

LAND USE COMMITTEE

Council of the County of Maui

MINUTES

July 22, 2015

Council Chamber, 8th Floor

CONVENE: 1:39 p.m.

PRESENT: VOTING MEMBERS:
Councilmember Robert Carroll, Chair
Councilmember Gladys C. Baisa
Councilmember Elle Cochran
Councilmember Don Couch
Councilmember Stacy Crivello

EXCUSED: VOTING MEMBERS:
Councilmember Michael P. Victorino, Vice-Chair
Councilmember Don S. Guzman

STAFF: Carla Nakata, Legislative Attorney
Raynette Yap, Committee Secretary

Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)
Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)

ADMIN.: William Spence, Planning Director, Department of Planning
Joseph Alueta, Administrative Planning Officer, Department of Planning
Kurt Wollenhaupt, Planner V, Department of Planning
Livit Callentine, Planner IV, Department of Planning
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works
Michael Miyamoto, Deputy Director, Department of Environmental Management
Stephen Orikasa, Captain, Department of Police
Scott English, Lieutenant, Department of Fire and Public Safety
Jan Shishido, Deputy Director, Department of Housing and Human Concerns
David Taylor, Director, Department of Water Supply
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Chantal Ratte, Executive Director, Ka Lima O Maui, Ltd.
Tom Croly
Louis S. Walsh
Colleen Suyama, Munekiyo Hiraga
Plus (3) Others

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

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CHAIR CARROLL: . . .(gavel). . . Land Use Committee meeting of July 22, 2015 will come to order. I'm Councilmember Robert Carroll, Chair of the Land Use Committee. First of all, my request that if anybody has anything, cell phones or whatever that makes noise, please turn it off. We have with us this morning [sic] voting Members Gladys Baisa --

COUNCILMEMBER BAISA: Hello, Chair.

CHAIR CARROLL: --Elle Cochran --

COUNCILMEMBER COCHRAN: Aloha, Chair.

CHAIR CARROLL: --and Don Couch.

COUNCILMEMBER COUCH: Aloha, Chair.

CHAIR CARROLL: Excused is Stacy Crivello and Don Guzman.

COUNCILMEMBER COUCH: And Mike Victorino.

MS. NAKATA: Mike Victorino.

CHAIR CARROLL: I'm sorry?

COUNCILMEMBER COCHRAN: Victorino's the Vice-Chair.

CHAIR CARROLL: And Mr. Victorino, excuse me. My Vice-Chair is also excused. Executive Branch representatives, we have Will Spence, Planning.

MR. SPENCE: Good afternoon, Chair.

CHAIR CARROLL: Joe Alueta, Department of Planning.

MR. ALUETA: Good afternoon, Chair.

CHAIR CARROLL: Kurt Wollenhaupt, Department of Planning is here. Livit Callentine Department of Planning will be with us shortly, hopefully. Kyle Ginoza, Director of Environmental Management for UL-11 [sic] and 26. Representative of Fire Department of Public Safety. Jan Shishido, Deputy Director of Housing and Human Concerns. We have Department of Police. Rowena Dagdag-Andaya, Deputy Director of Public Works. And we have a representative from the Department of Water Supply. And Mike Hopper, Deputy Corporation Counsel. The applicant's representative, Colleen Suyama, Munekiyo and Hiraga. Chantal Ratte, Executive Director, Ka Lima O Maui, Ltd. Committee Staff we have Raynette Yap, Committee Secretary and Carla Nakata, our Legislative Attorney. And we have with us Stacy Crivello.

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COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR CARROLL: Today we have three items on our agenda. The first item is regarding the Hana Community Health and Wellness Village and its request for District Boundary Amendment and a Change in Zoning. The second request is for a Change in Zoning for 1746-A South Kihei Road, the site of Kihana Nursery in Kihei. Finally, we'll be considering a request from Ka Lima O Maui, Inc. [sic], for a Change in Zoning. Assisting us this morning [sic] we have Dawn Lono in the Hana Office. Dawn.

MS. LONO: Good afternoon, Chair. This is Dawn Lono at the Hana Office.

CHAIR CARROLL: Thank you, Dawn. Lanai District Office, Denise Fernandez.

MS. FERNANDEZ: Good afternoon, Chair. This is Denise Fernandez on Lanai.

CHAIR CARROLL: Good afternoon. And from our Molokai District Office we have Ella Alcon.

MS. ALCON: Good afternoon, Chair. This is Ella Alcon on Molokai.

CHAIR CARROLL: Good afternoon. This morning [sic] we'll be opening testimony in a moment. You have three minutes. When you come to the microphone, to the podium, please identify yourself at the microphone and anybody you might be representing.

. . . BEGIN PUBLIC TESTIMONY . . .

MS. NAKATA: Mr. Chair, the first testifier is Tom Croly, he'll be testifying on LU-26.

MR. CROLY: Aloha, Chair. Aloha, Committee. I'm Tom Croly testifying on my own behalf. Kihana Nursery, I stand here today in support of the proposed Change in Zoning to B-2 to allow Kihana Nursery the zoning necessary for them to continually, continue to legally operate their business at their current location. I've been a customer of Kihana Nursery for more than 13 years, first at their old location that was operated under a Conditional Permit, and for the past about 7 years at their current location. Their folks there have helped me many times in keeping my sprinkler systems in working order and providing many of the plants that adorn my bed and breakfast in Maui Meadows. I really appreciate having a business like this available to me in Kihei, and I hope that this Committee grants their Change in Zoning to allow this business to continue. If there's one thing I would like to see and that would be better signage for this operation. As I drive down South Kihei Road and I look for them, their signage faces out to the street and I don't see it until I'm just up next to it and then I have to quickly signal and turn into their driveway. So I'd love to have a sign that was better presented to the drivers coming down the street. But today's Committee meeting brings to mind a question and that is why does an action like this, this Change in Zoning that has been applied for take so long? From my research it shows that this Change in Zoning was first applied for eight years ago. Fortunately the owners of this

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operation have been able to continue their operation without the proper zoning allowing it legally, but that really shouldn't be the case, should it? As you all know, I help people get permits to allow their, the operations of their short-term rentals and bed and breakfasts, and of course I have to tell those people they may not operate until their permits are granted. I would like to see this Committee and the Council in general doing everything that they can to shorten these times for the people like Kihana Nursery and like my clients who seek a short-term rental permit to minimize those times as much as we possibly can. It's impractical for people wishing to make a use to wait eight years before that use is granted. Their personal situations may change in that period of time and they may not even be in business by the time the zoning is changed. So, again, I am in full support of this zoning change, and I look forward to continuing to shop at Kihana Nursery. Thank you.

CHAIR CARROLL: Any clarification needed from the testifier? Seeing none, thank you. Ms. Nakata.

MS. NAKATA: Mr. Chair, the next testifier is Chantal Ratte, she'll be testifying on LU-11. Ms. Ratte is the last testifier who has signed up in the Chamber.

MS. RATTE: Good afternoon, Committee Chair, Members of the Committee. Thank you for the opportunity to provide testimony. My name is Chantal Ratte, I'm the Executive Director with Ka Lima O Maui, and I stand in full support of the Change in Zoning from Residential to Public/Quasi-Public. Just to provide you with an update on the capital project, I know you've heard a lot about our project over the last few years but very happy to report that it is moving forward. The total project consists of three phases. Phase I is renovation of an existing building that was constructed in '93 to accommodate our then plant nursery. So we have selected a contractor, we're negotiating with the contractor right now, and we anticipate construction to begin on that renovation in the next few months. Phase II will consist of building Ka Lima its own home to move its employment programs and administrative offices. And Phase III will be housing for persons with disabilities. This is all to take place on the two-acre lot in question. So I thank you for your support. I know that Councilmember Victorino introduced this resolution so we're very appreciative of the support.

CHAIR CARROLL: Any clarification needed from the testifier? Seeing none, thank you.

MS. RATTE: Thank you.

CHAIR CARROLL: Ms. Nakata.

MS. NAKATA: Mr. Chair, no one else is signed up to testify in the Chamber.

CHAIR CARROLL: Molokai, do you have anybody waiting to give testimony?

MS. ALCON: There's no one here on Molokai waiting to testify.

CHAIR CARROLL: Thank you. Lanai, do you have anybody waiting to give testimony?

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MS. FERNANDEZ: There is no one waiting on Lanai to testify.

CHAIR CARROLL: Thank you. Hana, do you have anybody waiting to give testimony?

MS. LONO: There is no one waiting in Hana to testify, Chair.

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

COUNCILMEMBERS: No objections.

CHAIR CARROLL: Public testimony is now closed.

. . . END OF PUBLIC TESTIMONY . . .

**ITEM NO. 1: DISTRICT BOUNDARY AMENDMENT AND CHANGE IN
ZONING FOR HANA COMMUNITY HEALTH AND
WELLNESS VILLAGE (CC 06-313)**

CHAIR CARROLL: Members, the Committee is in receipt of County Communication 16-313 [sic], from the Planning Director, transmitting the following: A proposed bill entitled A Bill for an Ordinance to Amend State Land Use District Classification from Agricultural to Rural for Property Situated at Hana, Maui, Hawaii. The purpose of the proposed bill is to grant a request from Hana Community Health Center, Inc. for a District Boundary Amendment from Agricultural to Rural for approximately 9.501 acres (TMK: (2) 1-4-003:022 (por.)), to allow for the expansion of the existing Hana Community Health Center in Hana, Maui, Hawaii, to be known as the Hana Community Health and Wellness Village. Number two, a proposed bill entitled A Bill for an Ordinance to Change Zoning from Interim District to Public/Quasi-Public District (Conditional Zoning) for Property Situated at Hana, Maui, Hawaii. The proposed, the purpose of the proposed bill is to grant a request from Hana Community Health Center, Inc. for a Change in Zoning from Interim District to P-1 Public/Quasi-Public District for approximately 12.108 acres (TMKs: (2) 1-4-003:022 and (2) 1-4-003:024), to allow for the expansion of the existing Hana Community Health Center in Hana, Maui, Hawaii, to be known as the Hana Community Health and Wellness Village. The Committee is also receipt in correspondence dated July 14, 2015, from Cheryl Vasconcellos, Executive Director of Hana Health Center, requesting withdrawal of the proposed Change in Zoning and District Boundary Amendment applications. The Committee may consider the filing of County Communication 06-313 and other related actions. Your Chair notes that the revised proposed bills were recommended for passage on first reading at the Land Use Committee of August 19, 2009, but since that time the applicant has not transmitted the required unilateral agreements and the applicant has communicated in a letter

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received earlier this month, would like to withdraw the application. Planning, Mr. Alueta, do you have any comment?

MR. ALUETA: No comments, Mr. Chair.

CHAIR CARROLL: Members, any discussion? Chair's recommendation.

COUNCILMEMBERS: Recommendation?

CHAIR CARROLL: The Chair will entertain a motion to file County Communication 06-313.

COUNCILMEMBER COUCH: Mr. Chair, I move that we file County Communication 06-313.

COUNCILMEMBER CRIVELLO: Second.

CHAIR CARROLL: Been moved by Mr. Couch, seconded by Ms. Crivello. Discussion? Hearing none, all in favor of the motion, signify by saying, "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried, five "ayes," two excused, no "noes."

VOTE: AYES: Chair Carroll, Councilmembers Baisa, Cochran, Couch, and Crivello.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Victorino and Councilmember Guzman.

MOTION CARRIED.

ACTION: FILING of communication.

CHAIR CARROLL: Thank you. Thank you, Mr. Alueta.

**ITEM NO. 26: CHANGE IN ZONING FOR 1746-A SOUTH KIHEI ROAD,
THE SITE OF KIHANA NURSERY (KIHEI) (CC 14-137)**

CHAIR CARROLL: Moving on to the next item. The Committee is in receipt of County Communication 14-137, from the Planning Director, transmitting the following: the

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proposed bill to grant a request from Lawrence N. C. Ing, Esq., on behalf of Louis S. Walsh, and Steven P. Walsh, and Laureen T. Walsh, for a Change in Zoning from R-3 Residential District to B-2 Community Business District for a parcel consisting of approximately 38,879 square feet located at 1746-A South Kihei Road, Kihei, Maui, Hawaii, to facilitate the long-term operation of the Kihana Nursery business and to create consistency with the Kihei-Makena Community Plan. The Committee is also in receipt of correspondence dated July 13, 2015, from the Department of Corporation Counsel, transmitting a revised proposed bill entitled A Bill for an Ordinance to Change Zoning from R-3 Residential District to B-2 Community Business District (Conditional Zoning) for Property Situated at Kihei, Maui, Hawaii, for the Proposed Kihana Nursery. The revised proposed bill incorporates a proposed conditional [*sic*] of zoning and nonsubstantive revisions. The Committee may consider whether to recommend passage of the proposed bill on first reading, with or without revisions. The Committee may also consider filing of County Communication 14-137 and other related actions. Members, the Chair has requested confirmation from three departments regarding several issues as shown in the correspondence in your binders. The matter of sewage manhole or sewer cleanout has been resolved as identified by the subsequent documents. The Department of Police has indicated that previous concerns regarding traffic impacts resulting from the entrance gate have been resolved. And Planning has clarified that there have been no complaints resulting from the nursery operation. The Chair also requested a revised proposed bill that inserts a condition of zoning similar to the one in the Conditional Permit for the nursery previously as documented, Ordinance 3202, 2004. The condition follows, that the Kihana Nursery, Inc., for as long as the property is used as a commercial nursery, shall not spray pesticides that there would be a negative impact on neighboring residents, and that Kihana Nursery, Inc. shall notify adjacent residents before using chemicals other than "Roundup," "Bt (Bacillus--oh boy, all right, everybody--thuringiensis)," and "pyrethrin," and "neem oil." The floor is now open for discussion. Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. I am in very much support of this request since they've been doing it as a Conditional Use Permit forever. And as, I will channel Mr. Hokama saying why don't we get them to do a Change in Zoning? They have done that. I do have some, another condition I would like to finalize after speaking with the applicant. So if you would indulge me in a short recess to get that completed. At some time, it doesn't have to be right now. Before we...

CHAIR CARROLL: We can take a short recess right now --

COUNCILMEMBER COUCH: Okay.

CHAIR CARROLL: --at the call of the Chair.

COUNCILMEMBER COUCH: Okay. Thank you.

CHAIR CARROLL: Recess 'til the call of the Chair. . . .(*gavel*). . .

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RECESS: 1:55 p.m.

RECONVENE: 2:03 p.m.

CHAIR CARROLL: . . .(*gavel*). . . This Land Use Committee will reconvene. Members, a handout is being distributed to you now.

COUNCILMEMBER COUCH: Mr. Chair, can you use the microphone, please?

CHAIR CARROLL: I'm sorry?

COUNCILMEMBER COUCH: Yeah.

CHAIR CARROLL: Oh, okay. I have such a soft voice that's why.

COUNCILMEMBER COUCH: Yes, you do. Thank you.

CHAIR CARROLL: Two handouts are being distributed to you. All right. The first handout, you'll see it's Exhibit "B" and Condition of Zoning. The one inside there right now, the difference is it says, the Kihana Nursery, Inc. What we've done is take out the name because no matter who owns it with this, the one I'm proposing to change, the condition stays there. It doesn't matter if somebody else buys it or what. As long as it's being used as a nursery, the conditions stay, and that's why we're having this change. And I will read it now. That for as long as the property is used as a commercial nursery, no owner or operator shall allow pesticides to be sprayed such that there would be a negative impact on neighboring residences, and the owner/operator shall notify adjacent residents before using chemicals other than "Roundup," "Bt (*Bacillus thuringiensis*)," "pyrethrin," and "neem oil." Could I have a motion?

COUNCILMEMBER COUCH: Mr. Chair, I move to amend the condition of zoning in Exhibit "B" as you read.

COUNCILMEMBER CRIVELLO: I second.

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

COUNCILMEMBER COCHRAN: Chair?

CHAIR CARROLL: Ms. Cochran.

COUNCILMEMBER COCHRAN: So this came about through what? Planning Commission? This condition?

CHAIR CARROLL: This came out about concerns when we consulted with Staff that by doing this, by changing it and taking the name out, no matter who owns it, as long as it's

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used for agricultural, this condition stays. The way we had it before, it would have been only for the current owner.

COUNCILMEMBER COCHRAN: Right.

CHAIR CARROLL: This way it's forever and ever.

COUNCILMEMBER COCHRAN: That, yeah, no, thank you, Chair. And I understand that part. My question is about, is in the other parts about negative impact on neighboring residences and then these four different chemicals being listed as other than. So that's where I wanted to know where did those four chemicals, who brought those up? Why are those four chosen to be the other than chemicals in this condition --

CHAIR CARROLL: Mr. Spence.

COUNCILMEMBER COCHRAN: --to begin with?

CHAIR CARROLL: Thank you. Mr. Spence, can you comment on that or...

MR. SPENCE: Thank you, Mr. Chairman. You want to comment on this?

MR. WOLLENHAUPT: Well, I'm the second planner on this. So with regards to the reason that the Roundup and the Bacillus thuringiensis is in there, I could not necessarily make a historical viewpoint because that was a condition of the Conditional Permit that was passed by the Council in 1997. So at that time in their deliberations they must have felt that those two chemicals had such importance that they would make a special condition for this. Then in discussion with Mr. Walsh, et al, the people there, there was a discussion I believe that came from the Chair about using the neem oil and the pyrethrin as something that's commonly used, and so there was an addition to the Conditional Permit condition for those additional two chemicals. So that's the historic background as to how we've arrived at four. The applicant is in the audience if you had probably specific questions regarding chemical use. So there we go.

COUNCILMEMBER COCHRAN: Yeah.

CHAIR CARROLL: Ms. Cochran.

COUNCILMEMBER COCHRAN: Well those first two...I'm not so concerned about the last two chemicals which was, which is more of an organic natural type, Chrysanthemum and neem oil, not a big...but the other two chemicals which were the original, brought up in 1997 which is quite a few years back, and today knowing what we know and the different, you know, controversial things that are occurring not only here in our County and State but worldwide in regards to these chemicals, I think there's a whole different light being shed upon these. So I kind of take issue with the way things are worded in that regard, Chair. What you're presenting in this amendment I understand. So I won't be supportive of this if it continues to stay the way it is. But I know what you're trying to do and I'm supportive of that. And so I don't know if it's

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time to rehash and talk it over with owner and what they do or don't do, the bottom line is the two existing words in this condition have passed, been passed down since 1997, I do not agree with. So that's my take on this at this time, Chair. Thank you.

CHAIR CARROLL: Thank you. Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And I would like to remind Members that Bt (*Bacillus thuringiensis*) is a certified organic pesticide, so this is one that's been around for a long, long time and it's certified in organic, as an organic use. So I have no problem with that one being on there. The other one, the Roundup, I would change the name potentially, but that still is widely used by residents around the country, especially in this County, including in this County, so that's one you can buy over the counter. So I have no problem with that one being there either. But certainly the Bt is a, is certified as an organic pesticide. So I have no problem with any four of these.

CHAIR CARROLL: Yeah, I believe they have Roundup on there because it is a commonly used one that anybody over here can go outside and go buy and use, that's why. And the neighbors or anybody else can go to the store and use it. And just explaining the rationale why it was on there, yeah. Further discussion to the motion on the floor? Seeing none, all in favor, signify by saying, "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed?

COUNCILMEMBER COCHRAN: No.

CHAIR CARROLL: Let the record show there are four "ayes," one "no," motion passes.

VOTE: AYES: Chair Carroll, Councilmembers Baisa, Couch, and Crivello.

NOES: Councilmember Cochran.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Victorino and Councilmember Guzman.

MOTION CARRIED.

ACTION: APPROVED.

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CHAIR CARROLL: Thank you. Before we continue on, you have this other flyer, I'm going to let Planning Department make an opening statement.

COUNCILMEMBER COUCH: Oh, okay.

CHAIR CARROLL: Usually I would have gone first, but I knew we had this one over here and I wanted to get rid of it. Mr. Spence.

MR. SPENCE: Yes, thank you, Mr. Chairman. We don't really have...I mean if you would like additional information, we have Mr. Kurt Wollenhaupt with us, he's the staff Planner for this project. Not a whole lot to say. This nursery has been around for a very long time. Has been a good member, as far as I know, has been a good member of our community and I see no reason why not to grant the zoning today.

CHAIR CARROLL: Thank you. Any questions for the Planning Department? If not, I'm going to go through the departments that we have over here, the different departments. The first one I'd like to...well, I'll ask the Members, any questions from the Department of Environmental Management? Okay. Any questions from the Department of Police? Mr. Couch. Could, please, representative, please come forward. If you'd identify yourself at the microphone please.

MR. ORIKASA: Good afternoon. Captain Stephen Orikasa with the Maui Police Department.

CHAIR CARROLL: Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And thank you, Captain, for being here. I have a question on the, there were some concerns about the traffic and what, that the Department said they pretty much cleared it for the entrance. What were the concerns and what was the mitigation? Do you know at all?

MR. ORIKASA: I tried to find previous submissions to this review, although I wasn't able to find anything, but from what I understand to current with the roadway improvements along with the so-called unofficial traffic assessment, there have been no adverse effects to the business being there in past years.

COUNCILMEMBER COUCH: Okay. Thank you, Chair.

CHAIR CARROLL: Any other questions from the Department of Police? Thank you.

MR. ORIKASA: Thank you very much.

CHAIR CARROLL: Anything for Public Works? Department of Public Works. Hearing none, all right, moving on. You have before you the handout, too, that Change in Zoning, the site of the Kihana Nursery, the uses that are not permitted. Any comment? Mr. Couch.

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COUNCILMEMBER COUCH: Thank you, Mr. Chair. You know I've dealt with these folks for a long time and they're a good community business and they do a lot for the community, both in their business and as well as they're heavy into the Little League and other community activities in Kihei. So they're very good community members. I, just in case, you know, something happens and they decide to sell the place at sometime in the late, you know, very far future, as we all know, a lot of permitted uses are in the B-2 Community Business District and I wanted to put a list of things that I didn't think we'd want in that location. I know it's in an interesting and kind of a bizarre little location. Shaka Pizza is right there, then on the other, then there's a church on a very narrow property, and then there's space for their business as well. And so it's in a unique situation. But I wouldn't want things like automobile services, upholstery shops, you know, and the list of things that we put on this list. So if the Members don't mind, I'd like to move to include a condition that these listed uses shall not be permitted.

CHAIR CARROLL: Are you going to make a motion?

COUNCILMEMBER COUCH: Yeah, yeah. I move that the...

CHAIR CARROLL: Please repeat that.

COUNCILMEMBER COUCH: I move that the list of conditions that I handed out not be permitted. The list of uses not be permitted.

CHAIR CARROLL: Do I have a second?

COUNCILMEMBER CRIVELLO: Second.

CHAIR CARROLL: Been moved by Mr. Couch, seconded by Ms. Crivello. Mr. Couch.

COUNCILMEMBER COUCH: Yeah, and this is to add, I'm sorry, I should have said to add as a condition to Exhibit "B." Condition No. 2, Exhibit "B." And I discussed some of this with the applicant and he's fine with it, too. He wouldn't want any of that stuff in that area as well. 'Cause it's, on one side is residential and like I said it's a church on the other side further on up a little bit and then more residential. So it's kind of a really mixed area over there, if anybody knows where Shaka Pizza is. They're right, kind of right next to 'em. So other than that, I think we got agreement with the applicant on this list. So I'm willing to . . . *(inaudible)* . . .

CHAIR CARROLL: If there's no objection, I'd like to call Mr. Scott Walsh down to the podium.

COUNCILMEMBERS: No objections.

CHAIR CARROLL: Could you please come to the podium? Identify yourself at the microphone.

MR. WALSH: I'm Louis Scott Walsh, everyone calls me Scott.

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CHAIR CARROLL: You've heard the discussion, do you have any comment?

MR. WALSH: No. I talked to Don about what he's talking about now and and I was fine with all of that.

CHAIR CARROLL: Thank you very much. Any questions for the applicant? None, thank you.

MR. WALSH: Okay.

CHAIR CARROLL: All right, Members, any further discussion to the motion on the floor? Seeing none, all in favor, signify by saying, "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried.

VOTE: AYES: Chair Carroll, Councilmembers Baisa, Cochran, Couch, and Crivello.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Victorino and Councilmember Guzman.

MOTION CARRIED.

ACTION: APPROVED.

CHAIR CARROLL: The floor is open for discussion. I have run through the departments that were requested and . . . *(inaudible)* . . . Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. I've been relatively quiet about this application and one of the reasons is this is déjà vu for me. I was here in 2009 when they came before us and got a new Conditional Permit, and at that time of course they were told that, you know, they might want to get their zoning changed. And so I'm familiar with the project, I've heard the pros and cons about it, but I'm very happy that they did take us up on it and come for the zoning change. So I'm in support. Thank you.

CHAIR CARROLL: Thank you very much. Further discussion? All in favor...

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COUNCILMEMBER COUCH: Oh...

CHAIR CARROLL: Oh, excuse me. Let's try to read the bill first, that would help. We have fast meetings but not that fast.

COUNCILMEMBER COUCH: Recommendation, Mr. Chair?

CHAIR CARROLL: Thank you, Mr. Couch. The Chair will entertain a motion to recommend passage on first reading of the revised proposed bill entitled A Bill for an Ordinance to Change Zoning from R-3 Residential District to B-2 Community Business District (Conditional Zoning) for Property Situated at Kihei, Maui, Hawaii, for the Proposed Kihana Nursery; incorporating any nonsubstantive revisions; and to file County Communication 14-137.

COUNCILMEMBER COUCH: Mr. Chair, I move to pass the proposed bill entitled, the revised proposed bill entitled A Bill for an Ordinance to Change Zoning from R-3 Residential District to B-2 Community Business District (Conditional Zoning) for Property Situated at Kihei, Maui, Hawaii, for the Proposed Kihana Nursery; and allow the Staff to make nonsubstantive changes; and file County Communication 14-137.

COUNCILMEMBER CRIVELLO: I second the motion.

CHAIR CARROLL: Moved by Mr. Couch, seconded by Ms. Crivello. Discussion? Mr. Couch.

COUNCILMEMBER COUCH: No, we've had everything that I needed to say. I just want to thank them for coming in and thank them for hanging in for the large number of years that they had to deal with this so.

CHAIR CARROLL: Thank you. Further discussion? All in favor of the motion on the floor, please say signify by saying, "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried, five "ayes," no "noes," two excused.

VOTE: AYES: Chair Carroll, Councilmembers Baisa, Cochran, Couch, and Crivello.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Victorino and Councilmember Guzman.

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MOTION CARRIED.

ACTION: FIRST READING of revised bill, RECORDATION of unilateral agreement, and FILING of communication.

ITEM NO. 11: CHANGE IN ZONING FOR KA LIMA O MAUI, LTD. (WAILUKU) (CC 15-116)

CHAIR CARROLL: Moving on, the Committee is in receipt of County Communication 15-116, from the Planning Director, transmitting the following: a proposed bill entitled A Bill for an Ordinance to Change Zoning from R-3 Residential District to P-1 Public/Quasi-Public District for Property Situated at Wailuku, Maui, Hawaii. The purpose of the proposed bill is to grant a request from Ka Lima O Maui, Inc...excuse me, Ltd., for a Change in Zoning from R-3 Residential District to P-1 Public/Quasi-Public District for approximately 2 acres located at Mahalani Street, Wailuku, Maui, Hawaii, (TMK: (2) 3-8-046:016), to allow for the development of 16 units of affordable housing and new office building, and renovation of an existing 2,500-square-foot building used by Ka Lima O Maui, Ltd.'s Medicaid Waiver Program. The Committee will consider whether to recommend passage of the proposed bill on first reading, with or without revisions. The Committee may also consider filing of County Communication 15-116 and other related actions. Members, we'll now receive a PowerPoint presentation today on this application from Colleen Suyama, Munekiyo and Hiraga, the applicant's consultant. If you're, you have been provided of the slides used in this presentation. We're going to take a very short recess while the applicant comes down and prepares their presentation. Recess. . . .(gavel). . .

RECESS: 2:23 p.m.

RECONVENE: 2:25 p.m.

CHAIR CARROLL: . . .(gavel). . . The Land Use Committee meeting is called back to order.

MS. SUYAMA: As presented, we're here to review Resolution No. 14-68 which was initiated by the Maui County Council, and it is a Change in Zoning for County property located at Tax Map Key (2) 3-8-046 Parcel 16.

COUNCILMEMBER COUCH: Excuse me, Mr. Chair? Can she, can we get her to talk into the microphone?

MS. SUYAMA: Oh, sorry.

COUNCILMEMBER COUCH: Just move it around if you're going to face that way.

CHAIR CARROLL: You have a soft voice and you're turning your head the other way that's why, so we can't hear you.

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MS. SUYAMA: Oh, okay. Okay, sorry. Okay. The owner of the property is the County of Maui and it's leased to Ka Lima O Maui, Ltd. Their lease is scheduled to end on July 6, 2059. And we did send a copy of the lease to the County Land Use Committee. This is the location of the property. Orientation-wise on the right-hand side is Kaahumanu Avenue. To the north or above, it's actually on the west side is the Maui Lani Parkway, and if you're familiar with that area you have the Kaiser Permanente Building and then you have the Maui Memorial Medical Center south of the project site. And it's adjacent to the Maui Economic Opportunity property. Currently, the property is on the Wailuku-Kahului Community Plan designated as Public/Quasi-Public use; however, the zoning of the property is R-3 Residential. For that reason, the Maui County Council initiated the Change in Zoning from R-3 Residential District to P-1 Public/Quasi-Public District. In terms of background, the final EA or the Finding of No Significant Impact was published in the Office of Environmental Quality Control, the environmental notice on June 8, 2011. Resolution No. 14-68 was adopted on July 8, 2014. The public hearing on the resolution was held by the Maui Planning Commission on November 25, 2014. The Maui Planning Commission recommended approval with one condition of zoning related to water conservation measures recommended by the Department of Water Supply. These are photos of the property. The first photo on the left is looking at the existing maintenance building that's on the property in front of the Kaiser Permanente Building. The photo on the right is on the top, is just looking at the building from Kaiser Permanente, and then the left-hand corner with the yellow car is a view of the building from the northeast corner. And the last photo is looking at the building from the southeast corner of the property. This is the original site plan that was proposed by Ka Lima O Maui for their project. They originally was looking at creating, developing a new office building to the right. The middle structure is the existing maintenance building that they propose to renovate. And the last two buildings were proposed to be 16 units for their clientele. At the Planning Commission meeting, the, Ka Lima O Maui indicated that they've eliminated one of the buildings and they're now proposing eight units, one of which would be used by an onsite manager for the project. Thank you. We're open to any questions from the Council Committee.

CHAIR CARROLL: We'll call on you afterwards if there's any other further discussion. I'd like to call on Planning now to give their opening statement.

MS. CALLENTINE: We have no comments, Mr. Chair.

CHAIR CARROLL: You have an opening statement?

MS. CALLENTINE: No, Mr. Chair.

CHAIR CARROLL: Thank you. All right. Members, again, I have the various departments over here I'm going to go through if you have any questions for any of the departments. The first one is the Department of Environmental Management. Does anybody have questions for them? All right. Department of Fire and Public Safety, any questions for them? Department of Housing and Human Concerns. Department

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of Police. Department of Public Works. Department of Water Supply. Hearing none, the floor is open for discussion. Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. And I'm in full support of what Ka Lima O Maui wants to do here. My only question would be to the Department of Planning for the permitted uses. I'm wondering how they're fitting residential in there under the permitted uses, a residential use.

CHAIR CARROLL: Mr. Spence.

MR. SPENCE: Yes. Thank you, Mr. Chairman. I think Livit's going to go look up something. That's my own question as well. I think there would have to be a specific condition to permit that. I don't have the ordinance in front of me or the draft.

COUNCILMEMBER COUCH: I'm looking at it and possibly facilities for nonprofit organizations because that's kind of wide open.

MR. SPENCE: If, I think it should be, if the Committee is comfortable with that interpretation, it should be really stated on the record.

COUNCILMEMBER BAISA: Chair?

CHAIR CARROLL: Ms. Baisa.

COUNCILMEMBER BAISA: Chair, I have a question and I'm going to exhibit my lack of knowledge, but Ka Lima is now called Limited, maybe the Director can explain why they changed their title? Is, Chantal was here.

UNIDENTIFIED SPEAKER: She is.

COUNCILMEMBER BAISA: If you don't mind, Chair?

CHAIR CARROLL: No objection to the Members?

COUNCILMEMBERS: No objections.

COUNCILMEMBER BAISA: No, I just want to make, I heard nonprofit so I want to make sure that we're not assuming something. Thank you.

CHAIR CARROLL: Thank you, Ms. Baisa. Please identify yourself at the microphone.

MS. RATTE: Sure. Chantal Ratte, Executive Director with Ka Lima O Maui. I wish I had a better answer for you but it's been Limited for quite a long time now, and I don't, at the top of my head, it was before I became director. So I know it was over ten years ago. I don't have a direct answer. I can certainly research. I vaguely remember the previous director making these efforts to make the change but I don't recall the exact reason.

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COUNCILMEMBER BAISA: But you are still nonprofit?

MS. RATTE: Absolutely --

COUNCILMEMBER BAISA: Okay. I think...

MS. RATTE: --we're a 501(c)(3).

COUNCILMEMBER BAISA: I just wanted to be sure because most of the nonprofits say Inc., and you say Limited, so I just wanted to make sure that if we're using the word nonprofit that we're okay. So if you're a nonprofit, that's my question, I'm okay.

MS. RATTE: Absolutely.

COUNCILMEMBER BAISA: I don't need to know why you changed your name.

MS. RATTE: Okay.

COUNCILMEMBER BAISA: Thank you.

MS. RATTE: Yeah, a 501(c)(3).

COUNCILMEMBER BAISA: Okay. I don't know if anybody else has...

CHAIR CARROLL: Any further questions for her . . . *(inaudible)* . . . Hearing none, thank you very much.

COUNCILMEMBER BAISA: Thank you.

CHAIR CARROLL: The floor is still open. Any further questions before we give a recommendation? Mr. Couch.

COUNCILMEMBER COUCH: I just would like to see if Mr. Hopper had any comment on the...

CHAIR CARROLL: Mr. Hopper.

MR. HOPPER: I have nothing to add. I mean if it's gotten to this point, I hadn't reviewed this at the Planning Commission before. I mean if it's gotten to this point with Public/Quasi-Public, there would have had to have been a clear pointing to a use, so I don't know if the applicant has that or the Department has that. I mean we can go through and guess, but there should be a history here that says exactly what the use is what use it falls under as a permitted use. 'Cause this has been going for a while, this isn't the --

COUNCILMEMBER COUCH: Right.

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MR. HOPPER: --first time it's been seen.

COUNCILMEMBER COUCH: Right. And it's been I think before us as well at some time or another for the lease I think. And I'm fine with, I am absolutely fine, I just don't want them to get caught up in some sort of legal mess if somebody decides to get upset at them or whatever. So if the Director felt more comfortable with us throwing that in as a condition, I'm happy to do that, but looking at the uses, I could, couldn't find one that would fit residential.

CHAIR CARROLL: Mr. Spence.

MR. SPENCE: Yes, Mr. Chairman. I think it would probably, it would be easiest just thinking down the line after however many Administrations come and go and Councils come and go, it would be easier if as a condition or listed under the permitted uses, however the Council wants to do it. To say, you know, housing as related to, you know, the nonprofit function or something like that.

MR. HOPPER: The Council cannot establish a new permitted use by this though.

COUNCILMEMBER COUCH: Right.

MR. HOPPER: I mean if you want to state on the record...and this, again, at some point someone decided that this would be the appropriate zoning for this use, and I'm not sure of the background of this decision. The ordinance will change to that zoning and any of the uses allowed in that zoning will now be allowed on this property. But the history of how that was determined I'm not familiar with.

COUNCILMEMBER COUCH: Right.

MR. HOPPER: I haven't reviewed every single, you know, document in the record here, but there should be an indication of why this is a particular use that's allowed under a permitted use. So that's something that should be relatively simple to find. I don't know if the applicant, again, or the Department has a position on this, but it should not be particularly difficult if it's gotten this far.

COUNCILMEMBER COUCH: Yeah. And I tend to agree with you, Mr. Hopper. It's just that in all of this, I couldn't find it. Potentially as a condition, it could be an accessory use, subordinate use, under the subordinate uses and structures which are determined by the Director of Planning to be clearly incidental and customary to the permitted uses listed herein. And we could clarify that a little bit more in the condition saying that the residential facility that is accessory to the current nonprofit use, something along those lines. Is that adding a permitted use?

MR. HOPPER: Well again, Mr. Chair, I mean the uses are stated, if you want to make it clear on the record, that's fine, but putting that in as a condition doesn't change the zoning district. It's going to the zoning district and any of the uses allowed in the district are

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going to be allowed. I mean normally you would reserve conditions like that for limitations on the uses, not to clarify which uses are allowed. So again, there should be an analysis of the permitted uses in the district and which one this falls under.

COUNCILMEMBER COUCH: Right. And I'm not sure I can find that analysis anywhere in the paperwork, so I just want to protect the agency from potential problems down the line.

CHAIR CARROLL: Ms. Baisa.

COUNCILMEMBER BAISA: Yes, thank you. I do know that what Ka Lima is proposing to do of course is definitely related to their mission and purpose for which they are given a nonprofit status by IRS. And, you know, them sheltering people on their site is not unusual. We have a lot of nonprofits on Maui that do that. You know you have Women Helping Women, you have Aloha House, you have Maui Youth and Family Services and they're all nonprofits that provide housing onsite.

CHAIR CARROLL: Planning, would you like a short recess while you continue looking over there? Mr. Spence?

MR. SPENCE: Sure, Mr. Chairman.

CHAIR CARROLL: We're going to take a short recess while Planning goes through that. Recess 'til the call of the Chair. . . .(gavel). . .

RECESS: 2:39 p.m.

RECONVENE: 2:49 p.m.

CHAIR CARROLL: . . .(gavel). . . This Land Use Committee meeting is called back to order. I'm going to call on Mr. Spence now. Mr. Spence. Mr. Spence.

MR. SPENCE: Yes, thank you, Mr. Chairman. We took the break to take some time to discuss if the housing would be permitted under the Public/Quasi-Public zoning or not. It's not specifically laid out in the Public/Quasi-Public zoning; however, it's very clear that the proposed housing for Ka Lima O Maui is related to the nonprofit function and it is most definitely a part of their facility. So in my opinion it could fall under a number of things listed of the permitted uses. In 19.31.020, Permitted Uses, it certainly would be, and probably the strongest is, as a permitted use is facilities for nonprofit organizations. This is the, Ka Lima O Maui's function, this is their mission is to, you know, help disabled persons. If it was just standalone housing, I might, you know, think a little bit differently but it's not. It's an integral part of their facility. It could fall under public facilities or public uses. It could fall under quasi-public uses or quasi-public facilities. So I think all of these point to a permissive interpretation that the housing would most definitely be allowed in this situation. And what I would propose to do is between, I mean assuming it gets passed out today, I would have a letter drafted for the full Council with this opinion on it. And at some time in the

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future, I know Mr. Couch voiced a willingness to amend this zoning district to specifically say that the housing would be permitted, you know, as related to a nonprofit.

CHAIR CARROLL: Any further discussion? Ms. Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. I think that's a very good idea that Mr. Couch would eventually amend the allowed uses, because there may be others and we know there are other nonprofits who house people.

MR. SPENCE: Right.

COUNCILMEMBER BAISA: And so if we have it clear then, you know, there's no question. So thank you.

CHAIR CARROLL: Thank you. Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And did I hear Ms. Suyama say that from the 16 units it'll be down to 8 currently? They're asking for 8 units instead of the initial 16?

MS. CALLENTINE: Yes. That was clarified. That's the number of units was 8 that was presented to the Planning Commission. I'm not sure how it went to 16 but --

COUNCILMEMBER COCHRAN: Okay. And then...

MS. CALLENTINE: --it's now 8.

COUNCILMEMBER COCHRAN: Okay, thank you. And then reading through the part in regards to DOE, Department of Education, I think the question was asked, is it going to be permanently excluding school-aged children in these units. So has that been answered?

MS. CALLENTINE: Yes, that was answered during the review of the EA. It was answered that there will be, one of the units will be for a manager and, who may or may not have children, school-aged children. The other units will be for adults only. And so they are not subject to impact fees therefore.

COUNCILMEMBER COCHRAN: Okay. Thank you very much. And reading through I guess the EAs and what have you, as a very culturally sensitive significant area with the sand dunes and what have you, I noticed that northeastern corner or, of the project site, outside of the actual site itself though has known burials and what have you. But I guess it doesn't need to be written on our behalf, Department, that if anything is found during the process of digging and building, that SHPD and all the Burial Council and whoever will be notified and I guess work normally stops, you know, monitoring occurs and all that. So is that pretty much safe to say a given that those practices will occur if such finds come, they come across inadvertent finds?

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MS. CALLENTINE: That was the conclusion of the EA that should any unanticipated finds occur, that appropriate protocols will be implemented in accordance with procedures established by the State Historic Preservation Division at the time, and with the Maui Island Burial Council.

COUNCILMEMBER COCHRAN: Okay. Okay. Well, very good. Chair, that's all. I believe my, you know, concerns and thoughts have been addressed. So thank you very much.

CHAIR CARROLL: Thank you, Ms. Cochran. Further discussion? If not, the Chair will give his recommendation.

COUNCILMEMBERS: Recommendation?

CHAIR CARROLL: The Chair will entertain a motion to recommend passage on first reading of the proposed bill entitled A Bill for an Ordinance to Change Zoning from R-3 Residential District to P-1 Public/Quasi-Public District for Property Situated at Wailuku, Maui, Hawaii; incorporating any non-substantial revisions; and to file County Communication 15-116.

COUNCILMEMBER COUCH: Mr. Chair, I move to pass the proposed bill entitled A Bill for an Ordinance to Change Zoning from R-3 Residential District to P-1 Public/Quasi-Public District for Property Situated at Wailuku, Maui, Hawaii; and allow Staff to make any nonsubstantive changes; and filing County Communication 15-116.

COUNCILMEMBER CRIVELLO: Second the motion.

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

COUNCILMEMBER COUCH: None.

CHAIR CARROLL: Any further discussion?

MS. NAKATA: Mr. Chair? Mr. Chair?

CHAIR CARROLL: Yes?

MS. NAKATA: Can Staff just request leave also maybe to make the bill title a bit more specific as to the property that's being rezoned?

CHAIR CARROLL: Any objections?

COUNCILMEMBERS: No objections.

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COUNCILMEMBER COUCH: So long as she's just putting in the TMK. Right? Is that, I'm assuming.

CHAIR CARROLL: Miss...

MS. NAKATA: The TMK would be one option.

COUNCILMEMBER COUCH: Okay. Thank you.

CHAIR CARROLL: All in favor of the motion, signify by saying, "aye."

COUNCILMEMBERS: Aye.

CHAIR CARROLL: Opposed? Motion carried, five "ayes," two excused, no "noes."

VOTE: AYES: Chair Carroll, Councilmembers Baisa, Cochran, Couch, and Crivello.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Victorino and Councilmember Guzman.

MOTION CARRIED.

ACTION: FIRST READING of revised bill and FILING of communication.

CHAIR CARROLL: This brings us to the end of our agenda for today. Thank you, Members, for attending, and all those in the audience here and in television land. This Land Use Committee meeting of July 22nd stands adjourned. . . .(gavel). . .

ADJOURN: 2:57 p.m.

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APPROVED:



ROBERT CARROLL, Chair
Land Use Committee

lu:min:150722:ds

Transcribed by: Daniel Schoenbeck

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CERTIFICATE

I, Daniel Schoenbeck, 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 4th day of August, 2015, in Kula, Hawaii



Daniel Schoenbeck