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**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM OF C.2
JULY 14, 2020**

Due to technical difficulties, the recording of the meeting from approximately 3:24 p.m. to 5:04 p.m. is lost and not available for transcription. A portion of the minutes (Pages 51-55) of Item C.2 has been transcribed from a video provided by the applicant.

C. UNFINISHED BUSINESS

Mr. Carnicelli: Aloha everybody. Welcome back to the Maui Planning Commission meeting of July 14, 2020. We are now back in session, and for the record up to bat is Deputy Director Jordan E. Hart taking the place of Director Michele McLean. Aloha.

Mr. Hart: Aloha, thank you. I'll go ahead and introduce Item C.2 if that's appropriate.

Mr. Carnicelli: Yep.

Mr. Hart: Okay, Item C.2, under Unfinished Business is Lew Abrams representing the Sacred Earth Assembly, a non-profit interfaith church, requesting a State Land Use Commission Special Permit to utilize approximately 14.6 acres of the Ahimsa Sanctuary Farm and a 7,693 square foot two-story agricultural building for church-related activities at 4504 Hana Highway, TMK: (2) 2-8-003:075 (por.). This is in Haiku on the Island of Maui. The permit numbers are SUP1 2019/0001 formerly SUP2 2017/0011. Tara Furukawa is the staff planner assigned. The public hearing held on May 28, 2019 and deferred to June 25, 2019 and August 13, 2019. A memo from the Director to the Commission dated July 14, 2020 is attached to your information packet.

The State Land Use Commission remanded this matter to the Maui Planning Commission after a hearing on January 24, 2020. At this time, I'd like to refer to the Commission's counsel to advise the Commission on the actions that are necessary as a result of the remanded item. Thank you.

1. **LEW ABRAMS representing the SACRED EARTH ASSEMBLY, a non-profit interfaith church, requesting a State Land Use Commission Special Permit to utilize approximately 14.6 acres of the Ahimsa Sanctuary Farm and a 7,693 square foot two-story agricultural building for church-related activities at 4504 Hana Highway, TMK: (2) 2-8-003:075 (por.), Haiku, Island of Maui. (SUP1 2019/0001 formerly SUP2 2017/0011) (T. Furukawa) (Public Hearing held on May 28, 2019 and Deferred to June 25, 2019 and August 13, 2019)**

<https://luc.hawaii.gov/sp19-410-sacred-earth-assembly-maui-county-docket-no-sup1-2019-0001-sacred-earth-assembly/>

The State Land Use Commission remanded this matter to the Maui Planning Commission after a hearing on January 24, 2020.

Mr. Carnicelli: Mr. Hopper.

Mr. Hopper: I did read the decision. I think I was at the last Commission meeting. I think the Commission wants is a first and foremost a greater clarification of the area for which the use is permitted. It was sent to the Land Use Commission 'cause the Planning Department couldn't quite determine exactly the area for which the special permit was requested. The issue is that there's a Land Use Commission Special Permit in the Agricultural District for an area under 15 acres that's the exclusive jurisdiction of the Maui Planning Commission. You get the final decision over that. If the permit is for land covering an area greater than 15 acres, the Planning Commission and the Land Use Commission have to review and approve. In this case the Department sent ...(audio feedback)...

Mr. Carnicelli: If you're on the call please mute yourself and mute your video.

Mr. Hopper: Yeah, thank you. And so, this was sent to the Land Use Commission 'cause to the Planning Department it was unclear about the acreage for which the use was being allowed. And so, it was sent to the Land Use Commission for its concurrent...(inaudible)...because the Land Use Commission staff had some communications raising concerns with areas that were close to the 15-acre limit. The Land Use Commission among other things ordered that the applicant clarify the area for which the use is being permitted and if it was below 15 acres that would make the permit within the exclusive jurisdiction of Planning Commission and the item wouldn't have to go to the Land Use Commission. So there, as I understand it there's a new map provided or at least an updated map provided clarifying the area for which the permit's being requested, the applicant can address that.

The Commission also did want findings on several specific issues but if the permit's not going back to the Land Use Commission because the area is below 15 acres my reading of that is that's those are issues for the Commission to determine.

Another issue with this item is that some of you commissioners were at these hearings, public testimony on the item was closed and written testimony was closed as well. This was...went to the Land Use Commission and came back to this Commission on remand. It's not a new proceeding, it's a continuation of an existing contested case hearing, therefore, since public testimony was closed it would remain closed in this case. The Planning Commission's Rules do state that an exception to the requirement for public testimony for all items is HRS 92-6, that states, that when a commission is exercising its quasi-judicial functions that it's not required to give public testimony at every single meeting on the issue. Basically, the Sunshine Law doesn't apply, the contested case rules apply, and in addition to that, the Commission did have a public hearing and did allow public testimony on this item previously.

You have a record of the previous meetings before you, it's attached as a link to the agenda. Members that were not present for those meetings are required to have reviewed and become

1 familiar with the record prior to voting on this item. And with that, I would leave it to the
2 Department for its, I guess recommendation on what it would want to adopt after hearing the
3 applicant's presentation, but I...that's, that's the background that we would have on this item,
4 and again, this is all attached to your agenda. It's a rather lengthy record that involves previous
5 meetings and a Land Use Commission decision, but I think the Department's letter that it
6 attached gives updated information on what the Land Use Commission was requiring of the
7 Commission, but I think the applicant will need to address several issues before the
8 Commission and obviously give its presentation and go...go through the normal questioning
9 process you would have.

10
11 But this is a bit unusual, this is a continuation of a hearing. The Commission did recommend
12 approval of the permit with...or the Commission approved the permit with conditions, it went to
13 the Land Use Commission, the Land Use Commission sent it back to you to determine several
14 things, first and foremost, what is the land area for which this permit is required and I think that
15 if, if you review the map and determine that the area is under 15 acres and make that finding
16 that this item would not have to go back to the State Land Use Commission. That's, that's the
17 background on this item.

18
19 Mr. Carnicelli: Thank you very much, Mr. Hopper. Deputy Director, we're gonna just go to
20 Ms. Furukawa? Tara, you're gonna just take this?

21
22 Mr. Hart: Yeah, I don't have any further comments at this time.

23
24 Mr. Carnicelli: Okay.

25
26 Ms. Tara Furukawa: Okay so, so for Number 1, the finding that they want you to make is to
27 determine the actual acreage of the special permit to make specific findings of the driveway and
28 parking area. So, if you look at Exhibit 2, the applicant provided an updated and field verified
29 site plan that shows the area proposed for use and it's delineated by fixed boundaries. So,
30 there's a fence and then there's a bamboo buffer. There's also...and berm—

31
32 Mr. Hopper: Chair, just to clarify this is, this is Exhibit 2 of the Department's letter that is
33 attached.

34
35 Ms. Furukawa: Yes.

36
37 Mr. Carnicelli: Right.

38
39 Mr. Hopper: To the...to the agenda, correct, just so members can review.

40
41 Mr. Carnicelli: Thank you, Mr. Hopper. Keep going Tara.

42
43 Ms. Furukawa: Okay, so Number 2, is with regard to the proposed conditions and the basis for
44 the conditions. So, I didn't attach it again, but there was a letter dated September 16, 2019 that
45 was the State Land Use Commission Special Permit approval, and in it there's 12 conditions

1 that were imposed on this permit. I think the applicant has some suggested revisions to it
2 though that he may want to speak to. Okay, so the third is—
3
4 Mr. Carnicelli: Okay, so we're talking about—hang on, hang on just for clarification 'cause I had
5 to go look this up.
6
7 Ms. Furukawa: Okay.
8
9 Mr. Carnicelli: This is the...anyways, okay, I see the...these are the conditions that we placed—
10
11 Ms. Furukawa: Yes.
12
13 Mr. Carnicelli: --on the SUP.
14
15 Ms. Furukawa: Yes.
16
17 Mr. Carnicelli: Right, and as I go through here, okay, and so, okay, go ahead, continue, sorry
18 Tara.
19
20 Ms. Furukawa: Okay, so the third is whether or not the actual use of the church is related to any
21 agricultural use of the property.
22
23 Mr. Carnicelli: Right.
24
25 Ms. Furukawa: So I guess they were saying you know this is a faith based church and it's, they
26 kind of honor ag, so...but I guess at the LUC hearing it was brought up that you know maybe
27 because the ag would be a permitted use, the church should be separated from it.
28
29 Mr. Carnicelli: Right.
30
31 Ms. Furukawa: So, it would really not have to go to the LUC for review. So, Number 4 is
32 whether or not—
33
34 Mr. Carnicelli: But wait a second, wait a second, wait a second, wait a second, if it's under
35 14 acres, three doesn't matter, doesn't go to LUC, right. If we clear one, none of these else go
36 back to LUC.
37
38 Ms. Furukawa: Yes.
39
40 Mr. Carnicelli: This whole package doesn't go back to LUC. So, then it's just—
41
42 Ms. Furukawa: Yes.
43
44 Mr. Carnicelli: --it's us wanting clarification. I mean, I think these are all good questions that we
45 may want to address, but we don't necessarily have to. I mean, maybe Mr. Hopper needs to

1 weigh in here but we don't necessarily have to address these if this is...if one is just saying, hey
2 listen it's 14.6 and we're done.

3
4 Mr. Hopper: Yeah, this was an order remanding from the Land Use Commission asking the
5 Commission to make specific findings on these items. Basically, when the Land Use
6 Commission gets a permit from the County that has been approved its options are to approve,
7 approve with modifications, like they can add their conditions, deny or remand to you for
8 additional findings.

9
10 Mr. Carnicelli: Okay.

11
12 Mr. Hopper: It remanded to you for additional findings. Among them were whether or not this
13 permit is within the jurisdiction of the Land Use Commission essentially, and so I would agree if
14 you determine that this, the uses is under 15 acres and you have a clear map to show you that,
15 I think you can make that finding and then, and then the Land Use Commission wouldn't have
16 further say over it as long as you are clear on the area that this permit would cover and that's
17 what the Planning Department was unclear on previously. I know there's a new map submitted
18 and if that's sufficient for the Department and you, I believe you could make that finding in the
19 record.

20
21 The other items are things that the Commission did say you should consider, but in substance, if
22 it does not go back to the Land Use Commission they wouldn't have any ongoing ability to
23 review whether you've complied with those but that's still in the order and things that they've
24 said that they want you to, to take a look at prior to deciding to, you know, to renew, I guess to
25 reapprove the permit that was already permitted, but I think the main...the first issue you've
26 identified is the threshold issue of what area does the permit cover and that was the big one for
27 the Land Use Commission's jurisdiction.

28
29 Mr. Carnicelli: Great, yeah thank you for the clarification, Mr. Hopper. Sorry to interrupt you
30 there Tara, go ahead.

31
32 Ms. Furukawa: Okay, so Number 4 is whether not traffic impacts need to be addressed and a
33 finding made with regards to those matters. So, when we sent this to you initially there was an
34 email submitted by the Maui Office of the State Department of Transportation and we included it
35 in the initial staff report, the only comment they had was that any signage in the state
36 right-of-way would require a permit. So we retransmitted after the LUC came down with this
37 order to the State DOT for review and comment on April 1, 2020 thinking that the email wasn't
38 sufficient, and then they attached...they sent the letter attached as Exhibit 3 in the memo to you,
39 and they said they don't have any objections to the SUP application, however...or conditions to
40 be imposed but they said that any future expansion or intensification of use beyond what is
41 presented would require a traffic assessment.

42
43 Okay, so Number 5 was a finding with regards to the impact of the shared water system
44 whether it's adequate for the project without causing detriment to the other users. The applicant
45 reached out to the adjacent neighbors, Jerome Labat and Michele Drewyer after the LUC

1 hearing and kind of requested permission to use the private water system for use of this church
2 and one of the adjacent neighbors, I guess, Michele Drewyer responded that the applicant does
3 not have her permission. Jerome Labat did send me an email. In this memo, it said that he
4 didn't respond, but he did, and he doesn't agree with it either. So that's a finding that you would
5 have to make and the shared water agreement, correspondence with neighbors, and a letter
6 regarding the water usage from the project engineer are attached as Exhibit 4.

7
8 The history of zoning violations and whether or not that has any relationship to the proposed
9 conditions for the project was also one of the other findings that the LUC asked for the
10 Commission to make, and Request for Service and detail on each were included in the original
11 staff report. Since then, other RFSs were filed. So, the Department had to investigate and
12 close them out, and the applicant was compliant, so we attached them as Exhibit 5. And that's
13 all of the findings that they requested that you make.

14
15 Mr. Carnicelli: Great. Thank you, Tara. So, I think what I would like to do is let's just start with
16 Number 1. Is, Mr. Abrams if you would unmute yourself and unmute your video? Good
17 morning, I guess it still is morning it's before noon.

18
19 Mr. Lew Abrams: Yes, good morning, Maui Planning Commissioners and Planning Staff.

20
21 Mr. Carnicelli: So, Mr. Abrams, I would like for you to go ahead and address LUC's, you know,
22 we have the, what is it the six concerns here. Let's just go ahead and start with Number 1, and
23 see if we can deal with that straight away which will I think not necessarily change how we
24 address the other five, but it gives us orientation.

25
26 Mr. Abrams: Okay.

27
28 Mr. Carnicelli: So, if you would please address the area?

29
30 Mr. Abrams: Okay. We appreciate the opportunity to again appear before the Maui Planning
31 Commission hopefully to finalize Sacred Earth Assembly's Special Use Permit to conduct
32 church related activities at Ahimsa Sanctuary Farm. We wish to thank you, the Maui Planning
33 Commission for its approval of Special Permit, SP19-410 for Sacred Earth Assembly at the end
34 of the September 16, 2019 hearing. I just wanted to acknowledge your thoughtful consideration
35 of all the material submitted and the testimony and I just wanted to thank you for granting that
36 and we are most appreciative of that Special Use Permit.

37
38 I do have a statement to address the concerns raised by the State Land Use Commission, and
39 the first issue is what you're asking me to speak to, and it says, that the Maui Planning
40 Commission shall determine the actual acreage of the Special Permit to make specific findings
41 of the driveway and parking area.

42
43 So, this our response. If you look at that site plan, the new one, an accurate and detailed
44 revised site plan drafted by David Harris of Oracle Consulting was verified by a Planning
45 Department site inspection and has been submitted for MPC's review. The changes to the site

1 plan removed all the inaccessible gulch areas from church use. It also confined church use to
2 the 14.6 acres clearly defined by existing fencing and the perimeter loop driveway allowing cars
3 to flow in one direction for ease and safety of entrance and exit to the church area. Any
4 ambiguity has been eliminated by including access for church activities to the entire usable
5 portion of the land except for a 60-foot wide strip of land running along the boundary fence line
6 separating our parcel from the neighboring parcel owned by Ms. Michele Drewyer. This 60-foot
7 wide area is over a thousand feet from the church building where most activities will take place.
8 It will be delineated with ample signage and it will provide an additional buffer to help minimize
9 any potential or perceived impact on Ms. Drewyer. As the site plan indicates, the area
10 requested for church use includes over a hundred parking spaces easily allowing for parking for
11 church activities.
12

13 Mr. Carnicelli: Great. Thank you very much Mr. Abrams, I appreciate that. Questions from the
14 Commission regarding this, 'cause I think might be what we'll do is let's go ahead and make a
15 determination on this one first, and then we can kinda go down the list. So, Commissioners,
16 any need...questions or need for clarification on this, on this particular portion of the
17 proceeding? Oh, you know what, Mr. Abrams, I forgot to ask you a question. Do you promise
18 to be truthful and were you truthful?
19

20 Mr. Abrams: Yes, I promise to be truthful and I explained truthfully the...yes, I spoke truthfully.
21

22 Mr. Carnicelli: Great, thank you. I just...is, I had to get that clarified, and so then back to the
23 Commission. Questions, need for clarification? Commissioner Tackett and then
24 Commissioner Freitas.
25

26 Mr. Tackett: So as, as soon on the map, the 14.6 how was that number derived? Was it
27 surveyed or how did, how did you guys come up with the 14.6?
28

29 Mr. Abrams: Yes, it was based on the site plan developed by Oracle Consulting. They have a
30 program that calculates the area within certain delineated boundaries and so that's how it was
31 established. I mean, the overall map was originally a surveyed map, but this was the area
32 delineated for the special use permit.
33

34 Mr. Carnicelli: So, I'm just gonna follow up on that. Oracle Consulting is who?
35

36 Mr. Abrams: David Harris, who is available to...he's logged in I think, he's available to answer
37 questions about that if need be.
38

39 Mr. Carnicelli: Okay. Any other questions from the Commissioners? I believe
40 Commissioner Freitas you got a question, question and/or comment or need for clarification?
41

42 Mr. Freitas: Yeah, my question was just...thank you, Chair by the way. We're only doing the
43 one whether this is 15 acres or less, that's what we're questioning, okay, I have no questions.
44

1 Mr. Carnicelli: Guys, we're just going to narrow it to this first because as Mr. Hopper had stated
2 if it's less than 15 acres then it does not get remanded by to the LUC so, and I think that we
3 should probably just clear this first. Any other questions? Commissioner La Costa.

4
5 Ms. La Costa: Thank you, Chair. Initially we had a map that showed a much greater area.
6 Was it reduced to 14.6 so that LUC would not be involved?

7
8 Mr. Abrams: Is that for me to answer?

9
10 Mr. Carnicelli: Yes.

11
12 Mr. Abrams: The issue, the original map was 14.7 acres. It was basically the same amount of
13 area but we had included the gulches that were really inaccessible so we removed those
14 gulches and eliminated this ambiguity of which part could be accessed for church activities and
15 which part couldn't by incorporating the whole upper usable area of the land except for that
16 60-foot buffer along Ms. Drewyer's boundary, but the acreage hasn't changed significantly.

17
18 Mr. Carnicelli: Questions, comments, anybody else? I have a question for David Harris, is he
19 on the call.

20
21 Mr. David Harris: Hello, can you guys see me?

22
23 Mr. Carnicelli: I can hear you Mr. Harris.

24
25 Mr. Harris: You can or cannot.

26
27 Mr. Carnicelli: I...well, yeah, I can, yes can.

28
29 Mr. Harris: Okay.

30
31 Mr. Carnicelli: So, you are Oracle Consulting?

32
33 Mr. Harris: Yeah, we are a land use and co-compliance consultants both in California and
34 Hawaii. So, I have a licensed engineer on my staff. We use Autodesk products, we, you know
35 develop property per request of clients.

36
37 Mr. Carnicelli: Gotcha. And this site plan that you put together for Mr. Abrams, did you do this
38 on site or did you do this on CAD?

39
40 Mr. Harris: Both. I visited the site several times, walked it, took measurements, additionally I
41 compiled information from previous surveys and other site maps that were initially done by
42 another draftsman.

43
44 Mr. Carnicelli: Gotcha. I noticed that you include some topo lines but not all is there a reason
45 for that?

1
2 Mr. Harris: So, we just, I basically just referenced what was available off of the initial survey for
3 the topo. We didn't actually do a full topographical survey. We just, I just migrated some of the
4 information for previous site maps into that one concerning the topo.

5
6 Mr. Carnicelli: Okay.

7
8 Mr. Harris: Concerning elevations.

9
10 Mr. Carnicelli: So, you did a site visit but you didn't actually survey?

11
12 Mr. Harris: Correct.

13
14 Mr. Carnicelli: You just did the site visit and then did this on CAD, okay.

15
16 Mr. Harris: Correct. And by migrating information from an original survey that was done into it.

17
18 Mr. Carnicelli: Correct, correct. Okay, does anybody else have any questions for Mr. Harris
19 while we got him on? Commissioner Pali.

20
21 Ms. Pali: So, I'm looking at the Exhibit 2 and I'm on paper I'm looking to the right and it looks
22 like the church use area which in my copy looks like yellow slanted lines—

23
24 Mr. Harris: Correct.

25
26 Ms. Pali: My question is referencing the 60-foot church use area setback from property line.

27
28 Mr. Harris: Yes.

29
30 Ms. Pali: It doesn't look like it's included in the 14.6, and so it looks like it's been...well, except
31 for a small little place at the bottom, there's like a sliver can you just explain the thought process
32 there of why it was excluded?

33
34 Mr. Harris: Sure. So we wanted to create a range, a buffer between the two...between the
35 church use activities or any potential activities that might go on, on Mr. Abram's property, and
36 the adjacent neighboring property so that slice of land is never going to have any church use
37 activities occur in there so that we could address any potential concerns that the neighbor might
38 have.

39
40 Ms. Pali: So, do you know the total square foot of that whole section that was removed from the
41 permit?

42
43 Mr. Harris: I don't know the square footage of that, I mean I could calculate it in my CAD
44 program, it gives pretty detailed accuracy of area.

45

1 Ms. Pali: And then what would prohibit a church member, do you have fence there, do you
2 have a bank, what would prohibit a churchgoer to not physically cross this invisible line?

3
4 Mr. Harris: Well, to start with to address that probably 90 percent of the activities are gonna be
5 on the other side of the property, on the north side of the property. It's that particular section of
6 the property is a little remote so someone would have to kind of purposely kind of wander into
7 that area if that was to occur.

8
9 Ms. Pali: Okay.

10
11 Mr. Harris: If they did, it probably wouldn't preclude being directly related to church activities, it
12 would probably just be somebody strolling around the property.

13
14 Ms. Pali: Okay, and this is a question for maybe legal. Is it typical when a property requests
15 these types of permits that they can sorta just elect a certain portion for the permit, is that
16 normal?

17
18 Mr. Hopper: I think that's the issue that—

19
20 Mr. Carnicelli: Deputy Director.

21
22 Mr. Hopper: Oh.

23
24 Mr. Carnicelli: Or go ahead Mr. Hopper.

25
26 Mr. Hopper: The Planning Department should definitely give their response too, because they
27 see lots more of these permits than I would, but I think that's the issue that this went to the Land
28 Use Commission for is that what type of information is required to determine what the acreage
29 is 'cause the LUC staff had raised concerns that if you're...if you got a larger parcel than
30 15 acres we wanna...we think we wanna look at that. I think the Land Use Commission in their
31 hearing made clear that if you can clearly show the area is under 15 acres that that's just a line
32 that the law says they don't have to review it on. So I think the applicant can designate a
33 smaller area than the full property, but will need to...the Commission will need to find that the
34 permit, the activities allowed by the permit are limited only to that area and have an accurate,
35 have an accurate representation of what that area is, and I can leave it to the Planning
36 Department to go over historically how this has been done and what they've seen, but that's I
37 think something that the Land Use Commission was asked to look at and I think they said, if you
38 establish that it's under 15 acres that is something within your jurisdiction but you should make
39 findings on what the area is and make clear that the permit can't...the permitted use can't go
40 outside of that area. But I think Planning Department for some of your questions as far as what
41 a typical application would show I don't know the answer to that, I don't deal with every
42 application that comes in.

43
44 Mr. Carnicelli: Deputy Director would you like to address that?

45

1 Mr. Hart: Thank you, Chair. So, the Department does allow properties to identify a portion of a
2 parcel for a special permit and typically it's clearly delineated and that was, you know, an issue
3 for this project as it evolved over time. And I think part, additional part of the evolution of the
4 conversation or at least the interaction with the Land Use Commission is further physical
5 delineation or how is there any level of certainty that uses don't, don't spill over into non-ag
6 areas, so I think that to the initial point that it is typically allowed that a parcel larger than
7 15 acres designate a 15-acre or less portion for a special use, and then it's delineated clearly
8 with a diagram for the review and approval process, then how is it also delineated on the ground
9 I think is something that needs to be explored further.

10
11 Mr. Carnicelli: Thank you, Deputy Director. I would have like to have seen imagery, you know,
12 it's the black and white lines is what it is, but I think to have a either a topo or imaging to see, I
13 mean, to say that, oh okay, we've taken out the gulches, I guess we're gonna have to go with it
14 at this point. Any other need for clarification? Commissioner Freitas.

15
16 Mr. Freitas: Is there a fence or a plan to have a fence on that line and I think...I ask that for not
17 only to meet this less than 15 but because of safety, if you have a gulch and you have church
18 activity at a farm that you probably might have tours or even children for safety is there a fence?
19 And again, I agree with Chairperson Carnicelli the pictures would have really helped to see how
20 steep, what the safety issues are.

21
22 Mr. Harris: Could I address that?

23
24 Mr. Freitas: Yes.

25
26 Mr. Harris: So—

27
28 Mr. Carnicelli: Go ahead Mr. Harris.

29
30 Mr. Harris: There is a actual boundary fence that is right on the ridge of that gulch that keeps
31 any potential wanderers or traffic from walking into the gulch. It's a steel post fence. It's pretty
32 strong. It would take somebody climbing the fence actually to get into the gulch to wander past
33 it. That fence is on the northeast end and west side of the property and then there's another
34 one on the adjoining property line past where this 60-foot setback is. So it's...and it's a
35 significant fence meaning that it's you know solid post, it's not something that's just gonna fall
36 over.

37
38 Mr. Freitas: Thank you.

39
40 Mr. Carnicelli: Any other need for clarification or questions? Tara, I have a question for you. I
41 can't recall and without me going back and you may not remember either, but the main
42 residence is not part of the church facilities and the church activities, correct?

43
44 Ms. Furukawa: He wanted them to be included because there may be some, you know some
45 people interested in staying there, I guess who would come visit the church or reverends or

1 something like that who may come and visit. So they would need a place to stay so that's
2 Lew Abram's house on the right side of the plan.

3
4 Mr. Carnicelli: Right. I mean, I was part of the commission that originally reviewed this and I, I
5 mean, maybe I'm...I'm gonna have to go back at lunch and review some more, but as a recall I
6 think that the, it was represented that the house would not be part of the church function but I'm
7 gonna have to go back and look at that, but that's not what's before us right now. I just
8 happened to notice that because it's all encompassing. So as far as Commissioners, us trying
9 to just make a determination on whether or not this is less than 15 acres, do you guys have
10 enough information to be able to take a vote on that? Need any more clarity? All right, seeing
11 none, then I guess what I'll do is I'll take a motion from the floor. Mr. Hopper, do you think that's
12 the best way to do it, is just like do these one by one by motion?

13
14 Mr. Hopper: I don't know if you need—

15
16 Mr. Carnicelli: Or at least this one by motion.

17
18 Mr. Hopper: --to do, I don't know if you need to do that...oh, sorry Tara had her hand her hand
19 up.

20
21 Mr. Carnicelli: Oh, go ahead, Tara.

22
23 Mr. Hopper: I don't know if you need to do it one by—

24
25 Ms. Furukawa: Commissioner Carnicelli, so I just wanted to...Exhibit 5.

26
27 Mr. Carnicelli: Yep.

28
29 Ms. Furukawa: You can't see it, but the dwelling is part of it.

30
31 Mr. Carnicelli: Okay.

32
33 Ms. Furukawa: Yeah.

34
35 Mr. Carnicelli: That's fine. Thank you. So anyways, again, Mr. Hopper.

36
37 Mr. Hopper: I don't, I don't know if you would do this piecemeal motion by motion. I think you
38 should look into the items and do it as a motion.

39
40 Mr. Carnicelli: Well, I wanna do this one...I think this one, I do. I mean, I think that this one
41 because this is kinda, it flips it whether we go back to LUC or not, so I'd like just at least be
42 super clear on that one. The other ones I agree we don't necessarily need motions, but this
43 one, I don't know...you're the, you're the attorney.

44

1 Mr. Hopper: Well, in the end, the Commission again will need to decide whether it's going to
2 approve, deny, defer or approve with modifications to the original conditions that you already
3 have. There has to be a ultimate determination made on that issue. If you wanted to take a
4 motion and a vote on this one just so you're clear on your continuing jurisdiction and that that's
5 your sole jurisdiction then I suppose it's okay to do that provided that your final determination
6 whatever it is would include reference to that determination. Normally when you make a
7 determination there's a approval letter that goes out on that issue and you typically don't do a
8 piecemeal approval. But in this case, if you wanted to do that upfront, as Chair, I think you
9 could, you could ask for that and get that provided that in the end you would still need to have
10 an overall action taken by the Commission to either, you know, what you would do with your
11 standard special permit which is to approve, deny, defer or you know, approve with conditions
12 as modified. So, you know, with that in mind I think you could do this but you still need that
13 overall motion in the end, I think.

14
15 Mr. Carnicelli: Okay, thank you.

16
17 Mr. Hopper: Because even if you choose to deny, I suppose it's relevant to determine if they've
18 accurately represented the area for which they're requesting the permit.

19
20 Mr. Carnicelli: All right. Okay. Thank you, Mr. Hopper. So, here's, here's sort of my intent
21 Commissioners, is I'm gonna invoke Commissioner Robinson again, and that is, I like to try to
22 trust past commissions. I don't want our determinations being second guessed down the road
23 so I don't wanna second guess other people's down the roads. I'm not saying I don't want to
24 re...you know, look at this thoroughly but I don't want to reopen the whole...we can do whatever
25 we want, but I'm just gonna say, is to start from square one and do the whole thing again, I think
26 that we need to take what a previous commission has done, move forward with that, but
27 address the concerns that the LUC has brought up because I think they're valid concerns, but
28 before that let's go ahead and do a determination to say yes, we are the authority on this, this is
29 under 15 acres or no, where it's gonna go back to LUC because it's over. So that being said, is
30 I guess I'll take a motion for that determination. Someone? Commissioner Thompson.

31
32 Mr. Thompson: I move we accept the new map, the 14.6-acre map that's presented to us.

33
34 Mr. Carnicelli: Okay. Do I have a second? I will second it for discussion. So just to be able to
35 have the discussion. So, Commissioner Thompson as the movant, I'll let you speak to the
36 motion.

37
38 Mr. Thompson: Thank you. Yeah, and that was here before us of course, and through great
39 pains, but if this, Number 1 is just to determine the size of the area and we have our new maps
40 and I believe this to be correct.

41
42 Mr. Carnicelli: Great. Thank you. Any other discussion on the motion? Seeing none,
43 Deputy Director or wait, Commissioner Castro did you have a question? I see you leaning
44 forward here.

45

1 Mr. Castro: Yes, I'm a...how did he determine the acreage, they used the CAD program
2 correct?

3
4 Mr. Carnicelli: Yeah. It does it electronically. It spits it out.

5
6 Mr. Castro: Do we know, do we know when the actual survey was done?

7
8 Mr. Carnicelli: Mr. Harris?

9
10 Mr. Harris: If you give me a minute, I'll pull that up real quick, hold on, I'm looking for it. Get
11 back to my DropBox, back here, one moment please, I'm looking for it, in archives, I apologize
12 here—

13
14 Mr. Carnicelli: That's a pretty fancy background you got going on there too, I just want to let you
15 know.

16
17 Mr. Harris: Yeah, I'm in a storage room here, I hung up some stuff. Let me...could you, could
18 you give me like just a minute here to search my records, my files?

19
20 Mr. Carnicelli: Yeah, yeah, yeah, yeah. I was just saying that as trying to defer, I'm vamping
21 here a little bit, trying to give you time.

22
23 Mr. Harris: Yeah, thank you.

24
25 Mr. Carnicelli: Sure.

26
27 Ms. Pali: While we're waiting for him, can I?

28
29 Mr. Carnicelli: Yeah, does anybody else want to speak to the motion. Yeah, you can speak to
30 the motion while we're waiting for Mr. Harris to answer that question.

31
32 Ms. Pali: I would just have a question with maybe Planning Department. What are the Planning
33 Department's requirements to be able to validate acreage? Are professionals allowed to utilize
34 old and past surveys to validate current use? What is just at least the expectation of the
35 Planning Department? I just want to make sure that we're not going rogue or introducing new
36 things for future?

37
38 Mr. Harris: Yeah. I found the survey.

39
40 Mr. Carnicelli: Hang on Mr. Harris, is there's a question for Deputy Director Hart on the floor
41 right now.

42
43 Mr. Hart: Yeah, Chair. Surveys, surveys are fine. I mean, it's...the survey was done by a
44 licensed surveyor. If the survey is done by a licensed surveyor and they put it into CAD, the

1 information will be correct and you could reference it at a later date. So, it's not, it's expected
2 that a consultant could use that CAD file to trace a new map using the same dimensions.

3
4 Ms. Pali: Is there a time frame?

5
6 Mr. Carnicelli: Unless, unless you're in, unless you're in Zone 1 on the Big Island then we might
7 need a new one, right?

8
9 Ms. Pali: And is there a time frame, could they use a survey that was 10 years, 20 years,
10 30 years old?

11
12 Mr. Hart: Yeah, there's...I mean, if there was some reason to expect that something had
13 changed and the survey was no longer valid then you know, we might be talking about
14 something. We're not specifically aware of anything here in that context, but if somebody wants
15 to bring it up, we can, we can, you know react to that and then I believe the applicant's
16 representative is about to tell us how old the actual survey is.

17
18 Mr. Harris: February 2, 2016 by a licensed surveyor.

19
20 Mr. Hart: And just Chair, just to add on, my recollection is that the surveyed site plan was part
21 of the original Department's material that was provided to the Commission although obviously
22 recognize there's...may have been good to retransmit everything along with the remanded
23 memo, I'm recognizing that now.

24
25 Mr. Carnicelli: So we're back to the motion which is to accept the map I guess called, Exhibit 1
26 on the Department's transmittal to us of 14.6 acres. So, would anybody else like to speak to
27 that motion? Okay, seeing none, then Deputy Director if you would restate the motion and we'll
28 take a vote.

29
30 Mr. Hart: All right, my BlueJeans option to unmute is not cooperating very well, so the motion
31 that I have from Commissioner Thompson is to accept the new map that identifies 14.6 acres as
32 the project area and that's identified as Exhibit Number 2.

33
34 Mr. Carnicelli: All those in favor, please raise your hand? That is one, two, three—

35
36 Unidentified Speaker: Come on.

37
38 Mr. Abrams: Can I speak to it?

39
40 Mr. Carnicelli: That's four—

41
42 Mr. Abrams: Nice.

43

1 Mr. Carnicelli: --those opposed? And Commissioner Tackett is dissenting. So, let the record
2 show that we had four in favor. Commissioner La Costa opposed and Commissioner Tackett
3 abstaining so that is 5-1. It does pass.

4
5 *(Motion was made at approximately 00:36:56 of Chapter 3 of the audio recording.)*
6

7 **It was moved by Mr. Thompson, seconded by Mr. Carnicelli, then**

8
9 *(Vote was taken at approximately 00:42:43 of Chapter 3 of the audio recording.)*
10

11 **VOTED: To Accept the New Map that Identifies 14.6 Acres as the Project Area**
12 **as Identified as Exhibit 2 in the Department's Report.**
13 **(Assenting – D. Thompson, K. Pali, S. Castro, K. Freitas,**
14 **C. Tackett – Abstain)**
15 **(Dissenting – P. D. La Costa)**
16

17 Mr. Carnicelli: So we've basically determined that, you know, this is our jurisdiction that we will
18 accept this map and that we won't send this back to the LUC. So, Commissioners, it is 12:18
19 and we've got five items on this to, to kind of tackle, would you like to go ahead and just do
20 lunch now and we'll come back and cull through this after lunch or would you like to just kinda
21 bury through it?

22
23 Ms. La Costa: This is going to be a while, could we please take a break now? Thank you.

24
25 Mr. Carnicelli: Okay. Everybody else concur? I see Kawika's nodding, yeah, just do lunch
26 now?

27
28 Mr. Thompson: I second that.

29
30 Mr. Carnicelli: Okay, so let's do that. It is 12:19 by my watch. Let's come back at 1:15. So we
31 will reconvene. We're gonna go to recess right now. We will come back at 1:15 and continue
32 with this item. Maui Planning Commission of July 14, 2020 is now in recess. Thanks everyone.

33
34 A recess was called at 12:19 p.m., and the meeting was reconvened at 1:17 p.m.

35
36 Mr. Carnicelli: Aloha everyone, the Maui Planning Commission meeting of July 13, 2020 is now
37 back in session it is 1:17 p.m. No, I will not accept this update right now, sorry my computer's
38 doing a little thing here. That would be bad.

39
40 Okay, so I guess where we left off was, we've...we're on let's see Item C.2, and we have dealt
41 with the first item of six that the Land Use Commission has requested us to deal with. So I was
42 just kind of reviewing this stuff during lunch and I think as Mr. Hopper said, maybe we can do is
43 just roll through these things and at the end we can go forward with our decision as to you
44 know, whether we're gonna approve, disapprove or amend.
45

1 So if we go to Number 2, it says with regard to proposed conditions and the basis for these
2 conditions. So I feel a little bit...personally like okay, I gotta, we gotta justify this, but the first
3 thing I would like to put on the record is that the applicant agreed to everything, all those
4 conditions, right, when we went through that we asked the applicant and the applicant agreed.
5 So, you know, I want that to be on the record. But if we then go to these conditions and I don't
6 know if you guys have them in front of you, but it says, State Land Use Commission Special
7 Permit, so if we have to give the basis for the conditions first off like I said, is the applicant has
8 agreed to everything, and a lot of this stuff was just to mitigate concerns that were brought up
9 along the way.

10
11 The first condition was the special permit...that the Land Use Commission Special Permit shall
12 be valid for one year, blah, blah, blah, blah, blah. I believe that what we did on that one if we
13 want to justify or the basis for that was due to concerns and compliance, we wanted to issue a
14 one-year permit rather than go any further than that. Is that...is anybody else have anything
15 that they would like to add as to the basis for that? Commissioner Pali.

16
17 Ms. Pali: So, I remember it very clearly too, and it was pretty back and forth. I remember some
18 things being agreed to and then things being changed, and so...and then even looking at this
19 map now, still I feel like things are changing and so what I'm sort of desperately looking for and I
20 have been since I've been ready to prepare this is, and I wish just for future if the planners when
21 we resee this since you keep referring to what we had already agreed to with conditions, and I
22 remember working hard on those conditions it would have kinda just been nice to...that that was
23 kind of in front of us right now, and we had that.

24
25 Mr. Carnicelli: Well, just so you know, Carolyn...Carolyn actually did email that to all of us—

26
27 Ms. Pali: Yeah, she did.

28
29 Mr. Carnicelli: --let's see, at...you know a couple hours ago, so...or whenever it was.

30
31 Ms. Pali: Oh, okay. Oh, good. Is that one today?

32
33 Mr. Carnicelli: Yeah, just that.

34
35 Ms. Pali: Oh, perfect. Thank you, Carolyn. She's the bomb.

36
37 Mr. Carnicelli: Well, she sent us the list of holidays at 7:56 a.m., and then at 11:49 she sent us
38 just the approval letter which has the conditions and so that's what I was reading from.

39
40 Ms. Pali: Dude, I love Carolyn. Okay.

41
42 Mr. Carnicelli: Yeah, Carolyn's on it. She's great.

43
44 Ms. Pali: Okay, good. So this is helpful. This is helpful.

45

1 Mr. Carnicelli: We're gonna just. What we'll do is we'll just walk through all 12 and we'll say
2 why we did them 'cause that's what the Land Use Commission wants, so...And so does
3 anybody else got anything to add on Condition 1 as far as I believe that the one-year permit was
4 the reason for that is that essentially...Mr. Abrams, I know that you've chimed in a couple times
5 and your video is on, but until you're called on, we're gonna be doing this on our own, right. So
6 I appreciate that, but is...we're gonna just walk through this. So, that was Condition 1.

7
8 And then, so Condition 2 that the subject SUP1 shall not be transferred without prior written
9 approval of the director. However, in the event that a contested case hearing proceeding
10 issuance of said SUP1, the public hearing...a public hearing shall be held by the appropriate
11 commission upon due published notice including the actual written notice to the last known
12 addressee of the parties to said contested case and their counsel.

13
14 So essentially again, this one was, okay, this is going to Mr. Abrams or the Sacred Earth
15 Assembly but there's no transfer of this permit to other people. This is something that we do
16 often is to say, hey listen, this isn't the business that you can then go sell or a church that you
17 can transfer off or something like that. Is anybody else have anything that they would like to
18 add to that? All right, cool.

19
20 Go back, okay so Number 3, is that the applicant, its successors and permitted assigns shall
21 exercise reasonable due care as to third parties with respect to all areas affected by the subject
22 SUP1 and shall procure at its own cost and expense, and shall maintain during the entire period
23 of this SUP1, a policy...a policy or policies of comprehensive liability insurance in the minimum
24 amount of \$1,000,000 naming the County of Maui as an additional insured, insuring and
25 defending the applicant and the County of Maui...I mean, and kind of going from there. Again,
26 liability insurance due to the nature of this, one of those things that we kind of typically do, and
27 is sort of standard with SUP permits. Anything further to add by anyone? I think that that one's
28 pretty standard is what we do, is just as protection goes for the County.

29
30 If I can click back, sorry my computer's slow, come on, there we go. Number 4, okay so this is
31 something is that no church and religious activities shall occur before 8:00 a.m. or after
32 9:00 p.m. allowing reasonable time for members to arrive, set up and disperse before and after
33 events. Any amplification of sound or music at an event shall occur inside and shall not exceed
34 any standards established by the State Department of Health for the Agriculture District.

35
36 I don't know if anybody else wants to chime in on this, but this condition had to do with the fact
37 that historically there had been some noise complaints or just there's issues of that or concerns
38 with that with the neighbors being that there's gulches and that it's a wide open space, and so
39 we had...just like earlier, right we on the STRH permit has hours of, you know, noise so this was
40 one of those things we kind of went back and forth on. Mr. Abrams did agree to it and also, we
41 acknowledge that we couldn't put restrictions greater than what our restrictions in the Ag
42 District, right. I mean, if he's gonna run lawn mower or a tractor we can't say okay, you gotta be
43 quieter than that, so that's why I think we used that. So, anything else you guys wanna add?
44 Commissioner La Costa.

45

1 Ms. La Costa: Thank you, Chair. Yeah, I too, remember going back and forth about the times.
2 There are neighbors in the immediate area. If this were a place were no neighbors then that
3 might be able to be reconsidered, but certainly everyone is entitled to quiet enjoyment of their
4 property and I think that this allows for that for all of the adjoining properties. Thank you.

5
6 Mr. Carnicelli: Great. Anybody else? Okay. This was one I think that I'm kind of invoking
7 Commissioner Robinson, I think that he kinda really helped with this one a lot. That church and
8 religious activities shall not occur on days other than Wednesday mornings, Friday evenings
9 and one additional day each week provided that none occur on a Monday and no more than six
10 per year occur on a Saturday with no more than 40 participants. Church and religious activities
11 may also occur on the holidays listed on the schedule provided by the applicant at the
12 August 13, 2019 Maui Planning Commission meeting with no more than 100 participants or the
13 maximum occupancy established by the Fire Department for the church building whichever is
14 lower.

15
16 So, I'll let you guys if somebody wants to chime in on that one first. That was one of those ones
17 where we're trying to say, okay we don't necessarily want to limit religious activities but at the
18 same time you can't say that everything is, you know like...I remember, you know, part of the
19 concern was oh, it's you know Arbor Day and so we're gonna celebrate Arbor Day and then
20 we're gonna celebrate this day and that day and they compile every single...'cause you know
21 they celebrate lots of different religions, you know they're nondenominational so suddenly
22 everyday could become a religious holiday and I know this is one of those ones we went back
23 and forth with the applicant multiple times and that they were okay with this, so I think that that
24 was part of the reason why, and then you know it's like okay, give people a break on a weekend
25 and so that was why like the you know, "x" amount of Saturdays and, you know, they said, oh
26 you know we're not gonna really do it on Tuesday anyway, so...or you know, we're gonna leave
27 Mondays alone or whatever it was...so, I gotta switch screens back and forth, but is that was
28 sort of the basis of this. Is anybody else have anything that they would like to add?
29 Commissioner Pali and then Commissioner La Costa.

30
31 Ms. Pali: Just a couple clarifications. The first thing is the holiday list that was sent to us this
32 morning from Carolyn, is that the list that was used for August 13, 2019 or is that a updated,
33 revised?

34
35 Mr. Carnicelli: Carolyn would you or Jordan?

36
37 Mr. Hart: That was first provided last night.

38
39 Ms. Pali: Yeah, so we need to distinguish because this is saying the holiday list provided by
40 applicant, August 13 and the list that was emailed looks very different.

41
42 Mr. Carnicelli: Right. So they tried to update the list is what...is that true Carolyn, yes?

43
44 Ms. Takayama-Corden: I received that from Tara, so Tara would have to answer.
45

1 Mr. Carnicelli: All right, Tara.

2

3 Ms. Furukawa: Yes, that's the case.

4

5 Mr. Carnicelli: Is that, is the list sent to us this morning is not the same as the August 13, 2019
6 list correct?

7

8 Ms. Furukawa: No, yeah correct.

9

10 Mr. Carnicelli: Correct. Okay.

11

12 Ms. Pali: So that needs to be addressed. And number 2, I feel like 4 and 5 since they're
13 separated they almost potentially could work against each other and I don't know if we should
14 ask counsel on that because we're talking about religious activities in general occurring before
15 8:00 and 9:00, but since 5 is electing exactly what days are allowed to have it and what days
16 aren't I feel like this almost should be combined so that we don't take 4 separately and say, well
17 any day is allowed because as long as it's between 8:00 and 9:00 and then 5 comes in
18 separately and says, oh but now it can only done. I don't know that it should be separate. It
19 sounds like it's the same thing to me. Those are my two observations.

20

21 Mr. Carnicelli: Okay, maybe, what is, I think right now what we're gonna do Commission is let's
22 give the basis for the conditions and then if we want to go back and wordsmith after and give
23 say an approval or not, we can potentially do that, but I think right now let's just go through and
24 give the basis for it. I get what you're saying where it would be real easy to kinda say, oh one or
25 the other, but I think right now as far as, you know, the reason why we have Number 5 kinda
26 what we're talking about. So, Commissioner La Costa, I think that you said you wanted to jump
27 in.

28

29 Ms. La Costa: Thank you, Chair. One of my questions was the same as Commissioner Pali's
30 about the difference in schedules and as you mentioned initially that Dr. Abrams had agreed to
31 the conditions that were set forth initially so how many Tara if could please let us know how
32 many were added with the new schedule that was sent to you at 11:30 last night, thank you.

33

34 Ms. Furukawa: Okay, I'm gonna need some time to do that.

35

36 Mr. Carnicelli: Yeah, yeah, yeah, is we'll keep going 'cause is we just gotta get through this first
37 and then we'll come back to you Tara when we're gonna go to discussing how we're gonna
38 handle the permit itself.

39

40 So, Number 6, that the church and the farm shall be subject to periodic inspections by the
41 County enforcement personnel at reasonable times upon presentation of appropriate
42 credentials.

43

44 If I'm recalling, part of this was due to the fact I think that there was, I believe some after-the-fact
45 permits that needed to be done and there was also just some vagueness as to what was going

1 to be and not, and there was some building permits that needed to be made and completed and
2 so part of this condition was just saying hey listen if you're saying it's a duck, and you want it to
3 be a duck, and we get to show up, and see that it's a duck. Anything else that somebody would
4 like to add at this point? Okay, it's a duck.

5
6 That the full compliance...that full compliance with all applicable governmental regulations shall
7 be rendered including compliance with the requirements of the Agricultural District pursuant to
8 Chapter 19.30A, Maui County Code, for uses of the property that are not related to the church
9 and that the State Department of Health requirements relating to the individual wastewater
10 system and the private water system. Verification of compliance with the State Department of
11 Health requirements shall be provided with the compliance report.

12
13 And let's see if I can go back to that one, you know, there was just questions about whether or
14 not they were going to meet health and safety, water and wastewater requirements and so we
15 kinda just conditioned it to say, you know I mean, it basically just says you're supposed to
16 comply with these things. I don't know if Deputy Director can help us with that, having his
17 expertise but it seems as through that's sort of why we put that in there. And I don't think you
18 were part of this meeting, were you, Deputy Director Hart?

19
20 Mr. Hart: Partial. The Director and I both participated in separate meetings because this one
21 went couple of periods. So just to clarify, you're, you're...can you reiterate what kind of
22 direction you're looking for with regard to the compliance?

23
24 Mr. Carnicelli: I'm just...is yeah, right now I'm just trying to say is the LUC has asked us what
25 are the basis for these conditions? So, I'm just going okay, I mean the basis for this condition in
26 my estimation and recollection is that you gotta comply with Chapter 19.30 and State DOH
27 requirements. I mean, it's just...you know, I mean I don't know if there's more to add than that,
28 it is fairly straightforward.

29
30 Mr. Hart: Right. Okay, so in the context of the request for the...from the Land Use Commission
31 to the Planning Commission to establish the basis of conditions I think that that was them
32 basically saying that they felt like if they're going to review this after you they would like to see
33 more clear information on the record with...for the basis. So, if the Commission's position is
34 that it's you know for the purpose of complying with existing State and County land use
35 regulations or complying with health, safety, and welfare requirements then that would be what
36 the Commission is saying, but just that it's clear you know when the State Land Use
37 Commission was reviewing it. I believe they were basically just saying they wanna...they
38 wanna have a clear understanding into the record for the basis of each of these things and you
39 know, many of them may be very straightforward.

40
41 Mr. Carnicelli: Got it, okay. Thank you. So, if we say, Number 8, that the applicant shall submit
42 to the Department a detailed report addressing its compliance with these conditions, two hard
43 copies and one digital copy by compact disk or similar means shall be submitted. The
44 compliance report shall be submitted to the Department with the request for time extension.

45

1 So, I mean, this might be one of those ones that you're talking about, you know, Deputy Director
2 where they're saying okay, why was this? I'm just gonna be a little bit frank, is I believe that
3 what happened was there was little bit of mistrust that brewed in the meetings when we
4 took...when we had this before us. And so there was some change of stories along the way
5 and you know that...and that's on the record of us saying, wait you said this, no, you said this
6 and we kinda just were going okay, we need to put some things in here that say if you're gonna
7 do this, then you're gonna do this. And we want it in writing ahead of time so that was part of I
8 believe you know, this you know, you gotta submit in detail the fact that you addressed all these
9 things and that it is what it is you say that it is, and you know we want it verified, you know, not
10 just okay, we're getting a pass on a permit. Especially if it's gonna come back and be reviewed
11 again in a year. So, anybody else want to add anything beyond that? None.

12
13 Number 9, that the applicant shall develop the property in substantial compliance with the
14 representations made to the Commission in obtaining the Special Permit. Failure to do
15 so...Failure to so develop the property may result in revocation of the permit.

16
17 Again, I'll go ahead and say that I believe this is the same thing again is to say, okay, maybe all
18 the representations that were made weren't conditioned and they're not in writing in the SUP but
19 this condition we put on there basically saying, okay if you told us so, then it's gotta be so. You
20 know, that's kind of standard that we know that like, okay, if you say something that you're
21 gonna do that, but this was kind of conditioning it saying no, you actually really are agreeing to
22 that, so that, that I was I think the reason for that particular condition. Anything else that
23 anybody else wants to add? Commissioner La Costa.

24
25 Ms. La Costa: Thank you, Chair. I don't know who has their...when it says, the property in
26 substantial compliance, does that mean that there is areas...there are areas to be able to ignore
27 or no, not quite comply because it's within the substantial? You know, we have to drill down on
28 all of this just like we do everybody, so...

29
30 Mr. Carnicelli: Deputy Director, do you want to answer what substantial compliance means?

31
32 Mr. Hart: Sure, thank you. That is a pretty common term that's used and basically very often
33 when a project is in the planning stage, there's expectations of exactly how things are gonna be,
34 but then when you go through building permit plan review or physical construction out in the
35 field some things might exist or occur that weren't foreseen that are not significant or major
36 issues but are little deviations from what may have been proposed. And so if there was some
37 sort of language that said, strict adherence, let's say who knows what it could be, let's say there
38 was a reason that a building needed to be shifted four feet to the left, the Planning Department
39 is relieved from the obligation to think do we need to send this back to the Planning
40 Commission.

41
42 Ms. La Costa: Thank you, Jordan that's not exactly what I meant but I do appreciate
43 explanation. I mean, if you expect there to be five buildings and they're supposed to be doing
44 sewing and cooking and weaving then those five buildings should be there and do sewing,
45 cooking and weaving rather than anything that is not represented previously, that's what I mean.

1
2 Mr. Hart: So in response to that, generally the way the Department looks at things is that if, if an
3 applicant gets an approval to do something that they would like to do and it turns out that they're
4 not able to or decide that they don't want to build out their project or pursue uses that would
5 benefit them completely generally the Department doesn't have a problem with them not doing a
6 full build out or carrying out their own project. If part of their project was represented as benefit
7 to the general public in exchange or as a you know, as a perk for their project then we would
8 generally expect them to fully build out that portion, you know, regardless of whether or not they
9 build out the portions that only benefit them.
10
11 Ms. La Costa: Thank you, Jordan.
12
13 Mr. Carnicelli: Anybody else? Okay, then—
14
15 Ms. Furukawa: Hello?
16
17 Mr. Carnicelli: --let's see, the applicant...Tara is that you?
18
19 Ms. Furukawa: Commissioner...yeah, so I looked through the proposed holiday schedule and it
20 looks like...
21
22 Mr. Carnicelli: Okay, we're not there yet.
23
24 Ms. Furukawa: Okay.
25
26 Mr. Carnicelli: Is I'll...is we'll get back to that, we'll get back to that, thank you though.
27
28 Ms. Furukawa: Okay.
29
30 Mr. Carnicelli: I'm glad that you're on it. Cool. What did I just read? Are we number...that was
31 9, yeah. So now 10, that the certificate of occupancy shall be required...a certificate of
32 occupancy shall be required for all church related structures prior to the initiation of operation
33 and shall be maintained for the duration of the permit. Verification shall be provided to the
34 Department to operation and shall be included with the compliance report.
35
36 If I do recall that is, they were in the process of finishing up. I believe that's what it was. They
37 hadn't had...they didn't get their C.O. yet, and so what we were saying in this particular
38 condition was this permit doesn't become effective until you got your C.O. You know, it's like,
39 okay go get your certificate of occupancy first, and you know, and then, then your permit
40 becomes valid, not it's valid and you know, maybe...maybe or maybe not you get your
41 certificate of occupancy, so that's what that was about as far as I can recall. Anybody else want
42 to add? Commissioner La Costa.
43
44 Ms. La Costa: Thank you, Chair. This is for Deputy Director Hart. Do all churches have to
45 have a certificate of occupancy?

1
2 Mr. Hart: I do not know the answer to that offhand, and I'll just give a little of background.
3 Basically, certificate of occupancies is a review by the agencies that regulate health, safety, and
4 welfare issues, and they are basically verifying that a building is up to Code and safe for
5 occupancy. Generally, it's required for commercial projects and it's commercial as opposed to
6 residential and it's administered by Public Works, so I don't...I don't specifically know the
7 answer to that, I can check on that with Public Works and get back to you as quickly as
8 possible.

9
10 Ms. La Costa: Thank you.

11
12 Mr. Carnicelli: Okay, so Number 11, that a minimum of 72 hours' notice shall be given to
13 neighbors for events with more than 40 participants via a website maintained by the applicant
14 which is available to the public and readily accessible. Website shall be functional and verified
15 by the Department prior to operation and shall be maintained for the duration of the permit.
16 Again, this was one of those conditions that came in regards to the neighbors and the
17 neighborhood being that they're gonna have you know, certain events over 40 people that
18 would go to the middle of the night, you know, like you know there were certain celebrations, I
19 can't remember I think it's in the next condition, you know, Christmas, New Years, things like
20 that that are gonna be big and people have to be able to be notified and they have to be able to
21 go someplace to kinda know when the area is going to be affected, and so that was part of what
22 this condition was, was just you know a way with which the public can know what's going on
23 and prepare. Anybody else want to add anything beyond that as far as the basis for that
24 condition. Commissioner Pali.

25
26 Ms. Pali: Yeah, I also recall giving them a number. They were only allowed to have so many
27 that broke the 40 participants and I don't see that that number is reflected.

28
29 Mr. Carnicelli: Is that, is that part of Number 4 and 5 that you were talking about earlier, I think it
30 might be.

31
32 Ms. Pali: Well, it definitely is all mixed up, so 4, 5, and now this one should all be kind of—

33
34 Mr. Carnicelli: Well, and then look at, look at the next one too, right, Number 12.

35
36 Ms. Pali: Yeah, so are we then saying that all events because it say's very clearly in Number 5,
37 all events maximum 40, but then you have a condition that says, but when there's events more
38 than 40 so that's a complete contradiction. But then on Number 12, you do specify one,
39 two...two events that could then have an exception. So, I just would like to clean up the
40 language that's all.

41
42 Mr. Carnicelli: Well, it's is, is what it was is that there were certain events, you know, daily like
43 their event is maybe on a Wednesday morning or a Saturday morning or something like that, the
44 applicant had said, oh we're not gonna have more than 40 people there, right. So, like the
45 special events that was sort of the delineation that we said, so it's like okay, yeah, when you go

1 to Condition 4 and 5, all right if it's under 40, it's not "special", right, that's just one of those ones
2 that they're doing as far as, you know, the church activities, normal church activities is typically
3 under 40. If it's an event, okay, 40 was the number where we said, okay, once it's over that,
4 now we start getting into these different, you know, areas, and so that's kind of—

5
6 Ms. Pali: Okay, so we just have to have the language specify that so when we're gone or if
7 change next year, that people understand what we were attempting to do, that's all. So, if you
8 wanted to use the term like, define the word, special event, event more than 40 participants, this
9 many per year are allowed, see holiday schedule. I'm just saying you know, just the details to
10 clean it up.

11
12 Mr. Carnicelli: Okay, yeah I would...yeah, is that's where you again go back to maybe we can
13 reorder these so they're next to each other so it makes more sense, but remember all of these
14 do, you know as much as you might want to put this one with that one they're conditions total
15 too.

16
17 So anyways, this last here as far as...(inaudible)...bases, that notwithstanding the prior
18 conditions, church and religious activities on Christmas Eve and New Year's Eve shall be
19 limited in time by county and state regulations of the general applicability, and the number of
20 participants shall be limited by the maximum occupancy established by the Fire Department for
21 the church building.

22
23 Okay, so what this was, was all right, you've got your holiday list, you've got your normal church
24 activities but we pulled out and said, Christmas Eve and New Year's Eve are different. We're
25 gonna let you go past 9 o'clock, however you're limited by county and state regulations,
26 whatever that is, right. So, you know, if there's...we can't, we can't grant you the permission to
27 go outside of what county and state regulations are so that's why we said it like that. Rather
28 than saying like oh, you can party all night or you can celebrate all night or whatever the word
29 you wanna use, we can't do that because there might be other restrictions. So, Christmas is, so
30 that's the restriction on the time, and then the number of participants we basically said okay,
31 that hundred again, number, you can go over a hundred as long as your certificate of occupancy
32 says...you know, so if your certificate of occupancy says 300 then that's what you're bound by
33 is 300, so whatever you know, that is, is there's your restriction. So we basically kind of said
34 okay, Christmas and New Year's is more open but there's gonna be these other things that are
35 going to hamper the, you know, the full-blown, so that was the basis for that condition as I recall
36 and I don't know if anybody else would like to add anything further on that. Okay, Mr. Hopper.

37
38 Mr. Hopper: Yes. Yes, can you hear me?

39
40 Mr. Carnicelli: I can. So, do you feel as though that we've kind of covered the basis for the
41 conditions and sorta satisfied Number 2, there?

42
43 Mr. Hopper: Yeah, I...that's the...if those are the Commission's basis I think any member's free
44 to add additional reasoning but I think the general idea was to try to mitigate the impact that the
45 church through noise and other issues would have on the surrounding properties which is part

1 of the, part of the criteria for granting the permit so I think that was the general intention behind
2 the conditions.

3
4 Mr. Carnicelli: Right. Gotcha. Okay, and then so if we go to Number 3, whether or not the
5 actual use of the church is related to any ag use of the property that I am gonna ask Mr. Abrams
6 to turn on his audio and video please. Hi, so could you please address this part is, is—

7
8 Mr. Abrams: Ah, we're back.

9
10 Mr. Carnicelli: Yeah, okay great. Mr. Abrams, if you could please explain to the Commission
11 whether or not the actual use of the church is related to agricultural use of the property?

12
13 Mr. Abrams: Okay, I shall do that. I have a written statement about that. In our previous
14 testimony in the August 13th hearing, the MPC minutes, Page 18, lines 3 through 27 we
15 describe how SEA, Sacred Earth Assembly's, earth-based philosophy supports its congregants
16 and learning to grow food naturally and offers applied hands-on learning opportunities through
17 farm volunteer activities on Ahimsa Sanctuary Farm, thus rather than displacing farming
18 activities Sacred Earth Assembly's ministry will allow its congregants to participate and learn
19 about farming and to...(inaudible)...Ahimsa Sanctuary Farm's agricultural activities and
20 production. Produce and value-added products from the farm will help supply community
21 potlucks and also will be for sale to church attendees and the general public as available. This
22 is will help meet the food sovereignty goals of Maui County, so clearly there is a relationship and
23 one doesn't displace the other, they're complimentary.

24
25 Mr. Carnicelli: Okay, any on this particular thing, is there any questions or need for clarification
26 from the applicant by the Commission? Commissioner Pali and then Commissioner La Costa.

27
28 Ms. Pali: Hello, I've got Exhibit 2, your newer, really nice, printed updated site plan and I just
29 had just a couple questions regarding the farming that you described. At the top of the picture
30 of the property you have, it looks like a big rectangle and a line is pointing and it says, vegetable
31 and herb garden and I just wanted to, I guess before I read it, I might have mistaken...I mistook
32 it for maybe parking because of the way it's drawn, but can you just confirm that that whole, big
33 rectangle that actually it looks like it runs the size of this long, I don't know if those are palms,
34 it's...nearby it is the ag storage and production little shed, is can you confirm that that is a
35 farming area that you're describing or is, is that something different?

36
37 Mr. Abrams: Yeah, that is the main, initial farm field that we opened up. You can see along the
38 boundary we planted bamboo as a windbreak to protect that area and we brought
39 in...(inaudible)...to supplement the soil, including cinder and oyster shell lime. We planted it
40 with a cover crop, we've introduced worms and it's now becoming a food forest. In addition to
41 vegetables and herbs, we have several ulu trees, other sorts of mangosteen, so we've evolving
42 it into a food forest, but it is clearly part of the farming on this land and then there's also
43 orchards planted of cocos and citrus, and you know, in other areas beyond that.

44

1 Ms. Pali: Thank you, I appreciate that. And so just to confirm where it says vegetable and herb
2 garden and it looks like a rectangle that is kind of one of the main spots of where you're planting
3 your vegetable and—
4

5 Mr. Abrams: Yeah, I think we also plant turmeric there which is one of our major products, yes.
6

7 Ms. Pali: Wonderful. Okay, and then in regards to...I'm just trying to look at the usable space in
8 conjunction with ag, and so we've got that there. I do see some beautiful pictures of, it looks
9 like palms and different trees, are these desired places that you're going to put them or if I...if
10 we were to go on a site visit would we already see the palms and the plants as presented on
11 this diagram?
12

13 Mr. Abrams: Yeah, that's what's, what's currently in place and growing. We have a coco
14 orchard that's coming into maturity, it's about eight-years-old now with more than 50 coconut
15 trees. There's a citrus orchard below the pond. Yeah, this reflects what is, what is in place, not
16 fully, and there's other fruit trees planted around, but it gives you an idea of how the agricultural
17 operation is distributed across that area.
18

19 Ms. Pali: Okay, I'm sorry, this might seem silly, but I can't find your coco palms.
20

21 Mr. Abrams: They're in the...to the north, you'll see...it's actually where it says gazebo, 12 x 12
22 gazebo on that far left-hand side of the diagram, that whole area is a coco orchard. There's,
23 there's representations of plants, I don't think it's particularly individually labeled as such but
24 those are cocos.
25

26 Ms. Pali: Oh, okay.
27

28 Mr. Abrams: Also, out in front of the church building on the far northern point, you'll see we
29 have a whole row of cocos as well.
30

31 Ms. Pali: Okay, okay. So just...okay, got it, thank you.
32

33 Mr. Abrams: Okay.
34

35 Mr. Carnicelli: Commissioner La Costa.
36

37 Ms. La Costa: Thank you, Chair. Thank you, Mr. Abrams. I have a couple of questions we're
38 looking at Exhibit 2 again, and I see that there are five different buildings that are referred to as
39 toolsheds, ag storage, et cetera, I'm just kinda curious why you have so many of these out
40 buildings and will they always remain in that use or do you have other uses in mind for them?
41

42 Mr. Abrams: Right. The out buildings we build as we needed them for tool storage sheds,
43 we've had a mushroom growing operation that we did in another shed that's on the middle
44 western side there, we have an herb distillation, it's not really so much of a business but we're
45 trying to develop our value-added products by distilling turmeric and other herbs that we're

1 growing and so we have that...another ag workshop for that purpose, and we've had just a
2 variety of needs to store tools and mowers and so on. The one building that we are asking for a
3 transition from a ACT 203 agricultural production storage facility, we've applied to have that
4 become an ohana, and so that permit has been submitted and, in the process, and it is under
5 construction. It's not a complete building until we get that full approval to finish that building,
6 you know, there's no electricity and you know we have to add on to it. We've just put, you
7 know, the basic walls and roof up and we're hoping to...originally it was proposed to be a ag
8 production and now we're asking for a permit to turn it into our first farm workers dwelling. We
9 don't an ohana other than that.

10

11 Mr. Carnicelli: Lew, do you have the \$35,000 income to justify the farm labor dwelling?

12

13 Mr. Abrams: That would be for our second farm labor dwelling. The first one is just, you know,
14 the main house and an ohana. We have fluctuated. There's been some years –

15

16 Mr. Carnicelli: Okay, no, no. No there's, there's a main dwelling, there's an accessory dwelling,
17 and then there's the farm labor dwelling, so anyways, you used anyway different terminology.

18

19 Mr. Abrams: Oh okay, so I guess it's...I'm talking about accessory, accessory dwelling.

20

21 Mr. Carnicelli: Okay, yeah, okay, thank you.

22

23 Mr. Abrams: I'm sorry, yeah.

24

25 Mr. Carnicelli: Commissioner Pali.

26

27 Mr. Abrams: We hope to reach that.

28

29 Ms. Pali: Okay, so I think probably would apply to Number 3 as well, church related agriculture.
30 I feel like I saw somewhere in the packet that your wanting to house church guests on property
31 and I just wanna confirm that there wouldn't be charging a nightly rate for church members to
32 stay is that...can you comment on that?

33

34 Mr. Abrams: Yeah, no, that was actually a reference for visiting religious leaders that we would
35 invite to come and give teachings and so yeah, there would be no money exchanged for that.

36

37 Ms. Pali: You know, short-term rentals is a hot topic right now and there are people that might
38 try to find loopholes to still allow those type of activities on their property so I just wanted to
39 make sure I was doing my due diligence to ask you.

40

41 Mr. Abrams: Thank you.

42

43 Mr. Carnicelli: Deputy Director just while we're here, I got a question for you.

44

45 Mr. Abrams: ...(inaudible)...

1
2 Mr. Carnicelli: The break for short-term stay versus long-term stay is 180 days, does it matter
3 whether or not someone's paying or not?
4

5 Mr. Hart: Well, it's complicated. So there's a definition of transient in Title 19,--
6

7 Mr. Carnicelli: Right.
8

9 Mr. Hart: -- and generally...I can just get to it, it's easier to...not easier but it's more accurate to
10 read the definition than to try to go from memory, but basically it accounts for, it accounts for if
11 there's no sort of exchange then you know, potentially it's exempt, but let me just read the
12 definition really quickly because it's kind of, it's kind of involved. While I am scrolling through, I
13 was able to review the County Code and certificates of occupancy are required for all structures
14 except for single and two-family residential structures and utility structures. So that would be
15 mean that they would be expected to be required for any sort of church structure that was to be
16 occupied. One moment.
17

18 Transient means any visitor or person who owns or rents or uses a lodging or dwelling unit or
19 portion thereof for less than a 180 days and whose permanent address for legal purposes is not
20 the lodging or dwelling unit occupied by the visitor. This definition shall not apply to nonpaying
21 guests of the family occupying the unit and to parents or clients in healthcare...or patients or
22 clients in healthcare facilities. Full-time students, employees who receive room and board as
23 part of their salary or compensation, military personnel, low-income renters receiving rental
24 subsidies from a state or federal governments whose rental periods are for a duration shorter
25 than 60 days or lodging provided by nonprofit corporations or associations for religious,
26 charitable or educational purposes provided that no rental income is produced.
27

28 Mr. Carnicelli: So, clergy is covered here?
29

30 Mr. Hart: Provided that no rental income is produced.
31

32 Mr. Carnicelli: Provided no rental income is produced. Okay, great. Commissioner Freitas.
33

34 Mr. Freitas: Thank you, Chair. Mr. Abrams, sorry I'm not speaking as much 'cause on this topic
35 because I...I was not on the Commission on the previous, so if I do ask questions that has been
36 addressed, I apologize. And I would like to--
37

38 Mr. Abrams: I understand. Nice to meet you.
39

40 Mr. Freitas: Nice to meet you too. I understand that this is like a farm and a church and it's
41 agriculture and you're saying that farm workers live where right now?
42

43 Mr. Abrams: Right now, we don't have farm...housing for farm workers, we've had our...we've
44 actually cut down on our farm workers in this COVID crisis, but we have one guy who comes
45 and helps us with the farm right now.

1
2 Mr. Freitas: And none of those sheds we mentioned earlier was used in any form for people to
3 camp on the property?

4
5 Mr. Abrams: No.

6
7 Mr. Freitas: Do you...when you have workshops or church functions do you...will you allow
8 people to pitch a tent and camp on this property?

9
10 Mr. Abrams: Yeah, we haven't got to that point yet. We would like to, you know, eventually to
11 be able to host a gathering where some people could come and possibly stay in a tent for like a
12 weekend, educational religious seminar. We're not fully, you know, in operation with that, but
13 that is something that we've thought about. It's one of the reasons why we proposed to turn one
14 of our ag sheds or storage units into a bathhouse so that we would the ability for campers to be
15 able to use the bathrooms there and so that's been approved. That actually, that bathhouse
16 has been approved but we haven't built it out. It's just a shed at this point or a cabin.

17
18 Mr. Freitas: That's what I was concerned if you did have camping if you're gonna have
19 adequate sewer and water and shower. Okay, thank you.

20
21 Mr. Abrams: Yeah, we have plans for septic to cover that.

22
23 Mr. Freitas: Thank you.

24
25 Mr. Carnicelli: So, okay Commissioners, so we're still kind of on Number 3 here which is
26 whether or not the actual use of the church is related to ag use of the property. You feel like
27 we've covered that, that we can say or...we can or cannot attribute actual
28 to...Commissioner La Costa.

29
30 Ms. La Costa: Thank you, Chair. No, I am not quite clear on this, sorry. In this explanation it
31 talks about how the congregants were learning to grow food naturally, so I have...and then it
32 goes farther to say that rather than displacing farming activities that SEA's ministry will allow its
33 congregants to participate and learn about farming. So to me, do you have to be a congregant
34 to be able to learn about how to grow food naturally is my first question, and my second
35 question is, your comment about rather than displacing farming activities you are on ag parcel
36 so how would you do that if this were not approved, how would you, how would you stop doing
37 farming activities?

38
39 Mr. Abrams: One does not need to be a participant in the church activities to come volunteer on
40 the farm. We currently have a Wednesday volunteer day where people come on between 9:00
41 and 1:00 and pitch in and usually we make a lunch for them and it's a volunteer opportunity and
42 a learning opportunity so it's not directly tied to church 'cause we haven't been approved for the
43 church activity yet, but we're hoping that as more people are coming to services that they'll learn
44 about these opportunities and plug in so we have more of a crew to actually get some, you
45 know, more work done on those, when we have those volunteer days.

1
2 Ms. La Costa: And could you please answer my second part, rather than displacing farming
3 activities your ministry will allow its congregants to participate and learn about farming, but what
4 do you mean by that please?

5
6 Mr. Abram: Well, that they will be able to be educated about growing food naturally by
7 hands-on involvement. You know, we have fishponds and orchards and gardens all that are
8 using permaculture development, permaculture design, and so it's a great learning environment.
9 In fact, we have had a permaculture farm tour in the past and just to be clear it's a none
10 exclusive use. You know, the farm use is not gonna be replaced by church, the church will be
11 allowed to hold church activities on the land, but they'll be participating in farming as people are
12 interested, and that's one of the reasons some people have been drawn to our ministries 'cause
13 they do recognize the(inaudible)...earth to the future generations and one of the key things
14 we need to learn how to do is to grow food organically and to develop a healthy nutrition and
15 address our food sovereignty needs so that's all part of the earth-based spirituality that we
16 teach.

17
18 Ms. La Costa: Okay, but I'm sorry maybe I'm just thick. It says, rather than displacing farm
19 activities we're gonna do this—

20
21 Mr. Abrams: Right.

22
23 Ms. La Costa: --so was it your intention to displace the farm activities or was this just
24 misworded?

25
26 Mr. Abrams: That was a reference...oh, excuse me that was a reference in an attempt to
27 address the concern that had been raised that church might take over the farm and make it less
28 room for farming activities. So that was where that language came from is—

29
30 Ms. La Costa: Okay.

31
32 Mr. Abrams: It's from the ...(inaudible)..., yes.

33
34 Ms. La Costa: Thank you.

35
36 Mr. Abrams: You're welcome.

37
38 Mr. Carnicelli: Okay, is here any need to clarify the third item from the Land Use Commission?
39 Okay, thanks, Commissioners. So, Tara if you could please come back for Number 4, which is
40 whether or not traffic impacts need to be addressed and a finding made with regards to those
41 matters. So, I just want to go back to that Tara, I believe it was Exhibit 5—

42
43 Ms. Furukawa: Exhibit 3.

44
45 Mr. Carnicelli: That we do have a letter...3, okay.

1
2 Ms. Furukawa: Yeah.
3
4 Mr. Carnicelli: Three from the...and basically the Department and I can't even find it here, the
5 DOT...the DOT basically said from their perspective we're okay?
6
7 Ms. Furukawa: Yep.
8
9 Mr. Carnicelli: Okay. However, I'm gonna just say this and we're not gonna do this, 'cause I
10 want to just get this LUC thing out of the way, that is actually one of the things I woke up the
11 night before...the night after we got done with this and I'm going, ahh, we should have done
12 something about traffic in and out off of Hana Highway there. So anyways, we may have to
13 address that as we proceed forward, but is everybody okay with the DOT addressing the Land
14 Use Commission's Number 4 as far as traffic goes? Commissioner Freitas, and then
15 Commissioner Pali after that.
16
17 Mr. Freitas: I was just gonna say that if they made an assessment around March or April
18 wouldn't that have been when there was no tourists here and that would be a kind of a false...I
19 mean not an inaccurate assessment?
20
21 Ms. Furukawa: We basically transmitted back to them because the Land Use Commission
22 thought in our original staff report we included an email from the Department of Transportation
23 and that one just required a permit if there would be any signage within the state right-of-way,
24 and I guess the Land Use Commission because it was a email, I don't know, we weren't sure if
25 that was sufficient enough so we retransmitted out the application to the State DOT and then
26 they came back with this letter. So, what we transmitted to them was the original application, it
27 wasn't a traffic assessment or anything like that.
28
29 Mr. Freitas: Wow, okay.
30
31 Mr. Carnicelli: Commissioner Pali.
32
33 Ms. Pali: Yeah, I'd just like to make a mental note that as we move along, I would want to be
34 revisiting this and potentially adding conditions for that.
35
36 Mr. Carnicelli: Okay. Commissioner La Costa.
37
38 Ms. La Costa: Thank you, Chair. Referring to the DOT's letter of April 22, 2020, it talks about
39 the building and allowing up to a maximum of a hundred people for the special use and the
40 traffic so when there are situations if this is approved and when there are situations where there
41 are more than a hundred people then that is going to have to be addressed down the line as
42 well. Thank you.
43

1 Mr. Carnicelli: Great. Thank you. I think also we would have to get the architect back and
2 kinda look at the parking and traffic flows 'cause we may need one-way streets or something
3 like that inside and then all that, so yes, I would agree with all you guys on that one.
4

5 So, moving onto Number 5, a finding with regards to the impact of the shared water system
6 whether it is adequate for the project without causing detrimental...detriment to the other users.
7 Tara, we're gonna bring you back on this one 'cause this could be a deal killer.
8

9 Ms. Furukawa: So subsequent to the LUC hearing the applicant contacted the adjacent
10 neighbors, Jerome Labat and Michele Drewyer to obtain permission from them for use of the
11 private water system for the proposed church, and Michele Drewyer and Jerome Labat
12 responded and they both said that, you know, they, they...he does not have their permission for
13 use of the water. So that's attached as Exhibit 4. Jerome's email came in later and that was
14 forwarded to you separately. The shared water agreement is also attached and a letter about
15 the water usage from the project engineer.
16

17 Mr. Carnicelli: So does the Department...where does the Department land on this, 'cause again
18 this is one of those ones I'm not, you know, hydrological engineer, I don't know whether or not,
19 you know, you know I mean I kinda tried to understand the water use agreement. I'm not an
20 attorney and I'm just going where does the...if the two people that share the water system are
21 saying we're not agreeing to this then do they have enough water? Do they have the ability to
22 carry off what we would be possibly permitting? And I know that, I do believe that that Director
23 has joined the call, I mean, I know that...I don't want to cut off the Deputy Director, but...sorry
24 Jordan I don't want you to...you know I don't want...look I'm making you turn all red now too, oh
25 gosh darn it, but I'd like to just know where the Department kinda lands in, you know, with this, I
26 mean, 'cause this kinda becomes...it potentially becomes a deal killer.
27

28 Mr. Hart: Yeah, I wanna clarify that's only a filter. That's a complicated issue, right, so...
29

30 Mr. Carnicelli: Yeah.
31

32 Mr. Hart: So basically, you know, the applicant asserts that there is water capacity available but
33 then they're in a private agreement with two other property owners on who can make use of the
34 water. So, they have a side civil issue that they're addressing. So does the County of Maui
35 make their decision based on a potential civil disagreement or is the use authorized based on
36 the information at hand and then the applicant needs to address their civil issue with their
37 neighbors and that's a really complicated situation that perhaps the Commission should get
38 counsel from or get input from your counsel on, and from the Department's side generally we
39 want to verify that there is sufficient water to accommodate a project, but again, you know a civil
40 agreement is generally not part of the decision making criteria or the basis for decision making
41 for the County of Maui.
42

43 Mr. Carnicelli: Right. So, Mr. Hopper would you also please weigh in as counsel for the
44 Commission.

1
2 Mr. Hopper: I do not think the Commission can have a say over whether or not the water can or
3 can't be used in a case where it's a private...by private agreement, that's between the parties
4 themselves. What the Commission's focus would be on would be whether or not this meets the
5 criteria for permitting and part of that criteria is that the permit would not have adverse effects on
6 surrounding properties and so this issue may relate to that. Again, you don't have any
7 jurisdiction to make a determination on whether the water can or can't be used, that's through
8 private agreement. And it looks like the past decision, it looks Condition 7 said that, that...that
9 basically the requirement would be that there has to be compliance with State Department of
10 Health requirements relating to the individual wastewater system and the private water system,
11 verification of compliance with State Department of Health requirements shall be provided with
12 the compliance report, but it seems like the past approval said it's up to the applicant to find
13 that. However, if you believe that based on the record that you have concerns with adverse
14 effects on surrounding properties based on the water issue, you can review the record and
15 certainly ask questions of the applicant on that issue, but in the sense that, in the sense of you
16 as a commission seeing if they meet the permitting criteria, I think that's the relevant criteria is
17 whether or not allowing this use would have an adverse effect on surrounding properties and
18 there's a record of this discussion going back and forth, but again, the commission, they're
19 basically saying that you have a...they have private water system and can go into why they
20 believe they are, they can be granted a permit but that's, that's I think how the issue would be
21 approached and not who has the legal right to use the water because that's between the owners
22 of the system.

23
24 Again, it's possible that the County could approve the permit and there could be a lawsuit that
25 prevents the landowner from utilizing the water and so that's, that's...you know it's similar to if
26 you had private CC&Rs that prohibited a use, the County could still grant the use but the private
27 CC&Rs may prohibit the activity from actually going on though I see that as a separate issue in
28 one sense, but it could be related to the criteria for granting the permit which is, deals with
29 adverse effects on surrounding properties.

30
31 Mr. Carnicelli: Okay, thank you, Mr. Hopper. Director McLean.

32
33 Ms. McLean: Thank you, Chair. The only thing I would add to this is that there are several
34 permitted structures on the property so those building permits would have to been signed off by
35 various state and county agencies. I would imagine the Department of Health would have been
36 among the agencies that signed off. Those structures include a water tank on the property. So,
37 when we're talking about the water use of this property, I think it would be reasonable to look at
38 the water use without the proposed...without the use that's proposed in front of you versus with
39 the proposed use. I don't know that there's a significant difference in the amount of water
40 demand if the property were used solely for agriculture versus for Dr. Abram's use that has an
41 agriculture component. I don't know that there's a significant difference in demand between the
42 two because both can involve a number of people coming to the property and using the property
43 in various ways. So that's, that's backing up what Deputy Director Hart said and what
44 Corporation Counsel said which is that it appears as if there's adequate water to serve the
45 property today, and there doesn't seem to be a significant difference in water demand with the

1 proposed use, and if there are concerns in terms of ownership in the terms, the private terms by
2 which that well is used, that would be more of a civil matter rather than something for the
3 Commission to take into, take into consideration when making the decision today. Thank you,
4 Chair.

5
6 Mr. Carnicelli: Thank you, Director. I guess, my question is I guess 'cause I think that that is
7 what that Condition 7 or whatever number it was we were trying to allude something to that
8 effect, we're saying okay listen if you ain't got the water then this permit's kinda conditional on
9 that. Any other questions in regards to this particular item from the Land Use Commission?
10 Commissioner Pali?

11
12 Ms. Pali: Yeah I think if at least for me personally as a Commissioner if I see that there's an
13 agreement in place and we are obviously exposed to a disagreement it's definitely not our place
14 to get involved with that, but I also can't unnotice what's been brought so I think it's slightly
15 irresponsible of me to say, hey I'm gonna issue you the permit and I'm deeming that you have
16 access to the water but I've seen an agreement that says you don't have access unless you
17 have your neighbor's permission, and so for ethically I'm struggling with that, and so maybe the
18 happy medium is if we did decide that we wanted this project to go forward is that I would want
19 a condition that he had proof that there was an agreement made amongst this, you know, that
20 he does his own thing, he deals with it, and he comes back to us and as a condition potentially
21 of this permit would be that he shows that he has proof and permission per the agreement to
22 utilize additional waters needed for these new activities, and so that that will be just my thought
23 process at this point.

24
25 Mr. Carnicelli: Yeah, I mean, I'm kinda going down the same bunny trail with you, but then the
26 other side of this is, okay, kinda what you know, Deputy Director Hart said, is...but that's
27 actually...it's a civil matter, and so suddenly what we're doing is we're saying okay, we're not
28 gonna grant you a permit unless you go get your neighbor's permission and even though we've
29 mitigated say, all of the...you know, 'cause we've added all these condition to try to mitigate
30 impacts on the community, we've mitigated those things and then because we're saying the
31 applicant then has to go get approval from their neighbor then now suddenly the neighbor can
32 basically deny the permit because of us because that's a civil matter. So, I mean on one hand
33 we don't want create a situation we're forcing neighbors to sue each other, but on the other
34 hand, you know, do we, are we granting a neighbor more power than us?

35
36 Ms. Pali: I think all applicants are tasked with proving, you know we used to have that saying,
37 where's the water, all applicants are tasked with show me the water, right? And so, this is a
38 classic case, I don't think that we're making this applicant different from anybody else. In his
39 case, he bought a property where there's a shared private agreement so he really can't function
40 if he doesn't have the agreement for the water so I feel like it's connected, but we're not gonna
41 get involved with the civil suit and I think it's appropriate that in order for me to know that he got
42 the water, I need to know that the agreement's been signed and this kinda brings us back to
43 small town Maui like I think Mr. Abrams seems like a super cool guy, I think he seems like he's
44 flexible. He's always been you know fun and cool and just flexible when I've seen him, and I
45 would say, Mr. Abram, you know, go make good with your neighbors, get the agreement, and

1 show me the water, that's sort of how I'm feeling. I don't think I'm infringing or giving additional
2 power to your neighbors, but let's face it, if you do have a difficult relationship with your
3 neighbors and you're not in good standing then any neighbor in any process of an application
4 can come up and make your life miserable. We've seen them. We've seen the testifiers, we've
5 seen them come up here, and so, I don't know, that's kinda how I'm feeling, and unless it's
6 illegal to take that perspective that's kinda what I'm feeling right now.

7
8 Mr. Carnicelli: Gotcha. Thank you. Anybody else want to chime...Commissioner La Costa.

9
10 Ms. La Costa: Thank you, Chair. I am looking at the letter from—

11
12 Mr. Carnicelli: You're really loud.

13
14 Ms. La Costa: Loud, okay. Better? Mo bettah?

15
16 Mr. Carnicelli: Yes.

17
18 Ms. La Costa: Okay, sorry I took out my headset so I had to turn it up, sorry, didn't mean to
19 blow out your eardrums. I am looking at the Neal Nishida letter, it was a PE dated June 2nd. My
20 concern is on the backside it talks about the attendees would range from 50 to a maximum of
21 300, and we've looked at 100 people continuously so, I...you know, I'm looking at discrepancies
22 again and not feeling very comfortable with that. It goes into the water agreement, et cetera,
23 et cetera, so it's all kind of dovetails into each other, so...

24
25 Mr. Carnicelli: Okay. Anybody else wanna jump in on this particular item?

26
27 Okay, so moving onto Number 6, the history of zoning violations and whether or not that has
28 any relationship to the proposed conditions for the project. So, Tara if you would just...I know
29 you did, but just go over the RFSs please or just you know kinda the overall what happened and
30 where we're at with the RFSs.

31
32 Ms. Furukawa: Okay, sure. So, since the item was remanded by the Land Use Commission
33 there are three new Request for Services on file from different people. If you look at Exhibit 5,
34 that's kinda the summary sheet of the three different ones. The RFS 19-0001228, this was just
35 for the record...well, this was just a record request, I guess. Okay, and then there's—

36
37 Mr. Carnicelli: But there was a couple that you had to go out and inspect and you found nothing
38 right?

39
40 Ms. Furukawa: Yeah, so RFS 19-0001748, that was...somebody said that there non-permitted
41 grading and groundwork occurring. There was heavy equipment, no SMA Exemption or
42 Grading Permit. So, I guess Public Works was sent out there and this was actually filed by
43 Ms. Drewyer, Lew's neighbor, adjacent neighbor. They went to check it out and they saw no
44 evidence of grading so they closed it out. And then Gail and I went out there actually, she went
45 out and she saw...she drove along the dirt driveway, she didn't see or hear any large machinery

1 in the area, so she went ahead and closed it as well. And then, there was RFS 20-0000184 and
2 this was a large party that was held on Friday night, it was January 31, 2020, this was an annual
3 birthday party for a friend, and Lew had said that no money was exchanged so the RFS was
4 closed by zoning. I think she requested that proof of the event taking place and the inspector
5 wasn't able to find it on her own, so...

6
7 Mr. Carnicelli: Okay. Is there any questions or comments on Item Number 6 of the Land Use
8 Commission's requests? Commissioner La Costa.

9
10 Ms. La Costa: Thank you, Chair. On this RFS summary towards the bottom it says, expiration
11 of after-the-fact permit application per owners RFS generated per building inspector request has
12 that ever been cleared? Has the building permit been issued? It was...the memo's dated
13 12-April-2019.

14
15 Ms. Furukawa: Yes, this was a old RFS that was in the staff report. So, the information is from
16 19-0000588 and it was closed out before it was brought you the first time.

17
18 Ms. La Costa: Okay, thank you.

19
20 Mr. Carnicelli: Any other questions, comments on this one? Commissioner Pali?

21
22 Ms. Pali: I'd like to just give Mr. Abrams a chance to defend himself here. Mr. Abrams, can you
23 just tell us a little bit about the RFS for the party? Were you able to give your neighbors
24 adequate notice? I mean, clearly, you've worked so hard to get this permit and you know you
25 might be under the glass, the glass eye right now, can you just let us know of how you handled
26 that party on January 31st.

27
28 Mr. Carnicelli: Okay, so whoever is doing the share screen I'm gonna ask you to please stop.

29
30 Mr. Abrams: ...(inaudible)...that sounds like...(inaudible)...Michele Drewyer...

31
32 Mr. Carnicelli: Is hang on, hang on a second, hang on a second Mr. Abrams, is whoever's
33 doing the share screen, please stop. Thank you. Okay, go ahead, Mr. Abrams.

34
35 Mr. Abrams: Okay, I'm looking to be admitted...so I'm addressing this...the...this issue of the
36 party in January not the water issue?

37
38 Ms. Pali: Oh, no, yeah, we've moved on. We're on RFSs now, and it looks like there was an
39 RFS put in.

40
41 Mr. Abrams: Well, that was...that's an annual birthday party that we have for elder, a cherished
42 elder in our community. He was turning 93, and we've had birthday parties since he was
43 87 years old, and he invites all his own friends come out and honor him and it's a beautiful
44 event. In fact, I've invited Michele Drewyer to that gathering a number of times 'cause I just
45 wanted her to experience such a beautiful community gathering. It's definitely not a money...a

1 commercial thing, it's a celebration that we've hosted for many years, I think since he was 87,
2 possibly earlier.

3
4 Ms. Pali: Okay, well I think specifically if you don't mind that sounds lovely, thank you for
5 sharing. Just because we're gonna be considering giving you a permit and what we want to
6 know is that you're going to be comfortable and used to following notice to neighbors on special
7 events like this one and so my specific question was can you share with me, if any, what
8 communication you gave your notices prior to holding the event on January 31, 2020 to let them
9 be aware of it going on?

10
11 Mr. Abrams: Right. I have invited her before whether I invited her this year, I do recall I don't
12 think so, last year I'm quite sure I invited her. She did not want to and has been quite, you
13 know, challenging and so I didn't think to invite her again. But on other occasions when we've
14 had gatherings, I have let her know what...that there would be some friends coming to visit.

15
16 Ms. Pali: Okay, and so—

17
18 Mr. Abrams: And of course, I'll comply, I will definitely comply or Sacred Earth Assembly will
19 comply with any condition that asks us to let our neighbors know in advance of a larger religious
20 gathering or ceremony.

21
22 Ms. Pali: I guess, the reason why I ask is because in August we expressed that this is what
23 protocol we would want you to take if were to approve it, and now we're here almost a year later
24 and you have opportunities to go ahead and make notice, and I was hoping that your answer
25 would have been yes, we started to notify our neighbors because we have...we are tasked that
26 if we give you this permit with these conditions, will you comply because we both know that
27 we're not gonna have a little, you know security person watching every minute of your activity so
28 there's gotta be a trust factor that you're willing to, you know, comply and that's what I wanted to
29 ask.

30
31 Mr. Abrams: So, I'm definitely willing to comply. I have in other years, and I honestly cannot
32 recall if I called her this year. I often in the past have let her know that we're going to be having
33 some friends come over so that she would not be as disturbed by it. She, but she repeatedly
34 has told me she cannot see or hear anything that happens down at this church building, it's just
35 the cars turning off of the Hana Highway which her property abuts and coming down about
36 200 feet of driveway before they disappear onto our land that has been her—

37
38 Ms. Pali: Okay, I got my answer.

39
40 Mr. Abrams: --disturbance.

41
42 Ms. Pali: Thank you, Mr. Abrams. Thank you.

43
44 Mr. Abrams: Okay, thank you.

45

1 Mr. Carnicelli: Okay, anybody else have any...Commissioner La Costa.

2

3 Ms. La Costa: Thank you. Can you tell me, did you notify your other neighbor Mr. Labat in
4 writing or telephone or anything else about the function for the birthday party?

5

6 Mr. Abrams: I don't believe so because Jerome is, is rarely there on the property. He lives on
7 the mainland and is only on the property for a week or two a year as far as I know, I don't know
8 his exact coming and going, but usually he's not present.

9

10 Ms. La Costa: So, you did not notify him?

11

12 Mr. Abrams: Did not.

13

14 Ms. La Costa: Thank you.

15

16 Unidentified Speaker: In the future—

17

18 Mr. Abrams: But in the future I will gladly let neighbors know and that's part of what came up to
19 post it on a website, we would definitely let people know.

20

21 Mr. Carnicelli: Have you started that website yet?

22

23 Mr. Abrams: We have started the development of it, it's under construction and we do have a
24 URL, I believe a provisional beginning of it is sacredearthtemple.org. And I'm working with a
25 webmaster to, you know, launch it more fully but I believe it's a registered URL, and still under
26 construction.

27

28 Mr. Carnicelli: Got it. Thank you. So okay, guys we've...thank you, Mr. Abrams. So, we've
29 basically in my opinion, and I don't know Director if you want to chime in, I think that we've kinda
30 cleared what the Land Use Commission asked us to do. So, what's in front of us right now is
31 basically a special use permit to, you know, accept, deny or condition and so is that sort of true,
32 Director is that where we're at in this whole thing?

33

34 Ms. McLean: Yes, Chair. Once you got through the State Land Use Commission questions,
35 you have access to the...your prior action and the conditions that went along with the approval
36 of the State Special Permit. So, you could review those conditions and decide that you want to
37 approve them again or whether you want to change any of them.

38

39 Mr. Carnicelli: Right, great. Okay, so members we already went through the 12 conditions that
40 the previous commission had put on the Special Use Permit. So, is there any additions or
41 changes that anyone would like to make at this particular time? Commissioner La Costa.

42

43 Ms. La Costa: Thank you, Chair. We were waiting for Tara to give us an updated list or the one
44 that we just received versus the prior one to see how many were added after-the-fact. Thank
45 you.

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Mr. Carnicelli: Thanks.

Ms. Furukawa: So I went through the proposed holiday schedule for 2020 to 2021 and it looks like there's...there's a discrepancy, there's an event on Thursday, November 26, 2020 and I think, I think that Condition Number 5 said that church and religious activities shall not occur on days other than Wednesday mornings, Friday evenings and one additional day each week provided that none occur on a Monday and no more than six per year occur on a Saturday. So, this one's on a Thursday for Thanksgiving which is understandable. Sunday, November 29th is another service day though, so that's two in one week that don't fall on a Wednesday or a Friday as this conditions states, so I don't know if you want to make an exception for that and then for 2021 it looks like, well and actually 2020, Monday, September 21, 2020 it's Fall Equinox and then Monday, April 26, 2021, April Full Moon, those are Monday events and the condition said none occur on a Monday, so I didn't know if you want to make an allowance for that as well.

Mr. Hopper: Tara, just a clarification. I thought the condition said that that's the general rule but then it says that if, if it's on the list then the days, the holidays could occur on different days which is the purpose of providing a list because that would be the exception 'cause Condition 5 says, it goes over the requirements that you talked about but then it does say, church and religious activities may also occur on the holidays listed on the scheduled provided by the applicant at the August 13, 2019 meeting, and then has other requirements for that. Is that meant to say, in addition to the general rules, as long as it's on the list it can be different dates and times, I wasn't sure if that was the case, but that appears to be what the condition, current condition says.

Ms. Furukawa: I don't have the other holiday schedule in front of me, the 2019 one.

Mr. Hopper: I mean, I think the intent is that the holiday schedule would have different days than the other schedule and that's what the Commission wanted. I mean, the Commission can review this and look at it, but I think the intent, it looks like from the condition was to say that you have to follow the regular schedule but exceptions can be made for the listed holidays that are provided.

Ms. Furukawa: Yeah.

Mr. Carnicelli: Yeah, and we should of maybe put those conditions next to each other. So let me, I'm trying to look at them here. Unfortunately, I gotta look at...so, church and religious activities shall not occur on days other than Wednesday mornings, and Friday evenings—

Ms. Furukawa: Yes.

Mr. Carnicelli: --and one additional day each week provided that none occur on a Monday, and no more than six per year on a Saturday with no more than 40 participants.

1 Ms. Furukawa: Yeah.

2
3 Mr. Carnicelli: Church and religious activities may also occur on the holidays listed on the
4 schedule provided by the applicant at the August 13 2019 Maui Planning Commission meeting.

5
6 So, I think Mr. Hopper is right. I mean, what we're doing here is we're saying okay, there's
7 church and religious activities that are not on a Wednesday...not on Wednesday morning,
8 Friday evening, some other day and not occur on a Monday, and there's no more than six per
9 year on a Saturday with no more than 40 participants, and then there's this additional thing
10 where we said okay, then there's this additional thing which is the list.

11
12 My first question which I think is originally what Commissioner La Costa was getting to is, we
13 just go the number of items, the number of days on the list you have now versus the other list
14 ...(inaudible)...let's take Wednesdays and Mondays and all that out of it, just is it the same
15 number of holidays? Like is there 23 on this and 23 on the other one or do they try to say, oh
16 now we want 24...you know what I'm saying?

17
18 Ms. Furukawa: Yes, I don't...I'd have to...I have to check that part, actually I have to look back
19 to the Land Use Commission.

20
21 Mr. Carnicelli: We just count 'em, right? We can just...take the August 13th list and then take
22 the last night's list. Mr. Abrams, I have a question for you. So, I remember this sacred birthday
23 thing coming up before and I'm looking at your list from last night and I'm seeing one on
24 February 21st that that was like some special birthday, right? So, is sorry, I'm gonna completely
25 butcher the name, Shiva—

26
27 Mr. Abrams: Shivaratri is a holiday sacred to all Hindus. It refers to the birth day, appearance
28 day of Lord Shiva. It's not a human being's birthday party.

29
30 Mr. Carnicelli: Okay. So that's not the birthday party—

31
32 Mr. Abrams: May I address—

33
34 Mr. Carnicelli: --that had. Okay, that's all I needed. Thank you, thank you Mr. Abrams.

35
36 Mr. Abrams: But I feel it's important to address the water issue.

37
38 Mr. Carnicelli: No. Is we're not there right now. Thank you. Tara, were you able to at least
39 count up the number of holidays here or Ms. La Costa do you have a question at this time?

40
41 Ms. La Costa: I do. I'm looking at the schedule that we were sent last night or this morning,
42 and I notice that there are eight additional holidays of the church that are outside of the Monday,
43 Friday, Sunday schedule and again, I'm concerned about the...through their religious...if they
44 say they're religious holidays then that's what they are, but I'm concerned about the neighbors
45 being subjected to three, four, five, six, seven days a week because they're holidays. So you

1 know, there's a holiday every month with the full moon, and Valentine's Day and Halloween,
2 and I'm just really concerned about residential areas that have all this activity and the
3 disturbance for that neighborhood so, I will be interested to see what Tara comes up with, with
4 the old list versus the new list. Thank you.

5
6 Mr. Carnicelli: Right, and the other part too, you know Commissioners that I did allude to earlier
7 and I would like to try to do the best we can is to maybe not redo what a previous Commission's
8 already done, you know.

9
10 Mr. Abrams: You need to redo.

11
12 Mr. Carnicelli: And so it's, it's one of those things—Director.

13
14 Ms. McLean: Thank you, Chair. I did find the old list and comparing—

15
16 Mr. Carnicelli: Okay, great. Thank you.

17
18 Ms. McLean: --and comparing the dates from the old list to the one that was just given to us,
19 there are two additional dates and that's Friday, February 21st and Friday, October 2nd, those
20 were not—

21
22 Mr. Carnicelli: And what are those two labeled?

23
24 Ms. McLean: Friday, February 21st is Shivaratri Birthday and Friday, October 2nd is Succoth.
25 Those were not on the original list.

26
27 Mr. Carnicelli: Okay. So, I'm just trying to...Director, maybe help me out here, we've got
28 12 conditions, we're trying to now decide whether or not we're gonna move forward with these
29 conditions or alter them. I'm just trying to figure out how to handle this here without completely
30 getting lost...you know, where we're here till 5:30 or 6 o'clock again.

31
32 Ms. McLean: Okay, just looking at the condition as written, another way to look at it is that
33 events are allowed on these days that are on your list plus Wednesday mornings, Friday
34 evenings, and other day per week except for Mondays unless a Monday is listed, and since the
35 original condition said six Saturdays, this has three Saturdays so only three additional
36 Saturdays. So, it's the same wording just looking at it a different way that you have this list—

37
38 Mr. Carnicelli: Right.

39
40 Ms. McLean: Plus Wednesday mornings, Friday evenings, one other day per week except for
41 Monday unless Monday is on the list and only three additional Saturdays.

42
43 Mr. Carnicelli: And do you feel the way that the conditions are written right now it spells that out
44 well enough or should we, you know wordsmith our conditions? 'Cause I...you know, now that
45 you're saying it like that, it makes total sense and that is what our intent was when we drafted

1 these conditions is exactly how you said it. So, do we need to redraft the conditions to where as
2 Kellie said, you know, although this is only a one-year permit, so you know, most of you all are
3 gonna be here when this thing comes back, if it comes back, you know, so we're gonna kinda
4 know since it's only a one-year permit. So, do you think that we should redraft the wording to, I
5 mean completely wordsmith it or just change out the old list for the new list but we're not giving
6 them the two new ones, we're not giving them extras.

7
8 Ms. McLean: Well, in terms of adding those two additional events both are on Fridays, and the
9 original condition says they can do Friday evenings so it's listed here, but even if it wasn't listed
10 here it would be allowed under the prior condition.

11
12 Mr. Carnicelli: Okay, okay. Okay. So, if we substituted the language of, you know, "the list",
13 that was provided August 13, 2019, we could say, okay, the list that was provided,
14 July 14, 2020.

15
16 Ms. McLean: Yeah, I can...I can play around with some wording real quick just to keep the—
17

18 Mr. Carnicelli: Okay.
19

20 Ms. McLean: --the complete substance of the condition the same, but to put it in words that are
21 more clear.

22
23 Mr. Carnicelli: Okay, thank you, Director. So are there any other conditions that the...you,
24 Commissioners, us we would like to alter, change, add? Commissioner Pali.

25
26 Ms. Pali: Just to chime in on that one. I understood that these special events were the only
27 ones that could over 40 people and that was the holiday list, everything off of that list they can
28 still have gatherings but they would have to be then under 40 people, are we on the same page
29 on that Chair?

30
31 Mr. Carnicelli: I think so, yeah.
32

33 Ms. Pali: Okay, so I just want to make that distinct, okay.
34

35 Mr. Carnicelli: Director, is that also how you view it, Director?
36

37 Ms. McLean: Yes.
38

39 Ms. Pali: Because what I heard was even if it wasn't on the Friday list they could still have it,
40 but the difference is the number of people, a hundred versus 40, so actually they wouldn't be
41 able to still have it if it wasn't on the holiday list and wanted more than 40, right?
42

43 Ms. McLean: Correct. You're correct.
44

1 Ms. Pali: And then the only simple ones I have Chair is just, number one, I do want to kinda
2 detail some information on the traffic requirements. I personally have a friend that lives in
3 Four Corners, I go to see her, I try to go to see here at least weekly and I take that road, and I
4 don't know why and I'm just a regular person when I'm not on commission, but I always see a
5 car, at least one parked in that tight turn on the street and it's very dangerous and I've not felt a
6 need to go and investigate, that's my job, but because I continually pass it on my normal back
7 and forth, I don't know where it's coming from, so I just wonder if Mr. Abrams could help us
8 whether it's his people or not, dude it could a random person I don't know, but a car should not
9 be on that on-street parking so what could we do to ensure that that tight turn is clear and where
10 there is not a car that could potentially attempt to park outside. I don't know if you...if
11 Mr. Abrams has suggestions on that, and so what we can do as a County to protect his property
12 or put bumps or things to just make sure no one parks there, and then of course, entering and
13 exiting that driveway would be something just to keep the people safe there.

14
15 The other thing that I would like to just again circle back to is just adding a condition that you
16 know once he can resolve and show proof to the County he does have access to the water, I
17 just, I don't know, I feel better about that, but I'll default to counsel.

18
19 And then the last thing that I had was I'm just, I'm just...well, I can do that when we have
20 discussion, I think those are the two main changes on the conditions.

21
22 Mr. Carnicelli: Okay. So, we don't have an actual traffic condition in there. I mean, there was
23 representations made, but one of the things that we did kinda talk about and then somehow got
24 lost in the conditions, maybe we add a condition that something to the effect of any event that's
25 over 40 people needs to have a, you know, some sort of traffic monitor at the driveway off of
26 Hana Highway. Now I don't want to put that person you know, in the right-of-way or anything
27 like that, but I think that it's important that, you know, when we have these larger events that
28 there's somebody out there because that's a gnarly left-hand turn out of there. You know, I
29 mean, it's a hairpin turn with a left-hand out of that that's kind of a blind turn, so...I think that it's
30 important to have some kind of traffic monitor, let's say, you know, prior to, during, and just after
31 any event that's over 40 people. And I know Director, you're writing another condition while I'm
32 kind of doing this, so I know you can multi-task really well, but I don't know if you can multi-task
33 by writing two conditions at the same time, but I personally would like to see, like to see that
34 one. So, any other Commissioners, do you have any other conditions, changes, additions that
35 you would like to see? Okay, no, no, all right so, Commissioner La Costa.

36
37 Ms. La Costa: Thank you, Chair. I would just like some clarification again on the holidays here.
38 They are a maximum of 100 people, except for New Year's and Christmas is that correct?

39
40 Mr. Carnicelli: I believe that's how it is, yeah.

41
42 Ms. La Costa: Okay, 'cause I just needed clarification thank you. So how do we know that
43 there are going to be a hundred people? I mean, what happens if there's a violation there?
44 Again, I'm looking at traffic and I'm looking at, you know, all the things that we have...are
45 requesting. So, thank you.

1
2 Mr. Carnicelli: Yeah, that's an enforcement thing that we can't control. Director...oh,
3 Commissioner Freitas.

4
5 Mr. Freitas: Just a quick question. With a hundred people attending and I believe only
6 25 parking stalls, is there room for everybody...for everybody else to park? Where would they
7 park?

8
9 Mr. Carnicelli: No, I believe, I believe there's a hundred spots if you look at the site map, the
10 site map it does say 100 hundred stalls.

11
12 Mr. Freitas: Okay.

13
14 Mr. Carnicelli: So, Director, do you have, have you finished crafting anything for us?

15
16 Ms. McLean: I'm getting close. I did have one question—

17
18 Mr. Carnicelli: Okay.

19
20 Ms. McLean: --in terms of the holiday list because there is February 21st has past so we don't
21 have to worry about that one, for the Friday, October 2nd event do you want to allow that or
22 should that be taken off?

23
24 Mr. Carnicelli: Friday, October 2nd?

25
26 Ms. McLean: That's the only other...(inaudible)...on the earlier list.

27
28 Mr. Carnicelli: I thought we covered this. I thought that we covered that it doesn't really matter
29 either way 'cause it's a Friday.

30
31 Ms. McLean: Well, it would be the difference between 40 participants and 100 participants.

32
33 Mr. Carnicelli: Oh, I see what you're saying, right, right, right, right. Then, I'm gonna say, let's
34 go...let's...I would say let's delete it because it wasn't included on the original list, you know, it's
35 not what was originally agreed to. Members, you guys okay with that, leaving it off the list?
36 Okay. Commissioner Freitas.

37
38 Mr. Freitas: I apologize Chair, I look at Exhibit 3, and the first paragraph says, the facility will be
39 used for meetings and various church activities, the project site has 25 parking spaces. Where
40 did you see a hundred?

41
42 Mr. Carnicelli: Oh, right. I went on Exhibit 2, the one right before that.

43
44 Mr. Freitas: Oh.

45

1 Mr. Carnicelli: And if you go to Exhibit 2 on the northern end, let's say the northwest, just
2 northwest of the...what's called the workshop there.

3
4 Mr. Freitas: Yeah.

5
6 Mr. Carnicelli: Is it says driveway and then there's if you look it says church parking
7 approximately 100 spaces.

8
9 Mr. Freitas: Oh, okay. I see that. Oh, okay.

10
11 Mr. Carnicelli: Now I don't if that also includes...actually you know what, Mr. Harris would you
12 please come, would you please unmute yourself?

13
14 Mr. Harris: Okay.

15
16 Mr. Carnicelli: On this map where you have a hundred spaces is that...there's those two rows
17 just to the northwest of the workshop—

18
19 Mr. Harris: Yes.

20
21 Mr. Carnicelli: --and then there's a bunch, is that also along the western portion, is that also
22 included?

23
24 Mr. Harris: Yeah, that—

25
26 Mr. Carnicelli: So those are also parking spots along over there?

27
28 Mr. Harris: It does. The idea is that a lot of the church activities would then you know
29 encompass some of that area as well with the medicine wheel and farm area, so not everybody
30 is always gonna park just next to the building, they would park places respective to where the
31 activity is going to occur.

32
33 Mr. Carnicelli: Yeah, I mean, is all parking doesn't have to be in one spot. I mean, I get that it's
34 also a farm and we got other places that we gotta park, so approximately in those two little rows
35 there that we're talking about, how many are there, and then how many are disbursed on the
36 saying where the western side roughly.

37
38 Mr. Harris: A, I—

39
40 Mr. Carnicelli: I don't know if you have actual numbers or not.

41
42 Mr. Harris: Yeah, I don't. I mean, I can count them, it looks like it's probably proportionately in
43 thirds, you know, a third outside of the immediate church area and then two-thirds next to the
44 building, the church structure.

45

1 Mr. Carnicelli: Great. Does that answer your question there, Commissioner Freitas?

2

3 Mr. Freitas: Yes, thank you.

4

5 Mr. Carnicelli: Okay. Thank you, Mr. Harris. Okay, Director.

6

7 Ms. McLean: Thank you, Chair. A proposed new Condition 5, that would read, that church and
8 religious activities shall, or excuse me, that church and religious activities may occur on the
9 dates listed on the scheduled provided to the Maui Planning Commission on July 14, 2020 with
10 the exception of Succoth on Friday, October 2, 2020 with a maximum of 100 participants.
11 Additionally, church and religious activities may also occur on Wednesday mornings, Friday
12 evenings, plus one other day per week except for Mondays, and except for three Saturdays per
13 year and shall be limited to a maximum of 40 participants.

14

15 Mr. Carnicelli: Nailed it.

16

17 Ms. McLean: And then an additional new condition, the applicant shall provide at least one
18 parking and traffic monitor for any event with more than 40 participants to ensure safe traffic
19 flow.

20

21 Mr. Carnicelli: So let's say, does it say...I'm sorry, did you say where 'cause I'm thinking at you
22 know at Hana Highway right, say so a traffic monitor at the entrance to the property at
23 Hana Highway cause you could a traffic monitor you know inside and that doesn't really impact
24 the community, but the entrance off of Hana Highway does.

25

26 Ms. McLean: Okay.

27

28 Ms. McLean: So, I guess next Director is to kinda go with what I think all of our concerns are
29 that was voiced by Commissioner Pali and that is water. Trying to find the condition here that
30 addresses that and is there a way with which we can reword that condition to I guess address
31 the fact that they may not have capacity?

32

33 Ms. McLean: It could be that Condition 7 already addresses that. I'll just read it in its entirety,
34 that full compliance with all applicable governmental requirements shall be rendered including
35 compliance with the requirement of the Agricultural District for uses of the property that are not
36 related to the church and State Department of Health requirements related to the individual
37 wastewater system and the private water system. Verification of compliance with State
38 Department of Health requirements shall be provided with the compliance report.

39

40 Mr. Carnicelli: So, you know, kind of I guess piggy backing on what the LUC had said, do you
41 feel as though that condition is written in a way with which, you know, we're addressing what it
42 is we think we're addressing or we're desiring to?

43

44 Ms. McLean: Yeah, it's really up to the State Department of Health to tell us about water
45 system adequacy. If a property is on the county water system then that's what the Department

1 of Water Supply does. With a private system it can be the Department of Health who regulates
2 some part of it or the Commission on Water Resource Management which protects the source.
3 Beyond those, we really don't have county level regulations for private water systems. We just
4 follow what the state agencies tell us and trust that their regulations are adequate. Now that
5 doesn't address any kind of private dispute and that, that isn't for the County to resolve anyway.
6

7 Mr. Carnicelli: And I think what we did in these conditions if I remembering too, Director, is we
8 really did try to defer to the appropriate governing body and/or, you know, statute, ordinance,
9 you know, like even with the noise, right, we just said, okay, not to exceed you know, whatever
10 that jurisdiction is, and so I think that this is kinda maybe doing it the same way going like, okay,
11 you all need to have water but we don't know what that is, DOH knows what that is, so go get
12 from DOH. I don't know, Commissioner Pali does that work, did not, would we like to—
13

14 Ms. Pali: I mean, I just—
15

16 Mr. Carnicelli: --add additional language?
17

18 Ms. Pali: Well, we're just kinda kicking the can down the road, you know, because we are privy
19 to the private agreement, other owners saying, that no, we don't want you to have...we're not
20 giving you permission and we know he needs permission to have access, but we're gonna grant
21 a permit to access that he doesn't have yet, and so that's, that's where we're hung up, I'm hung
22 up so I don't know. I don't know the answer to that but as long as I do my best to you know,
23 bring up the concern.
24

25 Mr. Carnicelli: Yeah, I mean, Director is there a way for us to try to you know, get involved or
26 mitigate the civil side of this?
27

28 Ms. McLean: Well, I believe that previously you talked about certificate of occupancy
29 requirement.
30

31 Mr. Carnicelli: Right.
32

33 Ms. McLean: The Fire Department would look at adequate water supply for fire protection so
34 that's another agency that would look to sign off on this, and thanks to Public Works for
35 reminding me of that. I would, I would defer again to Corp. Counsel to see if they have anything
36 else to add on this because it's...yeah, if there...if the owners of the system say that you can't
37 use it—
38

39 Unidentified Speaker: Put it in the check, you're--
40
41

42 Ms. McLean: I don't know how, I don't know how that would find its way through the process.
43

44 Mr. Carnicelli: Okay.
45

1 Ms. McLean: Maybe demonstrate water availability...(inaudible)...C.O. sign off.

2
3 Mr. Carnicelli: Right. No, that makes sense.

4
5 Ms. Pali: I think that—

6
7 Mr. Carnicelli: I mean if they—

8
9 Ms. Pali: Sorry, Chair.

10
11 Mr. Carnicelli: Go ahead, Kellie.

12
13 Ms. Pali: I don't...I think that we all agree that there's availability, the sticking point just to be
14 clear on the words is not that there's not availability, it's just that he's not authorized to access
15 the availability. So that's kinda the funky thing, but I'm not gonna let this...I'm just, I voiced it--

16
17 Mr. Abrams: ...(inaudible)...do you know...

18
19 Ms. Pali: --I'll default to, you know, our different agencies and the layers, and just trust the
20 process.

21
22 Mr. Carnicelli: Okay, thank you.

23
24 Mr. Abrams: May I address the water issue?

25
26 Mr. Carnicelli: No, Mr. Abrams. Is, is we're doing this right now with us and, and
27 Commissioner La Costa.

28
29 Ms. La Costa: Thank you, Chair. I'm in agreement with Kellie as far as what we have authority
30 to do and what we don't. If you signed an agreement, and you said, yes I will do this and he,
31 you know, got it when he bought the property, and two of the three which is a majority said,
32 sorry, you know, we're not gonna allow it, then, then have you just ignored the other two people
33 that they don't count on this, so it is a really big sticking point and I don't know how to get
34 around that being that it doesn't seem that the three people can sit down and hash this out so,
35 it's you know, it's a –

36
37 Mr. Abrams: There are provisions to the water agreement—

38
39 Mr. Carnicelli: Thank you. So, are there any other conditions or any other concerns that you
40 feel like we need to mitigate through this permit? Commissioner La Costa.

41
42 Ms. La Costa: Thank you, Chair. So, I just have one more question it's albeit it's not on the
43 seven, see this list of holidays and my question initially to Mr. Abrams, and it is now because it's
44 a very, very important to me in making a decision, and I want to know if they have been holding
45 church or worship activities over the past time from when they first applied for their permit, it

1 went through LUC, and now it's back at us, there have been several "holidays" that have gone
2 by and have those, have those services been going on outside a permit granting? Thank you.

3
4 Mr. Carnicelli: Mr. Abrams. Did you hear the question that Commissioner La Costa asked?
5 You're on mute right now. Did you, did--

6
7 Mr. Abrams: Yeah, the question was regarding whether we have started church activities
8 already or have been doing church services and the answer is no. We have had informal
9 gathering of our community and we've closed it way down even to that degree during this
10 proceedings, so no, we're looking forward to begin church and I want to make the point that
11 during this COVID crisis there's a need for community support and a place for people to gather,
12 so one of the things we wanted to address in the conditions is asking for approval to hold
13 socially distanced church out of doors before the certificate of occupancy.

14
15 Ms. La Costa: Thank you.

16
17 Mr. Carnicelli: Thank you. Any other questions, comments, concerns? Do we have enough
18 information to be able to make a decision? Does everybody feel so? Okay, so Tara—

19
20 Mr. Abrams: You do not have enough information because I have not—

21
22 Mr. Carnicelli: Mr. Abrams, Mr. Abrams is this, this is an ongoing thing, you keep interrupting
23 the okay, and whoever's doing share screen please stop. Guys, this is getting a little bit out of
24 control. This is a –

25
26 Mr. Abrams: May I have an opportunity to respond?

27
28 Mr. Carnicelli: formal meeting of the Maui Planning Commission. Okay, Mr. Abrams—

29
30 Mr. Abrams: To the condition.

31
32 Mr. Carnicelli: Mr. Abrams, Mr. Abrams, here's the thing, there's decorum, and repeatedly you
33 have broken decorum. It's not in your favor to continue to do this and to continue to interrupt us,
34 our proceedings, and the way with which we're conducting things, when, when you're asking for
35 our permission for something. If this is the way that you treat your neighbors—

36
37 Mr. Abrams: I totally...I respect that...(inaudible)...

38
39 Mr. Carnicelli: --okay, now you're interrupting me, you know what Mr. Abrams, now you're
40 interrupting me, okay. I'm pretty calm guy, but if this is the way you treat your neighbors, and if
41 this is the respect that you have for people, now I understand why people feel this way about
42 you. This meeting's in recess until 3:20. Meeting's now in recess.

43
44 A recess was called at 3:14 p.m. and the meeting was reconvened at approximately 3:24 p.m.

1 Due to technical difficulties, the recording of portion of the meeting from approximately 3:24 p.m.
2 to 5:04 p.m. is lost and not available for transcription.

3
4 Chair Carnicelli called the meeting back to order, and continued with the discussion.

5
6 **The following transcription in bold (Pages 51 – 55) was made from the video provided by**
7 **the applicant which they had recorded during the meeting:**

8
9 **Dr. Abrams: With regard to proposed conditions and the basis for the conditions, Sacred**
10 **Earth Assembly was gratified to see this requirement included in the January 24th LUC**
11 **order. At the Land Use Commission hearing held on November 6, 2019, Land Use**
12 **Commissioner Gary Okuda raised and discussed several very important First**
13 **Amendment Freedom of Religion issues.**

14
15 **Issue two, in the LUC order is a direct result of Commissioner Okuda’s discussion on**
16 **this topic at the Land Use Commission hearing. Commissioner Okuda specifically asked**
17 **whether other churches in Maui County had be held to specific days and times of**
18 **offering services. He asked, why they were being...he asked about the restrictive**
19 **conditions identified by the Maui Planning Commission, if they were necessary, and why**
20 **they were being imposed on the Sacred Earth Assembly. Commissioner Okuda raised**
21 **the issue how when it comes to churches if there are any restrictions imposed by the**
22 **government, it must show that the restriction must be imposed in order to serve a**
23 **compelling government interest. Further, the restriction imposed must be the least**
24 **restrictive means possible to achieve the compelling governmental interest.**

25
26 **In light of this First Amendment issue, Sacred Earth Assembly requests that the**
27 **restrictive conditions which Maui Planning Commission intends to impose upon Sacred**
28 **Earth Assembly and it’s Special Use Permit 1, that they, the Maui Planning Commission**
29 **identify and “make specific findings with regard to the proposed conditions,” due to the**
30 **importance and the basis of them certainly.**

31
32 **So, with respect to the Planning Condition 1, stating the Special Permit will be valid for**
33 **one year, we believe that a one-year term is too restrictive and could unnecessarily**
34 **hamper the efforts of Sacred Earth Assembly to get its ministry established. Given the**
35 **length of expense of the Special Use application and hearing process which has**
36 **occupied a great deal of time, money and energy over more than three years, Sacred**
37 **Earth Assembly asks the Maui Planning Commission to reconsider granting the**
38 **requested SUP for a period of three to five years. Especially after the devastating**
39 **impacts of COVID-19 on this island and everybody on it major investments have to be**
40 **made to operate a church in a pandemic. We need time to build the ministry through**
41 **strategic planning, fund raising, and program development. To insist that the church**
42 **return in one year for additional scrutiny without cause is unduly restrictive and is a**
43 **burden on Sacred Earth Assembly.**

1 Regarding Maui Planning Commission 10, that a Certificate of Occupancy shall be
2 required for all church related structures prior to the initiation of operation and the
3 requirement of Condition 4, that any amplification of sound and music at an event shall
4 occur inside, SEA recognizes the importance of having approved fire protection and
5 Certificate of Occupancy prior to holding church services in the church building.
6 However, this process will take considerable time and expense, delaying the beginning
7 of the services SEA wishes to provide the community. Because there is a large, flat,
8 grassy lawn out in front of the church building, SEA will be able to offer interfaith
9 services outdoors with ample social distancing as soon as its permit is approved with
10 this change that we're requesting. With congregants appropriately spaced...spread out,
11 transmission of the virus will be eliminated. However, some sound amplification will be
12 required in order for everyone to hear, so SEA asks that the stipulation that all
13 amplification be limited to indoors be removed from the approved conditions. Especially
14 in these times of social isolation and despair associated with COVID-19 it is more
15 important than ever for people to have a place to find spiritual refuge and community
16 connection. In my practice as a psychologist I am seeing a lot of people with anxiety
17 disorders and depression and suicidality coming up because they feel socially isolated
18 and their future is uncertain in terms of their work and livelihood.

19
20 SEA requests that it be able to commence church related activities immediately upon the
21 permit being approved by holding such services outdoors on the land included for
22 church use with amplification. Services are to be held in accordance with Maui County
23 COVID-19 Guidelines about social distancing and in compliance with standard sound
24 decibel ordinances. The COVID-19 pandemic has created an immediate need for our
25 church to provide safe outdoor services especially when it is impractical for most Maui
26 County churches to ensure the kind of social distancing that is required. As an interfaith
27 ministry, SEA is ready to welcome people from all denominations who may be hesitant or
28 unable to attend their usual indoor church services.

29
30 Regarding the Maui Planning Commission, Condition 5, as a family friendly ministry it is
31 important that we are available to meet on the weekends since that is when families are
32 more likely to be able to attend together. Sacred Earth Assembly asserts its right to
33 practice its religion and hold services at times that meet our congregation's needs. In
34 consulting with our congregants from different faiths many Christian congregants
35 requested family friendly programming on Sunday afternoons following Sunday morning
36 services offered by other churches in the community.

37
38 For people with Jewish background who celebrate Shavuot it is traditional to meet for
39 prayer from Friday evening through Saturday evening as such we respectfully submit
40 that the current MPC imposed limit to allow church activities only six Saturdays in a year
41 or now three is far too restrictive on the practice of our religion. We ask that the
42 Saturday restriction be removed.

43
44 Furthermore, during the COVID crisis SEA asserts that it will abide by official guidelines
45 regarding approved interior and exterior group size, otherwise, SEA requests that it be

1 treated the same as other churches in Maui County in which the maximum number of
2 congregants is defined by the Certificate of Occupancy determined by the Fire
3 Department.

4
5 Regarding MPC, Condition 4, regulating hours and noise levels, SEA asks that it be
6 granted the same consideration as any of its neighbors in agriculturally zoned areas
7 regarding the curfew time for amplified sound which in our understanding is 10:00 p.m.
8 rather than 9:00 p.m. termination time imposed by the MPC.

9
10 Similarly, we respectfully submit that prohibiting church activities before 8:00 a.m. is
11 inappropriately restrictive. In the Buddhist, Hindu, and Daoist traditions meditation and
12 energy cultivation exercises are often practiced in the early morning hours just after
13 dawn. Some congregants may wish to practice before going off to a typical work day. If
14 regulated at all, we request that church activities be allowed to start at 6:00 a.m. It is
15 important to note that in agricultural areas farmers routinely start up loud diesel tractor
16 engines and generators before dawn so there is no reason to limit much quieter and less
17 impactful early morning church activities.

18
19 LUC Issue 3, the MPC will make specific findings whether or not the actual use of the
20 church is related to any agricultural use of the property. I already addressed that.

21
22 LUC Issue 4, the MPC shall make specific findings as to whether or not traffic impacts
23 need to be addressed and finding made with regards to those matters. The Department
24 of Transportation approved the SEA's SUP1 and stated in their recent letter that no
25 significant traffic impacts are anticipated. The unlikely characterization of it being a
26 hairpin turn, there is approximately a thousand feet of visibility in either direction, maybe
27 1,001 and 800 in the other near the farm's Hana Highway driveway entrance. In the past
28 13 years that we've occupied Ahimsa Sanctuary Farm to our knowledge there have not
29 been any car accidents or collisions in the immediate entrance area. SEA congregants
30 will be instructed to carpool as much as possible, to drive slowly and to put on their turn
31 signals well ahead of the driveway entrance and I'm not opposed to having a traffic
32 monitor at larger, certain religious activities as well.

33
34 LUC Issue 5, the MPC shall make a finding with regards to the impact on the shared
35 water system whether it is adequate for the project without causing detriment to the
36 other users. A study has been submitted and it's in your record from engineer, Neil
37 Nishida after his review of the water system and its history of use. In it, Mr. Nishida
38 described his finding that the well has been providing ample water for the subdivision's
39 needs when running at about 50 percent of its capacity.

40
41 Ms. Takayama-Corden: Ten minutes.

42
43 Dr. Abrams: Additional demands for church use even if the congregation grew will be
44 negligible and there is no evidence that it might cause detriment to other users. SEA's
45 efforts to reach out to the neighbors who are a party to the water agreement have been

1 met with resistance but they have filed no formal legal complaints and have not sought
2 to resolve their concerns as stipulated in the water agreement through mediation or if
3 necessary, binding arbitration which we're completely willing to engage in. They have
4 provided no evidence to back up their concerns about how SEA's water would use would
5 negatively affect them and Neal Nishida, the engineer study, provides counter data to
6 that. We will continue to pay for any water we use by paying our proportion share of the
7 well pump electric bill based on the consumption indicated by the water meters.
8

9 LUC Issue 6, the MPC shall make specific findings regarding the history of zoning
10 violations. That has been addressed already, they've all been resolved. A review of the
11 record shows that all recent complaints have been received, that they originated with
12 Michelle Drewyer, a difficult neighbor who has exhibited a pattern of harassment of our
13 family over the past 13 years. Ms. Drewyer's complaints have been spurious, have been
14 checked out and closed by the Planning Department. There is no reason that such
15 complaints should impact the conditions for this project. SEA intends to comply with all
16 special use permit guidelines and to remain responsive to communications from
17 neighbors.
18

19 In summary, Sacred Earth Assembly is deeply grateful for MPC's approval of its Special
20 Use Permit in September 16th meeting. SEA understands and accepts most of the
21 conditions described when the SUP was approved. Consistent with the First Amendment
22 issues raised by the State LUC SEA asks only for reexamination of the few of the
23 conditions stipulated by the Maui Planning Commission pursuant to the First
24 Amendment. Sacred Earth Assembly is asking the Maui Planning Commission to specify
25 the factual basis and justification which each restrictive condition is being imposed, for
26 example, only a few Saturdays. SEA is asking the Maui Planning Commission to adjust
27 the language to reflect the least restrictive options for governmental regulation of our
28 church activities. We wish to remain flexible so that we can respond to the needs our
29 community and not be chained to specific days and times for services. I don't believe
30 you ask that of any other churches.
31

32 Most importantly, we ask the MPC to allow Sacred Earth Assembly to begin serving the
33 Maui Community without further delay beginning with socially distanced outdoor
34 services. We have a large lawn out in front of the temple where we can allow for people
35 to bring their blankets and be ten feet apart and participate, but it does mean that we
36 would need some amplification so that the people could hear.
37

38 Thank you for taking time to give this matter, Sacred Earth Assembly's needs, and the
39 value it offers to the community careful consideration. Again, I apologize for any
40 intensity or interrupting, it's just that many issues were raised and I didn't have a chance
41 to address particularly the water issue. In the water agreement it says that no lawsuits
42 are possible, that any disputes are to be mediated or be taken to binding arbitrary and we
43 will abide by that, and if we need to, we have a water tank, we can have the water
44 delivered to serve the needs of the temple, the church, Sacred Earth Temple, so that
45 should not be a reason to decline us today.

1
2 **I know this is difficult. Thank you for your careful consideration. Please recognize that**
3 **we're doing something worthwhile for the community. Thank you so much.**

4
5 **End of transcription of the video provided by the applicant.**

6
7 The following motion was then made after discussion:

8
9 **It was moved by Mr. Thompson, seconded by Mr. Carnicelli, and**

10
11 **The Motion to Approve the Land Use Commission Special Permit with the**
12 **12 Original Conditions, with Amendment to Condition 5 and the Addition of a 13th**
13 **Condition as Discussed, FAILED.**

14 **(Assenting – D. Thompson)**

15 **(Dissenting – K. Freitas, K. Pali, S. Castro, C. Tackett, P. D. La Costa)**

16
17 A motion was then made by Mr. Freitas and seconded by Ms. La Costa to Deny the Land Use
18 Commission Special Permit.

19
20 Discussion followed with Members noting it did not meet Criteria 2, the desired use will not
21 adversely affect surrounding property; and Criteria 5, the land upon which the proposed use is
22 sought is unsuited for the uses permitted within the district; and their concern over the water
23 issue as the applicant did not have permission from the other two parties in the water
24 agreement.

25
26 The Motion was then put to a vote.

27
28 **It was moved by Mr. Freitas, seconded by Ms. La Costa, and unanimously**

29
30 **VOTED: To Deny the Land Use Commission Special Permit.**

31 **(Assenting – K. Freitas, P. D. La Costa, K. Pali, C. Tackett, S. Castro,**
32 **D. Thompson – Abstain)**

33
34
35
36 Respectfully Submitted by,

37
38
39 CAROLYN TAKAYAMA-CORDEN
40 Secretary to Boards and Commissions II