exactly. That formula changes with the prevailing interest rates and the other criteria that they established.

COUNCILMEMBER MEDINA: Mr. Chairman, we have adopted this chart here, huh?

CHAIRMAN BAGOYO: That's before us this morning.

COUNCILMEMBER MEDINA: So then if we adopt this, can the Administration say that we want you to build 5 percent of the homes at 51 percent of the median income, would they interpret it that way? Would they force the developer to do it that way or would work within this range?

CHAIRMAN BAGOYO: Maybe we could ask that to the Planning Director or the Human Concerns Director.

MS. AVEIRO: Councilman Bagoyo, I would like to comment on that, and it does directly tie into my testimony here today. And it is explaining why we always ask for a more detailed breakdown of

the percentages. Because through experience we have found that if you say 51 to 65, all developers would put it at 65. And if you say 81 to 120, all the units are at 120. So we have in the past requested a more detailed breakdown. I do have a lot more to say, but I do have a prepared testimony.

COUNCILMEMBER MEDINA: That's the question here. As I read the proposal from Human Concerns, they say 50 percent of median or less, they want 3 percent. Now what we are adopting here is 51 percent to 65 percent. Now because you are proposing this, Stephanie, and what we're adopting is different, what is the Administration going to be? Are you going to enforce your policy on the developer or is the Council's policy going to be enforced?

MS. AVEIRO: We are coming with recommendations before the Council today, and we have come up with our own ideas. I think they're very similar to C. Brewer's and hopefully we can come to some agreement today. And it's not far off from what C. Brewer has proposed. And of course we would do whatever the Council approved in these conditions.

COUNCILMEMBER MEDINA: Well, Mr. Chairman, this is the first time I've heard of this proposal. All the months we've been working on this and I would just wonder if this is going to throw a monkey wrench into the whole bill today.

MS. AVEIRO: Councilman Bagoyo, would it be appropriate if I proceeded with my testimony? I don't believe we're very far off, Councilman Medina.

CHAIRMAN BAGOYO: Are there any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS.

Okay, you may proceed.

MS. AVEIRO: Well, I appreciate the opportunity to come and comment today. And I have provided you with a handout to make this presentation of percentages and numbers easier to follow. C. Brewer Properties is proposing to develop the two project sites that are to include 3,000 dwelling units. The proposal states that since they are proposing to provide more than 10 percent of the total number of affordable units to persons with incomes less than 80 percent of Maui's median income, the State Housing Finance and Development Corporation, that's HFDC, and the County of Maui has said that they may reduce by 10 percent the 60 percent affordable units required. C. Brewer is proposing to develop 15 percent of the affordable units at 80 percent and below of the median income. The total number proposed to be affordable units is 50 percent of the project or 1,500. The Department has no problems with the 50 percent figure, and in

fact is pleased that 15 percent of the 50 percent will be sold or rented at the low and the low-moderate income group levels. The Department's proposed percentages for affordable dwelling units for large projects is listed on Page 2. This is what we would normally require or ask of large developments. The reason for the more detailed breakdown is because our experience has been that if you say 80 percent and below all developers will sell all units at the 80 percent level. That's not bad, that's good economics. If you say 81 percent to 120 percent of the median, all units have price tags at the 120 percent level. Therefore, the Department now requests that whenever we are asked a more detailed breakdown to assure persons at all levels of incomes are provided for. Page 3 of the handout is what C. Brewer has proposed in its conditions. It is very similar to the Department's, and we have no problems with the general percentages on Page 3. However, we are recommending that there be a more detailed breakdown within each percentage group. Page 4 is our recommended percentages of dwelling units for the Wailuku and the Piihana projects. It's agreeing with them on the general percentages and asking for a more detailed breakdown within each. Page 5 provides numbers for those percentages. And it's for your information and future reference. As an example, whenever we say 80 percent of the median annual income, that means the monthly rate, the monthly rent of $782 or a selling price of $90,261. When you hear 51 percent of the median annual income, that means the monthly rent of $489 or a selling price of $53,000. And when you hear 140 percent of median annual income, that means $1,368 is the monthly rent and $165,137 is the selling price. And let me say here today that the median annual income is $39,100 for a family of four. The Department just has three additional comments regarding the proposed conditions. Those are detailed for you on Page 6. In past discussions there were some concerns expressed that all affordable units would be located in the Piihana project. Therefore, the paragraph starting with, "A. The applicant shall . . ." was suggested. Everybody with me? "The applicant shall provide a maximum of two-thirds of the dwelling units in the Piihana project district." The Department is in agreement to the two-third maximum. We would like to recommend the paragraph be strengthened with the addition following the percentage distribution shown above or words to that effect. We would want it to be clear that all of the low and the low-moderate levels not be the two-third maximum. We have no objections to the three possible alternatives to fulfill the conditions as long as the statement shall be mutually agreeable to the petitioner and the County is included. We are suggesting that all reference to HFDC in the last paragraph on Page 2 and the first paragraph on Page 2, and that's under Piihana's Exhibit, and the last two paragraphs on Page 2 dealing with the Wailuku project be deleted. Unless there is something the Department is unaware of, agreement by HFDC is not appropriate. Finally,

in the third paragraph on Page 2, the second paragraph . . . I'm sorry the third paragraph on Page 2 for Piihana and the second paragraph on Page 2 for Wailuku, the words, "insofar as possible" should be deleted and the words, "prior to or" be added to ensure that affordable housing requirement units be constructed prior to or concurrently with the completion of the market units. That concludes this Department's comments and recommendations, but on a final note and for the record, the Department of Human Concern's number one priority is to increase the affordable housing unit inventory in this County. We would like to make one last recommendation and that is for everyone here to do, here today do whatever it will take to get this project moving. We need those 1,500 affordable units now. Thank you.

CHAIRMAN BAGOYO: Thank you, Stephanie. Any questions to Stephanie? Councilwoman Lee.

COUNCILMEMBER LEE: I'll yield to Mr. Nishiki.

CHAIRMAN BAGOYO: Councilman Nishiki, you're recognized.

COUNCILMEMBER NISHIKI: Stephanie, you know, this is the first time that I've read the language itself in regards to these conditions. And I don't know whether you read the initial paragraph of the conditions where it talks about and an important statement that may be an oversight. Maybe you can look at it and tell me today or maybe next time. This condition may be fulfilled through construction and distribution agreements in the property or through other projects within the same community planned district as the property. In other words, and I need some clarification of this, it could be within this whole Wailuku/Kahului community plan. It does not mean and I'm concerned about this only because of the area up here in Wailuku Heights. I'm sure that the Company may look and say, hey, we know what these units and land is selling for now up in Wailuku Heights. Three hundred, four hundred thousand dollars. I mean, that's what they're doing. We know that two big golf courses that slipped on there probably illegally are being put in that Maalaea area. And we know that under this language, and you take it out HFDC, which I'm glad because I think that we should be in control of what these guys are planning to do. If they're saying that they want to be responsible and provide the kind of housing that we need here in Maui County for our residents now living here. I don't care about other people coming to this County. You know, the people that live here right now that need it. And so the concern has to be what this terminology means as you read it and perhaps the Corporation Counsel needs to instruct this Committee because as far as I'm concerned, it does not mean that the affordable units have to be done within these two

project districts as I read it. Is that a true fact or not on this condition?

CHAIRMAN BAGOYO: Is that a question to Stephanie or Corporation Counsel?

COUNCILMEMBER NISHIKI: Or your legal . . .

MS. AVEIRO: I would like to say that we recognize in the wording here that there were three possible alternatives to fulfill this condition. And as I stated, we have no objections to the three possible alternatives as long as the statement shall be mutually agreeable to the petitioner and the County. And which means that we would have to discuss this and seriously consider them trying to put it somewhere else. And also in that same paragraph is remove HFDC from that agreement. It would be between the petitioner and the County.

COUNCILMEMBER NISHIKI: . . . (inaudible) . . .

MS. AVEIRO: We can discuss removing the second alternative or be sure that we will have to agree to whatever they propose. And I wanted to change the terms to "shall be mutually agreeable to the petitioner and the County".

COUNCILMEMBER NISHIKI: Stephanie, the concern has to be this, and I will outline to you why. I don't think that, I don't think that this is what perhaps they want to do, but I'm concerned that so-called poor people and rich people should be able to live together. I don't care to see so-called rental units and that's another _____ that we have to spell out also. That people that or we so-called say may not be able to buy so, therefore, they should rent in a development such as this would include 500 or 600 acres when we talk about Piihana and this prime agricultural land in Wailuku Heights area of being developed. And I would need to understand this because in this statement here, in the conditions here, it does not guarantee that the same amount of people that we feel may be of a lower income because maybe the industries that prevail here in Maui County is the hotel industry which pay very little, these workers that help this industry should be subjected to live in a place that may be not as nice. And in these conditions, it does not state specifically that some of the housing being planned up here are where the affordable units should be. Second, . . .

CHAIRMAN BAGOYO: Councilman Nishiki, is the questions . . .

COUNCILMEMBER NISHIKI: Yes, I'm going to ask her the question as soon as . . .

CHAIRMAN BAGOYO: I want to remind you that what we want to do here . . . there's going to be ample time for debate and discussions. If you have a question to the department heads, I would ask you to ask those questions rather than making comments. There will be a time to make some comments.

COUNCILMEMBER NISHIKI: Yes, I gotta give the basis of what my philosophy is, Mr. Chairman.

CHAIRMAN BAGOYO: Yes, so if you could ask the questions, I would appreciate it.

COUNCILMEMBER NISHIKI: And secondly, there are many people here for the general plan revision, and I don't know what time . . . I think it was 10:15 when it was posting. So we can discuss this after that at 10:15 if we want to. I don't want to rush through this one here, Mr. Chairman, because we don't have the lack of time. I think now that we got Stephanie here whom we never had before, it is important now to discuss what the development is really going to do and the concerns. Stephanie . . .

CHAIRMAN BAGOYO: If I may, Mr. Nishiki, that's why I'm asking you that since we have Stephanie and Parks here, what I would like you to concentrate on is asking the questions to the experts as opposed to making comments. There will be a lot of time to make comments when we discuss this particular project.

COUNCILMEMBER NISHIKI: Well she has to base her thoughts on perhaps my thoughts also.

CHAIRMAN BAGOYO: Okay, thank you.

COUNCILMEMBER NISHIKI: Stephanie, the other concern is that these people here may have a choice to either provide rental or fee. And I do not think it should be left up to them. I think that your Department should have, if you don't have now, or can get an idea of people on the waiting list and the kind of incomes they make to look at where their priority of the affordable ranges are, okay. Because when these guys get this zoning, they're going to be able to make beaucoup profits on the lots that are upper that are less than 50 percent requirement and the sky is the limit. And they already know what these Wailuku Heights lots are selling for. So do you have a comment in regards to that aspect, the rental itself and not fee and what perhaps the need is within Maui County on the affordable?

MS. AVEIRO: These conditions proposed by C. Brewer does not discuss what the breakdown is between rentals and for fee or for sale. It is a question that we had ourselves. I would like to suggest at this time that maybe we write something in that says that they must discuss with us because I think we're wondering

ourselves. I think the need in Maui is so great that these 1,500 units at these detailed breakdown with the different, you know, various income levels, is a good start. We're certainly not going to be exceeding any of our needs. But with this more detailed breakdown, we're bound to hit a lot of different income levels and I did have one other comment about what you said in the beginning. The way that paragraph is stated right now, I don't believe it's a strong enough statement. And as I said before, that's why we should change the wording to "shall be mutually agreeable", not as may be mutually agreement, agreeable. And secondly, by saying that they had to build affordable units prior to or concurrently with the market rate units, it would encourage C. Brewer to not stray too far from what the Council and what the Administration is looking at. If they came in and started talking about a brand new piece, it would be like starting from square one and, remember, they have to do the affordable units prior to or concurrently. So I think we have, you know, subtly but, of course here I'm saying, subtly stated that we want those affordable units in these two projects of which only two-thirds can be in Piihana. That's two-thirds of the 600 units is 400. The rest, 1,500 minus 400 leaves 1,100 affordable units that have to be put somewhere else. And we're saying please don't come and talk to us about a third site. That means 1,100 units has to be in the Wailuku area.

COUNCILMEMBER NISHIKI: You know, it amazes me, but I need to ask you this question. Have you ever sat down with this developer and discussed this project district itself?

MS. AVEIRO: Not as yet.

COUNCILMEMBER NISHIKI: You've not done it yet?

MS. AVEIRO: Not as yet, no. We did have a full afternoon of meetings between the Housing Division Coordinator, Ed Okubo, the Deputy, Henry Oliva, and myself yesterday. And he brought me up to date.

COUNCILMEMBER NISHIKI: Would you consider not trying to build your ego up or anything but just trying to get us facts, you to be or your Department to be the one that would have the expertise in perhaps what type of housing we need based on the applicants and the people that come in and sign for housing here in the County of Maui?

MS. AVEIRO: Definitely. In fact in the wording where it says, and agreeable with the County of Maui, I would like to suggest that we put with the Department of Human Concerns, County of Maui to even get further to the exact department.

CHAIRMAN BAGOYO: Any other questions? Councilwoman Lee, followed by Councilwoman Drummond.

COUNCILMEMBER LEE: Mr. Chair, are you recognizing us only to ask questions of the department people at this point?

CHAIRMAN BAGOYO: Or to the applicant.

COUNCILMEMBER LEE: Not make comments. Okay, let me ask one question. Stephanie, this detailed breakdown that you are recommending that the developer provide in terms of affordable housing, has the County ever provided such a detailed breakdown in affordable units to your knowledge?

MS. AVEIRO: No.

COUNCILMEMBER LEE: No. Okay. Have you ever asked another developer to provide this kind of a detailed breakdown in affordable units?

MS. AVEIRO: I don't believe we've had any project of what we consider large projects to discuss as yet. Not since January anyway. And the first page that says the Department's proposed percentages is what we have been evolving or trying to make our housing policies.

COUNCILMEMBER LEE: You know, I understand that you must have spent a long time working on this breakdown and I certainly can appreciate the work you've done. However, I'm going to have to, when the discussion starts, object to at least two or the three conditions and object to the breakdown. Stephanie, as you may know, I've been working on this issue of affordable housing for three years now. And one of our major objectives is to provide incentives to the developers to provide housing. And it is really difficult to do that because you notice that there aren't many affordable housing projects coming up. And one of the main reasons for that, other than the fact of our limited infrastructure, is that County governments puts so many restrictions on these projects that nobody wants to do them. So when we have a project like C. Brewer's that potentially can produce a substantial number of affordable housing, what I would like us to do is to encourage them to build these homes and to not continue to put restrictions because when we do that, they can decide today they're not going to do the project because it's not cost effective. You see the problem we have a lot of times is we're dealing with need versus cost, and there are a lot of needs in this County. However, we can't afford to provide all the needs that exist and that is another major problem. So when our discussion starts, you know, and again this is nothing personal, but I will be speaking against this breakdown because to me it becomes very stringent, very difficult for the developer. And I'd hate to see this become a

precedent for other affordable housing projects because I feel this is a strong disincentive to build affordable housing. Thank you.

CHAIRMAN BAGOYO: Councilwoman Drummond.

COUNCILMEMBER TERUYA DRUMMOND: I have a question for David please. Good morning, David. Having heard what Stephanie has already told us previously and regarding the changes she would like to make in the condition on Exhibit B, from your standpoint as a developer, can you say right now that her recommendation to change the wording to say, "the petitioner shall implement this affordable housing requirement prior to or concurrently." Can you guys do that?

MR. BLANE: In terms of just striking that particular phase insofar as possible, that was always the intent. It just means if you strike that, how exact do you have to be. If you have a 101 market units here and 97 affordable units there, does that mean . . . I mean it's a question of do you have a little bit of range in terms of the timing. If one is under construction and the other one is already done, do the completed units have to sit there vacant for three months until the other ones are . . . You know, the intent always was that you don't do all your affordable units and then ten years later you say, well, I think I'm going to do some affordable housing. And that's why the State Land Use Commission and the Planning Commission when they passed this language said clearly that they're supposed to be concurrently. If you strike the phrase, insofar as possible, I don't know . . . you're getting down to splitting hairs, but I'm certainly not adamant about keeping it in. It still speaks the intent which is that they're supposed to come up together.

COUNCILMEMBER TERUYA DRUMMOND: And as representing the developer, you don't see any problem with that?

MR. BLANE: No, it was always our intent to do them. But, again, it's a question of how exact, you know, when they say it shall be exactly concurrent or something like that. Then you just have to trust the reasonableness of the people that you're working with in the future.

CHAIRMAN BAGOYO: And we're pretty reasonable. Any other questions, Councilwoman Drummond?

COUNCILMEMBER TERUYA DRUMMOND: No, thank you.

CHAIRMAN BAGOYO: Okay, Councilwoman Lee.

COUNCILMEMBER LEE: I have a question for David. David, do you have a copy of . . .

MR. BLANE: No, I just got it for the first time while she was addressing it. Somewhat surprising.

COUNCILMEMBER LEE: Okay, so on Page 6 where the conditions are. Number 2, second paragraph. This condition may also be fulfilled with the approval of HFDC. Now they're recommending that this be deleted. Is this sentence in here somehow, or the reason for HFDC being in here tied to your financing?

MR. BLANE: No, that's the law. You see the State, when they granted the land use action, changing from agricultural to urban, passed this regulation. This is standard language and this is State law. You can strike it from the County version, but that doesn't make it go away. You still absolutely have to go and get the three-way or the two-way concurrence between the County and the HFDC. If you strike it, it may have some, you know, emotional benefit, but it doesn't change the reality that any breakdown that we have, any project we do, any time we sell an affordable unit, we've got to take the income qualifications of those people, show it to the HFDC and prove to them that those people qualify. So whether it's in or out, it doesn't change the reality of the fact that the HFDC is a partner in all . . . (CHANGE OF TAPE) . . . there is no way you're going to change those.

CHAIRMAN BAGOYO: Any other questions? Councilman Nishiki.

COUNCILMEMBER NISHIKI: David, you come in for a specific zoning within these two districts, are you saying or are these statements here, listed in the conditions or your understanding is that you may perhaps want to build the affordable units outside of these areas?

MR. BLANE: We have no plans to do that now . . . .

COUNCILMEMBER NISHIKI: No, that's not the question. The language...

MR. BLANE: Okay, but you want to keep that option open. For instance, let's say there's a special need that comes up. Maybe it's homeless shelter, maybe it's elderly housing, maybe it's Hospice, maybe it's battered women, or single mothers. A special social need for which the State or the Federal government or the County appropriates funding, and they say we want to go with this now. C. Brewer you have some land here or here or here. We would like you to donate that land or contribute in some way and we will give you a credit for that. We can't wait until your roads are done or your sewers are done and we go and negotiate that. We say, okay, we would in exchange for that this and this. And the State agrees and the County agrees and you have to leave that option in or I mean I think it would be foolish to not have that option because that

gives you the flexibility to meet these particular needs as they come up. That's all that this says.

COUNCILMEMBER NISHIKI: Well, the question is . . .

MR. BLANE: If you don't come to that agreement, then it all stays in the project.

COUNCILMEMBER NISHIKI: The question is why don't you keep this agreement within this project district? Why do you say other lands? The question I have is that you may build just because you know the area and perhaps what this land is worth. You may maximize your high-end housing in these areas and Corporation Counsel, you should listen to this. And then fulfill your affordable in another area. Does this mean that you can perhaps put more homes of another price within another area and thereby continue to build what is allowable under the zonings of this project district and yet build the so-called affordable somewhere else?

MR. KEKUNA: Mr. Chair, Councilman Nishiki, the language that's on the bottom of Page 1 about if it could be built somewhere else, that's part of the Land Use Commission order. And you could read it as such in order to fulfill the affordable housing requirements to place affordable housing units in places other than the two project districts. But it has to be done under terms that are mutually agreeable among Brewer, HFDC, and Maui County. If Maui County does not want to see other, this affordable housing requirement be fulfilled in part in areas other than the two project districts, then I guess people would not come to a mutual agreement and you'd have to place then within the two project districts.

CHAIRMAN BAGOYO: Any other questions?

COUNCILMEMBER NISHIKI: David, the question, of course, that I've been trying to get an answer from you and you still do not want to give me a direct answer. Maybe today you may have changed it, but when we look at the lower income range housing, my concern is that you provide some of this in fee even if you have to go smaller lot sizes and not all rental. If we were to look at you providing through the County Housing Division so many of these and perhaps the percentages may change in fee, what do you think about that idea?

MR. BLANE: I don't know why you sit there and say I've never given you a straight answer. The straight answer is we are willing to do it either in fee or in rental depending on the type of program, and the type of project, and the type of financing, and the type of conditions that are in place at that time the project is built. Now there are a myriad of different programs. There are Federal programs, there are State programs, there are

County programs, there are non-profit programs. And you're asking me to predict exactly what they will be ten and twelve years from now. I cannot do that. All I can is that with the mutual agreement of the County and the State and the private developer, that we will look at all of these different options and try to get the maximum number of units, affordable units, be it rental or be it for sale to the people. But you're asking me to tell you exactly what that is at this point looking six and seven, ten years down the future, and I simply cannot do that. No one can do that. The State cannot do that. Two months ago they were saying let's emphasize housing that people can buy. Just last week the Governor comes and says let's emphasize housing that people can rent. Now if the State doesn't know what their housing policy is, how do you expect me to tell you what it's going to be.

COUNCILMEMBER NISHIKI: So, Mr. Bleen, are you saying . . .

MR. BLANE: It's Blane.

COUNCILMEMBER NISHIKI: Mr. Blane, you're saying ultimately that you may want to use government assistance in providing some of these housing?

MR. BLANE: Of course. The State may want to build housing units on our property. The County may wish to joint venture with us and do a project. We may wish to joint venture with some large employer to provide housing. This is the only way that makes it feasible. They use bonding issues, they use tax incentive financing, they use, again, a myriad of different programs. I'm not the Housing Director, but there's literally dozens of different programs that are available for different projects, different needs. And that is what we're going to go down the road together with some mutual agreement of all the parties involved. That's what this language says we're going to do.

COUNCILMEMBER NISHIKI: No further questions in regards to just these conditions. I've got other conditions that I'd like to address when you're ready to entertain questions outside these conditions that we're looking at . . .

CHAIRMAN BAGOYO: Alright, are we talking about the Piihana. Item 6, okay. Any other questions, Councilwoman Lee?

COUNCILMEMBER LEE: Okay, David, for the record, I'd like to know what you think of the Human Concerns proposal on the detailed breakdown for the affordable units.

MR. BLANE: To be honest, I just . . . to hand me something in the middle of the testimony and expect me to comment on it really is somewhat unfair. You know, we worked for months and months with Ed Okubo and the prior administration to come down with

this breakdown and we got the agreement on it. We worked for months and months with the current administration. We've had public hearings, we've had committee meetings, we've had meetings with the administration, we've asked for comments. There's never been any indication up until this moment that there have been any problems with this. No other developer has done a commitment. There's been talk, but no one has ever made this commitment that we've making here today. And then I get this handed to me literally as it's being read. I can't comment, you know, maybe during when they go and have the other testimony we can huddle and take a look at it. Maybe get some response. But it is a little bit disturbing that we would get sort of a change like this at this late hour.

COUNCILMEMBER LEE: Okay, thank you.

CHAIRMAN BAGOYO: Okay, any other questions to the applicant? Councilman Kawano.

COUNCILMEMBER KAWANO: Maybe for the applicant or whoever wants to answer this, Mr. Chairman, but why is it only now Human Concerns . . . I feel the same way with David this morning. You know, I was shocked when I saw this. And as Councilwoman Lee stated, and I think somebody else stated, that it's like throwing a monkey wrench into the system now. And I was just wondering is this a normal practice that after we get this far then all of a sudden we have something like this? I even read in the binder from Parks that she wished she can meet with David and I hope they did meet because I sure as hell hate to see when it comes back to us and then all of a sudden we have a problem where the park is going to be. So I don't know. I'm just as confused as David as far as this coming in now and why they didn't meet especially with Human Concern and . . . So I got a problem.

CHAIRMAN BAGOYO: Thank you, Councilman Kawano. Questions to the applicant? Mr. Nishiki.

COUNCILMEMBER NISHIKI: Outside the conditions here that we're looking at?

CHAIRMAN BAGOYO: You may proceed.

COUNCILMEMBER NISHIKI: David and Corporation Counsel, I'm looking at a cover letter October 30, 1990, under Conditions, Exhibit B, Number 8. And, Brian, you guys may wish to comment on this also. The applicant shall preserve the portion of the dune area of the project identified as containing human burials. The preservation planned for this area shall be submitted to the Historic Preservation Program of the State of Hawaii for its approval. What about our Counsel that we have here? Do you think that . . . and I guess, Brian, the concern is that

just as we get involved with HFDC and whatever, I think that most of the people here want more homerule and the County of Maui and its experts, be it Charlie Maxwell, Dana Naone Hall and these people that have fought to save Hawaiian burials to be involved in looking at this situation. And I'm just curious what you think about language that may perhaps be strengthened in this area because we know that even as recently--I don't know if that Hyatt Hotel, that Grand Hyatt was ever dedicated yet. We know that, I think I read in the paper recently that some of the bones or whatever were being dealt with and I think that this area that they're looking at, I think Charlie Maxwell knows very well of some of the problems that he and his Hawaiian community have experienced with developers that are not perhaps conscience or concerned about this and _____ whether we should have our own so-called committee, I don't know what the committee is called, be a part of this condition as inspecting or looking at preservation.

CHAIRMAN BAGOYO: Brian, did you wish to respond?

MR. MISKAE: Mr. Chair, Councilman Nishiki, I believe that the division responsible for this type of situation with DLNR works very, very closely with local activists, local Hawaiians, local individuals that are interested and involved in the preservation of archaelogical, significant archaelogical areas. One of my staff, for example, Keoni Fairbanks, is in fact a member of the Burial Council. One of the staff members from DLNR that is located on Maui, I believe is a member of our Cultural Resources Commission. There is substantial interaction between both the State and the County. Now, again, maybe others can comment further on this, but in my opinion, I believe that the condition as it's set out, does in fact allow for very close integration between our local people and the State people in this respect.

COUNCILMEMBER NISHIKI: I wonder if they should say, submit it to the Historic Preservation Program of the State of Hawaii and the Burial Council to make it clear in my mind that it is going to be addressed for its approval.

MR. MISKAE: There would be no problem at all in doing that, Mr. Chairman.

COUNCILMEMBER NISHIKI: David, you have any problems with that?

MR. BLANE: No, I think it's a good idea. In fact, that's the reality that we're dealing with on a practical matter. No, I think it's a good suggestion.

COUNCILMEMBER NISHIKI: The other concern, Mr. Chairman, is Item Number 5. The applicant shall connect to the new Central Maui Water Reclamation facility. By written agreement with the

County of Maui, the applicant may temporarily expand and connect to the existing Wailuku/Kahului wastewater reclamation facility. In addition, the applicant shall conform to any impact fee assessment by the County of Maui. My concern is this, number one, I don't know how these developments are going to be phased. Whether the expensive ones are going to be developed and affordable ones next. But I think that we may need to clarify that because I think that the pitch that was made by many members in allowing this expansion to occur and the capacity to be used was for specifically affordable housing or ohana housing projects that may be coming up in the Wailuku/Kahului area and we did not want to punish this segment of the community. And was curious whether we can say that this temporary use be only used for those affordable houses.

CHAIRMAN BAGOYO: Maybe in response to that question, Councilman Nishiki, the sewer allocation bill for the Central Maui, the Chair is going to be drafting the proposed bill and it will be discussed in our Committee regarding the allocation for whether it's affordable or market price. As you know, we approved the sewer allocation for Kihei without any hotel allocation of course. So that there will be before our Committee very shortly. It's now in the final stage and I will be transmitting it to each of the members for your comments.

COUNCILMEMBER NISHIKI: So you do not think it's important to put it in here, the conditions?

CHAIRMAN BAGOYO: I think it could be addressed in the sewer allocation bill.

COUNCILMEMBER NISHIKI: That's all I have for Piihana.

CHAIRMAN BAGOYO: Okay, thank you very much, Councilman Nishiki. Any other questions? If not, . . . Councilman Lee.

COUNCILMEMBER LEE: Just a comment on what you just said, Mr. Chair. When we work on that sewer allocation bill, don't forget we're asking these people to provide affordable homes concurrently with market homes so we cannot disallow sewage capacity for the market homes also. So we have to be very careful about that.

CHAIRMAN BAGOYO: So noted. Thank you. Brian.

MR. MISKAE: Mr. Chairman, in making reference to Mr. Nishiki's comments, we're looking at the proposed conditions that the Chair is recommending. I believe that the condition Mr. Nishiki was reading has been substantially amended to take out I believe any wording that would suggest any type of temporary system anyway. Is that not correct?

CHAIRMAN BAGOYO: Correct. Okay, any other questions? Councilwoman Lee.

COUNCILMEMBER LEE: David, this is a very significant and substantial project, but how many homes do you actually believe you're going to be building per year?

MR. BLANE: Our best optimistic projections would be about 300 homes per year. That's about, one, just the logistics of bringing material into the islands and the labor and also I don't think the population, you just can't process anymore than that. That would be . . . so we're really looking about a ten to twelve year project from the time we start the site work construction.

COUNCILMEMBER LEE: Will you reduce that number when Maui Lani comes up?

MR. BLANE: All the housing studies that we have shown or taken either on our own or participated with the County, even us and Maui Lani doesn't really, I mean the demand out there is so great that I don't think it's, both of us could go full bore together and still not solve the housing needs even in the central valley much less the outlying areas. I don't think that there would be, I don't think one project would slow the other project down in terms of sales. The demand is just overwhelming.

COUNCILMEMBER LEE: Thank you.

CHAIRMAN BAGOYO: Okay, any other questions to the applicant. If not, the Chair would like to entertain a motion to approve the Piihana project district.

COUNCILMEMBER LEE: So moved.

COUNCILMEMBER MEDINA: Second.

CHAIRMAN BAGOYO: It's been moved and seconded. Any further discussion? Councilman Nishiki.

COUNCILMEMBER NISHIKI: You know I had asked also that the DOE and Parks people come. I think that despite that we were looking at these two project districts concurrently which is perhaps my biggest problem, the fact is is that we are going to soon approve this entire mountain side here, all the way to Waiko Street and down here which is prime agricultural land and also this Piihana. And it seems like everytime we discuss these housing projects there were done public hearing in a series together. And despite that a motion has been made now, I had thought that we were going to watch the school situation, you know, what Kihei is experiencing, Pukalani is

experiencing. We know in Kihei, kids are being told they cannot participate in sports activities because of the lack of _____. I mean they cannot participate because we don't have enough park space to take care of all the kids.

CHAIRMAN BAGOYO: If I may, Mr. Nishiki, the Parks Director is here. We invited the Parks Director. We've also extended an invitation to DOE, and I believe Mr. Saka is here. So if you have any specific questions to those particular items, you know, they're here.

COUNCILMEMBER NISHIKI: That's who I want to talk to.

CHAIRMAN BAGOYO: Okay, for Piihana, we have Parks Director here. Charmaine, if you could join us and thank you for joining us this morning, Charmaine. Is Mr. Saka here.

COUNCILMEMBER MEDINA: Mr. Chairman, I may point out that some of the concerns mentioned by Mr. Nishiki are written within the conditions of this ordinance. You know, there's no way we can tell the Department of Education what to do, they're a State agency. But we can suggest that the applicant work with them to solve our problems. And those conditions are within this ordinance, and I think that's sufficient. Now whatever Parks needs also, they have articulated what they need as far as Parks and Recreation goes in this area, so I just look at Mr. Nishiki's questioning of just a matter of, a way of deferring this once again and delaying the project. So I hope that you'll take that under consideration that I don't feel that we need to get more information at this time. Okay.

CHAIRMAN BAGOYO: So noted. Thank you very much Councilman Medina. Have questions for Charmaine.

COUNCILMEMBER NISHIKI: I just want to say that Mr. Medina is always trying to put this gag rule on me from actually asking important questions because he is . . . with the developer perhaps in his room.

CHAIRMAN BAGOYO: Councilman Nishiki, would you ask the question.

COUNCILMEMBER NISHIKI: . . . these kinds of statements. Can I reply to what he just said about delay? I had asked that these people be here because of some of the concerns from people within the community that have problems with building homes and still yet lacking educational facilities necessary and park space necessary. This is a big occurrence in all our developments that are occurring now, that our kids are being left out. We can provide the housing, fine. But provide everything else that entails a development.

CHAIRMAN BAGOYO: Thank you. Proceed with the question, Councilman Nishiki.

COUNCILMEMBER NISHIKI: Once we allowing housing and all of this to cover the so-called land and forget about spaces for housing or rather for parks, Charmaine, and also for schools, Mr. Saka, we find that the County and government has to spend a great amount of time purchasing and looking for parks. We've heard that in the Wailuku area especially with what is now existing the population, that park space is limited. The Wailuku Elementary School and some of the baseball people have to go down to Waihee and practice and switch times with them. They go down to Kahului to try to look for park space. With the filling in of urban development here now, my concern is that we should look at and someone may say well it's unfair that we take on this developer. Nobody's picking on any developer. We're looking at responsible development by government to address every aspect of what a development will have as far as the impact in schools, parks, roadways, traffic, drainage, sewage, whatever. You happen to be the Parks Director and you know the shortage of parks in Wailuku area. Have you looked at these developments because there is a motion right now just on Piihana, you know, one area. Have you looked development of parks in this area and what do you think about what the proposal is just in Piihana in regards to parks?

CHAIRMAN BAGOYO: Charmaine.

MS. TAVARES: Thank you. As far as the proposal for Piihana District, I have looked at both of the project districts, and I have also looked at the community plans. And both projects are in compliance with what was recommended in the community plan as far as park space goes. I think a larger question that you're referring to, Councilman Nishiki, is about active park space for these teams to practice or to do whatever it is. That is only one facet of Parks and Recreation for the County of Maui. We need to look at total park and recreation space for the cross-section of the community which includes the toddler on to the senior citizen. Perhaps it is true that there is not enough active park space, but I think that the space for parks in the Piihana district for example is adequate for that particular development. If we're going to look at providing active park spaces such as War Memorial Complex or Central Maui Park, we need to look at those large recreation space areas, and it's I think up to the County of Maui to identify these spaces through the community plan and with the community plan revisions coming up shortly, this is the perfect time for us to really get in there, designate large blocks of land for those active recreation spaces of which you refer as far as ballteams and all of that. One other point I'd like to make about both of the projects, Wailuku and Piihana, and perhaps this will clear it up. My own philosophy about parks

and recreation spaces within developments is to take care of those people within the development, not the whole County of Maui within one project district or one particular area. We cannot look to one developer to solve the ills or the problems of the entire county. But we have to, we are going to count on those people to come forth and help us solve the problem in some other way or some other area. All I'm concerned about now is that there's recreation space, open space, for the mental health and physical health of the residents of that particular project district. We have, like I said, a greater question when it comes to large active recreation spaces, I for one would not like to see this project delayed any further either because I think that housing is crucial at this point. And we can work with the developers on other kinds of recreation space. If I may interject one other comment about the softball, baseball, and football and whatever sports activities are coming in. The people in Maui in particular are extremely spoiled when it comes to practice time and game time, okay. They have been told various untruths by coaches or league organizers or whatever. I know of places in the mainland where a team will practice once a week for one hour and that's all they're allowed because there are so many teams that want to play. And I get upset when I hear people or organizers of a league saying that we don't have enough park space, that's why we don't have league expansion, and that is not true. You can schedule in your practice times. It may take a little bit of challenge, but we no longer can afford the luxury of I want a park all night, five days a week for my team. That's not reasonable. So there are couple of sides to this whole issue of park space, but I believe that as far as Wailuku and Piihana project districts are concerned, the park space within those projects is adequate for what they are planning. Thank you.

CHAIRMAN BAGOYO: Thank you, Charmaine. Councilman Nishiki, question.

COUNCILMEMBER NISHIKI: Charmaine, don't get defensive about what I have to say. Just think that whatever we're trying to do, we're trying to do for this community of ours. You brought up a fact that once a week somewhere in the mainland. I'm talking about Maui. What I want for my kids here, okay. And we try to do the best for our kids. Don't bring up the mainland because you may want to compare. But I think that we have a responsibility to try to do the best because of urbanization and what is occurring to this community of ours in regards to our youth and you know if anybody else the problems we're having because of more urban growth and the problems with youth. What I am trying to get from you, if you do not have it, fine, is have you _____ master plan Wailuku and Kahului. What I'm saying is that Maui Lani is coming up with a 1,000 acres, okay, of development. And we got this area here and my concern is perhaps we look in the future all the lands will be

designated for urban growth. And when we start looking for park spaces, school space, there's no place to go. I think that we don't want to centralize everything for people that have to drive great distances to go. That if there's a community there, then we'd like to take care of something . . . I don't know what your philosophy is, okay. So my mind is not to have to do so much driving to go anywhere as much as possible. Just to take care of the recreation facilities . . . and school. We don't have to truck them from Keanae all the way to Hana and back again. You know, that aspect that we know that's just occurred recently.

CHAIRMAN BAGOYO: What's the question, Councilman Nishiki? Please proceed.

COUNCILMEMBER NISHIKI: Have you looked at planning for Parks within the Kahului and so looked at perhaps a possible area? Have you done . . .

MS. TAVARES: Yes, we've done those preliminary kinds of looking at it, and that we're working with the Planning Department in developing whatever is in the community plans and enlarging the community plans park designated areas in light of what these projects are that are coming up or future projects coming up. Now you talk about taking care of the kids in the particular area. The park spaces that are in the project districts now, those five acre parcels, two acre parcels or whatever, those are park spaces that kids can walk to, bike to, or take a short drive to without coming down to a complex type like War Memorial Complex. But somewhere along the line, what I'm saying, is that we're going to have to provide another space equal to or greater than War Memorial Complex in the Wailuku/Kahului district to take care of those organized active recreation activities. But it should not be within a project district or even within a residential district. This does not make for good neighbors because you want to put lights on those courts or fields, then you've got neighbors complaining about the noise level, the light level, all of those kinds of things. So those active recreation complexes should be placed somewhere in the community plan to meet the needs, those other needs of the community. You get what I mean? There are two different types of needs we're talking about here. One is for the neighborhood or the kids that live in that area or the people that live in that area. And those would be the neighborhood park types or even the community park type, but the larger question is also about active park space for organized recreational sports similar to what War Memorial Complex is. We do not want--I don't think, it's not my recommendation anyway--to put a War Memorial Complex size thing in Maui Lani or in Wailuku project district. I don't think it's appropriate there. We have to be somewhere else, not close to a residential or within a residential area.

COUNCILMEMBER NISHIKI: And if all residential areas are being _____ now and . . . from Waihee, coming all along this way because I know and know well what is being planned. All the way down to Waiko, then all the way down to Kahekili Highway, Maui Lani thousand acres, coming up this way now and Brewer's project on both sides of Honoapiilani Highway, all the way up to Waiko Road. All residential. My question is you say we have to look. My question is where do you think then today, you may not even know the answer today, do you plan for more parks.

MS. TAVARES: I don't know the answer to where today, but we definitely have to have more park space of the type that you're referring to for the Kahului/Wailuku area. That's definitely a truth there. And this is why I think the community plan revision or working with the Planning Department is the route that we have to go . If the law doesn't fit what we have today, we have to change the law.

COUNCILMEMBER NISHIKI: I'm done.

CHAIRMAN BAGOYO: Okay. Any other questions? There is a motion?

COUNCILMEMBER MEDINA: Ready for the question.

COUNCILMEMBER NISHIKI: School, Mr. Saka.

CHAIRMAN BAGOYO: This is for the Piihana?

COUNCILMEMBER NISHIKI: Yes.

CHAIRMAN BAGOYO: Maybe if . . . I understand that Mr. Saka has a flight to take. If there's no objections, I would like to ask the Committee to, if Mr. Saka, to in our discussion to include the Wailuku project district in terms of the school needs. Any objections to that?

COUNCILMEMBERS VOICED NO OBJECTIONS.

Okay, Mr. Saka. Any questions, Councilman Nishiki?

COUNCILMEMBER NISHIKI: Mr. Saka, you came and met with this Committee in an information session in regards to the concern I guess that we had especially here in Maui County, Baldwin High School and Kihei being rated two of the worst schools in the State. We've already had problems in Kihei with kids in rooms up to 98 degrees, we also see Maui County growing to an unusual high amount of growth and the problems contributed to our children's education. I mean those of us here are concerned by the fact that, you know, we stress so much about education and taking care of the kids. Within the Piihana project district, I think maybe you have looked at what is sufficient for

schools, for the kind of school that would be necessary. We've been told also that, why we don't know, but it is a fact that in more opulent type of communities that there is a tendency for these people to have less children. And in areas where you have more low income and median income kind of people living, there is a great amount of need because there seem to be more children being born in the communities. Piihana is one that is specifically geared toward so-called lower income, median income families. Have you looked at what the necessary amount of space you may need for . . . looking at what is happening around the Waihee area right now with the tremendous amount of growth including . . .

CHAIRMAN BAGOYO: Mr. Saka.

MR. SAKA: Yes. If evaluated between the Wailuku and the Piihana projects the number of students which we feel will come from a project, both projects, and we feel that with the addition of the school in the Wailuku project, it would accommodate all of the students in the Wailuku area. It will require some movement of school boundaries which we have proposed and which will be brought up to the school advisory council this fall. But we feel that with that school, we can accommodate all of the students.

COUNCILMEMBER NISHIKI: Are you saying that in the Piihana area, the kids will not be going to Waihee school?

MR. SAKA: Right now there's a tentative movement of boundaries and we are looking at accommodating them in the Waihee School. . . I mean in Wailuku Elementary. We still have to look at dividing up, looking at the street structures and boundaries between that project and the HFDC Waiehu Terrace project and then determining which students can move into Wailuku. We will be expanding Waihee School somewhat. We are sort of landlocked. We're putting in an eight classroom building and then looking . . . because actually we have to work off of Waihee School. You know, once we max out that school and then we will be moving students back to Wailuku.

COUNCILMEMBER NISHIKI: Because you are landlocked by a limited amount of space over there. So the question is how many students do you see emanating from the project district, and to what grades and what count as far as breakdown?

MR. SAKA: Right now our estimates are in grades K through 5 from the Piihana project between 110 and 120 students on a sustained enrollment over a 20 year period. And about 45 to 50 students grades 6 through 8 and about 50 to 60 students in the high school level.

CHAIRMAN BAGOYO: Mr. Saka, could you leave a copy of those projects to our staff so that we can distribute it to our members.

MR. SAKA: Yes, I think we provided a copy . . . Councilman Nishiki.

COUNCILMEMBER NISHIKI: Now within the count here, Mr. Saka, you're saying that you're going to address this with the school in this new project district here?

MR. SAKA: Right.

COUNCILMEMBER NISHIKI: Now, I know that the concern has to be what did you pay despite that we put a school site in Maui Lani. How much did you pay for the acreage there?

MR. SAKA: The Maui Lani site was donated.

COUNCILMEMBER NISHIKI: You didn't pay for the land there?

MR. SAKA: Not to my knowledge, no.

COUNCILMEMBER NISHIKI: I know you guys paid, but anyway.

MR. SAKA: The first . . . .

COUNCILMEMBER NISHIKI: Can you find out that information?

MR. SAKA: Yes. I'm pretty sure that the first school site was donated. The second school site in Maui Lani we would need to purchase. It's being set aside as a school site, but if we do need it, then we will be purchasing that second site.

COUNCILMEMBER NISHIKI: Thank you.

CHAIRMAN BAGOYO: Any other questions? Thank you very much, Mr. Saka. Those in favor of the motion signify by saying aye, oppose nay.

VOTES: AYES: Councilmembers Hokama, Medina, Lee, Kawano, Nishiki, Teruya Drummond, and Chairman Bagoyo.

NOES: None
EXC.: Councilmember Tanaka

MOTION CARRIED.

ACTION: FIRST READING.

ITEM 44 - REQUEST TO ESTABLISH PROJECT DISTRICT 3 AND CHANGE IN ZONING FROM COUNTY AGRICULTURAL DISTRICT TO PROJECT DISTRICT 3 AT WAILUKU (C. Brewer) (C.C. 90-521

Next Item is Item 44. This is a request to establish project district 3 and change in zoning from County ag district to project district 3 at Wailuku.

COUNCILMEMBER NISHIKI: Mr. Chair.

CHAIRMAN BAGOYO: The applicant is C. Brewer. Councilman Nishiki.

COUNCILMEMBER NISHIKI: Can we change the schedule and move the general plan in the schedule being that it is 10:15 and when the schedule . . . .

CHAIRMAN BAGOYO: What I'd like to do is to proceed with this projects as scheduled.

COUNCILMEMBER NISHIKI: Mr. Chairman, the reason why is because I've got a lot of questions in regards to this big one coming up and we know that we're keeping the general public. If there's no problem . . .

CHAIRMAN BAGOYO: You may ask those questions, Councilman Nishiki. Like I said, the Chair would like to follow the schedule as presented to us. Okay. Item 44, do you have any questions to the applicant, C. Brewer? Councilman Nishiki.

COUNCILMEMBER NISHIKI: David, in the application of this project district, again, when all the infrastructure is put in, is there a time as far as when you're going to have roads completed prior to opening any of the homes for living in. And I guess the concern has to be the traffic that's going to be emanated by this project district and unless certain roads are put in, it may create again traffic gridlock within the Kahului/Wailuku area.

CHAIRMAN BAGOYO: David.

MR. BLANE: There's two parts to that question. On the on-site conditions, you know, I can't build houses without roads. So any houses that are built will have to have the necessary infrastructure. In terms of the on-site conditions, if you'll look at number 4(a) on Page 3, it says no building permits will be issued for any structure mauka of Honoapiilani Highway until a construction contract has been executed and notice to proceed with construction has been issued for Waiale Drive from Kaohu Street to Honoapiilani Highway and the extension of Mahalani Street from the vicinity of the Maui Memorial Hospital to Waiale Drive. Essentially what it's saying is that the major

regional by-pass road which is coming down through the project district to Waiale Drive and tying in past Maui Memorial Hospital to where the Police Station is to provide that by-pass from Kahului to by-pass the congestion at Main and Market and the center of Wailuku town. That has to be completed prior to any buildings above the highway which is of course the bulk of the project district, where the bulk of the housing will be. So the condition to me is quite specific.

COUNCILMEMBER NISHIKI: The concern, David, I guess is with Piilani coming in and that Kala Road and then when you come down by St. Anthony High School . . . or maybe Brian could answer this, and then we're going to have to do a lot of renovations to that bridge that runs along Hashi's because that's scheduled to be four lane. Is it my understanding that all of this would be done prior to allowing any kind of people to live in these residentials? And what is that timetable?

CHAIRMAN BAGOYO: Brian.

MR. MISKAE: Mr. Chair, I'm trying to resolve what conditions we're reading here. I got three different sets and I'm not sure what one we're talking about. The version that I was given yesterday doesn't seem to jive with the version that's been read out this morning.

CHAIRMAN BAGOYO: The conditions before us is 8/20/91.

MR. MISKAE: Could you restate your question, Mr. Nishiki?

COUNCILMEMBER NISHIKI: You know all those roadway improvements under the bridge along St. Anthony school, the backyard, through the Millyard, right up through the lower portion of where this project district is being done by.

MR. MISKAE: Yes.

COUNCILMEMBER NISHIKI: What is my understanding when they talk about all of these things being addressed in the master plan, but what is the timing in regards to these completions being done compared to the subdivision being allowed to preoccupy . . . these are by the first phase or whatever the phase is going to be done within all of these projects?

MR. MISKAE: I believe first of all what has to happen is under the traffic master plan, a level of service rating has to be assigned to the roads that are affected by this particular development. And that particular level of service category, until such time as it is negatively impacted. In other words, until such time as that level of service assignment goes higher as a result of more development in the particular project, the roadway system would probably remain the same. In other words,

the roadway systems as it sits, may in fact be able to accommodate a certain number of units before it's expanded. This would be contained within the master plan that is related to in this particular condition.

COUNCILMEMBER NISHIKI: So there's no phasing in of the roads in regards to phasing in as a project is what you're saying?

MR. MISKAE: It would be part of the master plan system. It may in fact be that the master plan as it's being set up might indicate that the roadways that would be affected by this development are at a level of service right now that require upgrade. It might in fact, that not be the case. This would depend upon what level of service category was assigned to this particular roadway systems.

COUNCILMEMBER NISHIKI: Thank you.

CHAIRMAN BAGOYO: Any other questions?

COUNCILMEMBER NISHIKI: Not of Brian, but the applicant.

CHAIRMAN BAGOYO: You may proceed Councilman Nishiki.

COUNCILMEMBER NISHIKI: Charmaine here?

CHAIRMAN BAGOYO: Is Charmaine here? While we're waiting for Charmaine, Councilman Nishiki, you have questions to the applicant?

COUNCILMEMBER NISHIKI: I need Charmaine. Brian, what is the total acres in park space that you see really being what this project district is going to create?

MR. MISKAE: I believe the ordinance sets out the number of acres. David, you have that right handy there?

MR. BLANE: Not from the ordinance, but I have it memorized. There's 112 acres of parks and open . . . (CHANGE OF TAPE) . . . main area eight acres is adjacent to the new elementary school. Five acres would be established for the extension of the park adjacent to Wailuku Elementary School. That existing park. And seven acres established in the lower portion of the project district which would accommodate the people so they don't have to go back and forth across the highway. In addition, we plan an extensive . . . and this is what we call the active park where you've got your soccer and your baseball and where you expressed your concerns. In addition to that, we're going to initiate a plan--and this is, as we get into the final design--of joint use of some of the drainage and irrigation canals and buffer areas with jogging paths and bikeways. For instance, the Waihee ditch which runs through there, we intend

to . . . that ditch has to remain active. We intend to make that into a bikeway and jogging path. That's over a mile long. If you add that in, there's four or five acres of additional park. Now is that active or passive. That's a question of definition, but that in addition to the very specific active park areas. And there will be a number of those types of bike lanes throughout the project. So well over a fifth of the entire project is going to be set aside for parks and open space. This is well beyond any specific requirements in the subdivision code in terms of what we're providing.

COUNCILMEMBER NISHIKI: David, can you answer the question? You know in your neighborhood commercial area, there is a village--what is it called, Brian, that's allowed in there that's not allowed in the community plan?

MR. MISKAE: Village mixed use.

COUNCILMEMBER NISHIKI: Village mixed use. What is this so-called village mixed use that you're talking about? How do you understand this to work, Brian? It's not in the community plan, and this was put in.

MR. MISKAE: Because it's in a project district, it doesn't necessarily have to be in a community plan. This is the exciting part about project districts is that it allows substantial flexibility and creativity for land uses within these areas. So village mixed use might allow a number of different types of commercial ventures that for example might require a combination of B-1, B-2, that sort of thing. This might allow a combination of these things in one central area without having to go through the necessity of trying to split say a small neighborhood center up into a number of different specific land use districts. That's a general answer to a . . .

COUNCILMEMBER NISHIKI: Okay, but we got already 20 acres of neighborhood commercial. Is this in addition to . . . ? What we're doing ultimately is adding more commercial area if this is what I read it to be.

MR. BLANE: No.

COUNCILMEMBER NISHIKI: Then can you please clarify that.

MR. BLANE: If you'll look at your project district ordinance, I don't know I may have an old copy, but nothing has changed. There's really two columns. On the right hand column, it starts 364 acres of residential and then it breaks down commercial area of 20 acres. This is exactly what is in the community plan and it is exactly what is being adopted in the

project district ordinance as the land uses. But because they have to match with the zoning codes, village mixed use is kind of an umbrella zoning code which allows the community center and neighborhood commercial. But there can never be more than 20 acres of commercial nor more than 364 acres of residential. It's a question of a zoning category versus the actual land use which matches exactly the community plan. So there is no change.

COUNCILMEMBER NISHIKI: Brian, you see that happening because it seems like this village mixed use entails _____ acres.

MR. MISKAE: That's true.

COUNCILMEMBER NISHIKI: Okay, now it used to read that . . .

MR. MISKAE: But it's further broken down, Mr. Nishiki. So 34 acres of that would be residential. Ten acres would be school site, five acres would be community center and twenty acres would be eighborhood commercial. So there's a combination. That's what this village mixed use situation is so it can be an integrated type of development.

COUNCILMEMBER NISHIKI: So you see that as what is . . .

MR. MISKAE: Basically the only commercial there is is really the 20 acres. The balance of it is made up, the balance of the 69 acres can be made up of residential, school site, and a community center.

COUNCILMEMBER NISHIKI: Okay. Last question. Not last question, but in this entire project district, is there any allowance of golf courses or any verbiage that we have in here?

MR. MISKAE: No.

MR. BLANE: No.

CHAIRMAN BAGOYO: Any other questions?

COUNCILMEMBER NISHIKI: No.

CHAIRMAN BAGOYO: Any other questions from the members to the applicant or to any of the staff? Okay. If not the Chair would like to entertain a motion to approve the project.

COUNCILMEMBER HOKAMA: So moved.

CHAIRMAN BAGOYO: It has been moved by Councilman Hokama.

COUNCILMEMBER LEE: Second.

CHAIRMAN BAGOYO: Seconded by Councilwoman Lee. Any further discussion? Councilman Nishiki.

COUNCILMEMBER NISHIKI: Yes, Mr. Chairman. I am not a futurist, but I can consider myself a mental speculator in regards to this project and what's going to occur. I think that David at times has been upset at me, but it is not my job to please Mr. Blane in any way or whomever the developer is. It is my job to be responsible to look at what the people that voted me in to do and that is to make sure that there is responsible development. I think that whatever the cause for many councilmembers whether they request, whether Housing Coordinator comes in and gives us . . . this administration comes in and gives us a concern that they have. And I consider it a valid one to make sure that the developer himself puts in the type of housing that I think we need in Maui County. I think that we've seen within this Council, many members coming in and making revisions to an ordinance or to many different things without even having, without even having the different departments as Brian complained to us or the Housing Department perhaps needs to be addressed and we make many decisions not based on responsible action knowing what the . . . so far the administration has. This is a new administration that has come in and said we believe that these languages and everything else is of concern. And I think it is. That we involve our Housing Department and then looking at the needs of Maui County trying to make this project feasible. I resent the fact that many members have said this is a late time. I think that if there are reasonable responsible concerns that the administration has looked at and wish to impart to us and we look at what they have to say, digest it. And if it applies then react to it and do the necessary things that are necessary. Hopefully, Mr. Chairman, this is coming in and going to be recommitted to Committee. And hopefully we're going to be able to look at some of the concerns that the Housing Department has looked at. I think that they're valid ones. I think that if we are to remain in control of the type of housing that we need and here is a Department that I feel is fulfilling their responsibility to address and tell this Committee, look you need to look at the percentages, you need to look at including the Housing Department and not just the HFDC despite that the Land Use Commission says that this is part of their law. I think that if we can make this a stricter condition, then we ought to look at it. I think that my concern has to be with, again, the inadequate amount of park space that we're going to see once we see urbanization happen. And, again, punish our kids. Number two, we're going to see also an inadequate school system. By looking at the figures of what Piihana is--I don't know if Mr. Saka left, but I would wish that you call him in when we recommit this and look at what this project district is going to bring in and the cumulative effect on how much school space we need. I think that the Committee may wish to look at

perhaps another possible school site within this area. We can purchase it if that is what needs to be necessary. I think that, David, you guys are donating this school site here, aren't you?

MR. BLANE: It's part of the negotiations with the DOE.

COUNCILMEMBER NISHIKI: Oh, you're having negotiations . . .

MR. BLANE: Well, they're establishing an impact, the ordinance, and land donation is part of that so essentially.

COUNCILMEMBER NISHIKI: I think that we're really going to need to look at perhaps, Mr. Chairman, another area. I think that the need for housing may be the number one need, and so we're rushing through and saying, eh, government stop getting in the way. But I think that this is one area that we need to look at--the schools, and our infrastructure, roadway, and our parks before, again, we approve this in its final version. And I will still be voting yes despite that I have to me what are major concerns in regards also to affordability. Thank you.

CHAIRMAN BAGOYO: Thank you very much, Councilman Nishiki. Councilwoman Lee.

COUNCILMEMBER LEE: Thank you, Mr. Chair. I would like to urge my fellow councilmembers to vote in favor of the motion. I believe that this project is a very special one. I think Mr. Blane and his representatives have done an outstanding job in doing their homework and providing good planning in this project. Like Wayne mentioned, the LUC recently reduced their requirement for land use changed from 60 percent affordable, 40 percent market because they have come to realize like the rest of us that the requirements put on affordable housing developers have been unrealistic. And in spite of the efforts of the Human Concerns Department in trying to require more from the C. Brewer projects in terms of affordable housing, I think this represents another example of superfluous government regulations. And I feel that it's totally unnecessary and totally excessive. And I hope that this project will continue to move forward as quickly as possible because as we all know, the need for housing is crucial. It's needed today. Thank you.

CHAIRMAN BAGOYO: Thank you very much. Councilman Hokama.

COUNCILMEMBER HOKAMA: Mr. Chairman, as far as making a motion to approve the project, I want to make it very clear that I'm not making a motion just to please the developer. Now my actions in this Committee regarding developers and the development of projects is not based on just to make them happy or look good. I think the conditions that were set forth that were attached to the ordinance, both the Piihana and Wailuku situation, takes

care of a lot of the questions to me that has been raised. Whether it's park sites, education, the infrastructure, that places certain responsibility on the developer to work with the government agencies while the project goes on. I'm satisfied that the conditions provided with the ordinance takes care of that. That's the reason I am supporting the project. Not because I just want to please the developer.

CHAIRMAN BAGOYO: Councilman Medina. Thank you Councilman Hokama.

COUNCILMEMBER MEDINA: Just want to point out one thing that C. Brewer has agreed to and that is to build homes in the 51 percent to 65 percent of median income. No other developer is following the current County Code which develops this particular percentage basis and I see that 5 percent of those homes are going to be built in that income range which I think that is precedent setting in addition to the conditions that they are agreeing to. These conditions that have been imposed on C. Brewer are also more stringent than I've ever seen in the many years that I've been there, so I would support this project district and I would hope that Mr. Nishiki, who some years ago wanted to take up the Piihana subdivision from the land use designation in the community plan hopefully will remember that and hopefully support the fact that we do need housing in this community and support this project district as it is written here in this ordinance. Thank you.

CHAIRMAN BAGOYO: Thank you, Councilman Medina.

COUNCILMEMBER KAWANO: Mr. Chairman, move for the question.

COUNCILMEMBER LEE: Second.

COUNCILMEMBER NISHIKI: Point of information, point of clarification.

CHAIRMAN BAGOYO: Point of clarification. Briefly.

COUNCILMEMBER NISHIKI: Mr. Chairman, Mr. Medina mentioned something that is upsetting in regards to statements that he just made in regards to this Piihana area. I think that the concern has to be the kind of growth that is happening in areas like Wailuku. The concern that so-called and I did not say anything about it, but perhaps I . . . the concern that prime agricultural land is being used, especially up here in this area. I think that what Mr. Hokama and all of these people have expressed is valid. But I think that we have to accept and many of you will give the excuse that, oh, I just came into office. Fine. But we have to accept the fact that Maui has been a giveaway type of government and that's the reason why developers would prefer to build the big expensive ones rather than the cheap ones. And that's the reason why we have right now a lack of housing. And we cannot as Mr. Medina has said, you cannot shirk your

responsibility as an elected official in saying because he's been in office for a longer . . . as much of I have.

COUNCILMEMBER HOKAMA: Point of order, Mr. Chairman.

COUNCILMEMBER LEE: Yes, point of order, Mr. Chairman.

COUNCILMEMBER NISHIKI: I just wanted to make that last . . .

CHAIRMAN BAGOYO: Thank you. Okay, those in favor of the motion, signify by saying aye, oppose nay.

VOTES: AYES: Councilmembers Hokama, Medina, Lee, Kawano, Nishiki, Teruya Drummond, and Chairman Bagoyo
NOES: None
EXC.: Councilmember Tanaka

MOTION CARRIED.

ACTION: FIRST READING

Short recess, two minutes.

RECESS: 11:01 a.m.
RECONVENE: 11:10 a.m.

Will the Planning and Economic Development Committee please reconvene. If there's no objections before I recognize you, Councilman Nishiki, if there's no objections, the Chair would like to proceed to the general plan. I'm sure that there are a lot of people waiting for it. I apologize for the delay and we want to thank you for your patience. And if there's no objection . . .

COUNCILMEMBERS VOICED NO OBJECTIONS.

ITEM 8 - BILL TO AMEND CHAPTER 2.80 OF THE MAUI COUNTY CODE, PERTAINING TO THE GENERAL PLAN (Bill 59 1991)

Okay, we do have approximately 88 who signed up to testify. I just want to remind those who signed up to testify, you know, the Chair will give you three minutes. However, if you need more than three minutes, the Chair will allow you another minute after everyone had a chance to speak. So with that, I'd like to call on the first person to testify, Dr. Steven Moser. He will be followed by Rick Sands. As I call your name, please come forward. State your name for the record. Thank you.

DR. MOSER: Thank you very much for taking me first. I've been trying to hold off all my patients. First of all, I'd like to thank you for having this meeting, and I also would like to

PAUL R. MANCINI*
JAMES W. GEIGER
THOMAS D. WELCH, JR.

OF COUNSEL
ROSALYN LOOMIS
JEFFREY UEOKA

*A LAW CORPORATION

MANCINI, WELCH & GEIGER LLP

A LIMITED LIABILITY LAW PARTNERSHIP

305 E. WAKEA AVE., SUITE 200
KAHULUI, HAWAII 96732-2417

TELEPHONE (808) 871-8351

FACSIMILE (808) 871-0732

October 23, 2020

Michele Chouteau McLean
Director, Department of Planning
200 Main Street
One Main Plaza, Suite 315
Wailuku, Hawaii 96793
Via e-mail to michele.mclean@co.maui.hi.us

Karla Peters
Director, Department of Parks & Recreation
700 Halia Nakoa Street, Unit 2
Wailuku, Hawaii 96793
Via e-mail to karla.peters@co.maui.hi.us

Re: Kehalani Community Center and Wailuku-Kahului Project District 3 Phase III Approvals

Dear Directors McLean and Peters,

RCFC Kehalani, LLC ("RCFC"), has reviewed Director McLean's e-mails dated October 5, 2020. RCFC feels that the Wailuku-Kahului Project District 3 ("Kehalani") is in substantial compliance with all of the conditions contained in the Findings of Fact, Conclusions of Law, and Decision and Order for Docket No. A89-642, dated January 30, 1990 ("1990 D&O") and Maui County Ordinance 2053 (1991). RCFC offers the following in response to Director McLean's inquires:

Pocket Parks

Per RCFC's Parks Completion Update Letter dated October 15, 2020, attached hereto as Exhibit "1", there are approximately 27.0 acres of completed and dedicated park space in Kehalani. The Parks Assessment Agreement dated December 3, 2012, contemplated Kehalani developing 2,400 residential units and required 27.5 acres of parks. As noted in RCFC's letter the amount of

Parks that have already been completed would satisfy the development of 2,353 residential units. Per the Park Assessment Agreement:

> Notwithstanding the foregoing, if Kehalani develops fewer than 2,400 residential units in the Wailuku-Kahului Project District 3, it is understood and agreed that the required acreage of pocket parks shall be reduced by 500 square feet multiplied by the number of residential units actually developed that are less than 2,400 residential units.

At this time, RCFC anticipates that 2,300 residential units will be developed in Kehalani. Accordingly RCFC does not anticipate that the 4th Pocket Park will be necessary to satisfy its park assessment requirements, however if the total residential unit count exceeds 2,353 units, RCFC will comply with the terms of the Agreement and will provide the 4th Pocket Park.

Parks and Open Space Acreage

Finding of Fact 30 of the 1990 D&O ("FOF 30"), requires that Kehalani provide 112 acres of "Parks and Open Space (Pedestrian Paths and Drainage)". Section 19.80.050, Maui County Code ("MCC"), pertaining to the land use categories and acreage for Kehalani, requires that Kehalani develop 20 acres of parks and 94 acres of open space/roadways/drainageways. The requirements of the FOF 30 and Section 19.80.050, MCC, are inconsistent. To require strict compliance with both sets of requirements creates an impossible situation for the developer.

Kehalani has been developed in accordance with the more specific land use allocations established by the County in Section 19.80.050, MCC. Attached hereto is Exhibit 2 which is the Kehalani Master Plan Map and table showing the land areas of each various zoning districts and sub-districts. The total area of Park/Open Space Districts developed to date is 112.4 acres.

Kehalani Community Center Site

It is RCFC's contention that Condition 8 of the 1990 D&O ("SLUC Condition 8") controls in regards to the parks requirements for the Kehalani, which leaves the determination of the pro-rata share contribution for Kehalani to the County. Condition 7 of Maui County Ordinance 2053 (1991) ("County Condition 7"), the condition of zoning relating to park requirements for Kehalani, only requires a "community center site", and is silent in regards to the construction of a community center.

RCFC does not agree with the Planning Department's interpretation that FOF 85 supersedes the requirements of SLUC Condition 8, however, to resolve this issue it shall petition the State Land Use Commission to clarify the issue. RCFC's expectation would be that the County support RCFC's petition at the State Land Use Commission to only require the dedication of the community center site, as it is consistent with the County's conditions of zoning.

RCFC proposes, per the enclosed Term Sheet for Kehalani Community Center Site Transfer, that upon execution of an agreement memorializing the terms, that RCFC will restrict the use of TMK No. (2) 3-5-001:102, area approximately 4.65 acres along with access easement A-1 consisting of an area of 1.396 acres ("Property") to community center purposes. The restriction of the use of the Property shall serve to satisfy the community center site requirement of County Condition 7. Upon issuance of a SLUC declaratory order or other document confirming that RCFC is only required to dedicate a community center site, RCFC shall dedicate the Property to the County of Maui.

Phase III Project District Approvals

The pending Phase III Approval Applications for Modules 3, 6, and 7, will not be pursued at this time. The entity that was purchasing the modules for development cancelled the purchase contact as the acquisition was subject to the entity obtaining a Phase III approval from the County within a specified time.

While this discussion was initiated to resolve the community center issue, RCFC is in substantial compliance with the requirements of the 1990 D&O and Maui County Ordinance 2053 (1991). As discussed above, RCFC will be in substantial compliance with all requirements relating to parks and community centers. With respect to any outstanding roadway and drainage conditions RCFC in not aware of any conditions that have not have not yet been fulfilled nor has it received any notices of non-compliance from the Department of Public Works. Per the zoning ordinance the Public Works Director has the authority to withhold the processing of subdivisions or permits should RCFC not be in compliance of those conditions. Please note that RCFC submitted deeds for the dedication of roadways in April of 2017 to the County, however those deeds are still under review by the County. All drainage improvements required under the drainage unilateral agreements have been completed by RCFC.

Next Steps

1. County and RCFC to reach an understanding on the enclosed Term Sheet for Kehalani Community Center Site Transfer.
2. County and RCFC shall enter into an agreement regarding the Kehalani Community Site Transfer, said agreement shall be recorded and serve as a deed restriction on the Property, restricting its use to Community Center purposes.
3. County Condition 7
    a. County shall acknowledge that based on RCFC's Parks Completion Update Letter, RCFC has substantially complied with the requirements of the Park Assessment Agreement, and therefore has satisfied the requirement of County Condition 7 requiring RCFC to provide its fair and equitable share of park improvements, with the understanding that if more than 2,353 units are constructed in Kehalani, RCFC will be required to develop an additional Pocket Park.
    b. Upon recordation of the deed restriction, RCFC shall be deemed to have complied with the Community Center Site dedication requirement of County Condition 7.
4. RCFC shall petition the State Land Use Commission to determine whether the requirements of FOF 85, require it to construct a community center.
    a. RCFC shall use its reasonable best efforts to receive a determination by December 31, 2021.
    b. Upon issuance of a declaratory order or other document purporting that RCFC is only required to dedicate a community center site, RCFC shall dedicate the Property to the County of Maui.
    c. In the event that the State LUC requires the construction of a community center by RCFC or RCFC has not received a determination by December 31, 2020, RCFC and County shall engage in future discussions regarding this matter.
5. Per Section 19.45.050(C), MCC, a final site plan shall receive Phase III approval if it conforms in all substantive respects to the approved preliminary site (Phase II) plan. The agreement contemplated herein shall be deemed to provide substantial compliance with the preliminary site plan as it relates to parks and community centers and Phase III Approvals for the Wailuku-Kahului Project District 3 shall not be withheld or delayed for lack of

substantial compliance with Condition 7 or the 1990 D&O as it relates to parks and community centers.

As always we truly appreciate your attention to this matter and are confident that RCFC and the County can come to a mutually beneficial understanding and move towards completion of Kehalani. Please feel free to reach out to us with any questions.

Sincerely,

Jeffrey Ueoka

Cc: Michael Hopper, Deputy Corporation Counsel *via e-mail michael.hopper@co.maui.hi.us*
Mimi Desjardins, Deputy Corporation Counsel *via e-mail mimi.desjardins@co.maui.hi.us*
Stephanie Chen, Deputy Corporation Counsel *via e-mail stephanie.m.chen@co.maui.hi.us*
Everett Dowling, *via e-mail everett@dowlingco.com*
Brian Ige, *via e-mail brian @dowlingco.com*

Encl.

RCFC KEHALANI, LLC

October 15, 2020

Ms. Karla Peters
Director
County of Maui
Department of Parks and Recreation
700 Hali`a Nakoa Street, Unit 2
Wailuku, Hawaii 96793

Ref: Wailuku-Kahului Project District 3 – Parks Assessment Agreement dated December 3, 2012

Subject: Parks Completion Update

Dear Karla,

On October 12, 2020, RCFC Kehalani, LLC (RCFC) conveyed a completed Pocket Park located at TMK (2) 3-5-001:100 to the Kehalani Community Association (KCA). The deed conveying this Pocket Park is enclosed. The Pocket Park has an area of 4.761 acres. The total area of Pocket Parks that have been completed and conveyed to the KCA is 6.376 acres. Enclosed is a summary dated October 15, 2020 which lists the Parks that have been completed and conveyed.

The total area of Parks conveyed to both the County of Maui and the KCA is 27.006 acres which satisfies the Park requirements for developing 2,353 residential units in Kehalani. RCFC's current projected residential unit buildout of Kehalani is 2,300 residental units which is less than the 2,353 residential units which have been already satisfied. Kehalani currently has 1,830 completed residential units and 275 residential units under or pending construction for a total of 2,105 residential units. Enclosed is the Project District Map showing the residential unit counts. RCFC is projecting that 195 residential units will be developed on Modules 3, 6 & 7 which are the last large residential development parcels remaining in Kehalani.

The Parks Assessment Agreement was based on a residential build out of 2,400 units. Article 3 of the agreement allows for a reduction of the required Pocket park areas if the residential build out is less than the 2,400 units. Based on the Parks that have been completed to date, RCFC is requesting confirmation that the Parks agreement has been fully satisfied up to 2,353 residential units.

Please let us know if you have any questions or need any additional information regarding this matter.

Sincerely,

Brian H. Ige
Construction Manager
Dowling Company, Inc.
Development Manager for RCFC Kehalani, LLC

Attachments: 1) KCA Deed for Pocket Park TMK (2) 3-5-001:100
2) Kehalani Parks Requirement Summary dated 10-15-2020
3) Kehalani Project District Map dated 10-09-2020

cc: Jeff Ueoka – Mancini, Welch and Geiger LLP

EXHIBIT "1"

4117

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
October 12, 2020 8:01 AM
Doc No(s) A-75900089

/s/ LESLIE T. KOBATA
REGISTRAR

1 1/1 OFC
B-33587890

Conveyance Tax: $1.00

(M)

LAND COURT SYSTEM | REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

KEHALANI COMMUNITY ASSOCIATION
P.O. Box 1530
Wailuku, HI 96793

TITLE GUARANTY OF HAWAII HAS FILED THIS DOCUMENT FOR RECORD AS AN ACCOMMODATION ONLY. THIS DOCUMENT HAS NOT BEEN REVIEWED OR IN ANY WAY EXAMINED AS TO ITS EFFECT ON REAL PROPERTY.

TG ACCOM: 520445C
RS

Tax Key: (2) 3-5-001-100 Total No. of Pages: 7

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That RCFC KEHALANI, LLC, a Delaware limited liability company, whose address is 555 California Street, Suite 3450, San Francisco, California 94104, hereinafter called the "Grantor," for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration to Grantor paid by KEHALANI COMMUNITY ASSOCIATION, a Hawaii non-profit corporation, whose address is P. O. Box 1530, Wailuku, Maui, Hawaii 96793, hereinafter called the "Grantee," the receipt whereof is hereby acknowledged, does hereby give, grant, convey, release and

forever quitclaim unto the said Grantee, as a tenant in severalty, all of Grantor's right, title and interest in and to the real property described in Exhibit "A" attached hereto and by this reference incorporated herein; subject, however, to all encumbrances noted on said Exhibit "A".

TO HAVE AND TO HOLD the same, together with all buildings and other improvements, rights, easements, privileges and appurtenances thereon or thereunto belonging or in anywise appertaining or held and enjoyed therewith, unto the said Grantee, forever.

Grantor hereby reserves the right to establish and grant non-exclusive, perpetual easements over, under and through said parcel, for the benefit of Grantor and Grantor's successors and assigns as easements in gross, to construct, operate, maintain, repair and replace one or more lines and equipment for the transmission of water, electricity and other utility services, in such locations as Grantor may determine, at any time and from time to time; including but not limited to the right to define specific easement areas by survey maps and to grant easements to such property owners and developers, utility providers or neighborhood associations as the Grantor or its successors and assigns in its or their discretion shall determine.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, or neuter, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives, and permitted assigns, according to the context hereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the Grantor has executed these presents on this _____ day of _____, 20_____.

APPROVED AS TO FORM:
MANCINI, WELCH & GEIGER LLP

By Thomas D. Welch, Jr.

RCFC KEHALANI, LLC

By _____
Steve Towle
Its Authorized Signatory

Grantor

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles)

On Sep. 14, 2020 before me, C.K Recinos, Notary Public
(insert name and title of the officer)

personally appeared Steve Towle, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

C. K. RECINOS
Notary Public - California
Los Angeles County
Commission # 2197743
My Comm. Expires Jun 10, 2021

EXHIBIT "A"

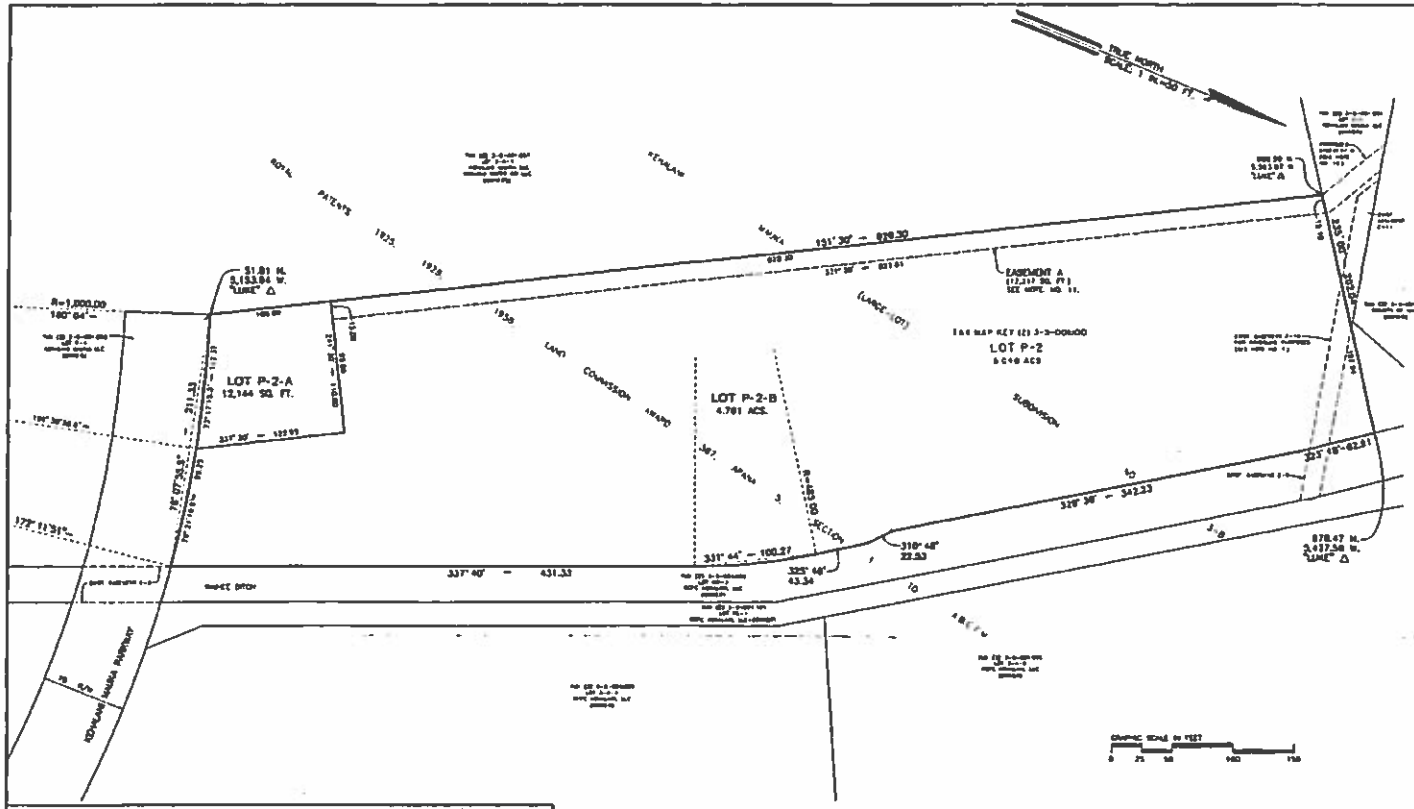
All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Numbers 1925, 1928, and 1958, Land Commission Award Number 387, Part 5, Section 1 to the American Board of Commissioners for Foreign Missions) situate, lying and being at Wailuku, Island and County of Maui, State of Hawaii, being LOT P-2-B, same being a portion of Lot P-2 of the "KEHALANI MAUKA (LARGE LOT) SUBDIVISION NO. 3-B", bearing Tax Key designation (2) 3-5-001-100, and containing an area of 4.761 acres, more or less.

Together with and subject to all matters of record.

Being a portion of the premises acquired by Limited Warranty Deed from Kehalani Mauka LLC, a Hawaii limited liability company, as Grantor, to RCFC Kehalani, LLC, a Delaware limited liability company, as Grantee, dated August 27, 2012, recorded in the said Bureau of Conveyances as Document No. A-47700416.

END OF EXHIBIT "A"

Tax Map Key: (2) 3-5-001-100



KEHALANI MAUKA (LARGE-LOT) SUBDIVISION NO. 3-B

SUBDIVISION OF LOT P-2
INTO LOT P-2-A AND LOT P-2-B AND
DESIGNATION OF EASEMENT A

BEING A PORTION OF ROYAL PATENTS 1925, 1928, 1958, LAND COMMISSION AWARD 387 APANA 5, SECTION 1 TO THE AMERICAN BOARD OF COMMISSIONERS FOR FOREIGN MISSIONS (A.B.C.F.M.)

WAILUKU, MAUI, HAWAII

SCALE: 1 IN. = 50 FT.

DATE: JUNE 6, 2014
REVISED: MAY 12, 2015

PREPARED FOR:

DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, HAWAII 96793

OWNER:

KEPO KEHALANI LLC
888 CALIFORNIA STREET
SUITE 3400
SAN FRANCISCO, CALIFORNIA 94108

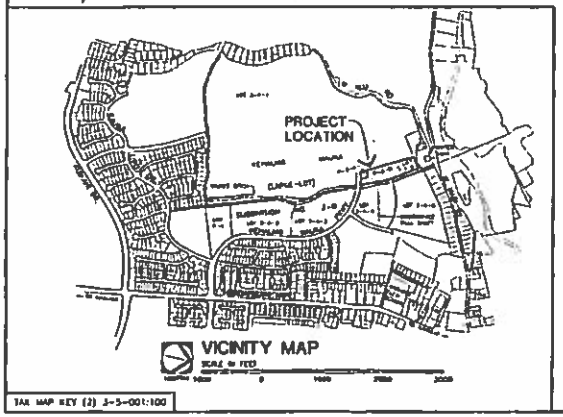
PREPARED BY:

RONALD M. FUKUMOTO ENGINEERING, INC.
1731 WILI PA LOOP, SUITE 203
WAILUKU, HAWAII 96793

PH. (808) 242-8811
FAX: (808) 244-7346
EMAIL: rfeng@rmfengineering.com

RONALD M. FUKUMOTO
LICENSED PROFESSIONAL LAND SURVEYOR
No. 9451
STATE OF HAWAII, U.S.A.

RONALD M. FUKUMOTO
LICENSED PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO. 9451
LICENSE EXPIRES 4/30/2016



TAX MAP KEY (2) 3-5-001:100

NOTES:

1. ALL AZIMUTHS AND RECORD COORDINATES REFER TO GOVERNMENT SURVEY TRIANGULATION STATION "LIHUE".
2. DIMENSIONS OF ABUTTING PARCELS ARE TAKEN FROM THE COUNTY REAL PROPERTY TAX DIVISION RECORDS.
3. EXISTING "RED-LINED" EASEMENT IS AN EASEMENT FOR UTILITY PURPOSES IN FAVOR OF MAUI ELECTRIC COMPANY, LTD. AND HAWAIIAN TELEPHONE CO. OF ELECTRIC CHANNEL, SHOALS, PHOTOGRAPH FILE AND "TRACT NO. 2, KEHALANI MAUKA, DRAINAGE AND UNDERGROUND RECORDED IN LIBER 30331 PAGE 23 DATED JANUARY 5, 2007. (NOT SHOWN ON MAP)
4. AN EXISTING EASEMENT FOR THE RIGHT OF ENTRY TO MAINTAIN DITCH NOS. 23 AND ACCESS PURPOSES IS IN FAVOR OF THE BOARD OF WATER SUPPLY, COUNTY OF MAUI AFFECTING "THE MAP KEY (2) 3-5-001:" PARCEL 91 AS SHOWN IN EXHIBIT "A" RECORDED IN DOCUMENT NO. 97-029070 DATED FEBRUARY 13, 1997.
5. EXISTING EASEMENTS 1, 2 AND 4 ARE EASEMENT FOR ACCESS PURPOSES IN FAVOR OF LOT 1 OF THE KEHALANI MAUKA (LARGE-LOT) SUBDIVISION NO. 1 (SUBDIVISION FILE NO. 3.1063) WITH EASEMENT 1 AFFECTING LOT 1, EASEMENTS 2 AND 4 AFFECTING LOT 2 OF THE KEHALANI MAUKA (LARGE-LOT) SUBDIVISION NO. 1 (SUBDIVISION FILE NO. 3.1063) RECORDED IN DOCUMENT NO. 2004-161826 DATED SEPTEMBER 2, 2004 (BEING PORTIONS OF KEHALANI MAUKA LONG DRIVE AND KEHALANI MAUKA PARKWAY)
6. EXISTING EASEMENTS AND EASEMENT RIGHTS FOR ACCESS PURPOSES IN FAVOR OF LOT 1-C OF THE KEHALANI MAUKA (LARGE-LOT) SUBDIVISION NO. 3-C (SUBDIVISION FILE NO. 3.2130) AFFECTING PARCEL LOTS 1, 2 AND 3 AS SHOWN ON KEHALANI MAUKA (LARGE-LOT) SUBDIVISION NO. (SUBDIVISION FILE NO. 3.2063) DATED DECEMBER 12, 2006, ROADWAY PARCELS "1", "2", "3", "4", AND "5" AS SHOWN ON KEHALANI MAUKA (LARGE-LOT) SUBDIVISION NO. 1 (SUBDIVISION FILE NO. 3.1063) AND ROADWAY PARCELS "A", "B", "C", "D", AND "16" AS SHOWN ON KEHALANI MAUKA (LARGE-LOT) SUBDIVISION NO. 2 (SUBDIVISION FILE NO. 3.2006) DATED SEPTEMBER 21, 2004.
7. EXISTING EASEMENT E-18 (0.041 AC.) IS A 15-FT. WIDE EASEMENT FOR WATERLINE PURPOSES IN FAVOR OF THE COUNTY OF MAUI AFFECTING LOT P-1 AS SHOWN ON THE KEHALANI MAUKA (LARGE-LOT) SUBDIVISION NO. 3-B (SUBDIVISION FILE NO. 3.2130) DATED JUNE 13, 2007.
8. EXISTING EASEMENT G IS AN EASEMENT FOR ELECTRICAL AND COMMUNICATION PURPOSES IN FAVOR OF MAUI ELECTRIC COMPANY, LTD. AND HAWAIIAN TELCOM, INC. AFFECTING LOT 1-A OF THE KEHALANI MAUKA (LARGE-LOT) SUBDIVISION NO. 2 (SUBDIVISION FILE NO. 3.2006) RECORDED AS DOCUMENTS 2008-152167 AND 2008-152168 DATED FEBRUARY 5, 2008. (BLANKET EASEMENT NOT SHOWN ON MAP)
9. EXISTING EASEMENT H AN EASEMENT FOR UTILITY AND ACCESS PURPOSES IN FAVOR OF KEPO KEHALANI LLC AND OWNER OF LOT 1-HS OF THE KEHALANI MAUKA (LARGE-LOT) SUBDIVISION NO. 3 (SUBDIVISION FILE NO. 3.2130) RECORDED AS DOCUMENT NO. 2009-140331 DATED JULY 31, 2009. (BLANKET EASEMENT NOT SHOWN ON MAP)
10. EXISTING EASEMENT R AN EASEMENT FOR CABLE TELEVISION PURPOSES AFFECTING LOT 1-A OF THE KEHALANI MAUKA (LARGE-LOT) SUBDIVISION NO. 2 (SUBDIVISION FILE NO. 3.2006) IN FAVOR OF TIME WARNER CABLE MANAGEMENT CO. RECORDED IN DOCUMENT NO. 2011-020629 DATED APRIL 5, 2011. (NOT SHOWN ON MAP)
11. EASEMENT A (12,317 SQ. FT.) IS A 15-FT. WIDE EASEMENT FOR WATERLINE PURPOSES AFFECTING LOT P-2-B IN FAVOR OF THE DEPARTMENT OF WATER SUPPLY, COUNTY OF MAUI.
12. PROPOSED EASEMENT B (537 SQ. FT.) IS A 15-FT. WIDE EASEMENT FOR WATERLINE PURPOSES AFFECTING LOT 1-A OF THE KEHALANI MAUKA (LARGE-LOT) SUBDIVISION NO. 2-B (SUBDIVISION FILE NO. 3.2130) IN FAVOR OF THE DEPARTMENT OF WATER SUPPLY, COUNTY OF MAUI.
13. LOT P-2-A WILL BE DEDICATED TO THE DEPARTMENT OF WATER SUPPLY, COUNTY OF MAUI FOR FUTURE DEVELOPMENT AS A WATER SOURCE.
14. THE SUBDIVISION IS LOCATED IN THE PLACED ZONE A WITH THE FOLLOWING DESIGNATIONS:
STATE LAND USE DISTRICT = AGRICULTURAL
COMMUNITY PLAN = PUKALANI
COUNTY ZONING = KEHALANI-MAUKA PROJECT DISTRICT 2, SUBDISTRICT = RESIDENTIAL
15. ALL BOUNDARY CORNERS ARE MARKED WITH 1/2"-INCH PIPE UNLESS OTHERWISE NOTED.
16. PURSUANT TO MAUI COUNTY CODE SECTION 2.64.070(C), THE COUNTY OF MAUI IS NOT RESPONSIBLE FOR ANY ROAD, ROADWAY, EASEMENT (INCLUDING BUT NOT LIMITED TO DRAINAGE, SEWER, ACCESS, RECLAIMED WATER, OR AMENDED LANDSCAPE) OR ANY OTHER DISCLOSED OR FIELD PROPERTY BOUNDARY WITH THIS MAP OR SHOWN ON THESE PLANS, UNLESS THE MAUI COUNTY COUNCIL HAS ACCEPTED ITS DEDICATION BY A RESOLUTION APPROVED BY A MAJORITY OF COUNCIL'S MEMBERS AT A REGULAR OR SPECIAL MEETING OF THE MAUI COUNTY COUNCIL.

FINAL SUBDIVISION APPROVAL
APPROVED AS SHOWN HEREON PURSUANT TO CHAPTER 18.16 MCC, ET SEQ.
SUBDIVISION FILE NUMBER: 3.2259
Approved for Recordation with the Bureau of Conveyances pursuant to Department of Taxation, State of Hawaii
Director of Public Works
Date: 6/23/15

SUBDIVISION FILE NO. 3.2259

KEHALANI PARKS SUMMARY
October 15, 2020

Total Area of Parks Required by December 3, 2012 Parks Assessment Agreement based on 2,400 Residential Units Being Developed:

Makai Park (Conveyed to County of Maui on June 15, 2015)	7.515 Acres
Mauka Park (Conveyed to County of Maui March 5, 2018)	13.115 Acres
Pocket Parks	6.870 Acres
Total Area of Parks Required	**27.500 Acres**

Pocket Parks Completed and Conveyed to Kehalani Community Association:

Akolea Pocket Park - TMK (2) 3-5-033:100	0.610 Acres
Cottages Pocket Park - TMK (2) 3-5-035:115	1.005 Acres
Module 9 (Highlands) Pocket Park - TMK (2) 3-5-001:100	4.761 Acres
Total Completed Pocket Parks	**6.376 Acres**

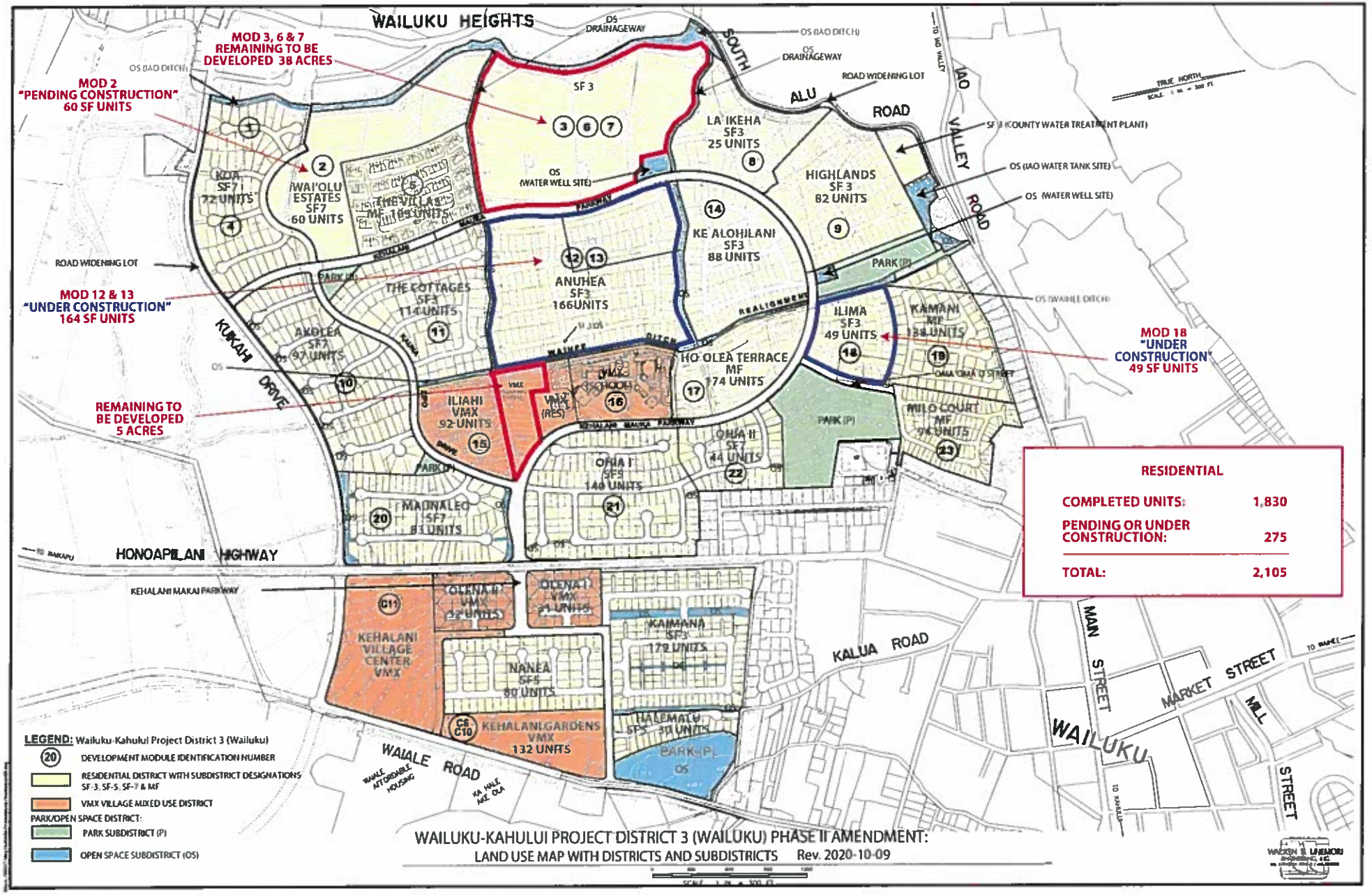
Remaining Pocket Parks to Complete Based on 2,400 Residential Units Being Constructed in Kehalani	0.494 Acres

Total Parks Completed:

Makai Park (Conveyed to County of Maui on June 15, 2015)	7.515 Acres
Mauka Park (Conveyed to County of Maui March 5, 2018)	13.115 Acres
Pocket Parks	6.376 Acres
	27.006 Acres

Number of Residential Units that can be developed based on the Amount of Parks that have been completed and conveyed:

Parks Completed	**27.006 Acres**
	1,176,364 SF
Required Park Land Area for Parks for Each Residential Unit Developed	500 SF/ Unit
Total Residential Units that can be developed 27.006 Acres divided by 500 sf per unit	**2,353 Units**
Kehalani Projected Maximum Buildout	**2,300 Units**


WAILUKU HEIGHTS
MOD 3, 6 & 7
REMAINING TO BE
DEVELOPED 38 ACRES
MOD 2
"PENDING CONSTRUCTION"
60 SF UNITS
SF 3
LA`IKEHA
SF3
25 UNITS
HIGHLANDS
SF 3
82 UNITS
KE ALOHILANI
SF3
88 UNITS
ANUHEA
SF3
166UNITS
KOA
SF7
72 UNITS
WAI'OLU
ESTATES
SF7
60 UNITS
THE VILLAS
MF
68 UNITS
THE COTTAGES
SF3
114 UNITS
AKOLEA
SF7
97 UNITS
ILIAHI
VMX
92 UNITS
HO`OLEA TERRACE
MF
174 UNITS
ILIMA
SF3
49 UNITS
KAMANI
MF
38 UNITS
MILO COURT
MF
96 UNITS
OHIA II
SF3
44 UNITS
OHIA I
SF3
140 UNITS
MAUNALEI
SF7
83 UNITS
KEHALANI
VILLAGE
CENTER
VMX
OLENA II
VMX
32 UNITS
OLENA I
VMX
31 UNITS
NANEA
SF3
80 UNITS
KAMANA
SF3
179 UNITS
KEHALANI GARDENS
VMX
132 UNITS
HALEMALU
SF3
31 UNITS
PARK (P)
OS
MOD 12 & 13
"UNDER CONSTRUCTION"
164 SF UNITS
REMAINING TO
BE DEVELOPED
5 ACRES
MOD 18
"UNDER
CONSTRUCTION"
49 SF UNITS
ROAD WIDENING LOT
KUKAH DRIVE
HONOAPIILANI HIGHWAY
KEHALANI MAKAI PARKWAY
KALUA ROAD
WAIALE ROAD
MAIN STREET
MARKET STREET
MILL STREET
WAILUKU
ALU ROAD
IAO VALLEY ROAD
SOUTH
OS DRAINAGEWAY
OS (IAO DITCH)
OS (WATER WELL SITE)
OS (IAO WATER TANK SITE)
SF 3 (COUNTY WATER TREATMENT PLANT)
ROAD WIDENING LOT
OS (WAIHEE DITCH)
TRUE NORTH
TO WAILUKU
TO KAHULUI
TO MAKAPU
WAIHEE RIVER
KEHALANI MAKAI PARKWAY
RESIDENTIAL
COMPLETED UNITS: 1,830
PENDING OR UNDER CONSTRUCTION: 275
TOTAL: 2,105
LEGEND: Wailuku-Kahului Project District 3 (Wailuku)
DEVELOPMENT MODULE IDENTIFICATION NUMBER
RESIDENTIAL DISTRICT WITH SUBDISTRICT DESIGNATIONS SF-3, SF-5, SF-7 & MF
VMX VILLAGE MIXED USE DISTRICT
PARK/OPEN SPACE DISTRICT:
PARK SUBDISTRICT (P)
OPEN SPACE SUBDISTRICT (OS)
WAILUKU-KAHULUI PROJECT DISTRICT 3 (WAILUKU) PHASE II AMENDMENT:
LAND USE MAP WITH DISTRICTS AND SUBDISTRICTS Rev. 2020-10-09

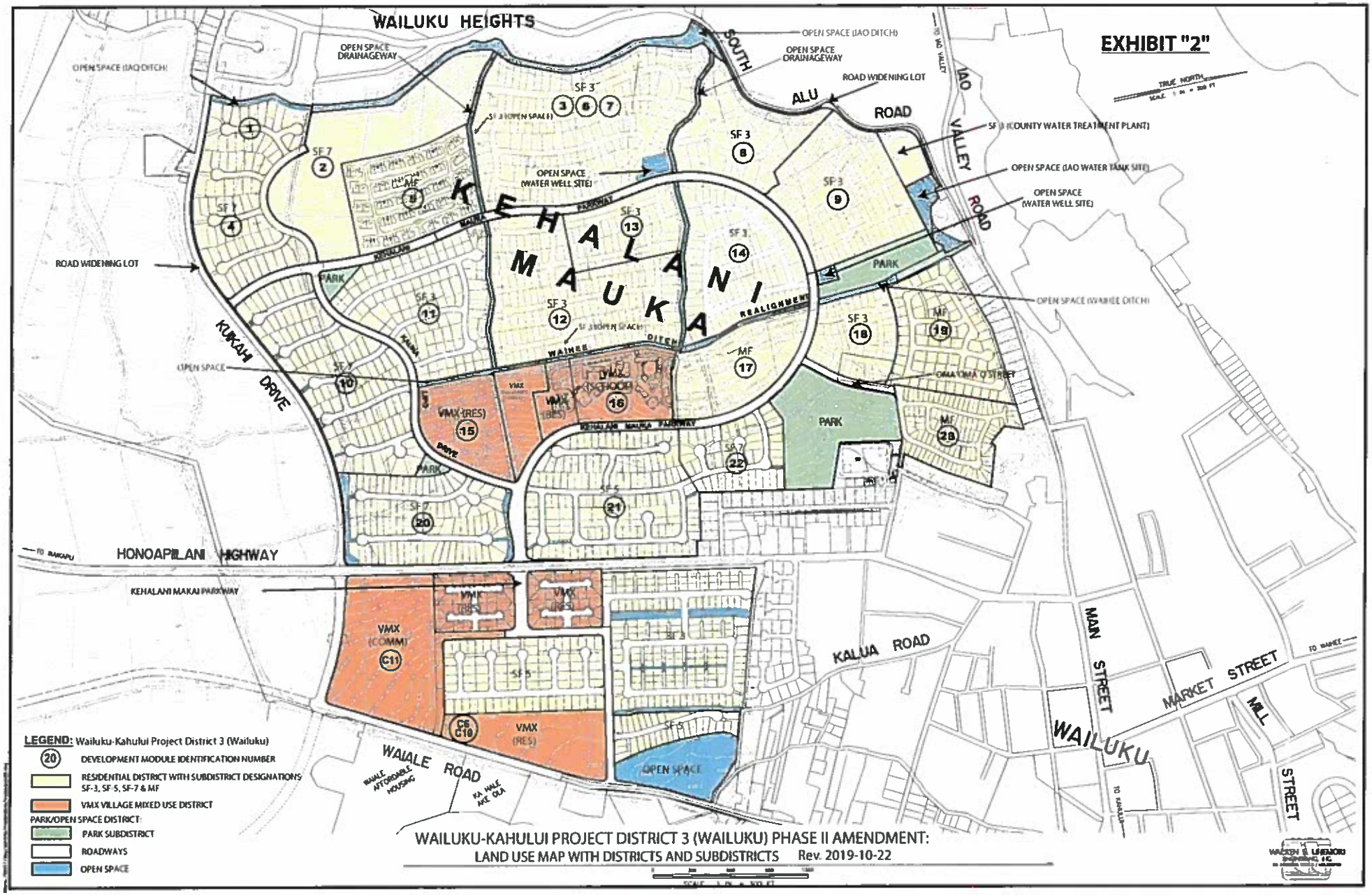


EXHIBIT "2"
WAILUKU HEIGHTS
OPEN SPACE (IAO DITCH)
OPEN SPACE DRAINAGEWAY
SOUTH ALU ROAD
ROAD WIDENING LOT
IAO VALLEY ROAD
SF 3 (COUNTY WATER TREATMENT PLANT)
OPEN SPACE (IAO WATER TANK SITE)
OPEN SPACE (WATER WELL SITE)
KEHALANI MAUKA
KEHALANI MAUKA PARKWAY REALIGNMENT
PARK
OPEN SPACE (WAIHEE DITCH)
KUKAHI DRIVE
OPEN SPACE
HONOAPIILANI HIGHWAY
KEHALANI MAKAI PARKWAY
VMX (COMM)
VMX (RES)
KALUA ROAD
MAIN STREET
MARKET STREET
MILL STREET
WAILUKU
WAIALE ROAD
WAIALE AFFORDABLE HOUSING
KA HALE AKE OLA
LEGEND: Wailuku-Kahului Project District 3 (Wailuku)
DEVELOPMENT MODULE IDENTIFICATION NUMBER
RESIDENTIAL DISTRICT WITH SUBDISTRICT DESIGNATIONS SF-3, SF-5, SF-7 & MF
VMX VILLAGE MIXED USE DISTRICT
PARK/OPEN SPACE DISTRICT:
PARK SUBDISTRICT
ROADWAYS
OPEN SPACE
WAILUKU-KAHULUI PROJECT DISTRICT 3 (WAILUKU) PHASE II AMENDMENT:
LAND USE MAP WITH DISTRICTS AND SUBDISTRICTS Rev. 2019-10-22

KEHALANI DEVELOPMENT SUMMARY
Wailuku-Kahului Project District 3 (Wailuku)
10/22/2019

MODULE / NEIGHBORHOOD	# OF UNITS	ACREAGE	DENSITY PER ACRE	VMX DISTRICT					RESIDENTIAL DISTRICT					PARK / OPEN SPACE DISTRICT			Subtotal Open Space, Drainage, Roadways	TOTAL (Acreage)
				VILLAGE MIXED USE DISTRICT					RESIDENTIAL SUBDISTRICTS (Acreage)					PARKS SUBDISTRICT	OPEN SPACE SUBDISTRICT			
				Commercial	Residential	School	Other	Subtotal	SF3	SF5	SF7	MF	Subtotal	Park	Open Space	Roadways		
COMPLETED OR IN PROGRESS DEVELOPMENTS																		
Makai																		
Kamana	179	29.21	6.13						17.92				17.92		4.87	6.42	11.29	29.21
C-5 (Halemalu)	30	5.33	5.63							4.20			4.20		0.10	1.02	1.13	5.33
C-7 (Nanea)	80	16.67	4.80							13.16			13.16			3.51	3.51	16.67
C-3 (Olena I)	31	5.97	4.82		4.82											1.15	1.15	5.97
C-2 (Olena II)	32	6.18	4.98		4.98			4.98								1.20	1.20	6.18
C-6/10 (Kehalani Gardens)	132	11.10	11.90		11.10			11.10									0.00	11.10
C-1/11 (Kehalani Village Center)		21.54		21.54				21.54									0.00	21.54
Kehalani Makai Parkway		4.70														4.70	4.70	4.70
Makai Park		7.52													7.52		7.52	7.52
Total Makai	484	108.2	4	22	21	0	0	42	18	17	0	0	35	0	12	18	30	108.2
Mauka																		
21 (Ohia I)	140	28.11	4.98							22.15			22.15		0.30	5.66	5.96	28.11
20 (Maunaleo)	83	20.48	4.05								15.87		15.87		1.49	3.12	4.61	20.48
1 & 4 (Koa)	72	22.98	3.13								22.98		22.98				0.00	22.98
15 (Ikahi)	92	9.80	9.39		9.80			9.80									0.00	9.80
22 (Ohia II)	44	10.01	4.40								8.06		8.06		0.21	1.74	1.95	10.01
10 (Akolea)	97	27.28	3.56								22.04		22.04	0.61	0.40	4.22	4.63	27.28
11 (Cottages)	114	22.86	4.99						18.61				18.61	1.00	0.02	3.22	3.25	22.86
5 (Villas)	103	16.08	6.41									16.08	16.08				0.00	16.08
23 (Malo Court I)	94	11.14	8.44									11.14	11.14				0.00	11.14
2 (Waiolu Estates)	60	22.98	2.61								22.98		22.98				0.00	22.98
17 (Hoolea)	174	12.25	14.20									12.25	12.25				0.00	12.25
19 (Kamani)	138	16.76	8.23									16.76	16.76				0.00	16.76
14 (Alohilani)	88	19.92	4.42						15.94				15.94			3.98	3.98	19.92
18 (Ilima)	49	9.10	5.38						9.10				9.10				0.00	9.10
12/13 (Anuhea)	164	39.20	4.18						39.20				39.20					39.20
8 (Lailieha)	25	14.21	1.76						14.21				14.21					14.21
9 (Highlands)	83	20.06	4.14						20.06				20.06					20.06
Iao Water Treatment Plant Site		2.54	0.00						2.54				2.54					2.54
Mauka Park		13.12												13.12			0.00	13.12
VMX / Community Center		5.15					5.15	5.15									0.00	5.15
VMX / School		13.60			3.50	10.10		13.60									0.00	13.60
North-South Pedestrian Bikeway (aka Wahee Ditch)		4.14												0.60	3.54		3.54	4.14
Mauka - Makai Drainage Corridor (North)		1.64													1.64		1.64	1.64
Mauka - Makai Drainage Corridor (South)		1.65													1.65		1.65	1.65
Road Widening Lots (Alu Rd, Kuikahi Dr.)		2.19														2.19	2.19	2.19
Iao Water Tank & Well Site		2.05													2.05		2.05	2.05
Kehalani Mauka Parkway		14.91														14.91	14.91	14.91
Oma oma o Street		1.06														1.06	1.06	1.06
Kauna Lapo Drive (aka South Collector)		3.46														3.46	3.46	3.46
Total Mauka	1620	388.7	4.2	0.0	13.3	10.1	5.2	28.5	119.7	22.2	91.9	56.2	290.0	15.3	11.3	43.6	54.9	388.7
TOTAL MAKAI AND MAUKA	2104	496.9	4.2	21.5	34.2	10.1	5.2	71.0	137.8	39.5	91.9	56.2	325.2	15.3	23.8	61.6	85.4	496.9
FUTURE DEVELOPMENTS																		
3,6,7 (SF)	152	38.56	3.94						38.56				38.56					38.56
Pocket Parks		4.76	0.00											4.76			0.00	4.76
Open Space / Water Well Site		1.26	0.00												1.26		1.26	1.26
Open Space / Iao Ditch		5.70	0.00												5.70		5.70	5.70
Total Future Developments	152	50.3	3.0	0.0	0.0	0.0	0.0	0.0	38.6	0.0	0.0	0.0	38.6	4.8	7.0	0.0	7.0	50.3
Total Kehalani	2256	547.2	4.1	21.5	34.2	10.1	5.2	71.0	176.1	39.5	91.9	56.2	363.8	20.1	30.8	61.6	92.3	547.2
PD Ordinance		549		22	34	10	5	71					364	20			94	549
Balance		-1.8		-0.5	0.2	0.1	0.2	0.0					-0.2	0.1			-1.7	-1.8

Printed 10/25/2019 8:28 AM

TERM SHEET FOR KEHALANI COMMUNITY CENTER SITE TRANSFER

1. **Parties**

   County of Maui ("County")

   RCFC Kehalani LLC ("RCFC")

2. **Property:**

   TMK No. (2) 3-5-001:102, area approximately 4.65 acres along with access easement A-1 consisting of an area of 1.396 acres ("Property"). The property has an appraised value of $2,020,000.

3. **Transaction**

   RCFC will convey the Property to the County at no cost.

   RCFC and County shall agree upon a form of Deed for the transfer of the Property.

   RCFC and County shall enter into an agreement formally memorializing the terms of the Kehalani Community Center Site Transfer set forth in this Term Sheet and parties agree it will use its best efforts to consummate an agreement within sixty calendar days after the execution of this Term Sheet. Said agreement shall be recorded as an encumbrance on the Property and shall restrict the use of the Property to community center purposes.

4. **Condition of Zoning**

   Per RCFC's October 15, 2020, Parks Update Completion letter, approximately 27.001 acres are dedicated to parks and open space uses in Kehalani, demonstrating that per the Parks Assessment Agreement dated December 23, 2012, Kehalani has provided its fair and equitable share of park improvements. The final remaining requirement of Condition No. 7 of Ordinance 2053 (1991) is the dedication of a community center site for use by the community. Upon recording of the agreement restricting the use of the Property to community center purposes, Condition No. 7 of Ordinance 2053 (1991) ("Condition 7"), will be deemed to have been satisfied.

5. **State Land Use Commission Decision and Order**

   RCFC shall petition the State Land Use Commission on whether the requirements of Finding of Fact 85 of the Findings of Fact, Conclusions of Law, and Decision and Order for Docket No. A89-642, dated January 30, 1990 ("1990 D&O"), requires it to construct a community center. Upon issuance of declaratory order or other document purporting that RCFC is not required to construct a community center, RCFC will dedicate the Property to the County of Maui. In the event that the State LUC declaratory order or other document purporting that RCFC is not required to construct a community center is not issued by December 31, 2021, RCFC and the County of Maui shall reevaluate the situation.

6. Wailuku-Kahului Project District 3 Phase III Approvals

Upon execution of this Term Sheet, RCFC agrees that the property will be set aside for a Community Center Site. Based on this representation the County will agree to not withhold Phase III Approvals for any Project or Development of the Wailuku-Kahului Project District 3 for lack of substantial compliance with Condition 7 or the 1990 D&O as it relates to parks and community centers. With the understanding that RCFC shall use its reasonable best efforts to receive a determination from the State Land Use Commission regarding the construction of the community center site by December 31, 2021.

7. Non-Binding

All parties understand and acknowledge that this Term Sheet merely constitutes a statement of their mutual intentions and a recital of their discussions in connection with the transactions contemplated by this Term Sheet, and therefore does not constitute a binding agreement upon any party.

(SIGNATURES ON THE FOLLOWING PAGE)

COUNTY OF MAUI:

MICHAEL P. VICTORINO
Its Mayor

RCFC KEHALANI LLC

AARON A. GIOVARA
Member

MICHAEL P. VICTORINO
Mayor

MICHELE CHOUTEAU MCLEAN, AICP
Director

JORDAN E. HART
Deputy Director

DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

March 11, 2020

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

Dear Mr. Orodenker:

SUBJECT: LUC DOCKET NO. A89-642 2019 ANNUAL REPORT FOR WAILUKU PROJECT DISTRICT, WAILUKU, MAUI, HAWAII; TMK(S): (2) 3-5-001:001 (POR.) AND 017 (POR.), (2) 3-4-007:002 (POR.)

The Department of Planning (Department) has reviewed the above-referenced 2019 Annual Report (Report) dated September 12, 2019. The Report represents the general progress of the Wailuku Project District, known as Kehalani, since its redistricting and this Report was submitted solely on behalf of RCFC Kehalani, LLC and solely with respect to the Wailuku Project District. Previously the Petitioner's affiliate, RCFC Piihana, LLC held an ownership interest in certain lands which were a part of the Piihana Project District; however, all such interests have since been sold to a third party.

The Department acknowledges that this Report reflects continuing fulfillment of Condition No. 12 requiring the Petitioner to provide Reports on an annual basis reflecting the status of the subject project and the Petitioner's progress in complying with the conditions imposed.

As part of the analysis, the Department annually reviews the project for compliance with conditions of the State Land Use Commission (LUC) District Boundary Amendment (DBA) in tandem with the project's progress.

At the November 2, 1989 LUC hearing for the DBA (Docket A89-642) under review in this letter, C. Brewer Properties, Inc. (Petitioner) through its witness's testimony stated that it would provide the land for and develop a community center; the DBA approval obligates the Petitioner to fulfill that representation. Consequently, the Department at this time cannot issue further Project District Phase III approvals until the Petitioner makes sufficient progress towards developing the community center at Kehalani. Also as stated in their Report, the Petitioner notes

EXHIBIT 2

that 25 of the 28 planned neighborhoods at Kehalani have received Phase III approvals. With only three planned neighborhoods left, timely progress towards developing the community center is essential in complying with representations made at the LUC hearing in 1989.

During the November 2, 1989 LUC hearing regarding the Petitioner's request to reclassify approximately 624 acres of land from agriculture to urban to develop a residential community, the issue of a community center on the Wailuku portion was discussed. This discussion led to Finding of Fact No. 85 on page 22 of the Decision and Order, which states: *"85. Petitioner proposed to develop and dedicate approximately 110 acres of parks and open space as well as a community center within the Wailuku Project District."*

That representation became a binding obligation through Condition No. 10 on page 50 of the Decision and Order, which states: *"10. Petitioner shall develop the Property in substantial compliance with representations made to the Land Use Commission in obtaining the reclassification of the Property."*

Consequently, the development of a community center remains an unfulfilled condition which needs to be addressed prior to any further Phase III application approvals.

Furthermore, the change of zoning approval granted by the Maui County Council for the Project District requires compliance with Condition No. 7 which addresses the lands that the Applicant is required to dedicate as public lands and which states: *"7. The applicant shall provide its fair and equitable share of park improvements generated by the project as is deemed necessary by the Director of Parks and Recreation of the County of Maui. The applicant's participation shall include, but shall not be limited to, the dedication of land in fee simple, free and clear of all encumbrances, for park use and a community center site for use by the community."*

The 2012 Park Assessment Agreement between Kehalani Holdings Company, Inc. and the County of Maui does not include land for a "community center" or "community center site"; consequently the Department does not believe that Condition No. 7 of the zoning has been met as to providing the required land for public use, nor has Condition No. 10 of the LUC decision been met as to developing the community center on that land. The Parks Assessment Agreement did not and cannot supersede or eliminate obligations imposed by the LUC or the County Council.

Furthermore, the Department requests an updated Wailuku Project District Land Use Map with districts and subdistricts to reflect development progress as of 2020.

The Department also requests an updated roadway master plan listing of streets within the Kehalani Project District and the progress made to date in dedicating these roadways to the County of Maui as part of its work with the Department of Public Works in meeting the Petitioner's obligations for transportation improvements, especially as the project nears completion. Additionally, the Department would like to review plans and timetables for the dedication of sewer/wastewater lines.

Additionally, the Department notes in the Report on page 5 that *"the mauka drainage system is substantially completed."* Further explanation is needed as to what additional improvements are required to complete the mauka drainage system, especially as the mauka developments are nearing completion.

For the reasons stated above, the Department believes that the Petitioner is not in compliance with the conditions of the DBA approval for Docket No. A89-642, nor is in compliance with the conditions of the change of zoning approval, and the Petitioner/Current Project Owner must either fulfill those conditions or request amendments to the DBA and change of zoning. Should you have any further questions on this matter, please contact the Department by email at planning@mauicounty.gov or by phone at (808) 270-8205.

Sincerely,

MICHELE MCLEAN, AICP
Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
John S. Rapacz, Planning Program Administrator (PDF)
Kurt F. Wollenhaupt, Staff Planner (PDF)
Tara K. Furukawa, Staff Planner (PDF)
Paul Critchlow, Staff Planner (PDF)
Rowena Dagdag-Andaya, Department of Public Works (PDF)
Department of Environmental Management, Wastewater Division (PDF)
Brian Ige, RCFC Kehalani LLC (PDF)
Gwen Ohasi Hiraga, Munekiyo Hiraga (PDF)
State Office of Planning
Rasmi Agrahari, Land Use Commission (PDF)
Land Use Commission (PDF)
Project File

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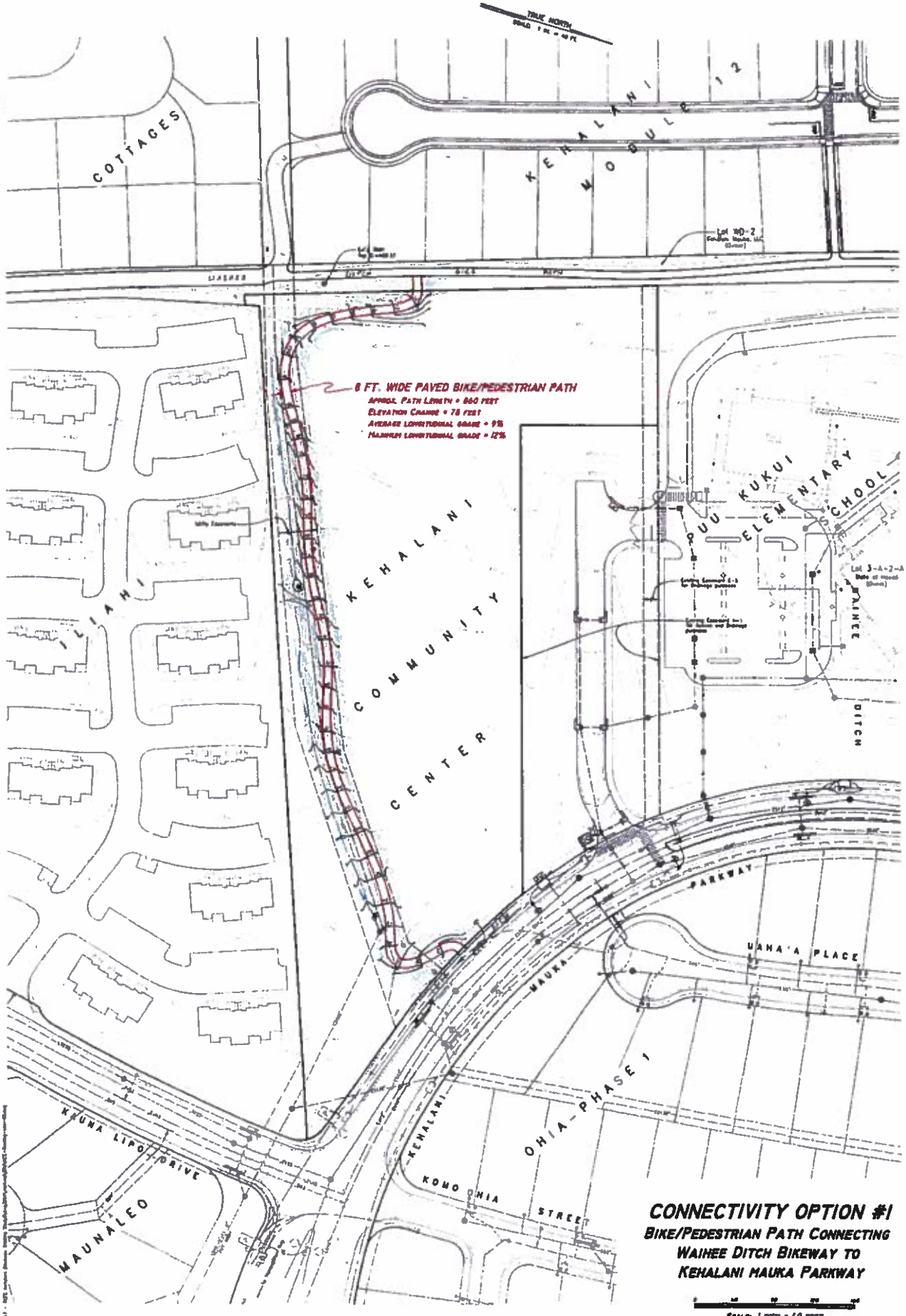


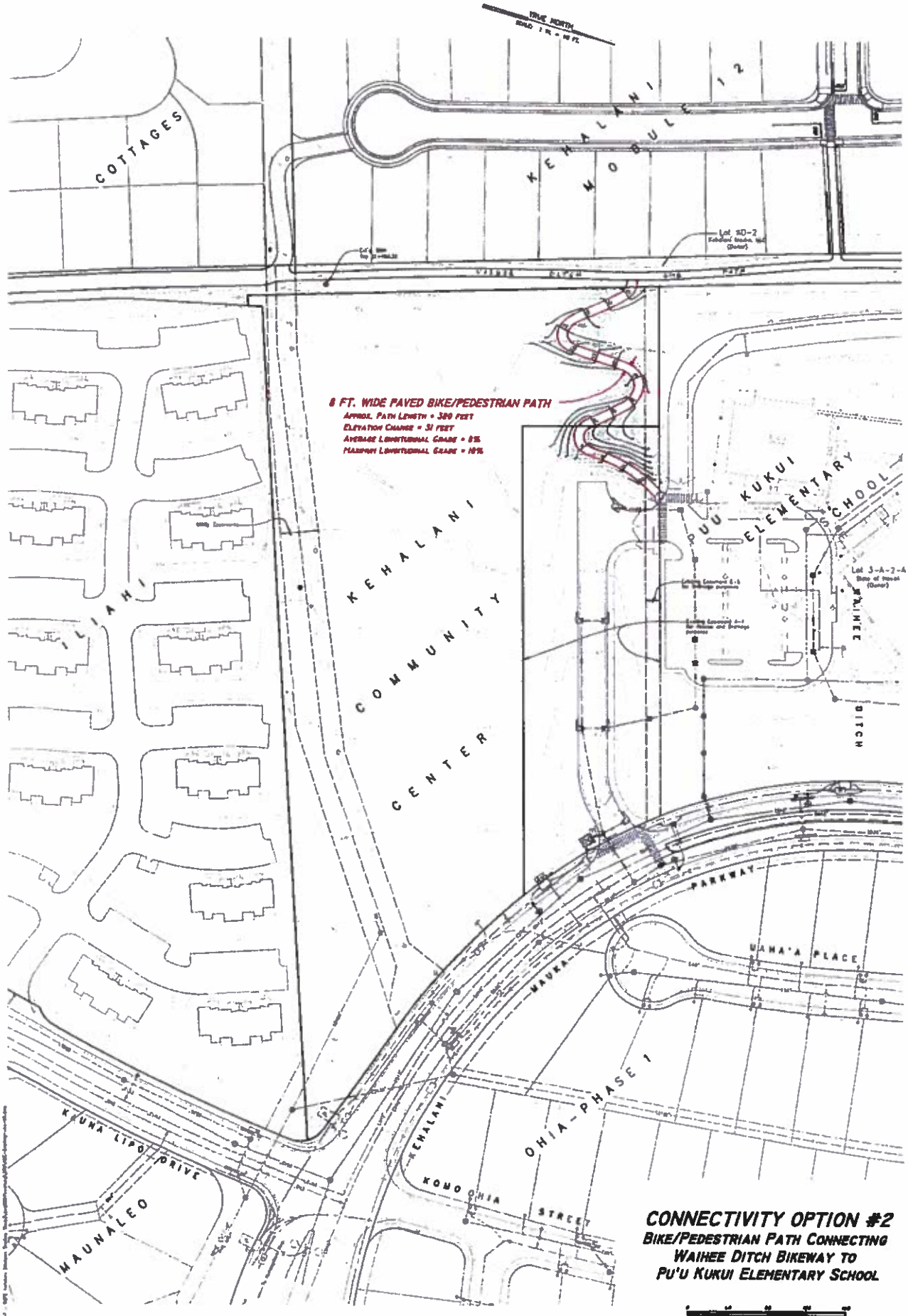
CONNECTIVITY OPTION #1

BIKE/PEDESTRIAN PATH CONNECTING WAIHEE DITCH BIKEWAY TO KEHALANI MAUKA PARKWAY

SCALE: 1 INCH = 40 FEET

AUGUST 22, 2019

EXHIBIT 3

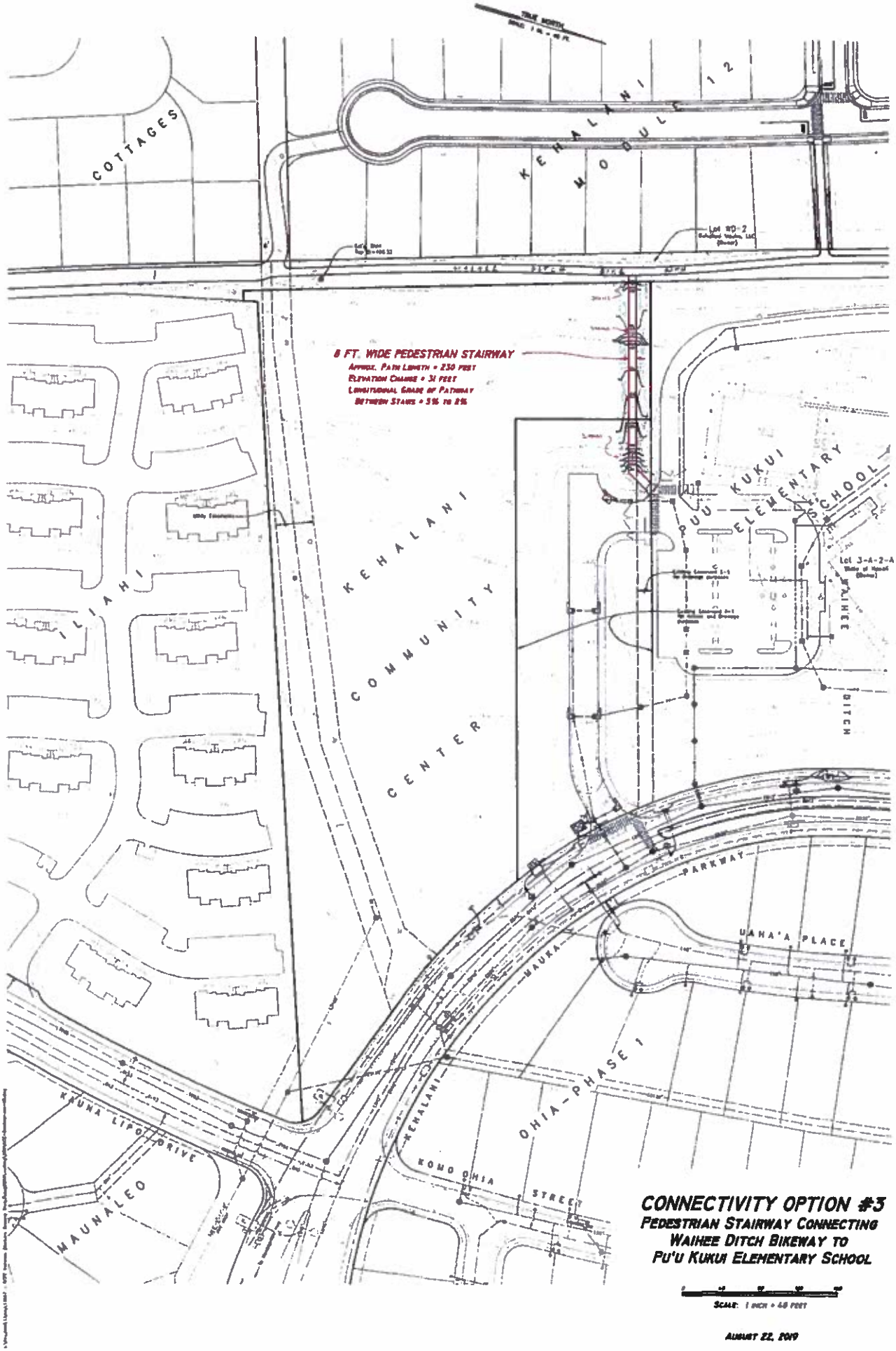


CONNECTIVITY OPTION #2

BIKE/PEDESTRIAN PATH CONNECTING WAIHEE DITCH BIKEWAY TO PU'U KUKUI ELEMENTARY SCHOOL

SCALE: 1 INCH = 40 FEET

AUGUST 22, 2019



CONNECTIVITY OPTION #3

PEDESTRIAN STAIRWAY CONNECTING WAIHEE DITCH BIKEWAY TO PU'U KUKUI ELEMENTARY SCHOOL

SCALE: 1 INCH = 40 FEET

AUGUST 22, 2019

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.)	CERTIFICATE OF SERVICE
)	
To Amend the Agricultural Land Use District)	
Agricultural District Boundary into the Urban)	
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)	

CERTIFICATE OF SERVICE

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

DANIEL E. ORODENKER, EXECUTIVE DIRECTOR
State of Hawaii Land Use Commission
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Honolulu, Hawaii 96804-2359

By Certified Mail No.:
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(Return Receipt Requested)

Digital Copy to State Land Use Commission, luc@dbedt.hawaii.gov

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DATED: Wailuku, Hawaii, December 1, 2020.

MICHELE MCLEAN, AICP
Planning Director
Department of Planning

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