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**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM D.1
APRIL 13, 2021**

Ms. McLean: The next item on the agenda, we actually have two proposed findings of fact conclusions, law and decisions and order before you. The first is one that would deny the request for State Land Use Commission Special Permit for Dr. Lew Abrams and Maria De Abrams to operate Sacred Earth Assembly, a non-profit interfaith church in the State and County Agricultural Districts at 4505 Hana Highway in Haiku, TMK: 2-8-003: 075.

There were a number of documents linked on the agenda and then a few more emailed just over the past few business days, the Commission may act to adopt, adopt with modifications or take some other action regarding the Proposed Findings of Fact, Conclusions of Law and Decision and Order.

D. CONSIDERATION AND ADOPTION OF PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

Pursuant to Chapter 91, Hawaii Revised Statutes, and Maui Planning Commission Rule 12-201-119, no public testimony will be taken.

- 1. Proposed Findings of Fact, Conclusions of Law, and Decision and Order denying the request for a State Land Use Commission Special Permit for DR. LEW ABRAMS AND MARIA DE ABRAMS to operate Sacred Earth Assembly, a non-profit, interfaith church in the State and County Agricultural Zoning Districts at 4505 Hana Highway, Haiku, Island of Maui, TMK (2) 2-8-003:075 (SUP1 2019/0001)(SUP2 2017/0011) (T. Furukawa) (Action on the application was taken by the Commission following public hearing at the July 14, 2020 meeting.) (Matter was rescheduled from the March 9, 2021 at the request of the applicant's attorney due to a scheduling conflict.) (Members: Please refer to your March 9, 2021 packet with which you received a hard copy of the D&O and a hard copy or flash drive for the Exhibits which you requested at a previous meeting.)**

The Commission may take action to adopt, adopt with modifications, or take some other action regarding the proposed Findings of Fact, Conclusions of Law, and Decision and Order.

Ms. McLean: The applicant does have an opportunity to address the Commission. First, I think it would be appropriate for Mr. Hopper to guide the Commission in the steps taken today and what actions would be appropriate. And then, of course, the applicant has an opportunity to address the Commission. Mike, do you have anything that you want to say to direct the Commission on this?

Mr. Hopper: Mr. Chair, if I may?

Mr. Tackett: Yes, please do, Mr. Hopper.

1 Mr. Hopper: As an initial matter, I know not all of the members have heard the whole record of
2 this proceeding. I believe the entire record, however, was sent to all of the members. So, I think
3 just verbally, I want to confirm that all of the members have read the full record prior to proceeding
4 so you know how many members will be participating. That might be a good initial matter to, to
5 go through.

6
7 Mr. Tackett: Understood. Anything else, Mr. Hopper?

8
9 Mr. Hopper: I would, if it would, I think it would be beneficial for the Commission once you've
10 established that to have an executive session prior to getting into the adoption of the Decision
11 and Order. There's some legal advice that I think would be important for the Commission to hear
12 with respect to this item and in the various filings or letters that have arisen since then. And I
13 think that's something I'd recommend prior to hearing from the applicant and deciding what to do
14 with this item.

15
16 Mr. Hopper: Okay. Yes, Kellie?

17
18 Ms. Pali: Chair, would you like me to call or I should say, I could call the executive session if you
19 would like, in pursuant to Section 92-5(a)(4) for us to be able to talk to our attorney about
20 questions pertaining to the commission's powers, duties and privileges.

21
22 Mr. Tackett: Sure, I would entertain your motion and P D second—

23
24 Mr. Hopper: Mr. Chair?

25
26 Mr. Tackett: --after I do the verbal confirmation. So, for those of you that were not here for the
27 initial, for the initial presentation, you guys were supposed to have all been provided all the
28 documentation and so I just need to confirm that yes, you did receive that documentation, you did
29 read that documentation, and that you feel that you have all the information you need to make a
30 sound decision on that information. Does anybody here not feel like they've had an opportunity
31 to, to read all the information and to be able to make an educated decision on this matter? Go
32 ahead, Mel.

33
34 Mr. Hipolito: Thank you, Chair. I've read all of the documentation, including the jump drive. Not
35 attending the original presentation there's a lot of things that could have been said that may not
36 be part of this. I read the documents. I understand it, but I still feel not comfortable at this point.

37
38 Mr. Tackett: Understood. So, at that point, are you saying that you would like to, you would like
39 to recuse yourself from the vote or are you comfortable with—

40
41 Mr. Hipolito: I recuse myself.

42
43 Mr. Tackett: Okay. And I believe also, Ashley, I believe you are also not on at that time. Have
44 you read all the information and do you feel comfortable weighing in on this adoption?

45
46 Ms. Lindsey: Yes, Chair, I read the information and I feel comfortable weighing in on the adoption.

1
2 Mr. Tackett: Outstanding. Anybody else have anything to say on this matter? Hearing none,
3 oh, go ahead Jerry.
4

5 Mr. Edlao: I read all the documents, a lot of documents, even on the jump drive and everything
6 else, and you know, yeah, I agree with Mel there may have been some things that were done in
7 person that may not be part of the documents but based on what I read, I feel comfortable moving
8 forward and discussing this.
9

10 Mr. Tackett: Okay, thank you Jerry. I believe, I believe that, that takes care of the verbal
11 confirmation. Next becomes the executive session which I believe we already have a motion from
12 Kellie, and a second from P D., not exactly how that, how that's gonna work, but if we could, if we
13 could move into that next section, please?
14

15 Ms. McLean: Chair, the way it works is that everyone would have to leave this meeting. Carolyn
16 will send a link to everyone with a new meeting that will just be for the executive session
17 participants, and then once that's concluded, you'll leave that meeting and then rejoin this one.
18 So, you'll need to have on hand the original link that you needed, that you used to join this
19 morning. So, you'll leave that and then come back to it.
20

21 Mr. Tackett: Understood.
22

23 Mr. Thompson: Carolyn sent out the email already. We have it.
24

25 Ms. McLean: Okay, did you vote on the motion?
26

27 Mr. Tackett: No.
28

29 Ms. McLean: Okay, so you need to vote on the motion.
30

31 Mr. Tackett: Okay, we need to call those in favor of going into executive session, please raise
32 your hand? And all those opposed? I believe it's unanimous, Director.
33

34 Ms. McLean: Yes, Chair.
35

36 **It was moved by Ms. Pali, seconded by Ms. La Costa, then unanimously**
37

38 **VOTED: To Go Into Executive Session.**
39 **(Assenting – K. Pali, P D. La Costa, J. Edlao, K. Freitas, M. Hipolito,**
40 **A. Lindsey, D. Thompson)**
41

42 Mr. Tackett: So, Commissioners, you guys should have all received a link and so we'll exit this
43 meeting and we'll enter that meeting and then we'll report back to this same meeting via the same
44 number we used the first time. All right, see you guys there.
45

1 The regular meeting was recessed at approximately 11:25 a.m., and the Commission went into
2 Executive Session at approximately 11:27 a.m. The Executive Session was adjourned at
3 12:01 p.m., and the regular meeting was reconvened at 12:03 p.m.

4
5 Mr. Tackett: And our next order of business?

6
7 Ms. McLean: Chair, I think Mr. Hopper would advise that the Commission establish that no
8 decisions were made in executive session and that the discussion related only to the
9 commission's powers, duties and liabilities.

10
11 Mr. Tackett: Can we all confirm that, what Director has just said was the case? All those all those
12 confirming, please raise your hand? (All members raised their hand) Thank you.

13
14 Ms. McLean: Chair, continuing on to the first Finding of Fact, Conclusions of Law and Decision
15 and Order that's before the Commission, we already read that matter into the record. I don't know
16 if Mr. Hopper has any procedural guidance for it, but at this point it would be appropriate to offer
17 the applicant the opportunity to address the Commission, and Chair, if you wish to establish a
18 time limit on that I believe it is your prerogative to do so.

19
20 Mr. Tackett: Yes, if we could please start that process with a time limit of 15 minutes.

21
22 Mr. Leslie Iczkovitz: Is it my turn now? Ready to go? Okay, good morning Commissioners,
23 Director McLean and Mr. Hopper. Thank you for this opportunity to speak with you today on my
24 behalf of my clients, Dr. Lew Abrams and Mrs. Maria Abrams, and their nonprofit Sacred Earth
25 Assembly.

26
27 First, I want to share something from my heart. I've known this family for years, and I know that
28 the...and I know this property very well, and I know that they've spent 13 years working very, very
29 hard to convert useless pineapple land into incredibly beautiful organic farm, certified organic and
30 just got recertified organic.

31
32 Mr. Tackett: Excuse me, Les. Excuse me, Les.

33
34 Mr. Iczkovitz: Yes.

35
36 Mr. Tackett: Could I just please ask Mr. Hopper a question. Mr. Hopper are you there?

37
38 Mr. Hopper: Yes, Chair.

39
40 Mr. Tackett: Do I have to, do I have to have him promise to tell the truth.

41
42 Mr. Hopper: I think he's legal counsel making arguments so generally you don't need to swear in
43 legal counsel for that.

44
45 Mr. Tackett: That's what I thought. Sorry Les, I just wasn't sure on my procedure with that. Go
46 ahead.

1
2 Mr. Iczkovitz: Not a problem. I understand.

3
4 Mr. Tackett: If you could please restart his 15 minutes. Thank you.

5
6 Mr. Iczkovitz: So, the Abrams have worked 13 years very, very hard to build an incredible property
7 here. Agriculture is what Maui is supposed to be about, and that's what they've done, they've
8 converted depleted pineapple land into a beautiful organic farm and they've...they spent over 20
9 years as ministers through the Temple of Peace in Haiku, where they've been ministers and
10 helping Kedar St John, the reverend there put on services for over 20 years and they've done a
11 lot for the community. The Commission, if you've looked through the, the testimonies, you have
12 over 60 people who's testified in support. You have dozens of letters in support and they've all
13 talked about just how much they've done for the community. Last November, Thanksgiving was
14 the first time in over 20 years the Abrams did not host a potluck Thanksgiving for people on the
15 island who did not have another place to go. And they've been available for, for so much and
16 they've always stepped right up. But they've had a vision for a church and they bought 25 acres
17 in Haiku, and they needed a place where they wanted to be far away from people.

18
19 So, the building they built as the temple building which they get the permit, the authority to go
20 forward, they...this building is 1,500 feet from the closest neighbor and there's just no noise,
21 there's no possible impact and you know, I've been impressed by this. I've, I've, you know the
22 services that they plan to do is similar to Temple of Peace, and quite frankly, I moved to Maui
23 after 40 years on Oahu. I moved to Maui two years ago to help them build this church. I was so
24 moved by what they do and the community that is so supportive of them. So, I'm just you know,
25 asking you, please, to do what you've already done, which was granted a permit back in August
26 of 2013...a, 2019.

27
28 Now, the record is over a thousand pages long, and I'm happy to hear that the commissioners,
29 the new commissioners have said that they've, they've read it all. But it's important for me to do
30 some history just so that we know we're on the same page. Procedurally in my letters to you, I
31 said, I put the point which I'm asking for a legal response is that legally you do not have the
32 authority to revoke SEA's existing permit. You granted a permit. The important questions and
33 the facts are these, the permit was issued and approved by the Maui Planning Commission on
34 August 13, 2019, and there's been no revocation of that permit...2019. There's been no
35 revocation of that permit. There's never been any notice on any agenda of any proposed
36 revocation of that permit. And under the Administrative Procedures Act, you have rules that you
37 have to follow. You can't just issue a permit and then change your mind.

38
39 Well, what we have here, the first order of business, I believe, is that whether or not, you know,
40 we've asked you to take this off the agenda because legally, procedurally, you do not have the
41 right to move forward, but that's, that's the first point that I'm asking to address.

42
43 But historically, the important thing is this, as on July 14th. Let me, let me, let me go back a
44 second. On ...(inaudible)...three meetings, August 13, 2019, the Maui Planning Commission
45 approved the permit with 12 conditions. Everything is in the record. All the discussions about
46 traffic, about water, about returns...requests for services. This was all in the record. And it was

1 discussed. You had three neighbors that...(inaudible)...but they all talked about, that there's no
2 traffic problems, there's no noise issues. You have three neighbors that complained, and after all
3 the information that was in the record, this Maui Planning Commission voted five to one in favor
4 of the permit. It granted the permit on August 13th. And then on September 16th,
5 Director McLean wrote a letter issuing the permit, gave it a permit number, so yes, it was
6 approved, but instead of issuing it right away, there was a question of jurisdiction so the Maui
7 Planning Commission sent it back up to Land Use Commission and said, you have jurisdiction.
8 But the Land Use Commission said that's not our job, your job is to determine who has jurisdiction.
9 So, the Land Use Commission issued an order sending it back down to the Maui Planning
10 Commission to determine who has jurisdiction and if it...and also had directed them to make six
11 findings. First finding being who has jurisdiction, the...once the Maui Planning Commission voted
12 in favor of jurisdiction, they had jurisdiction. The Land Use Commission had done its final action.
13 There was nothing left for them to do. So here you have a record which is clean that the Maui
14 Planning Commission relied upon to grant the permit in August 2019.

15
16 Now, what has happened since then? Has there been any new evidence negative to SEA's SUP
17 application? Absolutely, nothing. There's absolutely no new evidence into the record. Somehow
18 on July 14th...(inaudible)...just to really address the issues that were being discussed, and you
19 know, regarding incorrect information about the water system. So, you know, without us giving
20 us a chance, Maui Planning Commission decided we're going to just change our mind, even
21 though there's absolutely no new evidence in the record which would support changing our
22 decision back in August 2019. We're gonna go ahead and do it. We're gonna just...and so what
23 makes things more difficult is that somehow the Commission lost an hour and a half of the
24 recording. So, there's no audio recording. The motions that were made, the discussions of the
25 participants, your minutes which are required to be accurately describing what took place at the
26 meeting, are woefully incomplete. So, you know, and but then somehow somebody drafts findings
27 of facts and they come up with things and the three that I want to direct you to are Numbers 39 to
28 41.

29
30 And Number 39, it's stated that the applicant did not get approval of their neighbors to, to use the
31 common water system. Well, legally, we don't have to, and I'm not the only one who says that,
32 but Director McLean said that, attorney Michael Hopper said that, Deputy Director Jordan Hart all
33 said that on the meeting July 14, 2020. They all told you...(inaudible)...private water agreement,
34 a civil dispute is not a reason why you can deny a permit. But in spite of having said that,
35 somehow somebody put in the findings of fact that they have such a legal obligation. It's just not
36 true. There's no law. There's no fact. There was no case that your counsel can point you to that
37 says this is valid.

38
39 The next issue is traffic. Well but, let's go back to the water. What happened on July 14th, you
40 didn't really discuss the letter from the engineer that said there's plenty of water and even
41 Commissioner Pali did not, didn't argue that the water is adequate. She just wanted permission.
42 Permission is...(inaudible)...use a common water agreement. When it comes to the traffic, you
43 know, all the issues were discussed about traffic, the three people complained, but in spite of
44 whatever is in the record and which now includes the letter from the Department of Transportation,
45 which said traffic is not a problem. So how is it that somebody came up with an issue, a finding
46 of fact that said, oh, traffic's a problem. Name me one fact in the record which supports that. I

1 don't think you can do it because there are no such facts and there's nothing new came back
2 regarding traffic on August 19th, so it's not possible legally to change your mind.

3
4 And then the finding of fact, 41 says that we have a history of violating the law. And you know,
5 you mentioned new RFSs but was not mentioned in the findings of fact was that all RFSs were
6 submitted by neighbor Michele Drewyer, who's been a disgruntled...in opposition of this thing.
7 And each one of those four new RFSs were, were closed out because they had no basis for them.
8 So here we have a neighbor who complains and about potential traffic, but again, there is nothing
9 in the record that supports any finding of history of violation of the law. And the RFSs
10 were...(inaudible)...they did what they were supposed to do, but in order to revoke a permit,
11 because once you have a permit, you have a permit. You have...there's a value to that, and you
12 cannot just deny that permit. There's no law that says you can deny a permit. Ask your Lawyer,
13 what's the, what's the law, what's rule of Maui Planning Commission that allows you to revoke
14 the permit after it's been granted?
15

16 And you know, if you want to point to the Land Use Commission Order, the Land Use Commission
17 Order specifically does not say that you can revoke the permit. What it says is to modify the
18 conditions as appropriate. And going back to Land Use Commission there was a big
19 misunderstanding, the Land Use Commission was in favor of this permit. The State Office of
20 Planning wrote a letter to the Land Use Commission on November 4th that confirmed that we met
21 the five guidelines, there are five guidelines and we met them. They proved positively. So, when
22 Director McLean, her initial report in 2019 that was approval, the Commission, the Commission
23 voted its approval August 2019...(inaudible)...by giving the approval and said we met the five
24 guidelines...(inaudible)...planning said we met the five guidelines and everything in the record
25 says we've met the five guidelines. So how can you revoke a permit when you don't have the
26 legal authority to do so considering that the Land Use Commission said, you know, if you,
27 if you look at their minutes and I encourage you to of their meeting, they were concerned that the
28 restrictions imposed on SEA's permit was too restrictive.
29

30 And, you know, they do not, you know, they wanted to know well, how do you justify limiting this
31 congregation to six Saturdays a year? I mean, Dr. Abrams is Jewish. I'm Jewish. I want to be
32 able to celebrate the Sabbath in my church and to say that, you know, arbitrarily say you can't do
33 something. We said we wanted you to reconsider that because we don't think it's fair for
34 Saturdays to be excluded. So, what we did for the July 14th meeting last year was we brought a
35 letter addressing all the five, the six issues that LUC wanted us to comment on, and we
36 commented on it and we just asked the commission to consider some slight changes. Please
37 consider modifying it. We weren't demanding anything. We were just asking you to consider it.
38 But in response to that, everything just went south. It seemed like the Chairman, first of all, was
39 refusing to allow us to testify, even though Tara had had given us assurance the day before that
40 we would have a chance to testify. And she did tell the Commission that we planned to testify,
41 but somehow the Chairman last time did not really let us testify. He just said we're going to vote,
42 are we ready to vote without giving us a full chance to do that. It's just not fair.
43

44 But in order for this commission to make a decision today, it has to make a determination under
45 what legal right do they have to revoke the permit. And then, and if you look at your findings of
46 fact, what particular facts are there that supports the findings of fact 39 to 41, and there's just

1 nothing, nothing there. The...you know, and I have to say that whoever, you know, I'm very
2 curious, we're very curious as to who drafted these findings of fact without minutes, without an
3 oral recording, who took notes of that July 14th meeting, were those notes, what was used in
4 order to create those findings of fact? You know, and when did you discover that you didn't have
5 a recording and you're dependent upon someone to create minutes without notes? But the
6 prejudice that was shown in the drafting of these findings of facts is, is, is obvious. You know to
7 say that their history of violation of the law and using that a basis to deny the permit. That wasn't
8 anywhere in the meeting, someone just created that out of whole...(inaudible)...Same thing with
9 that there's a...you have a obligation to get your neighbor's permission to use the water. That
10 was never discussed at the July 14th meeting. That was, that was not found as a fact, that's not
11 a law, and the same thing with traffic, you know, a couple of people complaining about traffic does
12 not create facts sufficient to deny it because of a potential traffic impact.

13
14 So, what we're just asking of the Commission from the bottom of our hearts is that you granted a
15 permit with 12 conditions on August 13, 2019. Jurisdiction was confirmed with Maui Planning
16 Commission so the LUC had nothing to do with it. We're just asking respectfully the Commission
17 to give us, to reconfirm that our permit which was approved and has been in effect since 2019
18 remains in effect, we're not asking you for anything more than we've asked for. We'd like to have
19 a discussion about making some minor modifications, but right now we just, you know,
20 ...(inaudible)...this for over five years. The Abrams have been working on this for over five years,
21 they have invested so much money, so much time, so much energy, hundreds of their supporters
22 have, have shown their support to us, dozens have appeared, and this...the middle of this
23 pandemic this island needs spiritual support. You have people here who are suffering from the
24 pandemic or who have had the worst year ever.

25
26 Ms. Takayama-Corden: Fifteen minutes.

27
28 Mr. Iczkovitz: They're looking for support, they're looking for things. So, the, the, you know, I'd
29 like to turn over and give Dr. Abrams a chance for him to speak as well, and you know, I would
30 like an opportunity to, to summarize before your votes are taken.

31
32 Mr. Tackett: Yes, Les, let me, let me, as I understand it the 15 minutes was your 15 minutes. If
33 you wanted to split it with Dr. Abrams then, then that would have been your choice, but I don't
34 believe we have 15 minutes for each of you and then time for a, for a recap, but—

35
36 Mr. Iczkovitz: Chairman, I believe that under the rules, the applicant has to be given sufficient
37 time to address the issues. The applicant and his representative. So, I did not realize that I was
38 supposed to split the 15 minutes because I was told that, you know, Dr. Abrams and I would be
39 given a chance to speak. So, all we're asking Dr. Abrams is for maybe ten minutes to speak to
40 the three issues that's all we're asking.

41
42 Mr. Tackett: Mr., Mr. Hopper?

43
44 Mr. Hopper: I think that's fine, Chair. If it's going to be ten more minutes, I think that if they're
45 asking for that, it's, it's, you can do that.

46

1 Mr. Tackett: Okay. Ten minutes it is. Go ahead, go ahead, Mr. Abrams.

2
3 Dr. Lew Abrams: Thank you, Maui Planning Commissioners, Director McLean. ...(audio
4 feedback)...

5
6 Mr. Tackett: Les, are you still on?

7
8 Mr. Iczkovitz: I'm off.

9
10 Dr. Abrams: I think we have it settled. I appreciate the opportunity to appear before you one
11 more time. We've had four Maui Planning Commission hearings and one State Land Use hearing
12 and I just want to acknowledge that you all have spent a lot of time and energy reviewing volumes
13 of documents and spending time trying to come up with a fair solution associated with this permit,
14 and so I just want to acknowledge that.

15
16 And I also wanted to just say, acknowledge that there are several new members of the Maui
17 Planning Commission that I haven't had a chance to meet and weren't able to hear my initial
18 presentation, so I wanted to speak briefly to that, but also to acknowledge that it is a lot of work
19 that you have taken on as volunteers, and I appreciate your efforts to read all of this extensive
20 record, and for fair judgment, and I understand that your motivation for being on this committee
21 is to make a positive difference for the Maui community.

22
23 Just a little background, I am a PhD licensed clinical psychologist. We've been on Maui since
24 1998, and I've worked in a variety of public agencies, including the Molokini psychiatric unit and
25 private practice, and simultaneously my wife and I have been interfaith ministers at the Temple of
26 Peace in Haiku for more than 20 years where we sing and play in the church band. I held the
27 prayers. We cover the Sunday service, we've been covering...Kadar St John is out of town and
28 so this is a longstanding dream that we have been working on to be able to offer an interfaith
29 earth-based ministry to the Maui community.

30
31 Since 2007, we've been working on this 25-acre farm north shore, Haiku which is old pineapple
32 land, ...(inaudible)...permaculture and regenerative farming methods to restore the depleted land
33 left from that mono cropping and chemical agriculture. We've developed permaculture tours
34 where we educate people about some of these methods, and we have some actual solutions for
35 food sovereignty and ways of reclaiming some of the depleted land on this island. So, we feel
36 that, that we're offering value in that way.

37
38 And then my work as a psychologist interfaces and that I'm aware that in this time there's a lot of
39 people who are dealing with separation, alienation, anxiety, depression that are made worse by
40 COVID, and so, everyone needs a sense of community and belonging and purpose and this value
41 of putting the earth...(inaudible)...sustainably and being stewards of the planet for the future
42 generations which is basically a summary of the Hawaiian principle of malama aina is a great
43 unifier and we're inclusive, we're welcoming people of all faiths to gather and work together on
44 the land, learn to live sustainably, share locally grown potlucks, be together on the holidays, honor
45 rites of passage for our community members. That we're proposing to offer something positive
46 and enriching to the Maui community.

1
2 So, at the end of the third hearing in August 2019, you guys, we worked on developing conditions
3 that were balancing the neighbor's concerns and our ministry's request, and then after you
4 received this outpouring of support from our community with more than 500 people signing a letter
5 saying they were in support and would like to participate, and then 41 people either wrote letters
6 of support or appeared in person, including many elders older than like 80-years-old, including
7 Uncle George Kahumoku, Jr., Kahu Leiohu Ryder, Kahu Alalani Kuhina Hill, Aunty Piilani,
8 Reverend Dr. Ayin Adams, Reverend Kedar St John, ...(inaudible)...Kahn and the spiritual, the
9 late spiritual teacher Baba Ram Dass all offered support for this vision, and I believe that helped
10 you make a decision to decide to grant us that permit in August 2019.

11
12 But we were sent to the State Land Use Commission ...(inaudible)...were discussed and we were
13 basically, I understood instructed to return to ...(inaudible)...discuss and provide information with
14 the possibility of revising conditions to be less restrictive. And so, when we entered that fourth
15 Maui Planning Commission hearing, I had written a letter addressing every one of the Land Use
16 Commission's concerns and was eager to present that. And then the discussion started to go
17 into reservations about three main issues, and those issues are proposed in the findings of fact
18 that last was...(inaudible)...so, I encouraging you all to reexamine is water supply, traffic and
19 noise, and request for service. So, I just wish to briefly speak to each one of those things in an
20 effort to elucidate and clarify those issues.

21
22 So, regarding the water, the question was, will the...(inaudible)...have any negative impact on
23 the availability of water from the neighbors. And the one solid piece of evidence we have about
24 that is an engineering report done by Neil Nishida was requested by Tara Furukawa, our planner
25 in the Department, and he evaluated the capacity of the well, the holding tank, the pump, the
26 history of use, and his conclusion was that there's ample water in this well system that currently
27 with serving everyone in the water agreement, we're working, we're operating at slightly less than
28 50 percent capacity of that well. And that there's no anticipated negative effects on water supply
29 to the neighbors.

30
31 And then, as was mentioned, our water system is governed by a private water agreement,
32 ...(inaudible)...water that we use, and it was...we've, we've been doing that for the last 13 years.
33 We pay our share of the water use as well as take on responsibility for landscaping and trimming
34 around the well area. And in that private water agreement, it's clearly states that no lawsuits are
35 allowed to settle disagreements and all disputes should be settled through mediation or binding
36 arbitration. So, that is something that if, if it comes up, we will have the ability to work it out with
37 the, with our neighbors in the private water agreement. But in any case, we've also
38 put...(inaudible)...gallon water tank that's right next to the temple, and plumed into the temple
39 into which we have had delivered potable county water and we can have more truck deliveries of
40 that water if needed to supply any additional church use, so really the water issue is a nonissue.
41 This church does have access to water whether or not our neighbors agree within the private
42 water agreement.

43
44 Related to the traffic and noise, the only new data that I'm aware of was this letter from the
45 Department of Transportation that stated that there were no anticipated traffic concerns, and I can
46 say there's never been an accident, to my knowledge, anywhere near the entrance of my driveway

1 on the highway or on our land. We have 90 feet of frontage on the Hana Highway with views in
2 each direction of a thousand feet in one direction and several hundred feet in the other. And then
3 when people turn off the on the Hana Highway and enter our property, they basically disappear
4 from view from many of the neighbors. And the one-way loop road drive on our land where we
5 could ample parking for more than a hundred cars. So, that traffic laid to rest.

6
7 And then related to noise, again, our temple is located on a spit of land surrounded by gulch on
8 three side with more than a thousand feet to any neighboring house, and so there's never been
9 any formal noise complaints. It's not like the police have been called coming to our place about
10 loud, you know, events or anything. So, of course, if we were to get a call from a concerned
11 neighbor about noise, we would be very accommodating to turn down any volume or close up the
12 windows and doors. So, I just want to assure you that, you know, if you are to reconfirm this SUP,
13 we'll be extremely sensitive to any potential noise impacts on neighbors.

14
15 And then regarding the, the RFS complaints, you know, the, there's...it was mentioned in, on the
16 findings of fact that the three new complaints since the last Maui Planning Commission hearing,
17 what was not noted was that they all came from a single individual and they were all investigated
18 and closed and found to have no basis. In Director McLean's original report and
19 recommendations, she reviewed the history of RFS complaints in years prior, which were very
20 few, you know, five, six years ago, and she determined that they were not significant enough to
21 interfere, interfere with a recommendation to approve this SUP for five years. So, the primary
22 source of complaint has been one neighbor, Ms. Drewyer, who is between us and the
23 Hana Highway and we have gone to great lengths to try to mitigate and address her concerns.
24 We actually stopped using more than three acres of our property...(inaudible)...road on our land
25 to create a buffer, sort of a no man's land between us and the Drewyers. We have invited her to
26 holiday celebrations, we brought her harvest boxes free, gifts of produce from our land, we cut
27 down trees that she complained about that were growing in her view.

28
29 Ms. Takayama-Corden: Ten minutes.

30
31 Dr. Abrams: Okay, so I'm just saying we made great effort to appease her but that wasn't good
32 enough. She actually, she created a—

33
34 Mr. Tackett: Lew, Lew you got your ten minutes, Lew, so, we gotta, we gotta wrap it up at that
35 point.

36
37 Dr. Abrams: Okay, I will, I will come to the, the final conclusion here then. So,--

38
39 Mr. Tackett: That was the conclusion. You had ten minutes.

40
41 Dr. Abrams: Well, no let me, let me just...okay, I would just like to thank you for reconsidering
42 then possibly reapproving our Special Use Permit and to recognize that this is your chance to
43 make a positive difference by supporting this valuable offering to the Maui Planning Commission,
44 please don't force us into an appeal process—

45
46 Mr. Tackett: Thank you, Lew.

1
2 Dr. Abrams: --that might take many years, and I really appreciate and hope you can recognize
3 that malama aina is—

4
5 Mr. Tackett: Lew, Lew you're, you're running me over, Lew.

6
7 Dr. Abrams: This is a value—

8
9 Mr. Tackett: --You're running me over, Lew. You're running me over, okay, I'm trying to, I'm
10 trying to be nice about it, you got 15 minutes, you asked for ten more, we gave you ten more and
11 now you're running me over, so please, can we just please do this amiably, it would be so much
12 better.

13
14 Dr. Abrams: Thank you.

15
16 Mr. Tackett: Thanks Lew, I appreciate it. Thank you so much.

17
18 Ms. McLean: Chair, now would be an appropriate time if the Commission has any questions for
19 Corporation Counsel or for the Department on the draft document that is in front of you or of
20 course, if you have questions for the applicant that would be the time to ask those as well.

21
22 Mr. Tackett: So, Commissioners, do we have anything like that? Hearing none, what is, what is
23 in front of us is whether to adopt or not adopt our Findings of Facts and Conclusions. So, do we
24 have a...and this requires a motion, correct, Michele? So, do we do...is it a motion and a second?
25 Is that how this goes forward?

26
27 Ms. McLean: Yes, Chair. There would need to be a motion and a second and then a vote taken
28 whether that is to adopt or to adopt with modifications, defer or some other action.

29
30 Mr. Tackett: Got it. Thanks, Michele, thanks Director...(audio feedback)...that was pretty cool.
31 Go ahead Mr. Hopper.

32
33 Mr. Hopper: Just also there's been proposed Findings of Fact submitted and Conclusions of Law
34 and a D&O submitted by the applicant, if you do do a motion to approve your current, the, the
35 draft, then I think you would include in that motion, a motion to reject the applicant's findings. I
36 think just approving yours is probably implied leave rejecting the rest, but in your motion if you do
37 approve, adopt your Decision and Order I think you'd want to incorporate in that a rejection of the
38 applicant's proposal because they're, they're contradictory, so I think that that's something you'd
39 want to do if you decide to adopt your...the decision and order.

40
41 Mr. Tackett: Thank you, Director and Corp. Counsel, thank you for your guidance, we appreciate
42 it. Commissioners, do we have a motion? No motions? P D.

43
44 Ms. La Costa: Thank you, Chair. I would like to make a motion that the Planning Commission
45 adopt the Decisions and Finding of Fact that has been presented from the Planning Commission
46 to deny the permit.

1
2 Mr. Tackett: And, and in doing such, do you want to reject the...how is it, how is it stated, Michele?

3
4 Ms. McLean: Chair, if I'm understanding the motion correctly, we'd be to adopt the Findings of
5 Fact, Conclusions of Law, Decision and Order that were prepared by the Department, and to
6 reject the same entitled document submitted by the applicant.

7
8 Mr. Tackett: Thank you so much. Is that your intent P D?

9
10 Ms. La Costa: That is correct. I'm sorry I'm having trouble with my video and audio today, so I'm
11 coming in and out. So, that is correct, that is my motion to confirm and to accept the denial written
12 by the Commission and to deny the D&O submitted by the applicant.

13
14 Mr. Tackett: Thank you. Do we, do we have a second? We got, we got a second. Kawika. So,
15 moved and seconded. All those in favor, please raise your hand? All those opposed? Okay, and
16 the abstentions? I believe, I believe Mel recused himself so he's not voting, so I believe all the
17 votes are in.

18
19 Mr. Hopper: Chair, could you possibly count them for the record. I don't have everyone on my
20 screen, and I don't know if staff has it too, but I don't know if you can just count them out, maybe
21 you can see it, but I can't.

22
23 Mr. Tackett: Okay.

24
25 Ms. McLean: Chair, I saw Commissioners Pali, Lindsey, Edlao, Freitas, Thompson and La Costa
26 voting in favor of the motion, and Commissioner Hipolito abstaining.

27
28 Mr. Tackett: I believe he recused himself, is that the same?

29
30 Ms. McLean: Recused.

31
32 Mr. Hopper: Yeah, it's, it's a bit, it's a bit different. This is a not a situation where he's...his recusal
33 to vote would be an affirmative vote. He would just not be counted in the total. So, I think we're
34 clarifying that. Also, the applicant's attorney has asked to state something. I don't know if you
35 would want to entertain that at this point. It's an option, but not required.

36
37 Mr. Tackett: I believe the...so do you guys have the vote? Do you guys have the...you got
38 everything you need Michele?

39
40 Ms. McLean: Yes, and I believe Carolyn you can verify that you also have that.

41
42 Ms. Takayama-Corden: Yes, I do. I have the vote.

43
44 **It was moved by Ms. La Costa, seconded by Mr. Freitas, then**

45

1 **VOTED: To Adopt Proposed Findings of Fact, Conclusions of Law, and**
2 **Decision and Order Prepared by the Department and to Reject the**
3 **Proposed Findings of Fact, Conclusions of Law, and Decision and**
4 **Order Submitted by the Applicant.**
5 **(Assenting – P D. La Costa, K. Freitas, J. Edlao, A. Lindsey, K. Pali,**
6 **D. Thompson)**
7 **(Recused – M. Hipolito)**
8
9

10 Mr. Tackett: And so, Mr. Hopper, you're saying that their, their legal counsel wants more time?
11

12 Mr. Hopper: He, he had asked to, to make a statement. I mean, you've already taken the vote.
13 I mean, I suppose you can give him time to address the Commission if you'd like. I, if it's, if it's
14 just going to be arguing against the motion, then you can, you can have it, but you can listen to it
15 and then, you know, continue on as you like. But that may be something you would, you'd want
16 to do.
17

18 Mr. Tackett: I think, I think everybody's probably have a whole bunch of the same thing, but I'll
19 give him a couple minutes and that's it. So, go ahead.
20

21 Mr. Iczkovitz: Thank you, Commissioners. Thank you—
22

23 Mr. Tackett: Les, before we, before we get—
24

25 Mr. Iczkovitz: I'll be very fast.
26

27 Mr. Tackett: --before we get started, what kind of time frame you're looking at?
28

29 Mr. Iczkovitz: What we asked for was, and what we're asking for is, you have...there's three
30 members of the Commission who voted in favor of this permit on August 13, 2019. I have to ask
31 you to state for the record exactly what facts you are relying upon in the record to now change
32 your mind.
33

34 Mr. Tackett: Les, Les, no.
35

36 Mr. Iczkovitz: You have to have facts to change your mind.
37

38 Mr. Tackett: No.
39

40 Mr. Iczkovitz: You made a decision.
41

42 Mr. Tackett: No.
43

44 Mr. Iczkovitz: Based upon the record.
45

46 Mr. Tackett: No...the, the—

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Mr. Iczkovitz: You're not allowed to arbitrarily—

Mr. Tackett: ...(inaudible)...what is on the agenda.

Mr. Iczkovitz: ...(inaudible)...violating the administrative procedures act abundantly. You have not given a single fact to support finding of fact 39-41.

Mr. Hopper: At this stage, at this stage, legal counsel is interrupting the Chairperson.

Mr. Iczkovitz: I do not how—

Mr. Hopper: The Chairperson is—

Mr. Iczkovitz: --members who voted one way without having any new evidence introduced—

Mr. Hopper: Mr. Chair?

Mr. Iczkovitz: --changes their mind.

Mr. Tackett: Right, Mr. Hopper, right like I would have never let him talk, you know, I thought they got 15 minutes out the gate and they got 25 and now he wants to talk and now he wants to argue, like I, I...

Mr. Hopper: Understood Chair, understood. The reasons for the Commissioner's vote will be set forth in the Decision and Order and that's, that's what is there, and I think that's clear. At this point, you are in deliberation, and so, at that stage, I think you can move forward. I just, the applicant had asked to raise, raise an issue, I thought it be prudent to listen, but if it's, if it's more oral argument against the motion then I think that that's something you've already heard, so I think you can proceed.

Mr. Tackett: Yeah, thank you. I think, I think we should proceed on. We adopted what we felt we should adopt and we would, we would like to move on now at this point.

Ms. McLean: Okay, Chair, this matter is concluded, the Commission has voted on it.

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II