

**LAND USE COMMITTEE**  
**Council of the County of Maui**

**MINUTES**

**Council Chamber**

**August 3, 2011**

**CONVENE:** 1:31 p.m.

**PRESENT:** Councilmember Robert Carroll, Chair  
Councilmember Gladys C. Baisa, Member  
Councilmember Elle Cochran, Member  
Councilmember Donald G. Couch, Jr., Member  
Councilmember G. Riki Hokama, Member  
Councilmember Danny A. Mateo, Member (left at 2:45 p.m.)  
Councilmember Joseph Pontanilla, Member

**EXCUSED:** Councilmember Mike White, Vice-Chair  
Councilmember Michael P. Victorino, Member

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

Morris Haole, Executive Assistant to Councilmember Medeiros

**ADMIN.:** James Giroux, Deputy Corporation Counsel, Department of the Corporation  
Counsel  
William Spence, Director, Department of Planning  
Paul Fasi, Planner, Department of Planning  
Clayton Yoshida, Planning Program Administrator, Current Planning  
Division, Department of Planning  
Danilo Aagsalog, Director, Department of Finance (Item No. 44)

**OTHERS:** Merrill Kaufman  
Troy McCasland  
Daniel Kanahale  
Lisa Cochran  
Lena Kanemitsu  
Mac Suzuki  
Lucienne de Naie  
Troy McCasland  
Susan McCasland  
Plus (4) other people

**PRESS:** *Akaku Maui Community Television, Inc.*

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CHAIR CARROLL: . . . (*gavel*) . . . This Land Use Committee meeting of August 3, 2011, will come to order. First of all may I say that if anybody has any noise making things outside there, cell phones or otherwise, please turn them off or put them on the silent mode. We have with us this morning, Committee members with us, Council Chair Mateo, Baisa.

COUNCILMEMBER BAISA: Good afternoon.

CHAIR CARROLL: Cochran.

COUNCILMEMBER COCHRAN: Aloha.

CHAIR CARROLL: Couch.

COUNCILMEMBER COUCH: Good afternoon.

CHAIR CARROLL: Hokama and Pontanilla. Excused is Councilmember Victorino and Councilmember White will be joining us later. We have James Giroux, our Deputy Corporation Counsel.

MR. GIROUX: Afternoon, Chair.

CHAIR CARROLL: Will Spence, Department of Planning, will be here later, I believe, or he's on call, but he should be here. We have Paul Fasi with the Department of Planning, and Clayton Yoshida Planning...Planner, Department of Planning, and David Goode, Director of Department of Public Works, and Will Spence, Director of the Department of Planning. Also with us we have, Merrill Kaufman, for LU-19, and Troy and Susan McCasland for LU-44. Committee Staff, we have Pauline Martins, Committee Secretary, Kirstin Hamman, 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 will be limited to three minutes, with one minute to conclude. Testifiers are requested to state their name for the record and to indicate who they are representing, if appropriate. Ms. Hamman.

MS. HAMMAN: Mr. Chair, the first person signed up to testify is Merrill Kaufman, testifying on LU-19.

**. . . BEGIN PUBLIC TESTIMONY . . .**

MS. KAUFMAN: Good afternoon, Council members, my name is Merrill Kaufman, I'm a resident of Makena and I am a co-owner of the LU-19 property. I'm here to testify in support of the resolution before you. Just a super quick background on long history. We began, my husband and I began a Change in Zoning process almost four years ago, and at that time we envisioned the property to be re-zoned from State Ag to Rural. At the time of our initial Change in Zoning

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application we were advised by the County that our property was in fact zoned Interim, which would require a CIZ, a Change in County Zoning designation, and a Community Plan Amendment to achieve the conformity. After the initial meeting, at the Maui Planning Commission, to review the draft EA; we were informed that due to the settlement of the Hanohano lawsuit, our property was now County Zoned R-3. Since the property is designated as Single-Family in the community plan, we were at that point advised by the Planning Department, that to achieve conformity, we need only change the zoning from Ag to Urban. So, we withdrew that initial application to amend the CIZ, and amended it accordingly and resubmitted. It was always our intention, however; to achieve a Rural-like subdivision by attaching conditions that would be consistent with the RU.5 Zoning. So with the recent passage of the continuity zoning regulations in August 2010, it's now possible to achieve in a slightly more streamline process what we had hoped for from the onset. The resolution under consideration for you, for you today makes that possible. So I respectfully ask the Council to refer to the Planning Department to act swiftly in bringing LU-19 before the Maui Planning Commission, where we were last heard on this property three years ago, and ensure an expeditious return before you all at the Land Use Committee for further consideration. We would also request that the Chair upon re-receipt of recommendations from the Planning Commission request that LU-19 be put on the agenda as soon as possible before the, the Committee. It's been a long and kind of costly and arduous process, most of which has been out of our control. So we would really like to have your consideration and your support on the resolution. I won't be able to stay for the entire meeting, school gets out early on Wednesday. . . .*(laughter)*. . . So, if you have any questions I'd be happy to try to answer them. Thank you.

CHAIR CARROLL: Thank you. Members, any questions for the testifier? Hearing none, thank you very much for coming down.

MS. KAUFMAN: Thank you.

MS. HAMMAN: Mr. Chair, the next person signed up to testify is Troy McCasland, testifying on LU-44.

MR. McCASLAND: Aloha, good afternoon. I submitted a PowerPoint presentation, does that...

CHAIR CARROLL: This is a time for public testimony, sir. Public testimony, not, not the hearing on your bill.

MR. McCASLAND: Oh.

CHAIR CARROLL: Your application.

MR. McCASLAND: Oh I'm sorry, I misunderstood.

CHAIR CARROLL: This is the time for public testimony. No. This is public testimony.

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MR. McCASLAND: So, do I...

CHAIR CARROLL: We will be hearing, we will be hearing your one later.

MR. McCASLAND: Oh, okay, I'm sorry. Sorry, I must have filled out the form wrong, or...

CHAIR CARROLL: You're early.

MR. McCASLAND: Okay, I'm sorry.

CHAIR CARROLL: Okay.

MR. McCASLAND: Thank you.

CHAIR CARROLL: Thank you.

MS. HAMMAN: Mr. Chair, the next person signed up to testify is Daniel Kanahele, testifying on LU-19.

MR. KANAHELE: Good afternoon, Chair Carroll, and Committee members. I feel like shouting wake up 'cause I know you all came back from lunch, so...like me, you know, we're kind of still digesting our food. Anyway it's great to be here with you folks this afternoon, and like Merrill Kaufman, who preceded me...well, I should introduce myself, I'm Daniel Kanahele, I am testifying as an individual today and I'm here to make comment on LU-19. And like Merrill Kaufman before me, I would also like to support the, the resolution to have this item referred to the Maui Planning Commission. I think that this is a good thing to do. I'm, I'm glad the Kaufman's are in concurrence as far as how to go about achieving their ends, I, I know it's been maybe a long and, and difficult process for them, I know they've been working at it for several years. But like many other members of the community, Makena, what is called Makena today, what is known as Makena, but it had its own traditional names like Mooloa and Mooiki, is considered a special place, because it provides a refuge, from life so to speak, a place to get away, yeah, from Urban areas, and to enjoy a natural area that's, has Agricultural lands, Rural lands, Conservation lands. So I think this is a step in the right direction and like to echo the comments of Don Couch, when you said, if it looks like a duck, it walks like a duck and it quacks like a duck, must be a duck...so. This is a...the, the area is truly Rural, an area in, in character and we want to see that preserved and perpetuated for future generations to come. I'd also like to make the point that...I think, I think the Land Use Committee and County Council really needs to take a hard look on what they see as the future for this area that is called Makena today. There are a lot of R-3 lots there, like this lot, the Kaufman lots that are under State Classification Land Use or Agriculture. And I think the Council needs to come to a consensus as to what they see the future, of this place being. I know the Long Term [sic] Division of the Planning Department--I'll take a minute to conclude, Chair--has proposed that the Rural character of this area be preserved, and I would hope that the, the County Council would look at these, these lots that are R-3 and maybe consider rezoning them, so that they're perhaps more in

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character with the area as it is today. I do know that in the first community plan, 1970 community plan, that the planners at that time, for solve the urbanization, the build out of Kihei, and they saw Makena as being a quiet place of historic interest and natural beauty, and I would like to see that to be the vision for this place. Thank you very much.

CHAIR CARROLL: Thank you, any questions for the testifier? Seeing none, thank you.

MR. KANAHELE: Thank you.

CHAIR CARROLL: Ms. Hamman?

MS. HAMMAN: Mr. Chair, next to testify is Lisa Cochrane, testifying on LU-44.

MS. COCHRANE: Aloha. My name is Lisa Cochrane and I'm the Property Manager at 451 Ilikahi Street, I'm representing and supporting the McCasland family. I've lived in the house for a year, I also have been on Maui for ten years. I was a Property Manager in California for 500 units, and I'm here just to support that the house can be a vacation rental. I'm also friends with the neighbors and the neighborhood and I'm definitely here to state that I have every intention of supporting the McCaslands and their vacation rental at 451 Ilikahi Street, and also to make sure that I enforce all the rules, that the neighborhood comes first, and that is why I'm here today. Thank you.

CHAIR CARROLL: Thank you, thank you. Any questions for the testifier? Seeing none, thank you.

MS. COCHRANE: Thank you.

CHAIR CARROLL: Ms. Hamman?

MS. HAMMAN: Next to testify is Lena Kanemitsu, testifying on LU-44.

MS. KANEMITSU: Good afternoon, I am Lena Kanemitsu and I live right across the street from the McCaslands. I'm one of the original tenants in the subdivision so I've seen things change. Anyway, a few years back the McCaslands applied for a vacation rental and at that time it was denied because of several reasoning's. And I find that with vacation rentals, the people park in the driveway, which has a gate and they're quiet, they, they heed the rules of the house and I am for a vacation rental rather than long term rentals. We've had other long term rentals in our subdivision and cars are parked on both sides of the road and it presents a problem at times. Therefore, I am for vacation rental and I firmly back the McCaslands in their application for this.

CHAIR CARROLL: Thank you. Any questions for the testifier? One moment please. Ms. Baisa?

MS. KANEMITSU: Yes.

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COUNCILMEMBER BAISA: I think I, I might have slipped by. What are...you're an immediate neighbor, abutting neighbor?

MS. KANEMITSU: Right across the street from the McCasland's residence. I'm 456.

COUNCILMEMBER BAISA: Okay, thank you very much.

MS. KANEMITSU: You're welcome.

CHAIR CARROLL: Any further questions? Thank you. Ms. Hamman?

MS. HAMMAN: Next to testify is Mac Suzuki, testifying on LU-44.

MR. SUZUKI: Council member, my name is Mac Suzuki, I reside at 441 Ilikahi Street, which is next door, and I adjoin the property in question here, on both sides, the front and the side. I developed a lot where I now live about ten years ago and I've experienced different ownership in this property. And my judgment from the experience, well having lived there and been subjected to the different forms is, I do favor Mr. McCasland's effort to do a vacation rental here, because the impact to my property and the neighborhood is much less and favorable, more favorable. He's maintained his property well, he's responsive and I think his efforts are really a, a contribution for the community and our neighborhood.

CHAIR CARROLL: Thank you. Members, any questions for the testifier? Seeing none, thank you.

MR. SUZUKI: Thank you.

MS. HAMMAN: The next person to testify is Lucienne de Naie, testifying on LU-19.

MS. de NAIE: Thank you. Good afternoon, Chair and Committee. I would like to support the action that's being purposed, to refer this Land Use Boundary Amendment back to the Planning Commission. I believe the Kaufman's hit it on the head when they did their original EA that said the land was very well suited to fit under the State Rural Designation, it does fit all the characteristics, and so I'm glad that we're winding our way back to this. I would hope when the Council hears again the Pine Street Limited Parcel, that's immediately next door, that is under different ownership, but has had representation by Mr. Kaufman, that they would consider that this would be another way to resolve that, both should really be Rural. And just wanna step back a minute, reflecting on how did we get all this R-3 Zoning in a place that had no water, and no sewers and, you know, in other words R-3 is like you can build I think ten units per acre, something like that. And I, I did some research and it might be of interest to folks here, that back in the 1960s, when we first passed our Land Use Regulations and created the State Land Use Commission, and actually had a State category for Land Use Zoning. The State put thousands and thousands and thousands of acres in the Ag category, basically anything that was grazing land, ranch land went in the Ag category, but a few months later, the County of Maui, decided to rezone, also thousands of acres of land to R-3, and, and some other zonings. The only problem

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was that if Land was Ag under the State designation, the new State ag laws, as I understood them, did not give the County any authority to change the zoning on those lands. They only had the authority to change zonings on the Urban land and the Rural lands. So they didn't have the authority to change zoning on Ag land or Conservation land until it went to the Land Use Commission. So these thousands of acres that were designated R-3 in 1963 or '64, never had their, their State zoning changed. And so now you have people go whoa what's wrong with the State, why did they change the zoning, well the process was the County had to go to the State first and have that changed and then do their zoning change, and they didn't. And that's why most of Makena State Park is R-3 too; I mean it doesn't make any sense. But that's what we're stuck with, so I, I think you guys have done a wise thing, and I agree with Mr. Kanahale, we maybe should look at our vision for this place and try to work with the landowners and do what's fair. Thank you.

CHAIR CARROLL: Thank you. Any questions for the testifier? Seeing none, thank you.

MS. HAMMAN: Mr. Chair, Ms. de Naie was the last person signed up to testify.

*... END OF PUBLIC TESTIMONY ...*

CHAIR CARROLL: Is there anyone in the gallery that wishes to give testimony, please come forward at this time? Seeing none, if there's no objection, we will close public testimony.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR CARROLL: Public testimony is now closed on all items.

**LU-5      CONDITIONAL PERMIT FOR A TRANSIENT VACATION RENTAL KNOWN AS "SANDY SURF" (KIHEI) (C.C. No. 08-281)**

**LU-8      CONDITIONAL PERMIT FOR A TRANSIENT VACATION RENTAL KNOWN AS "PLUMERIA SURF" (KIHEI) (C.C. No. 08-282)**

**LU-56     CONDITIONAL PERMIT FOR A TRANSIENT VACATION RENTAL KNOWN AS "MANGO SURF" (KIHEI) (C.C. No. 08-263)**

CHAIR CARROLL: Members, today we have six items on our agenda. LU-5, Conditional Permit for a transient vacation rental known as "Sandy Surf" (Kihei); LU-8, Conditional Permit for a transient vacation rental known as "Plumeria Surf" (Kihei); and LU-56, Conditional Permit for a transient vacation rental known as "Mango Surf" (Kihei); LU-34, Community Plan amendment at Hale O Lono Harbor (Molokai); LU-44, Conditional Permit for a transient vacation rental operated by Troy and Susan McCasland (Lahaina); and LU-19, District Boundary Amendment

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for `Iwa `Ike, LLC (Makena). I know the agenda looks ambitious, however; with the filings I feel we have more than enough time to get through this.

LU-5 and LU-8 and 56 relate to requests from Maui Blue, LLC for Conditional Permits for three TVRs, Sandy Surf, Plumeria Surf, and Mango Surf, all located in Kihei. LU-5 relates to the Sandy Surf TVR located on nearly 23,000 square feet within the R-3 Residential District at 3244 South Kihei Road; LU-8 relates to the Plumeria Surf TVR located on nearby 24,000 square foot, feet within R-3 Residential District at 3254 South Kihei Road, right next door to the Sandy Surf; LU-56 relates to the Mango Surf TVR located on approximately 18,000 square feet within the R-3 Residential District at 1490 Halama Street. By correspondence dated July 20, 2011, Gwen Ohashi Hiraga, Principal, Munekiyo & Hiraga, Incorporated, requested, on behalf of Maui Blue, LLC, to withdraw the applications for the three Conditional Permits.

Members, based on Maui Blue, LLC's request to withdraw the application for Conditional Permits, I'll recommend that each of the communications be filed, and we will do the motions separately. The Chair at this time would, would entertain a motion to file County Communication No. 08-281.

COUNCILMEMBER COUCH: So moved, Chair.

COUNCILMEMBER BAISA: Second.

CHAIR CARROLL: Been moved by Mr. Couch, seconded by Ms. Baisa. Discussion? Mr. Couch?

COUNCILMEMBER COUCH: Mr. Chair, just a question on this to, I guess the Department. Is this organization operating these things already, as vacation, transient vacation rentals?

CHAIR CARROLL: Mr. Fasi?

MR. FASI: Paul Fasi. Thank you. I believe they are not operating at this time as transient vacation rentals.

COUNCILMEMBER COUCH: Okay, and does the Department anticipate them coming back for?

MR. FASI: We do not anticipate them coming back.

COUNCILMEMBER COUCH: Okay.

CHAIR CARROLL: Any further discussion on the motion on the floor, to the motion on the floor? All those in favor, please signify by saying "aye".

COUNCIL MEMBERS VOICED AYE.

CHAIR CARROLL: Opposed? Motion carried, seven "ayes", no "noes".