

OFFICE OF PLANNING
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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 PROPERTIES, INC.)	OFFICE OF PLANNING'S POSITION IN
)	SUPPORT OF WAILUKU
To Amend the Agricultural Land Use District)	PLANTATION, LLC, ET AL'S MOTION
Boundary into the Urban Land Use District for)	FOR ORDER BIFURCATING DOCKET
approximately 626 Acres Situate at Wailuku and)	NO. A89-642; CERTIFICATE OF
Piihana, Maui, Hawaii, Tax Map Key Nos. (2) 3-)	SERVICE
5-001:001(por.), 017(por.); (2) 3-4-007:002; (2))	
3-3-001:033, 039, and 016(por.); (2) 3-4-)	
032:010, 018, and 001(por.).)	
)	

OFFICE OF PLANNING'S POSITION IN SUPPORT OF PETITIONER WAILUKU
 PLANTATION, LLC, ET AL'S MOTION FOR ORDER BIFURCATING DOCKET NO.
 A89-642

THE OFFICE OF PLANNING, STATE OF HAWAII ("OP"), provides this position in support of Petitioner Wailuku Plantation, LLC, et al's Motion for Order Bifurcating Docket Number A89-642 pursuant to Hawaii Administrative Rules ("HAR") §§ 15-15-01, 15-15-70, and 15-15-71.

Background

In 1989, C. Brewer Properties, Inc. (“Original Petitioner”) petitioned the Land Use Commission (“LUC”) to reclassify 626 acres (“Petition Area”) from the State Agricultural District to the Urban District. The LUC approved the Petition and on January 30, 1990 issued its Findings of Fact, Conclusions of Law, and Decision and Order (“1990 D&O”). The Petition Area contained two non-contiguous parcels, the Wailuku Project District No. 3, (“Kehalani Parcel”), and the Piihana Project District (“Piihana Parcel”).

Subsequently, the Original Petitioner conveyed both parcels to Kehalani Holding Company, Inc. and Kehalani Mauka, LLC. In 2013, Kehalani Holding and Kehalani Mauka conveyed the Kehalani Parcel to RCFC Kehalani, LLC and the Piihana Parcel to RCFC Piihana, LLC.

Through several transactions from 2017 to 2019, RCFC Piihana conveyed the entire Piihana Parcel, approximately 79 acres, to Petitioner Wailuku Plantation. Since then, Petitioner Wailuku Plantation has sold portions of the Piihana Parcel, a total of approximately 4 acres, to different landowners. These are the additional Petitioners listed in the current Motion for Bifurcation.

Petitioners’ Motion and Deferral of Decision Making

On August 11, 2020, Petitioner Wailuku Plantation, LLC, et. al., filed a Motion for Order Bifurcating Docket No. A89-642 (“Bifurcation Motion”) asking that the LUC: 1. Order the substitution of the Original Petitioner with the Petitioners and recognize the new fee owners of the Piihana Parcel as formal parties in this Docket; and 2. To bifurcate the Docket and issue a new docket number for the Piihana Parcel. On August 26, 2020, Petitioner RCFC Kehalani, LLC filed a Joinder to Petitioner Wailuku Plantation, LLC, et al’s, Bifurcation Motion.

On September 2, 2020, the LUC held a hearing on the Bifurcation Motion. After hearing public testimony, presentations by the parties and discussion, the LUC decided to defer decision making on the Bifurcation Motion. The LUC's Order Deferring Decision Making on Petitioner Wailuku Plantation, et. al's Bifurcation Motion: 1. Deferred decision making for a period of 60 days after which the LUC would resume consideration of the matter at a November 16, 2020 hearing where the parties shall address the LUC's concerns, including but not limited to the allocation of responsibility between the Petitioners Wailuku Plantation, et. al., and RCFC Kehalani to comply with the representations and conditions of the 1990 D&O, how they have met or plan to meet the affordable housing requirement, as well as their financial capability and development timelines to complete their projects; 2. Required all parties to file with the LUC all written documents and position statements on the Bifurcation Motion by November 5, 2020; and 3. Authorized the LUC Chair on behalf of the LUC and at the Chair's discretion to order an extension of the 60-day deferral period of up to an additional 60 days if the parties agreed.

Petitioner RCFC Kehalani's Response to Deferral Order and OP Comment

On October 21, 2020, Petitioner RCFC Kehalani filed a Response to the Deferral Order presenting the status of its compliance with the affordable housing and infrastructure requirement of the 1990 D&O. Condition 1 of the 1990 D&O required that at least 30% of the residential units in each Project District be offered for sale or lease to families with incomes of up to 120% of the County's median income and at least 30% of the residential units in each Project District be offered for sale or lease to families with incomes from 120% to 140% of the County's median income. Condition 1 also provided that the Petitioner may obtain the special credit as determined by the Hawaii Housing Finance and Development Corporation ("HHFDC") and Maui County for offering more than 10% of the total residential units affordable to persons with less than 80% of the County's median income.

Petitioner RCFC Kehalani's Response includes three exhibits to substantiate its compliance with the D&O Condition 1. Exhibit 1 is an August 31, 1991 Annual Report submitted by the Original Petitioner C. Brewer that notes a tentative agreement between the Petitioner and Maui County to provide for 50% of the homes in the combined project districts to be in the affordable categories starting at 51% of the County median income. Also noted in the Annual Report is the Original Petitioner's intent to consult with the Hawaii Housing Finance and Development Corporation ("HHFDC") for its review and approval of the tentative agreement.

Exhibit 2 consists of Maui County Council Ordinance No. 2053, approved on November 8, 1991, that established the Wailuku-Kahului Project District 3 zoning. Condition 1 of the Ordinance required the applicant to comply with the affordable housing requirements set forth in the LUC's 1990 D&O. The Ordinance Condition 1 also imposed the following percentages of dwelling units in the Wailuku and Piihaha Project Districts in the aggregate to be sold or rented to persons in the low, low-moderate, and moderate income groups: 5% of the units to those in the 51% to 65% median income bracket; 10% to those in the 66% to 80% median income bracket; 15% to those in the 81% to 120% median income bracket, and; 20% to those in the 121% to 140% median income bracket. The number of affordable housing units provided by both project districts in aggregate would be 50% of the total number of units, and a total of 15% would be for those with incomes up to 80% or less of the County median income.

Petitioner RCFC Kehalani's Exhibit 3 is a March 11, 2020 letter from the Maui County Department of Housing and Human Concerns confirming that as of March 2, 2020, the Wailuku Project District has earned 1,130 affordable housing credits through the sale of units at affordable prices and is compliant with the affordable housing requirement.

Contrary to the August 31, 1991 Annual Report (Petitioner RCFC Kehalani's Exhibit 1), HHFDC has no record of having reviewed and/or approved a tentative agreement between the Original Petitioner and Maui County for the provision of 50% of the homes in the combined project districts in the affordable categories starting at 51% of the County's median income. In the discussion with the Original Petitioner leading to the 1990 D&O, HHFDC had recommended that 20% of the homes in the aggregate project districts be made available to households with incomes up to 80% of the county median but was unable to reach an agreement (see OP Exhibit 1).

OP has no comment on the county roadway and infrastructure and defers to the County of Maui.

Recommendation

OP believes that the change in ownership of the Piihana Parcel constitutes good cause for the substitution of the Original Petitioner with the Petitioners pursuant to HAR § 15-15-71. OP also believes that bifurcation of LUC Docket No. A89-642 into two separate dockets is appropriate given: 1. The owners of the Kehalani Parcel and the Piihana Parcel, respectively, have no affiliation and do not have related plans of development; 2. The two parcels are not geographically contiguous and are in significantly different stages of development; and 3. Both parcels will continue to be subject to the conditions of the 1990 D&O with the exception of Condition No. 9 that pertains exclusively to the Piihana Parcel. Bifurcation of the Docket into two separate dockets would allow for the just and efficient determination of every proceeding under HAR § 15-15-01.

Therefore, OP recommends that the LUC approve Petitioners' Motion for Order Bifurcating Docket No. A89-642.

DATED: Honolulu, Hawaii, December 14, 2020.

OFFICE OF PLANNING
STATE OF HAWAII

Mary Alice Evans

MARY ALICE EVANS ·
Director

OFFICE OF PLANNING

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235 S. Beretania Street
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**BEFORE THE LAND USE COMMISSION
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C BREWER PROPERTIES, INC.)	CERTIFICATE OF SERVICE
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To Amend the Agricultural Land Use District)	
Boundary into the Urban Land Use District for)	
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Piihaha, Maui, Hawaii, Tax Map Key Nos. (2) 3-)	
5-001:001(por.), 017(por.); (2) 3-4-007:002; (2))	
3-3-001:033, 039, and 016(por.); (2) 3-4-032:010,)	
<u>018, and 001(por.)</u>)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular mail.

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DATED: Honolulu, Hawaii, December 14, 2020.

OFFICE OF PLANNING
STATE OF HAWAII

Mary Alice Evans

MARY ALICE EVANS
Director

JOHN WAIHEE
GOVERNOR



JOSEPH K. CONANT
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUDGET AND FINANCE

IN REPLY REFER TO:



HOUSING FINANCE AND DEVELOPMENT CORPORATION

SEVEN WATERFRONT PLAZA, SUITE 300

500 ALA MOANA BOULEVARD

HONOLULU, HAWAII 96813

FAX (808) 543-6841

89:PLNG/4869 jt

December 12, 1989

MEMORANDUM

TO: The Honorable Harold S. Masumoto, Director
Office of State Planning

FROM: Joseph K. Conant

SUBJECT: Affordable Housing Condition for the Proposed
Wailuku/Piihaha Project, C. Brewer

Attached for your information is a copy of a letter dated December 5, 1989 from C. Brewer Properties, Inc. to the HFDC. Basically, the petitioner has summarized their understanding of our discussions relating to (1) the physical distribution of units within the Piihaha and Wailuku sites and (2) the provision of affordable housing units to meet the housing needs of various income groups.

While the HFDC is amenable to the proposed distribution of units within the Piihaha Project District and the Wailuku "Makai" and "Mauka" Project District, we do not agree with the proposed income groups being targeted for assistance. That is, the petitioner has proposed to provide 20% of the units for sale to families earning 80% of Maui's median income. While there is a definite need for homeownership opportunities at this level, we believe that such a condition would not equitably serve families with incomes lower than 80% of the median. Thus, in order to provide for a range of housing opportunities for all income levels, the HFDC, with the concurrence of the County of Maui, recommended that the petitioner provide 20% of the housing units for sale or lease to families earning up to 80% of the median.

As you know, we could not reach an agreement with the petitioner. Therefore, the HFDC has agreed that instead of providing 50% of the units at prices affordable to families earning from 80% to 140% of Maui's median income, the petitioner should offer 50% of the units for sale or lease

The Hon. Harold S. Masumoto
December 12, 1989
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at affordable prices. Thirty percent of the units would be offered for sale or lease to families earning up to 120% of Maui's median income, and 30% of the units would be offered for sale or lease to families earning 120% to 140% of the median income. This agreement was made with the understanding that the price distribution for the affordable units will be further refined during the county community planning and zoning process.

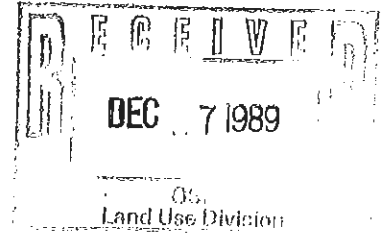


JOSEPH K. CONANT
Executive Director

cc: Mr. Ralph Masuda
Mr. Edwin Okubo
Mr. B.G. Moynahan



C. Brewer Properties, Inc.



December 5, 1989

Mr. Joseph K. Conant
Executive Director
State of Hawaii
Housing Finance and Development Corporation
7 Water Front Plaza, Suite 300
500 Ala Moana Boulevard
Honolulu, Hawaii 96813

Dear Mr. Conant:

**Subject: Confirmation of Agreement on Housing Distribution
for Wailuku and Piihaha Project Districts
Land Use Commission Docket No. A89-642**

First, we would like to express our appreciation for the timely and professional response and efforts of your staff in developing a mutually agreeable solution for housing distribution which recognizes and integrates affordable housing needs with specific project characteristics. We believe that the series of discussions produced increased awareness of both parties' concerns and a useful and realistic product. All of this was done in a very compressed time frame and in a very positive process.

Our attorney, Eric Maehara, is drafting specific language for inclusion in the draft Land Use Commission's Decision and Order. We will provide you with a draft as soon as possible. We are hopeful of completing our Land Use Commission action on December 14, so we will be moving very quickly.

In the meantime, we believe it would be useful to state the essence of the agreement on housing distribution in layman's terms. We also want to confirm discussions on some matters closely related to the housing distribution.

Mr. Joseph K. Conant
 December 5, 1989
 Page Two

The following is a simple table setting out the principles of our agreement. The table is organized by project district and by physical sub-area where appropriate:

% Median Income	Piihana	Wailuku Project District		Total	% Project
	Project District	"Makai"	"Mauka"		
80%	120 Units	480 Units	--	600 Units	20.00%
80-120%	180 "	195 "	100 Units	475 "	15.83%
<u>120-140%</u>	<u>200 "</u>	<u>175 "</u>	<u>100 "</u>	<u>475 "</u>	<u>15.83%</u>
Subtotal	500 "	850 "	200 "	1550 "	51.67%
>140%	<u>100 "</u>	<u>50 "</u>	<u>1300 "</u>	<u>1450 "</u>	<u>48.33%</u>
TOTAL	<u>600 Units</u>	<u>900 Units</u>	<u>1500 Units</u>	<u>3000 Units</u>	<u>100.00%</u>

In Summary:

- 1) We expect to provide 1,075 units (35.83%) for sale to those persons /families earning upwards from 80% of median income to 120% of median income (80%, 80%-120% categories).
- 2) We may also provide units for rent to satisfy requirements for the above categories instead of for sale units.
- 3) We may also provide units for rent to persons earning less than 80% of median income if Federal, State or County programs (or combinations of programs) are available to provide needed subsidies. These units would be in satisfaction of requirements for the 80% and 80%-120% income categories, not in addition to those requirements.

subsidies
special credits not guaranteed
define below 80%


Mr. Joseph K. Conant
December 5, 1989
Page Three

We believe the foregoing accurately summarizes the main areas of discussion and agreement. We realize there will need to be ongoing discussions over the years of implementation to refine details and specifics, but refinements (design, unit type, unit location, unit mix) will take place within the overall principles established now between HFDC and C. Brewer Properties, subject, of course, to the conditions in the Land Use Commission's final Decision and Order.

Please let me know as soon as possible if there is any area in the foregoing which needs attention on a "principles" basis at this time. We are proceeding to draft for the proposed Decision and Order on this basis.

Thanks again to the HFDC staff.

Very truly yours,


B. G. Moynahan
Executive Vice President

BGM:cao

cc: Richard Hirata
Marcel Audant
Janice Takahashi