

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

**MINUTES**

**Council Chamber**

**November 30, 2011**

**CONVENE:** 1:35 p.m.

**PRESENT:** Councilmember Robert Carroll, Chair  
Councilmember Mike White, Vice-Chair  
Councilmember Gladys C. Baisa, Member  
Councilmember Elle Cochran, Member (arr. at 1:51 p.m.)  
Councilmember Donald G. Couch, Jr., Member  
Councilmember Joseph Pontanilla, Member  
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  
Gina Flammer, Planner, Department of Planning  
Clayton Yoshida, Planning Program Administrator, Current Planning  
Division, Department of Planning

**OTHERS:** Gregory D. Kaufman, Authorized Agent for Pine State Limited and  
'Iwa 'Ike, LLC  
Jonathan Durrett, Esq., Attorney for Maui Memorial Park, LLC  
Wayne Arakaki, Consulting Engineer for Maui Memorial Park, LLC  
Pat Puana, Onsite Manager, Maui Memorial Park, LLC  
Stan Zitnik, Applicant  
Lucienne de Naie  
Merrill Kaufman  
Plus (5) other people

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

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# LAND USE COMMITTEE

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CHAIR CARROLL: . . . (*gavel*) . . . Land Use Committee meeting of November 30, 2011 is now in session. First of all, may I request that anybody has cell phones or anything else that makes noise, please turn it off. We have with us this morning, Committee Members, Vice-Chair of the Committee, Mike White --

VICE CHAIR WHITE: Aloha, Chair.

CHAIR CARROLL: --and Committee Members Joseph Pontanilla, Michael Victorino --

COUNCILMEMBER VICTORINO: Good afternoon, Chair.

CHAIR CARROLL: -- Donald Couch and Gladys Baisa. Danny Mateo is excused. Joining us later will be Elle Cochran and Riki Hokama. For our Corporation Counsel, we have James Giroux. We will have our Planning Director or we have Michele McLean with us today and Paul Fasi, our Planner, Department of Planning; Clayton Yoshida, Administrator for the Department of Planning; and Gina Flammer, Department of Planning; David Goode, Director of Public Works is on-call for LU-16 and -19. Greg Kaufman, authorized agent, Pine State Land Limited and authorized agent, 'Iwa 'Ike LLC, UL-19 [*sic*]; and Jonathan Durrett, Esq., attorney for Maui Memorial Park, LLC, LU-14; and Stan Zitnik, applicant, LU-20. Committee Staff, we have Pauline Martins, Committee Secretary and Kirstin Hamman, Legislative Attorney. Members, we have four items on our agenda today: District Boundary Amendment for Pine State Limited, Makena, LU-16; District Boundary Amendment for 'Iwa 'Ika [*sic*] LLC, Makena, LU-19; Cemetery Expansion at Maui Memorial Park, Wailuku, LU-14; Conditional Permit amendment to continue the use of converted garage for an Interior Design Office at 2144 Kahookele Street, Wailuku, LU-20. Public testimony on those items will be accepted starting in a few minutes. 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 if requested. Testifiers are requested to state their name for the record and to identify who they are representing if appropriate. We will now open--has anyone signed up, Ms. Hamman, for public testimony?

MS. HAMMAN: Yes, the first person to testify is Lucienne de Naie.

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

MS. de NAIE: Good morning, Chair Carroll. Good morning, Committee Members. My name is Lucienne de Naie. I'd like to testify on two matters so if it's possible to address?

CHAIR CARROLL: Yes, when you finish with one, then we'll start your time over on the other one.

MS. de NAIE: Thank you very much. Starting first with the Pine State Limited proposal for the Boundary Amendment, I'm in support of the Rural amendment. However, I would like to bring to the attention of the panel that the Planning Commission had a robust discussion about certain aspects that should be in the conditions for approval of the Boundary Amendment that may or may not be in your staff report. And you may have received some other correspondence on this,

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but it has to do with protection of historic roads, cultural sites and in essence, looking at this land in connection with other places. You know, years ago, I was fortunate that Uncle Ed Lindsey, you know, kind of took me under his wing and took me out hiking with him and Uncle Rene Silva to look at places. And you know, you first look at these places and you don't see nothing, you know. And then gradually your eyes open and Ed was always fond of saying, you know, you can't look at a slice of the salami, you need to look at the whole salami or you don't really know what you're looking at here. So one of the things that the Planning Commission asked very early on is that there be a map presented to the Council--and I'm not sure if that happened or not--that shows all the cultural sites that are in the proximity not just on the, the number, you know, Parcel 116 or 117, the Pine State, but, because there are no recorded sites there. But to the parcels to the south and the parcels to the north, mauka, makai, and a map was shown at the Planning Commission that was very abbreviated. It showed the sites that were immediately on the adjoining parcel, but it didn't show the historic roads and it didn't show the, the sites that were nearby that were all part of the same LCA that was given during the Mahele. And it just seems that when you're evaluating whether or not sites are significant and whether they should have any protection and the Planning Commission recommended that as many sites as possible be protected on both parcels. I'm only speaking to the one, the Pine State doesn't have any sites that are noted, but it does have a historic road that runs through it. And I'm going to pass some things out to you--unfortunately it couldn't be before I spoke--that show that historic road. It is in the deed of the property and it's an exclusion in the deed of the property, and it's just my feeling that it should be protected in some way and I just didn't see that in the applicant's plans. So there are two, it's a little confusing because there are two roads. One is a Maui Electric easement, but the other is identified separately and they're both in the, they're both in the description, you know, the Exhibit A that tells about the description of the land, and more importantly they're shown on old photographs from the '50's you can see the cuts and stuff that, that come through this particular area that were some sort of roads and they're recorded on 1970's maps as tract. So I would just like to call to your attention that it would be good to have a condition to protect historic roads on either property. So may I transition over into the second --

CHAIR CARROLL: Proceed.

MS. de NAIE: --the second parcel. But the second parcel, the larger parcel, the 'Iwa 'Ike parcel also has historic roads going through it. It's the same road basically kind of cuts through corner of both property. It, too, was part of this larger Land Commission Award that was given to Kenui. And just to put it in perspective, Mr. Kenui was a very important person. He was one of the founders of Keawala'i Church in Makena, one of a handful of people that gave the money to, to build the church in the 1850's. He served several minor government posts in the area. So he had a 16-acre claim and these two parcels are part of it. The Kaufman Subdivision, the original subdivision, four-acre subdivision next door was part of it and land that Dana and Isaac Hall and Uncle Les Kuloloio and others have their Hawaiian Cultural Center on is part of it. And among just those parcels there that made up this original Land Commission Award, there was a heiau, a probable burial, a number of walls, a chief's house with extensive terraces. In other words, in this one little Land Commission Award, 16 acres, there was a lot of concentration of important use. And so, you know, when we hear the applicant say, oh these are just old cattle walls and so

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forth and so on that are found on the `Iwa `Ike parcel, the archaeological report does not say the age of the walls. It just assumes they were from ranching. They were never dated. I just think that if we could...and they appear to follow this old dirt road too that's, that's in the, in the deed. So if there's any way that we can structure this project so that the remnants we still have left can be protected. You are allowed as a Boundary Amendment, I know you folks probably don't want to overstep the boundary of the State Historic Preservation guys, but they are busy and they mostly just sort of sign off on things unless there's big ticket items involved. They have visited the site and they, they did urge the applicant to protect what could be protected. But with a Boundary Amendment you have the right to put conditions on that respond to historical sites. So I just urge you to exercise that right. I will see if I can turn these papers into you that describe what the Planning Commission requested, 'cause that might give you some guidance. But basically there's four sites on the `Iwa `Ike parcel that could be preserved. Two are proposed for preservation. But all four--since we have so little left in that area--really should be preserved to relate to the other sites. Thank you.

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

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

MS. KAUFMAN: Good afternoon, Council members and Chairman Carroll. My name is Merrill Kaufman. I am a resident of Makena since 2005, a resident of Maui since 1989. I'm here today to testify on Item LU-16. I am a partial owner of the Item LU-19, so I'll restrict my comments to LU-16 although they're general and overarching in nature. I wanted to come today to urge you to approve the District Boundary Amendment. I wanted to share a little bit of an experience that I got to have beginning of last week, right down across from the subject parcel on Oneloa Beach or Big Beach Park. As I said, I've lived there since 2005, and I've been fortunate enough to in that time volunteer with the Hawksbill Turtle Monitoring Project that's run by the Hawaii Wildlife Fund. And although I, I've been patient and walked the beach at night and early in the morning, I've never gotten lucky, and I got lucky last week because some Hawksbills at the second nest were emerging. And I got to go down there with my children and watch these amazing, tiny, walnut-sized turtles come out of the sand, and we were late to school and we were just really overwhelmed by the experience. And I get, in, in the course of my job, I get to see some amazing wildlife, but I just wanted to say, you know, from the heart that the applicant in this case, who's my husband, who has lived down there for way longer than since 2005, we're going to do the right thing by that place not because someone tells us to or puts conditions on a piece of paper, but because it's the right thing to do and we care very much about that place. But I would like to say specifically all of the volunteered or self-imposed conditions that have been but on this District Boundary Amendment, many of those which the applicant, himself put on the amendment including: protection for the environment; safeguards from plant life to animal life, certainly including nesting sea turtles; concerns about parking and access and public safety, actually going to be increasing the parking for beach users in that area; concerns about low density with no ohanas and low impact with low profile homes; and certainly respect for cultural resources. I'm glad that Ms. de Naie brought up Keawala'i Church and the kupuna of

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Keawala`i. Our family are members of Keawala`i Church and as part of the process when we first moved to Makena in the 1990's was to consult with those folks, with the Ferreras and Aunty Laurie Chang and some of the families that are still represented from, who have a lineage in Makena and get their blessing and hear their concerns about our plans. So in closing, I would just like you to respectfully consider requesting or sorry, approving the District Boundary, Boundary Amendment.

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

MS. HAMMAN: Mr. Chair, nobody else has signed up to testify.

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

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

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR CARROLL: Public testimony is now closed.

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

CHAIR CARROLL: ... (*gavel*) ... Members, the Committee is in receipt of a revised proposed bill entitled, "A BILL FOR AN ORDINANCE 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". The purpose of the revised proposed bill is to amend the State Land Use District classification from Agricultural to Rural to allow for a two-lot subdivision on approximately 1.395 acres located at Makena-Keoneoio Road, Makena, Maui, Hawaii TMK (2) 2-1-05:117. By Resolution 11-77 adopted on August 5, 2011, the Council referred to the Maui Planning Commission the revised proposed bill for review and recommendations. The correspondence dated November 7, 2011, the Planning Director transmitted the Maui Planning Commission's comments on the revised proposed bill. The bill transmitted by the Department of the Corporation Counsel on November 21, 2011, incorporates the Planning Commission's recommendations. We have with us, Planner, Paul Fasi today. Mr. Fasi, would you care to make comment and bring us up to date?

MR. FASI: Yes, I would. First of all, I would just like to clear up a few misconceptions, and there's a big misconception throughout this whole project that the applicant is not going to preserve any of the historical sites. He has every intention of preserving historical sites and following the letter

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of the law. Secondly, I would just like to point out that some of the testimony, a large part of the testimony that you heard would have to be weighed against the actual facts and what transpired in that Maui Planning Commission meeting and it's in the minutes. For example, the road, the road, there was no discussion of the road being preserved. So I would just like to clear up some of those misconceptions, fact versus personal opinions. On November 25, 2008, this item came before the Maui Planning Commission and it passed unanimously seven-zero. At that time, the District Boundary Amendment was from State Ag to State Urban. On August 12, 2010, the Subdivision Consistency Bill became effective which would allow the applicant to be consistent with County land use designations from DBA from, to Rural versus Urban. On August 18<sup>th</sup>, the Council Land Use Committee meeting, the DBA came to the Land Use Committee as a, as State Urban, from Ag to State Urban. At that meeting, the applicant decided to invoke the Subdivision Consistency Bill and make the request, the change with the DBA from Urban to Rural. It was deferred due to noticing requirements and so the matter was not further discussed. On October 15, 2010, an opinion letter from Corp. Counsel stating that in order for the Council to initiate a bill for a District Boundary Amendment from Ag to Rural, the bill must be reviewed by the Planning Commission first. So the bill has to be reviewed by the Planning Commission before it can be reviewed here. On October 25<sup>th</sup>, that meeting did happen at the Planning Commission and it passed unanimously, seven to zero, one was absent, and the recommendations I believe are in your packet as recommended. There were no major changes to the conditions. And that concludes the Department's report.

CHAIR CARROLL: Thank you. Members, before I open the floor, Condition No. 5 relating to a roadway states, "This condition shall exempt Pine State Limited, from improving any portion of Makena-Keoneoio Road to Urban standards". Mr. Fasi, do you feel that this condition is now appropriate since we are changing the designation to Rural?

MR. FASI: No, sir. That condition is, should be deleted in its entirety. It has come down from the Department of Public Works that Urban standards wouldn't, will not be recommended. They are recommending Rural standards.

CHAIR CARROLL: Thank you. Members, in light of that, I would accept a motion to remove Condition 5.

COUNCILMEMBER PONTANILLA: Chairman, question?

CHAIR CARROLL: Been moved and seconded.

UNIDENTIFIED SPEAKER: No.

COUNCILMEMBER COUCH: No, it has not.

CHAIR CARROLL: I'm sorry.

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COUNCILMEMBER PONTANILLA: I have a question unless you want to make the motion first and then discussion?

CHAIR CARROLL: That if you want to have discussion before the motion, but the motion would be more appropriate.

COUNCILMEMBER PONTANILLA: Okay, and just a fast question for Mr. Fasi --

CHAIR CARROLL: Go ahead, proceed.

COUNCILMEMBER PONTANILLA: --in regards to Makena Road. Is the, the Makena Road from what, beginning from what area to ending area has Public Works considered this as a Rural road?

MR. FASI: I can only comment on the portion fronting the immediate property in question, and they just want to keep the Rural standards to keep the road the way it looks now and not impose Urban standards.

COUNCILMEMBER PONTANILLA: Yeah, and, and the reason why I ask is that maybe two, three years ago we had the same issue about keeping the road the way it is rather than put road improvements here, which I think the ordinance calls for road improvements. So I, I thought I'd ask you that question.

MR. GIROUX: Chair, if I could comment?

COUNCILMEMBER PONTANILLA: Sure.

MR. GIROUX: I could probably shed some light. My understanding is that the Public Works looks at the State designation of the, of the lands surrounding the road in order to make their determination. So it's the State designation that really determines what kind of improvements that they're going to require from the roadway. And, and that's the, the issue of once you take a, a property from State Rural to State Urban, that's when Public Works starts having trouble conforming with the community plan in the area.

COUNCILMEMBER PONTANILLA: So the road itself, is it a County road or a State road?

MR. GIROUX: I'm not sure.

COUNCILMEMBER PONTANILLA: Just as long we don't have this hodgepodge, you know what I mean?

MR. FASI: I'm sorry, what was the question?

COUNCILMEMBER PONTANILLA: County or State road?

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MR. FASI: I believe it's a County road.

COUNCILMEMBER PONTANILLA: Okay, fine.

MR. FASI: That's why they can impose the Rural standards.

COUNCILMEMBER PONTANILLA: Okay, thank you. That's good.

CHAIR CARROLL: Alright, is there any further discussion before I ask for a motion from the floor?  
Alright, I will accept a motion on the floor to remove Condition No. 5.

VICE-CHAIR WHITE: So move, Chair

COUNCILMEMBER VICTORINO: Second.

CHAIR CARROLL: It's been moved by Mr. White, seconded by Mr. Victorino. Discussion?  
Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. I'm looking on the November 17<sup>th</sup> Request for Legal Services, 'cause that seems to be the latest copy of the ordinance, and while it, it basically says it's going to preserve the traditional Rural scale and character of the existing portions of Makena-Keoneoio Road, I don't, I mean, I don't see any problem with leaving it in there just in case the applicant decided, well maybe the right-of-way might be a minimum of 30 feet or I, I don't know. I don't see any reason for removing it because these are pretty good restrictions even though, in, you know, those are the defaults in Rural, this spells out exactly what they can and cannot do. So, I'm, I'm in favor of leaving that in.

CHAIR CARROLL: Thank you. Ms. McLean?

MS. MCLEAN: Thank you, Mr. Chair, and I apologize for the, the inconsistency, or Mr. Fasi is correct that some of these are redundant with Rural standards. And if I recall, the Committee last time wanted to eliminate those duplicative conditions and the Planning Commission strove to do the same. Some of these are consistent with Rural standards, but some of them I think go beyond Rural standards. So I think it might be safer to leave the conditions in just to be certain that, that the Council, like the Commission, is spelling out specifically what they would like to see. So I, I apologize for the confusion within the Department on that one.

CHAIR CARROLL: We have heard from them that it is, doesn't hurt anything to leave it in, that sort of a split decision coming from that side which always makes it interesting. However, since it does no harm, unless somebody has some objection, we could withdraw the motion and just leave it in. Does anybody have any objection to withdrawing the motion?

COUNCILMEMBER BAISA: No.



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COUNCILMEMBER VICTORINO: Chair.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR CARROLL: Mr. White?

VICE-CHAIR WHITE: I'll withdraw the second.

CHAIR CARROLL: Okay, the motion is withdrawn. One moment please. Thank you. Alright, Members I'm going to open the floor.

COUNCILMEMBER VICTORINO: Chair?

CHAIR CARROLL: Mr. Victorino?

COUNCILMEMBER VICTORINO: Do we, do we have a motion on the floor? No?

CHAIR CARROLL: No, there is no motion on the floor at this time.

COUNCILMEMBER VICTORINO: Okay, so are we waiting to make a, wait for your recommendation and then discuss?

CHAIR CARROLL: I was going to open the floor if anybody had anything for Staff or any of the Administration present before I made my recommendation.

COUNCILMEMBER VICTORINO: Well, I just, the only thing I ask is maybe the Department can talk story before they come and make recommendations and then we make motions and then we take it back. I mean, you know, that's sometimes frustrating and it makes the process look kind of foolish. And so I just, again, it happens, but if Mr. Fasi says one thing and then we turn around and then Ms. McLean says another thing, you know, it's the same Department. And so, I, I always get a little frustrated when the same departments cannot be on the same page on a project like this has been around for so long, you know, and we've taken so many years to get to this point, I would hope that almost all the kinks should have been worked out by now. So, with that said, I will wait for your recommendation, Mr. Chair.

CHAIR CARROLL: If there's no objection, the Chair will make his recommendation?

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR CARROLL: And then we'll proceed from there. Members, the Chair will entertain a motion to recommend passage on first reading of the revised proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT FOR TAX MAP KEY NUMBER (2)

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2-1-005:117, MAKENA, KIHEI, MAUI, HAWAII”, and incorporating...we don’t have any amendments and any nonsubstantive revisions, and to file Communication 09-103.

VICE-CHAIR WHITE: So move, Chair.

COUNCILMEMBER COUCH: Second.

CHAIR CARROLL: It’s been moved by Mr. White, seconded by Mr. Couch. Discussion? Mr. White?

VICE-CHAIR WHITE: No discussion.

CHAIR CARROLL: Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair, and I want to request the Members’ support because we all pretty much supported it last time to go to Urban, I mean to Rural, and the, the only issue is that it took so long to get back when we really wanted it to get sooner. So hopefully, I know 90 days is pretty quick for the Planning Department, but we were hoping for a lot quicker, but appreciate the, the applicant’s patience on that. Thank you.

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

COUNCILMEMBER BAISA: Yes, thank you very much, Chair. And I, too, would like to urge us to take care of this today. It’s been hanging around for a very long time. I had the opportunity to work with the Kaufmans when I was Land Use Chair and, you know, it’s been a saga. So it would be wonderful if we could wrap this up today. Thank you, Chair.

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

COUNCILMEMBER PONTANILLA: Thank you. Just a fast question for Planning. The archaeological studies and mitigation actions, and I’m looking at Condition No. 14, so Map No. 1 would, would be the one that would be the map that we look at?

MS. MCLEAN: Can you, can you describe what you’re looking at again, please?

COUNCILMEMBER PONTANILLA: Yeah, this is November 4<sup>th</sup>, Map No. 1, and you know, when I look at Condition No. 14 it says that, “shall preserve archaeological sites 6223A and B as shown on the subdivision map”. So this must be the subdivision map, right?

... *(Short pause while the Planning Department Staff looked through material to confirm)* ...

CHAIR CARROLL: Mr. Pontanilla, do we need a recess?

COUNCILMEMBER PONTANILLA: No, no, no. Thank you.

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MR. FASI: You're correct. Map No. 1 would be referenced.

COUNCILMEMBER PONTANILLA: So Map No. 1 would be Condition No. 14 then...referenced to Condition 14?

MR. FASI: If it's referencing the map, it would be that map on Condition 14.

COUNCILMEMBER PONTANILLA: Okay, thank you.

CHAIR CARROLL: Thank you. Any further discussion to the motion on the floor?

COUNCILMEMBER VICTORINO: No.

CHAIR CARROLL: Seeing none, all in favor, please signify by saying "aye".

COUNCIL MEMBERS VOICED AYE.

CHAIR CARROLL: Opposed? Motion carried with Members Mateo and Hokama excused. We have seven "ayes" and two excused.

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

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmembers Hokama and Mateo.**

**MOTION CARRIED.**

**ACTION: FIRST READING OF REVISED BILL AND FILING OF COMMUNICATION.**

**LU-19 DISTRICT BOUNDARY AMENDMENT FOR 'IWA 'IKE, LLC (MAKENA)**  
**(C.C. No. 09-105)**

CHAIR CARROLL: Proceeding onward. Committee is in receipt of a revised proposed bill entitled, "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT FOR

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TAX KEY NUMBER (2) 2-1-005:118, MAKENA, KIHEI, MAUI, HAWAII.” The purpose of the proposed bill is to amend the State Land Use District Classification from Agricultural to Rural to allow for a four-lot subdivision on approximately 2.79 acres located at Makena-Keoneoio Road, Makena, Maui, Hawaii, TMK: (2) 2-1-005:118. By Resolution 11-85 adopted on August 23, 2011, the Council referred to the Maui Planning Commission the revised proposed bill for review and recommendations. By correspondence dated November 4, 2011, the Planning Director transmitted the Maui Planning Commission’s comments on the revised proposed bill. The bill transmitted by the Department of the Corporation Counsel on November 21, 2011 incorporates the Planning Commission’s recommendations. I have asked Mr. Kaufman to give us a very brief presentation on the application since we have not heard this one in any length. The Committee will be in recess for two minutes to prepare for the presentation. We now stand in recess. . . . (*gavel*) . . .

**RECESS:            2:07 p.m.**

**RECONVENE:      2:09 p.m.**

CHAIR CARROLL: . . . (*gavel*) . . . Land Use Committee meeting of November 30<sup>th</sup> is now back in session. We will now hear the presentation by Mr. Kaufman. Mr. Kaufman?

**. . . BEGIN PRESENTATION . . .**

MR. KAUFMAN: Okay, thank you, Chair Carroll. I will try to be brief. This is LU-19 and it is directly adjacent to the LU-19 project. It is, the subject parcel sits in an area that currently has a community...woops, our pointer’s not working, but you can see the subject parcel directly abuts a Rural subdivision right now and is surrounded by Rural lands in the area and single-family lands, as well. I wanted to point out just some quick historical images here and unfortunately this pointer is not working. There we go. Here’s the subject parcel right here, it’s not to scale, but it gives you some idea. This aerial was taken in 1949, and you can see this large compound here of this raised area and the roads that run around here. I show this to you just to show you a progression of the area to modern day. This again, is 1960. You can see the aerial compound here, the, the radio towers that are located at Oneloa and the areas that have been bulldozed and raised around it. This is the subject parcel sitting on Old Makena Road here. This is 1970, and again, 1975, the parcel’s slightly off the edge of the paper here, but you’ll start seeing some more road tracks, et cetera in the area. What’s most telling is this next slide and this is what I call the advent of the four-wheel drive. Look at the road tracks that have now been cut in this area and roadways in Makena over this short period of time. There’s a myriad of them. This roadway that was alluded to earlier in testimony, here you can see it runs along the MECO road site and goes out to this newly built compound out here. This, this roadway system was put into place in the 1940’s to serve this area here. But if you look at high resolutions, there are literally tracks cut everywhere in this area, and unfortunately, that’s what was happening in the area because of uncontrolled four-wheel drive use. And then you’ll see the same thing, existing roadways and the development of Makena Golf Course and the subject parcel here as well. And this is the parcel here today. This was LU-16, excuse me, I can’t get this, LU-16 was sitting here. This is

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LU-19 sitting here and this is a Rural subdivision next door to it. I'll take you real quickly, you've got a packet that has more images than I'm going to show here, but this is just your key, but I'll take you real quickly around a couple shots here. This is the, viewing north along Old Makena Road, and one of the things that will happen here is that these telephone poles that you can see are extremely close to the roadway will disappear and be placed underground. Those telephone poles were removed as a consequence of us developing the Kaufman Subdivision, and unfortunately when they removed them and put them near the road, they now become quite a hazard. As you can see, they're very close to the roadway there. And you also see that with the road widening lot that was just mentioned and, and the condition there, you will see that the actual boundary line will be pushed back here and provide a lot more ample parking for beach users and get those telephone poles out of the roadway. I showed this picture here because this is really what's happening in Makena. One of the benefits of coming before the Council and doing this process is that we've had to do archaeological surveys, we've had to do the right thing. This is my immediate neighbor adjacent to the south. There's the boundary line. Well every weekend he's backfilled this property and turned it into a pastureland here. No archaeological surveys, no preservations of any trails or cultural sites, no knowledge of what's going on there, and it's just been backfilled. And so those who worry about Makena are very concerned that...I've been the only one that's been calling about this and no one has tried to stop these people and preserve or protect that area. Who knows what's under there now? This is down, looking down towards the makai side of the property towards Oneloa, Makena State Park, and you can see the vegetation is extremely dense there. And real briefly, I put this up. This was requested by the Maui Planning Commission some time ago and I want to share it with you. This is the Kaufman Subdivision right here and this is an archaeological site that we preserved. It actually has about three-quarters of an acre rounded preserving this area. You can see that these, right there that push spot right there is where Maui, Maui Electric Company pushed it in with a bulldozer and put a telephone pole right there. So they had these roadways that they were driving through here to go to each telephone pole. Those roadways don't exist anymore because one of them was created by Sonny Vick, who lives just down the way, and they used to use it as a hunting trail as well. Well, you can't even find them anymore because there's no more trucks driving back and forth through there. So in 2007, an Archaeological Inventory Survey was undertaken by Xamanek Researches and an Archaeological Monitoring Plan was also created in 2007. SHPD accepted both of these plans. What was found here was a series of two dry-stacked walls right here and that's 22--excuse me, I can't see the number there--6223A and B is referred to. There was some agricultural scatter piles and a midden scatter pile here. I walked this site extensively with SHPD. I asked him, I spent hours out here looking at this, and I asked him--these did not rise to Criterion E, they rose only to Criterion D which is for informational purposes only. We are allowed to take these sites off. These sites here by the State archaeologist were indicated to me to be fairly recent, and while these were not dated, the preservation of these walls is something that I'm all in favor of. So I asked if you were to preserve anything on this property, what would it be? And they suggested these two sites here. We have suggested that to the Maui Planning Commission and you'll see it's part of the conditions. You also see in your correspondence, I've since written to Dr. Aiu, the head of SHPD and gotten his permission to preserve those sites. That, that, that letter came in on the 18<sup>th</sup>. So we are currently proceeding to get the metes and bounds of those properties and create a preservation plan so they will be

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preserved. Again, we are not required to do that, but it's something we want to do to do the right thing. A Cultural Impact Statement, Impact Assessment was done in April 2009, and we got no response. I could not believe we didn't get any response so I demanded they do it again and send it to a whole new set of people. Got no more response. I demanded that we put advertisements in the Honolulu papers, in the Maui papers. We ran them for three days in each place, never got any response. SHPD accepted and concurred with the findings of the CIA. It was also shared with OHA and they had no comment on the final CIA. In addition, one last thing, there was public testimony, at one point early on, concerned about traffic. So I went out of the way and funded a Traffic Study, and of course, the findings of the Traffic Study by Phillip Rowell and Associates found out that there would be about five roundtrips in the morning and six at night, and there would be no impact or change of road use level. All of these I think show the dedication and commitment to the, of the applicant, and in the future, the CC&Rs will require green homes, photovoltaic and you know, low water use, low energy use development there. Thank you.

... **END OF PRESENTATION** ...

CHAIR CARROLL: Thank you. We will now recess for two minutes to put up the screen. We stand in recess. ... (*gavel*) ...

**RECESS:            2:17 p.m.**

**RECONVENE:    2:19 p.m.**

CHAIR CARROLL: ... (*gavel*) ... The Land Use Committee meeting of November 30, 2011 is now called back to order. I would like now to call on Clayton Yoshida who is substituting for Joe Prutch to bring us up to date on anything from Planning. Mr. Yoshida?

MR. YOSHIDA: Good afternoon, Committee Chair Carroll and Members of the Council Land Use Committee. Since the applicant has gone over most of the details of the project, I will just say that the permitting history for this application pretty much follows the permitting history of the preceding Ke Kani Kai application. It was heard originally by the Maui Planning Commission back in October of 2008. This Council resolution for a District Boundary reclassification to go from Ag to Rural was heard by the Maui Planning Commission at the same October 25, 2011 meeting. There were three people who testified in favor, three people who are opposed. The Planning Commission after due deliberation recommended approval, is recommending approval with revisions to Conditions 1 through 12 as shown in Ramseyered format in our November 4, 2011 transmittal letter. Also with the addition of Condition No. 13, "that the applicant and any future lot owners are encouraged to implement energy conservation measures and renewable energy producing systems when developing the property"; and Condition No. 14, that the applicant shall preserve archaeological sites 6223A and B as shown on the 'Iwa 'Ike subdivision map, in situ and submit a preservation plan to the State Historical Preservation Division for their review and comment. We would also note that--I guess based on the testimony heard today--that the Department did transmit in, on

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November 4, 2011, Map No. 2, Figure 4, which is a distribution of archaeological features by formal and functional categories. That is I believe the map that the testifier, Ms. de Naie was referring to. With that, that concludes our...oh, the draft minutes of the October 25<sup>th</sup> meeting were also subsequently transmitted to this Committee. With that, that's our comments, Mr. Chair.

CHAIR CARROLL: Thank you, Mr. Yoshida. Any questions for Mr. Yoshida? If not, Ms. McLean, do you have any comment?

MS. MCLEAN: No thank you, Chair.

CHAIR CARROLL: Members, the floor is open. I would like to call Mr. Kaufman to the podium, before I give my recommendation.

*. . . (Short pause while Mr. Kaufman approached the podium.) . . .*

CHAIR CARROLL: Mr. Kaufman, are you authorized to sign any Unilateral Agreement on behalf of the property owner, or does that remain the same and is available same and are you available to sign?

MR. KAUFMAN: Yes, I am.

CHAIR CARROLL: Thank you. That was the only question I had for you. Do you have anything for Mr. Kaufman while I have him up there?

COUNCILMEMBER PONTANILLA: No. Just waiting.

CHAIR CARROLL: Okay, thank you. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Yeah, yeah, just fast question. The presentation, Mr. Kaufman had a overview, overhead projection of a property that is shown, you know, backfilled property. If there are archaeological findings in the property, how do you we go after those property owners?

CHAIR CARROLL: Mr. Yoshida? Is that a question for Mr. Yoshida?

COUNCILMEMBER PONTANILLA: Yeah, for Planning. Who is responsible?

CHAIR CARROLL: Ms. McLean, anyone, would care to answer that?

MR. YOSHIDA: I guess, Councilmember Pontanilla, I believe there is that Site 6223 that the Commission wanted preserved.

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COUNCILMEMBER PONTANILLA: No, what I'm saying, it's not his property but an adjacent property where, you know, that landowner backfilled. I'm, I'm looking at No. 5. I just wanted to know who follows up on, on, you know, things like this that happens, yeah? The site supposed to be protected.

CHAIR CARROLL: Mr. Pontanilla, if they cannot answer now--

COUNCILMEMBER PONTANILLA: Oh, no, yeah, they can--

CHAIR CARROLL: --the Chair would be happy to--

COUNCILMEMBER PONTANILLA: --provide something in writing.

CHAIR CARROLL: --address that in writing to them and then get back. I think that might be better.

COUNCILMEMBER PONTANILLA: Okay.

CHAIR CARROLL: Because it could be a little bit more complex than we would want to address at this time since it's not the applicant's property.

COUNCILMEMBER PONTANILLA: Okay.

CHAIR CARROLL: The Chair and his Staff will pursue that for you.

COUNCILMEMBER PONTANILLA: Okay, fine.

CHAIR CARROLL: Any further discussion before the Chair gives his recommendation?

COUNCIL MEMBERS VOICED RECOMMENDATION.

CHAIR CARROLL: The Chair will entertain a motion to recommend passage on first reading of the revised proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT FOR TAX KEY NUMBER (2) 2-1-005:118, MAKENA, KIHEI, MAUI, HAWAII", incorporating and with permission to do any nonsubstantive revisions and to file County Communication No. 09-105.

VICE-CHAIR WHITE: So move, Chair.

COUNCILMEMBER COUCH: Second.

CHAIR CARROLL: It's been moved by Mr. White, seconded by Mr. Victorino. Discussion, Mr. White?



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VICE-CHAIR WHITE: No discussion.

CHAIR CARROLL: Any further discussion? Hearing none, all in favor of the motion, please signify by saying "aye".

COUNCIL MEMBERS VOICED AYE.

CHAIR CARROLL: Opposed? Motion is carried. Seven "ayes", two excused, Mr. Hokama and Mr. Mateo.

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

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Councilmembers Hokama and Mateo.**

**MOTION CARRIED.**

**ACTION: FIRST READING OF REVISED BILL AND FILING OF COMMUNICATION.**

**LU-14 CEMETERY EXPANSION OF MAUI MEMORIAL PARK (WAILUKU)**  
**(C.C. No. 11-281)**

CHAIR CARROLL: Members, we will now go to LU-14. The Committee is in receipt of a proposed resolution to approve the location and boundaries of approximately 124,092 square feet of land identified as TMK: (2) 3-8-46:043, owned by Maui Memorial Park, LLC for the expansion of the Maui Memorial Park Cemetery, Wailuku, Maui, Hawaii. This request was initiated by Councilmember Michael P. Victorino at the request of the landowner, Maui Memorial Park, LLC. I've asked Jonathan Durrett, Esq., the attorney for the landowner to provide the Committee with a brief presentation concerning his request. Mr. Durrett, will you please approach the podium and identify yourself? Oh, you know, I'm sorry; we are going to do a presentation, a video presentation again. We are going to go into recess for two minutes and put down the screen for the presentation. We now stand in recess. . . . (*gavel*) . . .

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**RECESS:            2:27 p.m.**

**RECONVENE:      2:29 p.m.**

CHAIR CARROLL: . . . (*gavel*) . . . Land Use Committee meeting of November 30, 2011, is now back in session. We will proceed with the presentation.

**. . . BEGIN PRESENTATION . . .**

MR. DURRETT: Thank you, Chair Carroll. My name is Jonathan Durrett and I'm a representative of Maui Memorial Park. With me today is also Pat Puana, the onsite manager, as well as, Mr. Arakaki, our consulting engineer. Today we are asking the Council to adopt a resolution that would permit us to record the plat map for the cemetery plots at Maui Memorial Park. We are not asking for any land use approval. All necessary land use approvals have been obtained by Maui Memorial Park from the Maui County Planning Commission. This is a rendition of the site which is located across Waiinu Road from the existing cemetery. Some of you have probably seen it on the way to Maui Lani Subdivision. It intersects with Waiale on the left side of the map, and the site will provide much needed cemetery space and plots, additional 2,000 plots for burial spaces which as I mentioned are much needed in Maui County. The reason we are here before the, the Council is kind of interesting. Among the many things the laws ask the Council to determine, I bet you didn't know that you would also have the opportunity to determine the final say on cemeteries. Application for the County Special Use Permit and Accessory Use Permit were applied for in 2009, as I mentioned to you. The largest part of the lot is in Ag, but there was a sliver in M-1 District which was Light Industrial. Previously the site was used for a staging area for construction equipment for Mr. Gomes, but because the, the bulk of the property was in Ag, cemetery actually was permitted with a Conditional Use Permit there, but the accessory permit was necessary for the portion that was in the Light Industrial. The Planning Department recommended approval to the Planning Commission on May 11<sup>th</sup>. The Planning Commission conducted its public hearing October 12, 2010 and voted to approve the permit applications, and Planning notified the Park of the approval on October 15, 2011 and Maui Memorial Park then started to, wanted to commence its sales program. We have about, I'm advised by Ms. Puana we have about 20 consultant agents who, who are unable to sell plots because of the unavailability and so they're all anxious to be put back to work. And it was determined we should counsel with Department of Development Services as to see if there's any other things that might be needed, although Department of Development Services said that it appeared we had everything we needed, so you might check the Cemetery Statute. And lo and behold in the Cemetery Statute, Chapter 441, which turns out was passed long after all the cemeteries on Maui were developed, there's an interesting provision. And Section 2 basically says and I've highlighted it here, there must be filed a written Certificate of Dedication containing a description of the land or the property, and then the, the one that is pertinent to the Council today, "No cemetery shall hereafter be established nor shall boundaries of any existing cemetery be extended without the location and boundaries of the cemetery or extension thereof having first been approved by the Council of the County". We had hoped it would just say the

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County since we already had the Planning Commission approval, but the explicit opinion we received was that the Council required this come before you. And obviously, we would like to be able to get the resolution so we can record the plat and go forward with the sales program. The last portion which is, is bold and italicized says, “a certified copy of a resolution of the Council approving the location and boundaries of the cemetery or extension thereof which resolution shall be recorded.” Recordation in the Bureau of Conveyances requires us to have your resolution, and the law explicitly states that we may not embark in any sales program until we’re recorded. Corporation Counsel has reviewed and approved the form of our Certificate of Dedication, and has drafted and signed off on a form of your resolution as well, and we’re here request the Land Use Committee’s approval of the, adoption of the resolution. Thank you.

**... END OF PRESENTATION ...**

CHAIR CARROLL: Thank you. We will now stand in recess for two minutes while we raise the screen. Recess. ... *(gavel)* ...

**RECESS:            2:35 p.m.**

**RECONVENE:      2:37 p.m.**

CHAIR CARROLL: ... *(gavel)* ... Land Use Committee meeting of November 30, 2011 is now back in session. I’d now like to make the recommendation and then we can have discussion afterwards.

COUNCILMEMBER VICTORINO: Recommendation, Chair.

CHAIR CARROLL: Chair will entertain a motion to recommend adoption of the proposed resolution entitled, “APPROVING THE LOCATION AND BOUNDARIES OF A CEMETERY EXPANSION OF MAUI MEMORIAL PARK ON LAND SITUATED AT WAILUKU, MAUI, HAWAII”, and filing any nonsubstantive revisions that are necessary and file County Communication 11-281.

COUNCILMEMBER VICTORINO: Thank you, Chair. I move, I make the motion.

VICE-CHAIR WHITE: Second.

CHAIR CARROLL: It’s been moved by Mr. Victorino, seconded by Mr. White. Discussion? Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you. Thank you, Chair. And as you’re well aware of Maui Memorial Park has reached capacity. They have really been no ability to sell or to add to their existing cemetery. This was part of their master plan to expand into this area. As you well know, they have that one and they also have the, the cemetery area next to Waiale between the prison and Valley Isle Marine, yeah. And so, I would hope my colleagues will support this. It

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will have both a lawn and crypt terrace and as you can see, a lower and upper crypt terrace. It will extensively beautify the area as it exists today. So I thank my colleagues in advance for their support. Thank you, Chair.

CHAIR CARROLL: Any comments from Corporation Counsel or Planning?

MS. MCLEAN: No comments from Planning, Chair.

MR. GIROUX: No comment, Chair.

CHAIR CARROLL: Members, the floor is open. Any questions?

COUNCILMEMBER PONTANILLA: Chair?

CHAIR CARROLL: Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. I'll be supporting this resolution, but just a fast question for Planning Department. I know they had a landfill in that area before, and I just was wondering how close or is it in the same vicinity as the landfill?

CHAIR CARROLL: Mr. Fasi?

MR. FASI: If I understand your question, you're asking how close is it to the landfill?

COUNCILMEMBER PONTANILLA: Yeah, there was a previous landfill in this particular area, and I really don't know how close it is or if, even if it's upon that landfill?

MR. FASI: I'm going to have to defer that question to Mr. Arakaki if he can answer that, because I'm not aware that, of the history of the particular parcel here.

CHAIR CARROLL: If there's no objection, Mr. Pontanilla, I'll call the applicant?

COUNCILMEMBER PONTANILLA: Yeah, please. Thank you.

CHAIR CARROLL: Identify yourself at the podium, please.

MR. DURRETT: Thank you, Chair. Jon Durrett again, on behalf of the cemetery. There is a landfill in the vicinity. It's presently titled in Maui Lani and it's a little bit further up Waiinu, but it's a good question to raise because there, there's probably a likelihood that once this area is expanded, we may be going back and trying to acquire the landfill area for Maui Lani and develop that for further site.

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COUNCILMEMBER PONTANILLA: Yeah, that's, that's the only question, concern that I had and, and, you know, how long should a landfill, you know, once covered, how long can it stay covered before anything can be done or any type of development can be done on, on landfills?

CHAIR CARROLL: Thank you.

COUNCILMEMBER PONTANILLA: That's for Planning in the future should they expand.

CHAIR CARROLL: Thank you, Mr. Pontanilla. Any further questions before I call for the question? Mr. Couch?

COUNCILMEMBER COUCH: Thank you. I guess this is more of a long-term question possibly for Planning. Everybody's going to die and a lot of people are going to get buried. Did we have anything in our plans to expand or create new cemeteries, because this looks like a very tight area and where else are people going to go? I'm trying to be, you know, as sensitive as I can, but do we have plans for expansion? I mean, obviously.

MS. MCLEAN: We may.

CHAIR CARROLL: Ms. McLean?

MS. MCLEAN: Thank you, Chair.

CHAIR CARROLL: As far as, Mr. Couch, as far as I know there are no plans for--I have seen or heard of no plans for any--other expansions or any new cemeteries in Maui County on Maui, Molokai or Lanai at this time.

COUNCILMEMBER COUCH: I guess, Mr. Chair, that's something we may want to bring up in the Maui Island Plan and the General Plan, because they're going to have to expand unless we do some other form of disposal.

CHAIR CARROLL: I think you're just the person to do it, Mr. Couch. And I will do my part. I will do my part and I'll let everybody know by not dying. Thank you. Any further discussion? Hearing none, all in favor of the motion, please signify by saying, "aye".

COUNCIL MEMBERS VOICED AYE.

CHAIR CARROLL: Opposed? Motion carried. Seven ayes, two excused, Mr. Hokama and Mr. Mateo. Thank you.