

**MAUI PLANNING COMMISSION
REGULAR MINUTES
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 86-89) of Item C.2 has been transcribed from a video provided by the applicant

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Lawrence Carnicelli at approximately 9:05 a.m., Tuesday, July 14, 2020, online via BlueJeans; Meeting ID: **886 323 602**

Mr. Carnicelli: Good morning everyone. It is 9:05 a.m., on Tuesday, July 14, 2020, and the Maui Planning Commission meeting of said date will be called to order. First order of business is establishing quorum and having roll call. Also in attendance with us is Commissioner Christian Tackett, Vice-Chair Christian Tackett.

Mr. Tackett: Good morning.

Mr. Carnicelli: Commissioner Dale Thompson.

Mr. Thompson: Aloha and good morning Chair.

Mr. Carnicelli: Commissioner Stephen Castro. Good morning.

Mr. Castro: I guess you couldn't read my lips. Yes, good morning Chair and everyone.

Mr. Carnicelli: Yes, Commissioner Kawika Freitas.

Mr. Freitas: Aloha, good morning everyone.

Mr. Carnicelli: Good morning. Commissioner P Denise La Costa.

Ms. La Costa: Aloha kakahiaka kakou.

Mr. Carnicelli: Good morning, and Commissioner Kellie Pali.

Ms. Pali: Good morning, Chair.

Mr. Carnicelli: Good morning. Also in attendance is Director Michele McLean, I didn't throw in the Chouteau in this time.

Ms. McLean: Good morning Chair and Commissioners.

Mr. Carnicelli: Good morning. And believe Corporation Counsel, Michael Hopper is also in attendance.

Mr. Hopper: Yes, good morning Chair.

Mr. Carnicelli: Good morning. And just for the record so everybody knows, Tina Gomes has resigned. I believe it was as of June 24th last month, just so everybody knows that she has tendered her resignation to the Mayor and we're looking to replace her as soon as we can so that means we're still seven, and I just want to again, say thank you to the seven of you or the six of you for your dedication and doing this 'cause I know it's actually more challenging with less people, and so anyways, thank you all for you know, your service in doing this. So, but...so, anyways, so Tina is no longer on the agenda as you can see.

Also, for everybody as the Director had said, please everybody mute your video and your audio. As you come forward to testify, we can unmute yourself and either see you and/or hear you and do that. Also, as the Director also said, the chat function is not to chat, it's actually to...if you want to testify on an item please do so, via private chat to Director Michele McLean and she will put you up on your wish to testify. How we do this at the planning commission is we hear each item individually first and then we have testimony after that item. So, if you want to testify on an item that's not first, you'll have to wait until that item comes up and then you can testify at that particular time. Director, is there anything else I'm missing? I feel like I'm missing something. No. Okay, well with that being said, then we'll go ahead and start with our first item. Director.

Ms. McLean: Thank you, Chair. Commissioners, you have one public hearing item today and that is a request from Leila Monroe and Simon Dunne for a State Land Use Commission Special Permit in order to operate this is two dwelling, six-bedroom short-term rental home in the State and County Agricultural Districts located at 910 East Kuiaha Road, at TMK: 2-7-012:186 in Haiku. I believe the applicant has modified that request to one dwelling and four bedrooms, but the Project Planner, Tara Furukawa can go over that and the other details.

Mr. Carnicelli: Great. Thank you, Director. Tara. You gotta unmute yourself Tara.

B. PUBLIC HEARINGS (Action to be taken after each public hearing.)

- 1. LEILA MONROE AND SIMON DUNNE requesting a State Land Use Commission Special Permit in order to operate a two dwelling, six-bedroom short-term rental home in the State and County Agricultural Districts located at 910 East Kuiaha Road, TMK: (2) 2-7-012:186, Haiku, Island of Maui. (SUP2 2019/0019) (T. Furukawa)**

Ms. Tara Furukawa: Okay, there we go.

Mr. Carnicelli: There you go. Now we got you.

Ms. Furukawa: Okay, good morning Commissioners. This item has come to you for review because the applicant wishes to operate a four-bedroom short-term rental home in one farm dwelling in the State and County Agricultural Districts. There are two farm dwellings on site and

initially the applicant was proposing that the two dwelling with six bedrooms be short-term rented. In order to mitigate neighbor and Department concern about possible adverse impacts, the applicant decided to amend the scope of the STRH request from six bedrooms and two dwelling to four bedrooms in the main dwelling. The second farm dwelling will continue to be long-term rented. The applicant, Leila Monroe is present and she wanted to speak about her application.

Mr. Carnicelli: Okay.

Ms. Leila Monroe: Okay, let's see. Good morning Commissioners, can you all hear me okay?

Mr. Carnicelli: We can. I just need to ask you one...please identify yourself just for the record?

Ms. Monroe: No, problem. So, my name is Leila Monroe.

Mr. Carnicelli: Okay, Leila, and I have one other question for you.

Ms. Monroe: Sure.

Mr. Carnicelli: Do you promise to be truthful?

Ms. Monroe: Yes, I do.

Mr. Carnicelli: Okay, please proceed.

Ms. Monroe: Okay, thank you. So, yeah, I just wanted to offer a few key points about our application. First, I wanted to offer a sincere mahalo to Tara for her patience and time in working through this application, it was a long process. As she mentioned, there are two farm dwellings on the property that were both permitted as short-term rentals for the five years prior to the purpose of the property, we took ownership we canceled the existing reservations and there was a fair bit of complexity I guess from my perspective to the application because the STRH rules had changed shortly thereafter...shortly after our application, and there was concern from one of our neighbors. She took an approach that you'll probably hear about later in this review, and I then I just wanted to offer, as you may know I grew up on Maui and my immediate and much of my extended family are on the island. My husband, Simon and I have two children under three, and although our work it prevents us from returning full-time to the island at this time, at this date, we spend a significant portion of the year on the island and we hope to be able to relocate permanently. So, when we're not on the island we appreciate the opportunity to share our home with visitors who are looking for community-based experience for their stay and who are likely to stay for longer periods of times or getting a taste of real life in Haiku.

When the...just a side note, when the application notice sign was posted on the road, we received many inquiries from local families who were looking for more affordable, closer lodging options for their off-island visitors like grandparents or folks visiting for a wedding or graduation, situations like that. So, we do feel that the limited carefully permitted short-term rentals that Maui does authorize for communities such Paia and Haiku are fair and balanced...a fair and

balanced way to allow the local community and economy to benefit from tourist visitation while ensuring as Tara said, there's sufficient long-term rentals available.

So, my understanding is this hearing is in regard to the issuance of the special use permit for the agriculturally zoned property and I just wanted to offer that we are committed to maintaining and continually improving the agricultural use of the property. Since we became owners in 2018, we've been working with Adrian Ledesma and Kurt Wasson to improve the agricultural functioning of the property, adding diversity to the vegetables and fruits grown there, removing invasives and focusing on natives.

And then finally, although...as you see from the staff report the STRH permit I guess will be reviewed administratively after the decision on the SUP2 by the Commission today. I do want to briefly state that we have made sincere efforts to ensure that our use of our home is amenable to our neighbors. We have great relationships with most of our neighbors and we have honestly tried our very best to listen and work with the one neighbor who has taken this application as an opportunity to ask for an extensive list of things from us. As Tara...for example, as Tara noted at the outset and in her report, we amended our application. The previously permitted configuration did include both of the farm dwellings but we were fine with removing one of the farm dwellings from the application to respond to that concern. We've also, you know as another example, at that same neighbor's request that we divert the rainwater flowing from our property to her drive, we invested a huge amount of time and funds worked with a respected Haiku civil engineer to divert the rainwater runoff not just from our property but from the multiple properties mauka from ours. So, I think Tara's staff report is very thorough so I don't want to spend the commission's time by repeating any of that information, but if there are any questions unanswered at the end of testimony, I would be happy to address those and otherwise, I thank you very much for considering the application.

Mr. Carnicelli: Thank you, Leila I appreciate it. So, I guess at this point in time we'll go ahead and open up the floor for public testimony. Director, has anybody indicated to you they would like to testify on this particular item?

Ms. McLean: No, Chair, no one has indicated they wish to testify on this item.

Mr. Carnicelli: Okay, so if there is anybody that would like to testify please unmute yourself and if you would like to, also unmute your video and step forward if you would like to testimony on this particular item. Going one, going twice, okay, so if there are no objections, we're gonna go ahead and close public testimony on this item and we will open up the floor for...Tara, did you want to add anything that Leila did not or are we, just go to Q&A?

Ms. Furukawa: Q&A is fine.

Mr. Carnicelli: Okay, questions, comments from the Commissioner? Any need for clarification?
Ms. La Costa.

Ms. La Costa: Thank you, Chair. And thank you also for appearing today Leila. My question is has the home been used for short-term rental from the time you've bought it until today's hearing?

Ms. Monroe: No, it has not.

Ms. La Costa: Okay, and I'm looking at this, I'm going back and forth reading the threads between you and your neighbor. Have you ever sat down with a mediator to discuss any of these, I want this, sorry you can't, back and forth? I had to read it three times to figure out who the players were.

Ms. Monroe: Yeah, and I would offer that that is not, you know, the entire extent of the communications. We have tried to bring in sort of third-party support in working through some of these issues. My understanding was that Ms. Hemming was not really interested in that, but I think more importantly, you know, any time she made a request of us, we tried to really you know follow through with that request. You know, so for example, she said okay, this palm tree on your property I think it's leaning over too far into my driveway, you take it down, I said, okay, sure we'll take it down. And then you know, she says well, I don't like the way you took it down, and then you know, the drainage for example, I said okay, I that component is included in the email, happy to take a look at this drainage issue, but like you know we would like to bring in a civil engineer, you're asking us to do a lot of work, grading, cutting a hole through a bamboo windbreak, et cetera, I'd like to have some professional outside consultation before we make a plan, so you know, we brought in a civil engineer who had done much of the work on the property and is very familiar with Haiku, he lives there. So, we tried to bring relevant experts anytime there was, you know, what felt like a valid request, but there were also things for example like, she said, you know I don't want any fireworks on the property, I said okay, no problem but no one's lit off fireworks, and furthermore, she lit a fire on her property in August that caused the Fire Department and the Police Department to come, she was issued a citation. So, it's hard to I think express the extent of the difficulty we've had with her, but you know, she's, she's pretty well-known I think on the island as someone who is very difficult to communicate with. So, you know, I've tried my best to meet with in person with her and to bring in outside experts on whatever issue was in question.

Ms. La Costa: Thank you, I appreciate that. I'm looking at this map that you have, and which of these homes are you not going to use or is not going to be in the permit? Is it the one going off East Kuiaha or is it the one connected with the driveway with Ms. Hemming?

Ms. Monroe: Historically, the home that has four bedrooms which does utilize the easement drive had been used as the short-term rental home. So, we have a family living in the 910-square foot second farm dwelling which is the one that you access directly from East Kuiaha, so that would be the dwelling that would not be utilized and they would remain as long-term tenants.

Ms. La Costa: Thank you, I appreciate that. That's all for now Chair, thank you.

Mr. Carnicelli: Thank you. Anybody else have any questions for the Department and/or Ms. Monroe? Commissioner Freitas.

Mr. Freitas: Thank you, Chair. A couple of questions for Ms. Monroe. It says here that the easement is the responsibility of...the driveway, I'm sorry, the driveway easement is the responsibility of your neighbor is that correct?

Ms. Monroe: That's correct. That's the language that is in the easement deed, the document, but we have nonetheless contributed to purchasing gravel or doing repairs, so you know, technically it is not our responsibility to maintain that drive which was the point I was initially making but as a matter of you know, trying to work together we've been, you know, we've contributed and are willing to do things like she's requesting us...the week before this hearing she was like I want you to put up a solid gate and it needs to be electronic and we want some new signage, and you know, to be honest it felt like this has been her entrée to ask us for lots and lots of things that...I mean, I'm willing, we're willing to do it, it's okay, but it's not necessarily I think required in order to make it a safe and—

Mr. Freitas: It seems like you've been trying and you have been contributing even though it wasn't your responsibility for that's great.

Ms. Monroe: That's my perspective, yeah.

Mr. Freitas: I do also see...there was a complaint about that coconut tree, it's leaning the wrong way, dig it up, turn it the other way, but when I look at the picture that coconut tree is next to someone else's house not on, near the driveway or there is a coconut tree on that driveway.

Ms. Monroe: There was a coconut tree and we did remove it, but then after we removed it, that was the one she said, no, no, I wish you had dug it up and turned it, and I was like, honestly that's not really something you can do with a coconut tree that was leaning at that angle, and so, you know that was an example of where I was like, we're trying here.

Mr. Freitas: One more thing, one of letters of opposition talked about noise and I thought was...just wanted to ask you, what will be the noise rules for your occupants?

Ms. Monroe: And I think that maybe is from Mr. Wallace and he was referring to road noise, but regardless we—

Mr. Freitas: No, no, it was the one that said there's people partying, a party of eight partying late at night, that one.

Ms. Monroe: Yeah, okay, Ms. Hemmings, yeah, she was referring to I think prior to our ownership that there had been I think some people having a party, and we will absolutely have quiet hours. I think, you know, we have a chance to write new guest rules if we receive this permit, so you know, I tend to think like 9:00 p.m. to 9:00 a.m. make sense, but we're amenable if there are suggested hours that we should make quiet hours. The other thing is that by having that family onsite they're able to verify like, you know, your guests are being loud or and they need to be you know asked to leave or everything is fine. There's also been a number of situations where there's a house next to ours and Ms. Hemmings where I've heard them partying till two in the morning and it was extremely loud and then she messaged us in the morning and said you guys were super loud, and I was like it wasn't us, we have toddlers, like it

was the neighbors. So, I think it's important to have communication and to, you know make it clear that we absolutely want this to be quiet, it's a neighborhood, we don't want...we do not want people partying in our house, so those will be the rules.

Mr. Freitas: Thank you.

Ms. Monroe: Thank you.

Mr. Carnicelli: Director, what...in the STRH permit there's typically the, you know, it's gonna be handled administratively, what'd the typical hours of operations that are part of that?

Ms. McLean: I can look that up real quickly, Tara might know it off the top of her head, but I can look it up.

Mr. Carnicelli: But they're there, they are there?

Ms. McLean: There are quiet hours.

Mr. Carnicelli: As part of the permit.

Ms. McLean: They call it quiet hours, not hours of operation 'cause obviously people stay there every night, but there are quiet hours.

Mr. Carnicelli: Right, and that's part of the permit, you know, and anyways, yes, so, just so everybody knows that that is actually part of the permit not part of the SUP that we're dealing with today, so...but that's a good question Kawika. So, does anybody else have any questions for the Department and/or Ms. Monroe? Commissioner Pali.

Ms. Pali: I think this might be for staff planner. I think they introduced that there might have been a change and I just wanted to notate the change, my thought that I heard they were gonna keep one unit in long-term rental can they just clarify that please?

Ms. Furukawa: Yes, so the second farm dwelling off of East Kuiaha is the one that will be maintained in long-term.

Ms. Pali: Great. I think that's a smart move. Thank you.

Ms. Furukawa: I wanted to add also that the County rule is 9:00 p.m. to 8:00 a.m. for quiet hours.

Mr. Carnicelli: That's, okay. Sounds right, thank you. Any other questions at this time? Commissioner La Costa.

Ms. La Costa: Thank you, Chair. Ms. Monroe, do you have a set of bylaws that go with this condominium project or are you operating strictly off of the CC&Rs.

Ms. Monroe: We only have the CC&Rs and one of the things that was in discussion at one point is Christina Hemming asked, she said, actually I want to abolish the CC&Rs and I said, okay, but we can do that, and so we agreed I would hire an attorney and we did that and we wrote the terms to abolish the CC&Rs and then she changed her mind and didn't want to participate in that process and wouldn't contribute to the attorney's fees, so yeah, right now we just have the CC&Rs.

Ms. La Costa: This question is for Mr. Hopper, Chair.

Mr. Carnicelli: Mr. Hopper.

Mr. Hopper: Yes.

Ms. La Costa: Is it possible to negate, abolish, do away with the CC&Rs in this situation?

Mr. Hopper: The CC&Rs and whether or what they prohibit or not are generally not the purview of the County Planning Commission in granting the permit. Furthermore, I can't give legal advice to private landowners on their rights with respect to CC&Rs that's for them to get with their attorneys on.

Ms. Monroe: If I could add just one point on the CC&Rs, they actually explicitly permit, they do allow for short-term rentals, so she was party to those CC&Rs and as I mentioned the previous owners did have a short-term rental and so they are, they do allow for short and long-term rentals.

Mr. Carnicelli: Any other questions from the Commission? Any need for clarification? Seeing none, then Tara, would you please give us the Department's recommendation?

Ms. Furukawa: So, there are no permitted STRH or B&B operations within 500 feet of the property. As of March 31, 2020, there were 44 permitted STRH and the cap is 55 for the Paia-Haiku Community Plan Region. There are 51 permitted B&Bs in the region and the cap is 88. There are no open requests for service. There was one letter of support and two protest letters from property owners within 500 feet. The applicant has attempted to work with the neighbor immediately adjacent, that's Ms. Hemming, to alleviate concern and the communication is included as Exhibit 12 of the staff report. The application meets the criteria for SUP2 permit, therefore, the Department's recommending approval. The Department will then approve the STRH permit administratively, and we also request that the Commission authorize the Director of Planning to transmit the decision and order on behalf of the Planning Commission.

Mr. Carnicelli: Great. Thank you, Tara. Can I have a motion from the floor.

Ms. La Costa: So, moved.

Mr. Carnicelli: So, Commissioner La Costa moves to approve as recommended by staff is that correct?

Ms. La Costa: That's correct, sir.

Mr. Castro: Second.

Mr. Carnicelli: Seconded by Commissioner Castro. Discussion on the motion please. Commissioner La Costa.

Ms. La Costa: Thank you, Chair. Having read through everything including the letters of protest I just feel that Ms. Monroe and Mr. Dunne have done everything that they possibly can and then some to mitigate all the issues. She seems very responsible and I think that being that you have a review period for your first SUP segment that it would be prudent to allow the permit at this time. Thank you.

Mr. Carnicelli: Thank you, anybody else? Commissioner Freitas.

Mr. Freitas: Yeah, I copy fellow Commissioner La Costa in that they have worked with their neighbors but also with the overall recommendations and suggestions. I was pleased to see that it was moved from two dwellings to one on the permit and for that reason, I am supportive of this approval.

Mr. Carnicelli: Thank you, anybody else like to speak to the motion. Even though there's a motion on the floor I just want clarification Director, we don't need to make any changes since the application changed, we don't need to do anything with our end of the permit, you know what our intent is as far as the approval of the STRH permit correct?

Ms. McLean: Thank you, Chair. Yes, it's clear on the record that if the Commission does approve the motion to issue the State Special Permit that that would be for one dwelling and four bedrooms.

Mr. Carnicelli: Great.

Ms. McLean: And the STRH would obviously have to follow that.

Mr. Carnicelli: Great. Mr. Hopper.

Mr. Hopper: Just to clarify, I think the staff report is corrected to the narrower so if you, if you do adopt the staff report as is, I think that's what you would be approving. I know the agenda is a little broader but the staff report as I look at and maybe Tara can confirm does look like it talks about that it's only in one dwelling on two acres of land, so if that's the document you're adopting I believe that would be adequate.

Mr. Carnicelli: Great. Thank you. Any other discussion on the motion? Seeing none, Director.

Ms. McLean: Chair, the motion on the floor is to approve the one dwelling, four-bedroom State Special Permit for short-term rental use subject to the conditions in the staff report.

Mr. Carnicelli: All those in favor, please raise your hand. That is one, two, three, four, five in favor. Against? And abstaining? So, we have Commissioner Tackett abstaining, all other is we have five ayes, so congratulations Ms. Monroe you got your Special Use Permit.

Ms. Monroe: Thank you very much Commissioners.

Mr. Carnicelli: Continue with your process.

Ms. Monroe: Thank you.

Mr. Carnicelli: You're not done yet.

Ms. Monroe: No, but this is a major hurdle, thank you very much.

Mr. Carnicelli: You're welcome.

Ms. La Costa: Excuse me, Chair. I believe that—

Mr. Carnicelli: Yes?

Ms. La Costa: I beg your pardon, I believe that Commissioner Tackett did vote, he just kinda went like this across the screen. Could you clarify that please? No, you didn't vote, oh, I beg your pardon, sorry.

Mr. Tackett: No, I didn't vote. And so, I didn't vote because it's still kind of a gray area with the conditions we're in, but I understand that they put in a lot of time and effort and it is our purview and it's not out in Hana and they went through all of that stuff, so although I think this is the wrong time and place to be putting those kinds of people in people's personal home, I think, I think that after they put that kind of effort into making something like that happen, that it's not place to rain down on it because of much the same as what the stance you guys took, I read it the same way, I'm just kind of weary of the times and the dangers associated with them for the particular use that we continue to process and wondering if that's ever gonna change or if there's anything in the works with that or if we're just gonna continue to keep making tourist destinations into the residential areas with the outbreak the way it is, so, that's why I abstained, but thank you, thank you for checking with me.

Ms. La Costa: Apologize, Chair. Thank you.

Mr. Carnicelli: Thank you, Commissioner Tackett.

It was moved by Mr. Freitas, seconded by Mr. Thompson, then

**VOTED: To Approve the One Dwelling, Four-Bedroom State Land Use Commission Special Permit for Short-Term Rental Use as Recommended by the Department.
(Assenting – P. D. La Costa, S. Castro, K. Freitas, D. Thompson, K. Pali, C. Tackett – Abstain)**

Mr. Carnicelli:(audio feedback)...everybody needs to mute themselves please. Director.

Ms. McLean: Thank you, Chair. Next under Unfinished Business, we have two items, I think Chair if it's okay with you, I do want to note at this time, the second item under Unfinished Business which is the Sacred Earth Assemble request Corporation Counsel will speak to that when the item comes up but testimony will not be taken on that item, so people are welcome to watch the meeting but testimony will not be taken. I wanted to let people know that, and then further on the agenda under Communications, Item D.2, which the Lance Collin's request relating to the Grand Wailea, Mr. Collin's withdrew that request last night so there is nothing for the Commission to take up today. You can certainly discuss the details of it if you wish since it has been agendized but for those who are watching or who might be able...who might be interested in testifying that request has been withdrawn just for people's information who are tuning in. Thank you Chair.

Next on the agenda under Unfinished Business is County Resolution 20-27 referring to Commission a proposed bill to amend the Comprehensive Zoning Ordinance relating to Short-Term Rental Home Permits on Maui and Lanai. This is the third time that you folks will be discussing this item and Jacky Takakura is the Department lead, and I'll turn it over to Jacky to see if she has any other comments, but otherwise this would be open to the Commission for discussion.

C. UNFINISHED BUSINESS

- 1. MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, transmitting County Council Resolution 20-27 referring to the Maui Planning Commissions a Proposed Bill to Amend the Comprehensive Zoning Ordinance Relating to Short-Term Rental Home Permits on Maui and Lanai. (J. Takakura) (Recessed from the June 9, 2020 meeting and deferred from June 23, 2020 meeting)**

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/1127/Legislation---Proposed> and is summarized as follows:

Section 19.65.030.R. is proposed to be amended to reduce the number of short-term rental home permits per community plan area, with the exception of the Kihei-Makena community plan area for which no change is proposed.

Mr. Carnicelli: Yeah, I guess is I believe that, I believe that there were what, six of us here, we let Commissioner Pali actually have a birthday and she's actually missed a meeting for her birthday which we allowed, but Kellie did you have a chance to review the record and all the discussion and presentation and everything like that?

Ms. Pali: Short answer, yes.

Mr. Carnicelli: Okay, great.

Ms. Pali: I did, Chair.

Mr. Carnicelli: So then I guess at this point in time, you know, I guess...Jacky if you've got...if there's new information from last meeting to this meeting I'll be more than happy to...

Ms. Takakura: Good morning Chair and Members, no I don't have any further information. I had prepared the presentations into PDFs...report...Hopefully if you needed to review anything it was there for you, but I don't have any further information. Thank you.

Mr. Carnicelli: Thanks, Jacky. 'cause I mean I think we've exhausted this one as far as...but if you want further discussion we can do that. I think where left last time was we had a 3-2 vote without Kellie or I casting votes to leave the caps as it, and then I think we had a 3-2 to move the caps as per the recommendation. So at this point in time, maybe we'll, we'll start again if somebody would like to make a recommendation we'll start there for a motion for a recommendation. Commissioner Pali.

Ms. Pali: Am I able to participate in discussion at this point or are we just gonna go straight to motions?

Mr. Carnicelli: No, you can, you can discuss them. We don't have to...I'm just trying to...if nothing else then we can go as far down the rabbit hole as we want, I just didn't know how much everybody's...that you know you weren't here last time, so I think that it would be appropriate for you to share what it is that you think and where you're coming from on it 'cause we all you know, shot a lot of bullets at it.

Ms. Pali: Yeah, I actually if you allow Chair, I would like to just share my perspective. After listening, I'm kinda one of those that listen to it over and over and over and over, I take notes and then I go back into the recording so you guys sat through it for the many hours, but you know I was able to listen and I just would like to share with you my perspective after listening to all the different sides which I really think is important as commissioners that we remain flexible and then I would like to just give my perspective on things I feel were not maybe addressed and so, after taking all that information this is kind of in summary I'm learning not to be long winded, in summary this is my perspective before we vote.

Right off the gate number one, what I do like about getting permits through the current process is that we can manage it. I think this is really key piece that we need to focus in on. When an owner wants to do vacation rentals, when they go through the current process they...we get an opportunity to know who they are, where they live, the neighborhood gets an idea immediate neighbors in that surrounding area get notice that this is what they want to do, and if, if they get approved, the minute that they violate let's the complaints I hear are loud noises, stealing our neighborhoods, I work at a hotel, I wanna go home and not deal with visitors. If once the issue, the permit's issued and these problems exist they can...they have a right to complain, they have a right to call in and record that there are things that are disrupting their life and then we have the ability to see the RFS and say, hey it didn't work out like we thought, your noise factor is out of control and we can shut it down. This is a management process and I think we're forgetting

that part of doing this is so we can manage these people wanting to participate. That's number one.

Number two, is I'm always really worried about taking the people's voice away from them and forcing what we believe lifestyles should look like onto people, and I'm gonna tease that out in just a few short sentences. Three large complaints I heard was we don't have short-term rental...we don't have affordable, affordable long-term rentals and it's stealing affordable long-term rentals. Well, now that this commission, I can't speak for past commissions, but now that this commission is realizing that you know, much more about the problem potentially then when the applicants come, if it's a \$3 million house somewhere we all know that this is not an affordable rental. So, check not applicable. Another one is noise factor. Again, neighbors get notice and they can chime in. The neighbors in the immediate area have the ability to testify and chime in and so through this process and transparency, Maui Planning Commission being the gatekeepers, we get to address all these things that people are saying now about why they don't want them at all. We don't get that opportunity to address them when we don't have the system because lets face it most of the things that they're complaining about are the illegals, right, are the people who have no desire to do this legitimately, go through the process, we don't know where they live, we don't get notices, we can't manage it because they're gonna do it illegal and I don't think writing laws toward the illegals are making them any more legal. They still become, you know law breakers and so I just wanted to put that out on the side as one option. There was a testifier that mentioned that if we were to agree to reduce the caps that we would save 71, Michele McLean, are you able to just confirm is that about 71 units would then just be reduced if that was the case? Is that, do you know that for sure? I don't know if that number was accurate or not.

Ms. McLean: Jacky would have the latest numbers.

Mr. Carnicelli: Jacky would have it.

Ms. Pali: Okay.

Ms. McLean: You know the total number of permits that are allowed and with the change...

Ms. Pali: It sounds like we might...if we allow this then we would just...it would be saving. I actually think speaking the terminology was that we'd be saving 71 units and if I may, oh it was Councilmember Paltin, okay so she stated caps would save 71 units and that seems small but realizing only 30 affordable homes were added to inventory and the quote was last year, but I'll update the quote, last year would have been 2019 then it made that number 71...she didn't say the word seem essential, but she was alluding that 71 seems essential since we only had 30 affordable housing units that came on the market in 2019. And I just wanted to tease that out a little bit that, well we have to...we can't look at one year because you guys know the process on getting an affordable housing project. It's like ten years, 15 years so we should probably look at the bigger picture and say well, in 2018, we had hundreds of units come on for affordable housing, in 2020 we already had, you know, just one off the bat, Kamalani or is it...Kauwahine Village, a 120 affordable rentas for 2020, so we may have only had 30 which I would argue that fact because we had Waiale project of 70 units come on in 2019, we also had Makila Kai of 19 units in 2019, and so just trying to make the information fair, I don't know that that was a good

way to justify well, saving 71 units in hindsight is large because we only had 30 units, I just want to respectfully say that I don't think that 71 units is gonna help our problem. I don't think this is the way we help our problem. We have other things we can do as a, you know, as a you know, government and as a body to take care of affordable housing. It's not this way, and I just wanted to you know, bring all this up. I'm definitely protective of our neighborhoods. I don't want one in my neighborhood, maybe you don't want one in yours and so if there was a sign that went up next door that said potential rental you're gonna see me testify for my neighborhood, and that's where the people's voice in the immediate neighborhood, they get to speak up. It's where the majority of Maui says we're not gonna let you speak up and we're not gonna let you have a say because we're just gonna take a blanket approach and say no it's not allowed. I say, let's let the smaller communities decide what they want in their neighborhood and what they don't want. And the cap already was already super conservative. If you think our, you know population is 160,000 plus, plus, plus and we're talking a total 300 and something on the cap, I feel like that was conservative to begin with, and I say when we reach it, we reach it, we're done. So I don't know that I'm necessarily for lowering the caps. I think the caps are healthy from a management perspective and that's just my take on it. Okay, that was longer than I said I would be, sorry Chair.

Mr. Carnicelli: And still shorter than most, so Jacky.

Ms. Takakura: Thank you, Chair. I just wanted to clarify that the existing caps in total is 349, and the Department proposal is 230 permits so that would be a reduction of 119, just for clarification.

Mr. Carnicelli: Thank you. Thank you. Would anybody else like to chime in at this time? Commissioner Freitas, then Commissioner La Costa.

Mr. Freitas: In the last meeting, I made a comment and there was a quick response that I wanted to clarify and I'm not sure who can answer this, but the Council members I believe came up with a lower number and we or the Maui Planning had recommended a different number is that correct?

Ms. McLean: Yes, Commissioner Freitas. Council proposed the number that they proposed and our understanding is that that number was based on the number of active permits and the number in the pipeline and by the time we wrote the staff report to you, we revised those numbers based on the number of permits issued and the number in the pipeline. In some cases, that went up, in some cases that went down. The one notable difference though was in the Kihei-Makena Community Plan region where the Council proposed not changing the cap and my understand is the reason for that is that Kelly King the Council member representing that area wanted to get more input from her community so they just left it as is. The Department went ahead to recommend that that cap also be lowered in the same way as the others just to be consistent so that when it goes back to Council this Commission would have had the opportunity to comment on that concept as well.

Mr. Freitas: Yeah, so the reason why I'm sharing is that I was using the fact that the majority of the Council members had given a number which I felt they are leaning toward and that is why I was for the lower cap. I prefer the revised one 'cause it gives those that were in the pipeline

that opportunity since they started so I totally agree with that. That was my comment and I think Chair said something like they never heard it, which is true, they didn't vote on it, they didn't...that's why it's with us. But there were numbers that came from them which is a lower number. I think we, being called Maui Planning Commissioners plan the look of Maui five, ten, fifteen, twenty-five, thirty years from now and I continue to hear comments that based on COVID we may...it changes your vote on this matter. I don't think that a temporary slow down, a temporary speed bump in our economy, in our situation here should be used as a reason for a significant decision. There's been talk that people are...during this COVID that you know, unemployment is high, and again, everyone that was hired as a worker at these short-term rentals they're not gonna lose anything by this, The only thing they're losing is based on tourist not coming which has nothing to do with the cap. So I just wanted to bring that up as I thought about it and maybe at the last meeting by 5 o'clock we were running out of gas and our energy and our ability to stay focused was just...was hard, and after the two weeks I thought long and hard and that's what I think we should be voting on. Thank you.

Mr. Carnicelli: So just for clarification, Commissioner Freitas, the way that something like this normally works is...is cause then you change the Title 19, it comes to us for review, right. So we hold a public hearing and then based on public hearing we then give just a recommendation back to them. They're still gonna do whatever they want to do, but what normally happens is it goes from Council to Committee where they discuss it, and they have their own input and then they come up with something and then they transmit it to us that step didn't happen and that's what I meant by like they hadn't discussed it. It was just one of those things like it went from Council where the public was told there was going to be no decision made and so no one showed up to testify and then it just came straight to us and so it didn't get sent to committee as it normally would and so that's that step that I said that basically is...and that's what I was alluding to, I wasn't saying like okay, they didn't send us something, they did, but they did it at the full Council, they didn't actually do it at committee which is where you, as they say you know you do the heavy lifting, you do the work in committee not at the Council level so that's what that is, and then, I think at a later time I'll discuss my opinions on the COVID aspects of this. But is there anybody else who would like to chime in. Commissioner La Costa, that's right.

Ms. La Costa: Thank you, Chair. I have...some additional comments as well. If the cap is reduced...can everyone hear me, I took my headset off? Can you hear me? Okay, thank you. If the cap is reduced will that spur more illegal rentals because people are already renting illegally and the way to stop that is for neighbors to turn people in but obviously that hasn't been going on. I concur with Commissioner Pali in that the regulations are restrictive already and that's a good way to be able to police those that are licensed and I am concerned that the Kihei number is still lopsided at a hundred, you know, with their units and yes, it was suggested that they reduced but if it is left as it is they have a hundred which is much more than all the other areas on the island. So those are my concerns about this. Thank you Chair.

Mr. Carnicelli: Thank you. Anybody else like to chime in? Christian?

Mr. Tackett: I think, I think I was pretty clear on my stance so I'm just gonna stick with what I said last time without wasting anyone's time. Thank you though.

Mr. Carnicelli: Gotcha. Thank you, Commissioner Tackett. Commissioner Thompson, Commissioner Castro. No?

Mr. Castro: Good to go.

Mr. Carnicelli: Okay, so—

Ms. McLean: Chair? Excuse me?

Mr. Carnicelli: Yes.

Ms. McLean: You still need to take testimony on this item. I don't think you did.

Mr. Carnicelli: Oh yeah, that whole testimony thing. Oops. So is anybody signed up to testify on that.

Ms. McLean: No one has signed up Chair.

Mr. Carnicelli: Okay, is there anybody that would like to step forward and testify on this particular item, please unmute yourself and if you would like to unmute your video as well. I see Mr. Croly.

Mr. Tom Croly: Aloha, Chair.

Mr. Carnicelli: Please state your name for the record.

Mr. Croly: Hi, Thomas Croly and I'm speaking on my own behalf.

Mr. Carnicelli: You have up to three minutes.

Mr. Croly: I did speak to you at your first meeting on this and I just want to add a few comments from you know, the monitoring that I've heard and so forth. As I've stated in my written testimony and at my first one, there was a lot of though that went into the initial caps that were set up. Something that I recognized in the initial caps there were set up which were based on the number of operations that were already in place was that many of those operations were not going to be able to comply with the new law that we established and that was the case, you know people who are trying to rent out or were renting out units that were not dwellings, they had converted farm buildings into rentals and they had added kitchens to their homes and so forth they were not able to get through the permitting process. So there was culling if you will of the folks that were already out there. But we still do run the problem that existed then and that is there is a demand, a growing demand for this type of use and if that demand is not met by the legal ones it is likely met by those who are trying to skirt the law. So, I do think that it's very important that we, that we have cap numbers that are realistic to the demand and one thing that I do wanna just reiterate is that cap numbers were reduced from 48 out in Hana down to 30 at one time and they were also reduced in Paia from 88 down to 55. There was process that you know it went through when those decisions were made. There has not been a change here in Kihei from the 100 cap and we are nowhere near that, but there was an expectation that many

of these luxury oceanfront homes in Kihei would come forward to get permits for this use. Surprisingly not nearly as many as expected did come forward but almost none of those luxury oceanfront homes are rentals or the homes of their residents. They are the second homes of these folks and they continue to be. I would feel better if those were short-term rentals rather than sitting empty a good portion of the year, but it is what it is. So those were just a few comments that I wanted to make sure that the commission considered in their deliberations on this matter. Thank you.

Mr. Carnicelli: Any questions for the testifier? Mr. Croly, I have one question just cause I know you're a numbers wonk and you follow all this stuff.

Mr. Croly: Sure.

Mr. Carnicelli: And I'm just gonna assume that you would know a number like, what's the attrition rate per year?

Mr. Croly: You know, I've looked at it and about every year around ten percent of the existing permits don't renew. They've either sold the property and if they sell the property the new owner is not allowed to you know, make application or they forgot to renew which happens sometimes and then they would have to make a new application and if they forgot to renew and had to make new application something like reducing these caps down would take that opportunity away from them, but roughly ten percent every year of these permitted short-term rentals for one reason or another will not continue to the next year.

Mr. Carnicelli: Great. Thank you. Any other questions for the testifier? Commissioner Freitas.

Mr. Freitas: Thank you, Mr. Croly. I've actually used your first testimony a couple of times about this matter. I was thinking that there may have been some people that really wanted this to be phased out and I think the numbers that was selected was more of a compromised number and that compromised number just happen to have been the numbers that was already existing that's the one that came from the Council. So you did have kind of a complicated number of things to take into account to find out what the correct number would have been, I'm not sure if we are in that position to step back and wait months for that kind of study and report, but I do appreciate you sharing, I enjoy listening to you. Thank you.

Mr. Croly: Thank you.

Mr. Carnicelli: Thank you, Commissioner Freitas. Anything else for the testifier? Thank you, Mr. Croly. Is there anybody else that would like to come forward and testify...oh, sorry, Commissioner Tackett.

Mr. Tackett: Mr. Croly, were you part of the people that actually help create this this, this short-term rental? I believe you were you were part of that from the beginning were you not?

Mr. Croly: In deed, in deed I've been involved in both the Bed and Breakfast Ordinance which came first and then later the Short-Term Rental Ordinance at that time on behalf of the Maui Vacation Rental Association which I no longer represent but at that time I did, yes.

Mr. Tackett: Thank you.

Mr. Carnicelli: Any other questions for the testifier, need for clarification? Thank you, Mr. Croly.

Mr. Croly: Thank you, Chair.

Mr. Carnicelli: Is here anybody else that would like to testify on this particular item? Please unmute yourself and if you wish to unmute your video as well. Going once, anybody else like to come forward, going twice, seeing none, we will go ahead if there are no objections, we'll go ahead and close public testimony.

So, you know one thing that I think Mr. Croly in the ten percent attrition does show is that there still will be some sort of queue if the cap does move say to current there still will be some sort of a queue so let's just say if you know we're full in West Maui and someone sells their home and then that next person will come, it will just be much, much slower queue.

So, I'm gonna go ahead and weigh in on a couple of things. I think that Christian brings up something very, very poignant in these times and that is putting people in our neighborhoods you know during, you know the pandemic and everything like that, I think that that's something that we really need to look at, and as I stir on this particular item a lot and unfortunately or fortunately people call me about this item, right or they want to talk to me about this and kinda where I'm coming from in today, 'cause you always get new information and then you think about things kinda like you know Commissioner Freitas said is, this is a much larger conversation that needs to be had and that's kind of almost like why I'm, you know apprehensive to say let's move the caps because even though COVID is going to be relatively brief in the course of time, let's just say that, you know, I mean, visitors don't come here till 2021 and then we come back, they dynamics of our island is gonna completely change. Who comes here, when they come here, where they stay, all of that's gonna change and so what I would...I mean, you know if I could do this and it's not really relevant today, but I would like to see the recommendation come from us to be the nine Council members and the Mayor need to sit down and you guys need to have a policy conversation who are we going to be, what are we going to be moving forward? If, you know, and we gotta make a choice. If we're saying like hey listen there's this new visitor that wants to stay in local neighborhoods and that's the way people travel, Europe's been doing it for decades, South America's been doing it for decade, but if we say we don't want that traveler, we only want the resort traveler, that's it, that's the only one we want, I would like to see our policy makers make that choice, and guess what there's going to be a big chunk of tourism that we're gonna lose, and that's okay if we're making that decision clearly. We're saying yeah, we're willing to say we're gonna lose jobs, our population is gonna decrease, you know we're gonna end up in just a whole different economic place. Well, if we're making that consciously, great. This is kinda like nibbling around the edges, like oh okay, well if we just reduce this by a 120, you know, then somehow, we're helping the world in an election year. I just think this is a greater policy decision, and until we make that decision you know, the thing I said is we're trying to pick winners and losers. What if right now, the only people that are gonna travel once we start opening up again, the only people that are gonna travel are the people that aren't in resorts, that they're the people that do want to stay in neighborhoods and that's not a decision that nine or I guess seven volunteers are tasked with making that's why we

elect nine people for Council and one person for the Mayor to say like no, you know, I mean back Mayor Cravalho back in the 70's and 80's said we're going away from ag and we're gonna build condos all over the west side and the south side and that's what we made a policy decision to do. So for me, I mean, I don't mean to make this way more complicated than it needs to be, but I just think that until we have a policy decision about who and what we want to be and where we want to go as a community, and we're willing to take the hit for that, 'cause if we're willing to say, hey listen we're gonna get away from tourism then we gotta know that we're gonna lose a lot of people. There's gonna be a lot of local folks that are gonna move to Vegas or wherever it is they're gonna move because we don't, you know, we don't have economic base, and if policy makers are okay with that then that's cool. I'm okay, if that's a conscious choice, but if we're gonna nibble around the edges and say okay, we're gonna remove caps, I think in the...you know as Commissioner Freitas said in talking about ten years from now, twenty years from now when none of us are on this commission anymore okay, it's gonna make an effect somehow but we don't...we've not even done a study. We've not even done a view of what it would do or not, and so, I get that we're not going to lose any jobs by lowering the caps, I do get that, no one's gonna lose, go out of work if we lower the caps at current levels, but if we say there's no opportunity to grow that segment of the economy then we're losing an opportunity and if the Council says we don't want that opportunity, again, I'm fine with it, but I think that that's why for me I'm saying, okay, pre-COVID was a different situation, post-COVID we have hit, literally hit the reset button, literally hit the reset button, so what is Maui gonna be moving forward, and so that's why for me, I'll probably just if passed with voting will stay with leaving the caps as is and not lowering them just because I think that it's putting the cart before the horse, so I will now get off my horse, and Commissioner Tackett.

Mr. Tackett: So I have a little bit of different take on it ..I understand what you're saying but my take on it is that until your, until resorts are up and running and are at full capacity to offer tourists to go into neighborhoods and to be, to be trading your full-time employment for part-time employment in these vacation rentals so if, if the amount of tourists come, that come over aren't enough to open your Grand but it's enough to keep all your short-term rentals going and then you lose all the people that came over and invested millions of dollars in here is it worth for the few handful of people that are gonna come out and stay in the neighborhood or should we just shut it down and make this a place, Maui this is just a place where people live like we don't need no tourists because you don't need a handful or two or three hundred tourists to run this economy. If you want to run a tourism based economy you need your Marriotts, you need your Hyatts, you need your, your big hotels to be able to open, to be able to have enough people in those hotels to create full-time jobs with benefits, with healthcare for the children, with these types of processes, so I think, I think to be saying that we're, we're doing some kind of disservice to them by lowering the caps, I think that the caps should probably be lowered until such time as you determine whether or not this is gonna be a tourism based destination or not and at that time is your full time employment opportunities do they take a backseat to, to short-term rentals or is it more important to get the tens of thousands of people that worked in the hotels that all have to sit home now, getting those people back to work before we, we work on trying to get people into the residential areas. So I think, I think first we gotta determine whether or not you want, whether or not you want tourism in this, in this island and if you do, you need to protect your people that are fully invested and employ the most and then you could move onto to the smaller chunks. What I don't agree with is people saying that oh, my son, my son if I make it a legal way to get him a cookie, then he'll have cookies but if I make illegal to have

cookies well he's just gonna steal the cookies anyway, like it cannot be like that. You can't say I'm not gonna lower the caps 'cause they're just gonna do it anyway. If people, if people decide it's against the rules and they don't want to do it anyway then there needs to be something to deter them in place. We cannot be bullied into saying okay, we're just gonna let you have it because if I don't take it from you, you're gonna do it anyway so I might as well just give it to you. You know, I don't think that that's the right way for it to go forward. So I see you guys point of view on it, but I don't think that it's...if you take that stance it's gonna help the majority of the public. I think it's gonna help a finite portion of the public. And the argument has been made with the million dollars and multi-million-dollar houses that it's not gonna come back into a rental or regular rental anyway. The reason why one of those homes is ten million and not one million is because these kinds of opportunities are here, you know. If you can rent a ten-million-dollar house for \$15,000 a day it will never come down from ten million, but if you couldn't rent it for \$15,000 a day it might be a one-million-dollar house. One lucky sucker that had one good business might be able to afford it but as long as you can get \$15,000 a day for rental because it's out of the, out of the chain or off the charts as far as the type of experience you're giving then that's the reason why you have a ten-million-dollar property as opposed to a one-million-dollar property. So, it all relates to each other no matter which way you, or no matter which road you go down in my opinion. So anyways, thanks for allowing me to express myself on that.

Mr. Carnicelli: Commissioner Pali. Thanks, Christian.

Ms. Pali: First of all, I just want to say that I love Commissioner Tackett, and that's one thing I cherish about having all of us here is that we all have different perspectives and opinions and so I just want to give a lot of love and shout out to him and just having the courage to voice that. I do, however, I learned early on in Commission I kinda came in hot, but I'm really big accuracy and fact checking so I just wanted to kind of clarify a couple things if you don't mind. I think the planner, staff planner mentioned that the...all the caps originally were at 349 units, right, 349 total allowed permits. I found something as I was doing all my digging and you know, with the past meetings I missed and someone had created a letter, it was...oh, okay, Tamara Paltin, the Councilwoman she did a letter dated June 26 and it talks about like all these units zoned Apartment and things, I just wanted to put in perspective what 349 which is the current cap put that into perspective when we're talking about hotels, let's make it simple, Grand Wailea alone has about more than I know for sure, more than 700 rooms, just one single hotel has more than 700 rooms, so our cap island wide is 349, so even if we had a line, I don't know if Director McLean can confirm if we have a line of 119 people waiting to fill up our caps I'm pretty sure we don't but if we did, okay, and they were all maxed out at 349 they are not...I disagree lovingly disagree that the 349 if all of them are rented the minute COVID, you know we allow them to travel, it would not impact the 40 plus hotels when one hotel alone has 800 units. I just wanna kinda compare that just to be fair, and the other thing is this list that I got that was dated and on top of the hotels this list was about apartments and condos that were currently vacation rentals but not zoned Apartment, out of those 103 condo complexes there were 8,111 units so we're talking 8,000 units zoned Apartment that are doing vacation rentals plus all the hotels I just...I don't...I just lovingly disagree that 349 is not gonna impact us the way it was just reflected and so I just wanted to kind of lovingly point that out. The other things is, I'm with my commissioner I don't want to turn into vacation rental and then not have something for the locals. We do have to fight and preserve things for our local people, our way of life and I'm all about that, but I'm just...we just have to balance it and so I just wanted to clarify that. That's all.

Mr. Carnicelli: Thank you, Commissioner Pali. I also want to agree—

Mr. Tackett: I feel the love.

Mr. Carnicelli: --well, no...guys I want to just also say that is I appreciate the fact that we're gonna disagree on stuff, I've told people more than once I love when we have 5-4 votes, they think like why no, we should have 9-0 then that means you know we're all...it's like no, I have no problem with us disagreeing and expressing our feelings and passionately expressing our feelings and I think that this is good, healthy debate and I think especially for this conversation because I think this is what's happening in our neighborhoods, this is what's happening island wide, and hopefully we can kinda be a bridge of some people that are just becoming dogmatic, right, they're just saying no, this is the way it has to be and they don't want to listen to the other side and then the same thing happens on the other side. I like the fact that it's like here's you know six other people that I love and care about that I, you know hang out with for days at a time, you know every other week and we get you know express ourselves, and so this is why I think for me again is this is bigger than moving the cap. I would love to see this turn into we need to have a broader conversation about the island and where we're headed. So, Kawika I see you leaning in like you want to speak, yes go ahead.

Mr. Freitas: Commissioner Pali earlier said she like that applicants come through the Commission so we can hear them, understand them, get a better feel for their neighbor...neighborhood, and I just want to use today's earlier application as an example. Here was a house that could have been a long-term rental, it was at probably the size and affordability for our people, our residents. What happens is because the rule says that there is a cap and all of the things lined up, it's very difficult for us in the Commission to turn one down once it gets as far as they have unless there's a overwhelming letters of opposition, and Corporation Counsel had shared that with us before that we gotta make sure that we have a reason why we're turning it down. I sit here and I see one come through and I'm like I don't want it, I don't want it, but after listening and some of them play, play my emotions well, and then end up changing my mind and I end up voting for them, and also it's because there is a limit and we haven't reached that limit and to me, that is again, a reason why I'm for the cap, but I do agree with our Chairperson that you know what this has to be laid out a little bit better and clearer with a lot of things including how will this be enforced for those that if it does go lower for those that will operate illegally that can be another time and stuff, but I'm kind of stuck right now. And I agree with you I like it when we can...we all don't agree on certain things and we share why and we're not afraid, there's not jumping on somebody else's band, and speak for ourselves how we feel that's why we come from a diverse group around the island. So fellow commissioners I appreciate all of you, thanks.

Mr. Carnicelli: Yeah, and I think like even I can't remember who, I think it was Kellie and I had a conversation and that's why I can't wait to get two new commissioners because when you have nine is it's even a broader perspective and a richer debate so Commissioner Pali.

Ms. Pali: And then jumping in on Commissioner Freitas, I think I was also looking at that home, the earlier applicant, and I saw the size of it, I saw, you know you can go on Maui County Tax whatever and just check it out, reading the report, I think what allowed me to say, hey, I think I'm

okay with the vacation rental on your property because she's giving affordable rental. You see the original application was two, and I'm gonna be honest I didn't...that didn't sit well with me, and I did see complaints and so we could have had the ability to deny it based on the neighborhood not accepting it, but because she recognized our ...(inaudible)...she recognized some of the concerns and she did exactly what applicants should do, she wants to work with us so she gave us the smaller unit which I hope, and we want to encourage her to put that on as an affordable rental price for long-term families and then let her make a little bit extra money assuming if and when she can it might be another 12 months or whatever that looks like so it maybe even offset and subsidize keeping the long-term rental lower. So I would love to build models like that because if we utilize this the right way, people like her can help us create more affordable housing opportunities and availability to our, you know our residents and so I'm with you, I appreciate your commenting about that.

Mr. Carnicelli: See guys, and this is the conversation I wish our policy makers were having, right, 'cause we can come up with a bunch of other ideas, like I mean, I had somebody call me the other day and say, you know what we need to do, we need to tie an affordable house to every single STRH. You want an STRH permit, you gotta go build not by a credit, not pay fee in lieu but you gotta go build an affordable house whether for sale or for rent in order to get your STRH Permit, great conversation, you know, I would love to see something like that happen, unfortunately that's not part of this but yet it is, right, and there's this greater thing that needs to happen. Commissioner La Costa.

Ms. La Costa: Thank you, Chair. The affordable housing conversation, and I, too, have people that approach me about it, that is more of a county function and maybe a private/government partnership to build affordable rentals and affordable homes to house the people as other Commissioners have said and I concur a house that is multi-million-dollar or a condo on the ocean that pays thousands, and thousands, and thousands of dollars in taxes and upkeep in maintenance is not going to be affordable if it were taken out of short-term rental use. So the 349 as Commissioner Pali said is manini in the scope of how many units that are available. I think that and in concurrence with you, Chair that this needs to be a policy and if we have hit the reset button. I swim in the ocean everyday and the coral is coming back and saw 31 different varieties of fish two days ago including a barracuda that I hadn't seen in years, so as a community, as a county, as people who...you know raise their torches against short-term rentals in their neighborhoods it needs to be a policy set forth, but the 349 is not gonna make a dent in how many units are available and lovingly and respectfully again with Commissioner Tackett and in concert with Commissioner Pali I concur with her summation of that so thank you, Chair and again this is a county issue for ...(inaudible)...affordable housing not forcing people to turn their short-term rentals into affordable housing because some of them just won't cover than that. Thanks.

Mr. Carnicelli: Yeah, I mean in perspective there's 8,000 hotel rooms in Maui County, 12,000 vacation rental condos and 350 STRHs so I mean, that's...but then again, you know like Commissioner Tackett was talking about when you talk about employment, if you want to be an employee it is of the ten largest employers in Maui County eight are hotels, but the 12,000 condos are serviced by small business owners, right, the maids, you know the handyman and those kinda guys. Anyways, I...great conversation, I almost think it would do us a disservice to send a recommendation to the Council that says, move the caps or don't, right, like oh we voted

for moving the caps or we moved, you know, voted against moving the caps. If that's what you guys want to do that's great. We can also be, our recommendation is, y'all need to not do anything with this and have a conversation, that could be our recommendation as well, you know so, you know, have community outreach, you know, I mean, we've...this is our third one, we've had a ton of testimony on this item, could you imagine if okay, post-COVID or I mean, I think we had 350 people one call or something like or a 150 people on one call, could you imagine if the Council actually did this and how many people would show up, and we could really as a community start to churn what it is that you know we want to do here in the midst of this pause and you know, I mean, just go to, you know the same conversations are being had in Venice where the canals are now clear and there's fish back, you know, Tahoe and all these other places are having the same conversation. I think we need to have a conversation and not just say whether or not we're gonna move our caps or not. But, I'm gonna defer to you guys and see you know if what kind of a recommendation you would like to see us move forward with, and I'm okay with any of it whatever you know we would like to do. Anybody want to come up with a recommendation? Christian.

Mr. Tackett: I recommend that we recommend that the caps be reduced and the reason why I recommend that the caps be reduced is because we have lots of short-term rentals like you guys said in condo like setting, we have lots of hotels with thousands of rooms like you said in that setting and I think until we get a handle of those on those two things that it would probably be best to keep the...those type of rentals out of our residential lots because no matter which way you guys slice it and whether you love me or don't love me all of that is gonna lead to higher property values and higher cost for people that are trying to buy these properties. So it's my opinion that we should try to ride the ship on that front first and then deal with this that was made later that is continuously spoken about from the people that actually invented it or created in the first place and it's created, it's created to make money, make money out of buildings that should be people's homes so before we start making people making investors monies I think we should put people that work and just want a home to live in in these homes and do our best to keep these property values to something which is manageable which is something that we probably will never be able to achieve but at least we can tamp it down as low as we possibly can and hold it as low as possibly can for as long as we possibly can and that's why I think we should have a lower limit and that, that possibly like Mr. Croly says, he's for it for these reasons, I think possibly maybe it should of never been created in the first place, maybe it should have never happened and maybe we have enough hotels and maybe we have enough condos with the ability to do that built in without having to go down this other road and if people want to do those things, they can purchase those condos to make those types of things happen because that kind of stuff is already in place. So that's my motion and thank you for all your support.

Mr. Carnicelli: A motion and comment on the motion. So basically, if I could reiterate Commissioner Tackett your motion is to go ahead and reduce the caps as recommended by staff, correct?

Mr. Tackett: That's correct.

Mr. Carnicelli: Okay, do I have second? Seconded by Commissioner La Costa. So, Commissioner La Costa I'll let you speak to the motion as well.

Ms. La Costa: Thank you, Chair. This is a really tough one like you've said and we don't volunteer our time for easy things I don't think. You have to listen to your neighbors you have to look at small businesses. I hear what Commissioner Tackett is saying and I concur with that. In the big picture, it's a very difficult conversation to, you know to have, but I do want clarification. There were two different numbers that were stated in the letter that we had. One was what the Planning Department and then the other was those that are already in the queue so the ones that are approved is one number, those that are in the queue add to another number so I need clarification please on what the actual number is and not just the 349 less the 230, thanks.

Mr. Carnicelli: Jacky.

Ms. Takakura: Thank you, Chair. So in response to the question regarding the number of short-term rental home permits, the existing permits total 212, pending applications total 18, and so that adds up to the Department's proposal of 230.

Mr. Carnicelli: Thank you, Jacky. Anybody else like to speak to the motion? Commissioner Castro.

Mr. Castro: Thank you, Chair. I, too, I concur with Commissioner Tackett, you know we have a lotta hotels that are...that employ a lot of workers whether they're bargaining, non-bargaining staff, there's a good chance many of them will not be going back to work and now that the governor has extended till I believe September 1st these companies can't afford to keep 'em on the books, they will be letting people go, you know, and somehow we need to get those hotels filled even if it's a little at a time, we gotta get 'em in there, we gotta save these people's jobs. These hotels paid very good wages, excellent benefits and once that's gone, if they don't get recalled they lose that, and that's gonna be a lot of Maui people that will be out of jobs. So it's a start. To reduce the numbers I concur with Commissioner Tackett and let it work out, and I believe also that anything that's in the works now should be allowed to go through the process you know, but anything after the decision that's made you know, let it be what it is, but I do concur with Commissioner Tackett. Thank you.

Mr. Carnicelli: Thank you, Commissioner Castro. Anybody else like to speak to the motion? Commissioner Thompson.

Mr. Thompson: Sure, thank you, Chair. So, supply and demand have a big bearing on economics it's pretty simple. If there's demand, it's gonna happen, illegal or legal. This way we get to vet it. I don't think we have to worry so much about real estate prices for the next five years. There's gonna be more foreclosures, things are gonna be tumbling huge especially those with second homes and their ...(inaudible)...little condo and they live somewhere else. Guess what, if they got a mortgage, they're in trouble right now. They're not getting money. So I don't think we're gonna have a huge problem about that. I kinda like that I hate hamstringing property owners, you know government versus this, we're gonna close them off on that and next you can't roosters, and I kinda agree with that, but you can't build your house there because it's my view plane you know, you know it's not. So we're trying control other people's action. I think we get a little overbearing on that, these numbers that were made they were made...it already went to Commission, they studied the numbers, they did all their, their research on it, we haven't done any of that and now we're trying to second guess what they spent, I don't know how long,

we could ask Tom Croly apparently, but we spent a long time trying to do this. Do you I want to see every neighborhood full of Airbnbs, no, I got one next to me or the VRBOs or short-terms, I got one right next door, they're not bad, the guy makes money, million-dollar house, but I'm afraid about restricting people's rights on it too. One by one we're chopping things off and I don't know...maybe...but I kinda agree with you Chair, you throw it back to Council, put it to your committee, go do all your numbers, do the real studies on it and go to your communities, ...(inaudible)...your number it might be in between these two and when we first talking about it I went please can't we just split in the middle, wash our hands and be done with it and there's still a little loose. All these people, I don't think they're making...they're not meant to be huge killings out of it anymore. ...(inaudible)...it's going to be long time, we're not even letting them in and when we do, they're gonna be prescreened, they'll be vaccine and all everything so, so our real estate is gonna take a huge dive, we're gonna have a lot of people going bankrupt. It's gonna be ...(inaudible)... Now worse than some tourist in their new rental car it's gonna be empty, maybe some homeless people will move in...we'll get some use out of it, but the weeds are gonna be growing, it's gonna be a fire problem, we're gonna have some problems here. It's not little, we got some huge problems in front of us. Anyway, that's my two cents, thanks.

Mr. Carnicelli: Thank you, Commissioner Thompson. Would anybody else like to speak to the motion? Seeing none, Director.

Ms. McLean: Thank you, Chair. The motion on the floor is to recommend that the caps be reduced as proposed by the Department.

Mr. Carnicelli: All those in favor of the motion, please raise your hand. That is one, two, three, four. Opposed? One, two. Four to two. So I guess it does come to me. I will vote, I will dissent and vote against the motion, so the motion fails. Oh, and just for the record, Commission Thompson and Commissioner Pali were the other two dissenting votes.

It was moved by Mr. Tackett, seconded by Ms. La Costa, and

The Motion to Recommend to the County Council the Caps be Reduced as Recommended by the Department, FAILED.

(Assenting – C. Tackett, P. D. La Costa, K. Freitas, S. Castro)

(Dissenting – K. Pali, D. Thompson, L. Carnicelli)

Mr. Carnicelli: So, do we have another motion that we would like to put forward? Commissioner Pali.

Ms. Pali: Do I only have the choice of approve, deny and refer or can I make my own motion?

Mr. Carnicelli: You can make whatever recommendation you want.

Ms. Pali: I'm gonna go out on a limb because I hear what my other commissioners are saying and I really appreciate Commissioner Thompson also hitting the other angle about government telling us what to do with our property that it's a tough, tough line and over restricting behavior

and I was trying to allude to it, but I think he said it a lot more eloquently. So there's a lot of underlying things that are happening beyond what we're actually talking about but I also want to recognize that we are in COVID and we do want the hotel workers to go back even though I've given you the numbers, now it's literally a drop in the bucket but in respect to all of those things, I would like to make a motion to not approve or what I am saying, I don't want to agree to lowering the caps, but I almost feel like it should be frozen. I feel like we can... 'cause again, we don't have 119 people lining up to take up these empty spots. We have 18 in the pipe, so we're talking about 19 more applications that could potentially go out, but where are they? They're not here, right? We're in COVID, we're in uncharted time could we put a hold, maybe make a motion to say I'm not for lowering the caps but I want to recommend that you actually put a freeze, a moratorium or something maybe like six months on those empty spots, let the ones go through the process, let the ones that have it, have it, and let's just put a freeze on it and then you know live as usual after the freeze and that would be just in lieu of recognizing that we want our hotel workers to go back to work, we want to get back to normal, I don't know. Sorry, can you make a motion out of that?

Mr. Carnicelli: Well, is I'm gonna try and maybe clarify what I thought I heard you say.

Ms. Pali: Okay.

Mr. Carnicelli: And that is, is to put...okay, rather than moving a cap, we put a moratorium.

Ms. Pali: Freeze it for new applicants.

Mr. Carnicelli: Moratorium on new applicants for what period of time, six months. So a six-month moratorium on new applications, okay.

Ms. Pali: And that will also give Council and the Mayor to have conversations about the bigger picture.

Mr. Carnicelli: Okay, so the motion on the floor is to put a moratorium on new permits other than the ones that are in the pipeline, currently in the pipeline for six months, is there a second to that motion? Seconded. Okay, moved by Commissioner Pali, seconded by Commissioner Thompson. Do you want to speak further on it, Commissioner Pali?

It was then moved by Ms. Pali, seconded by Mr. Thompson,

To Recommend to the County Council to leave the caps as is, a moratorium for new applications exempting applications already in process for six months and during that time come up with a study to justify if the caps should be then moved.

Ms. Pali: Yeah, I think that I want to recognize that this is probably not the time to be talking about this because people can't come here, so it's kind of a wonky situation where we're talking about something that is...it's not irrelevant, but it's irrelevant for the time period because right now travelers can't come and nobody can...all the people with the permits can't even accept

tourists, right? We're kind of shut down at the moment, but I know that we're talking about things that will impact us once COVID passes but in recognition of this temporary time let's adjust to the temporary time, but also give Council and the Mayor's Administration time to just work out the bigger kinks and look at the bigger picture and so that's my happy medium I guess.

Mr. Carnicelli: Commissioner Freitas.

Mr. Freitas: Thank you, Chair. Could I add maybe a recommendation to Commissioner Pali's motion kind of adding what Commissioner Tackett had said earlier for somehow put a wording in there to take into consideration Mr. Croly's way of figuring out what the right number should be now that it's gonna be six months moratorium to somebody. I mean, when you say send it back, I'm not sure where back is to Committee or Council, wherever that—

Mr. Carnicelli: Back to the Council.

Mr. Freitas: Yeah, when we send it back—

Mr. Carnicelli: Yeah, Council...this is ultimately this is Council's decision. We're just a recommend...we're... they're just gonna get a recommendation from us that says something and then they'll wrestle with it however they want.

Mr. Freitas: Does that make sense though to really get a real number from Mr. Croly because he had a system of looking at the area and being more specific instead of just what was there plus what's in the pipelines. I think I would be more favorable to that.

Ms. Pali: So a friendly amendment asking for research to be done and information to be provided to us?

Mr. Carnicelli: Or...okay, 'cause I know Mr. Hopper doesn't like when we do a friendly amendments so we're gonna have to do an actual amendment to the motion. Is, so the current motion is to put a hold on new applications for six months, and then would the amendment be during that time to find out what the real number is. We should find out what the, let's see, find out what...I don't know maybe move the number during that, is that kinda what you're trying to say Commissioner Freitas?

Ms. Pali: Well, we want more information, we want more homework. They did all this homework when they initially put it in but like someone had mentioned, I don't know that they did their homework as well this time around and so just giving us more information and for me, what's the bigger picture, instead of taking small bites what is the cake that we're eating, what are we really taking a bite into, I'd like to see the bigger conversation happen.

Mr. Carnicelli: Is that kinda what you're saying is also Commissioner Freitas?

Mr. Freitas: Well, I think—

Mr. Carnicelli: Or are you going in a different direction with it. I kinda feel like you're going to someplace else with it.

Mr. Freitas: Well, sort of taking a systematic way of coming up with the number like how Mr. Croly provided. He had a system. He looked at various things that will affect a number. I think the Council wanted to lower it. They discussed it, but instead of coming up with a real thought out number, it just said use what's there now and that's it. So they really didn't...their number that they picked is...was not...maybe they discussed it, but they never really applied their discussion and got a system the way Mr. Croly has mentioned, so I would...can we say, listen to Mr. Croly and what his...

Mr. Carnicelli: That would be bad, no, we're not doing that, we're not doing that.

Mr. Freitas: Well, work it in a way that takes a more...(inaudible)...okay, sorry.

Mr. Carnicelli: ...(inaudible)...

Ms. Pali: Are you asking that they have to justify why reducing the number? Because they...to me they picked a number by just reducing it to what it...as is, and no more future. So that was that their number but maybe are you looking for more reasoning as on how they came to that number?

Mr. Freitas: Yeah. Create a fair system so that Kihei doesn't get to have the higher number and these are the guys have to go lower, whatever the system should be all of the districts should have the same not favoritism to anyone, and then Councilmember King can have her meetings in the next six months and give her what she wanted and then come up with that number 'cause I believe it should be lower over there too.

Mr. Carnicelli: Commissioner La Costa you've raised your hand a couple of times.

Ms. La Costa: Just gonna say what Commissioner Freitas did is that we need to come up with finite numbers for each of our community areas, Kihei specifically, hundred and everybody else has 88, 49, 33, hike so I think that that needs to be done in this period as well.

Mr. Carnicelli: So, I'm forgetting the word right now, but essentially we're kinda coming full circle back to almost where we started and that was that we want them to actually come up with a study of supply and demand to then justify what or you know, a...to come up with a number rather than just moving it straight to where we are, is that sorta what we're saying here. Okay, I see some head nods. So, in the meantime, we're still okay with and I'm trying to think what the amendment would be, and maybe, maybe Director's scribbling again, although is so we have a moratorium for six months, during that moratorium we would there to be a study and some actual data to justify moving or not moving the caps, and Commissioner Thompson.

Mr. Thompson: Was gonna add that zero is I think is more a emotional response than a pragmatic real one, so it's not...(inaudible)...not a study or something that's fair and unbiased.

Mr. Carnicelli: Got it. So I guess we'll say...Director did you write what maybe an amendment would be or look like?

Ms. McLean: What I'm hearing is that you're recommending approval of the reduction of the caps, but only for a period of six months so it's adopted as an ordinance it would have a short duration and that during that six months you recommend that the Council collect data, perform research and do more community outreach to determine if after that six months what changes to the caps if any would be appropriate.

Mr. Carnicelli: No, that's not. The motion is just a moratorium on new permits leaving the caps as is.

Ms. Pali: That's right. That's right, thank you.

Mr. Carnicelli: Leaving the caps as is, a moratorium on new permits for six months and during that time come up with a study to justify if the caps should be then moved.

Ms. McLean: Okay, effectively that's the same thing if you—

Mr. Carnicelli: Not really.

Ms. Pali: No, it's not. I'm not approving the reduction of the caps that's to me very different. Sorry to disagree, but I disagree.

Ms. McLean: No, no, no, I'm saying the practical result is the same. The motion is gonna be what, what you guys say it is, so of course, I can't change that, but your permits that are in the pipeline are acceptable under your motion, those can continue to be processed?

Ms. Pali: Of course, yeah.

Ms. McLean: Okay. Okay.

Mr. Hopper: Okay, Mr. Chair?

Mr. Carnicelli: Yes, Mr. Hopper.

Mr. Hopper: Just to kind of get us to where we are, as I understand it there was a motion made for a moratorium for six months on any new permit applications and then there was a motion to amend that motion to add that there would be additional, I guess, review by the Council based on available data to determine if there should be permanent reductions in the cap or not. Just so you know I...the idea of a moratorium is generally something that would need to be passed by ordinance and if that goes to the Council they would need to consider if that revision to the ordinance is something that would need to go out to the Planning Commissions again because that's different than what you're reviewing right now. You're reviewing right now whether to reduce the caps. I think if it was done to say it's a temporary reduction in the caps that's maybe a little bit more in tune with the current ordinance. If it's done as a moratorium, we would need to look and see if...I think that would have to be done by ordinance. I think for Lanai that was actually proposed and considered, so there's probably a model for doing that, but one issue would be if that would need to go back to the commissions from Council for them to rereview all of that and get public testimony on all that. I think that's an okay recommendation to make if

that's the recommendation and you can do it, but just to know that might not be something the Council can put into an ordinance and pass without sending it back to the commissions again because that's a pretty significant revision to the current ordinance just to note that, but I think it's a proper recommendation if that's what the group wants to recommend.

Mr. Carnicelli: Thank you, Mr. Hopper.

Mr. Hopper: And...so just to note, right now I think you're on the motion to amend the main motion.

Mr. Carnicelli: Right.

Mr. Hopper: I think we did clarify what the motions were, but—

Mr. Carnicelli: Well, I don't even think, I don't even think we actually have an actual motion, we're still trying to clarify what that amendment would be.

Mr. Hopper: Okay, I think it's fair to discuss.

Mr. Carnicelli: I don't think we have, officially have an amendment yet.

Mr. Hopper: Yeah, I guess if you want to discuss specifically what the amendment's going to entail before actually making a motion you can, but it be a good idea to be clear on the what the proposed amendment is before making the motion just so you know, I thought it was to...for the Council to receive basically, receive additional data on the STRH issue and determine whether there be permanent changes to the caps.

Mr. Carnicelli: Well, and—

Mr. Hopper: But you can clarify that as you see fit.

Mr. Carnicelli: Part, part of what you're saying too, Mr. Hopper, which would kinda maybe make this way more complicated than it needs to be, but again, Council is gonna do whatever they want is if we say, okay we want a moratorium and then study and come up with factual data on the caps and then change the caps that moratorium would have to come to us and then back to them and then probably that look at the caps would then have to come back to us because it would be a new thing and then go...so I mean, it's almost like it would have to bounce back and forth twice and I don't seen Council doing that, but at least I think what I would like to see come out of here is at least them get an understanding of what it is that we would like. You know, I just pragmatically I don't anticipate them following our recommendation. They're gonna do what they want to do which is fine, but I'd like for them to at least understand the flavor of what it is that we're gonna do. I don't think that they're gonna review the minutes and cull through everything of what it is that we've done over the course of three minutes, but I think if the recommendation can at least get them to understand what our concerns are that would be good. Commissioner La Costa.

Ms. La Costa: Thank you, Chair. So, Mr. Hopper, if you're talking about a moratorium and all of the hoops with which everyone has to jump through would your suggestion be that we put a

freeze on the current number that is the...the freeze on the number with only those being processed that are the queue right now and then discuss it at a later time? I'm trying to figure out what makes the most sense to get this resolved, thanks.

Mr. Hopper: Well, if your recommendation is just a moratorium on all new permits that's, that's...I'm not gonna speak for or against what you, what you would like to do. I guess it would be possible if you...the issue before and in the draft ordinance is what are the caps, what should the caps be, should they be reduced or left where they're at or some in between, so that's what you're being asked to recommend on. What I'm hearing is you're thinking of just a recommendation that we would put a moratorium on any new permits. That's a different thing than saying we are going to cap the...we're going to amend the caps to reduce them to an amount that is consistent with how many applications we currently have. If you do either one of them you'll have a similar effect, though the moratorium would be a more temporary thing, so the idea with a moratorium though is because that's not part of your original proposal. If you wanted to reduce the caps and a recommend a number that's within your original purview of the ordinance I think. If you want to look at a moratorium that is something that may be a bit different than what was sent to you from the Council and so the Council may need to when it makes amendments to that bill to draft a little bit different of a bill. The issue might be that the other planning commissions hadn't reviewed that and so they would need to see that as well. Again, I'm not the final on that, but that's something that raised a concern because you are talking about recommending something that's a little different than what originally came to you. You know, you can recommend whatever, you would, you would like. I just wanted to raise that as a potential issue that the Council might not be able to act on that recommendation without coming back to the commissions. I think any cap reduction whether it's permanent or temporary is probably something that is within the purview of this ordinance and could be acted on by the Council a bit more quickly, but again, if you want to recommend a moratorium for six months, I would you know, that would have to be put into an ordinance, the Department couldn't just say we're going to stop processing permits, so that's...you'd need a revised ordinance I think and that's where the issue comes up.

Mr. Carnicelli: Right, is the part of the issue here is, is that that this is a pre-Covid resolution so we're trying to current Covid reaction to a pre-Covid reso, but anyways, Commissioner La Costa.

Ms. La Costa: Thank you, Chair. And so my additional question to Mr. Hopper is you mentioned a temporary reduction, if that is a concurrence of the Committee can at some point it be reinstated if community input is such that they want to go to the actual number initially proposed under the ordinance, thank you.

Mr. Hopper: What the Council may do in that case is say we're gonna reduce the caps, but that bill would have some type of sunset clause or maybe we can look into doing something like that that would say the caps would go back to the original numbers or to say after six months there's a required review by the Council that would be done after that to consider whether the caps are appropriate. I think the original STRH bill in fact had a two-year review period that the Council would have to revisit that. Now it's a little difficult on whether that's binding on the future Council if they just don't act on it are there consequences, but you could potentially look at a temporary reduction in the form of a bill that would have a sunset clause although I hadn't looked into

those in the past so that might be a little more complicated than we'd...(inaudible)...temporary there are things I think could put in the legislation such as saying that the Council shall revisit it at the conclusion of six months or to have some type of a sunset clause that would go back to the previous caps that would be ...(inaudible)...because you'd be amending the Code automatically bring the caps back to what they were at and I don't know if we've looked at anything like that before, but those would be a couple of potential options for you.

Ms. La Costa: Thank you, Mr. Hopper.

Mr. Carnicelli: Commissioner Pali.

Ms. Pali: Okay so with that said, then I would withdraw my motion that was on the floor.

Mr. Carnicelli: Commissioner Thompson, you withdraw your second? Yeah, okay. So, new motion from someone?

After Discussion, Ms. Pali withdrew her motion and Mr. Thompson withdrew his second to her motion.

Ms. McLean: Chair, could I make a suggestion?

Mr. Carnicelli: Director.

Ms. McLean: We could if the Commission wants to send no specific recommendation on the specific cap changes but we can compile your comments, indicate the different motions and the different votes and just convey this discussion to the Council if you're not able to get a vote one way or the other then we can just say you weren't able to get a majority vote for these different motions but these are the issues and concerns and questions that you expressed today and in the prior meetings.

Mr. Carnicelli: Here's the question I have for you in that is we'll be able to review what it is that you're gonna transmit before you transmit it?

Ms. McLean: We could have a letter for you to review at the next meeting.

Mr. Carnicelli: Okay, so if we can't come to...let's give ourselves a couple more minutes here to see if we can actually agree with a recommendation and if not, then I would like to do that...I would...before...and not that I don't trust Staff, not that I don't trust the Department but I think that I would rather have our words, you know, be transmitted rather than you saying what we said. Commissioner Pali.

Ms. Pali: I don't know if this is appropriate to ask or not and so I don't know if it go to legal counsel, but are we allowed to understand whatever we recommend would recommending one thing or another would it change the dynamics of Council and how they approach the topic? We're not allowed to know that, okay.

Mr. Carnicelli: Oh, no, no, no, I don't think we will know that. I mean, I'm...I'm sorry, I shouldn't have shook my head because it was cynic in me that with saying is...guys, here's the other part of this is I love the fact that we really want to get this right, I love the fact that we wanna get this right and we are churning on this and three meetings later and maybe even four meetings later and most of the Council members won't even look at our recommendation.

Ms. Pali: Okay, okay—

Mr. Carnicelli: I mean, I'm just saying that—

Ms. Pali: --I got one.

Mr. Carnicelli: I'm just saying that is I mean they're not even going to look at it, they're gonna just do whatever they want to do. They're going like okay, that was...you know by ordinance, by Charter it has to go to planning commission, but that's you know, whatever—

Ms. Pali: Okay, got it.

Mr. Carnicelli: --and we're gonna do whatever we want. So I'm must as...I'm just wearing my cynic hat and Commissioner Freitas.

Ms. Pali: Okay, so let me try one more motion.

Mr. Carnicelli: Oh okay.

Ms. Pali: In lieu of Commissioner Freitas I would like to put a motion on the floor that I recommend studying the current demand in each region, I think that's what he was trying to allude to, and set the caps to meet each current demand. That's my motion. Did I get that...(inaudible)...

Mr. Carnicelli: Moved by Commissioner Pali, seconded by Commissioner Thompson. Discussion on the motion. Commissioner Freitas.

It was then moved by Ms. Pali, seconded by Mr. Thompson to Recommend to the Council to study the current demand in each region and set the caps according to the demand. Commission is taking no action to change the caps at this time until the study is done.

Ms. Pali: So the discussion is that—

Mr. Carnicelli: I'll go to Kawika, I'll go to Kawika and come back to you. Commissioner Freitas.

Mr. Freitas: So, would that mean it stays, in other words, we for now do not raise the cap, however we want County Council to do the study and come back with a hard number so that we

can...we know that there was thought put into it and it makes sense. If that's the case, I, I, yeah.

Ms. Pali: The motion would be do nothing at this time until you do the study so we can come to us and we can make an informed decision.

Mr. Carnicelli: Commissioner La Costa.

Ms. La Costa: Thank you, Chair. What we are talking about for timeframe? This has been like your poor little old horse that can no longer run, you know, it's just been reviewed and reviewed and reviewed and reviewed and reviewed and it goes back to the Council, it goes into Committee of appropriate, it comes back to us and how many months and we have to kick this around the corner again. So I think that what this body needs to do in my humble opinion is to make a decision, submit it to Council and let them run with the ball. So I think that we need to not just say here you get to have it. If you're going to send it back then we need a timeframe on that to come back to us because this is making me crazy. Thanks.

Mr. Carnicelli: It's not coming back to us. I'm telling you right now, it's not coming back to us. There's not a chance it's coming back to us, so what we can say is I mean, I think part of our recommendation is, hey listen if you guys are gonna move the caps get empirical data, right? Get empirical data, don't just move the caps because, no, to say oh, go get the empirical data and then come back to us again, then we'll be able to give you an opinion, that's not happening. So we can just say, listen before...our recommendation is go get empirical data and study the supply and demand before you move the caps. Commissioner Freitas.

Mr. Freitas: It's very similar to how they've set the limits now. I'm sure they're...it wasn't just whoever was on, they had to come up with a number with data. Now the question, are you sure it's not coming back to us or are you thinking it's not coming back to us.

Mr. Carnicelli: No, I...they're not gonna send it back to us again.

Mr. Freitas: Okay.

Mr. Carnicelli: I mean, I don't want to sound like a cynic but they're the decision makers, we're nothing more than a recommendation. I don't see a decision maker and again, take personalities out it, take...(inaudible)...then it come back to them, they're not gonna send it back for a second opinion, I just don't see them doing that, I just see that you know, they're gonna say, okay well if you're saying get empirical data, and then we get empirical data, okay now we can make the decision we don't need to give...get your opinion again once we have the empirical data.

Mr. Freitas: No, but—

Mr. Carnicelli: So, I just don't see it happening that way.

Mr. Freitas: But let's say we vote no change to the cap, and it's because of the data missing, but really in this group of commissioners if they really did that data and Mr. Croly came up with

that number that was perfect for each one would that have changed you vote because it seems like there are other reasons that people didn't vote. What I'm trying to say is, we want to leave it because this, this, this, this was...there was not enough information or whatever and one is that, but what other reason would have allowed us to vote, yes, put that as some of the reasons why we said no or are you saying when we say send it back with no change they don't care why we voted that is that kinda your...what you're trying to say?

Mr. Carnicelli: Well, I'm not gonna say don't care, but is—

Mr. Freitas: I would hope they care.

Mr. Carnicelli: --is, no, and that's just it, and that's why I'm saying is I'm not gonna say they don't care 'cause they do care I mean, they wouldn't have sought office if they didn't care. They do care, and so I apologize if I've implied that they don't care and that they don't listen and again, I have to...you know, I'll apologize to all nine of them for that, but what I'm saying is, is I agree with you in that if it would have come to us with empirical data, with a study it would have been easy for us to make a decision, right. This was a reso that was floated before Covid, the world blew up, and now we're trying to sort through it going okay, what are we doing or not without a study, without anything and that's, as I understand it what Councilmember King had even said pre-Covid was going we haven't studied this. We haven't gone to the community and asked them. We haven't said like listen what we are gonna do or not, how is this going to affect everything? So to me, it's almost like...it's...it is the middle ground in my opinion to say, listen guys before you make a decision study it, and I apologize if I've offended any of the Council members, not my intent.

Mr. Freitas: Again, sorry Chair, but I think this whole cap move was started by Council Paltin in west side only, was her desire and then everybody jumped on.

Mr. Carnicelli: Right.

Mr. Freitas: So by our decision we kind of delayed the wishes or such for Ms. Paltin, but it is what it is.

Mr. Carnicelli: Okay, so we do have a motion on the floor. If, Director if you could restate it please?

Ms. McLean: Running the risk of getting it wrong again, I believe the motion is to take no action on the caps until the Council conducts research into the demand and the community feeling in each region and then you would recommend that the caps be set accordingly. That you'd like to see it again based on that research, but that's their prerogative.

Ms. Pali: Yeah, so the wording, I wrote it down, recommend studying the current demand in each region and set caps to meet current demand and whatever you need to add to make that.

Mr. Carnicelli: Commissioner Thompson as the second does that agree with what it is that you had seconded?

Mr. Thompson: Yes.

Mr. Carnicelli: Okay, thank you.

Mr. Thompson: You know, funny is that our committee is split, I imagine our community will be just as split.

Mr. Carnicelli: Agree.

Mr. Thompson: So, it's gonna be a tough one.

Mr. Carnicelli: So if there's no other discussion on the motion Director why don't you state it or Kelly you can restate it and then we can...

Ms. McLean: The motion is for the Council to study the demand in each region and set the caps according to the demand and that's taking no action, this Commission is making no recommendation to change the caps at this time.

Mr. Carnicelli: Until that study is done. Okay. That is...Commissioner La Costa.

Ms. La Costa: Thank you, Chair. I need some clarification though there was no time frame set in there so that this doesn't go on ad nauseam so I think that I don't know how to change it if that needs to be a restated motion, rather than a friendly amendment, a restated motion to include some kind of time frame whether it's sunset or whether it be affirmative. Thank you.

Mr. Carnicelli: Commissioner Pali.

Ms. Pali: So my understanding is that we would recommend that they take that action to study and once they do that we hope if they were to take our recommendation then they would make that decision and so am I putting a time frame on when they should do the study, do you want a time frame on when you think it's coming back because I also agree that they're not gonna ask us for a second opinion, this is our first and likely final opinion that we give them to do the study prior to making their final opinion. So what am I putting the time frame on exactly?

Ms. La Costa: Well, I think that it...for the community's sake, for this debate that goes back and forth, that people want answers and they want it in a time frame that is acceptable just to leave it open without any kind of you know, finite time is just saying, well whenever you get to it. It's not gonna help the community decide whether they want 349 or 230, so I think that there needs to be you know, no later than November 30th or whatever date you want to put on your motion so that it does finally come to some vote from the Council. Thanks.

Ms. Pali: Would you like me to recommend—

Mr. Carnicelli: If I could, if I could address it, hang on, hang on, Commissioner Pali is Commissioner La Costa is I understand what you're saying but this was a Council initiated reso that they wanted to have fast tracked during budget. They wanted us to do this during budget and they would have gotten it back right away after budget and they were gonna run with it, and

then Covid happened and everything blew up. So this is something that they actually, you know, Tamara Paltin who is the Chair of the Sustainable Land Use and Planning Committee, this is her bill, this is her baby, she wants to move on this. I don't think we need to give them a timeline. I really...I mean, I get what you're saying but I don't see them sitting on this. This is something that's really initiated by them and they're driving so I don't think that we need to say, hey listen you better do this within this time 'cause I think that that's what we're gonna do, and especially if they're gonna do a study, they're gonna try and do it lickety split in my opinion, that's just an opinion, but if we want to put a timeline on the motion that's fine too.

Ms. Pali: I don't mind, I don't mind recommending, I don't mind just saying that we recommend that you get this done within 90 days or something like that 'cause it's still a recommendation, right, so...

Mr. Carnicelli: Study is not going to happen in 90 days though, that's the unfortunate part of this.

Ms. Pali: Okay, well whatever P. La Costa, Commissioner P. La Costa, I'm just saying that I would be willing to entertain a recommendation of time frame. I don't think that it would matter.

Mr. Carnicelli: Commissioner La Costa do you have a timeline that you'd like to put on it and what portion of it you'd like to put a time line on.

Ms. La Costa: Thank you, Chair. I think that a recommendation should be within six months. If it is a fast track item for the Council then they most certainly would get it done within that time. I just think that it...we need to have like you said, before empirical data so that our communities will go okay, if you know, if I can only go 35 here then that's what they decided. So this can't be hanging out there forever, and ever, and ever, thank you.

Mr. Carnicelli: Fair enough—

Ms. Pali: I'm okay with that change.

Mr. Carnicelli: Okay, so we have an amendment to the main motion by Commissioner La Costa to include a six-month timeline, seconded by Commissioner Pali. Vote on the amendment to include timeline, those in favor of including the timeline, please raise your hand? So that is one, two, three, four, five in favor. Opposed? Commissioner Tackett has abstained so the motion passes 6-0.

It was moved by Ms. La Costa, seconded by Ms. Pali, then

**VOTED: To Amend the Motion to Include a Six-Month Timeline.
(Assenting – P. D. La Costa, K. Pali, D. Thompson, K. Freitas,
S. Castro, C. Tackett – Abstained)**

So now back to the main motion as stated including the timeline is what's now on the floor. Any further discussion on that recommendation to the Council? Seeing none, Director if you would actually read the motion.

Ms. McLean: To recommend to the Council that they study the current demand in each region within six months and set the caps according to the demand.

Mr. Carnicelli: All those in favor of that motion please raise your hand. That is one, two, three, four, five. Opposed, Commissioner Tackett. So dissenting is Commissioner Tackett. Motion passes 5-1.

It was moved by Ms. Pali, seconded by Mr. Thompson, then

VOTED: Recommend to the County Council to study the current demand in each region within Six Months and set the caps according to demand. No recommendation to the change the caps at this time, until that study is done.
**(Assenting – K. Pali, D. Thompson, K. Freitas, S. Castro,
P. D. La Costa)**
(Dissenting – C. Tackett)

Mr. Carnicelli: Congratulations, Commission. That was, that was actually really good work guys. I mean, I think that, you know, I've often said in situations like this if everybody walks away unhappy then probably got a good result. So hopefully everybody walks away unhappy. Commissioner Castro.

Mr. Castro: Thank you, Chair. What I'd like to say is that while we can agree to disagree, in the end what needs to come is what is in the best interest of our communities.

Mr. Carnicelli: Agreed, and that's the part that I think is cool...or go ahead Commissioner Tackett.

Mr. Tackett: Well said.

Mr. Carnicelli: Yeah, yeah, and this is what makes me proud to be a commissioner with you guys, so thank you. At this time, we're gonna take a break. So before we move onto our next item, let's see I have 11:17, let's take a break, let's come back at 11:30. So the Maui Planning Commission is now in recess until 11:30.

Ms. McLean: Chair, just want to let you know that Deputy Director Jordan Hart's gonna be stepping in for...jump over to Council, so he'll be with you when you reconvene at 11:30, and then I'll join when Council is finished. Thank you, Chair.

Mr. Carnicelli: He better not screw it up. All right, thank you.

Ms. McLean: He'll get the motions better than I got them, so...

Mr. Carnicelli: I don't know, I don't know, all right, thank you. I'll see everybody in 15.

A recess was called at 11:18 a.m., and the meeting was reconvened at 11:34 a.m.

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 SUP 1 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. (SUP 1 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.

(Item B.2 begins at approximately 00:00:33 of Chapter 3 of the audio recording.)

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

approved the permit with conditions, it went to the Land Use Commission sent it back to you to determine several things, first and foremost what is the land area for which this permit is required and I think that if, if you review the map and determine that the area is under 15 acres and make that finding that this item would not have to go back to the State Land Use Commission. That's, that's the background on this item.

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

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

Mr. Carnicelli: Okay.

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

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

Ms. Furukawa: Yes.

Mr. Carnicelli: Right.

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

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

Ms. Furukawa: Okay, so Number two is with regard to the proposed conditions and the basis for the conditions. So, I didn't attach it again, but there was a letter dated September 16, 2019 that was the State Land Use Commission Special Permit approval, and in it there's 12 conditions that were imposed on this permit. I think the applicant has some suggested revisions to it though that he may want to speak to. Okay, so the third is—

Mr. Carnicelli: Okay, so we're talking about—hang on, hang on just for clarification 'cause I had to go look this up.

Ms. Furukawa: Okay.

Mr. Carnicelli: This is the...anyways, okay, I see the...these are the conditions that we placed—

Ms. Furukawa: Yes

Mr. Carnicelli: --on the SUP.

Ms. Furukawa: Yes.

Mr. Carnicelli: Right, and as I go through here, okay, and so, okay, go ahead, continue, sorry Tara.

Ms. Furukawa: Okay, so the third is whether or not the actual use of the church is related to any agricultural use of the property.

Mr. Carnicelli: Right.

Ms. Furukawa: So I guess they were saying you know this is a faith based church and it's, they kind of honor ag, so...but I guess at the LUC hearing it was brought up that you know maybe because the ag would be a permitted use, the church should be separated from it.

Mr. Carnicelli: Right.

Ms. Furukawa: So, it would really not have to go to the LUC for review. So, Number 4 is whether or not—

Mr. Carnicelli: But wait a second, wait a second, wait a second, wait a second, if it's under 14 acres, three doesn't matter, doesn't go to LUC, right. If we clear one, none of these else go back to LUC.

Ms. Furukawa: Yes.

Mr. Carnicelli: This whole package doesn't go back to LUC. So, then it's just—

Ms. Furukawa: Yes.

Mr. Carnicelli: --it's us wanting clarification. I mean, I think these are all good questions that we may want to address, but we don't necessarily have to. I mean, maybe Mr. Hopper needs to weigh in here but we don't necessarily have to address these if this is...if one is just saying, hey listen it's 14.6 and we're done.

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

Mr. Carnicelli: Okay.

Mr. Hopper: It remanded to you for additional findings. Among them were whether or not this permit is within the jurisdiction of the Land Use Commission essentially, and so I would agree if you determine that this, the uses is under 15 acres and you have a clear map to show you that, I think you can make that finding and then, and then the Land Use Commission wouldn't have further say over it as long as you are clear on the area that this permit would cover and that's

what the Planning Department was unclear on previously. I know there's a new map submitted and if that's sufficient for the Department and you, I believe you could make that finding in the record.

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

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

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

Okay, so Number 5 was a finding with regards to the impact of the shared water system whether it's adequate for the project without causing detriment to the other users. The applicant reached out to the adjacent neighbors, Jerome Labat and Michele Drewyer after the LUC hearing and kind of requested permission to use the private water system for use of this church and one of the adjacent neighbors, I guess, Michele Drewyer responded that the applicant does not have her permission. Jerome Labat did send me an email. In this memo, it said that he didn't respond, but he did, and he doesn't agree with it either. So that's a finding that you would have to make and the shared water agreement, correspondence with neighbors, and a letter regarding the water usage from the project engineer are attached as Exhibit 4.

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

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

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

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

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

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

So, this our response. If you look at that site plan, the new one, an accurate and detailed revised site plan drafted by David Harris of Oracle Consulting was verified by a Planning Department site inspection and has been submitted for MPC's review. The changes to the site plan removed all the inaccessible gulch areas from church use. It also confined church use to the 14.6 acres clearly defined by existing fencing and the perimeter loop driveway allowing cars to flow in one direction for ease and safety of entrance and exit to the church area. Any ambiguity has been eliminated by including access for church activities to the entire usable portion of the land except for a 60-foot wide strip of land running along the boundary fence line separating our parcel from the neighboring parcel owned by Ms. Michele Drewyer. This 60-foot wide area is over a thousand feet from the church building where most activities will take place. It will be delineated with ample signage and it will provide an additional buffer to help minimize any potential or perceived impact on Ms. Drewyer. As the site plan indicates, the area requested for church use includes over a hundred parking spaces easily allowing for parking for church activities.

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

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

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

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

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

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

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

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

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

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

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

Mr. Abrams: Is that for me to answer?

Mr. Carnicelli: Yes.

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

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

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

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

Mr. Harris: You can or cannot.

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

Mr. Harris: Okay.

Mr. Carnicelli: So, you are Oracle Consulting?

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

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

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

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

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

Mr. Carnicelli: Okay.

Mr. Harris: Concerning elevations.

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

Mr. Harris: Correct.

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

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

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

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

Mr. Harris: Correct.

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

Mr. Harris: Yes.

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

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

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

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

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

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

Ms. Pali: Okay.

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

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

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

Mr. Carnicelli: Deputy Director.

Mr. Hopper: Oh.

Mr. Carnicelli: Or go ahead Mr. Hopper.

Mr. Hopper: The Planning Department should definitely give their response too, because they see lots more of these permits than I would, but I think that's the issue that this went to the Land Use Commission for is that what type of information is required to determine what the acreage is 'cause the LUC staff had raised concerns that if you're...if you got a larger parcel than 15 acres we wanna...we think we wanna look at that. I think the Land Use Commission in their

hearing made clear that if you can clearly show the area is under 15 acres that that's just a line that the law says they don't have to review it on. So I think the applicant can designate a smaller area than the full property, but will need to...the Commission will need to find that the permit, the activities allowed by the permit are limited only to that area and have an accurate, have an accurate representation of what that area is, and I can leave it to the Planning Department to go over historically how this has been done and what they've seen, but that's I think something that the Land Use Commission was asked to look at and I think they said, if you establish that it's under 15 acres that is something within your jurisdiction but you should make findings on what the area is and make clear that the permit can't...the permitted use can't go outside of that area. But I think Planning Department for some of your questions as far as what a typical application would show I don't know the answer to that, I don't deal with every application that comes in.

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

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

Mr. Carnicelli: Thank you, Deputy Director. I would have like to have seen imagery, you know, 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 mean, to say that, oh okay, we've taken out the gulches, I guess we're gonna have to go with it at this point. Any other need for clarification? Commissioner Freitas.

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

Mr. Harris: Could I address that?

Mr. Freitas: Yes.

Mr. Harris: So—

Mr. Carnicelli: Go ahead Mr. Harris.

Mr. Harris: There is a actual boundary fence that is right on the ridge of that gulch that keeps any potential wanderers or traffic from walking into the gulch. It's a steel post fence. It's pretty strong. It would take somebody climbing the fence actually to get into the gulch to wander past

it. That fence is on the northeast end and west side of the property and then there's another one on the adjoining property line past where this 60-foot setback is. So it's...and it's a significant fence meaning that it's you know solid post, it's not something that's just gonna fall over.

Mr. Freitas: Thank you.

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

Ms. Furukawa: He wanted them to be included because there may be some, you know some people interested in staying there, I guess who would come visit the church or reverends or something like that who may come and visit. So they would need a place to stay so that's Lew Abram's house on the right side of the plan.

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

Mr. Hopper: I don't know if you need—

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

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

Mr. Carnicelli: Oh, go ahead, Tara.

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

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

Mr. Carnicelli: Yep.

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

Mr. Carnicelli: Okay.

Ms. Furukawa: Yeah.

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

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

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

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

Mr. Carnicelli: Okay, thank you.

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

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

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

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

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

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

Mr. Castro: Yes, how did he determine the acreage, they used the CAD program correct?

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

Mr. Castro: Do we know when the actual survey was done?

Mr. Carnicelli: Mr. Harris?

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

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

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

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

Mr. Harris: Yeah, thank you.

Mr. Carnicelli: Sure.

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

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

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

Mr. Harris: Yeah. I found the survey.

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

Mr. Hart: Yeah, Chair. Surveys, surveys are fine. I mean, it's...the survey was done by a licensed surveyor. If the survey is done by a licensed surveyor and they put it into CAD, the information will be correct and you could reference it at a later date. So, it's not, it's expected that a consultant could use that CAD file to trace a new map using the same dimensions.

Ms. Pali: Is there a time frame?

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

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

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

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

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

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

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

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

Mr. Abrams: Can I speak to it?

Mr. Carnicelli: That's four—

Mr. Abrams: Nice.

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

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

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

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

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

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

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

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

Mr. Thompson: I second that.

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

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

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

Okay, so I guess where we left off was, we've...we're on let's see Item C.2, and we have dealt with the first item of six that the Land Use Commission has requested us to deal with. So I was just kind of reviewing this stuff during lunch and I think as Mr. Hopper said, maybe we can do is just roll through these things and at the end we can go forward with our decision as to you know, whether we're gonna approve, disapprove or amend. So if we go to Number 2, it says with regard to proposed conditions and the basis for these conditions. So I feel a little bit...personally like okay, I gotta, we gotta justify this, but the first thing I would like to put on the record is that the applicant agreed to everything, all those conditions, right, when we went

through that we asked the applicant and the applicant agreed. So, you know, I want that to be on the record. But if we then go to these conditions and I don't know if you guys have them in front of you, but it says, State Land Use Commission Special Permit, so if we have to give the basis for the conditions first off like I said, is the applicant has agreed to everything, and a lot of this stuff was just to mitigate concerns that were brought up along the way.

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

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

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

Ms. Pali: Yeah, she did.

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

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

Mr. Carnicelli: Yeah, just that.

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Carnicelli: Great. Anybody else? Okay. This was one I think that I'm kind of invoking Commissioner Robinson, I think that he kinda really helped with this one a lot. That church and religious activities shall not occur on days other than Wednesday mornings, Friday evenings

and one additional each week provided that none occur on a Monday and no more than six per year occur on a Saturday with no more than 40 participants. Church and religious activities may also occur on the holidays listed on the schedule provided by the applicant at the August 13, 2019 Maui Planning Commission meeting with no more than 100 participants or the maximum occupancy established by the Fire Department for the church building whichever is lower.

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

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

Mr. Carnicelli: Carolyn would you or Jordan?

Mr. Hart: That was first provided last night.

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

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

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

Mr. Carnicelli: All right, Tara.

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

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

Ms. Furukawa: No, yeah correct.

Mr. Carnicelli: Correct. Okay.

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

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

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

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

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

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

If I'm recalling, part of this was due to the fact I think that there was, I believe some after-the-fact permits that needed to be done and there was also just some vagueness as to what was going to be and not, and there was some building permits that needed to be made and completed and so part of this condition was just saying hey listen if you're saying it's a duck and you want it to be a duck and we get to show up and see that it's a duck. Anything else that somebody would like to add at this point? Okay, it's a duck.

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

And let's see if I can go back to that one, you know, there was just questions about whether or not they were going to meet health and safety, water and wastewater requirements and so we

kinda just conditioned it to say, you know I mean, it basically just says you're supposed to comply with these things. I don't know if Deputy Director can help us with that, having his expertise but it seems as through that's sort of why we put that in there. And I don't think you were part of this meeting, were you, Deputy Director Hart?

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

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

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

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

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

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

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

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

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

Mr. Hart: Sure, thank you. That is a pretty common term that's used and basically very often when a project is in the planning stage, there's expectations of exactly how things are gonna be, but then when you go through building permit plan review or physical construction out in the field some things might exist or occur that weren't foreseen that are no significant or major issues but are little deviations from what may have been proposed. And so if there was some sort of language that said, strict adherence, let's say who knows what it could be, let's say there was a reason that a building needed to be shifted four feet to the left, the Planning Department is relieved from the obligation to think do we need to send this back to the Planning Commission.

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

Mr. Hart: So in response to that, generally the way the Department looks at things is that if, if an applicant gets an approval to do something that they would like to do and it turns out that they're not able to or decide that they don't want to build out their project or pursue uses that would benefit them completely generally the Department doesn't have a problem with them not doing a full build out or carrying out their own project. If part of their project was represented as benefit to the general public in exchange or as a you know, as a perk for their project then we would generally expect them to fully build out that portion, you know, regardless of whether or not they build out the portions that only benefit them.

Ms. La Costa: Thank you, Jordan.

Mr. Carnicelli: Anybody else? Okay, then—

Ms. Furukawa: Hello?

Mr. Carnicelli: --let's see, the applicant...Tara is that you?

Ms. Furukawa: Commissioner...yeah, so I looked through the proposed holiday schedule and it looks like...

Mr. Carnicelli: Okay, we're not there yet.

Ms. Furukawa: Okay.

Mr. Carnicelli: Is I'll...is we'll get back to that, we'll get back to that, thank you though.

Ms. Furukawa: Okay.

Mr. Carnicelli: I'm glad that you're on it. Cool. What did I just read? Are we number...that was 9, yeah. So now 10, that the certificate of occupancy shall be required...a certificate of occupancy shall be required for all church related structures prior to the initiation of operation and shall be maintained for the duration of the permit. Verification shall be provided to the Department to operation and shall be included with the compliance report.

If I do recall that is, they were in the process of finishing up. I believe that's what it was. They hadn't had...they didn't get their C.O. yet, and so what we were saying in this particular condition was this permit doesn't become effective until you got your C.O. You know, it's like, okay go get your certificate of occupancy first, and you know, and then, then your permit becomes valid, not it's valid and you know, maybe...maybe or maybe not you get your certificate of occupancy, so that's what that was about as far as I can recall. Anybody else want to add? Commissioner La Costa.

Ms. La Costa: Thank you, Chair. This is for Deputy Director Hart. Do all churches have to have a certificate of occupancy?

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

Ms. La Costa: Thank you.

Mr. Carnicelli: Okay, so Number 11, that a minimum of 72 hours' notice shall be given to neighbors for events with more than 40 participants via website maintained by the applicant which is available to the public and readily accessible. Website shall be functional and verified by the Department prior to operation and shall be maintained for the duration of the permit. Again, this was one of those conditions that came in regards to the neighbors and the neighborhood being that they're gonna have you know, certain events over 40 people that would go to the middle of the night, you know, like you know there were certain celebrations, I can't remember I think it's in the next condition, you know, Christmas, New Years, things like that that are gonna be big and people have to be able to be notified and they have to be able to

go someplace to kinda know when the area is going to be affected, and so that was part of what this condition was, was just you know a way with which the public can know what's going on and prepare. Anybody else want to add anything beyond that as far as the basis for that condition. Commissioner Pali.

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

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

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

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

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

Mr. Carnicelli: Well, it's is, is what it was is that there were certain events, you know, daily like their event is maybe on a Wednesday morning or a Saturday morning or something like that, the applicant had said, oh we're not gonna have more than 40 people there, right. So, like the special events that was sort of the delineation that we said, so it's like okay, yeah. You go to 4 and 5, all right if it's under 40, it's not "special", right, that's just one of those ones that they're doing as far as, you know, the church activities, normal church activities is typically under 40. If it's an event, okay, 40 was the number where we said, okay, once it's over that, now we start getting into these different you know areas, and so that's kind of—

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

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

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

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

Okay, Mr. Hopper.

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

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

Mr. Hopper: Yeah, I...that's the...if those are the Commission's basis I think any member's free to add additional reasoning but I think the general idea was to try to mitigate the impact that the church through noise and other issues would have on the surrounding properties which is part of the, part of the criteria for granting the permit so I think that was the general intention behind the conditions.

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

Mr. Abrams: Ah, we're back.

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

Mr. Abrams: Okay, I shall do that. I have a written statement about that. In our previous testimony in the August 13th hearing, the MPC minutes, Page 18, lines 3 through 27 we describe how SEA, Sacred Earth Assembly's, earth-based philosophy supports its congregants and learning to grow food naturally and offers applied hands-on learning opportunities through farm volunteer activities on Ahimsa Sanctuary Farm, thus rather than displacing farming activities Sacred Earth Assembly's ministry will allow its congregants to participate and learn about farming and to...(inaudible)...Ahimsa Sanctuary Farm's agricultural activities and production. Produce and value-added products from the farm will help supply community potlucks and also will be for sale to church attendees and the general public as available. This

is will help meet the food sovereignty goals of Maui County, so clearly there is a relationship and one doesn't displace the other, they're complimentary.

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

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

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

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

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

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

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

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

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

Ms. Pali: Oh, okay.

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

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

Mr. Abrams: Okay.

Mr. Carnicelli: Commissioner La Costa.

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

Mr. Abrams: The out buildings we build as we needed them for tools, storage sheds, we've had a mushroom growing operation that we did in another shed that's on the middle western side there, we have an herb distillation, it's not really so much of a business but we're trying to develop our value added products by distilling turmeric and other herbs that we're growing and so we have that...another ag workshop for that purpose, and we had just a variety of needs to store tools and mowers and so on. The one building that we are asking for a transition from a ACT 203 agricultural production storage facility, we've applied to have that become an ohana, and so that permit has been submitted and, in the process, and it is under construction. It's not a complete building until we get that full approval to finish that building, you know, there's no electricity and you know we have to add on to it. We've just put, you know, the basic walls and roof up and we're hoping to...originally it was proposed to be a ag production and now we're asking for a permit to turn it into our first farm workers dwelling. We don't an ohana other than that.

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

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

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

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

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

Mr. Abrams: I'm sorry, yeah.

Mr. Carnicelli: Commissioner Pali.

Mr. Abrams: We hope to reach that.

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

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

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

Mr. Abrams: Thank you.

Mr. Carnicelli: Deputy Director just while we're here, I got a question for you. The break for short-term stay versus long-term stay is 180 days, does it matter whether or not someone's paying or not?

Mr. Hart: Well, it's complicated. So there's a definition of transient in Title 19, and generally...I can just get to it, it's easier to...not easier but it's more accurate to read the definition than to try to go from memory, but basically it accounts for, it accounts for if there's no sort of exchange then you know, potentially it's exempt, but let me just read the definition really quickly because it's kind of, it's kind of involved. While I am scrolling through, I was able to review the County Code and certificates of occupancy are required for all structures except for single and two-family residential structures and utility structures. So that would be mean that they would be expected to be required for any sort of church structure that was to be occupied. One moment.

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

Mr. Carnicelli: So, clergy is covered here?

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

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

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

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

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

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

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

Mr. Abrams: No.

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

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

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

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

Mr. Freitas: Thank you.

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

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

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

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

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

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

Mr. Abrams: Right.

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

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

Ms. La Costa: Okay.

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

Ms. La Costa: Thank you.

Mr. Abrams: You're welcome.

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

Ms. Furukawa: Exhibit 3.

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

Ms. Furukawa: Yeah.

Mr. Carnicelli: Three from the...and basically the Department and I can't even find it here, the DOT...the DOT basically said from their perspective we're okay?

Ms. Furukawa: Yep.

Mr. Carnicelli: Okay. However, I'm gonna just say this and we're not gonna do this, 'cause I want to just get this LUC thing out of the way, that is actually one of the things I woke up the night before...the night after we got done with this and I'm going, ah, we should have done something about traffic in and out off of Hana Highway there. So anyways, we may have to address that as we proceed forward, but is everybody okay with the DOT addressing the Land Use Commission's Number 4 as far as traffic goes? Commissioner Freitas, and then Commissioner Pali after that.

Mr. Freitas: I was just gonna say that if they made an assessment around March or April wouldn't that have been when there was no tourists here and that would be a kind of a false...I mean not an inaccurate assessment?

Ms. Furukawa: We basically transmitted back to them because the Land Use Commission thought in our original staff report we included an email from the Department of Transportation and that one just required a permit if there would be any signage within the state right-of-way, and I guess the Land Use Commission because it was an email, I don't know, we weren't sure if that was sufficient enough so we retransmitted the application to the State DOT and then they came back with this letter. So, what we transmitted to them was the original application, it wasn't a traffic assessment or anything like that.

Mr. Freitas: Wow, okay.

Mr. Carnicelli: Commissioner Pali.

Ms. Pali: Yeah, I'd just like to make a mental note that as we move along, I would want to be revisiting this and potentially adding conditions for that.

Mr. Carnicelli: Okay. Commissioner La Costa.

Ms. La Costa: Thank you, Chair. Referring to the DOT's letter of April 22, 2020, it talks about the building and allowing up to a maximum of a hundred people for the special use and the traffic so when there are situations if this is approved and when there are situations where there are more than a hundred people then that is going to have to be addressed down the line as well. Thank you.

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

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

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

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

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

Mr. Carnicelli: Yeah.

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

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

Mr. Hopper: I do not think the Commission can have a say over whether or not the water can or can't be used in a case where it's a private...by private agreement, that's between the parties

themselves. What the Commission's focus would be on would be whether or not this meets the criteria for permitting and part of that criteria is that the permit would not have adverse effects on surrounding properties and so this issue may relate to that. Again, you don't have any jurisdiction to make a determination on whether the water can or can't be used, that's through private agreement. And it looks like the past decision, it looks Condition 7 said that, that...that basically the requirement would be that there has to be compliance with State Department of Health requirements relating to the individual wastewater system and the private water system, verification of compliance with State Department of Health requirements shall be provided with the compliance report, but it seems like the past approval said it's up to the applicant to find that. However, if you believe that based on the record that you have concerns with adverse effects on surrounding properties based on the water issue, you can review the record and certainly ask questions of the applicant on that issue, but in the sense that, in the sense of you as a commission seeing if they meet the permitting criteria, I think that's the relevant criteria is whether or not allowing this use would have an adverse effect on surrounding properties and there's a record of this discussion going back and forth, but again, the commission, they're basically saying that you have a...they have private water system and can go into why they believe they are, they can be granted a permit but that's, that's I think how the issue would be approached and not who has the legal right to use the water because that's between the owners of the system. Again, it's possible that the County could approve the permit and there could be a lawsuit that prevents the landowner from utilizing the water and so that's, that's...you know it's similar to if you had private CC&Rs that prohibited a use, the County could still grant the use but the private CC&Rs may prohibit the activity from actually going on though I see that as a separate issue in one sense, but it could be related to the criteria for granting the permit which is, deals with adverse effects on surrounding properties.

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

Ms. McLean: Thank you, Chair. The only thing I would add to this is that there are several permitted structures on the property so those building permits would have to been signed off by various state and county agencies. I would imagine the Department of Health would have been among the agencies that signed off. Those structures include a water tank on the property. So, when we're talking about the water use of this property, I think it would be reasonable to look at the water use without the proposed...without the use that's proposed in front of you versus with the proposed use. I don't know that there's a significant difference in the amount of water demand if the property were used solely for agriculture versus for Dr. Abram's use that has an agriculture component. I don't know that there's a significance difference in demand between the two because both can involve a number of people coming to the property and using the property in various ways. So that's, that's backing up what Deputy Director Hart said and what Corporation Counsel said which is that it appears as if there's adequate water to serve the property today, and there doesn't seem to be a significant difference in the water demand with the proposed use, and if there are concerns in terms of ownership in terms of ownership, and the terms, the private terms by which that well is used, that would be more of a civil matter rather than something for the Commission to take into, take into consideration when making the decision today. Thank you, Chair.

Mr. Carnicelli: Thank you, Director. I guess, my question is I guess 'cause I think that that is what that Condition 7 or whatever number it was we were trying to allude something to that

effect, we're saying okay listen if you ain't got the water then this permit's kinda conditional on that. Any other questions in regards to this particular item from the Land Use Commission? Commissioner Pali?

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

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

Ms. Pali: I think all applicants are tasked with proving, you know we used to have that saying where's the water, all applicants are tasked with show me the water, right? And so, this is a classic case, I don't think that we're making this applicant different from anybody else. In his case, he bought a property where there's a shared private agreement so he really can't function if he doesn't have the agreement for the water so I feel like it's connected, but we're not gonna get involved with the civil suit and I think it's appropriate that in order for me to know that he got the water, I need to know that the agreement's been signed and this kinda brings us back to small town Maui like I think Mr. Abrams seems like a super cool guy, I think he seems like he's flexible. He's always been you know fun and cool and just flexible when I've seen him, and I would say, Mr. Abram, you know, go make good with your neighbors, get the agreement, and show me the water, that's sort of how I'm feeling. I don't think I'm infringing or giving additional power to your neighbors, but let's face it, if you do have a difficult relationship with your neighbors and you're not in good standing then any neighbor in any process of an application can come up and make your life miserable. We've seen them. We've seen the testifiers, we've seen them come up here, and so, I don't know, that's kinda how I'm feeling, and unless it's illegal to take that perspective that's kinda what I'm feeling right now.

Mr. Carnicelli: Gotcha. Anybody else want to...Commissioner La Costa.

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

Mr. Carnicelli: You're really loud.

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

Mr. Carnicelli: Yes.

Ms. La Costa: Okay, sorry I took out my headset so I had to turn it up, sorry, didn't mean to blow out your eardrums. I am looking at the Neal Nishida letter, it was a PE dated June 2nd. My concern is on the backside it talks about the attendees would range from 5 to a maximum of 300, and we've looked at 100 people continuously so, I...you know, I'm looking at discrepancies again and not feeling very comfortable with that. It goes into the water agreement, et cetera, et cetera, so it's all kind of dovetails into each other, so...

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

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

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

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

Ms. Furukawa: Yeah, so RFS 19-0001748, that was...somebody said that there non-permitted grading and groundwork occurring. There was heavy equipment, no SMA Exemption or Grading Permit. So, I guess Public Works was sent out there and this was actually filed by Ms. Drewyer, Lew's neighbor, adjacent neighbor. They went to check it out and they saw no evidence of grading so they closed it out. And then Gail and I went out there actually, she went out and she saw...she drove along the dirt driveway, she didn't see or hear any large machinery in the area, so she went ahead and closed it as well. And then, there was RFS 20-0000184 and this was a large party that was held on Friday night, it was January 31, 2020, this was an annual birthday party for a friend, and Lew had said that no money was exchanged so the RFS was closed by zoning. I think she requested that proof of the event taking place and the inspector wasn't able to find it on her own, so...

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

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

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

Ms. La Costa: Okay, thank you.

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

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

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

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

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

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

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

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

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

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

Ms. Pali: Okay, and so—

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

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

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

Ms. Pali: Okay, I got my answer.

Mr. Abrams: --disturbance.

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

Mr. Abrams: Okay, thank you.

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

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

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

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

Mr. Abrams: Did not.

Ms. La Costa: Thank you.

Unidentified Speaker: In the future—

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

Mr. Carnicelli: Have you started that website yet?

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

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

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

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

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

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 days 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 or 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.

Ms. Furukawa: Yeah.

Mr. Carnicelli: Church and religious activities may also occur on the holidays listed on the schedule provided by the applicant at the August 13 2019 Maui Planning Commission meeting. So, I think Mr. Hopper is right. I mean, what we're doing here is we're saying okay, there's church and religious activities that are not on a Wednesday...not on Wednesday morning, Friday evening, some other day and not occur on a Monday, and there's no more than six per year on a Saturday with no more than 40 participants, and then there's this additional thing where we said okay, then there's this additional thing which is the list. My first question which I think is originally what Commissioner La Costa was getting to is, we just go the number of items, the number of days on the list you have now versus the other list ...(inaudible)...let's take Wednesdays and Mondays and all that out of it, just is it the same number of holidays? Like is there 23 on this and 23 on the other one or do they try to say, oh now we want 24...you know what I'm saying?

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

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

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

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

Mr. Abrams: May I address—

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

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

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

Ms. La Costa: I do. I'm looking at the schedule that we were sent last night or this morning, and I notice that there are eight additional holidays of the church that are outside of the Monday, Friday, Sunday schedule and again, I'm concerned about the through their religious...if they say they're religious holidays then that's what they are, but I'm concerned about the neighbors being subjected to three, four, five, six, seven days a week because they're holidays. So you know, there's a holiday every month with the full moon, and Valentine's Day and Halloween, and I'm just really concerned about residential areas that have all this activity and the disturbance for that neighborhood so, I will be interested to see what Tara comes up with, with the old list versus the new list. Thank you.

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

Mr. Abrams: We need to redo.

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

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

Mr. Carnicelli: Okay, great. Thank you.

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

Mr. Carnicelli: And what are those two labeled?

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

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

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

Mr. Carnicelli: Right.

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

Mr. Carnicelli: And do you feel the way that the conditions are written right now it spells that out well enough or should we, you know wordsmith our conditions? 'Cause I...you know, now that you're saying it like that, it makes total sense and that is what our intent was when we drafted these conditions is exactly how you said it. So, do we need to redraft the conditions to where as Kellie said, you know, although this is only a one-year permit, so you know, most of you all are gonna be here when this thing comes back, if it comes back, you know, so we're gonna kinda know since it's only a one-year permit. So, do you think that we should redraft the wording to, I mean completely wordsmith it or just change out the old list for the new list but we're not giving them the two new ones, we're not giving them extras.

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

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

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

Mr. Carnicelli: Okay.

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

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

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

Mr. Carnicelli: I think so, yeah.

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

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

Ms. McLean: Yes.

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

Ms. McLean: Correct. You're correct.

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

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

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

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

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

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

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

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

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

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

Mr. Freitas: Okay.

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

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

Mr. Carnicelli: Okay.

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

Mr. Carnicelli: Friday, October 2nd?

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

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

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

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

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

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

Mr. Freitas: Oh.

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

Mr. Freitas: Yeah.

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

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

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

Mr. Harris: Okay.

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

Mr. Harris: Yes.

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

Mr. Harris: Yeah, that—

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

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

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

Mr. Harris: A, I—

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

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

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

Mr. Freitas: Yes, thank you.

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

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

Mr. Carnicelli: Nailed it.

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

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

Ms. McLean: Okay.

Ms. McLean: So, I guess next Director is to kinda go with what I think all of our concerns are that was voiced by Commissioner Pali and that is water. Trying to find the condition here that

addresses that and is there a way with which we can reword that condition to I guess address the fact that they may not have capacity?

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

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

Ms. McLean: Yeah, it's really up to the State Department of Health to tell us about water system adequacy. If a property is on the county water system then that's what the Department of Water Supply does. With a private system it can be the Department of Health who regulates some part of it or the Commission on Water Resource Management which protects the source. Beyond those, we really don't have county level regulations for private water systems. We just follow what the state agencies tell us and trust that their regulations are adequate. Now that doesn't address any kind of private dispute and that, that isn't for the County to revolve anyway.

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

Ms. Pali: I mean, I just—

Mr. Carnicelli: --add additional language?

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

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

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

Mr. Carnicelli: Right.

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

Unidentified Speaker: Put it in the check.

Mr. Abrams: You got...

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

Mr. Carnicelli: Okay.

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

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

Ms. Pali: I think that—

Mr. Carnicelli: I mean if they—

Ms. Pali: Sorry, Chair.

Mr. Carnicelli: Go ahead, Kellie.

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

Mr. Abrams: ...(inaudible)...do you have it on...

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

Mr. Carnicelli: Okay, thank you.

Mr. Abrams: May I address the water issue?

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

Ms. La Costa: Thank you, Chair. I'm in agreement with Kellie as far as what we have authority to do and what we don't. If you sign an agreement, and you said, yes I will do this and he, you know, got it when he bought the property and two of the three which is a majority said, sorry, you know, we're not gonna allow it, then, then have you just ignored the other two people that

they don't count on this, so it is a really big sticking point and I don't know how to get around that being that it doesn't seem that the three people can sit down and hash this out so, it's you know, it's a –

Mr. Abrams: There are provisions to—

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

Ms. La Costa: Thank you, Chair. So, I just have one more question it's albeit it's not on the seven, see this list of holidays and my question initially to Mr. Abrams, and it is now because it's a very, very important to me making a decision, and I want to know if they have been holding church or worship activities over the past time from when they first applied for their permit, it went through LUC, and now it's back at us, there have been several "holidays" that have gone by and have those, have those services been going on outside a permit granting? Thank you.

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

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

Ms. La Costa: Thank you.

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

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

Mr. Carnicelli: Mr. Abrams, Mr. Abrams is this, this is an ongoing thing, you keep interrupting...okay, and whoever's doing share screen please stop. Guys, this is getting a little bit out of control. This is a formal meeting of the Maui—

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

Mr. Carnicelli: --Planning Commission. Okay, Mr. Abrams—

Mr. Abrams: To the condition.

Mr. Carnicelli: Mr. Abrams, Mr. Abrams, here's the thing, there's decorum, and repeatedly you have broken decorum. It's not in your favor to continue to do this and to continue to interrupt us,

our proceedings, and the way with which we're conducting things, when, when you're asking for our permission for something. If this is the way that you treat your neighbors—

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

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

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

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

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

The following transcription in bold (Pages 86 – 89) was made from a video provided by the applicant which they had recorded during the meeting:

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

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

In light of this First Amendment issue, Sacred Earth Assembly requests that the restrictive conditions which Maui Planning Commission intends to impose upon Sacred Earth Assembly and it's Special Use Permit 1, that they, the Maui Planning Commission identify and "make specific findings with regard to the proposed conditions," due to the importance and the basis of them certainly.

So, with respect to the Planning Condition 1, stating the Special Permit will be valid for one year, we believe that a one-year term is too restrictive and could unnecessarily hamper the efforts of Sacred Earth Assembly to get its ministry established. Given the length of expense of the Special Use application and hearing process which has

occupied a great deal of time, money and energy over more than three years, Sacred Earth Assembly asks the Maui Planning Commission to reconsider granting the requested SUP for a period of three to five years. Especially after the devastating impacts of COVID-19 on this island and everybody on it major investments have to be made to operate a church in a pandemic. We need time to build the ministry through strategic planning, fund raising, and program development. To insist that the church return in one year for additional scrutiny without cause is unduly restrictive and is a burden on Sacred Earth Assembly.

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

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

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

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

Furthermore, during the COVID crisis SEA asserts that it will abide by official guidelines regarding approved interior and exterior group size, otherwise, SEA requests that it be treated the same as other churches in Maui County in which the maximum number of congregants is defined by the Certificate of Occupancy determined by the Fire Department.

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

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

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

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

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

Ms. Takayama-Corden: Ten minutes.

Dr. Abrams: Additional demands for church use even if the congregation grew will be negligible and there is no evidence that it might cause detriment to other users. SEA's efforts to reach out to the neighbors who are a party to the water agreement have been met with resistance but they have filed no formal legal complaints and have not sought to resolve their concerns as stipulated in the water agreement through mediation or if necessary, binding arbitration which we're completely willing to engage in. They have provided no evidence to back up their concerns about how SEA's water would use would negatively affect them and Neal Nishida, the engineer study, provides counter data to that. We will continue to pay for any water we use by paying our proportion share of the well pump electric bill based on the consumption indicated by the water meters.

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

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

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

Thank you for taking time to give this matter, Sacred Earth Assembly's needs, and the value it offers to the community careful consideration. Again, I apologize for any intensity or interrupting, it's just that many issues were raised and I didn't have a chance to address particularly the water issue. In the water agreement it says that no lawsuits

are possible, that any disputes are to be mediated or be taken to binding arbitrary and we will abide by that, and if we need to, we have a water tank, we can have the water delivered to serve the needs of the temple, the church, Sacred Earth Temple, so that should not be a reason to decline us today.

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

End of transcription of the video provided by the applicant.

The following motion was made after discussion:

It was moved by Mr. Thompson, seconded by Mr. Carnicelli, and

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

(Assenting – D. Thompson)

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

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

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

The Motion was then put to a vote.

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

VOTED: To Deny the Land Use Commission Special Permit.

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

D. COMMUNICATIONS

1. LUANA DEVELOPMENT PARTNERS, LP submitting the annual report regarding disbursement of funds in the Settlement Agreements for the Honua Kai Resort, North Beach Park, and Related Improvements at TMK: (2) 4-4-014: 006 and 008, and 4-4-001: 010, Kaanapali, Island of Maui. (SM1 2004/0017) (C. Thackerson)

Condition No. 32 of the SMA approval (SM1 2004/0017) states:

That an annual report shall be filed with the Maui Planning Commission on the disbursement of the funds in the Settlement Agreements for their information.

This is for notification and review purposes. No action is anticipated.

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

After a lengthy discussion, the Commissioners asked that documentation of the approval and the minutes of the meeting be provided to them at a future meeting.

2. LANCE D. COLLINS, attorney for Victor Gregor Limon, The Hawai'i Independent, and Disappeared News, submitting Letter dated June 24, 2020 relating to the ongoing contested case hearing on the following application:

BRE ICONIC GWR OWNER LLC, requesting a Special Management Area Use Permit, Step 1 Planned Development Approval, and Step 2 Planned Development Approval for the Grand Wailea Resort to transfer "H-2 Hotel" and "OS Open Space" zoning designation areas, update facilities and create 224 new guest room units, renovate and expand the resort swimming pool and restaurant facilities, expand the parking structure from three to five levels to provide 316 additional parking stalls, removal of the Seaside Chapel Structure, addition of approximately 30 public beach parking stalls, and related landscape, utility, and infrastructure improvements at 3850 Wailea Alanui Drive, Wailea, Island of Maui, TMK (2) 2-1-008:109. (SM1 2018/0011) (PD1 2019/0001) (PD2 2018/0003) (A. Cua)

No public testimony will be taken on this matter as it relates to an ongoing contested case proceeding.

AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO CONSULT WITH ITS ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO THE COMMISSION'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES AND LIABILITIES, PURSUANT TO SECTION 92-5(a)(4), HAWAII REVISED STATUTES.

The Commission may take action with respect to the letter.

Mr. Collin's withdrew his request per his letter dated July 13, 2020.

E. DIRECTOR'S REPORT

1. West Maui Community Plan Update

First scheduled meeting is July 28, 2020 at 5:30 p.m. via BlueJeans

2. SMA Minor Permit Report

This is for notification and review purposes. No action is anticipated.

3. SMA Exemptions Report

This is for notification and review purposes. No action is anticipated.

Clarification was asked for SM5 2020/0131 and SM5 2020/0149 as both was noted as parking garage spall repair for the same property.

4. Discussion of Future Maui Planning Commission Agendas

a. July 28, 2020 agenda items

Ms. McLean went over the items scheduled for the July 28, 2020 meeting.

F. NEXT REGULAR MEETING DATE: July 28, 2020

G. ADJOURNMENT

The meeting was adjourned at approximately 5:04 p.m.

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Lawrence Carnicelli, Chair
Stephen Castro
Kawika Freitas
Kellie Pali
P Denise La Costa
Christian Tackett, Vice Chair
Dale Thompson

Others

Michele McLean, Director, Department of Planning
Jordan Hart, Deputy Director, Department of Planning
Jordan Molina, Deputy Director, Department of Public Works
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel