

LAND USE COMMITTEE
Council of the County of Maui

MINUTES

Council Chamber

July 13, 2011

CONVENE: 1:33 p.m.

PRESENT: Councilmember Robert Carroll, Chair
Councilmember Mike White, Vice-Chair
Councilmember Gladys C. Baisa, Member
Councilmember Elle Cochran, Member
Councilmember Donald G. Couch, Jr., Member
Councilmember Joseph Pontanilla, Member (arr. at 2:06 p.m.)
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember G. Riki Hokama, Member
Councilmember Danny A. Mateo, Member

STAFF: Kirstin Hamman, Legislative Attorney
Pauline Martins, Committee Secretary

ADMIN.: James Giroux, Deputy Corporation Counsel, Department of the Corporation
Counsel
Michele McLean, Deputy Director, Department of Planning
Paul Fasi, Planner, Department of Planning
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works

OTHERS: Gregory D. Kaufman, Authorized Agent, Pine State Limited
Isaac Hall
Sergeant Dean Rickard
Officer Melvin Johnson
Plus (1) other person

PRESS: *Akaku Maui Community Television, Inc.*

**LU-16 DISTRICT BOUNDARY AMENDMENT FOR A TWO-LOT SUBDIVISION FOR
PINE STATE LIMITED (MAKENA) (C.C. No. 09-103)**

CHAIR CARROLL: ... (*gavel*) ... The Land Use Committee meeting of July 13, 2011, called to order. This Land Use Committee meeting of July 13, 2001 [*sic*]...if anybody has any cell phones, anything that makes noise out there, please turn it off or put it on the silent mode. We have with us this morning, the Vice-Chair of the Committee, Mr. White, Mr. Victorino.

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VICE-CHAIR WHITE: Good morning, Chair.

COUNCILMEMBER VICTORINO: Aloha, Chair.

CHAIR CARROLL: Couch.

COUNCILMEMBER COUCH: Good morning.

CHAIR CARROLL: Cochran.

COUNCILMEMBER COCHRAN: Good morning.

CHAIR CARROLL: . . .*(inaudible)*. . .

COUNCILMEMBER BAISA: Good afternoon, Chair.

CHAIR CARROLL: Joining us later will be Mr. Pontanilla. Mr. Hokama and Mr. Mateo are excused from this meeting. From Corporation Counsel we have James Giroux.

MR. GIROUX: Good afternoon, Chair.

CHAIR CARROLL: Michele McLean, Deputy Planning Director; Paul Fasi, Fasi, who will join us later.

MS. McLEAN: I believe so.

CHAIR CARROLL: I believe he will be joining us a little bit later, Department of Planning. Ms. Andaya, Deputy Director of Public Works, and David Taylor, Director of Water Supply. We have Greg Kaufman, the Authorized Agent for Pine State Limited; Committee Staff, Pauline Martins, Committee Secretary, Kristin Hamman ...*(clears throat)*... excuse me, Legislative Attorney. Public testimony on this item will be accepted, starting in a few moments. Those wishing to testify should sign up at the table in the lobby. Testimony shall be limited to three minutes, with one minute to conclude. Testifiers are requested to state their names for the record and to indicate who they're representing, if appropriate. Members, today we have one item on our agenda: LU-16, District Boundary Amendment for a two-lot subdivision for Pine State Limited (Makena). I will now accept public testimony. Ms. Hamman?

MS. HAMMAN: Mr. Chair, the first person to testify is Isaac Hall.

... BEGIN PUBLIC TESTIMONY ...

MR. HALL: Good morning, Chair Carroll, or good afternoon, Chair Carroll and Members of the Land Use Committee. I'm here to testify on a portion of this notice, on the agenda, that says the

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Committee may consider whether recommend passage of the revised proposed bill. And I take that, the revised proposed bill, being the Ag to Rural, being the Ag proposed bill, on first reading. So, I'm here to support your passing on first reading, the bill to go from Ag to Rural. I, I submitted a rather lengthy letter dated July 6, 2011, and I'm hoping that it got distributed and I'm hoping that you've had a chance to read it. But the point of that letter was to present a legal argument on why this matter did not have to be remanded back to the Maui Planning Commission before you could adopt an ordinance changing this from Ag to Rural. And, and I'm trusting that you read it, and if you did read it, the main point is that this project has been a Rural project from the beginning to the end. Every reviewing agency, entity, person, committee has looked at this as a Rural project and, and nothing else. And the second main point is, the only reason that any of these changes were made in the application were due to changes by the County and not by the applicant. And the first change that got made was the, an administrative change, and the zoning of the parcel from Interim to R-3, which had nothing to do with the applicant and I'm not even sure it's valid, that change, based on the Hanohano case. But the second change was the change in the conformity consistency law that, that you folks adopted and made it now possible that this change, boundary amendment can be passed to Rural without all the other changes in, in community plan, et cetera. So, here we stand before you at, after all of those changes have been made in the County law where the applicant finally can do what he actually always wanted to do, which was to put it into Rural. And this project has always been a Rural project, and reviewed as a Rural project and so all I'm asking you to do is to, at this point pass the revised ordinance to Rural instead of Urban. We would oppose an Urban designation for this parcel, we think it would have adverse impacts to do that. So for all reasons set out below, set out in this letter, I'd ask that you adopt the Ag to Rural ordinance on first reading, without remanding it back to the Planning Commission. Thank you.

CHAIR CARROLL: Any questions for Mr. Hall? None. Thank you very much.

MR. HALL: Thank you.

CHAIR CARROLL: Ms. Hamman?

MS. HAMMAN: Mr. Chair, Mr. Hall was the last person signed up to testify.

CHAIR CARROLL: With no objections, Members...excuse me, is there anyone out there that wishes to give public testimony at this time, please come forward? Seeing none, if there is no objection I will close public testimony.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR CARROLL: Public testimony is now closed.

... END OF PUBLIC TESTIMONY ...

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CHAIR CARROLL: Members, LU-16 relates to a request from Pine State Limited for a District Boundary Amendment from Agricultural to Urban for a two-lot subdivision on approximately 1.38 acres located at Makena-Keoneoio, *I'm sure I pronounced that wrong*, Road, Makena, Maui, Hawaii. We have two alternate pieces of legislation posted on today's agenda: A proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR TAX KEY MAP NUMBER (2) 2-1-005:117, MAKENA, KIHAI, MAUI, HAWAII"; and a proposed resolution entitled "REFERRING TO THE MAUI PLANNING COMMISSION A DRAFT BILL TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT FOR TAX KEY MAP NUMBER (2) 2-1-005:117, MAKENA, KIHAI, MAUI, HAWAII". Draft bill is attached to the resolution.

At our last meeting on June 29, the Committee members requested a proposed bill that would allow the Committee to consider recommending an amendment to the State District Boundary from Agricultural to Rural, without referring the bill to the Maui Planning Commission for review. ...*(clearing throat)*... Excuse me. At that meeting, this item was deferred so the Chair could consider the possibility of posting such a bill on the Commission's, Commission...Committee's meeting agenda. Members, if you'll recall, the Department of the Corporation Counsel opined in correspondence dated October 15, 2010, that a Council-initiated bill amending the district boundary from Agricultural to Rural, should be referred to the Maui Planning Commission for its review and recommendation. After careful consideration, the Chair has decided that it would not be prudent for the Committee to recommend passage of a bill amending the district boundary from Agricultural to Rural, without review by the Maui Planning Commission. As recommended by Corporation Counsel, such a review is required by the Charter. Therefore, the options posted for the Committee's consideration today are to either recommend passage of a bill to amend the district boundary from Agricultural to Urban, or to recommend adoption of a resolution referring a draft bill to the Maui Planning Commission that would amend the district boundary from Agricultural to Rural.

Corporation Counsel, if the Council adopts a resolution transmitting the planning to the Planning Commission, a draft bill to amend the District Boundary Amendment to Rural, and the Maui Planning Commission does not provide its report within 120 days, can the Council then consider passage of the bill, without the report, if it has a vote of at least six Members? Mr. Giroux?

MR. GIROUX: That, that's correct, Chair.

CHAIR CARROLL: Thank you. Planning Director? Ms. McLean, do you have any comment at this time?

MS. McLEAN: No comments, Chair.

CHAIR CARROLL: Thank you. Members, we're doing this a second time. I will open the floor to discussion. Mr. Couch?

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COUNCILMEMBER COUCH: Thank you, Mr. Chair. Thank you for researching this further, and while I may not agree with your results...or, or your, your decision, I still want to check with Corp. Counsel. Corp. Counsel, have you read Mr. Hall's letter?

CHAIR CARROLL: Mr. Giroux?

MR. GIROUX: Yes, I have it in the, the binder.

COUNCILMEMBER COUCH: The question I have is, having read it, this, this seems pretty compelling that, that and of course I know how attorneys can go on either side of the thing, and everything can be compelling, but is, is your opinion still the same that, that we still have to send this down even after having read this and, and looking at the arguments?

MR. GIROUX: Yes, we still stand by our, our opinion.

COUNCILMEMBER COUCH: Then, then the next question is to the Planning Department. I, I know I got, had a discussion with Mr. Spence. If for some reason this...we have to send this down to Planning, I still am a little shaky on that, do we have, he, he gave me his assurances that he would expedite this application. Is that your understanding as well?

MS. McLEAN: Yes.

CHAIR CARROLL: Mr. Giroux? ... (*chuckled*) ... I mean Ms. McLean.

MS. McLEAN: Yes. ... (*chuckled*) ...

CHAIR CARROLL: McLean. Excuse me.

MS. McLEAN: Yes.

COUNCILMEMBER COUCH: Okay, and then the question I have then is how long if, if you, if this is expedited, how long would this take to get through the system?

CHAIR CARROLL: Ms. McLean or Mr. Fasi, whoever can answer the question.

MS. McLEAN: Three to four months.

COUNCILMEMBER COUCH: Go ahead.

MS. McLEAN: Because there would be a public hearing requirement, so there have to be notice, and there are timelines built into our administrative rules as to when notice is given to the applicant, so that they can do their notification.

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COUNCILMEMBER COUCH: Well okay, but the four months is...a 128 days is four months so, so you're saying that's the fastest you can do?

MS. McLEAN: Well, four months would be on the outside, I mean we can say three months.

COUNCILMEMBER COUCH: And, and I'm sorry, Mr. Chair. The reason I bring this up is because for the most part, and not, not 100 percent, but I would say between 75 and 80 percent of this whole mess was created by the County. And I'd like to see, I mean everybody that was in the room last time, and everybody that's in the room today wants to see it as Rural, and to, to put the applicant through yet more time and more money is, I, I have a hard time with that, and that's, that's why I'm trying to push this as much as possible to get this through, so that the applicant can move on with his project. The, the lot right next door to this, this lot here, is already Rural and it's gone through the whole rural process, it's State Rural, community plan Rural and County zone Rural. And there's a lot right down the street that's also Rural. So there's no question that nobody doesn't want it Rural, everybody wants it Rural. So, can we just do this without having to go through, putting the guy through yet another layer of problems, possible problems, you know, something could come up, something else could happen, and then it might be another two years before this happens. That, that's my concern, is, is he's been through, he's been doing exactly what we as a County have told him to do, and at every time he keeps, things keep changing on him, and granted the last thing was not the County's fault. But still we would have been done two years ago if, if he had gone on the his chart, you know, his course, he wanted to do this, County said oh well, because of this you could probably do that, and let's change it, and then change it and then it, it just was a whole big mess, and so I'm trying to get out of this mess as quickly and cleanly as possible.

CHAIR CARROLL: The answer to your question is, and I am sorry but we have the two posted item on the agenda today and after, and that's why we postponed this until today. The Chair also tried to do everything possible to get another resolution. With what we have before us and with the Sunshine Law and posting requirements and our own Charter, which we cannot ignore, no matter how well intensions we are to what we have to deal with what we have before us today. Anyone else, further discussion? If not, the Chair is going to ask for a motion from the floor. Further discussion?

COUNCILMEMBER BAISA: Recommendation?

COUNCILMEMBER COUCH: What's your recommendation, sir?

COUNCILMEMBER BAISA: What's your recommendation?

COUNCILMEMBER VICTORINO: Your recommendation, Chair?

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CHAIR CARROLL: Members, I will entertain a motion to recommend passage on first reading of a revised proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR TAX MAP KEY NUMBER (2) 2-1-005:117, MAKENA, KIHEI, HAWAII", incorporating nonsubstantive revisions, and the filing of County Communication No. 09-103.

VICE-CHAIR WHITE: So moved, Chair.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR CARROLL: Been moved by Mr. White, seconded by Mr. Victorino. Discussion? Mister...excuse me, Mr. Couch?

COUNCILMEMBER COUCH: Thank you. Again, I, I, I can't support that only because it, that opens the County up to potential, very, almost certain lawsuit, and then dragging this out even more. So, unfortunately the lesser of two evils, was to, would be to send it back. But again somehow if the, the attorneys around can find a way, I would love this go to Rural right now.

CHAIR CARROLL: Further discussion?

UNIDENTIFIED SPEAKER: No.

CHAIR CARROLL: Hearing none, all in favor of the motion on the floor, signify by saying "aye"

VICE-CHAIR WHITE: "Aye".

CHAIR CARROLL: All those opposed signify by saying "no".

COUNCILMEMBER BAISA: "No."

COUNCILMEMBER COCHRAN: "No."

COUNCILMEMBER COUCH: "No."

COUNCILMEMBER VICTORINO: "No."

CHAIR CARROLL: Note, we have four "noes" and one "aye"...two "ayes", four "noes" and two "ayes". The motion does not pass.

CHAIR CARROLL: All right. Members...the Chair will entertain a motion to recommend adoption of a proposed resolution entitled "REFERRING TO THE MAUI PLANNING COMMISSION A DRAFT BILL TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT FOR TAX MAP KEY NUMBER (2) 2-1-005:117, MAKENA, KIHEI, MAUI, HAWAII", incorporating nonsubstantive revisions.

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COUNCILMEMBER COUCH: So moved.

COUNCILMEMBER VICTORINO: Second.

CHAIR CARROLL: Been moved by Mr. White [*sic*], seconded by Mr. Victorino. Discussion? And the Chair will have some proposed amendments but discussion first.

COUNCILMEMBER COUCH: Mr. Chair?

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: It's my understanding that if we send this out as Rural, as it is, Condition No. 1 and 6 are redundant, and I'd ask Staff if that is, if that is the case, and if so, we can amend to remove Condition 1 and 6?

CHAIR CARROLL: Staff? Ms. Hamman?

MS. HAMMAN: Mr. Chair, I believe that Condition No. 1 is redundant of the draft bill to change the classification from Ag to Rural. I think there's a question regarding the applicability of Condition No. 9, to that bill.

CHAIR CARROLL: Would you like to make a motion for the removal of the first one?

COUNCILMEMBER COUCH: Yeah, so moved, I move that we remove Condition No. 1 and renumber the conditions accordingly.

CHAIR CARROLL: Do we have a second?

COUNCILMEMBER BAISA: Second.

CHAIR CARROLL: Seconded by Ms. Baisa. Discussion? Hearing none, all in favor of the motion to amend by removing Condition No. 1 and renumbering the conditions, please signify by saying, "aye".

COUNCIL MEMBERS VOICED AYE.

CHAIR CARROLL: Opposed? Motion carried. Six. Any opposed? I'm sorry.

COUNCILMEMBER COUCH: No --

CHAIR CARROLL: None opposed? Motion carries.

COUNCILMEMBER COUCH: --there's...yeah.

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VOTE: AYES: Chair Carroll, Vice-Chair White, Councilmembers Baisa, Cochran, Couch, and Victorino.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Hokama, Mateo, and Pontanilla.

AMENDMENT CARRIED.

ACTION: DELETE CONDITION NO. 9 FROM RESOLUTION.

CHAIR CARROLL: Okay, Condition No. 9, Public Works, over here? Would you please come down? Please identify yourself at the microphone.

MS. DAGDAG-ANDAYA: Good afternoon, Committee Chair Carroll and Members of the Committee. I'm Rowena Dagdag, Deputy Director of Public Works. And our Department's comments regarding to Condition No. 9, under Chapter 18 of the Maui County Code 18.16, Design Standards. Pavement width for minor streets, for Rural designation is 22 feet, so it's already in, within our County Code. Right-of-way width is currently at 40 feet, in the condition it says, right-of-way width shall be a minimum of 32 feet. In the Code, design standards or improvements, do not include curbs or gutters or sidewalks, as well, so.

COUNCILMEMBER COUCH: Mr. Chair, personal...

CHAIR CARROLL: Yes, Mr. Couch?

COUNCILMEMBER COUCH: Point of personal privilege. We're...what bill are we looking at? Because all of ours says Condition 6 is that.

MS. DAGDAG-ANDAYA: Oh, I'm sorry Condition 6. I thought...I'm sorry...

COUNCILMEMBER COUCH: She said nine and he said nine, so I'm a little concerned.

MS. HAMMAN: Mr. Chair, if I could clarify.

CHAIR CARROLL: Somebody either turned the six upside down or the ...*(inaudible)*...

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COUNCIL MEMBERS: . . . *(Laughter)* . . .

CHAIR CARROLL: Ms. Hamman, which is it, six or nine?

MS. HAMMAN: It's Condition No. 9 of the draft bill, attached to the resolution, referring the draft bill to the Maui Planning Commission. Condition No. 6 of the bill for an ordinance to amend the State Land Use District classification from Ag to Urban, is the same as Condition No. 9 in the Rural bill.

CHAIR CARROLL: And that's what I have before me also. I'm sorry, sorry for the confusion over there.

COUNCILMEMBER COUCH: I don't have the draft bill yet.

CHAIR CARROLL: You should.

COUNCILMEMBER COUCH: Can we have a short recess?

CHAIR CARROLL: One moment while we make sure that all the Members have the draft bill. Oh, you found it?

COUNCILMEMBER COUCH: No.

CHAIR CARROLL: We'll take a five minute recess. We will reconvene at 2 o'clock. We'll stand in recess. . . . *(gavel)* . . .

RECESS: 1:55 p.m.

RECONVENE: 2:06 p.m.

CHAIR CARROLL: . . . *(gavel)* . . . Land Use Committee meeting of July 13, 2011, is now back in session. Members, the Condition No. 9, over there, we can leave that, after checking with Staff and everyone, it's appropriate. And I'm sorry for the confusion, but we had two sets over here, as you well know by now. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: If you could talk in the mic so we can hear.

COUNCILMEMBER BAISA: Yeah, we can't hear you.

CHAIR CARROLL: Oh, okay. How's that?

COUNCILMEMBER VICTORINO: Alright. Good.

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CHAIR CARROLL: Alright. We have two sets, we had two sets of amendments over there and with two bills, it did get a little confusing because we was looking at the wrong one. But we do not have to worry about nine. However, when we did remove No. 1, after talking to Planning, it would be appropriate if we change No. 1 with something the Planning Department has come up with. Ms. McLean?

MS. McLEAN: Thank you, Chair. Because there's so many versions of the bills going out, the idea to delete the condition that lot shall be a minimum of one-half acre or greater, we believe that to be redundant with another condition in a different bill that said the County RU-0.5 Rural District standards shall apply.

COUNCILMEMBER VICTORINO: Right.

MS. McLEAN: And that would be true, those two would be redundant. In the bill we're looking at now though, it doesn't have that second condition that says the County RU-0.5 Rural District standards shall apply. So we would recommend rather than what the condition in this bill initially stated saying minimum half acre lots, rather than that, just use that broader condition that County RU-0.5 Rural District standard shall apply, and that would take care of lot size, as well as other Rural standards.

CHAIR CARROLL: Thank you. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: So, am I hearing that we should change it to RU-0.5?

MS. McLEAN: The condition, right.

COUNCILMEMBER PONTANILLA: No. 1.

MS. McLEAN: That Condition No. 1, should say County RU-0.5 Rural District standards shall apply.

COUNCILMEMBER PONTANILLA: Okay.

MS. McLEAN: And then you don't have to say anything specific about lot sizes because that would be covered.

CHAIR CARROLL: Alright, Members, let me see if I can confuse you further before we call on anyone else. The conditions contained in the draft bill to amend the State Land Use District classification from Agricultural to Rural, are the same conditions that were contained in the proposed bill to amend the classification to Urban that the prior Land Use Committee recommended revisions to. In order to ensure that the conditions reflect the work of the prior Committee, I would make a motion to that effect to get that, and that would include what Ms. McLean was talking about. Now, Ms. Baisa, followed by Ms. Cochran.

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COUNCILMEMBER BAISA: Before you said what you said I was offering a motion to do what Ms. McLean was suggesting, but you have another suggestion?

CHAIR CARROLL: Yeah, I, because it would be included in a motion that I'm gonna ask for from the floor, that would be in that already.

COUNCILMEMBER BAISA: Okay, I'll just wait until you ask for the motion. Thank you.

CHAIR CARROLL: Thank you. Any further discussion? Mr. Couch?

COUNCILMEMBER COUCH: Can--sorry about that--can you clarify that a little bit more? You're gonna take--let me see if I get it right--you're gonna take the conditions that were in the, the Ag to Rural...to, to Urban --

CHAIR CARROLL: You know what --

COUNCILMEMBER COUCH: --bill.

CHAIR CARROLL: --maybe I should repeat it again.

COUNCILMEMBER BAISA: Yeah.

COUNCILMEMBER COUCH: Yeah, please.

CHAIR CARROLL: It would be easier. Okay, the conditions contained in the draft bill, to amend the State Land Use District classification from Agricultural to Rural are the same conditions that were contained in the proposed bill to amend the classification to Urban that the prior Land Use Committee recommended revisions to. In order to ensure that the conditions reflect the work of the prior Committee, I was going to make the motion to have that put in.

COUNCILMEMBER COUCH: Are you asking for a motion?

COUNCILMEMBER VICTORINO: Are you asking?

COUNCILMEMBER BAISA: Are you asking?

CHAIR CARROLL: I was going to state the motion and then ask for it.

COUNCILMEMBER COUCH: Okay.

COUNCILMEMBER VICTORINO: Then you go ahead.

CHAIR CARROLL: I'll state the motion that I would like --

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COUNCILMEMBER VICTORINO: There you go.

CHAIR CARROLL: --somebody to make. I would entertain a motion to revise the conditions of the draft bill, attached to the resolution, so that they mirror the conditions contained in the proposed bill to amend the district boundary to Urban, with the exception of Condition No. 1, relating to lot size, and Condition No. 6, relating to Makena-Keoneoio Road.

VICE-CHAIR WHITE: So moved, Mr. Chair.

CHAIR CARROLL: Moved by Mr. White.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR CARROLL: Seconded by Mr. Victorino. Discussion? Ms. Cochran?

COUNCILMEMBER COCHRAN: Oh, sorry.

COUNCILMEMBER COUCH: Go ahead.

COUNCILMEMBER COCHRAN: Thank you. So, with the suggested language change by Ms. McLean...

CHAIR CARROLL: Is in this.

COUNCILMEMBER COCHRAN: But I'm looking at Condition 4, which states that all setbacks to match that required Rural. Would that be also incorporated into the changes you mentioned, Ms. McLean?

CHAIR CARROLL: Ms. McLean?

COUNCILMEMBER COUCH: No those got removed.

MS. McLEAN: Thank you. I believe the, the Chair's recommendation would include that same broader condition that the RU-0.5 Rural District standard shall apply. So that would take care of the setback condition as well as the lot size condition.

COUNCILMEMBER COCHRAN: Okay.

MS. McLEAN: It would encompass that.

COUNCILMEMBER COCHRAN: Thank you.

CHAIR CARROLL: Mr. Pontanilla?

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COUNCILMEMBER PONTANILLA: Thank you. After hearing your suggested language, looking at the Planning Commission's conditions, which of the following conditions would apply to what is being suggested by Planning?

CHAIR CARROLL: McLean?

MS. McLEAN: The half acre lot size.

COUNCILMEMBER PONTANILLA: Yeah.

MS. McLEAN: Setbacks.

COUNCILMEMBER PONTANILLA: Okay.

MS. McLEAN: Possibly retaining walls.

COUNCILMEMBER PONTANILLA: Which is number?

MS. McLEAN: Building heights, I'd have to look at building heights.

COUNCILMEMBER PONTANILLA: F, 9F.

MS. McLEAN: 9F retaining walls, right.

COUNCILMEMBER PONTANILLA: Yeah.

MS. McLEAN: It might be building heights. And these are things that we can look at, again, in our report to the Planning Commission, to see if there are redundancies. We can remove those redundancies and just clean it up so that it's Rural 0.5, and that encompasses all of these specifics.

COUNCILMEMBER PONTANILLA: Okay.

MS. McLEAN: I'd rather, at this stage, I'd rather leave everything in, so it's clear and then --

UNIDENTIFIED SPEAKER: Yeah.

MS. McLEAN: --we can do, take a careful look at all the different standards and make sure that, that they're all covered.

CHAIR CARROLL: Mr. Pontanilla?

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COUNCILMEMBER PONTANILLA: No, thank you for referring me to those numbers as was agreed by the Planning Commission. And since this going back to the Planning Commission then they'll kind of further review this thing.

MS. McLEAN: Yes.

COUNCILMEMBER PONTANILLA: Fine.

CHAIR CARROLL: Thank you.

COUNCILMEMBER PONTANILLA: Thank you.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: Well mister...thank you. Mr. Pontanilla brings up a good point. If this is going back to the Planning Commission, they, they may be able to tighten this up, right? With these conditions or should we...

CHAIR CARROLL: The Planning Commission to do it, can do anything they want, it's just sending back the information --

COUNCILMEMBER COUCH: Okay.

CHAIR CARROLL: --to them.

COUNCILMEMBER COUCH: In that case, Ms. McLean just said that she'd rather leave everything as is and have it cleaned up there. So, that goes against the motion that you're talking about, because you, in your motion you had talked about removing one and six. Is that correct?

CHAIR CARROLL: That is correct.

MS. McLEAN: My intention wasn't to contradict the Chair, either way; either way is fine, I think the intent from the Committee would be very clear...to ensure that the Rural half acre standards apply.

COUNCILMEMBER COUCH: Okay, so the motion is still on the floor that we get rid of one and six. I have another question for ten.

CHAIR CARROLL: Proceed.

COUNCILMEMBER COUCH: No. 10 talks about brackish and, and reclaimed water shall be used during construction and for other nonpotable purposes. Is that, does that mean that after construction you still can't use...or you still must use nonpotable water to do landscaping?

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CHAIR CARROLL: Ms. McLean?

MS. McLEAN: That's how, I can see that's how that condition could be interpreted, and there was discussion last time the Committee met about that. And I think we would wanna talk about that further to make it clear one way or the other.

COUNCILMEMBER COUCH: Right, and that, that would be my suggestion when it goes down to Planning Commission, to make that abundantly clear, one way or the other, and then obviously the applicant has a opportunity to discuss that with the Department. Okay, I just wanna flag that to make sure that that is made clear, and whatever, I think the applicant was concerned that, that's not what they...he thought they were talking about. So, yeah, please look at that as well. I, I guess we don't have any changes to make 'cause they'll make them at the Planning Commission.

CHAIR CARROLL: And the Chair did research that, Mr. Couch, and it was in the applicant's original application to the Planning Commission, it was --

COUNCILMEMBER COUCH: Okay.

CHAIR CARROLL: --from the applicant. Okay, any further discussion? If not, all in favor of the, the motion to amend, please signify by saying "aye"?

COUNCIL MEMBERS VOICED AYE.

CHAIR CARROLL: Opposed? Motion carried, seven-zero.

VOTE: AYES: Chair Carroll, Vice-Chair White, Councilmembers Baisa, Cochran, Couch, Pontanilla, and Victorino.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Hokama and Mateo.

AMENDMENT CARRIED.

ACTION: DELETE CONDITION NOS. 1 AND 6 FROM RESOLUTION.

CHAIR CARROLL: Back to the main motion as amended. Further discussion? Ms. Baisa?

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COUNCILMEMBER BAISA: Yes, thank you very much, Chair, and I'd like to thank you very much for bringing this matter forward. Also like to thank the applicant, it's been a long journey. This has been rolling around in this Committee for a long time, and the applicant has been very diligent about trying to work with us. During my term as Land Use Chair, I worked very closely with him, and I found him very helpful, trying very hard to, you know, produce what we needed and to accommodate the, the requests that were made of him. And I thank you for bringing this forward; thank my colleagues for moving this on. I also would please respectfully ask the Planning Department to do your best, to let's try and get this resolved and let's not let it sit for another few years, because it, it's just too much. But again I'd like to thank everybody for your cooperation.

CHAIR CARROLL: Thank you, Ms. Baisa. Mr. White?

VICE-CHAIR WHITE: Thank you, Mr. Chair. I too would like to ask the Planning Department to facilitate this being moved as quickly as possible. I think this is just another example of how we tend to get in the way, with our own processes, and to say that, well I have a hard time saying that we should be proud of something that is relatively cut and dry, relatively simple, taking two years to get through this process. And I'd just like us to focus on maybe making it easier for people that are applying for changes, rather than making it this difficult. I voted in favor of the Urban because it's consistent with the zoning around the...from a County standpoint, the zoning all around this parcel. I'm okay with it going back to Planning. Everyone wants it to be Rural, but it's adding time and, and money to the applicant. And if it was for a really clear change in the final outcome, I would've, I would have gone along with this in the beginning. But the end result is that once it comes back to us, it's gonna be virtually the same, with the conditions as it was, if we'd just voted on it initially, so I just ask you guys move it as quickly as you can. So thank you.

COUNCILMEMBER VICTORINO: Chair?

CHAIR CARROLL: Mr. Victorino?

COUNCILMEMBER VICTORINO: I'll yield to Mr. Couch first.

COUNCILMEMBER COUCH: Oh, no...you were first, go.

CHAIR CARROLL: Mr. Victorino?

COUNCILMEMBER VICTORINO: Okay, thank you. Department, simply, everything has been said, let's work on this, make this a priority. You know, I'd like to see it done in the next 90 days instead of 120, at least, if not even sooner than that. Okay, really seriously, I've been on this Council and this, this has been coming back and forth for so long, that I'm almost think I'm part of that family already. And so, you know, it, it, it gets funny but it really isn't when you thinking how much time and effort and money these people have put in. And so I really believe that there should be no hesitation, when you walk out put that at the top of the heap and get it taken care of,

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top of the heap, not even in between, not even one sheet down, please help these people out and get it done, so when it gets back here, and then I hope the Members that are all gonna be here yet, remembers what happened and we'll pass it out expeditiously. Thank you.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: Thank you, and I thank the Members for expressing, helping me express my frustrations with the...this situation. And I do realize, Planning Department, that you have a 45-day hearing notice, so when this gets...obviously this has to go to Council first and then it gets right out of Council. But I hope that one, one of your Department is gonna be sitting right at the County Clerks as soon as he stamps that thing, to get on that. I also would like to ask the Chair if he could, as the Committee, could ask Corp. Counsel to really reconsider that decision that was made to make sure that we are on the right path, not on this particular item, but in general, the decision that was written down, written based on this. The, the issues that we've come across like Councilmember Victorino said, we're gonna have the same thing here, after everything gets all done we're pretty much gonna have the same thing here, and it could have been avoided if we had just said change Rural to Urban...or Urban to Rural and let's move it on to Council. So, I'd like to ask that, that Corp. Counsel take a look at that decision again and, and give us a little bit more clarity, if you will.

CHAIR CARROLL: I will pass it on to Corporation Counsel and we will have them look at it again.

COUNCILMEMBER COUCH: Thank you.

CHAIR CARROLL: But we did have them look at it as far as this is concerned right now. They have scrutinized it very closely, and I feel that we are on solid ground at this moment. Any further discussion? If not, all in favor of the motion as amended, please signify by saying "aye"?

COUNCIL MEMBERS VOICED AYE.

CHAIR CARROLL: Opposed? Motion carried seven-zero.

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VOTE: AYES: Chair Carroll, Vice-Chair White, Councilmembers Baisa, Cochran, Couch, Pontanilla, and Victorino.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Hokama and Mateo.

MOTION CARRIED.

ACTION: ADOPT RESOLUTION AS AMENDED.

CHAIR CARROLL: Members, this was the only item on our agenda today, thank you very much. I know this is a very difficult item, I appreciate you being here and I appreciate the involvement that this Committee had in finding resolution. This meeting of July 13, 2011, stands adjourned. . . . (gavel) . . .

ADJOURN: 2:23 p.m.

APPROVED BY:



ROBERT CARROLL, Chair
Land Use Committee

lu:min:110713

Transcribed by: Gladys Kamalani

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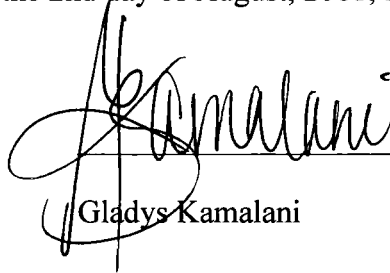
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CERTIFICATE

I, Gladys Kamalani, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 2nd day of August, 2011, in Wailuku, Hawaii



Gladys Kamalani