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Attorney for Petitioner
RCFC KEHALANI, LLC

BEFORE THE LAND USE COMMISSION

STATE OF HAWAII

In the Matter of the Petition of)	DOCKET NO. A89-642
)	
C. BREWER PROPERTIES, INC.)	STIPULATION; DECISION AND ORDER
)	
To Amend the Agricultural Land Use District)	Hearing Date: December 30, 2020
Boundary into the Urban Land Use District)	
for approximately 626 Acres Situate at)	
Wailuku and Piihaha, Maui, Hawaii, Tax)	
Map Key Nos.: 3-5-01: Portion 01, Portion)	
17; 3-4-07:02; 3-3-01:33, 39, and Portion 16;)	
3-4-32:10, 18 and Portion 01)	
)	
)	
)	

STIPULATION

I. THE PARTIES.

WAILUKU PLANTATION LLC, EDGAR SOMERA, FAY SOMERA, LARRY S. SKY, DAYONG ZHAO, XIU XIANG FANG, BONG HWA SHI JORDAN, WENXIAO LIU, ELISE TRAVIS and RONALD VILORIA (collectively, the “**Piihaha Owners**”); RCFC KEHALANI, LLC (“**RCFC**”); the STATE OF HAWAII OFFICE OF PLANNING (“**OP**”); the COUNTY OF MAUI, DEPARTMENT OF PLANNING (the “**County**”) hereby stipulate as follows (the Piihaha Owners, RCFC, OP and the County are hereinafter collectively the “**Parties**”):

II. BACKGROUND.

In 1989, C. Brewer Properties, Inc. filed a Petition for District Boundary Amendment to amend the Land Use District Boundary with the Land Use Commission of the State of Hawaii (the “**Commission**”) to reclassify approximately 626 Acres situate at Wailuku and Piihana, Maui, Hawai‘i from the Agricultural District to the Urban District. The “**Petition Area**” consisted of two (2) separate non-contiguous parcels of real property situated in the Wailuku District, Island and County of Maui, designated in the Wailuku-Kahului Community Plan as Project District No. 3, comprised of approximately 547 acres (the “**Wailuku Project District**”) and Project District No. 2, comprised of approximately 79 acres (the “**Piihana Project District**”). At the time the aforesaid Petition for District Boundary Amendment was filed the Wailuku Project District was comprised of the following Tax Map Key Numbers: (2) 3-5-001:001 (portion) and :017 (portion); (2) 3-4-007:002; and the Piihana Project District was comprised of the following Tax Map Key Numbers: (2) 3-3-001:033, :039, and :016 (portion); (2) 3-4-032:010, :018, and :001 (portion).

On January 30, 1990, the Commission issued that certain Findings of Fact, Conclusions of Law, and Decision and Order dated January 30, 1990 (the “**Original D&O**”) under Docket No. A89-642, reclassifying the Petition Area to the Urban District. The Original D&O set forth one hundred thirty-seven (137) findings of fact (the “**Original FOF**”) and declared that the reclassification was subject to the fifteen (15) conditions specified therein (the “**Original Conditions**”).

C. Brewer Properties, Inc. eventually sold all of its interest in the land comprising the Petition Area. As of the date hereof, the Piihana Owners collectively own the properties which comprise the Piihana Project District. And as of the date hereof, the Piihana Project District remains largely undeveloped.

In August 2012, RCFC acquired the master developer's rights and obligations with respect to the Wailuku Project District. As of the date hereof, the Wailuku Project District consists of roughly twenty-five separate residential subdivisions and has been substantially developed. RCFC, along with approximately 1,850 other property owners, collectively own the properties which comprise the Wailuku Project District.

III. STIPULATION.

The Parties agree that bifurcation of Docket No. A89-642 is appropriate because (i) the Piihana Project District and Wailuku Project District are unrelated projects, under separate ownership and control; (ii) development of these two project districts has moved forward on completely different timetables; and (iii) going forward bifurcation will support just and efficient proceedings before the Commission.

Accordingly, the Parties hereby jointly request that the Commission bifurcate Docket No. A89-642 into (a) Docket No. A89-642A for the Piihana Project District (the "**Piihana Project District Docket**") incorporating those findings of fact and conditions from the Original D&O which pertain to the Piihana Project District; and (b) Docket No. A89-642B for the Wailuku Project District (the "**Wailuku Project District Docket**") incorporating those findings of fact and conditions from the Original D&O which pertain to the Wailuku Project District, all as set forth in more detail hereinbelow.

A. Findings of Fact. Certain Original FOF pertain solely to the Piihana Project District; certain Original FOF pertain solely to the Wailuku Project District; and certain Original FOF pertain to both the Piihana Project District and the Wailuku Project District, all as more specifically set forth in Table 1 hereinbelow.

TABLE 1

COLUMN 1	COLUMN 2	COLUMN 3
Original FOF Which Pertain Solely to Piihana Project District	Original FOF Which Pertain Solely to Wailuku Project District	Original FOF Which Pertain to Both Piihana Project District and Wailuku Project District
12, 13, 17.b, 32, 33, 34, 61, 62, 63, 71, 72, 73, 74, 75, 86, 98, 99.b, 107, 114, 116, 122, 123, 126	4, 5, 10, 11, 17.a, 30, 31, 58, 59, 60, 70, 85, 97, 99.a, 106, 113, 115, 120	1, 2, 3, 6, 7, 8, 9, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 64, 65, 66, 67, 68, 69, 76, 77, 78, 79, 80, 81, 82, 83, 84, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 100, 101, 102, 103, 104, 105, 108, 109, 110, 111, 112, 117, 118, 119, 121, 124, 125, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137

Upon the approval of the bifurcation requested herein, the Parties agree that the Original FOF that would become a part of the Piihana Project District Docket shall be those listed in Column 1 and Column 3 of Table 1 hereinabove; and the Original FOF that would become a part of the Wailuku Project District Docket shall be those listed in Column 2 and Column 3 of Table 1 hereinabove.

B. Conditions. Certain Original Conditions pertain solely to the Piihana Project District; certain Original Conditions pertain solely to the Wailuku Project District; and certain Original Conditions pertain to both the Piihana Project District and the Wailuku Project District, all as set forth in Table 2 hereinbelow.

TABLE 2

COLUMN A	COLUMN B	COLUMN C
Original Conditions Which Pertain Solely to Piihana Project District	Original Conditions Which Pertain Solely to Wailuku Project District	Original Conditions Which Pertain to Both Piihana Project District and Wailuku Project District
9	[none]	1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14 and 15

Upon the approval of the bifurcation requested herein, the Parties agree that the Original Conditions that would become a part of the Piihana Project District Docket shall be those listed in Column A and Column C of Table 2 hereinabove; and the Original Conditions that would become a part of the Wailuku Project District Docket shall be those listed in Column B and Column C of Table 2 hereinabove.

C. Interpretation. The Parties acknowledge and agree that the bifurcation requested herein is a procedural matter and, except as set forth herein, is not intended to alter or amend any of the existing substantive rights or obligations of any of the Parties or property owners in either the Piihana Project District or the Wailuku Project District. Accordingly, in interpreting the Original FOF and/or the Original Conditions in the context of the Piihana Project District Docket or the Wailuku Project District Docket, capitalized terms defined in the Original D&O shall retain the definitions ascribed to them in the Original D&O. However, notwithstanding anything contained herein to the contrary, any decision and/or order that may be issued by the Commission in the Piihana Project District Docket shall not affect or apply to the property owners in the Wailuku Project District; and any decision and/or order that may be issued by the Commission in the Wailuku Project District Docket shall not affect or apply to the property owners in the Piihana Project District.

D. General Terms

1. The Parties expressly represent and warrant to each other that they respectively have the authority to enter and be bound by the terms of this Stipulation.

2. This Stipulation shall be subject to, governed by, construed, and enforced pursuant to the laws of the State of Hawai'i.

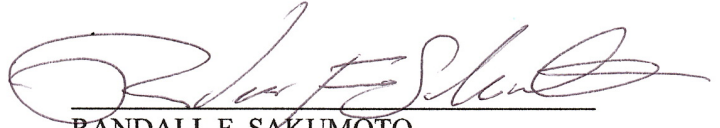
3. This Stipulation shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the Parties.

4. This Stipulation sets forth the entire agreement between the Parties, and fully supersedes any and all prior and/or contemporaneous agreements or understandings between the Parties, which pertain to the subject matter hereof.

5. This Stipulation shall not be altered, amended, modified, or otherwise changed in any respect, or particular whatsoever, except in a writing duly executed by each Party to this Stipulation.

6. This Stipulation may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same instrument.

DATED: Honolulu, Hawai‘i, December 7, 2020



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RCFC KEHALANI, LLC

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Michele
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Date: 2020.12.07 10:13:19 -10'00'

MICHELE MCLEAN, AICP
Planning Director
Department of Planning

DECISION AND ORDER

The Commission, having found that (i) the Piihana Project District remains largely undeveloped as of this date; (ii) the Wailuku Project District has been substantially developed as of this date and consists of roughly twenty-five separate residential subdivisions; (iii) the Piihana Project District and Wailuku Project District are unrelated projects, under separate ownership and control which have completely different development timetables; and (iv) going forward, the bifurcation of Docket No. A89-642 will support just and efficient proceedings before the Commission,

HEREBY ORDERS THAT:

a. Docket No. A89-642 is bifurcated into (i) the Piihana Project District Docket, which shall be assigned Docket No. A89-642A; and (ii) the Wailuku Project District Docket, which shall be assigned Docket No. A89-642B.

b. The Original FOF identified in Column 1 and Column 3 of Table 1 hereinbelow are a part of the Piihana Project District Docket. The Original FOF identified in Column 2 and Column 3 of Table 1 hereinbelow are a part of the Wailuku Project District Docket.

TABLE 1

COLUMN 1	COLUMN 2	COLUMN 3
Original FOF Which Pertain Solely to Piihana Project District	Original FOF Which Pertain Solely to Wailuku Project District	Original FOF Which Pertain to Both Piihana Project District and Wailuku Project District
12, 17.b, 13, 32, 33, 34, 61, 62, 63, 71, 72, 73, 74, 75, 86, 98, 99.b, 107, 114, 116, 122, 123, 126	4, 5, 10, 11, 17.a, 30, 31, 58, 59, 60, 70, 85, 97, 99.a, 106, 113, 115, 120	1, 2, 3, 6, 7, 8, 9, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 64, 65, 66, 67, 68, 69, 76, 77, 78, 79, 80, 81, 82, 83, 84, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 100, 101, 102, 103, 104, 105, 108, 109, 110, 111, 112, 117, 118, 119, 121, 124,

		125, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137
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c. The Original Conditions identified in Column A and Column C of Table 2 hereinbelow are a part of the Piihana Project District Docket. The Original Conditions identified in Column B and Column C of Table 2 hereinbelow are a part of the Wailuku Project District Docket.

TABLE 2

COLUMN A	COLUMN B	COLUMN C
Original Conditions Which Pertain Solely to Piihana Project District	Original Conditions Which Pertain Solely to Wailuku Project District	Original Conditions Which Pertain to Both Piihana Project District and Wailuku Project District
9	[none]	1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14 and 15

d. This bifurcation is a procedural matter which supports the just and efficient proceedings of the Commission. Except as set forth herein, the bifurcation is not intended to alter or amend any of the existing substantive rights or obligations of any of the Parties or property owners in either the Piihana Project District or the Wailuku Project District. Accordingly, in interpreting the Original FOF and/or the Original Conditions in the context of the Piihana Project District Docket or the Wailuku Project District Docket, capitalized terms defined in the Original D&O shall retain the definitions ascribed to them in the Original D&O. However, notwithstanding anything contained herein to the contrary, any decision and/or order that may be issued by the Commission in the Piihana Project District Docket shall not affect or apply to the property owners in the Wailuku Project District; and any decision and/or order that may be issued by the Commission in the Wailuku Project District Docket shall not affect or apply to the property owners in the Piihana Project District.

e. Within six months of the date of this order, RCFC shall file with the Commission under the Wailuku Project District Docket a statement of current costs for the remaining Wailuku Project District development and outstanding improvements, as well as a detailed schedule for necessary approvals and development.

f. Within six months of the date of this order, the Piihana Owners shall file with the Commission under the Piihana Project District Docket a statement of current costs for the remaining Piihana Project District development and outstanding improvements, as well as a detailed schedule for necessary approvals and development.

g. Within six months of the date of this order, the Piihana Owners shall file with the Commission under the Piihana Project District Docket information to verify the financial capability to complete the Piihana Project District development as represented, consistent with §15-15-50(c)(9) of the Commission's rules.

h. Within six months of the date of this order, the Piihana Owners shall file with the Commission under the Piihana Project District Docket a detailed report explaining how substantial compliance with the conditions of the Piihana Project District Docket is being achieved.

Done at _____, Hawai'i, this _____ day of _____, 20____, per
motion on _____.

LAND USE COMMISSION
STATE OF HAWAII

By _____

APPROVED AS TO FORM

Deputy Attorney General

Filed and effective on:

Certified by:

DANIEL ORODENKER
Executive Officer