

RCFC KEHALANI, LLC

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OFFICE OF THE
COUNTY COUNCIL

Mr. Robert Carroll, Chair
Land Use Committee
County of Maui
200 S. High Street
Wailuku, HI 96793

Subject: Waiale Road Extension Project (LU-58)
Ref: Land Use Committee letter Dated July 24, 2018

Dear Councilmember Carroll,

First, we apologize for the delay in getting this response to you. As noted in your letter, the Wailuku-Kahului Project District 3 (Kehalani) zoning dates back to 1991, and it has taken time to obtain and go through the relevant files. The Department of Planning has also been cooperative, and has allowed us to research their files as well.

To provide some background on the ownership of Kehalani (the Project), Wailuku Agribusiness Co. Inc. (WACI) was the Developer and Declarant at the time the Kehalani zoning was obtained in 1991. WACI's successor development entity for Kehalani was C. Brewer Homes, Inc. (CBH). Beginning in the mid to late 1990's WACI's parent company, C. Brewer and Company, Ltd., began the process of closing their business, and they transferred the Kehalani lands into an entity called Hawaii Land and Farming (HLF). In 2000, HLF and the Kehalani lands were sold via a stock purchase to a new ownership group which later became known as Kehalani Holdings Company, Inc. (KHCI) and Kehalani Mauka LLC (KM). In early 2013, RCFC Kehalani, LLC (RCFC) obtained the remaining lands in Kehalani from KHCI and KM via a deed in lieu of foreclosure action. RCFC's parent entity was KHCI's and KM's lender.

The following is a summary of the relevant information we were able to find in the files:

1. On March 22, 1995, a letter (see **Exhibit A**) from the County of Maui Planning Department confirmed that the Kehalani zoning conditions had been satisfactorily complied with and they were prepared to grant approval of the subdivision. This letter was in response to CBH's letter dated November 15, 1994 (see **Exhibit B**) which contained a compliance report on the status of the Project's zoning conditions and a request to obtain approval of their initial Phase I subdivision in Kehalani. In Item no. 1 of the March 22, 1995 letter, the Planning Department states their agreement with CBH's fair share contribution for traffic improvements as described in CBH's letter dated March 8, 1995 (see **Exhibit C**). The second to

the last paragraph of the Planning Department's letter goes on to state that subdivision approval is subject to the condition that an agreement regarding roadway and traffic improvements and/or dedication shall be submitted to the County of Maui (COM) no later than May 13, 1995. Although we did find drafts of the proposed agreement (see **Exhibit D**) prepared by CBH's attorney we could not find transmittals to the COM of the agreement. It appears the agreement memorializing CBH's fair share contribution for Kehalani's traffic improvements was never executed. CBH did however obtain approval of the subdivision.

2. In CBH's zoning compliance letter dated November 15, 1994 (see **Exhibit B**) they note in the status of **Condition No. 2 – Master Plans** that the Maui Planning Commission on April 21, 1992, approved the drainage, roadway, sewer and water system master plans that were submitted as part of the Project's Phase II application. We have attached (see **Exhibit E**) CBH's Phase II application that was submitted to the COM along with the COM Department of Planning and Planning Commission approval letter dated May 27, 1992. CBH's application included the master plan maps. CBH's status on **Condition No. 4 – Traffic Study** referenced a Final Traffic Impact Report (see **Exhibit F**) which was submitted to the COM Department of Public Works and Waste Management (DPWWM) and the Hawaii Department of Transportation (HDOT) for review on April 28, 1994.
3. During the process of dissolution of C. Brewer and Company, on November 30, 1999, a Memorandum Concerning Grant of Various Property Rights (Memorandum) (see **Exhibit G**) was recorded in the Bureau of Conveyances. The Memorandum encumbered various parcels then owned by WACI to provide the required land for roadways and drainage needed for the Kehalani Project at no cost to HLF, the developer of Kehalani at that time. The recorded Memorandum runs with the land, and is an obligation of successor owners of the lands. Item No 1 of the Memorandum included the Waiale Road widening parcels, and Item No. 3 encumbered the parcels required for the Waikapu By-Pass road or Waiale Extension to Waikapu. In 2003, WACI began subdividing (see **Exhibit H**) their parcels south of the Kehalani Project for sale, and as a result of this encumbrance, an 80 foot wide roadway lot extending from Kuikahi Drive to Waiko Road was subdivided. The roadway lot was then sold to Spencer Homes along with other adjacent parcels. As the parcels were developed by Spencer Homes, the roadway improvements within the roadway lot were completed by Spencer Homes, and our understanding is that the improvements and roadway have been conveyed to the COM. Similarly, when WACI sold their parcels south of Waiko Road to Waiale 905 Partners, the landowner was obligated to provide the lands for the future road right of way through the parcel. We understand the COM purchased (see **Exhibit I**) a parcel from Waiale 905 Partners in December 2012. When the COM's parcel was subdivided by Waiale 905 Partners an 80 foot wide roadway access easement was provided from Waikapu Stream to Honoapiilani Highway (see **Exhibit J**). The Memorandum still remains as an encumbrance on the COM's Waiale 905 Partners'

deeds. The Memorandum has ensured that lands for the Waiale Extension or Waikapu Bypass roadway would be made available to the COM at no cost as originally proposed by CBH in their letter dated March 8, 1995 (see **Exhibit C**).

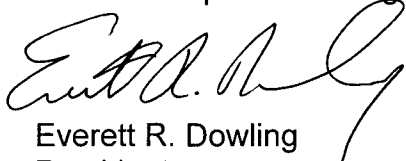
4. In June 2002, CBH's successor, KM, submitted an amendment to the Project's Phase II approval obtained in 1992 by CBH. The amendment modified the 65 acres of land mauka of Honoapiilani Highway. On September 10, 2002 the Maui Planning Commission approved the proposed amendment. We have attached (see **Exhibit K**) the Planning Department's approval letter and report to the Maui Planning Commission. The Planning Department's report includes a Traffic Impact Analysis Study dated May 2002 which analyzed the traffic impacts resulting from the proposed development of the Kehalani lands mauka of Honoapiilani Highway. The Planning Commission's approval required a revised Traffic Impact Analysis Report (TIAR) be submitted by March 30, 2003, to address the HDOT's concerns. In March 2003 a revised TIAR was submitted to the HDOT (see **Exhibit L**).
5. In June 2005, CBH's successor, KM, began the processing of Kehalani Mauka Large Lot Subdivision 3-C which would subdivide 144 acres of the Project into large lots to be sold to various home builders. Prior to subdivision approval, the HDOT requested that KM prepare an updated Traffic Evaluation of the Project. In July 2006, KM submitted to the HDOT a Traffic Evaluation Report dated July 2006 (see **Exhibit M**). The processing by KM was never completed, and in 2013, RCFC took control of the property and continued with the processing of the subdivision. Since significant time had passed since the 2006 report, the HDOT requested an updated traffic evaluation. An update of the 2006 report was prepared, and the report dated December 21, 2014 (see **Exhibit N**) was submitted to the HDOT. In June 2015, RCFC obtained final subdivision approval of Kehalani Mauka Large Lot Subdivision 3-C. At the same time, RCFC was designing improvements to the Kuikahi/Honoapiilani Highway intersection, and the updated traffic evaluation was used by the HDOT to confirm the improvements being undertaken were satisfactory. The Kuikahi/Honoapiilani Highway intersection improvements were completed in November 2016 at a cost of \$1.9 million.
6. In early 2012, CBH's successor for the makai portions of the Project, KHCI, started the development of the Kehalani Village Center. As part of the plan approval and permitting process a TIAR (see **Exhibit O**) was prepared for the Project. During the permitting process KHCI requested deferral of offsite roadway improvements that the COM required. The COM agreed to KHCI's request, and a Phasing Agreement for Roadway Improvements was executed and recorded in the Bureau of Conveyances on October 5, 2012 (see **Exhibit P**). The agreement called for completion of the offsite roadway within five years. Shortly after the agreement was executed, RCFC obtained the partially completed development, and proceeded with the completion of plans for the offsite work. The approval process

for the offsite work plans took much longer than expected, and in mid-2017 RCFC requested a time extension of one year to get the work completed. The COM approved RCFC's request, and an amendment to the agreement (see **Exhibit Q**) was executed and recorded extending the completion date to October 5, 2018. RCFC completed the \$1.7 million offsite roadway improvement project in February 2018 well ahead of the new completion deadline. RCFC also installed provisions for future traffic signals at both the Kuikahi Drive and Waiale Road entrances to the Project. The agreement requires that the traffic signals be installed at these intersections when warranted.

In closing, we hope the foregoing summary provides you with the information you requested. Please be assured that RCFC Kehalani, LLC is committed to complying with the Project's traffic related zoning conditions as it continues with the development of the Project.

If you have any questions or need any additional information regarding this matter please contact Brian Ige at 808-270-0511 or via email brian@dowlingco.com.

Best regards,
RCFC Kehalani, LLC
By Dowling Company, Inc.
Its Development Manager



Everett R. Dowling
President

Attachments

cc: Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
Michele Chouteau McClean, Planning Director, Department of Planning
David Goode, Director, Department of Public Works